



EMPLOYMENT TRIBUNALS

Claimant: Ms Sarah Lindup

Respondent: Bright HR Limited

Heard at: Manchester

On: On 16 to 20 December 2024,
15 to 17 January 2025, 14
March 2025 and 22 April 2025

Before: Tribunal Judge Holt
Mrs L Buxton
Mr N Williams

REPRESENTATION:

Claimant: In person represented by her father Mr Lindup
Respondent: Mr J Samson (Counsel)

RESERVED JUDGMENT

The complaint of maternity discrimination pursuant to section 18 of the Equality Act 2010 is well-founded.

REASONS

Introduction

1. By a claim form presented on 19.03.23 the Claimant brought a claim for maternity discrimination [ET1, 11-18]. She seeks compensation alone. The majority of the Claimant's complaints (see paragraph 6 herein below) occurred after she had returned from her maternity leave, as will be discussed later. The claims are resisted by the Respondent's particulars of response dated 26 April 2023.

2. In broad outline, the Claimant claims that, before she took maternity leave, she had been very successful in the Respondent's "web team", part of their sales department. Before her maternity leave, and continuing whilst she was pregnant, she had been promoted to, and continued to work in, the Respondent's web team which was the most sought-after sales team position because it was the team which generated the most revenue for the Respondent and, at the same time, the greatest remuneration for the sales team. This was because, whilst the sales team personnel all had a basic salary, they had opportunity to significantly enhance their earnings with sales-dictated commission.

3. The Claimant was on maternity leave from 08.02.22 and originally due to return to work on 08.08.22 but exercised the right to additional maternity leave.

4. The Claimant's case is that everything started to go wrong for her and her professional relationship with the Respondent when her head of sales moved abroad and the Respondent brought in a new head of sales, Jayde Stott, whilst the Claimant was still on maternity leave. The Claimant met Ms Stott for the first time via an MS Teams meeting on 26.10.22, the contents of which are pivotal to the case and highly contested. The Claimant claims that Ms Stott dismissed her contention that she would return to the web team, as had been promised by the Respondent before and during her maternity leave, and also that the Claimant was entitled to protected earnings at the rate of £1,250 for the first three months of her post-maternity return to work. The Claimant immediately followed this up with emails, tried to meet with Ms Stott to discuss the issue upon her return to work on 15.11.22 and raised a grievance when Jayde Stott did not change her mind. The Claimant then raised a grievance with the Respondent's CEO, Alan Price, on 01.12.22, which did not result in her being returned to the web team. She raised another grievance which was dealt with by the Respondent's general counsel Rob McKellar, and finally invoked the Respondent's appeal process which was dealt with by James Potts.

5. In its response form with appended detailed particulars of response ("PoR") dated 26 April 2023 [23-39], the Respondent rejected the Claimant's claims. The Respondent raised a number of issues. The points of resistance which are outstanding are (in summary):

- i. That the Claimant has made no allegations which amount to unfavourable treatment during the protected period of her maternity leave (noting that she has never alleged any problems whilst she was pregnant).
- ii. That the Claimant has made no allegations of unfavourable treatment because she exercised the right to additional maternity leave.
- iii. It was "*within the Respondent's gift*" to alter the personnel on the sales teams. [§20, p33 PoR].
- iv. The Claimant and Ms Stott met on 26.10.22. The Respondent notes that immediately after the meeting the Claimant expressed that it was "lovely" to have met Ms Stott [emails at 10:18 and 10:22];

- v. There were further email exchanges between the Claimant and Ms Stott on 26.10.22, 03.11.22 and 04.11.22. Topics in these emails included: that Ms Stott would speak with the Claimant upon her return on 15.11.22; and that the protected earnings claimed at £1,250 which was eventually confirmed at £1,250 by Liam Regan on 07.11.22. In the same email Mr Regan said that: *"In terms of the web team, we make changes to the individuals working on specific campaigns on a monthly basis. We look at a number of factors including performance to make our decisions. The specific campaign you will initially work in will be discussed on your return to the office."*
- vi. The Claimant's "characterisation" of what transpired between her and the Respondent between 15.11.22 and 02.12.22 are vehemently denied and were, subsequently, investigated in the grievance and appeal processes.
- vii. The allegations of falsification of the Claimant's sales data is denied.
- viii. [§34, p36 PoR] The Claimant did not meet her sales targets for the first two months of her return, despite the fact that she was working towards "reduced" (ie lower) sales targets than she would have to have met had she returned to the web team. She was also recorded with warnings for being late on 6 occasions from the beginning of January 2023. Her poor performance continued in February and March 2023 when she failed to meet her targets.
- ix. Rober McKellar dealt with the Claimant's grievance comprehensively on 20.12.22 delivering a detailed decision on 04.01.23 which dismissed her complaints.
- x. The "thrust" of the Claimant's appeal was that she did not agree with Mr McKellar. She appealed, and Mr James Potts (Legal Services Director) heard her grievance appeal on 18.01.23. On 09.02.23 he wrote to the Claimant expanding that he was unable to substantiate her appeal.
- xi. The Respondent highlights in particular [42, p38 PoR] that there was no unfavourable treatment and the Claimant did not have the right to return to the same job. She only had the right to return to a "similar" job upon return because she had exceeded the 26 weeks of ordinary maternity leave in accordance with the Maternity and Parental Leave etc Regulations (SI 1999/3312). There was no discrimination within the protected period. At [§42.10] it is pleaded *"Any information in the form of the email dated 19 August 20220 did not amount to an agreement to the contrary. It was merely a commentary on the structural position and the dynamics of the Sales Team at the time. There was no guarantee or indication that the structural position would be the same on her return."*

The Issues

6. In this case the following list of complaints and issues had been identified in advance of the hearing in relation to the claimed pregnancy and maternity discrimination pursuant to section 18 of the Equality Act 2010. They were identified by Judge Cline on 7 June 2023 [48] at a case management hearing:

1. Did the Respondent treat the Claimant unfavourably by doing the following things?
 - i. On 26 October 2022, during a video meeting with the Claimant, Jayde Stott refused to honour a previous agreement in relation to the Claimant's position on the web team and protected earnings and was rude to her.
 - ii. On 15 November 2022, Jayde Stott refused to meet with the Claimant and shouted at her in front of her colleagues.
 - iii. On 16 November 2022, Jayde Stott shouted at the Claimant and stated that she did not like her.
 - iv. In late November 2022, and following her period in "*grad bay*", the Claimant was not moved to the web team.
 - v. Between 22 and 29 November 2022, Jayde Stott falsified the Claimant's statistics.
 - vi. On 1 December 2022, the Claimant told Alan Price (the CEO) that she was not on the web team and Mr Price then queried this with Jayde Stott, who provided falsified statistics in order to justify the position.
 - vii. On 4 January 2023, the Claimant's grievance was not upheld.
 - viii. On 9 February 2023, the Claimant's appeal was not upheld or investigated in a satisfactory manner.
2. Did the unfavourable treatment take place in a protected period?
3. If not did it implement a decision taken in the protected period?
4. Was the unfavourable treatment because the Claimant was exercising or had exercised the right to ordinary or additional maternity leave?

7. We noted that the Claimant cites only one discriminatory incident within the protected period, namely the meeting on 26.10.22, the remaining allegations relate to incidents after the protected period.

Listing

8. On 07.06.23 there was a preliminary hearing before Employment Judge Cline [40-49] by which time the Respondent had applied to strike out the Claimant's claim on the basis that the Claimant had no reasonable prospect of establishing any unfavourable treatment during the protected period of her pregnancy/maternity. Judge Cline drafted the list of issues [48] which forms the basis of consideration of this case. Judge Cline listed the strike out application for a preliminary hearing which was first listed on 19.09.23 before Judge Dennehy. Unfortunately, Judge Dennehy had to recuse herself [55-56]. The strike-out application was re-listed and by which time the Claimant had made an application to amend her claim. These two applications were dealt with by Judge Buzzard (on 03.11.23 and 21.03.24 [60-67] and signed 28.03.24 [60-65]). Judge Buzzard dismissed both applications and gave further case management directions, including that the case was listed for a 5-day hearing commencing 16.12.24.

9. On 06.12.24 Judge Cookson refused an application by the Respondent to adjourn the final hearing, arguing that the case would require 14 days. On 12.12.24 the Tribunal confirmed that there was no objection to the Respondent's witness, Mark McMin, giving evidence from Canada.

10. At the beginning of the hearing before us on 16.12.24 Mr Samson made another application to adjourn the hearing saying that two weeks were required. We indicated that we would proceed, but that we would not be considering any issues in relation to quantum, not least because this would shorten matters.

11. There was also a long-drawn out application that certain parts of the Claimant's witness statement and allegations would not be referred to because they were not relevant to the issues in hand. Decisions were made and the scope of the case thereby limited, although we did comment regarding the proportionality of the time spent on these preliminary matters. By the time that we had read the witness statements, the agreed bundle [654 pages long by the end of the hearing after several additional documents were added to it] and dealt with the two applications referred to above, we were well into the second day of allocated time. It should be noted that, had the adjournment application been successful, then the case would not have been allocated a hearing until well into 2026. Whilst it is regrettable that the hearing of the evidence had to be spread out over December 2024 and January 2025 and the panel had to reconvene more than once to deliberate and, further, that there has been yet further delay in providing this decision and reasons, the case will, in the end, have been dealt with sooner than had it been delayed to start in 2026.

Evidence

12. Any reference to page numbers in these Judgment and Reasons is a reference to that bundle unless otherwise indicated [bundle page numbers].

13. The Claimant called 5 witnesses (including herself). They were her mother, Karen Lindup, Hannah Jenkins (manager) and Iona MacRae (performance Manager) who had been her colleagues during her employment with the Respondent and her father, Richard Lindup.

14. The respondent called 4 witnesses Mark McMinn (from Canada where he continues to be employed by the Respondent), Lee Salter, Liam Regan, and lastly Jayde Stott.

15. With full agreement between the parties, witnesses were taken in something of a random order so as to accommodate various personal commitments and the time zone problem for Mr McMinn. Regrettably, Ms Stott's evidence had to be delayed over the holidays to 15 January 2025.

16. Given the volume of evidence and papers, we cannot refer to everything. Just because we have not referred to an issue or piece of evidence does not mean that we have not considered it. Here we set out the fundamental issues and principal evidence in order that our decision can be understood.

Relevant Legal Principles

Pregnancy and Maternity Discrimination (Equality Act 2010 section 18)

17. Section 4 of the Equality Act 2010 lists maternity as a protected characteristic. Section 18 says: **Pregnancy and maternity discrimination: work cases:**

- (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 section (2), if the treatment of a woman is in implementation of a decision taken in the protected period, the treatment is to be regarded as occurring in that period (even if the implementation is not until after the end of that period).
- (6) The protected period, in relation to a woman's pregnancy, begins when the pregnancy begins, and ends—
 - (a) if she has the right to ordinary and additional maternity leave, at the end of the additional maternity leave period or (if earlier) when she returns to work after the pregnancy;
 - (b) if she does not have that right, at the end of the period of 2 weeks beginning with the end of the pregnancy.
- (7) Section 13, so far as relating to sex discrimination, does not apply to treatment of a woman in so far as—
 - (a) it is in the protected period in relation to her and is for a reason mentioned in paragraph (a) or (b) of subsection (2), or
 - (b) it is for a reason mentioned in subsection (3) or (4).

