



EMPLOYMENT TRIBUNALS

Claimant: Mrs J Ward

Respondent: Sternberg Reed LLP

Heard: East London Tribunal Hearing Centre

On: 1, 2, 3, 4 ,7, 8, and 9 July 2025

Before: Employment Judge S Shore

Members: Mrs J Henry
Professor J Ukemenam

Appearances

For the claimant: Mr J Ward, Lay Representative
For the respondent: Mrs K Rotheram, CEO

JUDGMENT

The unanimous decision of the Tribunal is that:

Unfair Dismissal (ss. 94 to 98 Employment Rights Act 1996 (“ERA”))

1. The claimant’s claim of unfair dismissal is dismissed. The sole reason for dismissal was redundancy.

Direct Race Discrimination (s.13 Equality Act 2010 (“EqA”))

2. The Tribunal makes the following decisions regarding the claimant’s claims of direct discrimination because of race:
 - 2.1. The claim that the claimant was dismissed as an act of direct race discrimination is dismissed.
 - 2.2. The claim that the claimant was not offered an alternative role in the redundancy process as an act of direct race discrimination is dismissed.

Indirect Sex Discrimination (s.19 EqA)

3. The claimant's claim that the bonus scheme that was introduced in 2017 was an act of indirect sex discrimination in that:
 - 3.1. The respondent imposed a PCP that set a target far higher than the claimant's previous 3x salary bonus scheme;
 - 3.2. The respondent, in applying the claimant's bonus target, did not make any adjustments to reflect the claimant's part-time/reduced hours; and
 - 3.3. The PCP was discriminatory in relation to women in that it put women at a particular disadvantage when compared to men; it put the claimant to that disadvantage; and the respondent cannot show that the PCP was a proportionate means of achieving a legitimate aimis dismissed.
4. In the alternative, the introduction of the 2017 bonus scheme was not conduct extending over a period and the claim fails because it was presented out of time, and it would not be just and equitable to extend time.

Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 ("the Regulations") (r.5)

5. The claim that the claimant was subjected to less favourable treatment compared to a full-time worker in respect of the 2017 bonus scheme is dismissed.
6. In the alternative, the introduction of the 2017 bonus scheme was not conduct extending over a period and the claim fails because it was presented out of time, and it would not be just and equitable to extend time.
7. The claim that the claimant was treated less favourably than a comparable full-time worker by being subjected to a detriment on the ground that she is a part-time worker by being told at an interview on 8 September 2022 by Ms Kokkinos that "...*they weren't fond of it [having part time workers] before...*" and by not being offered a role in the Family Department is dismissed.

Disability status (s.6 EqA)

8. The claimant did not meet the definition of disability during and after her period of absence in 2019.
9. At all material times from March 2022, the claimant was disabled as defined in section 6 of the Equality Act 2010. We find that the respondent had constructive knowledge of the claimant's disability of mental illness from March 2022.

Discrimination arising from disability (s.15 EA)

10. The Tribunal makes the following decisions regarding the claimant's claims of discrimination arising from disability:

- 10.1. The claim that the respondent failed to provide information regarding the department that the claimant would return to or a return-to-work plan following her sick leave is dismissed.
- 10.2. The claim that it was suggested to the claimant that she take time to consider a change in legal career is dismissed.
- 10.3. The claim that the respondent criticised the claimant for taking annual leave on 1 September 2022 is dismissed.
- 10.4. The claim that the claimant was dismissed because of something arising from disability is dismissed.
- 10.5. The claim that the respondent failed to transfer the claimant into one of two vacant roles in the Family Department or placing her in a trial period in either role is dismissed.

Failure to Make Reasonable Adjustments (s 20/21 EA)

11. The Tribunal makes the following decision relating to the claimant's claims of failure to make reasonable adjustments:
 - 11.1. The claim that subjecting the claimant to an interview process in respect of alternative employment following the decision to close the Clinical Negligence department placed her at a substantial disadvantage compared to persons who are not disabled and that the respondent failed to make a reasonable adjustment (namely to transfer her into a vacant role in the Family Department or place her on a trial period in respect of such a role) to avoid the disadvantage, is dismissed.
 - 11.2. The claim that that the requirement that the claimant to work her full-time hours on her return from sickness absence in July 2022 placed her at a substantial disadvantage compared to persons who are not disabled and that the respondent failed to make a reasonable adjustment, namely referring to her to Occupational Health or arranging a phased return to work, is dismissed.

Victimisation (s.26 EA)

12. The Tribunal makes the following decisions relating to the claimant's claims of victimisation:

Protected Acts (s. 43B EA)

- 12.1. The claimant's email to the respondent dated 30 May 2022 was not a protected act;

- 12.2. The claimant's grievance dated 12 July 2022 was a protected act; and
- 12.3. The claimant's presentation of her ET1 in this case on 27 October 2022 was a protected act.

Detriments because the claimant did a protected act

- 12.4. The claim that the respondent failed to refer the claimant to OH on or shortly after 30 May 2022 is dismissed on its merits and because the detriment alleged happened before a protected act was done.
- 12.5. The claim that the respondent failed to investigate fairly and/or uphold the claimant's grievance of 12 July 2022 is dismissed.
- 12.6. The claim that the respondent failed to provide information regarding the department the claimant would return to or return to work plan following the claimant's sick leave is dismissed.
- 12.7. The claim that it was suggested to the claimant that she take time to consider a change in legal career is dismissed.
- 12.8. The claim that the respondent failed to consider and/or provide suitable alternative employment is dismissed.
- 12.9. The claim that the respondent only provided the claimant with 2 days' notice of the appeal hearing against her redundancy is dismissed.
- 12.10. The claim that during the redundancy appeal hearing on 26 September 2022, the respondent focussed on whether the claimant had obtained an independent medical report to support her assertion that she was disabled within the meaning of section 6 of the Equality Act 2010 is dismissed.
- 12.11. The claim that during the redundancy appeal hearing on 26 September 2022, the respondent failed to address why the claimant had not been assessed by OH is dismissed.
- 12.12. The claim that that the respondent dismissed the claimant because she did a protected act is dismissed.
- 12.13. The claim that the respondent failed to investigate fairly and/or uphold the claimant's redundancy appeal is dismissed.
- 12.14. The claim that the respondent failed to consider the claimant's grievance appeal thoroughly and fairly is dismissed.

Unauthorised Deduction from Wages (s.13 ERA)

- 13. By consent, the claim that the respondent deducted monies from the claimant's wages without authorisations succeeds. The respondent shall pay the claimant the sum of **£1,281.20** gross without deduction of Income Tax or

employee's National Insurance contributions within 14 days of the date of this Judgment if it has not already done so.

Jurisdiction

14. The claimant's claims of indirect sex discrimination and detriment because of her part-time status in respect of the bonus scheme were presented out of time and the Tribunal does not find it just and equitable to extend time to allow the claims. The claims did not form part of a conduct extending over a period.

REASONS

Introduction and History of Proceedings

1. The claimant was employed by the respondent, a firm of solicitors, from 3 July 2006 to 9 September 2022, when her employment was terminated. The respondent's case is that the reason for dismissal was redundancy as it closed its Clinical Negligence department in which the claimant worked. The claimant alleges that the dismissal was an act of direct race discrimination; or because of her part-time status; or because of disability; or because she did a protected act. The claimant had joined the respondent as a Solicitor but at the time of her dismissal, she was employed as an Associate Partner.
2. The claimant started early conciliation with ACAS on 25 August 2022 and obtained an ACAS early conciliation certificate dated 28 September 2022. She presented her ET1 and Attachment on 27 October 2022 [11-29]. The claimant was represented by a solicitor, Ms Grieff, at this time, who drafted the ET1 and Attachment. Ms Grieff represented the claimant on a pro-bono basis.
3. The claimant brought claims of:
 - 3.1 Unfair dismissal;
 - 3.2 Direct discrimination because of race;
 - 3.3 Indirect discrimination because of sex;
 - 3.4 Detriment because she was a part-time worker;
 - 3.5 Discrimination arising from disability;
 - 3.6 Failure to make reasonable adjustments;
 - 3.7 Victimisation; and
 - 3.8 Unauthorised deduction from wages.

- 4 The respondent presented a response form (ET3) [30-37] and Grounds of Resistance [38-49] on 28 November 2022.
- 5 On 30 March 2023, a preliminary hearing was held before Employment Judge Feeney at which the claimant appeared in person and the respondent was represented by counsel. A case management order was produced [51-62] that made orders for the parties to do certain things by certain dates, including exchanging witness statements by 14 March 2024 (paragraph 8.1 [59]).
- 6 EJ Feeney also set up a public preliminary hearing for 16 August 2023 to consider the claimant’s disability status and any application for strike out or deposit made by the respondent [51-52].
- 7 EJ Feeney set up the following timetable for the final hearing with the parties based on the claimant calling four witnesses plus herself and the respondent three:

Day	Morning	Afternoon
1	Initial discussion/reading	Initial discussion/reading
2	Initial discussion/reading	Claimant’s evidence
3	Claimant’s evidence	Claimant’s evidence
4	Respondent’s evidence	Respondent’s evidence
5	Respondent’s evidence	Respondent’s evidence
6	Submissions	Deliberations
7	Judgment followed by remedy if appropriate	

- 8 On 16 August 2023, at the public preliminary hearing set up by EJ Feeney, Employment Judge Green determined that the claimant did not meet the definition of disability in section 6 of the Equality Act 2010 and struck out all her claims of disability discrimination as a result of his finding. He also struck out the claimant’s claims of detriment because of part-time status and indirect sex discrimination in the decision dated 22 August 2023, that was sent to the parties on 24 August 2023 [63-79]. The claimant successfully appealed the strike outs.
- 9 On 28 September 2023, the Tribunal sent the parties a Notice of Hearing that listed the final hearing for seven days to start on 18 September 2024.

- 10 A few of the dates for compliance with case management orders were extended by agreement. The date for exchange of witness statements was extended to 25 June 2024, for example.
- 11 On 4 July 2024, the claimant wrote to the Tribunal regarding the readiness of the parties for the listed final hearing. She advised that:
 - 11.1 She had appealed EJ Green's strike out on 5 October 2023.
 - 11.2 The respondent had not responded to a request for specific disclosure.
 - 11.3 There was no agreed bundle, and there had been no witness statement exchange.
 - 11.4 Witness statements had not been exchanged; and
 - 11.5 A List of Issues had yet to be agreed.
- 12 After further exchange of correspondence, the final hearing listed for 18 to 20 and 24 to 27 September 2024 was removed from the list due to a lack of judicial resource.

Issues

- 13 The bundle contained three versions of a List of Issues [81-91]. The first List of Issues [81-84] was prepared for the preliminary hearing before Employment Judge Feeney on 30 March 2023 and was referenced in paragraphs 17 and 18 of the case management order that was produced after the hearing [53]. EJ Feeney invited the parties to consider the draft List and notify the Tribunal if there were any disputes.
- 14 No disputes were raised by the parties. The second List [85-87] was produced after the first but neither side argued that it was agreed or definitive. The third List [88-91] was produced after Employment Judge Green struck out the claimant's claims of disability discrimination on the grounds that she did not meet the definition in section 6 of the Equality Act 2010 and also struck out her claims of indirect sex discrimination and a claim of detriment under regulation 5 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 because he considered that the claims had no reasonable prospect of success.
- 15 All the decisions of EJ Green were successfully appealed by the claimant before HHJ Shanks at the Employment Appeal Tribunal at a hearing on 11 April 2025, so the third List became redundant.
- 16 We discussed the Issues with the parties, and it was agreed the following List be adopted. We should note that the date of the claimant's appeal against dismissal was wrongly stated to be 26 September 2022 at paragraphs 15 g) and h) below. We have corrected that error and inserted the correct date (27 September 2022).

UNFAIR DISMISSAL

1. *The C was dismissed on 9/9/22. She has the requisite service to bring a claim for unfair dismissal. The C alleges that she was unfairly dismissed. Was her dismissal fair or unfair for the purposes of Part V of the ERA 1996? In particular:*
 - a. *What was the reason for dismissal? The R says redundancy. The C states that this was a sham redundancy situation.*
 - b. *If there was a potentially fair reason for dismissal was her dismissal fair or unfair having regard to s.98(4) of the ERA 1996? In answering that question the C focusses in particular on the questions set out in (c) to (f):*
 - c. *Was there a failure to adopt a fair and objective process in allocating alternative roles?*
 - d. *Was there a failure to provide alternative suitable employment?*
 - e. *Was the requirement for C to interview for an alternative role reasonable?*
 - f. *Was a reason for C's dismissal due to disability and/or race and/or victimisation, or due to her sickness absence and/or due to her status as a part-time worker?*

RACE DISCRIMINATION: s.13 of the Equality Act 2010 ("EA 2010").

