



EMPLOYMENT TRIBUNALS

A rule 49(3) anonymity order dated 5th June 2025 prevents disclosure of the Claimant's name or address or details which are likely to lead the public to identify the Claimant as a party or otherwise involved in these proceedings from any document entered on the Register or otherwise forming part of the public record

Claimant: Ms GNQ

First Respondent: Bombus Limited

Second Respondent: Ms A Coward

Heard at: London South (Croydon)

On: 15th, 16th, 17th, 18th and 19th June 2026

Before: Employment Judge L Clarke

Members: Ms L Lindsay

Mr P Adkins

Representation

Claimant: Ms GNQ in person

First and Second Respondents: Mr Arnold (consultant)

JUDGMENT was sent to the parties on **30th July 2026** and written reasons were requested in accordance with Rule 60 of the Employment Tribunal Procedure Rules. The following written summary reasons are therefore provided:

SUMMARY REASONS

1. Following the evidential stage of the final hearing, the Tribunal took considerable time for deliberation as there were a large number of issues to consider. Summary reasons were given orally at the conclusion of the hearing on 19th June 2026.

2. The Tribunal's determinations were unanimous.
3. The background to the claims is familiar to all parties and the events with which the Tribunal is concerned took place at what was undoubtedly a difficult time in the Claimant's life: Her adoption dream was nearing fruition and it was a stressful and crucial stage of linking and matching in that adoption process. In addition, her father was in the end stages of her life. The Tribunal accepted that the Claimant was under a substantial amount of pressure. The adoption was of paramount importance to her and anything that she perceived as a threat to that process seemed very unfair to her per se. It was also clear to the Tribunal that the Claimant viewed the adoption and the early stages of linking prior to the match certificate as being the equivalent of a pregnancy.
4. In both original ET1 claim forms submitted by the Claimant she had ticked discrimination on the grounds of pregnancy and maternity. However, the Tribunal notes that the law does not treat those two things (adoption and pregnancy) as equivalent or equal. Pregnancy is a protected characteristic from conception whereas adoption is not a protected characteristic and the primary laws protecting adoption only activate on receipt of the adoption matching certificate when entitlement statutory adoption pay becomes active.
5. The Tribunal heard oral evidence from three witnesses: from the Claimant herself and from two witnesses for the Respondent. The Tribunal was satisfied that all of the witnesses who gave evidence did so honestly and to the best of their ability. However, it was also clear that all their recollections had been impaired by the passage of time since the events that the claims concern, and they all gave evidence that was coloured by their particular perceptions which had likely been consolidated and emphasised by repeated revisiting during the time since the events had happened. In general where there were contemporaneous documents the Tribunal placed more reliance on those documents and where there was a contradiction between the evidence of a witness and contemporaneous documents, the contemporaneous documents were considered to provide a more accurate and reliable account than the written or oral evidence of the individual witnesses.
6. The Tribunal noted that during the Claimant's oral evidence she sometimes got into a bit of a muddle and it was apparent she found it difficult to answer questions where she thought the answer might not assist her case. In the Tribunal's judgment, her interpretation of events was heavily coloured by how things made her feel, and she used the words "I felt" or equivalent multiple times. Her feelings, whilst valid, were not always objectively justified. It was clear that she perceived anything that questioned her journey to parenthood as being significantly different from pregnancy, or which she perceived as a threat to her prospects of adoption, was viewed as hostile and unfair and she was unable to recognise anything that contradicted that narrative. This impacted on the quality of her evidence and the Tribunal's assessment of its reliability.
7. Amelia Coward (the Second Respondent) was also the main witness for the First Respondent. The Tribunal found that she was at times defensive and prickly and both her witness statement and her oral evidence lacked key

details or information about relevant matters.

8. The Tribunal found the oral evidence of Kathryn Selvey, the HR person involved in advising the business, who gave evidence in these proceedings, to be particularly poor. She had a limited recollection of key events and was repeatedly unable to remember matters that she was asked about. Her evidence lacked specifics where specification was required despite her oral evidence that she had reviewed the documents to prepare her witness statement (which was signed only five days prior to her oral evidence).
9. The Tribunal also considered a witness statement from Amber Carter which was attached to the Claimant's witness statement. She did not give live evidence and was not able to be cross examined by the Respondents. She was not working at the business at the time of the redundancy process involving the Claimant, having left the business in 2021. She gave general evidence about roles of various people within the business prior to her departure, which indicated that workers were more interchangeable in the production team than the Respondents' evidence suggested, but her knowledge was two years out of date for the events that this case concerns and the Tribunal accepted that the business had changed during that two year period, with different products coming on line and different working practices as it shrank from its peak. The Tribunal also noted that although she made general comments about the negative workplace environment, this was contradicted by the Claimant's own evidence at the Respondents bundle page 312 where the Claimant said that she "*really enjoyed working at Bombus since I started working there in 2011*" and said that she thought that Amelia Coward was "*an inspirational boss*" and that it had been "*a lovely place to work with lovely colleagues*". Overall, the Tribunal felt it could place no weight on the statement of Amber Carter as it considered the majority of its contents to be irrelevant to the issues that the Tribunal had to determine.
10. The issues the Tribunal had to decide was set out clearly in a case management order of August 2025 and no party sought to depart from them at the hearing but were determined in a different order to that on the list of issues.

Employment Status

11. The employment status of the Claimant is relevant to the length of continuous service and therefore to the claims for unpaid statutory redundancy payment and for notice pay. It is also potentially one of the relevant factors considered by the First Respondent during the redundancy process.
12. There is no issue that the Claimant began with the First Respondent being employed on a full-time basis on PAYE in around November 2011 and that there was then a subsequent change in her employment arrangements in 2012 when she wished to become part-time and ceased to be paid on a PAYE basis. The arrangements then changed again in October 2019 when all parties agree that she was employed and placed on PAYE until her dismissal on the 26th June 2023.
13. The Tribunal found that there was an established history of the First

Respondent accommodating the Claimant when she wanted to change her working relations with the company, not only in 2012 when she sought to change her hours and reduced from full-time but also when she sought to move back to PAYE in 2019 to assist her to obtain a mortgage and then again in May 2022 when she wanted to reduce her hours further. The real question then is her employment status between 2012 and 2019 when all parties contemporaneously described the Claimant as a freelancer.

14. There is no termination document available to the Tribunal in relation to the employment which started in 2011. The Respondents say the Claimant gave her notice and that wasn't challenged by the Claimant nor did the Claimant provide any clear explanation as to how the employment relationship which arose in 2011 came to a legal end. It is however clear from the documentation that the Tribunal does have access to that the instigation of the change came from the Claimant seeking to substantially reduce her hours from full-time to part-time. There was also contemporaneous evidence before the Tribunal that the First Respondent gave its mind to how that proposed arrangement would work and concluded that it would only work for the business if the Claimant went from employee to freelance. Also, that the Claimant accepted that situation as she wished to retain some continuing engagement but reduce her hours.
15. The claimant therefore registered with HMRC as self-employed, completed self-assessment tax return returns and did not expect to receive (or in fact receive) sick pay or holiday pay during the period between 2012 and October 2019. There was no formal contractual arrangement in place between the Claimant and the First Respondent to cover the new arrangements but the Respondents confirmed, and the Tribunal accepted, that there were no contractual documents with any freelancers that were engaged and the Tribunal found it could draw no firm conclusions from the lack of such documentation.
16. The Tribunal is satisfied that the ongoing relationship between the Claimant and the First Respondent after 2012 retained a substantial number of the features consistent with an employment status rather than that of freelancer and that in practice, there was minimal practical change in the day-to-day arrangements between the Claimant and the First Respondent other than in relation to the Claimants hours, pay and tax mechanisms. The Claimant continued to undertake the First Respondent's work on the First Respondent's premises using the First Respondent's materials, the First Respondent's tools and to the First Respondent's specifications. She was subject to substantial control by the First Respondent and was substantially integrated into the business both socially, practically and through use of their systems. The contractors handbook is a good example of the level of integration.
17. There is no evidence that substitution would have been accepted or acceptable and during this period, had the Claimant chosen to seek to substitute someone else to provide her services but that situation never arose. The Claimant undertook all the work personally.
18. However it is an irreducible minimum for employment status, and not merely a factor to be taken into consideration, that there must be a mutuality of obligation between the Claimant and the First Respondent and the evidence

in this case, including the contemporaneous documentary evidence, leads the Tribunal to conclude that there was, between 2012 and October 2019, no mutuality of obligation.

