

disclosure that follows by both parties was carried out on the basis of the order. Until this hearing the Respondent has not disputed the contents of the annex to the order. The concession made stands and the Respondent was refused permission to withdraw the concession of like work with the comparator for the whole of the relevant period.

4. The issues in the case were correctly set out in that annexe and are as follows:
 1. Miss Greenwood claims Equal Pay for like work with a comparator Mr Chris Andrews. She alleges that she and Mr Andrews were employed on like work (within section 65(2) of the Equality Act 2010) (EqA) for the period from 1 February 2009 (when Miss Greenwood's training period ended) to the date of the presentation of this claim on 1 September 2016. She claims compensation for failure to pay basic salary as modified by the Equality Clause throughout the relevant period. Although any claim would have to be limited to the maximum six year period provided by statute.
 2. The Respondent accepts that Mr Andrews is a comparator falling within section 79(3) or subsection 4 of the Equality Act. He was employed on "like work" for the relevant period.
 3. The Respondent says that the difference between Miss Greenwood's basic salary and that of Mr Andrews was because of a material factor that did not involve treating Miss Greenwood less favourably because of her sex and did not put women at a particular disadvantage when compared with men. It alleges that Mr Andrews was paid more than Miss Greenwood because he originally worked at the Manchester depots where staff, whether male or female, worked longer hours in a busier environment than at the Leeds depot) and are therefore paid a higher salary. When the Respondent transferred Mr Andrews to the Leeds depot it maintained his salary in order to dissuade him from resigning.
 4. In order to facilitate the settlement of the claim the Tribunal made Orders requiring the company to disclose the basic salary and sex of those individuals working as rental clerks in Manchester (whether in the van and lorry section in which Mr Andrews originally worked or in the car and minibus section) and Leeds in the relevant period.
5. Those statistics were produced for the Tribunal and are at pages 55 and 56 in the bundle.
6. At this hearing the Tribunal heard evidence for the Respondent from Mrs Graziella Bacci. She is the HR director with overall responsibility for all employee and human resource issues and from Mr Alessandro Bacci who is the director with overall day to day responsibility for the running of the company. We also heard evidence for the Claimant from the Claimant and we saw documents from an agreed bundle of documents. From the evidence we saw and heard we made the following findings of fact.
7. The Respondent is a vehicle rental company offering self drive van and car hire services including contract hire, fleet and specialist vehicles.
8. The Respondent has depots in Manchester and Leeds for van rental and car hire. In Manchester it employs approximately 140 employees: 128 employees

at the head office and van department and 12 in the car department. It has 32 employees in the Leeds branch. Mrs Bacci explained that the Leeds rental desk is a smaller operation and not as busy as the van rental desk in Manchester. Whilst the Leeds depot deals with approximately 720 vehicles (including vans and cars) the Manchester van depot deals with approximately 4,550 vehicles (not including contract vehicles). Whilst both depots operate garages, the Leeds garage is fairly small. It operates on days only with approximately 10 mechanics. By contrast the Manchester garage operates for 24 hours with approximately 30 mechanics on the day shift alone.

9. All of the staff on the Leeds desk (including the Claimant), work on a shift pattern of four days on and four days on. In contrast the Manchester van staff work a more intensive shift rota worker longer shifts than Leeds. Manchester van staff work Monday to Friday every week, alternative Saturdays and one Sunday in every six weeks. Sometimes the intensive nature of their shift pattern means they can work 12 days continuously and this can happen two or three times a year. By contrast Leeds staff only work four days on four days off.
10. The Claimant was employed as a rental desk clerk at Leeds since 20 October 2008. For the purpose of her claim the relevant period for comparison is February 2009 to September 2016, although any claim for equal pay would be limited to back to back pay for six years only.
11. The Claimant's contract of employment was at pages 43 to 53 in the bundle. Her job title is counter rental clerk based at Leeds. The contract refers to a schedule which says that the Claimant can be required to work at the 'other' location (Manchester) but in practice this did not happen.
12. The Claimant relies on a comparator, Christopher Andrews (CA) for the purposes of her claim. He was also employed as a counter rental clerk located in Manchester. He had the same standard contract of employment as the Claimant but for him, the 'other' location where he could be required to work was 'Leeds'.
13. The Respondent concedes that the Claimant and her comparator were performing 'like work' for the whole of the relevant period (February 2009 to September 2016) and that for the whole of the relevant period Christopher Andrews was paid more than the Claimant. Mr Andrews left the Respondent's employment in September 2016.
14. The question for the Tribunal to decide was whether the reason for the difference in the pay of Christopher Andrews and the Claimant was tainted by direct or indirect sex discrimination or was because of a material factor that did not involve sex discrimination. If it was indirectly discriminatory then and only then would the Respondent have to justify the pay disparity. The law is set out in section 69 of the Equality Act 2010 and has been correctly stated by Ms Gould in her closing submissions and is summarised in the annex of issues identified by Employment Judge Cox and set out at the end of these reasons.
15. The background facts in this case were not disputed. Christopher Andrews moved to Leeds in August of 2015. In January 2016 during a conversation with a work colleague, the Claimant was led to believe that Manchester van and lorry clerks were earning more than the Leeds clerks.