18. On 7 June 2023 Employment Judge Cline identified that the agreed list of issues (set out herein) has to be determined within subsections 18(2) and 18(4) and/or 18(5) of the Equality Act 2010. The Claimant will only show that she has suffered unlawful discrimination if she has been treated unfavourably: in the protected period of her pregnancy because of the pregnancy (or illness resulting from the pregnancy [s18(2)]; or because she is exercising or has exercised the right to ordinary or additional maternity leave [s18(4)].

19. At the relevant time in 2022, the only exception for incidents in relation to pregnancy that occurred after the end of the protected period, was the implementation of a decision taken in the protected period [s18(5)].

20. In considering the issue of “unfavourable treatment”, we have had regard to **Williams v Trustees of Swansea University Pension and Assurance Scheme** [2018] UKSC 65 by way of analogy to disability discrimination. In that case Langstaff J (President of the EAT) [§17] is quoted as having said:

“... treatment which is advantageous cannot be said to be ‘unfavourable’ merely because it is thought it could have been more advantageous, or, put the other way round, because it is insufficiently advantageous. The determination of that which is unfavourable involves an assessment in which a broad view is to be taken and which is to be judged by broad experience of life. Persons may be said to have been treated unfavourably if they are not in as good a position as others generally would be.”

21. We have also considered the decision of HHJ Peter Clark in **Johal v Commission for Equality and Human Rights** UKEAT 0541_09_0207. Noting that it was a pregnancy discrimination claim, Mr Samson¹ suggested that it was helpful. This case refers to the possibility that maternity leave may be the occasion for the treatment complained of, but that this, of itself, does not make it the cause of the discriminatory treatment. It is not sufficient that maternity to be simply part of the background context. The unfavourable treatment must be “*because of*” the maternity. There must be a causal connection between the protected characteristic and the treatment complained of.

22. We have also had regard to the case of **Interserve FM Ltd v Tuleikyte** [2017] UKEAT/0267/16/JOJ, a decision of Mrs Justice Simler DBE (President) concerning s18 Equality Act 2010. This case says:

*“Section 18 applies to unfavourable treatment and therefore requires no comparison with the treatment that is meted out to others. Whether treatment is unfavourable is a question of fact left to the good sense of tribunals. In most cases, the answer is likely to be obvious. In other cases, where the answer is more difficult, the decision of Langstaff P in **Trustees of Swansea University Pension & Assurance Scheme and Anor v Williams** UKEAT/0415/14 contains a helpful discussion about what may be unfavourable treatment (see paragraph 29)”. [§11]*

¹ See skeleton argument §45

“To be unlawful within section 18(4) the unfavourable treatment must be “because” the Claimant was exercising or seeking to exercise, or has exercised or sought to exercise, the right to compulsory, ordinary or additional maternity leave.” [§12]

“In domestic law, the point is well established that the mere fact that a woman happens to be on maternity leave when unfavourable treatment occurs is not enough to establish direct discrimination” [§20]

“It follows that it is necessary to show that the reason or grounds for the treatment – whether conscious or subconscious – must be absence on maternity leave and that the mere fact that a woman happens to be on maternity leave when the unfavourable treatment occurs is not enough to establish unlawful direct discrimination under section 18”. [§21]

Relevant Findings of Fact

23. This section of the Reasons sets out the broad chronology of events followed by other pertinent background matters required to put our decision into context.

Chronology of events

24. The Claimant's date of birth is 20.02.98. She started work for Peninsula Business Services, the Respondent's "sister" company on 21.10.19 (ET1 Form) after a recommendation and reference from the Events Director, where she had been working in telesales.

25. The Respondent provides staff management, business organisation software and a wide range of human resources ("HR") services to businesses; particularly, it seems, small to medium sized businesses who do not have their own in-house HR department. The Claimant was employed by the Respondent from 07.09.20 until May 2023.

26. On 17.06.21 the Claimant was promoted to the web team due to (the Claimant claims in the ET1) *“good performance, compliance, and values”*. The web team was required to work with high value data (inbound leads) which led to commissionable earnings. Whilst we did not investigate the value of the Claimant's claim for damages due to time constraints, (as set out in her schedule of loss or otherwise), we noted that her claim is predicated on the basis that her work on the web team generated commission at around four times her salary.

27. In 2021 the Claimant became pregnant with her first child. She continued working into the eighth month of her pregnancy and began maternity leave on 08.02.22. During this time, her manager and Head of Sales was Mr Mark McMinn.

28. On 11.04.22 the Claimant visited the head office with her new baby and met with Mark McMinn. The Claimant claims that it was discussed that the Respondent wanted the Claimant to return to the web team after her maternity leave. On 15.05.22, whilst on maternity leave, the Claimant attended an awards ceremony at Hotel Football

in Old Trafford where she was given awards relating to her sales performance as part of the web team. On 22.07.22 the Claimant attended a "KIT" (keep in touch) day with the Respondent whilst she was still on maternity leave. On 17.08.22 the Claimant says that she received written confirmation via email from Liam Regan stating that she would receive £1,250 protected earnings for the first 3 months of her return after the maternity leave. On 19.08.22 the Claimant received an email from Liam Regan which she describes as written confirmation to confirm her position on the web team. The Claimant says that £1,250 reflected her position and income on the web team. If she was considered to be a member of another team, then the protected earnings figure would have been less and at around £750.

29. The meeting on 26.10.22 was a key event when there was an MS Teams meeting conducted between the Claimant and Ms Jayde Stott, who was the new Head of Sales and who the Claimant had never interacted with before, to discuss when the Claimant would return to work. (By this time, Mr McMinn had transferred to work for the Respondent in Canada). The Claimant's case is that it was a professional meeting and she wanted three things: Her post-maternity return to work date to be finalised; confirmation that Ms Stott knew that her protected earnings would be £1,250; and for reassurance that she would return to the high-earnings-potential web team, which, she claims she had been promised whilst still off by her previous head of sales and which, she also claims, had been corroborated by various things Liam Regan had done and said, including agreeing the level of the protected earnings at £1,250 a month.

30. At the 26.10.22 meeting the Claimant and Ms Stott agreed that she would return to work on 15.11.22. The rest of the matters surrounding the meeting are highly controversial and key issues in the claim. The Claimant says that she told Jayde Stott about her position on the web team and the agreement over protected earnings and also showed Jayde Stott email confirmation. The Claimant says that Ms Stott laughed at the idea and refused them both. Other than agreeing the return date, the Claimant's account is that the meeting was unsuccessful, to the extent that, within minutes of the meeting ending, the Claimant and Ms Stott engaged in email correspondence (discussed below), the gist of which was the Claimant was unhappy that the £1,250 had not been confirmed and also unhappy that Ms Stott indicated that the Claimant would not be returning to the web team. The Claimant's case is that Ms Stott was dismissive of her demands for reassurance about her position and remuneration and said, in effect, that she would meet with the Claimant and finalise relevant details upon her return from maternity leave on 15.11.22.

31. On 15.11.22 the Claimant returned to work as planned. It is uncontroversial that for the first two weeks of a return to work after a period of absence, all recent returnees, including the Claimant, had to work in "grad bay" to get them "back up to speed". However, the Claimant claims that on 15.11.22 Jayde Stott refused to meet the Claimant as previously promised, and shouted at her in front of colleagues when the Claimant wanted to talk, in particular, about her desire for confirmation that she would be returning to the web team once her two-week stint in grand bay was complete. On 16.11.22 the Claimant raised a grievance for bullying/discrimination against Jayde Stott with Liam Regan via MS Teams. On the same date, he showed Jayde Stott the Claimant's message to him. The Claimant was taken straight into an impromptu meeting held by Jayde Stott and Liam Regan. The Claimant claims that she was shouted at by Jayde Stott and not allowed to speak, and that Jayde Stott said that she

did not like the Claimant. The Claimant went home due to severe anxiety for the next 48 hours but returned to work in 18.11.22.

32. The Claimant alleges that on 22.11.22 Jayde Stott falsified, by manually changing, the Claimant's sales-related statistics on the shared company database (which was called "SalesForce") to make the Claimant appear to be underperforming and the Claimant also claims that on 29.11.22 Jayde Stott falsified another statistic. This was investigated by Bright HR's compliance team.

33. On 29.11.22 the Claimant's time on grad bay came to an end. On 01.12.22 The Claimant told the CEO, Alan Price, that she was not back on the web team. He met with Jayde Stott, who gave the Claimant's allegedly faked statistics as reasoning for her not being included in the web team. On 02.12.22 a grievance was raised again by the Claimant with Liam Regan. On 20.12.22 a grievance meeting was held between the Claimant and the Respondent's general counsel, Rob McKellar. The grievance was not upheld. On 18.01.22 an appeal meeting held by James Potts (the Respondent's Legal Services Director). The decision is set out in Mr Potts' Grievance Appeal Outcome letter dated 9 February 2023 [394-412]. Again, the Claimant's grievance was not upheld on appeal.

34. In terms of the Employment Tribunal proceedings, the Claimant's ACAS certificate is dated 15.03.23. The Claimant's ET1 is dated 19.03.23 [11-22]. There is an Acknowledgement of Claim and Notice of Claim dated 29.03.23. There is a Particulars of Response On 26.04.23 [31-39] drafted by Irwell Law (the in-house legal department for Peninsula, the sister company of the appellant's employer). There was an ACAS certificate issued against Jayde Stott dated 05.04.23 which has been discontinued with the claim proceeding only against the Respondent herein.

Background regarding the Claimant and Ms Jayde Stott

35. Whilst this claim relates to the way that the Claimant alleges that the Respondent treated her as a consequence of becoming pregnant with her first child, she makes no complaints regarding events during the pregnancy itself.

36. As alluded to above, in the period which included her pregnancy up until the start of her maternity leave, the Claimant had been a member of the "web team". It is the Claimant's case that, the fact that she was on the web team handling the Respondent's most "valuable data" ie sales leads, was a reflection that the Claimant had demonstrated a track record for being one of the Respondent's most successful sales employees. She started her maternity leave on 08.02.22. Initially she intended to return to work on 08.08.22 [see email of Hayley Sykes - 190] but then the Claimant extended her maternity leave so that her first day back in the respondent's office was 15.11.22

37. As mentioned above, whilst she was on maternity leave, the Claimant was invited to, and attended, a party organised by the Respondent at the Hotel Football, Old Trafford on 15.05.22 where the Respondent staged an awards ceremony. The Claimant had received two awards: the "Millionaire Award" and the "Ally Award". The Claimant received the awards as a result of being a both notably high performing sales operative, and also for being a highly regarded team member. [See §12 & 13 Claimant's witness statement]. We note that in her oral evidence Ms Stott asserted

that the awards were generic awards for the whole team (it was not clear if she meant the whole sales force, or a smaller team within the sales force). Notwithstanding, Ms Stott did confirm, vaguely, that the Millionaire award was for “revenue achievement”. Having considered the evidence, we are satisfied that the “Millionaire Award” was given to the Claimant by Mark McMinn and Alan Price because she had made £1.3 million income for the Respondent-company in a 12-month period, despite not having worked for the full 12 months. We have had regard to Mr McMinn’s evidence [§5] where he said that the Claimant had consistently performed well before she went on maternity leave and which he did not depart from in oral evidence.