19. The key documents in the evidence the Tribunal has relied on include that in April/May 2017 the Claimant wasn't required to work as a result of a laser printer fire for at least a couple of months in total. She was not required for work until she was, in her own words, "*invited back*". That is confirmed by both the Claimant's own evidence in correspondence and in her billing records, as well as those of the First Respondent. Additionally, in the Respondents' bundle at page 177.
20. The Tribunal also found examples of the Claimant saying that she cannot work on one of the days where she appears to have been scheduled to work for the First Respondent (eg Respondents' bundle page 177). Further, at Respondents' bundle page 178 the Claimant e-mailed the First Respondent seeking to swap her working dates. She also informed the First Respondent of future booked holiday dates. That was phrased as the Claimant telling the First Respondent that she had booked holiday and was not available rather than requesting permission for the same. In the Claimant's bundle page 411 an e-mail chain from that page onwards shows that the Claimant offered a number of work dates over a month or so and that the First Respondent accepted some, but not all, of them. Later e-mails in the chain show that the Claimant then indicated that she was no longer available during those dates that had been accepted and withdrew the offer to work on them. The Claimant's bundle at 1422 (her summary of billing records) shows that the number of days that she worked each month wildly fluctuated over the period between 2012 and October 2019 with virtually no consistency other than that she worked most months. The Tribunal found that there was no pushback from either party about the fluidity of these arrangements and no consequences when the Claimant was not available for work on the days the First Respondent had work available, or when the Claimant sought to move or cancel dates she had agreed to, or when there was an extended period when the First Respondent did not offer the Claimant work/had no work for her and consequently she did not work and was not paid. Although the First Respondent had regular work available, when they did not they did not engage the Claimant and it is clear both parties accepted that there was no responsibility for the First Respondent to make work available or to pay the Claimant when there was in fact no work available. That is very unlike the responsibilities which would have fallen on both the Claimant and the First Respondent if the arrangement was truly an employee-employer arrangement during the period 2012 to 2019.
21. Accordingly, the Tribunal was satisfied, on the balance of probabilities, that there was no mutuality of obligation and therefore the proper characterisation of the Claimant's engagement with the First Respondent between 2012 and October 2019 was not that of employee, and the Claimant's relevant continuous employment commenced in October 2019.

Redundancy Payment

22. The claim for redundancy payment was prefaced on the Claimant having a period of continuous employment from the commencement of her initial

employment in 2011 until her termination. There is no dispute that the Claimant was paid the full amount of her redundancy pay if that her continuous service only started in October 2019, which the Tribunal finds to be the case for the reasons set out above. There is therefore no unpaid redundancy payment, and that element of the Claimant's claim must be dismissed.

Wrongful Dismissal/Notice Pay

23. The employment status of the Claimant between 2012 and 2019 also impacts on the wrongful dismissal and notice pay element of her claim. On this claim, the primary issue between the parties was as to whether or not an appropriate duration had been applied. The Tribunal having concluded that the Claimant was not employed during the period 2012 to October 2019 and her continuous employment only starts from October 2019, it is clear from the Claimant's contractual document that her relevant notice period entitlement was one calendar month.
24. She was given notice of termination on the 26th June 2023 when she was sent her termination letter, but as that letter was sent late at night it was not effective until the next working day. Therefore, the effective date of notice is the 27th June 2023. One month's notice means that her final paid day should have been the 26th July 2023.
25. The Claimant and the Respondents' ET1 and ET3 do not agree as to the amount of the Claimant's gross or net pay per month. The Claimant's ET1 shows her gross was £975 per calendar month and net is £761.80. That is repeated on the Claimant's Schedule of Loss. The Respondents' ET3 suggests the gross was £675 per calendar month and net was £560 per calendar month. The Tribunal has considered the bank statements and the pay slips in the bundle for the months immediately prior to the termination and notes in particular pages 1599 to 1601 and 1612 of the Claimant's bundle and which show that the Claimant's net pay received around the period of March 2023 was £761.80 per calendar month and the gross was £975 per calendar month. The Tribunal prefers the contemporaneous evidence of the pay slips and the bank statements and finds that the wage that was due to the Claimant for her notice period was a gross amount of £975 per calendar month equivalent to a net of £761.80.
26. The Tribunal then looked at whether or not in fact what had been paid in her final salary payments and pay slips equated to having been given a notice of one month. The contemporaneous records show that there was clear confusion for at least a period of time with the First Respondent initially only providing 3 weeks' notice and then talking about a 4 weeks notice period - which is of course not equivalent to a full calendar month.
27. The Tribunal considered the date to which she should have been paid (26th July 2023) and worked out what, on the basis of the £975 gross found to be the Claimant's wage, the equivalent amount on the final payslip (which appears in the Claimant's bundle page 1625) should have been pro rata. The Tribunal is satisfied that regardless of the manner in which the written contemporaneous documents expressed the duration of the Claimant's notice period, and the confusion that had therefore arisen about the amount due, that the amount the Claimant received in pay on her final payslip (and

which all parties agree was in fact paid) was not less than the equivalent of one month's notice and that therefore no further sums are owed. The claim for wrongful dismissal/notice pay must also therefore be dismissed.

Unfair Dismissal/Automatic Unfair Dismissal

28. The Tribunal considered these heads of claim together because in order to determine both of these claims the Tribunal has to consider the reason or the principle reason for the Claimant's dismissal. As outlined to the parties earlier in the proceedings it is the First Respondent's burden to show, on the balance of probabilities, what the reason for the dismissal or the principle reason for the dismissal was. The First Respondent says the reason was redundancy, whereas the Claimant considers that the real reason for her dismissal related to her impending adoption of a child. All parties are agreed that if in fact the reason, or principal reason, the Tribunal finds for the dismissal was redundancy, that that is a potentially fair reason for dismissal.

Reason for dismissal

29. Having heard the evidence, the Tribunal concluded that on the balance of probabilities the reason for the dismissal was in fact redundancy. The Tribunal found evidence to support substantial financial distress for the First Respondent company for quite a lengthy period prior to the Claimant's dismissal. In particular, in the documents shown to the Tribunal in relation to the withdrawal of the First Respondent's overdraft with the bank, the downturn in work (the sales figures showed reductions in comparative months in the early parts of 2023 to those in 2022 in the region of 30%, and the letter from the First Respondent's landlord in relation to rent. The Tribunal noted that there had been discussions internally within the First Respondent about the need to consider cost savings which started in the first quarter of 2022 in correspondence with the First Respondent's bookkeeper and with the HR consultant (Kathryn Selvey) who was engaged in 2022 when redundancies were first being considered. The Tribunal also noted that there was a further contraction of the business after the Claimant's dismissal and that currently the workforce of the business comprises only the owner (the Second Respondent, Amelia Coward), one employee and a freelance part time bookkeeper.

30. The Tribunal found that in fact, there was no real benefit to the First Respondent in dismissing the Claimant in advance of the pending adoption in order to avoid becoming liable to pay statutory adoption pay, which was a prime plank of the Claimant's case that the pending adoption was a factor in the decision to dismiss. Essentially, the adoption and therefore the liability to pay statutory adoption pay is largely cost neutral to the First Respondent's business. The First Respondent would be able to reclaim the amount paid to the Claimant plus an additional sum to cover administration from the government. In reality, the Tribunal finds that it would in fact have assisted the First Respondent for the Claimant to be placed on adoption pay if possible as it would have afforded the breathing space of a cost neutral employee for a period which could have given room to enable or support the potential recovery of the business and avoided the need for redundancies with the consequent need to make redundancy payments.