2. *The C alleges that:*
 - a. *her dismissal was an act of direct race discrimination; and*
 - b. *not being offered an alternative role was an act of direct race discrimination.*
3. *The C relies on two female comparators who were offered alternative roles without an interview namely Emily Minton and Lauren Collins: alternatively, a hypothetical comparator.*
4. *Was C's dismissal an act of race discrimination?*
5. *Was C not being offered an alternative role an act of direct race discrimination?*

INDIRECT SEX DISCRIMINATION: s. 13 of the EA 2010

6. *The C alleges that:*
 - a. *The bonus scheme introduced in July 2017 constituted indirect sex discrimination in that:*
 - i. *The R imposed a PCP that set a target far higher than the C's previous 3x salary bonus scheme.*

- ii. *The R in applying C's bonus target, did not make any adjustments to reflect C's part-time/reduced hours.*
 - iii. *That PCP was discriminatory in relation to women in that it puts women at a particular disadvantage when compared to men; it put the C to that disadvantage; and the R cannot show that the PCP was a proportionate means of achieving a legitimate aim.*
- b. *Was the introduction of a bonus scheme in July 2017 conduct extending over a period which continued until her dismissal?*

PART TIME WORKERS (PREVENTION OF LESS FAVOURABLE TREATMENT) REGULATIONS 2000 ("the 2000 Regulations")

7. *The C alleges she was subject to less favourable treatment compared to a full-time worker due to the revised bonus scheme (previous being x3 salary) which constituted a detriment. She alleges that she was subjected to that detriment on the ground that she was a part time worker.*

8. *The C alleges that she was treated less favourably than a comparable full-time worker by being subjected to a detriment on the ground that she is a part-time worker by being told at an interview on 8 September 2022 by Ms Kokkinos that "they weren't fond of it [having part time workers] before" and by not being offered a role in the Family Department¹.*

DISABILITY DISCRIMINATION

9. *The C claims she was at the material time a disabled person for the purpose of the Equality Act 2010. Her alleged mental impairment is anxiety and depression. Is she right? Was the C disabled within the meaning of the legislation?*

10. *If she was, did the R know or ought it reasonably have known that she was disabled? The C alleges that the R knew or ought to have known from at the earliest February 2019 or at the latest May 2022.*

FAILURE TO MAKE REASONABLE ADJUSTMENTS: s.20 and 21 of the EA 2010.

11. *The C alleges that the R discriminated against her by failing to comply with a duty to make reasonable adjustments.*

- a. *She alleges that subjecting the C to an interview process in respect of alternative employment following the decision to close the Clinical Negligence department placed her at a substantial disadvantage compared to persons who are not disabled and that the R failed to make a reasonable adjustment (namely to transfer her into a vacant role in the Family Department or place her on a trial period in respect of such a role) to avoid the disadvantage.*

- b. *She alleges that the requirement that the C work her full-time hours on her return from sickness absence in July 2022 place her at a substantial disadvantage compared to persons who are not disabled, and that the R failed to make a reasonable adjustment namely referring to her to Occupational Health or arranging a phased return to work.*

DISCIMINATION ARISING FROM DISABILITY: s. 15 of the EA 2010

12. *The C alleges that she has been treated unfavourably because of something arising in consequence of her disability (absence from work) in:*

- a. *Failing to provide information regarding the department the C would return to or return to work plan² following her sick leave;*
- b. *Suggesting that the C take time to consider a change in legal career;*
- c. *Criticising the C for taking annual leave on 1/9/22;*
- d. *Dismissing her; and*
- e. *Failing to transfer the C into one of two vacant roles in the Family Department or placing her on trial period in respect of such roles.*

13. *If the C is correct in her contentions in para. 10 above can the R show that the treatment in question was a proportionate means of achieving a legitimate aim?*

VICTIMISATION: s. 27 of the EA 2010

14. *The C alleges she made protected acts for the purposes of s. 27(2)(d) of the Equality Act:*

- a. *By email to the Respondent dated 30 May 2022*
- b. *By grievance dated 12 July 2022*
- c. *By issuing the current claim on 27/10/22.*
- d. *Do the acts in a-c above amount to protected acts?*

15. *If so, was she subjected to the following detriments because she did a protected act?*

- a. *Failing to refer her to occupational health on or shortly after 30/5/22;*
- b. *Failure to investigate fairly and/or uphold the C's grievance of 12 July 2022*
- c. *Failure to provide information regarding the department the C would return to or return to work plan, following the C's sick leave.*
- d. *Suggesting the C take time to consider a change in legal career.*
- e. *Failure to consider and/or provide suitable alternative employment.*
- f. *Only providing the Claimant with 2 days' notice of the appeal hearing against her redundancy.*

- g. *Focussing during the redundancy appeal hearing on 27 September 2022 whether the C had obtained an independent medical report to support her assertion that she was disabled within the meaning of the EqA 2010*
- h. *During the redundancy appeal hearing on 27 September 2022 failing to address why the C had not been assessed by OH.*
- i. *Dismissing the C*
- j. *Failing to investigate fairly and/or uphold the C's redundancy appeal.*
- k. *Failing to consider the C's grievance appeal thoroughly and fairly.*

UNAUTHORISED DEDUCTION OF WAGES: s.13 of the ERA 1996

16. *The C alleges that she has been subjected to an unlawful deduction of wages by reason of the failure to pay her outstanding holiday pay, said to be worth approximately £533.75.*

JURISDICTION/TIME LIMITS

17. *The Claim was issued on 27/10/22. An Early Conciliation certificate was issued in respect of the Claim on 28/9/22, and an early Conciliation notification was made to ACAS on 25/8/22. Are the C's claims out of time having regard to the time limits in s123 of EA 2010 such that the ET does not have jurisdiction to consider them in any event.*

- a) *Has the C been subjected to continuous acts of discrimination?*
- b) *The Tribunal is asked to consider whether it would be just and equitable to extend time to consider any claims that are out of time.*

17 As we did not find in favour of the claimant on any of her disputed claims, and the claim for unauthorised deduction from wages was dealt with by consent, we do not need to determine remedy.

Law

18 The statutory law relating to the claimant's claims of discrimination is contained in the Equality Act 2010 (EqA). The relevant sections of the EqA were sections 6 (definition of disability) 13 (direct discrimination); 15 (discrimination arising from disability); 19 (indirect discrimination); 27 (victimisation), 123 (time limits) and 136 (burden of proof). The relevant provisions are set out here:

6. Disability

A person (P) has a disability if—

- (a) *P has a physical or mental impairment, and*
- (b) *the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.*

A reference to a disabled person is a reference to a person who has a disability.

13. Direct discrimination

A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.

The relevant protected characteristics are—

- (a) age;*
- (b) disability;*
- (c) gender reassignment;*
- (d) race*
- (e) religion or belief;*
- (f) sex;*
- (g) sexual orientation.*

15. Discrimination arising from disability

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

- (a) A treats B unfavourably because of something arising in consequence of B's disability, and*
- (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.*

The section does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

19. Indirect discrimination

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

A provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

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

- (b) *it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,*
- (c) *it puts, or would put, B at that disadvantage, and*
- (d) *A cannot show it to be a proportionate means of achieving a legitimate aim.*

20. Adjustments for disabled persons

Duty to make adjustments

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

(6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.

(7) A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.

(8) A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.

(9) In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to—

- (a) removing the physical feature in question,*
- (b) altering it, or*
- (c) providing a reasonable means of avoiding it.*

(10) A reference in this section, section 21 or 22, or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to—

- (a) a feature arising from the design or construction of a building,
- (b) a feature of an approach to exit from or access to a building,
- (c) a fixture or fitting, or furniture, furnishings, materials, equipment, or other chattels, in or on premises, or
- (d) any other physical element or quality.

(11) A reference in this section, section 21 or 22 or an applicable Schedule to an auxiliary aid includes a reference to an auxiliary service.

(12) A reference in this section or an applicable Schedule to chattels is to be read, in relation to Scotland, as a reference to moveable property.

(13) The applicable Schedule is, in relation to the Part of this Act specified in the first column of the Table, the Schedule specified in the second column.

21. Failure to comply with duty

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

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

(3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

27. Victimisation

A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

- (a) *making an allegation (whether or not express) that A or another person has contravened this Act.*

Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

123. Time limits

(1) Subject to sections 140A and 140B proceedings on a complaint within section 120 may not be brought after the end of—

- (a) the period of 3 months starting with the date of the act to which the complaint relates, or*

- (b) such other period as the employment tribunal thinks just and equitable.*

(2) Proceedings may not be brought in reliance on section 121(1) after the end of—

- (a) the period of 6 months starting with the date of the act to which the proceedings relate, or*

- (b) such other period as the employment tribunal thinks just and equitable.*

(3) For the purposes of this section—

- (a) conduct extending over a period is to be treated as done at the end of the period;*

- (b) failure to do something is to be treated as occurring when the person in question decided on it.*

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

- (a) when P does an act inconsistent with doing it, or*

- (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.*

136. Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

(4) *The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.*

(5) *This section does not apply to proceedings for an offence under this Act.*

(6) *A reference to the court includes a reference to—*

(a) an employment tribunal...

19 The relevant provisions of section 123 of the EqA (see above) are:

19.1 A claim must be brought after the end of a period of three months starting with the date of the *act (or omission) to which the complaint relates; or*

Such other period as the employment tribunal thinks just and equitable.

19.2 The period of three months can be extended by the ACAS early conciliation process;

19.3 Conduct extending over a period is to be treated as done at the end of the period;

19.4 In the absence of evidence to the contrary, a respondent will be treated as failing to do something when it does an act inconsistent with doing it; or

19.5 If the respondent does no inconsistent act, on the expiry of the period in which the respondent might reasonably have been expected to do it.

20 “*Conduct extending over a period*” was considered in the case of **Commissioner of Police of the Metropolis v Hendricks** [2002] EWCA Civ 1686. The Court of Appeal said this:

“52. The concepts of policy, rule, practice, scheme or regime in the authorities were given as examples of when an act extends over a period. They should not be treated as a complete and constricting statement of the indicia of “an act extending over a period”. I agree with the observation made by Sedley LJ, in his decision on the paper application for permission to appeal, that the appeal tribunal allowed itself to be side-tracked by focusing on whether a “policy” could be discerned. Instead, the focus should be on the substance of the complaint that the commissioner was responsible for an ongoing situation or a continuing state of affairs in which female ethnic minority officers in the service were treated less favourably. The question is whether that is “an act extending over a period” as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed.”

21 Conduct extending over a period may relate to more than one different protected characteristic – **Worcestershire Health and Care NHS Trust v Allen** [2024] EAT 40.

- 22 Any act which is found not to be an act of discrimination cannot be part of a continuing act – **South Western Ambulance Service NHS Foundation Trust v King** [2020] IRLR 168, EAT.
- 23 Time starts to run in reasonable adjustment cases as set out in section 123(4): the employer is to be taken as deciding not to do something either when it does an act inconsistent with doing it, or if there is no inconsistent act, on the expiry of the period in which it might reasonably have been expected to do it.
- 24 In **Fernandes v Department for Work and Pensions** EAT [2023] 114, the EAT summarised the position established in the leading cases of **Matuszowicz v Kingston Upon Hull City Council** [2009] IRLR 288 and **Abertawe Bro Morgannwg University Local Health Board v Morgan** [2018] EWCA Civ 640 as follows at paragraph 16.

“The principles set out in the existing authorities amount to the following propositions:

a. The duty to make an adjustment, under the statutory scheme, arises as soon as there is a substantial disadvantage to the disabled employee from a PCP (presuming the knowledge requirements are met) and failure to make the adjustment is a breach of the duty once it becomes reasonable for the employer to have to make the adjustment.

b. Where the employer is under a duty to make an adjustment, however, limitation may not begin to run from the date of breach but at a later notional date. As is the case where the employer is under a duty to make an adjustment and omits to do so there will be a notional date where time begins to run whether the same omission continues or not.

c. That notional date will accrue if the employer does an act inconsistent with complying with the duty. d. If the employer does not act inconsistently with the duty the notional date will accrue at a stage where it would be reasonable for the employee to conclude that the employer will not comply, based on the facts known to the employee.”

- 25 The question of when the Tribunal should use its discretion on extending time is set out in **Abertawe Bro Morgannwg University Local Health Board v Morgan**:

“[18] ... It is plain from the language used (“such other period as the employment tribunal thinks just and equitable”) that Parliament has chosen to give the employment tribunal the widest possible discretion. Unlike section 33 of the Limitation Act 1980, section 123(1) of the Equality Act does not specify any list of factors to which the tribunal is instructed to have regard, and it would be wrong in the circumstances to put a gloss on the words of the provision or to interpret it as if it contained such a list ...

[19] ...that said, factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh).”

79. Legatt LJ went on to say [25] “As discussed above, the discretion given by section 123(1) of the Equality Act 2010 to the employment tribunal to decide what it “thinks just and equitable” is clearly intended to be broad

and unfettered. There is no justification for reading into the statutory language any requirement that the tribunal must be satisfied that there was a good reason for the delay, let alone that time cannot be extended in the absence of an explanation of the delay from the claimant. The most that can be said is that whether there is any explanation or apparent reason for the delay and the nature of any such reason are relevant matters to which the tribunal ought to have regard.”.