16. On 24 March 2016, she asked her manager Piero Martini whether Mr Andrews was earning more money than she was. At that time she had concerns about Mr Andrew's ability to perform the role and the quality of his work.
17. She says and we accept that Mr Martini immediately told her that was not the case and that Mr Andrews was not earning more money than her. She asked Mr Martini if he knew what she was earning and he said that he did not know but he would speak to Graziella Bacci at the Manchester depot.
18. The Claimant describes how within half an hour of that conversation Mr Martini called her back into his office and assured her Mr Andrews was not earning more than the Claimant. That was incorrect and misleading information provided to the Claimant by Mr Martini.
19. The Claimant then wrote to Graziella Bacci and began a grievance procedure by way of a letter dated 7 April 2016 (page 61 in the bundle). That letter is clear. The Claimant alleges that Mr Andrews is paid more than she is paid and has been paid more than herself since his transfer to the Leeds office in August 2014. She states "we do exactly the same job so I consider this is not only unfair but unlawful under the Equality Act 2010".
20. Mrs Bacci arranged for Mr Martini to deal with the letter as a grievance and a grievance meeting was arranged for 19 May 2016. At that grievance meeting the Claimant raises the issue of whether Mr Andrews is paid more than her for doing exactly the same job. Mr Martini confirms they are both performing exactly the same job and assures her that he will investigate the pay issue. At that meeting the Claimant came prepared with list of questions for Mr Martini having sought legal advice. Mr Martini could be in no doubt about what information the claimant was seeking. One of the questions listed was "are there any material factors for Chris being paid more than me?" At the grievance meeting she asked the question "does Mr Andrews do anything that would explain why he gets more money. The answer to that question given by Mr Martini is "he would have to look at the figures, **any reasons or circumstances**". He assured the Claimant that he will provide her with a full written response to all her queries.
21. On 7 June 2016, Mr Martini provides his response by letter to the Claimant. In relation to the pay inequality complaint he states as follows: "*you consider that any differential in pay is contrary to the Equality Act 2010. Whilst I do not consider that it is appropriate to comment specifically on the salary of another employee, I have investigated your concerns and can confirm that to the extent that there is any historical differential in pay, this is due to a material factor which is not directly or indirectly discriminatory and is in no way related to gender. You will be aware that Christopher Andrews transferred to the Leeds depot from Manchester and therefore there were pre-existing pay arrangements in place. Furthermore, your salary is equivalent to that of other colleagues male and female carrying out the same role at the Leeds depot. Accordingly I do not uphold this aspect of your grievance*".
22. Mr Martini advises the Claimant that she has a right to appeal the decision to Mr Alessandro Bacci. The Claimant appeals by a letter dated 7 June 2016. She states that: "*during our meeting 19 May 2016 I asked Piero Martini if there were any material factors for the difference in pay between myself and Christopher Andrews. He clearly stated that there were no material factors*

between the comparator and myself and agreed that we have the same job role and work the same hours and shifts. To claim now that material factors do exist and to do so in such generalised statement raises a question of why those factors were not evident during our meeting. Therefore I ask that you expand on those material factors and provide evidence to support that statement". The Claimant could not have made it any clearer what further information she required from the Respondent to deal with her grievance. The simple solution would have been for the Respondent to have provided to the Claimant the information they have sought to rely on at this hearing in that response.