31. The First Respondent was preparing for the maternity leave for another employee, Katie, around the time (who went onto maternity leave in August 2023) at around the time that the Claimant was considered for redundancy. The Tribunal accepted the Second Respondent's evidence that on numerous previous occasions the business had effectively been required to pay maternity leave for various employees and there was no real problem with them doing so. The Tribunal also noted that there was no material difference to the First Respondent between the maternity pay provisions and the statutory adoption pay provisions other than the documentary evidence required to substantiate the payments. The First Respondent was aware of the background of the Claimant seeking adoption from at least 2021 and had facilitated her to do so by providing references in 2022.
32. The timetable of the First Respondent's consideration of redundancies initially started in 2022 before being abandoned due to a number of workers leaving the business. It was then resurrected in early 2023 and then again parked whilst there were changes in personnel from employee departures which again delayed the potential need for redundancies.
33. The first clear evidence of a formal redundancy processing start process starting is on the 24th April 2023 when both the Claimant and the Respondents agree that the Claimant and the second Respondent had a conversation which explained concerns the First Respondent's concerns about the financial position of the business, the need for steps to be taken, and that redundancies were a consideration.
34. Before that meeting took place the First Respondent, though aware that the Claimant had been progressing through an adoption process, would have been unaware that there was any particular potential child being considered for adoption by the Claimant because the Claimant herself was unaware of that until the day after that meeting took place. It is clear that as a result of that meeting on 24th April 2023 the Claimant understood that redundancies were a possibility as the meeting prompted her to send an initial e-mail on the 26th April 2023 which raised the potential of adoption and the potential link to a child, but the Tribunal found that her e-mail considerably downplayed the situation as she now presents it, indicating the potential adoption as being very uncertain both in terms of timing and in terms of whether it would happen at all. The Tribunal was unable to conclude that the Respondents, who would not have been as familiar with the adoption process as the Claimant would have been, would have read that letter as having as indicating that the Claimant was either taking, or seeking to take, or was likely to take in the near future, ordinary or additional adoption leave.
35. The Tribunal accepted that from the Claimant's perspective, she noted no particular need for redundancies in April 2023 as work appeared to be busy and that also fed into her view that the reason for her dismissal was that she had raised the imminency of adoption. However, the Tribunal noted that the Claimant only worked two days per week (on the Monday and the Tuesday) and so may not have been privy to all the steps that the Respondents were taking, and had taken, to mitigate the First Respondent's financial position, which included closing the business on a Friday (a day the Claimant was not present at work). The fact that the Claimant perceived the workplace as being busy when those steps had been implemented does not undermine the case presented by the First Respondent that the work available was

being concentrated into fewer days and there was a focus on developing new products to kickstart business. The Tribunal was not satisfied that the Claimant's perception, from her limited perspective, that the business was busy was not the equivalent of the business actually being as busy as it ever had been or an indicator that there was no need for redundancies.

36. During the course of the redundancy process, the First Respondent offered the Claimant a period of unpaid leave as a way of delaying the consideration of her redundancy and prolonging her employment, which the Claimant rejected. The Tribunal was satisfied that the Respondents did not realise that a period of unpaid leave would affect any statutory adoption payments sought by the Claimant. The fact that unpaid leave was offered during the redundancy process was not, in the Tribunal's view, an indication that there was a reason for redundancy which related to the adoption (as suggested by the Claimant). Rather it speaks to the financial position of the First Respondent and the need to cut the costs to enable the business to remain viable and a desire to retain the Claimant if possible.
37. The Claimant felt that the First Respondent accelerated the process of her redundancy when they found out about her potential adoption and in particular about the potential match date for the panel matching on the 11th July 2023. The Tribunal finds that was not the case. The original consultation, set out in the initial formal letter of 2nd May 2026 advising the Claimant that she her role was being considered for redundancy (Claimant's bundle page 691) indicated an original consultation period of two weeks. That was in fact was extended so that the dismissal did not take place until the 26th June 2023, almost 8 weeks later.
38. The Claimant's perception that the total consultation period was rushed was coloured by the number of things she was dealing with at that time (as set out at paragraph 6 above) and the fact that she wanted it to be slower to ensure that she became entitled to statutory adoption pay.
39. In fact, the contemporaneous documentary evidence, objectively viewed, is consistent with the evidence given by the Respondents' witnesses (and to some degree the Claimant's evidence as well) and shows that the First Respondent was willing to extend the process and to offer unpaid leave (as set out at paragraph 36 above) which the Claimant rejected and, ultimately, leave rather than pay in lieu of notice (as set out at paragraphs 43 and 113 below) to facilitate the Claimant achieving statutory adoption pay if at all possible within the timetable that the First Respondent was considering.
40. The Tribunal notes in particular that the First Respondent extended the redundancy consultation period (which had already run for 3 weeks and therefore exceeded its two week estimate) after receiving the social worker's letter of 24th May 2023 (Claimant's bundle 714) which evidenced a more positive linking between the Claimant and the child that she ultimately adopted. That letter set out the proposed panel match date of 11th July 2023. Consultation continued for over a further month after this letter so that the dismissal wasn't until the 26th June 2023 and, had the panel match date proceeded and a matching certificate been issued on or around this date, the Claimant's entitlement to statutory adoption pay would have arisen during her notice period.

41. There are other key indicators and documents which indicate that the Respondents in fact tried to assist the Claimant to obtain statutory adoption pay and that the adoption was not the reason for the dismissal (see paragraphs in respect of the redundancy pool below). This did not suggest to the Tribunal that the First respondent was in a position where it was making the Claimant redundant because of the proposed adoption or because it wished to avoid statutory adoption pay.
42. During the early redundancy process, the First Respondent offered to put the redundancy process on hold if the Claimant received a match certificate that would entitle her to statutory adoption pay. On an objective assessment the Respondents appeared to be working to try and ensure that the Claimant would receive statutory adoption pay not that she wouldn't. The Tribunal noted that letters to accountancy which contain various inquiries relating to the adoption pay situation were interpreted by the Claimant as ways to avoid paying statutory adoption pay whereas objectively considered the Tribunal concluded that these were merely inquiries to understand the position not to avoid it.
43. The Tribunal also noted that post-dismissal after initially intending to make payment in lieu of notice in accordance with the Claimant's contractual provisions the First Respondent changed its position and placed the Claimant on garden leave. That was only done to facilitate the Claimant to claim statutory adoption pay in the event that the match certificate was provided within the notice period and is yet another indicator to the Tribunal that it was not the potential adoption that was the reason for dismissal but that the real reason was the First Respondent's financial situation.
44. The Tribunal therefore found that there was a genuine redundancy situation and that redundancy was the reason for the Claimant's dismissal. That is consistent with the contemporaneous documents, including the dismissal letter, the earlier correspondence regarding redundancy, the cost saving measures implemented prior to the redundancy process, the information about the First Respondent's financial position and reducing orders, and the appeal discussion and reasoning.
45. Accordingly, the claim for automatic unfair dismissal must fail as the reason for the dismissal was not an automatically unfair reason related to family within s99 of the Employment Rights Act 1996.
46. Having determined the reason for dismissal was a potentially fair reason, the Tribunal had to go on and consider whether or not the respondent acted reasonably or unreasonably in all the circumstances in treating that as sufficient reason to dismiss the Claimant.

Fairness of the Dismissal

47. In considering whether the dismissal was procedurally fair and was within the range of reasonable responses of a reasonable employer, the Tribunal has to have regard to the First Respondent's size and administrative resources.
48. The Tribunal found that the First Respondent was a small business with no internal administrative support or human relations and with limited access

to external Human Resources support. At the time the redundancy process commenced in April 2023, the business comprised of the Second Respondent (the director and owner), Jo (the bookkeeper who subsequently took voluntary redundancy and remained on a limited ongoing basis on a freelance arrangement), the Claimant herself, two other individuals (Katie and Carla) plus some use of external freelancers by the names of Alex and Esther.