- 26 On the question of whether the claimant was disabled, we took guidance from the cases of **Parnaby v Leicester City Council** (UKEAT/0025/19), **Morris v Lauren Richards Ltd** [2023] EAT 19, and **All Answers Ltd v W** [2021] EWCA Civ 606. The commentary on the cases in Harvey on Industrial Relations and Employment Law, paragraph 165.05, states:

*“In **Parnaby**, a claimant who had suffered two bouts of depression contended that he was disabled, even though the second period of depression had not lasted for 12 months at the date of the discriminatory act complained of. The ET found it was not at that time 'likely' to last for 12 months or to recur. However, overturning this decision, the EAT held that the likelihood of how long the condition would last had to be informed by the fact that the claimant had been dismissed, which had removed the cause of the impairment – the work-related stress. The decision to dismiss was, however, one of the matters of which the claimant complained as an act of disability discrimination, such that the ET had needed to consider the question of likelihood – whether it could well happen that the effect would last at least 12 months or recur – at the time at which the relevant decisions were being taken, which was prior to the implementation of the decision to dismiss. At that time, with the cause of the impairment ongoing, the condition was likely to last for the requisite period.*

*In **Morris**, the claimant had for three and a half months suffered anxiety for work-related reasons and the tribunal concluded that the anxiety was unlikely to persist after she was dismissed: held by the EAT, the likelihood of long-term impairment must be considered at the time of the alleged detriment rather than after her dismissal.*

*The assessment of the likelihood of the adverse effect lasting for 12 months is to be made as at the date of the alleged discrimination and must not take into account anything only known or occurring after that time: **All Answers Ltd v W**.”*

- 27 The provisions relating to unauthorised deduction from wages claims are set out in paragraph 13, of the ERA:

13. Right not to suffer unauthorised deductions.

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

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

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

- 28 The relevant statutory law in relation to the claimant's claim of unfair dismissal is set out in section 98 of the Employment Rights Act 1996:

Section 98 Employment Rights Act 1996

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show-

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it-

(a) Relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) Relates to the conduct of the employee,

(c) Is that the employee was redundant, or

(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(3) In subsection (2)(a)—

(a) "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and

(b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical, or professional qualification relevant to the position which he held.

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal was fair or unfair (having regard to the reason shown by the employer)-

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case."

29 This is a redundancy unfair dismissal case. Redundancy is one of the potentially fair reasons for dismissal. In the leading case of **Williams v Compair Maxam Ltd** [1982] IRLR 83, the EAT set out the standards which should guide tribunals in determining whether a dismissal for redundancy is fair under s 98(4). Browne-Wilkinson J expressed the position as follows:

"... there is a generally accepted view in industrial relations that, in cases where the employees are represented by an independent union recognised by the employer, reasonable employers will seek to act in accordance with the following principles:

1 The employer will seek to give as much warning as possible of impending redundancies so as to enable the union and employees who may be affected to take early steps to inform themselves of the relevant facts, consider possible alternative solutions and, if necessary, find alternative employment in the undertaking or elsewhere.

2 The employer will consult the union as to the best means by which the desired management result can be achieved fairly and with as little hardship to the employees as possible. In particular, the employer will seek to agree with the union the criteria to be applied in selecting the employees to be made redundant. When a selection has been made, the employer will consider with the union whether the selection has been made in accordance with those criteria.

3 Whether or not an agreement as to the criteria to be adopted has been agreed with the union, the employer will seek to establish criteria for selection which so far as possible do not depend solely upon the opinion of the person making the selection but can be objectively checked against such things as attendance record, efficiency at the job, experience, or length of service.

4 The employer will seek to ensure that the selection is made fairly in accordance with these criteria and will consider any representations the union may make as to such selection.

5 The employer will seek to see whether instead of dismissing an employee he could offer him alternative employment.

The lay members stress that not all these factors are present in every case since circumstances may prevent one or more of them being given effect to. But the lay members would expect these principles to be departed from only where some good reason is shown to justify such departure. The basic approach is that, in the unfortunate circumstances that necessarily attend redundancies, as much as is reasonably possible should be done to mitigate the impact on the work force and to satisfy them that the selection has been made fairly and not on the basis of personal whim.'

30 We considered all the law above when making our decision.

Housekeeping and Hearing

Day One

- 31 We did not receive the hearing bundle and respondent's statements until 9:15am on the first morning, 1 July. We began our reading, noting that we did not have a witness statement from the claimant. Despite their lack of experience in Tribunal proceedings, both Mr Ward and Mrs Rotheram acquitted themselves very well in their conduct in their respective cases.
- 32 We started the hearing at 10:35am on the first scheduled day, 1 July. The hearing was recorded with no objection from the parties. The claimant was represented by her husband, who has no legal training. The respondent was represented by Mrs Rotheram, its CEO, who is not a trained lawyer.
- 33 We introduced ourselves to the parties and discussed the overriding objective of the Tribunal Rules. Rule 3 sets out the overriding objective of the Tribunal Rules (their main purpose), which is to deal with cases justly and fairly. It is reproduced here:

Overriding objective

3.— (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes, as far as practicable—

(a) ensuring that the parties are on an equal footing,

(b) dealing with cases in ways which are proportionate to the complexity and importance of the issues,

(c) avoiding unnecessary formality and seeking flexibility in the proceedings,

(d) avoiding delay, so far as compatible with proper consideration of the issues, and

(e) saving expense.

(3) The Tribunal must seek to give effect to the overriding objective when it—

(a) exercises any power under these Rules, or

(b) interprets any rule or practice direction.

(4) The parties and their representatives must—

(a) assist the Tribunal to further the overriding objective, and

(b) co-operate generally with each other and with the Tribunal.

- 34 The respondent produced a hearing bundle of 753 pages with an index. If we refer to pages in the bundle, the page number(s) will be in square brackets, with the prefix “HB” to indicate that the document is from the hearing bundle (e.g. [HB 43]).
- 35 The respondent produced the bundle used at the public preliminary hearing before EJ Green of 337 pages with an index. If we refer to pages from the preliminary hearing bundle, the page number(s) will be in square brackets, with the prefix “PH” to indicate that the document is from the hearing bundle (e.g. [PH 75]).
- 36 The respondent also produced the following documents that were not agreed by the claimant:
- 36.1 A draft Chronology consisting of five pages;
 - 36.2 A Cast List consisting of three pages ; and
 - 36.3 A Key Documents reading list consisting of two pages.
- 37 Mr Ward said that the Chronology was missing some dates that the claimant felt were important, and that the Cast List was missing some relevant individuals. We reassured him that the three documents produced were not evidence and were meant as a guide to the Tribunal who were not as familiar with the case as the parties. We would use the documents as a guide to assist us. It was not necessary or proportionate to spend time adding in additional names to the cast list or dates to the chronology.
- 38 The respondent also produced four witness statements from:
- 38.1 Kelly Rotheram, the respondent’s CEO. Her witness statement was dated 9 September 2024 and consisted of ninety-three paragraphs.
 - 38.2 Soulla Kokkinos, the respondent’s Head of Family Department. Her witness statement was dated 9 September and consisted of sixty-five paragraphs.
 - 38.3 Jane Morel, who is the respondent’s Head of Private Client Department. Her witness statement was dated 9 September 2024 and consisted of seventeen paragraphs.
 - 38.4 Emily Minton, who is an Associate Solicitor for the respondent. Her witness statement was dated 5 September 2024 and consisted of fifty-one paragraphs.
- 39 The respondent’s witness statements were presented in a witness statement bundle that consisted of fifty pages. If we refer to pages from the witness statement bundle, the page number(s) will be in square brackets, with the prefix “WS” to indicate that the document is from the hearing bundle (e.g. [WS 22]).

40 The claimant's case as set out in the List of Issues agreed by the parties and EJ Feeney was that she met the definition of disability because of the mental impairments of anxiety depression. For the purposes of this hearing, we took the claimant's assertions about her mental health at their highest and considered the Employment Tribunal's Presidential Guidance: Vulnerable parties and witnesses in Employment Tribunal proceedings (22 April 2020) and the Equal Treatment Bench Book (Chapters 1 and 4 on litigants in person and mental illness respectively) when conducting this hearing. Links to both documents are here:

[Microsoft Word - VULNERABLE PARTIES AND WITNESSES 16042020.docx](#)

[ETBB - July 2024 \(May 2025 update\)](#)

41 We were mindful of the possibility of unconscious bias when we made our decision, both in respect of our deliberations and the possibility of the respondent exhibiting the same in our consideration of the evidence.

42 We asked the parties which of the three Lists of Issues we should use and came to a decision that was agreed and recorded above.

43 The claimant had not produced a witness statement. Mr Ward said that there had been a lot of confusion. He accepted that he and the claimant had received the Tribunal orders. Mr Ward said they were disputing disclosure and had been awaiting the outcome of the EAT appeal. They had also been required to attend a Dispute Resolution Appointment. None of those reasons is good enough to explain the failure to produce a witness statement on the first day of a final hearing. The lack of a witness statement had been raised at a Dispute Resolution Appointment ("DRA") that had taken place on 28 June 2025. It would not have been in furtherance of the overriding objective to postpone the final hearing to a date that would likely have been in 2026 because of the fact that the claimant's factual allegations went back to 2017 and that there are tens of thousands of claims waiting for a final hearing.

44 We had read the respondent's witness statements and the related pages of the hearing bundle. None of the statements addressed the claimant's indirect sex discrimination case arising from the bonus scheme and there were relevant documents missing from the hearing bundle.

45 Given that the evidence of both parties was deficient and that we had fewer witnesses than EJ Feeney was anticipating, we decided to use the reading time given in EJ Feeney's timetable to allow the claimant to write/complete her witness statement and for Mrs Rotheram to supply an amended statement and additional bundle that filled in the gaps in the respondent's case. We made the following orders:

45.1 The case was adjourned until 2:00pm on the second day;

- 45.2 By 4:00pm on Monday 1 July 2025, the respondent was to produce a supplementary bundle of documents dealing with the claimant's bonus claim and send a copy to the Tribunal and the claimant; and;
- 45.3 By 12:00pm on Tuesday 2 July 2025, the parties were to exchange the claimant's witness statement and the respondent's supplementary statement from Mrs Rotheram.
- 46 We ended the hearing at 11:06am and released the parties until 2:00pm on the second day. We used the rest of the day to complete our reading. Whilst reading the documents, we noticed that there were no documents concerning the claimant's grievance that was submitted on 12 July 2022, and no evidence that covered it. This was relevant because the claimant asserted that the grievance was a protected act in her victimisation claim.
- 47 We asked our Clerk to write to the respondent, copying in the claimant, as follows:
- "EJ Shore has asked me to write to you about one or two matters that have come up during the Tribunal's reading of the papers.*
- Could you email in a Word copy of the List of Issues [pages 91-84 of the bundle], please?*
 - Whilst there are mentions of a second grievance in the claimant's ET1 and in the Chronology (Grievance submitted on 12 July 2022; Grievance meeting 7 September 2022; Grievance decision given to claimant on 27 September 2022; Appeal made 30 September 2022; Grievance appeal 31 October 2022, etc., there do not seem to be any documents about the process in the bundle and none of your statements make reference to the second Grievance.*
- Could you provide electronic and hard copies of the missing documents and cover the second Grievance in the witness statement that is to be produced tomorrow, please?*
- Could you also indicate by tomorrow at 12:00pm if you intend to call Jane Morel, please?"*
- 48 We had asked the question about Ms Morel because the respondent's case appeared to be that they and the claimant had agreed that the claimant was not interested in a job as a Private Client Solicitor at the respondent's Grays office as a suitable alternative vacancy to redundancy. Ms Morel was the respondent's Head of Private Client who interviewed the claimant.

Day Two

- 49 The respondent sent a supplementary bundle to the Tribunal and the claimant at 3:03pm on Monday 1 July 2025. It consisted of 354 pages, including an index. If we refer to pages from the supplementary bundle, the page number(s) will be in square brackets, with the prefix "SB" to indicate that the document is from the supplementary bundle (e.g. [SB 101-123]).

- 50 The claimant submitted a witness statement by the prescribed time. It was dated 2 July 2025 and consisted of 174 paragraphs.
- 51 The respondent submitted a supplementary witness statement from Mrs Rotherham by the prescribed time. It was also dated 2 July 2025 and consisted of fifty-eight paragraphs.
- 52 We read the witness statements and the supplementary bundle of documents. The claimant's witness statement contained a great deal of background information that was not relevant to the issues that we had to determine in the case. That is not a criticism of her; it is a statement of fact. Mrs Rotheram's statements also contained evidence that addressed background matters and were not relevant to the matters we had to determine.
- 53 We started the hearing at 2:00pm and confirmed which documents we had received. Mr Ward then told us that he had submitted some additional documents at approximately 1:15pm that day. Mrs Rotheram confirmed that she had received the documents but had not opened or read them. The documents were:
- 53.1 The claimant's appraisal dated 10 September 2019;
 - 53.2 The claimant's appraisal dated 19 January 2015;
 - 53.3 An email dated 6 March 2017 from Kathryn Turner, who was the respondent's Head of Clinical Negligence at the time to Dino Enahoro (a Solicitor in the respondent's Clinical Negligence department) and the claimant about fee targets for the year.
 - 53.4 An email dated 14 May 2023 from Lauren Collins, who worked as a [title] in the respondent's Clinical Negligence department to the claimant with the heading "Redundancy";
 - 53.5 The claimant's contract of employment with the respondent dated 20 March 2006;
 - 53.6 The respondent's Sickness Policy, which was described as dated from 2022;
 - 53.7 The claimant's grievance appeal dated 23 July 2019;
 - 53.8 An email dated 13 October 2015 from the Kathryn Turner to the claimant;
 - 53.9 Emails of various dates in 2021 between the claimant and Darren Conway, who was the former Head of Clinical Negligence for the respondent;
 - 53.10 An email dated 21 May 2015 from the claimant to Mrs Rotheram and partners in the respondent headed "Career Progression";
 - 53.11 An extract from the respondent's manual headed "Performance Management Policy and Procedures";

53.12 The claimant’s appraisal dated 19 January 2015;

53.13 An email dated 4 January 2018 from Frances Anderson, a former partner in the respondent, who had been Head of Operations before she retired in June 2020, with an Associate - Competency Assessment Form;

53.14 Emails dated 20 September 2019 and 4 October 2020 from the claimant to Mrs Rotheram about the caseload of Darren Conway, who had recently resigned; and

53.15 A letter from the respondent to the claimant dated 20 March 2006 offering her employment with the respondent.

We subsequently added all the documents to the bundle. We have noted the page numbers from the hearing bundle (HB) that we allocated to the documents.