23. Mr Bacci carried out some investigations. Prior to his grievance appeal meeting with the Claimant, he saw the grievance letter of 7 April 2016, the notes of the grievance hearing with Mr Martini dated 19 May 2016 and the letter from Mr Martini to the Claimant confirming the outcome of the grievance dated 7 June 2016. Mr Bacci questioned Mr Martini about what he had told the Claimant in relation to Mr Andrews' salary. The questions and answers are at page 95 to 96 of the bundle. Question no 4 is *"Shirley came to see you in March re Chris his attitude and she put it to you that she believed Chris was paid more than her. You said you didn't know as you were not aware of what people were paid, but that you would ask Graziella and then get back to Shirley. She said that half an hour later you told her that you had spoken to Graziella and you confirmed to Shirley that Chris wasn't paid more (no figures were mentioned) and there would be a pay review now anyway. Is this correct?"*
24. Mr Martin's answer is: *"Shirley did come to speak to me. I told her at the time that I wasn't aware of any differences in pay. I did speak to Graziella who told me there was no difference in pay and I told Shirley that head office told me that there was no difference in pay. I told Shirley that in any event a pay review was imminent".*
25. That account was consistent with the Claimant's recollection of events and was as we have stated misleading the claimant providing incorrect information and demonstrates a lack of transparency.
26. The Claimant was specifically raising the issue of Mr Andrews' pay and inequality on the grounds of her sex and Mr Martini was telling her that Mr Andrews was paid the same when he was not.
27. Mr Bacci had an investigation meeting with Graziella Bacci. He says that Graziella confirmed that Mr Martini had contacted her in relation to a genuine enquiry as to whether Shirley's male colleagues were paid more than her. She knew that Mr Andrews was paid more than the Claimant but did not relay that information to Mr Martini or if she did, he did not relay the information to the Claimant. Mr Martin could not tell the Claimant whether Mr Andrews was paid more at the grievance hearing either. Mrs Bacci confirmed to Mr Bacci that the Claimant and Mr Andrews were doing the same job and had just changed location and nothing else.
28. On 1 July 2016 Mr Bacci wrote to the Claimant notifying her of the grievance outcome. In relation to her 'inequality of pay' complaint he states as follows:
- "You informed me that you had raised questions with Piero regarding salary on the Leeds reception and that following discussions with Graziella Bacci, Piero had confirmed the staff on the Leeds reception were paid the*

same. In your letter of appeal you also raise that whilst Piero had informed you there were no material factors in relation to differentials in the job carried out by Chris and yourself and the other staff on the Leeds reception he had concluded that there were material factors which accounted for any differential in pay.

Accordingly I have interviewed both Piero and Graziella. Having spoken to both I reach the conclusion that there have been some misunderstandings in the information which has been provided to you. For the avoidance of doubt I accept that all staff on the Leeds reception (including Chris) are carrying out the same role. For clarity, all the male and female staff (with the exception of Chris) are paid at the same salary. I believe that you were informed by Piero that the staff were paid the same (following information from Graziella) that this is the information she was referring to, which is accurate.

During our meeting, we discussed the circumstances which led to Chris being transferred to the Leeds depot. You were under the misapprehension that Chris had requested this transfer. This is not the case. As I explained, the company requested that Chris transfer from Manchester to Leeds to fill a vacancy which he could not even have been aware of existed at the time. Accordingly, the company offered to transfer Chris on his existing terms and conditions and therefore to preserve his pay. This is entirely legal. Chris did not apply for a new job which was subject to new terms and conditions, rather he transferred on the basis of his existing terms and conditions. There was no legal requirement for him to sign a new contract. As such, the material factor (ie the factor which is not in any way linked to gender) referred to previously by Piero, which accounts for any small disparity in pay, is that of Chris' transfer to Leeds on protected pay. In addition, Chris has longer length of service than any of the Leeds reception employee. Again for the avoidance of doubt there is no difference in pay between the other male and female staff who work on the Leeds reception”.

29. The letter does not explain to the Claimant why there was a pay differential historically, before Mr Andrews had moved to Leeds or provide the evidence to support Mr Martini's statement that any "historical differential in pay is due to a material factor which is not directly or indirectly discriminatory and is no way related to gender". The Claimant had specifically requested evidence to support that generalised statement and Mr Bacci did not deal with that specific question during the course of the grievance hearing with the Claimant or in his written response. Mr Bacci accepts now that he did not handle the grievance outcome as well as he could have done and that he did not address all of the questions that the Claimant had raised in her appeal relating to equal pay.
30. Mr Bacci was able at this hearing to give a detailed explanation of the historical differences in pay between Manchester and Leeds rental clerks. That information could quite easily have been provided to the Claimant at the time and would in the Claimant's words have avoided her sitting in Tribunal now listening to that explanation for the first time. He did not address the misinformation relating to pay provided to the Claimant when she initially raised the query with Mr Martini, when she was incorrectly told that there was no pay difference between Mr Andrews and the Claimant.