Steps prior to Redundancy Process

49. The Tribunal considered the First Respondent's redundancy policy (which starts at page 257 of the Respondents' bundle), The Tribunal accepted the Second Respondent's evidence as to the steps taken to prevent redundancies prior to the redundancy process commencing as there was no evidence to substantially contradict her evidence and it was partially supported by contemporaneous documentation.
50. The Tribunal found that the First Respondent took reasonable steps in accordance with the redundancy policy to try to avoid a redundancy situation prior to April 2023: it did not replace staff leavers; it accepted voluntary redundancy from Jo (bookkeeper); reduced freelance use to a minimum; and it considered other cost saving measures at an early opportunity both in March 2022 (Respondents' bundle page 221) and also in May 2022 (Respondents' bundle page 274) and had implemented all the measures set out in the May 2022 e-mail [274], including moving to a four day week in March 2023.

Redundancy Pool Selection and Consultation

51. The Respondents accept that the Claimant was considered in a pool of one at the time of the formal redundancy process whereas it is clear that prior to 26th April 2023 the First Respondent had previously considered of a wider redundancy pool.
52. On 24th January 2023 correspondence regarding potential redundancies between the Second Respondent and Kathryn Selvey (Respondents' bundle page 262), four people were being considered as a pool for redundancies and described as being part of a production team, namely: the Claimant, Carly, Katie, and Alice. Subsequently, the First Respondent's workforce materially changed. Alice left the business and there were also further departures in the form of Amy and Jo, the bookkeeper who offered voluntary redundancy and by the time the redundancy process concerning the Claimant started, was in the process of transitioning from employee to freelance (which finalised in May 2023).
53. The Claimant suggested that the redundancy pool was narrowed from 4 people to her alone after her disclosure on 26th April 2023 about the greater certainty of an imminent adoption. The Tribunal notes its previous comments about that letter at paragraph 34 above.
54. There is such limited evidence before the Tribunal in respect of the period from 24th January 2023 to 25th April 2023 that it is not possible for the

Tribunal to conclude precisely when the pool for production redundancy narrowed from the prospective pool of 4 set out in the 24th January 2023 documentation to the Claimant alone. There was no correspondence between 24th January 2023 and 25th April 2023 between the Respondents and the HR consultant, Ms Selvey, which assists to throw any light on how the pool was narrowed, when the pool was narrowed or when or how the pool of 1 was constructed. It is clear that 4 people did production work at the First Respondent. There was no documentation setting out the nature and scope of their roles and a lack of evidence as to precisely what roles were undertaken by the individuals working in production in early 2023 or how their roles differed from each other in terms of the skills required or the amount of time dedicated to each activity they undertook. The Tribunal was not satisfied that the Claimant's position within the business was truly and substantially unique from others working in production.

55. The Tribunal notes that the Claimant was not told that there was a redundancy pool of 1 (her alone) either in the 25th April 2023 initial discussion or in the formal letter issued on 2nd May 2023 and there is nothing in the redundancy script that was prepared in advance of the hearing the meeting on 25th April 2023 which assists. The Claimant's evidence is that she was told to keep the discussion confidential until the Second Respondent had spoken to other members of the workforce but there is no evidence that the Second Respondent ever did so, or that any other persons were consulted regarding potential redundancies in or around April 2023.
56. The Tribunal does not consider that any clear conclusions can be drawn from the Second Respondent's request that the discussion should be kept confidential or the contents of the discussion and concludes that it was equally consistent with the First Respondent having created a pool of one but nevertheless telling the whole workforce about the redundancy situation (which the Tribunal would expect a reasonable employer to do) as it is to having a greater initial pool who the Second Respondent wishes to speak to individually before the redundancies became public knowledge and then reducing it at a later stage.
57. The Tribunal also noted that by 25th April 2023, the Respondents knew that Katie would be going on maternity leave and would therefore become cost neutral to the business at a fixed point in the near future.
58. There is no evidence as to that was considered in detail before determining the selection pool which contained only the Claimant.
59. In particular, there is no contemporaneous material to indicate that the Respondents, or their HR adviser, looked at the particular job roles of the individuals who initially formed the pool of 4 and had a production role, or looked at their length of service, or anything else which justifies them considering the Claimant to be in a unique position. The only evidence comes from the limited oral evidence given by the Second Respondent at the hearing, not from the contemporaneous documentation or written witness evidence. She said that the pool of four had been created while they were the First Respondent was looking at multiple redundancies and the loss of the salaries from Amy and Alice meant that the First Respondent no longer needed to look at multiple redundancies by April 2023 and was

only looking for one redundancy, and so the scope of who they were looking at also narrowed. She also gave evidence which indicated that the Respondents perceived Carly as more useful to the business because she had skills in photography that the Claimant did not.

60. During the course of the Respondents' submissions the Tribunal was referred to the case of *Valimulla v Al-Khair Foundation [2023] EAT 131* which concerned the formulation of a pool of 1 for redundancy. The Tribunal considered carefully the conclusions of HHJ Katherine Tucker, who determined that case and noted in particular paragraphs 32 to 34 of the judgment. The Tribunal is required to scrutinize the First Respondent's approach and apply the litmus test of reasonableness to its process and decision making, considering whether the First Respondent genuinely applied their mind to the question of the pool from which employees should be selected and whether the pool selection was within the range of reasonable approaches open to the reasonable employer.
61. The First Respondent was required to keep an open mind, to consider a provisional proposal and conduct rational consultation on pool selection. The lack of any documentary evidence in support of the change from the pool of 4 to a pool of one is a disadvantage to the First Respondent in this case.
62. Taking all of the evidence, the Tribunal received into consideration, on the balance of probabilities the Tribunal concludes that there is no evidence at all that the pool narrowed after 24th April 2023 and that it was more likely than not that the Claimant was placed in a pool of one prior to the initial discussion with the Claimant on 24th April 2023.
63. The Tribunal is satisfied that any inconsistencies between the documents provided to the Claimant or the subject matter of e-mails which referred to "consultations" or "redundancies" (plural) after April 2023 (eg Respondents' bundle page 318) were a carryover error from the fact that the initial discussions and consultations with Ms Selvey took place substantially earlier at a time when multiple redundancies were being considered.
64. As set out above, the Tribunal is satisfied that the disclosure made by the Claimant on 26th April 2023 in relation to the prospective adoption did not really make it clear that the adoption was imminent or mention a formal link to the child and nothing indicated a definite or certain match or imminent adoption timeframe in a process that the Respondents had been aware of for over two years and did not therefore impact on pool composition.
65. However, the Tribunal finds that there was no genuine or meaningful consultation on pool selection. The Tribunal notes that the redundancy policy does not appear to suggest that there would be a consultation on pool selection whereas is clear from the case of *Valimullar*, and also from the ACAS guidance, that this is a necessary part of a fair redundancy process. *Valimullar* in particular requires meaningful consultation on pool selection and the involvement of employees throughout the redundancy process.
66. The Tribunal considers that no reasonable employer (even of the size and with the limited resources available to the First Respondent) would have failed to consider, and consult with, all three potential remaining candidates

from the pool of four identified in January 2023 (ie the Claimant, Carly and Katie) prior to finalising the redundancy pool and placing the Claimant in a pool of one but there is no evidence whatsoever that that in fact occurred.