54 Mrs Rotheram asked for additional time to link the claimant’s witness statements to the relevant pages in the bundle to assist her cross-examination. Mr Ward asked for additional time to consider the new documents received from the respondent.

55 Before making our decision on the question of further time, we asked the parties how long they anticipated questioning each other’s witnesses. Mrs Rotheram said she thought she may be an hour with the claimant. Mr Ward gave the same estimate for the respondent’s witnesses. We found it unlikely that sets of cross-examination would be over in 60 minutes but decided to adjourn the hearing until 10:00am on 3 July 2025 when we would hear from Mrs Ward.

56 We then amended the timetable. We reconsidered the timetable on our own initiative (because I miscounted the days available to us) as follows, which allowed some slippage time if cross-examination went on longer than anticipated:

Day	Morning	Afternoon
3	Claimant’s evidence	Respondent’s evidence
4	Closing arguments (30 minutes each side) Deliberations	Deliberations
5	Deliberations	Deliberations
6	Deliberations	Delivering Judgment on Liability
7	Dealing with remedy	Delivering Judgment on Remedy

- 57 It was intended that the parties would exchange closing submissions at 9:00am on Friday 4 July. We notified the parties of the change by email on 3 July 2025.
- 58 We released the parties at 2:30pm.

Day Three

- 59 The Tribunal received an email from the respondent copied to the claimant at 1:14pm on 2 July (Day Two) that was forwarded to us at 9:37am on Day Three. It objected to the inclusion of two of the documents that the claimant had submitted, emails from the respondent's former HoD in the Clinical Negligence department and Lauren Collins, who was also made redundant from the respondent's Clinical Negligence department at the same time as the claimant.
- 60 The hearing started at 10:10am. We dealt with the additional documents first. The other documents submitted by the claimant were accepted by the respondent. The two email statements dated 25 October 2021, and 14 May 2023 respectively were objected to as hearsay. We explained that there was no rule against hearsay in the Employment Tribunal, but as the authors of the emails had not been called to give evidence, we could give the statements little weight.
- 61 Mrs Rotheram said that the respondent had not seen the documents before. Mr Ward said that they had been sent to the respondent some time ago and would confirm the date of the email that contained the two documents. We left it to the parties for the claimant to determine when the documents were sent to the respondent and for the respondent to check whether it had received them and got on with the evidence.
- 62 The claimant gave evidence on oath from 10:25am and relied on her witness statement dated 2 July 2025 that consisted of 174 paragraphs. We had read the witness statement the previous day and found that it contained many paragraphs that were background, which we defined as information that may be important to the claimant, but which did not help us determine the issues in the case. We indicated to the claimant that we would not give much weight to the background information. We indicated to Mrs Rotheram that we would not require her to cross-examine the claimant on the following paragraphs of the claimant's witness statement: 1-52; 61-75; 80 (this paragraph dealt with a without prejudice discussion about the claimant's employment which is protected by privilege and should not have been disclosed to the Tribunal. We ignored the paragraph in our consideration of the facts.); 84-88; and 89-97. These paragraphs constituted about half of the claimant's witness statement.
- 63 As an adjustment, we took breaks every hour or so. At every break we indicated to the claimant that she could not speak to anyone about the case during the break. We repeated this warning to all subsequent witnesses where appropriate. We took our first break from 11:15am to 11:26am. We broke again between 12:15pm and 12:20pm and took lunch between 1:05pm and 2:05pm.
- 64 On the resumption, cross-examination of the claimant continued until 3:05pm, when we took a break until 3:15pm. Cross-examination ended at 3:25pm. There were no questions from the Tribunal and no re-examination.

- 65 Jane Morel, the respondent's Head of Private Client Department, gave evidence on oath for the respondent from 3:30pm. Her witness statement was dated 9 September 2024 and consisted of seventeen paragraphs [WS 34-37]. There were no supplemental questions.
- 66 Mr Ward cross-examined the witness from 3:30pm until 3:42pm. Mrs Henry asked one question of the witness. Professor Ukemenam asked one question. I had no questions for the witness. Mrs Rotheram asked one re-examination question, which prompted Professor Ukemenam to ask a further four questions. There was no further re-examination, and the witness was released with the agreement of Mr Ward at 3:52pm.
- 67 We then discussed the case with the representatives and asked them to be prepared to make closing submissions on the following day. The hearing closed at 4:00pm.

Day 4

- 68 We started the hearing on the fourth day at 10:18am. We advised the parties that as we had not completed the evidence, we would hear closing submissions at the start of the fifth day, which would give them the weekend to hone their closing arguments.
- 69 Mr Ward advised the Tribunal that the additional documents that he submitted to the Tribunal had been sent to the respondent on 28 September 2023. This was not disputed, so we allowed the documents to be admitted.
- 70 We then heard evidence on oath from Soulla Kokkinos, the respondent's Head of Family Department. Her witness statement was dated 9 September and consisted of sixty-five paragraphs.
- 71 Ms Kokkinos was cross-examined from 10:20am until 11:15am, when we took a break. We resumed at 11:25am and continued until 11:30am. Professor Ukemenam asked three questions. Mrs Henry asked five questions. I asked one question. The Tribunal questions ended at 11:49am. Mrs Rotheram asked re-examination questions until 11:54am. The witness was released with the agreement of Mr Ward.
- 72 Kelly Rotheram, the respondent's CEO gave evidence on oath. Her witness statement was dated 9 September 2024 and consisted of ninety-three paragraphs. Whilst she was giving evidence, Ben Thomas, a partner in the respondent, took over as its representative.
- 73 We allowed Mr Thomas to ask supplementary questions to address the matters raised by the documents produced to the Tribunal by the claimant. Mr Thomas asked eight questions, ending at 12:15pm. Mr Ward then cross-examined the witness until 12:50pm, when we broke for lunch.
- 74 We resumed at 1:50pm and continued until 2:32pm, when Mr Ward finished his cross-examination. Professor Ukemenam asked one question. Neither Mrs Henry nor I asked any questions. There was no re-examination and we took a break at 2:40pm.

- 75 On the resumption at 2:48pm, Emily Minton, who is an Associate Solicitor for the respondent, gave evidence on affirmation. Her witness statement was dated 5 September 2024 and consisted of fifty-one paragraphs.
- 76 There were no supplementary questions. Ms Minton was cross-examined by Mr Ward until 3:01pm. Mrs Henry asked the witness two questions. Professor Ukemenam asked one question. There was no re-examination. The witness was released with the agreement of Mr Ward. We closed the hearing for the day at 3:08pm.

Day 5

- 77 The Tribunal received the respondent's closing submissions at 7:37am and the claimant's closing submissions at 9:52am. Our assigned Clerk was ill, and replacement was not allocated until 9:45am, so we did not get the submissions until after 10:00am. The air conditioning unit in the hearing room sprung a leak and we had to call in the maintenance team to deal with the situation.
- 78 A journalist had applied for CVP access to the hearing, which the Clerk had to set up. In the event, the journalist did not attend. We eventually started the hearing at 10:58am. We apologised to the parties.
- 79 Mrs Rotheram relied on her closing submissions, which consisted of 71 paragraphs. She made no references to any case law. Mrs Rotheram spoke from 10:58am to 11:30am. I asked her about the claimant's unauthorised deduction from pay claim, which appeared to be conceded. It was agreed by Mrs Rotheram that the claimant was owed the sum of £1,281.20 gross without deduction of Income Tax or employee's National Insurance contributions. Mr Ward accepted the calculation after discussion. The figure proposed by the respondent was more than the figure claimed by the claimant.
- 80 Mr Ward relied on his closing submissions that consisted of 65 paragraphs. He relied on one case: **Coulson v Rentplus UK Ltd** [2022] EAT 81, which concerned a sham redundancy process after a decision to dismiss had been taken long before the redundancy process started. We closed the hearing for the day and advised the parties that we would consider our decision and give a judgment on liability, which would include any findings on Polkey and/or contributory fault at 10:00am on Day 7.
- 81 We started our deliberations at 11:45am on Day 5 and continued until the evening of Day 6. We put the start of the hearing on Day 7 back to 12:00pm.

Day 7

- 82 We started the hearing at 12:00pm and delivered our extensive oral Judgment and Reasons until 12:30pm. The claimant asked for written reasons.
- 83 **Note from EJ Shore – It is entirely my fault that the written Judgment and reasons in this case have been delayed by four months. I make an unreserved apology to the parties and my colleagues. The reasons for the delay are the health of my family, my own health, and the pressure of other Judgments that were heard before this case at a time when I was under a**

great deal of pressure due to my responsibilities as a carer to elderly relatives who subsequently died, and the fact that I sit part-time at East London and have duties in another region.

Undisputed Facts

- 84 We should record as a preliminary finding that a number of relevant facts were not disputed, not challenged, or actually agreed by the parties. These were:
- 85 The claimant was employed by the respondent, a firm of solicitors, from 3 July 2006 to 9 September 2022, when her employment was terminated for the stated but disputed reason of redundancy. The claimant had joined the respondent as a Solicitor but at the time of her dismissal, she was employed as an Associate Partner in the respondent's Clinical Negligence department.
- 86 The claimant started early conciliation with ACAS on 25 August 2022 and obtained an ACAS early conciliation certificate dated 28 September 2022. She presented her ET1 and Attachment on 27 October 2022 [11-29]. The claimant was represented by a solicitor, Ms Grieff, at this time, who drafted the ET1 and Attachment. Ms Grieff represented the claimant on a pro-bono basis.
- 87 The claimant brought claims of:
- 87.1 Unfair dismissal;
 - 87.2 Direct discrimination because of race;
 - 87.3 Indirect discrimination because of sex;
 - 87.4 Detriment because she was a part-time worker;
 - 87.5 Discrimination arising from disability;
 - 87.6 Failure to make reasonable adjustments;
 - 87.7 Victimisation; and
 - 87.8 Unauthorised deduction from wages.
- 88 The respondent presented a response form (ET3) [30-37] and Grounds of Resistance [38-49] on 28 November 2022.
- 89 It was agreed that the claimant reduced her working hours to 27 hours per week in August 2014. It was agreed between the parties that the claimant met the definition of part-time worker.

- 90 It was agreed that the claimant raised the possibility of raising a grievance about her perceived lack of career progression (she had not been promoted to Associate Solicitor) in March/April 2015.
- 91 The respondent launched an Associate and Partner Development Programme (“APDP”) in June 2015. The claimant joined the Programme.
- 92 In December 2017, Kathryn Turner, the HoD in the respondent’s Clinical Negligence department, began a period of maternity leave. The claimant acted up as HoD during Ms Turner’s maternity leave.
- 93 Between 5 February 2019 and 30 April 2019, the claimant was absent from work due to ill health, returning on a phased return.
- 94 On 24 May 2019, the claimant raised a grievance [643-663] against Kathryn Turner (she was then known as Kathryn May). She alleged “*bullying and harassment.*” The grievance was not upheld at a meeting on 17 June 2019, and the claimant appealed the decision on 25 July 2019 by a document dated 23 July 2019.
- 95 The grievance appeal was heard by Mohinder Gill, who was a partner in the respondent at the time, but who retired in June 2024. The appeal was not upheld. The claimant was notified of this on 6 August 2019.
- 96 On 10 September 2019, the claimant had her annual appraisal with Mrs Rotheram and Frances Anderson, a partner in the respondent and Head of Operations, who retired in June 2020.
- 97 In April 2020, Kathryn Turner left the respondent. Darren Conway, a Solicitor with a Legal Aid qualification that qualified him to run state-funded Clinical Negligence cases, was promoted to Head of Department of the respondent’s Clinical Negligence department. The claimant had not applied for the role outright but had suggested that she undertake the role jointly with Mr Conway. The respondent rejected the claimant’s suggestion that the role be shared. The claimant agreed that she did not have the Legal Aid qualification that Mr Conway had.
- 98 In December 2020, the respondent informed the claimant (and others) that it was considering promoting some Solicitors to Fixed Equity Partnership. The new status would mean that the claimant would have become self-employed and would be required to invest capital into the respondent, amongst other things. On 25 May 2021, the claimant was offered either a Fixed Equity Partnership, or Associate Partner status. An Associate Partner has no equity in the business and is an employee of the respondent. She would be held out as a Partner to the outside world. On 26 May 2021, the claimant chose to accept the offer of Associate Partnership.
- 99 On 1 July 2021, the respondent converted its status from a partnership to a Limited Liability Partnership (“LLP”). The claimant’s employment transferred to the LLP under The Transfer of Employment (Protection of Employment) Regulations 2006 (“TUPE”).