31. The Respondent's failure to provide full information at the time of the appeal and grievance and at the time she made the first request caused the Claimant to be sceptical about the accuracy of the information she was being given. That approach would only have added to the Claimant's suspicions of sex discrimination rather than alleviate them.
32. Ms Gould accepts in her submissions that the Respondent did not handle the grievance procedure very well and that could have led to the Claimant bringing these proceedings. The explanation that we have been given at this Tribunal for the 'material factors' explaining the pay differential the Respondent relies upon, of busier location, longer and more intensive periods, volume of vehicles, complexity of the work carried out etc were never given to the Claimant.
33. In cross-examination the Claimant was unable to challenge the evidence of those differences put to her by Ms Gould. She has never worked in Manchester, and can only base her experience on what happens at the Leeds location. She accepts that the shift pattern is different, that the number of vehicles dealt with demonstrates the quieter environment in Leeds compared to Manchester.
34. At the hearing further differences were referred to by Mr Bacci about additional duties that were carried out in Manchester which include checking vehicles, booking vehicles in and out, delivering and collecting vehicles, physically checking the files which are located in Manchester. Dealing with account queries, checking new vehicles in, higher volume of telephone calls, higher foot fall. Checking vehicle listings and assisting with the pumps in filling vehicles and washing vehicles when needed. That level of detail was not provided to the Claimant at the time she raised her grievances but we accepted Mr Bacci's evidence of those differences.
35. The issue for the Tribunal first of all was whether there was direct discrimination ie was the reason for the difference in pay between the Claimant and Christopher Andrews because of her sex. The Respondent has described the reason for the difference as 'protected pay' linked to a transfer made at their request. The Claimant does not dispute that Mr Andrews' pay before he transferred to Leeds was higher and that higher pay was maintained and was therefore protected. She may dispute whether the transfer was at the request of the Company or Mr Andrews but that does not affect the issue of the reason why his pay was maintained/protected at the rate he was paid prior to his transfer. A woman in materially the same circumstances who was transferring would also have had her pay protected. We accepted that the transfer was the reason why Mr Andrews was paid more than the Claimant.
36. By way of aside, Ms Gould had for the first time in her closing submissions suggested that there was no less favourable treatment in fact because she had calculated that the hourly rate for Leeds rental staff was £8.83 compared to an hourly rate of £8.53 for the Manchester staff. That was based on her complex calculation of the hours, days and shifts worked. However that has never been the Respondent's case. The Respondent has always accepted that the Claimant was paid less than Mr Andrews and the statistics provided at page 55 and 56 support that difference in pay and a higher rate of pay for Mr Andrews up until 2016 when there was very little difference in pay because Mr Andrews pay was not increased. The calculation was not put to the

Claimant or relied upon or referred to by the Respondent's witnesses. We do not accept the submission that there was in fact no less favourable treatment.