67. In relation to the post-pool selection consultation, the Tribunal notes that the First Respondent substantially extended the consultation period as set out above and that a number of meetings and correspondence by e-mail took place with the Claimant.
68. The first meeting on 24th April 2023 warned of the possibility of redundancy. The second meeting on 2nd May 2023, followed up by formal letter, warned the Claimant specifically that her role was at risk, there was a further meeting on 9th May 2023 when it was identified that she was in a pool of one was identified and there were various discussions about alternatives to redundancy which took place between 11th May 2023 and the next formal consultation meeting on 6th June 2023.
69. There was a detailed e-mail chain between the First Respondent and the Claimant including a letter on 4th June 2023 setting out that the meeting on 6th June 2023 would be the next and final consultation meeting and there was further e-mail traffic after the meeting on 6th June 2023 between the Claimant and the Second Respondent.
70. Notwithstanding the indication in the letter of 4th June 2023, there is clear evidence of the First Respondent's attempts to contact the Claimant subsequently to arrange a further consultation meeting, which ultimately proved unsuccessful and did not take place. The Tribunal noted that the Second Respondent phoned the Claimant at least twice including once when the Claimant was on her annual leave on 16th June 2023 and that a meeting had been planned for the following Monday but then the Claimant was off sick on the planned date and the meeting did not happen.
71. There was a final consultation which took place by e-mail. The Respondents' e-mailed the Claimant on 19th June 2023 and the Claimant responded the same night although she had in fact been given a longer period until 21st June 2023 at noon to respond.
72. The Tribunal considered that not all employers would have proceeded to make the determination on the dismissal without the proposed final meeting taking place, particularly as the attempts to arrange that final meeting had failed (both due to failed phone calls on a day that the Claimant was not usually at work and was in fact on annual leave) and also because the final scheduled meeting couldn't happen due to the Claimant being off sick. However, the Tribunal considered that there had been extended and extensive consultation prior to that point, the First Respondent had extended the process already and on balance, it was not able to conclude that it was outside the range of reasonable responses, given the size and resources of this business, to proceed to make a final determination without the proposed final consultation meeting and at the time that it did, after an extended consultation period.
73. The Tribunal also notes that the opportunity for appeal was afforded to the Claimant, and ultimately taken up, and that was partially successfully. Whilst it did not change the substantive outcome, the original indication that

the Claimant would be paid in lieu of notice was amended to the Claimant being put on gardening leave during the period of notice.

74. the claimants match panel date was delayed by matters outside of the respondents control and the tribunal is satisfied that it was not outside the range of reasonable responses to proceed to dismissal after the extended consultation. Without waiting for a further period at cost to the business to see whether the certainty regarding the adoption that the claimant hoped for in fact materialised the unpaid leave to extend the period and delay redundancy decision before the redundancy decision was taken
75. The Tribunal also noted that nothing that was raised either through the appeal or during these Tribunal proceedings suggests to the Tribunal that further consultation would have resulted in a different outcome.
76. The First Respondent's failure to consult on pool selection and the placing of the Claimant in a pool of one notwithstanding that she was not the only employee undertaking a production role rendered her dismissal procedurally and substantively unfair.

Prospects of Dismissal following a fair process

77. The Respondents' mind was closed as to the pool selection. The wider pool had been considered in January 2023 and the identity of the redundancy target was production work. The Tribunal does not consider that was outside of the range of reasonable responses.
78. Limited job descriptions for those involved in production were available. The Tribunal had evidence only of the Claimant's job description from 2011 and Carly's job description dating from 2014. There was clear evidence from both the Claimant and from the job description from 2011 that, historically at least, the Claimant's role was quite a wide one. There was limited evidence as to how it had narrowed over time but the Second Respondent's clear evidence, which wasn't really disputed by the Claimant, was that in the last few years of the Claimant's employment she was primarily undertaking 2 dimensional production comprising cards and framing. This was something that the Second Respondent herself could do. Her evidence was that in contrast, Carly was primarily undertaking 3D production in photography (which is confirmed by her job description from 2014) and which the Second Respondent said she was unable to do herself.
79. The Tribunal accepted that the Claimant may have had relevant skills to undertake some of the 3D work, but that she was not doing so to the extent and to the level of Carly who was doing it routinely during the early part of 2023. The Tribunal also accepted that the product line developed and evolved over time and that whilst the Claimant could potentially have been trained to make the 3D products then offered. It was apparent from the Claimant's CV that she had relevant background experience and skills to produce the 3D products that the First Respondent required producing. However, particularly in a business of this size, the Tribunal concluded that it was not outside the range of reasonable responses for the First Respondent to decide to terminate the Claimant's employment as a person who did not have the current skills and experience on particular products, in favour of retaining the person who primarily produced those products

when the Claimant's work could be absorbed by the remaining workers more easily, including by the Second Respondent.

80. Having considered all the material available to it, the Tribunal concluded that even if a meaningful consultation on pool selection taken place, and had even if the Claimant, Carly, and Katie had all been placed into a selection pool, on the balance of probabilities the outcome, namely the Claimant being selected for redundancy, would have been the same.
81. The Tribunal reached this conclusion after considering and applying the selection criteria in the First Respondent's own redundancy policy to the three individuals who would have been placed in a wider pool had it not been limited to the Claimant on the basis of the evidence that it heard.
82. The Tribunal noted that whilst there was no evidence to enable the Tribunal to make a comparative on most of the criteria in the selection list, there were three key, and probably most important, criteria where the Tribunal did have evidence and information to compare the three potential candidates. Those were: the relevant knowledge and skills; the relevant qualifications; and the length of service.
83. The Tribunal considered that the First Respondent would have taken employee status as the basis for length of service. The Tribunal noted that Carly had substantially longer continuous employment service than the Claimant, although the Claimant had a longer work history taking into count her freelancing period. Katie had only three months less continuous employment service than the Claimant had as an employee, but as previously noted, by August 2023 she would be going onto maternity leave and would essentially become cost neutral to the business, offering the business some breathing space without the need to go through a redundancy process in respect specifically of Katie.
84. Further, and perhaps more importantly, both Carly and Katie had distinct roles beyond merely production and they each had specific qualifications which the Respondents considered valuable and necessary to the operation for business. In particular, in relation to Carly she undertook both the photography and the 3D production, and in relation to Katie she undertook the digital design. The Tribunal was satisfied on the evidence that each of these elements formed a significant part of their job roles.
85. Although the Tribunal considered that the First Respondent did not appear to have looked at the possibility of moving Carla to part time working in order to retain the Claimant, given the size of the company and its limited resources the Tribunal was unable to conclude that it was outside of the range of reasonable responses for the First Respondent to discount this possibility.
86. It is not for this Tribunal to substitute its own view as to who should have been made redundant, but merely to assess whether or not the First Respondent's views fell within the range of reasonable responses. The Tribunal noted that Katie was pregnant at the time of the redundancy process and was therefore provided with legal protections in relation to her pregnancy, whereas the Claimant was not similarly protected unless and until the adoption match certificate was provided. This was not in fact

produced until substantially after the redundancy process had concluded. The Tribunal therefore concluded that, on the balance of probabilities, had there been a fair selection process and proper consultation on the pool, the outcome of the redundancy process would nevertheless have been the same, namely that the Claimant would have been made redundant.

87. The Tribunal also looked also at whether or not the First Respondent had taken any reasonable steps either to find suitable alternative employment for the Claimant or to avoid the redundancy position and is satisfied that there were no alternative roles or vacancies available within the First Respondent's business. It was also satisfied, for the reasons set out above, that there were no practical alternatives to making the Claimant redundant. Although the Claimant suggested an alternative, namely that the remaining freelancers not be used and that she remain as an employee and take on their work, the Tribunal is satisfied that by the time the redundancy process commenced, the freelancers had been scaled back so that their use was limited to skills which no one else in the business, including the Claimant, possessed. Specifically, those skills included digital marketing design and commerce. The Tribunal concluded that in the circumstances, it was not outside of the range of reasonable responses for the First Respondent to decide that retaining the Claimant and asking her to undertake the work being done by those freelancers was not a viable solution.
88. In conclusion, the Tribunal was satisfied on the balance of probabilities that there were no genuine alternatives to the Claimant's redundancy. The only potentially viable alternative would have been to delay the decision on redundancy until the Claimant had an adoption match certificate and could be placed on adoption leave on the cost neutral statutory adoption pay, thus deferring any determination as to whether or not she was redundant until that leave came to an end and affording an opportunity for the business to grow sufficiently to sustain her employment in the meantime. The Tribunal were all satisfied that the First Respondent would have done that if the match certificate had been received or was clearly due to be received within a time frame that matched the extended consultation.
89. However, the Claimants match panel date was delayed by matters outside of the Respondents' control. The Tribunal was satisfied that it was not outside the range of reasonable responses to proceed to dismissal after the extended consultation without waiting for a further period to see whether the certainty regarding the adoption that the Claimant hoped for in fact materialised. Further delay would have been at cost to the business and the unpaid leave offered to the Claimant to extend the period and delay the redundancy decision had been rejected by the Claimant when she realized that it would affect the amount of any statutory adoption pay she would otherwise be entitled to.
90. The Tribunal therefore considered whether, had the First Respondent consulted on the selection pool and correctly identified those persons who the Tribunal considers should have been placed in the redundancy pool, the duration of the consultation period would have been extended.
91. On the balance of probabilities, the Tribunal concluded that even if full there had been full consultation, given the already extended consultation period