- 100 On 12 July 2021, Darren Conway resigned. He left the respondent on 8 October 2021. On 3 August 2021, the claimant was advised that she would not be promoted to HoD of Clinical Negligence; Mohinder Gill, Head of Civil Litigation, would head the Clinical Negligence team. The claimant was told she would report to Mrs Rotheram.
- 101 On 5 August 2021, the claimant was told that she would receive a pay rise, backdated to 1 April 2021. The claimant requested a higher pay rise. The request was refused on 16 August 2021.
- 102 On 1 October 2021, the respondent announced to staff the Partner and Associate Partner promotions that had been agreed, including the claimant's promotion to Associate Partner.
- 103 On 10 February 2022, the respondent held a Partnership Meeting at which it was decided to look at the options for the future of the Clinical Negligence department.
- 104 On 15 February 2022, the claimant emailed all Partners and expressed the opinion that she was not being given adequate support by Mrs Rotheram and that her concerns had not been addressed.
- 105 On 4 March 2022, the claimant began a period of sick leave
- 106 On 25 March 2022, Julie Young (HR) made a note of a conversation with the claimant [552 HB].
- 107 On 24 May 2022, the respondent granted the claimant additional paid leave to cover her sickness absence to 30 June 2022. Without this concession, the claimant would no longer receive employer's sick pay on the expiry of three months' sickness absence.
- 108 On 30 May 2022, the claimant asked Julie Young from HR if she was a disabled person [563 HB]. Mrs Rotheram respondent on 31 May 2022 [577 HB].
- 109 In June 2022, a firm of solicitors confirmed an offer to take the respondent's Clinical Negligence cases.
- 110 On 15 June 2022, the claimant indicated that she hoped to return to work "...in July..." 2022. On 29 June 2022, the claimant confirmed her return date as 18 July 2022.
- 111 On 8 July 2022, the claimant, Emily Minton, and Lauren Collins received a written notice that their positions were at risk of redundancy, which included a calculation of their redundancy pay entitlement. On 12 July 2022, there was a meeting of the respondent's Clinical Negligence team, which included the claimant, Emily Minton, Lauren Collins, Kelly Rotheram, and Charlotte Woolven-Brown (a non-designated member of the LLP, Human Resources Partner, and Head of Employment who left the respondent in September 2023).
- 112 On 12 July 2022, the claimant submitted a grievance alleging [57-65 SB] that she was a disabled person and that the respondent's bonus arrangements were unfair and/or unreasonable.

- 113 On 13 July 2022, the claimant submitted alternative proposals to redundancy to the respondent. On the same date, the claimant was advised of the roles at the respondent that were available as alternatives to redundancy.
- 114 On 15 July 2022, the claimant's last MED3 certificate from her GP expired.
- 115 On 18 July 2022, the claimant returned to work.
- 116 On 23 August 2022, the claimant met with Julie Young for a return-to-work interview.
- 117 On 29 July 2022, the respondent confirmed that the claimant's redundancy would proceed and confirmed the potential alternative roles available to the claimant were in the Family and Private Client departments.
- 118 On 2 August 2022, the claimant advised the respondent that she wished to be considered for roles in both departments.
- 119 On 23 August 2022, the claimant attended a return-to-work interview with Julie Young (HR Manager) [574-576 HB] at which the claimant raised her disability and requested that she be allowed to work from home for all her contracted hours. The claimant was on annual leave from 24 August 2022 to 6 September 2022. The claimant began early conciliation with ACAS against the respondent on 23 August 2022.
- 120 On 1 September 2022, the claimant was invited to two meetings on 8 September 2022.
- 121 Charlotte Woolven-Brown heard the claimant's grievance on 7 September 2022. The claimant was accompanied by her husband, Jason Ward.
- 122 On 8 September 2022, the claimant was interviewed by Soulla Kokkinos (HoD Family) and Francesca Clay (Partner Family) for the vacancy in the Family Department. On the same date, she was interviewed by Jane Morel (HoD Private Client) for the vacancy in the Private Client department.
- 123 On 8 September 2022, the two interviews took place.
- 124 On 9 September 2022, the claimant was notified that she was to be made redundant, and her contract of employment was terminated on 9 September 2022. It was agreed that this was the effective date of termination.
- 125 On 13 September 2022, the claimant appealed her redundancy dismissal. On 23 September 2022, the respondent invited the claimant to an appeal hearing, which took place on 27 September 2022. The claimant was accompanied by her husband. The appeal was heard by Richard Cooper, a Partner in the respondent's Crime department. Julie Young took notes.
- 126 On 27 September 2022, the claimant was advised of the outcome of her grievance by Charlotte Woolven-Brown. The grievance was not upheld.

- 127 On 28 September, ACAS issued the claimant with and Early Conciliation certificate.
- 128 On 30 September 2022, the claimant appealed the grievance decision. The grievance appeal was acknowledged by the respondent on 4 October 2022. The meeting to hear the appeal before Ben Thomas (Partner, Crime) was scheduled for a date after his return from annual leave.
- 129 On 10 October, the respondent sent the claimant the decision in her appeal against dismissal. The appeal was rejected.
- 130 On 26 October 2022, the respondent sent the claimant the minutes of the grievance meeting on 27 September 2022.
- 131 The claimant presented her ET1 and Attachment on 27 October 2022 [11-29 SB].
- 132 The grievance appeal hearing was held on 31 October 2022. Ben Thomas was the respondent's decision maker. Julie Young took notes. The claimant was accompanied by her husband.
- 133 The claimant was advised that her grievance appeal was not upheld on 22 December 2022. The respondent provided the claimant with reasons why the grievance appeal had not been upheld on 23 March 2023.

Points of Dispute

- 134 We have not made findings of fact on much of what is alleged by the claimant in her lengthy witness statement because we did not find that many of the matters referred to therein were relevant to the issues that we had to determine. We notified the claimant and her representative of our intentions before she gave evidence. We did not make findings of fact on the evidence of Ms Rotherham which we did not find assisted us to make findings of fact that were relevant to the Issues in the case. We did consider matters that were not claims of themselves but were background from which we might make inferences about the actual claims before us.
- 135 The Tribunal must deal with matters in a proportionate way – we must allocate time and resources to an Issue (a question that we must find the answer to) that is proportionate to its importance or value. This must be done through the lens of the List of Issues, which sets out the claims, and in a way that ensures that we only address matters that are relevant to the issues we must determine.
- 136 We will therefore address the findings of fact in the order of the issues set out in the list of issues. It may be that some findings made in the earlier issues are relevant to later issues.

Unfair Dismissal (ss.94-98 Employment Rights Act 1996)

Reason for Dismissal

- 137 We find that the respondent has shown on the balance of probabilities that the reason for dismissal was redundancy. We make that finding because we find:
- 137.1 The claimant was one of three fee-earners (including Lauren Collins, who checked medical records and reports but was not a Solicitor or engaged in purely legal work) in the respondent's Clinical Negligence department at the time of her redundancy. This was never disputed;
 - 137.2 The respondent decided to stop doing Clinical Negligence work because:
 - 137.2.1 The partners in the respondent voted to stop doing the work on 10 February 2022 [329 HB];
 - 137.2.2 The rationale for stopping Clinical Negligence work was contained in Mrs Rotheram's report to the partners dated 6 February 2022 [325-328 HB] and listed the following factors:
 - 137.2.2.1 The respondent had twenty-eight current Clinical Negligence files;
 - 137.2.2.2 Only three of the twenty-eight cases were cases that were likely to generate substantial fees (i.e., they were designated as "large cases");
 - 137.2.2.3 All three of the large cases were unlikely to be resolved for some years;
 - 137.2.2.4 The firm had lost its Head of Department (Mr Conway) in October 2021, which had presented an issue with the firm's Legal Aid position, as he had been its Legal Aid Supervisor and the firm had no one to replace him, as no one in the department was on the Clinical Negligence Panel;
 - 137.2.2.5 Mrs Rotheram had limited trust in the remaining members of the department being able to handle the more complex cases;
 - 137.2.2.6 The claimant, as the senior remaining lawyer in the department, was unlikely to achieve Panel status within the 3-month timescale that Mrs Rotheram anticipated would be the maximum time that the Legal Aid Authority would give the respondent to find a replacement. We find that Mrs Rotheram's evidence on the point was credible; and

137.2.2.7 The respondent had failed to find a suitable replacement as Head of Department and did not consider that the claimant was ready to take up the role.

137.2.3 Additionally, the following factors were also in play:

137.2.3.1 The respondent had been notified of an exceptionally large professional negligence claim against it from a former client. Its Professional Indemnity Insurance (“PII”) insurers had advised the respondent that its premiums would rise by over £200,000 per year because of the claim and that the respondent may not be insurable if it did not drop Clinical Negligence work. We take judicial notice (facts that we can accept to be true without requiring formal proof of evidence) that a firm of solicitors cannot practice without appropriate PII;

137.2.3.2 The respondent’s After the Event (ATE) insurer had indicated that it would no longer offer the respondent cover for Clinical Negligence cases because of the low volume of claims it was handling. It was agreed evidence that the claimant read the first letter from the ATE insurer about its proposal to cease offering insurance; and

137.2.3.3 The level of incoming new cases was falling; and

137.2.3.4 The respondent’s first plan was to sell the Clinical Negligence cases to one of two other specialist Clinical Negligence firms at a premium.

137.2.4 None of the respondent’s evidence above was seriously disputed by the claimant.

137.3 In its At-risk Notice letter to the members of the Clinical Negligence department dated 8 July 2022, the respondent repeated some and added further details of the reason for its decision to close the department [166-168 HB]:

137.3.1 Reducing profitability because of the implementation of fixed fees in Clinical Negligence work;

137.3.2 The removal of ATE funding;

137.3.3 The unsustainable nature of the funding of Clinical Negligence work given the long-term nature of the work (i.e., the respondent had to pay for the legal

work and disbursements such as medical reports as they were incurred but only received payment for the case on its conclusion); and

137.3.4 The general high-risk profile of Clinical Negligence work not aligning with the firm's strategy to reduce risk and avoid significant increases in its insurance premium.

137.4 We find that the respondent has shown on the balance of probability that the requirements of the business for employees to carry out work of a particular kind (namely Clinical Negligence legal work) had diminished and were expected to cease in February 2022, which is one of the definitions of redundancy in section 139(1)(b) of the Employment Rights Act 1996. The claimant did not dispute the reduction in work or that the majority of the twenty-eight files were transferred to other firms. Four were settled by Ms Minton, and some were discontinued. We find that by the time that the claimant was dismissed, there was virtually no Clinical Negligence work for her (or anyone else) to do.

Fairness of Dismissal

138 We find that the dismissal of the claimant was fair for the following reasons:

138.1 In paragraph 15 of his closing submissions, Mr Ward noted that there was no evidence of a contract or agreement to sell the Clinical Negligence work or any effort to transfer the claimant to the firm that took most of the files under The Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"). As we indicated to Mr Ward at the end of his closing submissions:

138.1.1 There was no claim for a breach of TUPE before this Tribunal. We heard and saw no evidence that would enable us to make any findings on the point;

138.1.2 There was no application to amend the claim to include a claim for breach of TUPE;

138.1.3 The unchallenged evidence of Mrs Rotheram was that the respondent had attempted to sell the remaining Clinical Negligence files to two other law firms but neither deal materialised. If such a deal had materialised, it is possible that the claimant would have TUPE'd across to the firm that took on the files;

138.1.4 In the end, the files were mostly transferred to the firm to which the former HoD, Mr Conway, had gone, although other files had gone to several other firms. We find that the evidence of the respondent that the only formal

documentation it received from the receiving firms was a lien on the file in respect of the respondent's legal costs;

138.1.5 The transfer of files had been on receipt of signed authorities from the clients; and

138.1.6 We took judicial notice that in the circumstances, there would have been no contract between the respondent and the receiving firms in respect of the files.

138.2 The claimant, Associate Partner, and Lauren Collins, Medico-Legal Advisor, were made redundant from the Clinical Negligence department. Emily Minton was offered an alternative role as a Solicitor in the Family department without being interviewed.

138.3 The respondent's unchallenged evidence was that it disposed of its entire Clinical Negligence caseload and stopped doing the work.

139 We find that parts of the respondent's process in the redundancy around the issues of who were required to attend interviews, what roles were on offer or were being interviewed for, and what was said about retraining were shambolic, but do not find that the procedure taken in the round was a sham. We reject Mr Ward's closing submissions to the contrary in paragraph 13 of his closing arguments for the following reasons and findings:

139.1 We find that the decision to close the Clinical Negligence department was made on 10 February 2022.

139.2 We do not find that the respondent determined that the claimant and her colleagues in the department were condemned to redundancy at the time that the decision to close the department was made because a final decision had not been made. There were options open to the respondent to sell the work or reorganise the department without making redundancies. If the work was sold, there would have been a possibility of a TUPE transfer.

139.3 We do not find it unreasonable that the respondent sought to sell the Clinical Negligence files to one of several potential purchaser practices, as a sale of all the files to a single practice may have saved some jobs through TUPE.