37. We do accept that the reason was nothing whatsoever to do with the Claimant's sex. It was because Mr Andrews pay was protected on his transfer from Manchester to Leeds because he transferred. There was a vacancy in Leeds. Mr Andrews was asked by the Respondent to fill that vacancy. It suited him because of his own personal circumstances, it suited the Respondent and the Respondent honoured the pre-existing pay to facilitate that move. The Claimant might feel that is unfair given her perception of Mr Andrew's poor performance but that is not the issue.
38. We then had to consider whether there was any indirect discrimination. Were women put at a disadvantage when compared to men? The statistics do not support a pay differential based on sex. There are some anomalies and we were taken to the statistics by Ms Gould and by the Claimant. It is important to remember though that when these statistics are compared and analysed we must compare like with like. The Claimant presented some statistics based on 'averages' but when the statistics were analysed correctly there were no differences between the sexes that demonstrate pay disparity on the grounds of sex. Where there were differences in pay they were explained for reasons not tainted by sex. For example males (E) and (F) in Manchester vans were paid more than other men and women at Manchester vans because they had additional managerial supervisory responsibilities. There was only one woman employed in Manchester vans in the same relevant period. That was female (I) who started on a salary of £16,500 on 1 June 2012. Mr Andrews was by that time on a salary of £18,000 but had been on a salary of £16,000 since 2009 and so had longer service than female (I) who was a new starter when she joined. More importantly males (G) and (H) joined the company in the same year and were appointed on the same salary as female (I). There was no salary increase in 2013, but by 1 April 2014 G, H and I were all on the same salary of £18,000 compared to Mr Andrews who was on a salary of £19,000. However, at that point he had been employed since 2004 which explains the pay differential.
39. In relation to the Manchester cars statistics again there were some pay differentials but this time went in favour of the female members of staff. Two females (R) and (S) had additional responsibilities and were paid more than other men and women. Female employee O did not have additional responsibilities but was paid more than male M who had started one year before her. We did consider very carefully the statistical information to see if it disclosed any evidence of indirect discrimination. Although the evidence about pay and how decisions made given by Mr A Bacci indicates an informal process carried out Mr Bacci Senior based on information he is provided by Ms G Bacci and his knowledge of the individual employee concerned. The statistics did not reveal any form of hidden historical indirect discrimination between men and women in the period prior to Mr Andrews' transfer to Leeds which required justification.
40. In those circumstances there was no requirement for the Respondent to establish any justification defence under section 69 of the Equality Act 2010.. In those circumstances the claim for equal pay fails and the Claimant's pay is not modified over the relevant period relied upon and her claim is dismissed.

41. We have not set out Section 69 of the Equality Act 2010 or any of the relevant case law which as we have stated was accurately set out in Ms Gould's closing submissions and is summarised in Employment Judge Cox's annex to the order. However for completeness, Section 69 of the Equality Act 2010 sets out the defence of material factor. In the context of this case we read that section as referring to (A) as the Claimant, (B) as Mr Andrews and the 'Responsible Person' as the Respondent. The section provides as follows:

1. The sex equality clause in A's term has no effect in relation to a difference between A's terms and B's terms if the responsible person shows that the difference is because of a material factor reliance upon which-
 - (a) does not involve treating A less favourably because of A's sex than the responsible person treats B, and
 - (b) if the factor is within subsection (2) is a proportionate means of achieving a legitimate aim.
2. A factor is within this subsection if A shows that, as a result of the factor A and persons of the same sex doing work equal to A's are put at a particular disadvantage when compared with persons of the opposite sex doing work equal to A's.
- 4.....
- 5.....
6. For the purposes of this section, a factor is not material unless it is a material difference between A's case and B's.

42. In closing it has not been disputed by the Respondent's witnesses, the Respondent's counsel or the Claimant that this claim was unlikely to have been pursued if the Claimant's concerns about pay differentials had been properly and fully dealt with during the grievance procedure. The lack of openness and transparency about the pay being paid and the reasons for pay differentials historically were never explained. Instead misleading information of no difference in pay between Mr Andrews was provided or no information which simply fuelled the Claimant's suspicions that the reason was tainted by sex discrimination. We understand that the pay in a Respondent's organisation is decided by one individual Mr Bacci Senior. Although the Claimant has not succeeded in her claim the Respondent may wish to re-visit its sex equality policies and grievance policies in dealing with this type of complaint. It might want to ensure transparency in relation to pay and how it is decided and communicated in the future so that this type of complaint can be avoided. The Claimant made very simple enquiries at a very early stage which could have been answered openly and honestly. It was only as a result of the Respondent's failure to do that that the Claimant was left with no other option than to ask those questions at the Employment Tribunal at a cost to her of £1,200 and her time of three days 'holiday' from work in attending the hearing.

43. Unfortunately the Tribunal cannot order the fees paid to be reimbursed to the Claimant because the Claimant has not been successful in her claim and the rules do not provide for reimbursement of those costs in these circumstances. It is a matter for the Respondent if it wishes to pay those costs as a gesture of

good will. Given the part the Respondent has played in the Claimant bringing this claim we hope that it will do so. Finally the Claimant has represented herself and prepared for these proceedings in a manner that has assisted the Tribunal given the complexity of the claim she was making and we thank her for that assistance. We also thank Ms Gould for her professionalism and assistance to the Tribunal.

Employment Judge Rogerson

Date: 5 May 2017