38. As summarised above, the Claimant claims that, whilst she on maternity leave she was anxious to return to the web team. We were satisfied by her unchallenged evidence that, whilst she was off work on maternity leave, she and her family had moved house to a larger property demanding higher rent. We find that the move represented her expectation that she would maintain her income upon return from maternity leave.

39. Jayde Stott was recruited and started her new job as Head of Sales, taking over from Mark McMinn on 01.09.22 whilst the Claimant was on maternity leave. The start of her new role with the Respondent was complicated by a pre-booked holiday and in this period, she was also dealing with some challenging personal circumstances. She was also a young mother with family responsibilities. She had been recruited after a successful role with another company where she had, inter alia, worked on key performance indicators (“KPI’s”). Her oral evidence was that she was recruited to increase efficiencies at the Respondent’s business relying on the application of more exacting KPIs. She and the Respondent’s employee Beth Greenwood moved to the Respondent at around the same time.

The Respondent’s sales model and computer software

40. As noted already, all material times, the Respondent sold a large range of HR advice and services to businesses. The Respondent had (and continues to have) an “online” virtual presence and had set up their marketing so that any potential client looking to buy in HR services could find the Respondent’s website by doing a basic online search. The Respondent had a sophisticated website designed to generate interest in their professional service products and HR services. The website was also designed to encourage potential clients to get directly into contact with the Respondent’s sales team, as a result of which, the Respondent would try to turn the potential clients’ interest into a sale of a concrete HR service.

41. The uncontested evidence, which mainly came from Lee Salter (the Respondent’s Head of SalesForce), was that the Respondent had invested heavily in their website and the electronic means of attracting potential clients, and also in the software that tracked the potential clients’ interest and the progress of the potential clients’ interest in the Respondent’s HR products through their sales processes. Potential interested clients were referred to as sales “leads”. The Respondent had a dedicated team working on the software that managed the sales leads. There was evidence that suggested that the software was constantly being updated and improved with the ultimate aim of bringing in yet more leads, and also aimed at better managing the leads so that they translated into even more clients, and thus more remuneration

for the Respondent's business. The Respondent's software staff (as opposed to sales staff), including Lee Salter, were dedicated to software and were not engaged in sales at all. The software was so sophisticated that it soon categorised the leads, (referred to interchangeably as "data"), according to how keen the potential client was to engage the Respondent in a potential contract for services. At the hearing there was frequent reference to how "hot" the different types of sales "leads" were.

42. A key objective embedded into the Respondent's outward/public-facing website and software was that, once a potential client, a "lead", had shown interest in the Respondent's HR products by making contact with the Respondent, then the lead was quickly contacted by a member of the Respondent's sales team. The initial contact was made by a BSC (a "business software consultant" sometimes referred to as a "business sales consultant"). The BSC would book a meeting which would include a demonstration of the Respondent's products. The BSC attempted to set up a meeting with the "lead" by video call or telephone call as soon as it could be arranged. However, it was a BDM ("Business Development Manager") who conducted that actual demonstration meeting with the "lead". The "lead"/potential client could decline or go forwards with a contract to engage the Respondent. Both the BSC and BDM would make commission from a successful sale.

43. The objective of the call, self-evidently, was to sell the Respondent's services and get the lead to the point of making a contract with the Respondent as soon as possible. It was a feature of the sophisticated system that the ongoing interest (or lack of interest) of a "lead" was monitored closely by the Respondent's software. Naturally, the Respondent hoped to turn the leads into a rapid sale of their product or products, but even if a lead did not agree to buy a service at the first video or conference call, then plenty of "leads" decided to buy a service within a short period of time. However, the longer the period of time that passed from a lead's initial interest in the Respondent's services, then the Respondent knew that the lead was less likely to buy a service.

44. The Respondent's software apparently monitored and kept track of whether a sales lead was continuing to take an interest in the Respondent's products or not and there was a system for following up the leads which did not immediately convert into a sale. For obvious reasons, the leads that the Respondent preferred, because it represented the best return for the investment that the Respondent-business had made into their sales lead-attracting marketing activities, was the type of sales lead that converted to a sale immediately during the sales pitch in the video or telephone call. Potential customer-leads who hesitated or delayed represented more work for the Respondent to try to persuade them to buy the Respondent's HR services. The "hottest" leads were the keenest clients who needed least persuasion to buy the respondent's products because they required the least work on the part of the sales team. The last thing that the Respondent wanted was a potential lead who was not converted into a sale immediately because there would need to be investment in further time and resources to try to cajole them into purchasing a service. In his oral evidence Lee Salter talked about "cold" data which he described as "data" that had been previously been contacted but which "needs to be touched". We understood that to mean data generated when a potential sales lead had been in contact with the Respondent's staff, but had not shown much or any further interest. The essence of his evidence was that the potential lead had "lost" interest and a great deal of time had

elapsed since first contacting the Respondent. The parties also talked at times about “fresh” data by which we understood them to mean data generated by very recent enquiries from leads.

45. Linked to the desirability of converting “hot leads” into sales and maximising the interest to sales conversion rates, the Respondent considered that certain staff would be more skilled and successful in converting leads into concrete sales immediately as compared to other colleagues. Therefore, the Respondent devised a system whereby a significant element of sales employees’ remuneration was linked to their success rate in relation to the interest-in-HR-products-to-sales conversion rates. The sales team members were motivated to try to constantly improve their conversion of leads to sales figures. Inevitably, this meant that they were competing with each other to attract the hottest leads via the computer system, by being quick and making successful conversions.

46. I pause to emphasise that, at the hearing, we had no formal, expert evidence about how the Respondent’s software worked, but Lee Salter, whose role included dealing with IT and data, gave the most detailed evidence and explained the sales software in the most technical terms. He explained that the Respondent’s software “system” did many things at the same time. The tasks the software performed included the outward/public-facing functions of marketing, funnelling leads so that the lead made contact with the Respondent, and recording sales pitch/demonstration meeting appointments between the lead and the BDM. There was evidence that the Respondent kept recorded copies of the demonstration meetings between the lead and member of the sales team which could be reviewed by the managing members of the sales team. The software also included an internal “slack” channel chat function which could be used by the Respondent’s team to communicate with each other about a particular lead. Information was inputted into and recorded by the software system by the sales teams when they were working on a lead. Whilst it was not discussed at the hearing in any detail, when a successful lead was converted into the sale of a product, then the actual product and the nature of the product was recorded, and so the software also provided the Respondent with a sophisticated tool which allowed the Respondent to see how many leads were being worked on in the system, which leads were “hot” and which leads were “cold”. (Slightly confusingly, using different terminology, Lee Salter also claimed that data was not referred to as “cold”, rather they referred to “older” data which was being “nurtured” by Mark McMinn).

47. In relation to the above matters, because the members of the sales teams’ interactions were captured by the software, the software was programmed so that the Respondent’s managing staff could run reports to see in a very detailed manner how quickly members of the sales team were able to convert leads into sales. The software therefore allowed the Respondent to set up and check a hierarchy of success within the sales team. From this had evolved a system whereby the “performance” of the different parts of the sales teams was monitored and graded, and, based on this grading, the sales team were further sub-divided into individual sales teams. The individual sales teams were: the web team, webinar/WhatsApp team, partnership team, prem/14days, SAT/additional services team and grad/business restart team (also known as “*grad bay*”).

48. The software also allowed the Respondent's management team to constantly monitor the lead-interest-to-sales-conversion rate of individual sales employees. In the Respondent's business model, a member of the Respondent's sales team could be moved between the sales teams according to the data representing their current success in converting lead enquiries and interest into actual concrete sales of the Respondent's products.

49. In general terms the Respondent's business model rewarded, by way of commission, the sales staff who converted the most leads into sales at the fastest rate. Inevitably, this meant that to maintain or increase the commission element of their remuneration, then the sales staff had to make the conversion of an interested lead into a sale as quickly as possible. Each member of the sales team was monitored closely and so the sales role generated constant pressure to rapidly sell the HR products to the leads. The evidence in the case included that the Respondent created a workplace ambience in which sales staff were encouraged to compete with each other, with "success", ultimately being demonstrated by how many successful leads they converted into sales which everyone would know would then be translated into sales commission remuneration. Whilst the Respondent was very focussed on being profitable and a system of intense competition was part of the sales role, there were also lighter elements within the workplace culture which included awards ceremonies for the most successful sales operatives.

50. The system also worked on the basis that the quickest sales members were on the web team and the "hottest" data was funnelled to them first. They were motivated by the knowledge that they would obtain the highest levels of commission if they consistently turned the leads into sales. They were also given the highest targets to meet. In contrast, sales team members who were less quick were given lower grade (less hot) "data" and had to work with the leads that were "colder" or "cool", but their targets were also lower.

51. Considering the Respondent's software in yet more detail, what was described was that it was a massive and sophisticated sales and management tool keeping track of a range of data inputted into the software system. However, only certain members of the workplace had access to certain parts of the software system which was password protected. The uncontested evidence of Mr Salter was, further to questions from me, that the Respondent had bought an off-the-peg basic (although actually very complex) computer programme which was designed with the functions that the Respondent needed for the business needs. However, the software system allowed for amendments and re-programming of the software to allow the Respondent to adapt the software to cater for improvements and other changes in the way that the Respondent wanted their staff to work. The software could be amended in such a way that the software system evolved in a style that was bespoke to the Respondent's business. However, the uncontested evidence was also that only those in the software team (not the sales team) knew how to amend the fundamental algorithms which was the DNA of the software system and dictated how the software system would work in practical terms; it was, of course, the software system which ultimately formed the basis of the remuneration of individual sales team staff based on their commission.

52. Finally, in relation to describing the software system that underpinned the Respondent's business, the software monitored the incoming sales leads and

“funnelled” them electronically into the in-boxes of the sales team by way of what sounded like a so-called “narrow” or “weak” artificial intelligence (AI) system. The computer programming distributed the sales leads work to the members of the sales teams and there was evidence that the speed at which the sales leads were distributed depended on the pace at which a sales team member was getting through the leads sitting in their in-box on a particular day. If a sales lead was waiting in an in-box for too long without being “actioned” then, the software system would notice and re-distribute the lead to another sales operative. The software system described sounded entirely neutral in the sense that it operated on the speed at which individuals within a particular team were dealing with the leads with zero appreciation of the identities of the individual employees. The firm impression given was that this compute system could not discriminate on any basis other than how fast a sales operative was clearing their in-box in the context of their particular team. The human staff, however, could move individuals around between the sales teams if it was perceived that an individual did or did not warrant a position on a particular team.

53. Central to the issues in the case was the fact that, linked to the way that the Respondent’s system was set up, the software funnelled the “hottest” leads to those in the sales teams that were also performing most successfully according to the Respondent’s measure of success which was also, in turn, proportionate to the amount of money that a sales operative was earning by way of commission. The software was programmed to reward those who were on the most successful team with the “leads” most likely to generate a successful sale for the Respondent. However, whilst the management staff could intervene and direct a particular lead to a particular member of the sales team, the uncontested evidence was that they rarely did so. Generally, it was the software system that distributed the tasks and, crucially, the lead opportunities, but those that had already demonstrated a propensity for successful sales were provided with the best leads which were the hottest, ie those that were most likely to turn into a contract with the Respondent company in the shortest time. In summary, the Respondent did not generally influence the way that the leads were funnelled to particular individuals in particular teams. However, the key human management decision of who was on which team had a significant impact on the commission that individual could make. The best team to be on from the perspective of potential earnings, was to be chosen to be on the web team.