139.4 We find that the negotiations were long and arduous, but ultimately unsuccessful.

139.5 The three members of staff affected by potential redundancy were notified of a group redundancy consultation meeting and provided with an at-risk letter [166-168 HB] and redundancy calculation [169 HB] on 8 July 2022.

139.6 On 11 July 2022, the claimant was sent details of a one-to-one meeting on 13 July 2022 to discuss alternative roles and policy documents [176-180 HB].

- 139.7 The group consultation meeting took place by video on 12 July 2022.
- 139.8 On 13 July 2022, the claimant sent her alternatives to the proposal to close the department to the respondent [193-196 HB].
- 139.9 The claimant met with Charlotte Woolven-Brown, a partner in the respondent on 13 July 2022. The claimant was accompanied by her husband. She advised Ms Woolven-Brown that she had sent in her alternative proposals for the department and said she was interested in the alternative roles of Solicitor in the Family department or Solicitor in the Private Client department. The meeting was adjourned so the respondent could consider the claimant's alternatives to redundancy.
- 139.10 Ms Woolven-Brown wrote to the claimant on 29 July 2022 [199-201 HB] with the response to the claimant's proposals. The respondent rejected the alternative business strategy that the claimant had proposed. It is not the Tribunal's job to go behind the commercial decision made by the respondent. We would comment, however, that we found no obvious logical fault in the respondent's reasoning.
- 139.11 Ms Woolven-Brown also addressed the claimant's request to be considered for Solicitor roles in the Family and Private Client departments. The claimant was informed that the level of role that the respondent could offer in Family was dependent on her working knowledge of Family Law and the associated Legal Aid rules. The claimant was told that *"...doing a module on the LPC many years ago is unlikely to provide you with sufficient knowledge. We would be happy to retrain you but to do that we would need an initial period where you worked as a paralegal before we could release you to conduct files of your own."*
- 139.12 As far as the Private Client role was concerned, Ms Woolven-Brown told the claimant that as she had no previous experience of Private Client work, *"...we would have to put you through an extensive period of retraining. Before we commit to that, we would need to know that were committed to remaining in the role long term."*
- 139.13 Ms Woolven Brown also indicated to the claimant that the respondent was happy to allow the claimant to remain off work on full pay as *"additional leave"* and added the comment that the additional leave would *"...allow you space to consider whether a change in legal career is something you want to pursue."* [201 HB]
- 139.14 The claimant was also told that she was due to be made redundant on 3 August 2022, but that the date of redundancy would be extended if she took the opportunity to apply for the roles in Family and Private Client.
- 139.15 The full-time salary for a Family Solicitor was stated to be £40,000 pa. The full-time salary for a Family Paralegal was stated to be £23,000 pa. The full-time salary for a Private Client Solicitor was stated to be

£30,000 pa. The claimant was earning £44,415 pa as an Associate Partner on a .747 FTE equivalent working week (28 hours per week when the respondent's full-time working week was 37.5 hours in Clinical Negligence). The claimant's full-time equivalent salary was £59,484.00 pa in Clinical Negligence.

- 139.16 We find that the claimant has misunderstood how section 138 of the Employment Rights Act 1996 works. Her case is that she was entitled to a four-week trial period in one of the roles in which she was interested. That is not correct. Section 138 means that if someone's employment is terminated or is due to be terminated and that she is then re-engaged or her contract is renewed, she has a four week period after the new contract or re-engagement happens as a trial period, at the end of which, she is entitled to continue in the role, or decide that it is not for her and effectively opt for the terms she was entitled to on the termination of her previous post. In practical terms, this means that she could collect her redundancy and notice entitlements.
- 139.17 The unambiguous evidence in this case is that the claimant's contract of employment was ultimately terminated on 9 September 2022 and that she was not offered re-engagement or a contract renewal.
- 139.18 The requirement of **Williams v Compare Maxim** (see above), is that an employer makes reasonable efforts to identify suitable alternative employment for an employee at risk of redundancy.
- 139.19 We find that, given the claimant's lack of knowledge and practical experience in the areas of Family Law and Private Client Law, it was entirely reasonable for the respondent to require her to interview for the positions.
- 139.20 We find that the evidence did not show that the respondent had acted unfairly or unlawfully by failing to appoint the claimant to any of the Solicitor or Paralegal roles that she interviewed for. We make that finding because:
- 139.20.1 There was nothing in the claimant's CV [217-220 HB] or career history in 2022 that suggested she had knowledge or experience of Private Client law or practice.
- 139.20.2 We therefore find that the claimant could have no reasonable expectation of being appointed to the role of Solicitor in that department, as very few of her skills were transferable from her Clinical Negligence practice that she had followed for more than 20 years.
- 139.20.3 We find that the claimant agreed with Jane Morel, HoD for Private Client that she was not a good match for the Private Client role.

- 139.20.4 We find that it is likely to have taken the claimant 12 months or more to be a functioning Private Client Solicitor.
- 139.20.5 We find that Mrs Rotheram's unchallenged evidence was that the role was at the respondent's Grays office and was unsupervised.
- 139.20.6 We find that the claimant's qualification for the Family roles was based on:
- 139.20.6.1 A Family Law module in her LPC course in the late 1990s; and
- 139.20.6.2 Two short periods as an Outdoor Clerk and Legal Assistant in 1996 and 1999.
- 139.20.7 The claimant had not practised family law in over 20 years and had developed a specialist in Clinical Negligence.
- 139.20.8 We accepted the unchallenged evidence of Ms Kokkinos, the respondent's Head of Family department, that the nature of Family Law and the corresponding Legal Aid provisions had changed beyond recognition since the turn of the century. We find that in July 2022, the claimant had no practical skills in Family Law or related Legal Aid matters. We do not find it unreasonable for the respondent to consider that any of the roles in Family were suitable alternatives. We find that no reasonable employer would have found the roles to be suitable.
- 139.20.9 We find that the claimant had some transferrable skills, but not many that would be relevant to a Family Law practice. She could gain those skills, but we find that this would be a long and arduous task for her. We do not find it unreasonable for the respondent to consider that any of the roles in Family were suitable alternatives. The cut in pay for the claimant between her FTE salary of £59,484 to a Solicitor role at £40,000 and a Paralegal role at £23,00 was substantial. We find that no reasonable employer would have found the roles to be suitable alternatives.
- 140 We find that the respondent notified the claimant of her potential redundancy, undertook meaningful consultation with her, and made efforts to find alternative employment within its business.
- 141 We do not find that the Family Law roles or the role in Private Client were suitable alternative vacancies. If the claimant had been offered any of the roles and had refused them, we would not have found such refusal to have been unreasonable or that it would have disqualified her for a redundancy payment.
- 142 We find the dismissal to have been fair, if not flawless. Those flaws were:

- 142.1 The delay in arranging the interviews. It was not clear why the interviews did not take place earlier in August 2022;
 - 142.2 Not following a formal interview process. The interviews were variously described as an informal chat and an interview, which was inconsistent;
 - 142.3 The interview with Ms Kokkinos was a mixture of formal and informal elements.
 - 142.4 If it was intended to be a formal interview, the Scenarios should have been sent to the claimant in advance of the interview to enable her to prepare; and
 - 142.5 The decision to raise the Scenario and then drop it when it became apparent that the claimant could not answer the questions was inconsistent.
- 143 However, the flaws in the procedure were insufficient to lead us to a finding that the dismissal was unfair. We would add, in anticipation of our findings below, that we did not find the dismissal was tainted by discrimination.

Direct Race Discrimination (s. 13 Equality Act 2010)

- 144 The claimant self identifies as a Black British woman of Caribbean descent.
- 145 There was some discussion in the hearing about comments made in the respondent's announcement of several internal promotions (including the claimant's promotion to Associate Partner and Mrs Rotheram's witness statement (paragraph 40 [9-10 WB])) about diversity, to which the claimant took offence.
- 146 We reminded ourselves of the guidance in Chapter 8 of the Equal Treatment Bench Book (May 2025 update) and shared this with the parties. At paragraphs 11 to 14, the ETBB states the following:

"Many believe that the reason ethnic minorities face ongoing disadvantage in many aspects of life is primarily because of institutional/systemic racism and historical injustices; others disagree with this analysis. Institutional racism was defined in the 1999 Macpherson report as: "The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amounts to discrimination through unwitting prejudice, ignorance, thoughtlessness, and racist stereotyping which disadvantage minority ethnic people."

In 2021, the government-commissioned Sewell report came to the conclusion that, "Put simply we no longer see a Britain where the system is deliberately rigged against ethnic minorities. The impediments and disparities do exist, they are varied, and ironically very few of them are directly to do with racism. Too often 'racism' is the catch-all explanation and can be simply implicitly accepted rather than explicitly examined. The evidence shows that geography, family influence, socio-economic background, culture, and religion have more significant impact

on life chances than the existence of racism. That said, we take the reality of racism seriously and we do not deny that it is a real force in the UK.”

Numerous charities and activist groups, and some politicians, have criticised the report, emphatically disagreeing with its conclusions and pointing to statistics which they believe necessarily implicate racism as the primary factor. According to race equality thinktank Runnymede Trust, “The people involved in this Commission had no interest in genuinely discussing racism, but even this Government does not go as far as to say that we are post racial. The least the Commission could have done is acknowledge the very real suffering of Black and minority ethnic communities here in the UK.”

It is not the role of this Bench Book to form an opinion on the causes of any disadvantage, rather to set out differences to assist judges, and provide information to help them deal fairly with people from different ethnic minority backgrounds. As mentioned at the start, fair treatment is a fundamental principle embedded in the judicial oath and is, therefore, a vital judicial responsibility. Judges are expected to be ever vigilant to ensure decisions are not influenced by their own personal biases, beliefs, or perspectives.”

- 147 We do not find that any of the statements that the claimant was unhappy about could reasonably be taken to be discriminatory because of race.

Dismissal

- 148 We find that the evidence showed facts from which we could conclude, in the absence of explanation that the claimant may have been dismissed because of her race. The facts were the claimant’s evidence plus the fact that Ms Minton, a White Solicitor in the Clinical Negligence department was dropped into a role with the Family department without an interview, whilst the claimant was not.

- 149 However, we find that the respondent has shown that there was not a contravention of section 13 of the Equality Act 2010. We make that finding because:

149.1 We find that neither of the comparators named by the claimant in this claim, Ms Minton, or Ms Collins were true comparators. They were not materially the same as the claimant save for the protected characteristic. The evidence is summarised in the claimant’s own table of comparisons contained in her witness statement and in the claimant’s closing submissions.

149.2 The claimant is Black, whereas Ms Minton and Ms Collins are White, which is the basis of the claimant’s comparison, however:

149.2.1 The claimant was an Associate Partner with 20 years’ experience. Ms Minton was a newly qualified Solicitor and Ms Collins was a Medico-Legal Adviser who was not legally qualified;

149.2.2 The claimant had very limited experience in Family Law and practice that had been gained in the 1990s, whereas Ms

Minton had a few years of recent experience in the respondent's Family Law costs department and had achieved a very high mark in the LPC Family Law module just before joining the respondent. We find that the claimant's table incorrectly recorded Ms Minton's experience;

149.2.3 The claimant was paid £59,454 pa (FTE), whereas the comparators were paid £36,000 (Ms Minton) and £30,000 (Ms Collins).

149.2.4 Ms Collins had no Family Law experience. She had no legal or specific Family Law experience. We find that she was made aware of the Paralegal role in the Family department, but it was agreed that she would not be suitable for such a role, and it was not offered. She was made redundant.

149.3 In the alternative, the claimant relied on a hypothetical comparator. We find that the claimant did not switch the burden of proof in respect of a hypothetical comparator because she did not bring evidence of how a hypothetical comparator (a Clinical Negligence Associate Partner with more than 20 years' experience in that specialism, whose department was closing and who had done an LPC module and had done a few months of paralegal-type work in the 1990s) would have been treated differently.

149.4 Further, we found the evidence of the respondent's witnesses about the claimant was that she was well-liked and popular in the firm.

149.5 We find that it dilutes the strength of her race discrimination claim (and her other claims) that the claimant also alleges that her dismissal was unfair under the Employment Rights Act; and/or because she was a part-time worker; and/or because she did protected acts; and/or she was disabled. The scatter-gun approach leaves the Tribunal with the impression that the claimant did not have compelling evidence to show an unlawful reason for her dismissal, so made multiple claims in the hope that one of them stuck.

Alternative Role

150 We repeat our findings above about the switching of the burden of proof and direct comparators and hypothetical comparators.

151 We find that the claimant had a genuine and understandable grievance about Ms Minton being given a Family Law Solicitor role whilst she was denied even a Paralegal role. However, we find that Ms Minton was not a true comparator.

152 We find that Ms Collins was not offered a role in the Family department. We repeat our finding above find that she was made aware of a Paralegal role in Family but as she had no relevant knowledge or training, it was agreed that she would not fit the role. Her assertion in her email to the claimant was successfully rebutted by the respondent's evidence. We prefer the respondent's evidence as it was given live and was internally credible and consistent with the documents

and circumstances. Ms Collins was made redundant as she was not a suitable candidate for the Paralegal role, which was not a suitable alternative.