from two weeks to almost eight weeks, consultation in relation to pool selection and then selection from within a larger pool would have taken place over approximately the same period of time. The size of the First Respondent's business and the number of redundancies did not meet the threshold for collective consultation. The Tribunal considered that the consultation period was generous and consultations with additional individuals would have run in parallel. Accordingly, the Tribunal concluded that even if the full consultation had taken place in respect of pool selection and even had the pool consisted of a greater number of people than merely the Claimant, the decision to make the Claimant redundant would not have taken place later than the date it in fact occurred.

92. Drawing all the points relevant to the ordinary unfair dismissal claim together, the Tribunal found that the First Respondent had adopted an unfair process and that the dismissal itself was therefore unfair. The Claimant will therefore be entitled to a basic award. However, on the balance probabilities the dismissal would have occurred in any event within the same time frame so the compensation element of the unfair dismissal award will be reduced under the *Polkey* principles by 100% to reflect the Tribunal's findings and there will be no compensation award.

Discrimination Claims Generally

93. The Claimant brings claims of sex discrimination. She is female and the protected characteristics she relies upon as the basis of her claim is her sex. Nevertheless, it became clear throughout these proceedings that predominantly her complaints about discrimination related not directly to her sex but in large part to the adoption that she was a major factor in her life at that time. The Tribunal noted that adoption itself is not a protected characteristic and cannot found the basis of a claim for discrimination. On the case as brought, the Claimant compares herself with people who are male.

Direct Discrimination

94. The Tribunal first considered the things on the list of issues that the Respondents were said to have done in respect of the direct sex discrimination claim.
95. The Tribunal noted that the Respondents generally denied that these matters occurred in the Response to the claims and in their witness evidence but the majority, if not all, of the allegations were not expressly put to or explored in cross examination with the Second Respondent despite the Claimant being prompted at least twice by the Tribunal to address those matters on the list of issues. The Tribunal therefore had to determine the question of whether or not those events occurred based solely on the documentary evidence, the Claimant's evidence and the Respondents' general denial.

Re 27th April 2023: confirmed the Claimant had been selected for redundancy, was in the role of "production" and was in a pool of one

96. For the reasons set out above, the Tribunal does not consider that the evidence indicates that the date of the 27th of April 2023 identified by the

Claimant is correct and found that the pool of one was first formulated by the First Respondent before 24th April 2023 and first informed to the Claimant on 9th June 2023. Save for these details, it is accepted by all parties that the Respondents did in fact select and place the Claimant in a pool of one for redundancy after identifying that her role was production.

Re 2nd May 2023: Second Respondent told the Claimant the First Respondent did not want to pay statutory adoption pay, that her part-time wage was causing financial difficulty and suggested the claimant take a period of unpaid leave

97. Although the Claimant's witness statement contains provisions which support her assertion that the Second Respondent told the Claimant that the First Respondent did not want to pay statutory adoption pay, there is no documentary evidence that supports this allegation. The Tribunal found the Second Respondent's oral evidence that she would not have said this to be compelling. Her oral evidence is consistent with the Respondents' position set out in the documentary evidence from the time which shows that they informed the Claimant about statutory adoption pay as early as May 2022 and that they were in fact willing to pay statutory adoption pay in 2023 and stop the redundancy process if in fact the match certificate (the document required by HMRC for statutory adoption pay to become payable) was available. The most contemporaneous documentation generated by the Claimant, for example the letter which appears at the Claimant's bundle page 739, does not specifically mention this allegation and whilst her appeal request (Respondents bundle page 331) does mention it, it appears to be an interpretation of the Claimant rather than a direct statement from the Second Respondent. That interpretation is not consistent with other documented comments and actions of the Respondents discussed above under consideration of the dismissal, such as the move from PILON to gardening leave and the Respondents' e-mails regarding the timetable and willingness to pay statutory adoption pay which appear in the Respondents' bundle at pages 304 and 425.

98. The Tribunal considers it is likely that there was discussion about other people's maternity leave including Katie around the time of the redundancy and that it is quite possible that the Second Respondent made comments about the requirements and the occasional difficulties of administering maternity pay. This, together with the Respondents' repeated requests for formal documentation of the adoption match (the match certificate), which the Claimant did not have, the Claimant interpreted to be an expressed reluctance to acknowledge the imminence of her adoption and therefore as a reluctance to pay the statutory option pay. However, as set out above, the Tribunal found that the Claimant was unable to see evidence that points contrary to her own narrative and is focused solely on those things which she perceived as negative indicators relating to the adoption.

99. The Tribunal concluded that on the balance of probabilities, the Claimant misunderstood comments made by the Second Respondent and that there was no express indication by the Second Respondent that the business did not want to pay statutory adoption pay.

100. The Claimant also asserts that she was told by the Second Respondent that it was her part-time wage that was causing the First Respondent's financial difficulties. This is covered by the Claimant's witness

statement but not expressly put to the Second Respondent.

101. There are some contemporaneous documents which support for the Claimants case, namely the Claimant's own appeal letter (Respondents bundle 331) but there is no other documentary evidence in support beyond what is contained in the Claimant's own generated documents. The Claimant is unable to give the very specific words that were said. The Tribunal considers it possible that there was a discussion as to the Claimant's part-time working, her high rate of pay and a link to the financial difficulties of the First Respondent during the redundancy discussions, but the Tribunal notes that the Claimants interpretation of events is frequently coloured by her perception and is not always objectively accurate. Taking all the evidence together the Tribunal was not satisfied on the balance of probabilities that the Second Respondent said precisely what the Claimant describes or in the manner described in relation to her part-time wage.

102. All parties and the documentary evidence agree that the Respondents suggested a period of unpaid leave to the Claimant during the course of the redundancy process. Documents also show that the Claimant herself also suggested it in the early stages of the redundancy consultation process. The Tribunal is satisfied however that this was an attempt to assist the Claimant and not an attempt to avoid paying statutory adoption pay. In fact it was an attempt to avoid or delay the redundancy and facilitate her entitlement to statutory adoption pay. It did not materialise as the Claimant did not want unpaid leave when she realised that it would have an impact on the amount of any statutory adoption pay. Although the Claimant sought to criticise the Respondents for not having established that it would have such an impact before offering it, the Tribunal does not accept that was a valid criticism. The onus was not on the Respondents to explore the implications of offering unpaid leave, the onus was on the First Respondent to explore alternatives to redundancy.

Re 9th May 2023: Second Respondent doubted there was an upcoming adoption and said she thought the Claimant had fabricated it

103. By 9th May 2023, the Respondents had been aware of the adoption process for at least a couple of years and, prior to the letter of 26th April 2023 sent by the Claimant they had no indication that it was reaching any conclusion. As set out above, the Claimant's letter of 26th April 2023 referred to the possible forthcoming adoption in very cautious and uncertain terms using terms such as "such early days" and "by no means a done deal". At 9th May 2023 the Respondents had not received the social workers confirmation letter or any of the formal documents supporting the likely match and the Tribunal noted that on 11th May 2023, two days after this comment was allegedly made, the Respondent wrote to the Claimant a long list of things that they could do to try to support the adoption (Respondents bundle page 308).