54. I emphasise that an individual litigant would nearly always be at a disadvantage challenging a complex computer software system. Someone in the Claimant’s position does not know the fine detail of how the computer programme works and they only know the outcome of the programming and how it structures their work. Most individual litigants do not have the resources to interrogate the computer in a technical expert way. None of the witnesses in this case, other than Lee Salter, were software experts. They just did their best to explain how the software worked in relation to their role. The Claimant did not challenge the general description of how the software system functioned as described by Mr Salter. The fact that she alleges that “her” data was interfered with to generate what she alleges were unreliable statistics used by Ms Stott to demonstrate to her superiors that the Claimant was functioning less well than the Claimant believed she was, indicated that the Claimant believed that Ms Stott (and possibly others) were able to manipulate the software system to generate false and unreliable “data” and “statistics”. Jayde Stott denied that she had access to the parts of the software system which would have allowed such manipulation of the data. Ms

Stott's position and her stated inability to influence the data at source was corroborated by Lee Salter.

KPI standards

55. The Respondent had Key Performance Indicators, KPI's, in place before the Claimant went on maternity leave and it was the Claimant's evidence that KPIs had been used to calculate her commission whilst she was on the web team. We find that Jayde Stott was recruited partly to change the KPI's and the commerciality of the Respondent-business. As set out above, Ms Stott started as Head of Sales on 01.09.22 and immediately took a period of holiday and then had to deal with domestic issues. Nonetheless, from the outset Ms Stott was planning to implement a new KPI system. In evidence the Claimant acknowledged that the KPI system introduced by Jayde Stott whilst she was off and "rolled out" from November 2022 was slightly different from what she had experienced before her maternity leave.

56. Jayde Stott's evidence was that she was employed by the Respondent to introduce a "new culture" and this included consistent KPI standards. Jayde Stott, along with others including Beth Greenwood who had also come with her to the Respondent company from where they had previously worked together, devised a bespoke system for the Respondent. In October 2022 Ms Stott and Ms Greenwood were working on their KPI standards system but the Claimant was not told any information about the new KPI standards system other than, Ms Stott claimed, it being briefly mentioned in the online "*back to work meeting*" on 26.10.22.

57. Jayde Stott's evidence was that at the end of October 2022 (i.e. within weeks of the Claimant coming back to work) she and Beth Greenwood had devised a PowerPoint presentation [636–652]. The uncontested evidence was that the PowerPoint presentation was shown to the sales workforce every Monday morning in November 2022, such that the sales workforce was educated about the new KPI standards commission system so as to become familiar with the new system which was about to be imposed on them. Also, Ms Stott's evidence was that individual managers were discussing the new KPI standards system as set out in the PowerPoint presentation on a daily basis in November 2022. So far as the Claimant is concerned, however, the Claimant was not made aware of the detail of the new KPI standards system until she returned to work on 15.11.22. It was her evidence that she attended two of the Monday morning presentations at the end of November 2022.

58. The evidence from the Claimant was that Ms Stott did not discuss even in very general terms the new planned KPI system with the Claimant at the return to work meeting on 26.10.22, despite the fact that Ms Stott was discussing the proposed new KPI system with management colleagues in October of 2022. In terms of timing, as mentioned already, the evidence was that the KPI system was introduced to the sales teams from the beginning of November 2022. However, there is no evidence that the new KPI system was communicated to the Claimant at all in the first half of November 2022 ie in the time between the 26.10.22 meeting and her return to work on 15.11.22.

59. So far as the rest of the sales teams in the office, the evidence was that in November of 2022 the KPI system was introduced to the sales team once a week at the regular Monday team briefings. At the end of November 2022, the evidence suggested that the management team started to look at the sales performance data

as per the new KPI system, but they did not enforce the consequences of the new KPI system on the sales team at the end November of 2022. What was described was a type of dummy run for November 2022. I paused point out that the Claimant rejoined they Respondent's workforce (in grad bay) in the middle of the first month that the new KPI system was being "rolled out" and at a point when the new KPI's were being tested.

60. In evidence the Respondent acknowledged that in December 2022 it would not have been appropriate to roll out the new KPI system for several reasons, including that December was a short month for sales due to the holidays. Also, it was acknowledged by the Respondent that potential clients were not interested and sales in December. It is therefore the case that the new KPI system was not fully operational until January of 2023.

61. In January of 2023 the new KPI system became fully operational and the Respondent started to move staff between the teams as a result of the data generated by the new KPI system. The KPI system meant that the Respondent had an even more detailed view of what the sales teams' members were doing with the leads/data that they were provided with, and they were set targets to aim for. However, the evidence also suggested that the raw "leads" and data that was incoming was basically the same as previously. The new KPI regime did not change the nature of the incoming sales leads in the whole of the relevant period from October 2022 through to January 2023 and beyond.

The Claimant and her remuneration

62. As mentioned above, in the second half of November 2022, the Claimant was on grad bay for two weeks and therefore had limited data to work with. In December she was in the partnership team [232] with Liam Regan as her Manager. Once she returned from her maternity leave, she was never put back into the web team. Consequently, she claims that she suffered a massive financial detriment because the preponderance of her income, pre-maternity leave, had been generated by her sales commission as a member of the web team. This is the fundamental basis of her claim.

63. The Claimant's title was as Business Software Consultant. The statement of terms and conditions of her employment [81] included that she was entitled to statutory maternity leave [82]. Her contract references a grievance policy. Her remuneration in terms of salary was £20,000 per annum payable monthly by credit transfer. There was a commission scheme, quarterly bonus, and monthly bonus applicable to the employment (details issued separately). At [83], any amendments to the statement were to be agreed between the Claimant and confirmed in writing. Terms and conditions were signed and dated by the Claimant on 3 September 2020. She signed new terms and conditions on 21.04.21 [85] and on 17.06.21 the Claimant was promoted to the web team. On 15.10.21 the Claimant's salary was increased to £22,000 per annum [87]. For the benefit of the chronology it is also noted that the Claimant was provided with an updated contract of employment which she signed on 21.02.23 and there was a further contract of employment signed on 02.05.23.

64. On 21.10.21 the Claimant signed the BSC – "*Business Software Consultants - FY 22 October 2021 pricing and targets policies*" [88] document. This document includes the commission rates for BSCs in the form of a hierarchy between the web team, webinar/WhatsApp team, partnership team, prem/14days SAT/additional

services team and grad/business restart team. As emphasised throughout her case, at the time that the Claimant went on maternity leave, the Claimant was in the web team.

65. We were not provided with any payslips or monthly breakdowns of the Claimant's income either before or after the events in issue. I emphasise that there was no cross-examination on her remuneration and we are not making findings in relation to her earnings and commission here because the hearing was focussed on liability issues. However, her earnings are relevant to the issue of whether she returned to "similar" work after her maternity leave. [§253] of the Claimant's witness statement is that before she went on maternity leave her income was around £65,000 and she goes on to say that when she returned from maternity leave it was around £24,000. At [260] of the Claimant's witness statement she says that her gross earnings between August 2021 and February 2022 (less the statutory maternity pay she received in February 2022) were £42,650.78 equivalent to £73,115.64 per year (or £6,092.97 per month). She did not receive any maternity pay from Bright HR. Her witness statement [§261] says that her net pay during maternity leave was £29,963.93 equivalent to £51,366.74 per year or (£987.82 per week). At [§262] she says that from August 2021, 3 months after she joined the web team, to February 2022 when her maternity leave began, she earned £31,120.45 (gross) in commission an average of £4,445.78 per month. Again, I emphasise that we have not, at this stage, made any findings as to the accuracy or reliability of the Claimant's figures. At this stage we are only considering the overall arch of her evidence that, upon her return to work after her maternity leave, she suffered a very significant drop in her income which was less than half of what it had been before her maternity leave.

66. The Claimant was provided with an Employee Handbook [starts 111]. This includes general terms and procedures which in turn includes [140] maternity/paternity/adoption leave and pay. This states *"You may be entitled to maternity ... leave and pay in accordance with the current statutory provisions. If you ... become pregnant ... you should notify your line manager at an early stage so that your entitlement and obligations can be explained to you"*.

67. Within the Employee Handbook there is also [119] a section on equality, inclusion and diversity. In the introduction this includes a statement that *"We will actively support diversity and inclusion and ensure that all our employees are valued and treated with dignity and respect. We want to encourage everyone in our business to reach their potential"*. Under the heading *"statement of principle"* it is stated that at (e) pregnancy and maternity that no employee will *"receive less favourable treatment because of any "protected characteristic"*. The statement of principle section also says that *"No employee or prospective employee will be disadvantaged by any conditions of employment that cannot be justified as necessary on operational grounds"*.

68. At [119] the Respondent's statement of principle in relation to equality, inclusion and diversity says that *"The Peninsula Group acknowledges the value of diversity and is committed to achieving equality for its entire workforce. The Peninsula Group wishes to attain a workforce which is representative of the communities from which it is drawn"*. We comment that there is no specific mention to treatment of pregnant members of staff or those returning from maternity leave. It is striking also that there is no explicit maternity policy within the bundle of documents that we have been taken

to, and we therefore infer that there was no maternity policy. We are struck by the contention that mention of equality does not take into account the diverse needs of different individuals within a workforce, including those on maternity leave or those recently returning from maternity leave. Finally, and as a key issue in this case, there is no written policy of what the situation was regarding commission for an individual returning from maternity leave, in circumstances where the commission represented a very significant percentage of the Claimant's remuneration.

The back to-work-meeting on 26 October 2022

69. As emphasised throughout, this is a key event in the case. There are significant disagreements between the Claimant and Jayde Stott regarding what happened and what was said. We were not provided with a note of the meeting which occurred online via MSTEams. The Claimant's mother was present and supervising the Claimant's baby, but she did not participate in the meeting nor directly witnessed it, just the Claimant's demeanour and report of what the Claimant said immediately after the meeting. We note that the Claimant told her mother immediately after the meeting that she had been "taken off web" and that the new sales manager would not be honouring agreements made earlier during the maternity leave.

70. The online meeting was the first time that the Claimant and Ms Stott met each other. In essence, the Claimant describes it as a routine business meeting where she was keen to establish her return-to-work date, her "protected earnings" remuneration upon return due to her having no sales "in the pipeline" as a result of having been off on maternity leave and, crucially, confirmation that she would be returning to the web team. In contrast, Ms Stott described a "get to know you" type of introductory call. Ms Stott says [§6 witness statement] that it was an "*informal chat whilst her daughter was playing*" and that "*everything appeared fine and there were no issues.*" It is uncontested that the Claimant's return to work date of 15 November 2022 was agreed and also, at some point, Ms Stott did see the Claimant's baby daughter.

71. We emphasise that the "return to work" online meeting was the only event complained about which occurred during the protected period (which ended on 14.11.22).

The Claimant's performance according to the KPI's after 15.11.25

72. At the hearing before us there was a huge amount of evidence regarding the Claimant's performance once she returned to work, including the projects she worked on and the additional duties and mentoring she took on. This included evidence about the additional "data" that she was given on a bespoke basis which, the Respondent alleged, was designed to boost her results. There was also a great deal of evidence about the fact that the Claimant was deemed to have been given additional opportunities with some better data being provided, but that, according to the KPIs, to have performed poorly.