- 153 We find that the respondent has shown clearly that the reason that it did not offer the claimant a role in Private Client or Family was that her legal training in the former was non-existent and her legal training on the latter was more than 20 years out of date, and her experience in Private Client was also non-existent and her experience in Family was a period of few months more than 20 years earlier.
- 154 Ms Kokkinos was the expert in Family Law before us, and we accept her evidence that the claimant would not have been able to function as a Family Law Solicitor for a period of at least 12 months that would have made her employment in the department unfeasible. We also accept Ms Kokkinos' evidence that it would be months before the claimant would be ready to work unsupervised as a Family Law Paralegal. We also accept from Ms Kokkinos' evidence and the transcript of the interview that the claimant appeared to have done little research or preparation for the interview.
- 155 We would criticise the respondent, however, for failing to let the claimant have the Scenario that Ms Kokkinos started to question her on in the interview in advance of the interview itself, so she could prepare. We took into account that the claimant would have been nervous at the interview and had recently recovered from mental illness. That criticism is not enough to swing the claim in favour of the claimant, however, and we repeat our findings about her suitability for the role made above. We acknowledge that the entire process must have been stressful for the claimant, especially as she had a concurrent grievance ongoing.

Indirect Sex Discrimination (s.19 Equality Act 2010)

- 156 This claim is that the bonus scheme introduced by the respondent in 2017 was an act of indirect sex discrimination because it adversely affected part-time workers to a greater extent than full-time workers and that women were more likely to be parttime because of childcare responsibilities.
- 157 We find that the presumption that women have more responsibility than men for childcare is still a valid one (Report of the ONS "Families and households in the UK 2022").
- 158 However, we find that the premise of the claimant's claim is based on a misunderstanding of how the bonus scheme worked. This is reflected in our finding that none of the claimant's asserted PCPs are made out. We make that finding because:
- 158.1 The claimant entered the 2017 bonus scheme voluntarily and received an increase in salary for agreeing to the updated terms.
- 158.2 The scheme replaced a previous scheme that gave the claimant a 20% bonus on fees billed and paid, which exceeded her annual salary by three times. That scheme made no recognition for part-time status.

- 158.3 We find that the respondent had good reason to change the scheme, as the old scheme was vulnerable to manipulation, and that it was perceived that the targets were too high to be motivating for most fee-earners. The Clinical Negligence team had relatively few files. Payment of the respondent's fees on the files generally happened at the end of the case. Some of the more complex files could generate fees of six figures. A fee-earner could game the system by loading their billing into one financial year, rather than spreading the fees over two or three years. For example, they could delay a bill until the start of a new financial year or accelerate another file, so it was billed just before the end of a financial year. We should note that there was no evidence that the claimant did this, although Mrs Rotheram gave unchallenged evidence that another fee-earner at the respondent did indulge in the practice.
- 158.4 We accept the evidence of Mrs Rotheram about how the new scheme worked, as she was its designer and demonstrated a thorough understanding of it, which was in sharp contrast to that of the claimant and her representative.
- 158.5 The claimant was provided with a document titled "Bonus Details" [318-319 SB] at a meeting with Ms Rotheram and the then HoD for Clinical Negligence on 4 July 2017. A summary of the meeting was sent to the claimant by email on 4 July [17 SB]. It was explained that the bonus scheme had a provision for fee-earners who were working on big cases where fees were sporadic (such as Clinical Negligence).
- 158.6 The 2017 scheme for fee-earners where income receipts are sporadic worked like this:
- 158.6.1 An assessment was made of the fee-earner's current caseload and work in progress, with particular emphasis placed on any large cases which could impact either positively or negatively on forecasted billing performance. The fee-earners participated in the process of setting the anticipated fees and success rates, so had a part in setting the targets.
- 158.6.2 A target figure was then calculated as the anticipated fees on each file in the year multiplied by the percentage chance that the claim will be successful.
- 158.6.3 The fee-earner was credited with the proportion of recorded time that they had spent on the file. So, if there was £100,000 of time recorded on a file and fee-earner A had recorded £80,000 of it, whilst fee-earner B had recorded £20,000 of it, only £80,000 of the fees would count towards fee-earner A's bonus.
- 158.6.4 The fee-earner was paid a bonus of 20% of any fees recovered in the bonus year that exceed the target.

158.7 For the first bonus year, the claimant’s target was assessed like this:

File No.	Likely Fees (£)	% Probability Settlement	Budget
GRI0215/1	35,000	100%	35,000
MCG0161/2	50,000	100%	50,000
BRO1124/2	40,000	50%	20,000
MCV0010/2	30,000	65%	19,500
RAH0063/2	80,000	65%	52,000
ELL0213/2	40,000	50%	20,000
		Target	196,500

158.8 It was not disputed that, as part of this consultation, the claimant successfully sought amendments to her salary and sick pay provisions but accepted the bonus scheme as it was written.

158.9 We find that, in relation to the first PCP contended for, the respondent did not impose a target that was always higher than the claimant’s previous 3x salary scheme. The target was set by reference to the work in progress, the anticipated settlement date and likely percentage chance that the case would succeed.

158.10 Therefore, in 2020/2021, the claimant’s target was £80,000, which was far less than 3x her salary. Her target for 2021/2022 was £75,000, which was also far less than 3x her salary.

158.11 We find that, in relation to the second PCP, there was no correlation between a fee-earner’s target and their working hours, as the target was a function of their caseload, its prospects of settlement and percentage chance of winning.

158.12 We therefore find that the respondent did not apply the PCPs contended for and the claimant’s claim falls at the first hurdle. We note the decision of HHJ Shanks in the EAT, which was made about prospects of success. We have had the benefit of all the evidence and find that the claim fails on its facts.

158.13 We would also note that whilst there was no claim that the claimant had been underpaid her bonus entitlement, an alleged underpayment was the basis of the claimant’s claims of indirect sex discrimination and detriment because of part-time status. We find that the claimant’s mathematics was at fault in the allegation that she had been

underpaid. The claimant based the allegations on summaries of bonus entitlement that were produced by the respondent (for example [201-207 SB]). The figures included negative figures that referenced work done by fee-earners *other than the claimant* and whose work, therefore, could not count towards the claimant's bonus.

- 158.14 The claimant had turned the negative numbers into positive numbers so, for example, -£1,500 was turned in to +£1,500 by the claimant, a differential of £3,000 between the claimant and the respondent. Mr Ward accepted that this was his error, and we find that this error, which was repeated, was the cause of the entire alleged difference between the claimant's bonus figures and those of the respondent.

Part-time Worker Detriment (Regulation 5 - Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000)

Bonus Scheme

- 159 It was agreed that the claimant was a part-time worker.
- 160 We repeat our findings above that there was no interaction between the revised 2017 bonus scheme and the claimant's part-time status. Her part-time status was entirely neutral under the 2017 scheme because of the way that the bonus was calculated.
- 161 The claimant did not identify an actual comparator. There is no provision allowing a hypothetical comparator in part-time worker detriment cases (**Carl v University of Sheffield** [2009] IRLR, EAT).
- 162 This claim was misconceived and fails.
- 163 In respect of the claim that Ms Kokkinos said to the claimant at an interview for the role in Family on 8 September 2022 that, "...*they were not fond of it* [having part-time workers] *before...*", we find that on balance, the words were not said by Ms Kokkinos. We make that finding because:
- 163.1 The words do not appear in the notes of the meetings;
 - 163.2 Ms Kokkinos denied saying them;
 - 163.3 In cross-examination, the claimant agreed that the respondent's notes were an accurate account of the meeting;
 - 163.4 The notes indicate that Ms Kokkinos said "...*four days a week would be fine.*"; and
 - 163.5 The claimant did not identify an actual comparator. There is no provision allowing a hypothetical comparator in part-time worker detriment cases (**Carl v University of Sheffield** [2009] IRLR, EAT).
- 164 The claim fails.

Disability (s.6 Equality Act 2010)

- 165 We find that the claimant did not meet the definition of disability following her period of ill-health absence between 5 April 2019 and July 2019. We made that finding after following the guidance in the cases of **Parnaby, Morris, and All Answers Ltd**, (see above) and applying it to the documents and evidence of the claimant in her impact statement. The respondent did not cross-examine the claimant on her impact statement.
- 166 We find that the naming of the mental illness that affected the claimant is secondary to its effects on her ability to carry out normal day-to-day activities. We find that at no time during her employment with the respondent were the claimant's reasons for absence noted as anxiety and depression. When she was absent because of her mental health, her absence was recorded as "work-related stress" on her MED3 certificates.
- 167 The respondent obtained an Occupational Health (OH) Report dated 21 May 2019 [190-192 PH] that records that the claimant's absence from 5 February to 30 June that year was a breakdown in the relationship between the claimant and her then HoD, Kathryn Turner. The opinion of the OH professional was that the claimant would be able to return to the workplace provided the working relationship issues had been addressed. The OH professional was of the opinion that the claimant did not meet the definition of disability under the Equality Act 2010.
- 168 The claimant was able to return to work after her grievance had been determined and there was a change in management arrangements.
- 169 The claimant was absent from 5 February 2019 to 30 June 2019.
- 170 There was no evidence presented of any absence due to mental illness from the claimant's phased return on 16 December 2019 to the start of her second period of long absence on 7 March 2022. That absence continued until 15 July 2022.
- 171 Ms Turner left the respondent in April 2020. We find that the stressor was removed and that claimant's mental illness was not likely to last for a total period of 12 months. The claimant was not absent with any mental health issue until 4 March 2022.
- 172 We find that the claimant did meet the definition of disability for the period starting on 4 March 2022 and continuing until the last act complained of: the rejection of her Grievance appeal on 22 December 2022 [263 SB]. We make that finding on the unchallenged evidence of the claimant in her impact statement and the fact that the stressor that caused her initial absence was added to by the risk of redundancy; her subsequent dismissal; and the issue of these proceedings. In those circumstances we find the claimant's mental health condition was likely to last 12 months.

Failure to make Reasonable Adjustments (ss.20-21 Equality Act 2010)

Appointment to Family Team Without Interview

- 173 Although no PCP was set out in the List of Issues, and no reference was made to it in the claimant's evidence or closing submissions, the PCP must be the respondent requiring the claimant to attend an interview for the Family and Private Client roles.
- 174 We cannot see that the claimant produced any evidence as to why this placed her at a substantial disadvantage compared to someone without the claimant's disability. Her case was simply an assertion that she should have been placed straight into a vacant role in the Family department.
- 175 When she was interviewed, the claimant had been certified fit for work. We do not agree that a requirement for the claimant to be interviewed for the Family department role put her at a substantial disadvantage compared with someone who did not have a mental health condition. If the claimant was fit to work, she was fit to be interviewed.
- 176 This claim intersects with the claimant's claims of unfair dismissal and other matters as it refers to the suggested adjustment of giving her a trial period in a Family team role. We repeat our findings above that it was reasonable of the respondent to assess the claimant's suitability for the role in the Family department and that it was reasonable to conclude that she was not suitable.
- 177 We find that the respondent did not know or could reasonably have known that the claimant was likely to be placed at the disadvantage alleged as we find that there was no disadvantage.
- 178 This claim was misconceived.

Requirement to Return on Full Time Hours

- 179 We find this claim also to be misconceived. Factually, the claimant was not required to return to work on full time hours, as she was a part-time worker. It was her request to return when she did on 18 July 2022, having given a month's notice of her intention to return.
- 180 The claimant did not request a phased return at the time and was not allocated much work to do, as her department was shutting down. She was not required to attend work when she did return to work and was told that she remained on what was, effectively, paid leave. It was her choice to return to work in a department that was closing down and which had no new incoming work.
- 181 As there was virtually no work to return to, and no prospect of being retained as an employee unless she was appointed to a new post in Family or Private Client, we find it was not a reasonable adjustment to order an OH report in July 2022. The appropriate time to order such a report would have been if and when the claimant had secured an alternative post with the respondent, which she never did.

Discrimination Arising from Disability

- 182 The claimant alleged that she was treated unfavourably because of her absence from work and that the absence arose from her disability. We should note that we have only found that the claimant was a disabled person from 4 March 2022.

Failure to Provide Information

- 183 This claim is vague. It does not specify a date or dates and does not state what information the respondent failed to provide the claimant with, or what a “return to work plan” is or would entail. The claimant’s evidence in chief did not address the point. We could not find facts from which we could conclude, in the absence of explanation, that there could have been a breach of sections 20 and 21 of the Equality Act 2010.

Change in Legal Career

- 184 We find that the alleged detriment is not a detriment. We make that finding because we do not accept that any reasonable person would interpret what Ms Woolven-Brown wrote in her letter to the claimant on 29 July 2022 [199-201] as anything but sensible advice. We find that the claimant had indicated that she was willing to make a complete change of specialism after more than 20 years developing a career in Clinical Negligence. She could have sought work as a Clinical Negligence Solicitor at another firm, where she would have had realistic expectations of a senior role with a remuneration package around that which she was receiving from the respondent.
- 185 Instead, she had indicated she was prepared to take a huge cut in salary and status by starting a new career in Family or Private Client work.
- 186 The claimant had just returned from a period of ill health absence that had lasted over four months, and we find it supportive of Ms Woolven-Brown to grant the claimant additional paid leave at home “...to allow you space to consider whether a change in legal career is something you want to pursue.”
- 187 The claimant prayed in aid an allegation that a Black former colleague who was a qualified lawyer was offered a job as a cleaner in the redundancy round that took place when the respondent closed its Personal Injury department some time before it closed its Clinical Negligence department. No direct evidence was led by the claimant on this point. We prefer Mrs Rotheram’s evidence in cross-examination that at the time of the closure of the PI department, the only job that was available in the respondent was as a cleaner. The list of available jobs was shown to those at risk. There was only one job on the list, as a Cleaner. We find that the list was shown to all those at risk (irrespective of colour) as proof of what was available, rather than an offer of a cleaning job which qualified lawyers may have found demeaning.