104. Taking all of this together the Tribunal was not satisfied on the balance probabilities that what is alleged was said was precisely what was in fact said. Whilst the Tribunal does not consider the Claimant gave intentionally dishonest evidence, her perception of the Respondents position was likely coloured by their requests for documentation to evidence the adoption and the uncertainty about the timeframes and the process that

the Respondents may have been expressing and finds that the Claimant misinterpreted the actual conversation that took place and failed to perceive that any expressed uncertainty merely mirrored the uncertainty she herself had expressed in her correspondence of 26th April 2023.

Re a working day in May: Second Respondent asked the Claimant if she would qualify for statutory adoption pay with another employer

105. This allegation is covered by the Claimant's witness statement in paragraphs 400 and 420. The tribunal found it more likely not that there was a conversation along these lines but it cannot be satisfied as to the precise wording or when it occurred. The Second Respondent knew that the claimant was, or had been, employed elsewhere in addition to her employment with the First Respondent. However the Tribunal noted that the Claimant perceived any inquiries or comments about this as the First Respondent seeking to avoid paying statutory adoption pay and as a negative dismissive or hostile comment whereas the Tribunal considers that if the words were said as the Claimant alleges, that it was because the Second Respondent sought to help or reassure the Claimant that she may still be entitled to maternity pay and/or to satisfy the Respondents that the actions being taken to save the business would not leave the Claimant wholly high and dry.

Re 6th June 2023: Second Respondent doubted the adoption was going ahead/Claimant was telling the truth, told the Claimant she chose to adopt and be a single mother, to ask her father for money and that not making her redundant would discriminate against staff who were not about to adopt

106. There is some support for these allegation the Second Respondent doubt that the adoption was going ahead from contemporaneous documents, namely the claimants letter of 7th June 2023 (Claimant's bundle page 739). The Tribunal noted that by 6th June 2026 the Respondents had received the social workers letter confirming the proposed match and panel match date but notes it comments at paragraphs 103 and 104 above.

107. The Tribunal is satisfied on the balance of probabilities that there was some discussion about the probabilities of the adoption going ahead and that such discussion took place in the context of the time frame of the First Respondent's redundancy consultation process. The Tribunal found that the Claimant's own letter of 26th April 2023 and indeed the social worker's subsequent letter provided a degree of mixed messaging regarding the certainty of the process from the stage that it was at that point in time.

108. The Tribunal was not satisfied that what the Second Respondent said was that she doubted the adoption itself would go ahead, or that the Claimant was telling the truth but find that she may have expressed concern about whether or not an adoption would take place during the time frame specified by the First Respondent for consultation during the redundancy process.

109. The allegation that the Second Respondent told the Claimant that she had chosen to adopt and to be a single mother is not an allegation which is included in the Claimant's correspondence of 7th June 2023 and there is

no other contemporaneous evidence that it occurred. It was not put directly to the second Respondent in cross-examination and she hasn't had a formal opportunity to respond to them in detail in her oral evidence. The Tribunal is not satisfied that those words were said. The Claimant's recollections are not always precise and they are coloured by her interpretation of words said. Throughout these proceedings the Tribunal examples of her misunderstanding as a result of the lens through which she perceives all matters related to the adoption.

110. The Tribunal also considered whether the Second Respondent told the Claimant to ask her father for money to help whilst on adoption leave and that not making her redundant would be a discrimination against staff members who were not about to adopt a child. These allegations are not included in the documentation of the Claimant from 7th June 2023, which is the most contemporaneous document in which she made assertions as to the Respondents' conduct and the comment regarding discrimination against other staff members is not substantiated in the Claimant's witness statement. For these reasons, the Tribunal is not satisfied on the balance of probabilities that these comments were made by the Second Respondent.

Re 16th June 2023: tried to contact the Claimant by phone twice whilst the Claimant was on annual leave

111. The Tribunal noted the document at the Claimant's bundle page 746 and the Respondents' e-mails before 16th June 2023 regarding contact, and that of 19th June 2023 which says that the Second Respondent called on 16th June 2023 to discuss redundancy (Respondents' bundle page 324). The Tribunal is therefore satisfied that the Second Respondent did call the Claimant on 16th June 2023. However, the Tribunal noted that it was not clear from the evidence it received whether the Second Respondent knew that the Claimant was on holiday. 16th June 2023 was not a working day for the Claimant with the First Respondent and the Claimant would not have had to book that day off as annual leave. The Tribunal was not satisfied that the reason for the contact was to make it appear that the Respondents were engaging in a consultation process. The Tribunal finds that it was a real, if misguided, attempt to engage in final consultation on redundancy having regard to the contents of the e-mail, the history of consultation and the subsequent e-mail correspondence which I've already referred to in previous discussions about the consultation process. It was misguided because such discussions should more appropriately have taken during the Claimant's working time with the First Respondent.

Re 19th June 2023: e-mailed a final option of consultation in writing and required an immediate response whilst the Claimant was on leave

112. The e-mail referred to is within the Respondents' bundle at page 324. It was sent at 7:36pm. It offered a final option of doing the final redundancy consultation meeting in writing but it did not require an immediate response. It required a response by 12 noon on 21st June 2023 to a number of questions it raised and it also advised the decision would be made in the absence of response if there was no response and on the basis of previous consultation. It effectively afforded the Claimant a day and a half to respond, which the Tribunal found was not a generous amount of time, but the Claimant did in fact respond substantively on the same evening (19th June

2023) at 10:14pm and that response appears in the Respondents bundle at page 325. The Tribunal accepts the allegation in part but does not find that the motivation alleged or the requirement for an immediate response is made out.

Re 26th June 2023: dismissed the Claimant with immediate effect to avoid paying statutory adoption pay

113. The Tribunal agrees that the Claimant was dismissed and initially that she was dismissed with immediate effect. That is not in issue between the parties. The letter of dismissal is dated 26th June 2023 (Respondents' bundle page 328). It indicates an immediate dismissal with payment in lieu of notice ("PILON"). The First Respondent was entitled to make payment in lieu of notice under the terms of the Claimant's employment contract. To that extent that allegation is found proved. However, the Tribunal was not satisfied that PILON was done to avoid statutory adoption pay. There is no evidence to support that allegation. Once it was raised by the Claimant during the appeal that the PILON affected her potential entitlement to statutory adoption pay the First Respondent immediately reverted to a period of notice to be undertaken on gardening leave rather than PILON. That is not consistent with an attempt to evade the paying of statutory adoption pay. Further, it is not clear whether on 26th June 2026 the Respondents knew that the panel date for the Claimant's match panel had been moved from its earlier date of 11th June and the Tribunal notes that had it not been moved the change from gardening leave to PILON would have meant that the Claimant was in fact entitled potentially entitled to statutory adoption pay had the match certificate been issued on that day or shortly thereafter. The Tribunal finds that the Respondents were focused on whether or not the First Respondent needed the Claimant to attend work or not during the period, not on the impact on her eligibility for statutory adoption pay when considering whether or not to make PILON in the first instance.

Between April and July 2023: carried out a rushed and predetermined redundancy procedure with the intention of dismissing the Claimant

114. For the reasons already set out above in respect of the unfair dismissal claims, the Tribunal was not satisfied that objectively the redundancy consultation process was rushed but accepts that it may have felt so to the claimant, particularly given what was at stake for her. This was a small business with a small workforce and limited options. The two week formal consultation starting on 2nd May 2023 after the Claimant had already been warned of the potential for redundancies on 24th April 2023 was subsequently expanded to just under eight weeks and termination did not in fact take place until 26th June 2023.

115. Falso for the reasons set out above, the Tribunal considered that the outcome may have been virtually inevitable from the outset given the financial position of the business but it was satisfied that attempts were made to explore alternatives during the consultation process and that the outcome was not predetermined. There were however no viable alternatives that were identified during consultation. The number of meetings, the correspondence referring to alternatives, the discussion of unpaid leave and the discussion of the willingness to halt the redundancy process if the

Claimant became eligible for statutory adoption pay through receipt of the matching certificate all support the Tribunal's conclusion.