73. In relation to the Claimant's alleged poor performance, the Claimant's explanations included that the Jayde Stott interfered with the Salesforce software and was able to generate wholly unreliable data to demonstrate that the Claimant's performance was worse than it actually was. Also, the Claimant became angry and resentful (our characterisation) at the way she perceived she was being dealt with by

the Respondent which adversely affected her performance at work. She was also worried about the financial consequences for her young family and her post-pregnancy increase in financial pressures.

The ways in which the Claimant was not treated the same as other employees

74. We now turn to consider if and how the Claimant was treated differently from other employees and whether any such different treatment was related to her maternity leave.

75. Before the new KPI standards system was rolled out starting in October 2022, inevitably, members of staff who had not been away from the office continued to be allocated to the teams within the hierarchy according to their past performance. The new KPI standards system did not change their existing team/personnel allocation. Therefore, in November and December 2022, whilst the new KPI standards system was being brought into force, the KPI standards system was imposed on the workforce at their previous and existing level within the sales team hierarchy i.e. according to the particular team that they had been in before November. The Claimant's expectation was therefore that she would, after being in grad bay, go back to being in the web team on 29 November 2022, returning to where she had been prior to going on maternity leave. We note that the Claimant's not being re-allocated back to the web team occurred *after* the Claimant had returned from maternity leave i.e. it was outside the protected period. However, the case reveals a very real tension regarding the starting point for the application of the new KPI system upon existing sales personnel who had not been away from the office and returned via grad bay, as compared to the Claimant who, whilst she had a track record in the web team until February 2022, had had her work history interrupted by her maternity leave.

76. Linked to the above, the Claimant had less training in the new KPIs than her colleagues because she returned to work after her colleagues were part way through their new KPI training. As mentioned before, there is no evidence of the Claimant being warned in any detail about the new KPI system, nor being brought up to speed upon her return in mid-November 2022, particularly when Jade Stott and the layer of managers above the Claimant had known since October 2022 (or before) that a new system of remuneration calculation was about to be unleashed on the sales workforce.

77. At this point we highlight [119] that *"no employee or prospective employee shall be disadvantaged by conditions of employment that cannot be justified as necessary on operational grounds"*. In that regard we also note [§20] [33 – Respondent's ET3 Form] where it is asserted that *"It was within the First Respondent's gift to alter the dynamics and personnel in respect of any lead sources or campaign performance at any time and indeed the email from Liam Regan dated 19 August 2022 is an example of that"*. These two assertions are not entirely consistent.

78. The Claimant was also treated differently *during* her maternity leave in that, according to Jade Stott, it would be normal for a new mother's line manager to have a return-to-work meeting with the employee. In this case, for reasons which were not fully explained, it was in fact the Head of Sales, namely Ms Stott, who had the return-to-work meeting with the Claimant.

79. Yet another way in which the Claimant was treated differently was that, initially she was refused the opportunity to have protected earnings, a matter which we find was definitely discussed at the 26.10.22 meeting. Ultimately, the protected earnings issue was resolved in her favour, but we find that there was a significant period of weeks when the Claimant was being told by Jayde Stott that it was simply not the case that she was going to receive protected earnings at the rate of £1,250 a month. This worried and upset the Claimant. It is also relevant and supportive of the Claimant's case that, when she was finally paid the protected earnings, it was the protected earnings at a level that reflected the web team position, rather than the protected earnings that reflected the position of the team that she ultimately ended up in.

80. Another way in which the Claimant was treated differently was the fact that, after her agreed two weeks in grad bay, she was allocated to the partnership team. Had she not been on maternity leave we find that she would have, not having been in grad bay, been in the web team at the start of the new KPI standards rollout. On the balance of probabilities, we find that there is no evidence to suggest that the Claimant would not have maintained her awards-ceremony-celebrated performance record based on the evidence regarding her performance prior to her maternity leave.

81. We find that the changes to the KPI standards process introduced by Jayde Stott was a very significant change to the Respondent's organisation. We find that it is very clear that the new KPI standards system was not formally rolled out until January 2023. However, it is unclear from a practical point of view and particularly from the perspective of the workforce, how the new KPI standards process was applied on a practical basis during November and December 2022. We find that in November 2022 the workforce was certainly being educated about the fact that the KPI standards were going to be brought into effect shortly. However, the evidence suggests, whilst it is unclear, that in December 2022 the management teams were collecting information about the performance of the workforce and applying that information for their own purposes to the new KPI standards structure. However, it also appears that in terms of remuneration, in December 2022, the salesforce continued to receive remuneration calculated as per the "old" KPI system i.e. according to the number of leads that they had successfully worked on as opposed to the "new system" which included a new element of the remuneration reflecting average and consistent success rates.

82. Even without knowing of the impending KPI changes, we are satisfied that the Claimant was very keen to know from Jayde Stott that she would be returning to the web team (after two weeks in grad bay) on 26.10.22. We are satisfied that the Claimant emphasised to Jayde Stott that she believed that this had been promised by Liam Regan and corroborated by the team schedule set out in the provisional web team structure/allocation that she had seen. Consequently, the Claimant communicated that she would have been slotted into the web team upon return had she returned on 08.08.22 as originally planned. There is a schedule of teams in an email dated 19.08.22 from Liam Regan which clearly shows the Claimant allocated to the web team [206]. We are satisfied that the issue of the Claimant wanting to know that she would be re-deployed to the web team was corroborated by her immediate post-meeting emails [200 – 205 and 207-213] and her suggestion that there should be a note taker at a future meeting [204]. At [212] the Claimant put in writing at 10:22 to Jayde Stott, *"During my last KIT day, I had a meeting with Hannah and Liam arranging and confirming that I would be returning to the Web Team, as this was the position I*

was in when I left for maternity leave. I will find the email stating team structure which was sent out a few months again, confirming confirmation of my position on Web. I understand the team structure itself may have changed re BDM.BSC pairings, yet my position on Web itself was confirmed within that email".

83. At [§8] in her witness statement, Jayde Stott says *"I do not agree that the discussion surrounding the web team was a refusal. I told Sarah that procedures, products and management within the department had significantly changed"*. Ms Stott goes on to assert, *"We would need to work with her to get her back to full speed and trained on all the updated products and process since she had left"*. We find this evidence to be somewhat disingenuous because in October 2022, so far as the sales personnel were concerned, the procedures had not changed. The sales staff did not start to be educated about the new KPIs until the beginning of November 2022, and they were not fully operational until January 2023. Further, Ms Stott could have told the Claimant about the fact that the impending new KPI's would potentially impact upon her work allocation and remuneration, but she chose not to. She would have been well-placed to give the Claimant detailed information about the new KPIs, but she chose not to. In fact we find that Jayde Stott told the Claimant that she definitely would not be going back on the web team during the meeting on 26.10.22 and failed to re-address the issue in the subsequent email exchanges up until 14.11.22.

84. Appreciating that it was after the end of her maternity period, and so not directly relevant to the issues under review, we were satisfied that the Claimant was provided with lower quality leads and data after 29.11.22. This is corroborated in that she complained to Alan Price by email [233] dated 01.12.22, once the December team allocations had been circulated, stating that she was on "partnership data" for the foreseeable future and at the same time also referring to the fact that her position on the web team had been previously confirmed whilst she had been on maternity leave. The Claimant also said to Mr Price, *"I was informed during my meeting with Jayde on 26th October that I would not be returning to Web, with no given reason. This decision was not made based on performance as I was still on maternity leave at this time."* In relation to the "partnership data" sales leads, we are satisfied that it was of lower "quality" (less "hot", in the Respondent's jargon) in part because this is corroborated by the deals target being only 13, as compared to 40 for the web team [232].

85. We note that the Claimant has never claimed discrimination as a result of pregnancy, and so her case is not satisfied pursuant to section 18(2) Equality Act 2010. (Section 18(3) is not pleaded). In relation to whether the Claimant was treated differently after she returned to work in mid-November 2022, we note that she had at least two days when she was disrupted (she did not have a desk and equipment the day of her return) and then she struggled to get Ms Stott to meet with her regarding her pressing concerns over her re-allocation back to the web team and she raised a grievance). Thereafter, there is some evidence that she was training some other people in that period which would have taken away her opportunity to work purely on her commission rate. There was also good evidence that December was a quiet month, and it was accepted that the sales team would make less sales in December anyway because of the holiday period and because of potential customers being less receptive to the sales pitch. Therefore, upon return, the Claimant was at a further disadvantage because other people had a longer and uninterrupted track record, whereas she seemed to be judged as of January 2023, according to November and

December performance alone, which were, in her case, unusual months for the reasons set out above. When it came to the “full” application of the new KPIs in January 2023, there was no evidence that her pre-maternity leave performance was considered at all.

86. In relation to her having helped in the training of others upon her return to the workplace, the Claimant seems to have chosen to volunteer to coach other colleagues at work, but it is also relevant that her managers knew that she was doing this and did not prevent her from doing so. Linked to that, we find that this seemed to be to an advantage to her managers because the Claimant was taking away some of their other responsibilities and, in effect, assisting them in their roles.

87. A central plank in the Respondent’s response to the claim is that it relies on the fact that they say the Claimant failed to meet her targets from December 2022, January 2023, and onwards and that this poor performance post-return to work in fact justified their decision not to put her in the web team. They imply that it can be inferred that, by extrapolating back, then this demonstrates that she would not have performed in the web team and would have lost her place there once the new KPIs were fully operational, had she been on the web team at that point in time. The Claimant’s response is that, firstly, she was given considerably lower quality data even though at times it was “mixed” data upon her return to work. However, the principal argument is that she never even had the *potential* to earn what she would have done had she been in the web team from 15.11.22 because the quality of the data that she was actually provided was far less advantageous, less “hot”, than the data that the web team continued to be supplied with, as corroborated by the lower sales targets. She was, she claims, and we find, prevented from even having the opportunity to re-establish and demonstrate her superior sales talent and, thus, earnings capacity, because she was fed inferior sales leads/data from the beginning of her post-maternity leave return to work.

Discussion and conclusions

88. I now turn to consider the list of issues which focus on whether the Claimant was treated unfavourably by the Respondent by doing the things set out underlined in the subheadings below as per the list of issues (identified by Judge Cline and set out at §6 herein). Both parties provided written arguments. Mr Samson made detailed oral submissions which followed his skeleton argument. Mr Lindup said that he simply wanted to rely on the Claimant’s written submissions argument. I will summarise the relevant points in the discussion and conclusions below. The Tribunal read the written submissions. Reference can be made to the written submissions if necessary. Our decisions below reflect the arguments made by the parties from their respective points of view.

89. The relevant protected period was the period of the Claimant’s maternity leave from 08.02.22 to 14.11.22. (As emphasised above, no allegations were made relevant to the period of her *pregnancy*). Whilst the period was not formally agreed at the hearing, it did not seem to be in dispute.

On 26 October 2022, during a video meeting with the Claimant, Jayde Stott refused to honour a previous agreement in relation to the Claimant’s position on the web team and protected earnings and was rude to her

90. This breaks down into three issues: (i) whether there was refusal to honour a previous agreement about the web team; (ii) the protected earnings; and (iii) whether Jayde Stott was rude to her.