Criticising the Claimant for Taking Annual Leave

- 188 This is an allegation that is said to have happened on 1 September 2022 in a letter from Mrs Young [210 HB].

189 We find that there was no criticism of the claimant for taking annual leave in the letter. There was no detriment. This is an example of the claimant perceiving discrimination where there was none.

Dismissing the Claimant

190 We refer to our previous findings. The reason that the claimant was dismissed was redundancy. The claimant did not show facts from which we could have concluded in the absence of explanation that the respondent had contravened the Equality Act 2010 other than her assertion. There was nothing to add to her assertion.

191 The claim fails.

Failing to Transfer the Claimant

192 This is another attempt to make a different claim from the same circumstances. We repeat our findings above. In relation to a section 15 claim, the claimant did not show facts from which we could have concluded in the absence of explanation that the respondent had contravened the Equality Act 2010 other than her assertion. There was nothing to add to her assertion.

193 The claim fails.

Victimisation (s. 27 Equality Act 2010)

Protected Acts

194 We find that the claimant's email to the respondent dated 30 May 2022 [303] was not a protected act as it did not meet any of the requirements of section 27 (2)(a-d) of the Equality Act 2010.

195 We find that the claimant's grievance dated 12 July 2022 was a protected act.

196 We find that the claimant's presentation of her ET1 in this case on 27 October 2022 was a protected act.

Detriments

OH Report

197 We do not find the respondent's failure to refer the claimant to OH on or shortly after 30 May 2022 to be a detriment because the claimant did a protected act. We make that finding because:

197.1 We find that there was no connection between the claimant's protected act and the failure by the respondent to request an OH report which was requested by the claimant on 30 May 2022. The respondent's witnesses were not challenged on the point and made no admissions.

197.2 We find that the claimant's request for an OH report to determine whether she was a disabled person was not made to assist her return

to work, but to provide her with evidence for a contemplated Tribunal claim. We find it unusual for the claimant to have anticipated her return to work in July 2022 in an email dated 15 June 2022 and for her then to have confirmed the date of return (18 July) in an email of 29 June 2022.

197.3 We find that the respondent's explanation for why no OH report was requested was logical and credible:

197.3.1 On 15 June 2022, the claimant advised she would be returning to work in July 2022. On 29 June 2022, the claimant confirmed she would be returning on 18 July 2022;

197.3.2 The respondent was contemplating selling the Clinical Negligence department's work, or closing the department;

197.3.3 The claimant was not required to attend work from 18 July 2022; and

197.3.4 It was likely that her employment with the respondent would terminate, and she would not return. If she did return, that would be the time to ask for an OH report.

198 Having found that the claimant's email of 30 July 2022 was not a protected act, there was no protected act that predated the alleged detriment.

2022 Grievance

199 We find that the respondent did not fail to investigate the claimant's grievance of 12 July 2022 [57-65 SB] fairly. The respondent did not uphold the grievance, but we find that this was not because she did a protected act. We make these findings because:

199.1 The respondent's witnesses were not challenged on the point;

199.2 The claimant produced no evidence other than her own assertion that the respondent investigated her grievance in the way that it did and/or failed to uphold her grievance because she did a protected act. There was no additional evidence to take into account. The claimant did not transfer the burden of proof to the respondent;

199.3 We find that the respondent's investigation of the claimant's grievance was one that came within in a band or reasonable responses to the grievance;

199.4 The claimant has no right to expect a grievance to be upheld; and

199.5 On our findings above, the claimant's grievance about her bonus entitlement were unfounded, so the outcome was, on our findings, fair.

Return to Work Plan

- 200 We find that this allegation was vague and was not explained in the claimant's evidence in chief. We assume that it refers to her return to work in July 2022. We find that no "return to work plan" was put in writing, but that the arrangements for the claimant's return to work were clearly explained to her in an email that told the claimant that she was not required to attend work and would be given light work to do at home as the Clinical Negligence department was closing, the files were being transferred elsewhere, and Ms Minton was handling the transfers.
- 201 The claimant was told that she would participate in the selection interviews for jobs in Family and Private Client.
- 202 We therefore find that the claim has no basis in fact.

Change in Legal Career

- 203 We repeat our findings above about Ms Woolven-Brown's letter of 29 July 2022 [199-201 HB]. We do not find that the words "...to allow you space to consider a change in legal career is something you want to pursue" to be a detriment.
- 204 The claimant did not provide any evidence, other than her assertion, that the statement was made because the claimant did protected acts.

Suitable Alternative Employment

- 205 We find that this claim also fails on the findings of facts we have made above. We have found that none of the jobs available in Family of Private Client were suitable alternative employment. We find that the concept of suitable alternative employment is a joint one between the employer and the employee. In a hypothetical example, an employee who is employed as an Electrical Fitter may think that being an Accounts Manager is suitable alternative employment, but unless they have the appropriate skills and experience, the employer is unlikely to agree.
- 206 We have set out above our findings as to why we consider that there were no suitable alternative jobs available at the respondent for the claimant.
- 207 Additionally, the claimant provided no evidence, other than her own assertion, that there was a connection between her doing protected acts and the failure of the respondent to offer her an alternative job.

2 Days' Notice of Appeal

- 208 This claim fails on the facts. The claimant was given notice of her appeal against redundancy on Thursday 22 September 2022 for a meeting on Tuesday 27 September 2022.
- 209 We find that four days' notice of an appeal is reasonable and not a detriment.
- 210 If we are wrong about that, we find that the claimant has not established facts from which we could conclude in the absence of explanation that the respondent breached section 27 of the Equality Act 2010.

Redundancy Appeal Hearing

211 We find this allegation fails on the facts. The claimant alleges that during the redundancy appeal on 27 September 2022, Mr Cooper, who heard the appeal, focussed on whether the claimant had obtained an independent medical report to support her assertion that she met the definition of disability.

212 The claimant made a record of the meeting [278-281 HB] that does not appear to us to be a contemporaneous note of what was said in the meeting. It is written in the past tense. We do not regard it as an accurate record of the meeting.

213 The respondent's minutes of the meeting [260-266 HB], which appeared to last 53 minutes, were not disputed by the claimant. The question of disability is mentioned once in the meeting [263] in this exchange:

"RC - ...Have you any evidence that you meet s.6 EQA 2010 criteria?"

JCW - I am not a medical expert can only tell you from the fact, I have anxiety and depression, been on long term sick leave, consulted with my GP, been prescribed medication. As an employee did not know I had to provide a medical report.

RC - I am not trying to go behind what you may or may not have. You say in your letter that you contend you are disabled.

JCW - I think the focus should be given to what support given to me during...what was given."

214 We find that the above exchange is four lines in seven pages of notes. We find that the exchange was not focussing on the claimant having an independent medical report. The claimant was not asked for an independent medical report. She was asked for evidence of disability. When she indicated that she had no evidence other than what she mentioned in the exchange, Mr Cooper moved on.

215 We find that when an employee asserts disability, it is not unreasonable for an employer to ask for evidence. We find that the conduct of Mr Cooper is not a detriment. If we are wrong about that, we find that the claimant has not established facts from which we could conclude in the absence of explanation that the respondent breached section 27 of the Equality Act 2010.

216 We also note that the claimant's record of the meeting states "*He asked me what evidence I have that I am disabled and whether I have provided a medical report.*" We find that the word "*independent*" was not used.

Redundancy Appeal - OH

217 The claimant's claim is that Mr Cooper, during the redundancy appeal meeting on 27 September 2022, failed to address why the claimant had not been assessed by OH. This complaint must be seen in the context of the claimant's redundancy appeal email dated 13 September 2022 [255 HB].

218 The appeal listed five grounds of appeal:

- 218.1 The respondent had provided no evidence that her application for the four vacancies had been “...unsuccessful and, if so why this was the case”.
- 218.2 The respondent had “...provided no evidence that they considered the statutory framework provided by s.138 ERA and which I was entitled to in relation to these four vacancies.”
- 218.3 The respondent “...failed to consider in a reasonable manner whether with training and as allowed for by s.138 ERA that would have allowed me to be a suitable candidate for the four vacancies and thereby preventing my dismissal on grounds of redundancy.”
- 218.4 That “further and without prejudice to the foregoing,” the decision to dismiss her was because of her protected act, which she identifies solely as her grievance of 12 July 2022.
- 218.5 That in deciding to dismiss her, the claimant had failed in its duty to make reasonable adjustments as per s20-21 of the Equality Act 2010.
- 219 There is no mention of an OH report in the grounds of appeal.
- 220 We repeat our finding above that we find the respondent’s notes of the appeal to be an accurate record of the appeal meeting. The only mention of an OH report is contained in the exchange between the claimant and Mr Cooper set out above under the previous claim.
- 221 We find that the appeal itself did not require the respondent to explain why it had not addressed why the claimant had not been assessed by OH. We find that the Claimant did not ask the question in the redundancy appeal meeting. We therefore find that the allegation is not made out on the facts.
- 222 If we are wrong about that, we find that the claimant has not established facts from which we could conclude in the absence of explanation that the respondent breached section 27 of the Equality Act 2010.

Dismissal

- 223 We repeat our previous findings about the reason for the claimant’s dismissal. We repeat that the sole reason for the claimant’s dismissal was because the Clinical Negligence department was closing and the respondent could find no alternative job for the claimant, having made reasonable efforts to do so.

Redundancy Appeal Investigation and Outcome

- 224 The claimant’s closing submissions had no comment on any of the victimisation claims. The List of Issues alleges that the respondent failed to investigate fairly and/or uphold the claimant’s redundancy appeal.
- 225 In respect of the outcome of the appeal, we find that given our findings on the dismissal itself, the respondent could not be criticised for refusing the appeal. That claim therefore fails on the facts.

- 226 In respect of the investigation, the claimant gave no details of the allegation that the respondent had failed to properly investigate her appeal in her ET1 [22-23 HB] despite her Details of Claim [11-29 HB] being nineteen pages long.
- 227 The claimant's witness statement (paragraphs 154-160) contained her evidence of her victimisation claim. She dealt with her redundancy appeal at paragraph 132. The claimant provided no evidence of any failings by the respondent to fairly investigate her appeal.
- 228 We therefore find that this claim fails on the facts. The claimant's case at its highest does not show facts from which we could conclude without further investigation that the respondent had contravened section 27 of the Equality Act 2010.

Grievance Appeal

- 229 The claimant's allegation was that the respondent failed to consider the claimant's grievance appeal thoroughly and fairly.
- 230 In her Details of Claim (paragraph 57 [23 HB]), the claimant made no criticism of the investigation of the grievance, although the grievance appeal had taken place at the time the document was written.
- 231 The claimant's closing submissions had no comment on any of the victimisation claims.
- 232 The claimant's witness statement covered the grievance appeal in one sentence (Paragraph 135):
- "I lodged a Grievance Appeal and the Hearing took place on 31 October 2022."*
- 233 There was nothing in the claimant's witness statement about the grievance appeal in the section headed "Victimisation" (paragraphs 154-160).
- 234 We therefore find that this claim fails on the facts. The claimant's case at its highest does not show facts from which we could conclude without further investigation that the respondent had contravened section 27 of the Equality Act 2010.

Jurisdiction/Time

- 235 We find that all the claims that we have dealt with above were made in time save for the claims of part-time worker detriment and indirect sex discrimination relating to the bonus scheme that failed on the facts in any event.
- 236 We find that the just and equitable test in section 13 of the Equality Act 2010 and Regulation 8 of The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 apply to the claims of part-time worker detriment and indirect sex discrimination. The relevant dates are:

- 236.1 The claim of part-time worker detriment arose on the inception of the new scheme in 2017. The claimant made no complaint until her grievance in 2022.
- 236.2 The indirect sex discrimination claim relating to the bonus arose on the same date as the part-time worker claim.
- 236.3 The claimant started early conciliation with ACAS on 25 August 2022 and obtained an ACAS early conciliation certificate dated 28 September 2022. She presented her ET1 and Attachment on 27 October 2022 [11-29 HB]. The claimant was represented by a solicitor, Ms Grieff, at this time, who drafted the ET1 and Attachment.
- 237 We find that the bonus claim is a matter that has no factual or legal connection to the other claims of discrimination that the claimant makes. As we have found that none of her claims of discrimination succeed, she cannot tether these claims to later claims that were presented in time.
- 238 We do not find it just and equitable to extend time to allow the claims. The claimant could and should have made the claims in time.

Summary

- 239 As we have dismissed all claims except the unauthorised deductions from wages claim, which was settled between the parties, there is no requirement for a remedy hearing.
- 240 We empathise with the situation that the claimant found herself in during 2022, but on our findings, the respondent had no choice but to close its Clinical Negligence department and her redundancy was an inevitable consequence of that. We sincerely hope she can draw a line under these events and move on with her life and career.

Approved by:
Employment Judge Shore
Dated: 14 April 2026