Less Favourable Treatment Because of Sex

116. In respect of those allegations that the Tribunal found proved in respect of the Respondents' conduct the Tribunal went on to consider whether or not they amounted to less favourable treatment of the Claimant. The Tribunal concluded that those matters which it was satisfied occurred could amount to less favourable treatment of the Claimant and noted that this is a relatively low threshold.
117. In order for the Claimant's direct discrimination claims to succeed, the Claimant would also have to satisfy the Tribunal that the less favourable treatment was because of the Claimant's sex.
118. The workforce of the First Respondent was all female and there was no-one in the same position as the Claimant in all material aspects other than her sex. The Tribunal was therefore required to consider a hypothetical comparator and considered that the appropriate comparator was a sole male adopter. The Claimant accepted this.
119. The Tribunal was not satisfied that a male solo adopter would have been treated any differently to the Claimant in the circumstances. The Tribunal noted that it heard no evidence that any of the Respondents' actions that were found to have been proved on the balance of probabilities related to her sex rather than her status as an adopter (which is not a protected characteristic).
120. The Claimant's case appeared to be that because she was a solo female adopter and the majority of solo adopters are female therefore anything which impacted her as a solo female adopter was related to her sex. The Claimant produced some very limited statistics on the frequency of solo female adopters but the Tribunal was unable to accept her line of argument. The Tribunal noted that her argument did not take into account the formulation of the hypothetical comparator. There was simply no evidence from which the Tribunal could conclude that a male solo adopter would have been likely to have been treated any differently.
121. Consequently, the Tribunal was not satisfied that in the absence of any other explanation any reasonable tribunal could properly conclude on the balance of probabilities that the reason for the Respondents' proven conduct was the Claimant's sex. The Claimant's claims for direct discrimination must therefore fail.

Indirect Discrimination Claim

122. The PCP was formulated so that the question for the Tribunal to determine was whether or not the Respondents had hostility towards an employee who was adopting. The Tribunal's conclusion is that there was no hostility towards adoption.
123. In reaching this conclusion the Tribunal relied predominantly on the documentary evidence. In particular the Tribunal noted the letter from the

First Respondent to the Claimant in May 2022 (Claimant's bundle page 710) when the First Respondent sent information on statutory adoption pay and leave. The Tribunal found that this was not consistent with hostility to adoption.

124. The Tribunal also relied on the Respondents' offer during the redundancy process, and particularly at an early stage, to halt the redundancy process if provided with a match certificate to enable them to be satisfied that the Claimant was entitled to statutory adoption pay.

125. The Claimant asked the Tribunal to consider correspondence from the Respondents dated 27th April 2023 (page 304 Respondents bundle) where the Respondents appears to be making a comparison between the Claimant's early adoption match stages (where there had been a linking but not a match certificate) as comparable to somebody trying for a baby. The Claimant found this to be offensive and to trivialise her adoption journey. That in part is because it is clear that she considered the early stages of linking more akin to the early stages of actual pregnancy. However, in law the Respondents are essentially correct. There is no protection for adoption at the link stage whereas protection for pregnancy commences at conception.

126. Overall, the Tribunal considered that the Respondents' e-mails provided in the contemporaneous documentary evidence showed a positive reaction to the adoption rather than hostility. The Tribunal noted that in the same e-mail the Claimant complained of dated 27th April 2023, there is reference to the flip side of the adoption, namely that if the match certificate could be provided within weeks then the Respondents could compromise the redundancy process and place the Claimant on statutory adoption pay rather than pursuing the redundancy.

127. The Tribunal also noted the Respondents' e-mail correspondence of 11th May 2023 offering unpaid leave to defer the redundancy process and hopefully to enable the Claimant to become entitled to statutory adoption pay before it concluded (Respondents' bundle 308 to 309) but noted that the e-mail also confirmed that they couldn't guarantee a return to work after any such unpaid leave. The Tribunal found that the sentiment in that correspondence was essentially supportive of adoption and was an attempt to facilitate the Claimants entitlement to statutory adoption pay within the context of what the business could afford.

128. Much of the Claimant's evidence in relation to the PCP and the hostility related more generally to allegations about the Respondents (particularly the Second Respondent's) expectations of the workforce and in particular mothers within the workforce but did not distinguish between adoptive mothers (of which there were none at the relevant times) and natural mothers.

129. The Tribunal does not make any findings that there was a poor workplace culture in relation to balancing demands of the business and the demands of motherhood but was unable to conclude on the balance of probabilities that even if there was, that it amounted to a hostility to adoption.

130. The Tribunal found that the Claimant's perception of hostility was

grounded in her perception that the redundancy process and the redundancy itself threatened her adoption process as a possible change in her circumstances and also placed her in a position of financial instability if she didn't receive statutory adoption pay. Anything that interfered with or risked the failure of the adoption process was, in her perception and understandably so, unfair.

131. The most analogous situation to adoption that occurred in the First Respondent's workplace was maternity. The evidence received by the Tribunal included that a number of employees between 2011 and 26th June 2023 took maternity leave but there was no credible and reliable evidence that there was any resistance from the Respondents to any individual taking maternity leave.

132. The Tribunal found that there was no PCP of hostility to adoption, and that even if there had been such a PCP it was not in fact applied to the Claimant.

133. Even if the Tribunal is wrong about that, there was no evidence from which the Tribunal could conclude that such a PCP would not have been applied equally to male adopters or that the a PCP of hostility towards adoption placed women at a particular disadvantage.

134. The PCP as framed by the Claimant relates to adoption, not only solo adoption. Further, she relied primarily on hostility towards paying statutory adoption pay in support of the PCP. Such hostility, if established, is not sex specific. Any employee adopter, whether male or female, solo or partnered, would be entitled to statutory adoption pay on receipt of a match certificate.

135. The Claimant produced some statistics in her bundle in relation to the frequency of sole female adoption but the Tribunal did not consider that these statistics assisted it to determine whether the alleged PCP would have placed women at a particular disadvantage. The Tribunal noted that adopters may be male or female and that there are both gay and straight adopters and solo and partnered adopters. A PCP relating to adoption as a whole or entitlement to statutory adoption pay is not sex specific.

136. As the Tribunal concluded that the Claimant was not in fact put at a disadvantage because there wasn't a PCP, and that any PCP wasn't in fact applied to her and would not in any event have related to a protected characteristic, the Tribunal did not need to go on and consider whether or not the PCP was a proportionate means of achieving a legitimate aim.

137. For the reasons set out, the Claimants claim for indirect discrimination must fail and will be dismissed.

Conclusions and Remedy

138. The only claim that the Claimant has succeeded on is the ordinary unfair dismissal claim. The Claimant is entitled to a basic award but as the Tribunal found that the Claimant would have been dismissed for redundancy in any event within the same timeframe, for the reasons set out above it determined that no compensation element is payable in respect of the claim.

139. Remedy therefore required a straightforward calculation of the basic award only and the parties were consulted on the amount of the same and agreed the following based on the Tribunal's findings as to the Claimant's gross pay as set out above and agreement that the Claimant was over the age of 41 years at all times since the commencement of her continuous employment service in October 2019:

Multiplier: 3 (years continuous service) x 1.5 (multiplier for Claimant's age)
= 4.5

Gross pay: £975 per month, equivalent to £225 per week

Basic Award: 4.5 x £225 = £1,012.50

140. Judgment was therefore given for the basic award in the total sum of £1,012.50.

Approved by:

**Employment Judge
L Clarke**

29th July 2026

**SENT TO THE PARTIES ON
30th July 2026**

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FOR THE TRIBUNAL OFFICE

Notes

Written full reasons will not be provided unless requested by any party by a written request received by the Tribunal within 14 days of the sending of the written summary reasons.

All judgments (apart from judgments under Rule 51) and any written full reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

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

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/