91. In terms of setting the return to work meeting up, we have had regard to [198-199]. These are an email from the Claimant dated 23 October 2022 (a Sunday) at 14:49 where the Claimant wrote to Sophie Collier copying in Jayde Stott. In this email the Claimant was asking Sophie for information relevant to her plan to return to work mid-November. This email is picked up within 3 minutes by Jayde Stott who responds to say *“Good afternoon Sarah. Thanks for your email. My name is Jayde Stott and I’m the new head of sales at Bright. Can we schedule a call for Wednesday 26 October at 10:30 am to go through the requests please below and catch up. If you could let me know this time and date is possible. Looking forward to catch up ...”*. It is noteworthy that this email does not say anything about the proposed changes relating to the new KPI standards process under discussion.

92. In relation to the previous agreement there is good evidence that the Claimant was in contact with her previous team whilst she was on maternity leave. This includes her being invited to an awards ceremony at Hotel Football on 15 May 2022 when the Claimant received the *“Millionaire”* and *“Ally”* “awards” for her high performance in relation to the web team. The Claimant also attended a day on 22.07.22 and took her baby to work to show her colleagues. In the context of these encounters the Claimant was told by Allen Price, and also it was confirmed, by Liam Regan that she would be returning to the web team. We find that it was wholly unsurprising that the Claimant had an expectation that she was going back to the web team.

93. So far as the meeting on 26 October 2022 is concerned, the uncontested evidence is that the Claimant was at her parents’ house with her baby and her mother was present in another room. The meeting was online. We are satisfied by the Claimant’s evidence is that, at that meeting, she raised the date that she would return to work, her protected earnings and also sought confirmation that she would return to the web team.

94. Key evidence in relation to what happened in the meeting is set out at [§21-23] and continuing of the Claimant’s witness statement. The Claimant says *“As Jayde was new to Bright HR and this was the first time we had met I asked her whether she had been made aware of the 2 written agreements ... that I had made with Bright HR. Jayde said that she was not aware of them. She seemed rather sceptical. I assumed she wanted confirmation. I therefore told Jayde that the two agreements were, namely that on return to work I would rejoin the web team after 2 weeks in grad bay and would receive protected earnings for the first 3 months after my return. Jayde immediately responded: “Well, I didn’t know about either of these, so you definitely won’t be going on the web team”. She laughed as though my returning to the web team was a ludicrous idea, and continued: “... so lets move on. Secondly, no-one gets protected earnings anymore so you won’t be getting that either”*. In response is Ms Stott’s evidence on this point at [§7] of her witness statement in which she says *“I understand Sarah alleges that I did not honour a previous agreement in relation to her position on the web team and protected earnings. This is not true. Initially, I thought that she was referring to protected earnings for new starters, however, I was not aware at the time that this was in place for business software consultants (BSCs) coming back from*

maternity leave. I said I would need to seek some clarity internally and stated it would need to be discussed with Liam Regan (head of telesales) and senior management. (We think that business software consultant should have been business sales consultant).

95. In relation to the context we note that there is no evidence of the meeting being set up or how the format was agreed, but we do know that Jayde Stott's evidence was that it would normally be a line manager that met with the Claimant, whereas for a reason unexplained, Jayde Stott decided to have the meeting with the Claimant despite being the overall sales manager allegedly several positions above the Claimant in the hierarchy. Jayde Stott justified this on the basis that she was a new sales manager and was using it as an opportunity to meet the Claimant for the first time. It was striking that she repeatedly referred to the meeting as a *"mum to mum chat"*. This is surprising given that, in reality, it was a formal return to work meeting albeit it being conducted in a relatively informal style. So far as the Claimant is concerned, we find that she was very keen to have the meeting and the key issue that she wanted to discuss was reassurance that she would return to the web team. We find that Jayde Stott refused to engage with the Claimant's enquiry about her returning to the web team.

96. As mentioned already, following on from the meeting, apparently immediately after the meeting had finished at 10:17 on 26 October 2022 Jayde Stott wrote to the Claimant saying *"Thanks for catching up was lovely to meet you and Evie, as discussed your return date will be Tuesday 15 November at 9 am. You will be returning full-time and you don't require any flexible working at this time ... we will look at the annual leave for Christmas on return as you have annual leave to take, as discussed campaigns are changed monthly so your [sic] not guaranteed to join the web team"*. This was followed up by the Claimant, five minutes later at 10:22, responding to Ms Stott saying *"Attached above is my correspondence with the business, confirming my protected earnings at £1,250 per month for 3 months. During my last KIT day, I had a meeting with Hannah and Liam arranging and confirming that I would be returning to the web team, as this was the position I was in when I left for maternity leave. I will find the email stating team structure which was sent out a few months ago, containing confirmation of my position on web. I understand the team structure itself may have changed re BDM/BSC pairings, yet my position on the web itself was confirmed within that email"*. I have already noted that it is striking there is no reference at all to any new KPI standards for calculating commission which was, according to Ms Stott, under review and the new system being devised in October 2026.

97. The Claimant then continued the correspondence that she had started at 10:22 10 minutes later at 10:41 when she says [202] *"As mentioned in my previous email I have confirmation of returning to the web team. I understand team structure is revised monthly, based on performance. As I was assigned to the web team a while ago based on great performance, it was confirmed to me that I would return to this team. As I haven't been working due to maternity leave, it does not make sense that I would be removed based on performance"*.

98. At 10:50 Jayde Stott responded to the Claimant's email of 10:41 saying *"Hi Sarah, thanks for sharing as discussed this was August prior to my joining the business and the infrastructure of the team has changed, lets discuss when you return to work"*.

The Claimant followed this email up at 11:17 saying *“more than happy to have a meeting with a notetaker to discuss and outline this”*. The conversation seems to have ended on 26 October 2022 at 11:18 with the email from Jayde Stott saying *“Thanks Sarah see you on 15 November”*. It is striking that on this occasion Jayde Stott was not dealing directly with what appeared to be the Claimant’s main concern, namely which team she would be allocated to once she had done her two weeks agreed stint in grad bay. Nor did her response deal with the Claimant’s stated request for reassurance that she was going to return to the web team.

99. There is relevant evidence from the Claimant’s mother Mrs Karen Lindup. Her evidence was that she was in a different room when the Claimant was speaking to Jayde Stott by MTeams. She did not directly overhear the return-to-work conversation, but the Claimant spoke to her immediately afterwards. We find that in her evidence she was reporting what the Claimant had told her immediately after the MTeams meeting, which included the key information that the Claimant had said to her that she was not guaranteed her position back on the web team. The fact that the Claimant was concerned and agitated about this issue is corroborated by the immediate correspondence with Jayde Stott on the topic and the Claimant pressing for a meeting to confirm the same.

100. We note that [§6] of Mrs Karen Lindup’s witness statement says *“Immediately the call ended Sarah came to me to tell me about the conversation. She was in complete shock and bewilderment and shaken by the content and tone the other person had used. Sarah had been taken off “web” due to the fact that what had been arranged verbally before and confirmed in writing during her maternity leave had not been arranged and agreed with the new sales manager and she would not be honouring these agreements”*. In relation to Mrs Lindup’s evidence, we find that the Claimant was simply reporting to her what Jayde Stott had told her. In no sense do we find that the Claimant agreed with Jayde Stott’s assertion that she would not be returning to web. The Claimant did not accept that position at the end of the meeting, ie that she was still “in the dark” about where she would be working upon return from maternity leave, hence the need for immediate correspondence and wanting to have a meeting.

101. In that regard we note the Claimant’s evidence that [§24] of her witness statement she says of Ms Stott, *“Her tone and manner were mocking and intimidating. I was quite shocked by her flippant response, but I assumed that she might come round if she saw my written agreements, as she had not been aware of them. I was surprised therefore that she immediately dismissed them and decided there and then that I would not be returning to the web team. There was no discussion about my previous performance, which Jayde would not know but was relevant to which team I would be allocated. Jayde did not ask me about my previous performance.”*

102. We note that at on 29.10.22 the issue of protected earnings was still very much an issue. It transpired that, subsequently, that issue was clarified in the Claimant’s favour and, eventually, the Claimant was paid the protected earnings indeed at the web team equivalent rate. However, what is key is that Jayde Stott apparently made the decision and communicated it to the Claimant before she had checked. (See [§33] of Claimant’s submission document).

103. On the topic of the team allocation, we also note [206] which records the fact that, had the Claimant returned to work in August of 2022, then she was designated to work in the web team under Tom Bamber.

104. In oral evidence of Liam prevaricated and was vague when cross-examined but in contrast, by his email dated 19.08.22 at 09:15 he provided a document headed "Revised Team Structure" to Hannah Jenkins and Kay-leigh Igo which clearly shows that the Claimant, when she was supposed to be going back to work in August 2022, was assigned to the web team under Tom Bamber. At [§18] of her witness statement the Claimant refers to this as confirmation by Liam Regan that she would be allocated to the web business development manager Tom Bamber.

105. We have regard to [§16] of Liam Regan's witness statement in which he says *"Sarah initially told the company that she would be returning to work around the end of August 2022. Based on this information, and the situation within the web team at the time, Sarah was assigned to the web team on her return"*. We note that there was no evidence as of 19.08.22 that any consideration was ever given to the possibility that the Claimant might return to any position *other* than the web team after she had completed her two weeks in grad bay.

106. We have also had regard to the evidence of Mark McMinn who had been the Claimant's head of sales up until July 2022. He says [§5 witness statement] that he recalls that the Claimant was consistently performing well before she went on maternity leave and believes that she was given an award in July or August 2022 for her sales.

107. Returning to the first and most important in the list of issues, we find that Jayde Stott initially refused both the web team enquiry and the protected earnings, although immediately after the meeting she did seek to clarify the protected earnings issue with Liam. We find, nonetheless, that Jayde Stott refused to deal with the Claimant's position upon return because: she did not deal with the issue at the meeting; she did not seek clarification e.g. by email in the following days; she was not available to discuss the issue on 15.11.22; she did not tell the Claimant about imminent changes in the department regarding the KPI issue on 26.10.22 of subsequently before the Claimants return. On 26.10.22 Ms Stott had decided that the Claimant would not be deployed to the web team upon her return to work and she refused to give any weight to, never mind honouring, the previous agreements. We find that the meeting on 26.10.22 was not a *"mum to mum chat"*, but rather, a formal work meeting. We find that the Claimant was immediately very concerned that Jayde Stott was not prepared to honour the previous agreement that the Claimant firmly believed had been made. It was quite clear to us that the overall approach of Ms Stott was to communicate that she was the new boss and that she would be making new decisions regarding how the teams would operate in anticipation of the new KPIs she was about to "roll out".

108. So far as whether or not Jayde Stott was *"rude"* to the Claimant, we are not sure that the evidence goes that far. The post-meeting emails were polite and professional in tone. We note that is likely that there was tension in the meeting given the difference of views and no doubt it was a difficult situation, particularly for the Claimant who was worried. It seems that there was frustration on both sides. Nonetheless, we find that Jayde Stott was not prepared to enter into a discussion with

the Claimant and had made up her mind regarding the Claimant's future position on the web team i.e. that she was not going to return to the web team. We find that Jayde's manner was deliberately defensive and potentially insensitive. It is therefore likely that she came across as uncooperative and obstructive, impatient and insensitive about the Claimant's position and that she was "stone walling" the Claimant. She did not do anything in the follow-up emails or to go back to reassess the web team decision, despite the fact that Ms Stott had to backtrack in relation to the protected earnings (see the emails around [212]). This appears to be very poor management, but we find that it narrowly misses being characterised as rude.

On 15 November 2022, Jayde Stott refused to meet with the Claimant and shouted at her in front of her colleagues

109. We find that on 15.11.22 Jayde Stott in fact did refuse to meet with the Claimant. The reasons for this were complicated. She was, she said, "*putting out fires*" in the department and also on this day had significant personal/family issues that she was dealing with, such that she was away from the office for part of the day. Nonetheless, the background had been that Jayde Stott had promised to speak to the Claimant on 15.11.22, which was a significant day for her because it was the Claimant's first day back in the office. Having indicated that she would speak to the Claimant, on 15.11.22 Jayde Stott changed her position and told the Claimant to speak to other colleagues. In effect she refused to speak to the Claimant about what was the "burning issue" for the Claimant, namely her web team allocation.

110. In relation to issue of whether or not Jayde shouted at the Claimant in front of her colleagues, we are not satisfied regarding precisely what happened. There was a dispute in the evidence between the parties. We find that it was undoubtedly a noisy workplace and that individuals had to raise their voices in any event. Even if the Claimant and Jayde Stott did employ raised voices in order to communicate, we are not satisfied that Jayde Stott intentionally raised her voice in the sense of speaking to the Claimant in a way so as to demean her, publicly or "*put her down*". Probably due to the background noise, if nothing else, there were raised voices on both sides. On the balance of probabilities, however, our overall finding is that Jayde Stott did not communicate with the Claimant in a way so as to publicly humiliate her.

On 16 November 2022, Jayde Stott shouted at the Claimant and stated that she did not like her

111. We were satisfied by the uncontested evidence that there was a meeting on 16.11.22. Liam Regan was also present although appears to have been somewhat passive. We find that both the Claimant and Jayde Stott were in an emotional state because there were high levels of frustration. On the balance of probabilities, we find it likely that there were raised voices on both sides due to different points of view being expressed and heightened levels of frustration. However, overall, the evidence is contradictory and unclear. Liam Regan's evidence did not help to resolve the factual

issues on this point. Ultimately, we cannot find that Jayde Stott positively said that she “*did not like*” the Claimant.

In late November 2022, and following her period in “grad bay”, the Claimant was not moved to the web team

112. Factually this is correct. The Claimant seems to have been part of the partnership team at this point. Nonetheless it is unclear what happened to the data that the Claimant was sent when she was in the partnership team. There was some evidence that the Claimant was treated differently because she complained to Alan Price [231] as set out in her email to Alan Price dated 29.11.22. At 13:30 the Claimant had complained to Alan Price, as a result of which she was put on the out-of-hours rota and was given “*additional data*”. It was unclear quite what the Claimant’s status was within the prem team/partnership team. We were unclear what the data in the prem team/partnership team was, only that it was not as “*good*” or “*hot*” as the web team data. The Respondent suggested that the Claimant was being fed better quality data than colleagues in the prem team/partnership team, but we had no forensic way of judging the accuracy of that assertion one way or the other. Notwithstanding, the Claimant was not happy with Alan Price regarding her earnings potential and also, as a separate matter, her “*campaign allocation*”.

Between 22 and 29 November 2022, Jayde Stott falsified the Claimant’s statistics

113. Given the essentially unchallenged evidence from Lee Salter regarding the way that the company software was designed and set up, we are satisfied that Jayde Stott did not have access to this software so as to enable her to manipulate the data. It was not put that Lee Salter or anyone else had manipulated the data on behalf of Jayde Stott (or indeed anyone else on behalf of the Respondent). We also note that the Claimant’s assertions on this point were limited to only two examples. We rely on the fact that Lee Salter [§11 witness statement] says that the system could not be manipulated without leaving a trace. Overall, we found that there was a lack of cogency in relation to the Claimant’s claims, and so we are not satisfied that Jayde Scott falsified the Claimant’s statistics.

On 1 December 2022, the Claimant told Alan Price (the CEO) that she was not on the web team and Mr Price then queried this with Jayde Stott, who provided falsified statistics in order to justify the position

114. Again, in relation to this allegation it is factually correct that the Claimant told Alan Price that she was not on the web team and then Mr Price queried this with Jayde Stott. However, we are not satisfied that Jayde Stott provided falsified statistics in order to justify her position. We so find for all the reasons set out above and preferring the evidence of Lee Salter. There was insufficient evidence to back up the Claimant’s assertions.

On 4 January 2023, the Claimant's grievance was not upheld.

115. We are satisfied that the grievance, which was not upheld, did not consider the 26.10.22 meeting. The Claimant expressed her concerns stemming from the 26.10.22 meeting and described the meeting and its contents to Mr McKellar during the grievance investigation meeting on 20.12.22 [276, 278 and 279]. The Claimant also explained the email exchanges that had taken place immediately after the meeting up until her return to work on 15.11.2022. Mr McKellar also interviewed Jayde Stott [296]. The interview starts with him asking Ms Stott about the background to the grievance, as a result of which Ms Stott starts by mentioning the meeting of 26.10.22. Jayde Stott characterised the meeting to Mr McKellar as "... have pretty just normal mum to mum chat, welcomed her back". Ms Stott told Mr McKellar "she was fine" and "everything was just fine". She also volunteered to Mr McKellar that there had been a discussion about the £1,250 protected earnings which she, Jayde, had not known about.

116. However, in his grievance hearing outcome letter to the Claimant dated 04.01.23 [325], Rob McKellar only mentions the meeting of 26.10.22 tangentially. He mentions [325] that "you were initially told that you would not receive 3 months' worth of protected earnings". There is mention of the email exchanges [326] on 26.10.22 and 3 and 7 November 2022. However, he does not mention what happened at the meeting or the fact that there was a meeting or the relevance of the emails to the meeting, and crucially, that Jayde Stott said that the Claimant was not going to be returning to the web team. We note in particular in the later grievance appeal letter (dated 10.01.23) that the Claimant says "the natural inference to be drawn from these omissions is that the mid-October meeting and subsequent emails were in his view completely irrelevant" [336].

117. Despite the fact that the Claimant spoke about the 26.10.22 meeting in detail at the grievance and Ms Stott volunteered information about the 26.10.22 meeting, Mr McKellar failed to deal with the meeting, its significance and consequences in the grievance letter. Consequently, whilst the grievance was not upheld, it seems that Mr McKellar's decision was flawed as he had failed to deal with the source of the Claimant's complaints regarding her position within the business upon return post-maternity leave, and with her income being contingent on that position. The failure to deal with the 26.10.22 meeting then became the basis of the Claimant's appeal letter (written on her behalf by her father), resulting in the grievance appeal outcome letter prepared by James Potts, legal services director, dated 09.02.23 [394-412].

On 9 February 2023, the Claimant's appeal was not upheld or investigated in a satisfactory manner

118. James Potts interviewed the Claimant on 18. 01.23 [346-375]. The Claimant told Mr Potts that "the issues arose in mid-October when I had my first meeting with Jayde Stott" [348]. The Claimant highlighted the importance of the meeting saying: "... if we go back to October before I came back to work, whilst on maternity leave, that I

was told very simply you won't be getting protected earnings, you won't be getting web. No discussion, no reason given. It was obviously quite a shock to know that" [349].

119. In the Potts interview, the Claimant spoke in detail about the 26.10.22 meeting. This includes the evidence from the Claimant *"I asked if she was aware of two agreements I had that pre-dated the employment that weren't made with her ... so I informed her, and Jayde simply said that I wouldn't be getting either of those agreements ..."* [353 and 354].

120. The Claimant also highlighted to Mr Potts that she had been treated badly and in a dismissive manner by Jayde Stott. *"...I believe it forms part of the argument that I wasn't being listened to, I'm being bullied, because, for every instance of the way of I've been treated by Jayde is completely dismissive ... shouted at, discriminated against, not listened to, which is exactly how I was treated".* [361].

121. There is no evidence that James Potts interviewed anyone else for the appeal including that he did not interview Jayde Stott.

122. In her appeal letter [341], the Claimant emphasised that decisions were made on 26.10.22 which were "instant" decision. She told Mr Potts *"It was not appropriate to make the instant decision without considering the relevant facts"*.

123. Mr Potts' grievance appeal outcome letter is at [394-412]. He mentions the 26.10.22 meeting at points 21-38 of his letter [396-399] as well as the exchange of emails. Starting on 26.10.22 and continuing to 07.11.22. Mr Potts also states [411] that he had undertaken the grievance appeal as a review of the original decision, rather than a rehearing of the original grievance.

124. Mr Potts considers his conclusions under the headings of breach of contract, discrimination, including maternity discrimination under Section 18 of the Equality Act 2010, and harassment. In so far as his findings regarding the 26.10.22 meeting between the Claimant and Jayde Stott are concerned, he found that the meeting was not hostile. He concluded that Ms Stott was wrong about the protected earnings point but that had already been dealt with by the time of the appeal [408].

125. Mr Potts found that there was no agreement and no contractual right for any BSC to be allocated to any particular lead source or campaign. He found that the allocation of leads was fluid to such an extent that there are changes each month. He refers to an email from Liam Regan dated 07.11.22 which said *"We make changes to the individuals working on specific campaigns on a monthly basis. We look at a number of factors including performance to make our decisions"*. He concluded in the appeal letter that the Claimant had the right to return from maternity leave to a similar job [3(d), 4(10)], he found [3(g)] that there was no express agreement that the Claimant would return to any particular lead source or campaign, nor was any decision taken or implemented in that period. However, little consideration was made of the meeting itself on 26.10.22 and how things were left afterwards. Paragraphs at [§§34 and 35, 398] imply that Jayde Stott never gave the impression that the protected earnings position had been an issue. Further, [§36] seems to suggest that Mr Potts found that Liam Regan had cleared up the misunderstanding, which is not correct.

126. The appeal seems to have been a review of the documentary evidence previously considered by Mr McKellar supplemented by Mr Potts speaking to the Claimant [411]. He clearly realised that the meeting of 26.10.22 was within the protected period. However, he failed to deal with the axiomatic 26.10.22. meeting and the points raised in the appeal letter. He says, with some ambiguity, that there was no express agreement that the Claimant would return to any particular leads source or campaign. Mr Potts characterises the email from Liam Regan to the Claimant on 19.08.22 as “... *did not amount to agreement to the contrary. It was merely a commentary on the structural position at the time. There was no guarantee or indication that this structural position would be the same on your return*”. There is then a reference to Liam’s proposed team structure dated 19.08.22 which clearly indicated that the Claimant would have been in the web team [177] but Mr Potts fails to deal with this. In relation to [398] and the protected earnings [§34], Mr Potts could not see any “*deviation*”. This is contrary to all the other evidence that there was a clear disagreement over the protected earnings, even though that was subsequently rectified.

127. Mr Potts refers to the 26.10.22 meeting in the context of the protected earnings issue. He says that there “*may*” have been an issue about protected earnings. He is summarising at a high level without considering how the Claimant felt before and after the meeting. He does not consider the impact of the claim on her or the alleged dismissive attitude of Jayde Stott. Mr Potts rejected the Claimant’s concerns. He talks about the interview but does not give any weight to the Claimant’s complaints regarding the decision. He therefore goes on to conclude [410] that there was no discrimination within the protected period.

128. Some elements of the appeal were prima facie satisfactory. However, in his discussions regarding the 26.10.22 meeting Mr Potts focused on the protected earnings issue. He also formed the view that she was supposed to return to a similar role and that this was consistent with her contract. Nonetheless, he did not consider the consequences of the changed role and the fact that this led to a significant reduction in remuneration. There is no discussion about how this impacted on her financially, nor the way that she was treated. It should be noted that, whilst income and remuneration was not discussed at the hearing, particularly because we were not dealing with remedy, the Claimant indicated that she had taken a significant reduction in income. We are at pains to emphasise that we are not making any findings at this point in relation to what the actual loss of earnings was, but simply emphasise that the gist of the Claimant’s evidence was that she had suffered a very significant drop in remuneration as a result of not being positioned back in the web team upon return from maternity leave.

129. Therefore, whilst she was brought back and given a role with some similarities and protected earnings that indicated her previous position in the web team, it was artificial to say that she had returned to a “*similar*” role given the very significant reduction in remuneration. Therefore, the appeal investigation was unsatisfactory because it did not touch on this at all. Mr Potts did not discuss levels of commission or remuneration in terms of pounds and pence or indeed of percentage changes. The issue of the web team, ultimately, is about the Claimant’s income and ability to earn commission. Mr Potts failed to deal with this at all. He is also somewhat vague when he says that the issue of protected earnings “*may have been*” discussed.

Did the unfavourable treatment take place in a protected period?

130. We find that the fundamental decision that the Claimant would not be going back to the web team was made on 26.10.22, ie within the protected period. Whilst the appeal letter says no decision made in the protected period, we disagree. The two key decisions made within the protected period were the decision that she would not be returning to the web team, and also and also rate of protected earnings not being at £1,250, later corrected, but where such protected pay recognised her web-team-based status.

If not did it implement a decision taken in the protected period?

131. The Respondent argued that there was no relevant decision or decisions made in the protected period. We disagree for the reasons set out above.

132. On 26.10.22 Jayde Stott make it clear that the Claimant would not be going back to work on the web team. The Respondent says that it was not a formal discussion and just a “chat”, relying on the context. We agree with the Claimant’s assertion that it was a return-to-work meeting, even if conducted in an informal setting. (The degree of formality is not relevant to our decision). We find that the unfavourable decisions made that the Claimant would not be returning to the web team and would not get £1,250 protected earnings (later corrected) had their actual impact after she returned on 15.11.25. as set out above, the Claimant’s understanding that Jayde Stott would not be deploying her to the web team upon her return was corroborated by her immediate post-meeting emails.

133. Consequently, the grievance and later appeal were natural consequences of the decision had been made by Jayde Stott on 26.10.22 that the Claimant would not be returning to the web team. The fact that Jayde Stott offered to meet the Claimant to discuss matters on 15.11.22 was not evidence, we find, that supports the Respondent’s contention that no decision had been made in the protected period. It was not unreasonable for the Claimant to expect to have the promised meeting. Instead, we find that Ms Stott’s behaviour would be characterised on 15 and 16 November 2022 as a “fobbing off” of the Claimant and ignoring her disquiet. In any event, Jayde Stott did not facilitate the promised meeting on 15.11.22. Even though we are not satisfied that she shouted at the Claimant as per the list of issues, Ms Stott’s handling of the Claimant was poor and did nothing to reassure her. By 16.11.22 the Claimant was so concerned that she resorted to the grievance procedure. We find that the Claimant’s October and November 2022 emails, her attempts to meet with Jayde Stott on 15.11.22 and the meeting on 16.11.22 which led to the Claimant going home in a state of distress, the Claimant invoking the grievance process and the later appeal all flowed from the decision made on 26.10.22 within the protected period; Ms Stott’s decision not to redeploy her to the web team. The chain of causation connecting to the 26.10.22 was not broken.

134. The key decision in the protected period, (the decision not to re-deploy the Claimant to the web team communicated on 26.10.22) led directly to her subsequent

unfavourable treatment after the protected period ended; the sub-optimal sales lead “data” that the Claimant was given access to, which in turn directly impinged on her remuneration. As a result, the Claimant could not earn anything approaching her pre-maternity leave levels simply because of poorer quality “raw material” ie the sales leads. In this regard, we note that our findings do not hinge on any pre-maternity leave agreement. Even if she had not been “promised” that she would be returning to the web team, then she would still have expected to be able to generate similar remunerative benefits. To return to a role that led to her income dropping by considerably over half of what it was pre-maternity leave does not represent a return to a “similar” role in our view.

135. In terms of the relevance of the protected period:

- i. 1(i) was within the protected period.
- ii. 1(ii) to (viii) fell outside the protected period.
- iii. 1(ii - iv) fall away because we were not satisfied that the evidence meets the requisite civil standard.
- iv. In terms of 1(vi-viii), however, the Claimant was pressing the Respondent through Alan Price, later the grievance process and continuing later through the appeal process, to take notice of her core complaint made on 26.10.22 that she would not be returned to the web team, with adverse consequences for her potential level of remuneration. She was, in effect, looking at them to go above Jayde Stott’s decision and implement a conclusion that would have put her back in the web team. The failures of Alan Price, the grievance process and appeal process to address the Claimant’s core complaint were therefore connected to the protected period. The Claimant did not stop trying to get the Respondent to address her core complaint from the moment she returned to work on 15.11.22, but they failed to do so. To that extent, the omissions of Alan Price, the grievance procedure (principally Rob McKellar) and the appeal process (principally James Potts) are linked to the original 26.1.22 decision. However, whether Alan Price’s lack of decision, the grievance and appeal amount to an “implementation” of the original 26.10.22 decision not to redeploy the Claimant to the web team, is a “moot” point. We find that the essence of “implementation” is a process of putting a decision into effect; the execution of a decision or plan. On balance, we were not satisfied that *failure to correct* Jayde Stott’s discriminatory decision of 26.10.22 was such as to amount to the “implementation” of the 26.10.22 decision. Therefore 1(vi-viii) also fall away due to reasons of causation and cannot be considered from the perspective of remedy. For the avoidance of doubt, (as per issue 4.), the unfavourable treatment occurred, we find, because the Claimant was exercising the right to additional maternity leave.

136. In summary, therefore, in relation to the issue of “implementation”, we are not satisfied that neither Alan’s Price not having listened fully to the Claimant, nor the grievance, nor the appeal processes could be characterised as “implementation” of the 26.10.22 non-deployment-to-web-team decision, even if the grievance and appeal were brought about by the decision on the 26.10.22 and Jayde Stott’s subsequent failure to re-consider; we so find even in circumstances whereby Jayde Stott was demonstrated to have been wrong about the £1,250 protected earnings.

Was the unfavourable treatment because the Claimant was exercising or had exercised the right to ordinary or additional maternity leave?

137. It is a fact that the Claimant was on maternity leave when relevant matters on 26.10.22 unfolded resulting, ultimately, in the Claimant not being re-deployed to the web team and thereby losing very significant opportunities to re-establish her pre-maternity leave levels of remuneration. Whilst it is the Claimant’s word against Ms Stott’s we are satisfied, as set out above, that the decision was made by Ms Stott whilst the Claimant was on maternity leave on 26.10.22. Ms Stott was prompted by the Claimant to reconsider from immediately after the 26.10.22 meeting, until the end of the protected maternity leave, but Ms Stott failed to do so.

138. The key issue here is whether the decision was made because the Claimant was exercising or had exercised the additional maternity leave. It is difficult to know Ms Stott’s motivation, but on any view, we find her decision on 26.10.22 to have been irrational. As of 26.10.22, Ms Stott did not know the Claimant, never having met the Claimant or worked with her before. The “stand out” and crucial piece of information about the Claimant would have been, if Ms Stott had made any basic enquiries about the Claimant, that her pre-maternity sales figures had been so good as to attract two awards which also confirmed that she was a very successful team player. Further, absent the maternity leave, in October, November and December 2022, when the change in KPIs was being planned, presented to the sales workforce and tested out, then the Claimant would have been in the web team on the basis of the only evidence about her track record, namely her pre-maternity-leave successful track record. Therefore, in the absence of any other evidence or sensible, rational explanation from the Respondent, the only conclusion that this Tribunal can draw, as per **Interserve**, is that from 15.11.22 onwards the Claimant was treated unfavourably, with disastrous personal consequences for her income, on the basis of the decision made on 26.10.22 that she would not be allowed back onto the web team. This was intimately connected to her maternity leave because the decision was apparently made in what Ms Stott repeatedly characterised as a “mum-to-mum chat”. In Ms Stott’s mind the Claimant does not seem to have been a sales executive going through a return-to-work meeting. It seemed that Ms Stott saw the Claimant as a “mum” and arrangements regarding fundamental issues to do with her employment and potential remuneration were “chat”. This is a very significant undermining or degrading of the Claimant’s employment status.

139. Further, the Claimant’s assertive and insistent emails following the meeting on 26.10.22 afforded Ms Stott the opportunity to reflect and reconsider before the Claimant returned to work. She could have sought input from Alan Price or Mark

McMinn who was still employed by the Respondent, albeit in a different capacity. Rather, Ms Stott stuck with her decision not to bring the Claimant back into the web team, a decision that the Respondent weakly and illogically explains as being on the basis of a belief that it was in their “gift” to deploy the Claimant as they saw fit in a “similar” role. The disadvantage therefore continued for the remainder of the Claimant’s employment and the Respondent failed to give proper re-consideration of the Claimant’s complaints.

140. We find that “similar” work (or position or role) in this case does not mean sales in general; does not mean client calls and inputting data regarding the same HR products and services; “similar” does not denote being in the same office with the same team of people. In the context of the Claimant’s role and pre-maternity leave history, we find that “similar” means similar levels of opportunity to earn similar levels of remuneration. A new position causing a loss of considerably more than half the expected income is not a “similar” position.

141. It was irrational for the Respondent not to re-deploy their award-winning web team member, who only months earlier they had feted, back to the position where she had a track record of bringing in £1.3 million in sales for them in less than a year. In the interim, between the bumper success of the Claimant and the decision of the new head of sales, Ms Stott, the only other issue was the matter of the Claimant’s maternity. On the balance of probabilities, the only conceivable reason for the sudden vault face in the Respondent’s attitude towards the Claimant, and the resulting massive loss of remuneration, was her maternity leave. The maternity leave was not a background, contextual issue. We find that this was the fundamental matter and the vehicle whereby, through Jayde Stott, the Claimant could be “gifted” the disadvantageous role.

142. In the same way that the Respondent emphasised throughout the case that we should be careful to ensure that we only consider potential discrimination within the protected period, we also find that the Respondent cannot point to the Claimant’s allegedly poor post-15.11.22 disappointing KPI performance to assert that this justifies their not having redeployed her to the web team from the end of November 2022. We find that the Respondent cannot look at their post 15.11.22 KPI statistics to extrapolate backwards to explain their decision not to re-deploy the Claimant to the web team. If the Respondent had deployed the Claimant back to the web team and she demonstrably had not performed to the requisite standard, then this would have been a different matter, but they did not do so.

Conclusion

143. On a unanimous basis we find that the Respondent discriminated against the Claimant in breach of section 18(4) of the Equality Act 2010.

144. The case will now be listed for a remedy hearing with a time estimate of one day unless within 14 days the parties have informed the Tribunal that they have agreed terms for remedy.

Tribunal Judge Holt

10 July 2025

JUDGMENT AND REASONS SENT TO THE PARTIES ON
16 July 2025

FOR THE TRIBUNAL OFFICE

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