



EMPLOYMENT TRIBUNALS

Claimant: Mrs D Ledkova
Respondent: Traiana Limited

Heard at: East London Hearing Centre

On: 1 – 3 September 2021

Before: Employment Judge Burgher
Members: Ms J Henry
Mr M Rowe

Appearances

For the Claimant: In person
For the Respondent: Ms Bayoumi (Counsel)

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by Cloud Video Platform. A face to face hearing was not held because the relevant matters could be determined in a remote hearing.

JUDGMENT

- 1 The Claimant's claims for direct sex discrimination fail and are dismissed.
- 2 The Respondent has discriminated against the Claimant by reason of taking maternity leave, contrary to section 18 Equality Act 2010.
- 3 The Claimant's claims for unlawful victimisation fail and are dismissed.
- 4 A remedy hearing is listed to take place on 23 November 2021.

REASONS

Issues

1. At the start of the hearing the Claimant decided against pursuing her extant and recently submitted application to amend her claims to seek to add an Equal Pay claim in view of the potential impact on the determination of her existing claims.

2. The issues the Tribunal are required to determine are as follows:

Time limits

1. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 7 January 2020 may not have been brought in time.
2. Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
 - 2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
 - 2.2 If not, was there conduct extending over a period?
 - 2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
 - 2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
 - 2.4.1 Why were the complaints not made to the Tribunal in time?
 - 2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

Direct sex discrimination (Equality Act 2010 section 13)

3. Did the Respondent do the following things:
 - 3.1 Demote the Claimant on her return from maternity leave on 4 November 2019 or confirm this demotion on 30 January 2020;
 - 3.2 Remove the Claimant's 3 direct reports and/or fail to return the Claimant's direct reports on her return from maternity leave and/or confirm this to be the position on 30 January 2020;
 - 3.3 Fail to provide the Claimant with an opportunity to apply for and/or lead the combined team. The Claimant compares her case to that of Mr Jeffrey (her maternity cover) who was installed in this role.
 - 3.4 Reduce her seniority following her return from maternity leave by making her report to Mr Jeffrey.
 - 3.5 On 6 January 2020, give her a lower performance evaluation rating for 2019 of "Meets all or most expectations" having said it 'pro-rated' "Exceeds expectations" for two months worked in 2019 following return from maternity leave. This action is deemed unfair and spoiled Mrs Ledkova's track record of "Exceeds expectations" ahead of the restructure and the selection process.

- 3.6 Failing to give her no performance evaluation rating in respect of seven months worked in 2018 because she was on maternity leave when a performance review was due. Mrs Ledkova completed her side of the performance review before going on maternity leave. This inaction spoiled Mrs Ledkova's track record of "Exceeds expectations" ahead of the restructure and the selection process. The Claimant found out about this on 6 January 2020.
- 3.7 Upon the Claimant's grievance being upheld, HR failing to follow its second recommendation by failing to assess whether there was any further action or process needed to address Mr McKenzie's failure to follow the appropriate process for making changes to the Claimant's role, including by failing to inform him the grievance had been upheld.
- 3.8 Giving the Claimant bad feedback when the Claimant informed her manager that the grievance had been upheld.
- 3.9 Including Mr McKenzie in the global restructure process, albeit that her grievance had been upheld against him.
- 3.10 Failing to promote the Claimant in that global restructure process.

4. Was that less favourable treatment?

The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's.

If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether s/he was treated worse than someone else would have been treated.

The Claimant says she was treated worse than Mr Jeffreys and a hypothetical man.

5. If so, was it because of sex?

Pregnancy and Maternity Discrimination (Equality Act 2010 section 18)

6. Did the Respondent treat the Claimant unfavourably by doing the following things:

6.1 The above claims are repeated.

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

Victimisation (Equality Act 2010 section 27)

8. Did the Claimant do a protected act as follows:

8.1 Bring an internal grievance of discrimination.

9. Did the Respondent do the following things:

9.1 See issues 3.7, 3.8 and 3.10

10. By doing so, did it subject the Claimant to detriment?

11. If so, was it because the Claimant did a protected act?

Remedy for discrimination or victimisation

12. Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?

13. What financial losses has the discrimination caused the Claimant?

14. Has the Claimant taken reasonable steps to replace lost earnings, for example by looking

for another job?

15. If not, for what period of loss should the Claimant be compensated?
16. What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?
17. Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for that?
18. Is there a chance that the Claimant's employment would have ended in any event? Should their compensation be reduced as a result?
19. Should interest be awarded? How much?

Evidence

3. The Claimant gave evidence on her own behalf.
4. The Respondent called the following witnesses:
 - 4.1 Adrienne Seaman, Managing Director and Associate General Counsel International, Grievance officer
 - 4.2 Lucy Chowdhury, Head of HR, NEX Optimisation.
 - 4.3 Jodi Abudarham, Executive Director Client Solutions Delivery
 - 4.4 Errol McKenzie, Executive Director Optimization Operations, Claimant's direct line manager.
 - 4.5 Francie Sisul, Managing Director, Compensation & Benefits, Grievance Appeal officer.
5. All witness gave evidence under oath and were subject to cross examination and questions from the Tribunal.
6. The Tribunal was also referred to relevant pages in a bundle consisting of 844 pages.

Facts

7. The Tribunal has found the following facts from the evidence.
8. The Respondent is a financial technology company, currently part of the CME Group. It operates financial markets infrastructure for post-trading, risk management and regulatory compliance. It is part of the NEX group of companies, which became part of the CME Group of companies following CME's acquisition of NEX in November 2018.
9. The Claimant started work with the Respondent on 6 January 2014 as a Project Manager. At that time, she was line managed by Hanit Tzaidi, the global lead for Trading and Risk Management ('TRM').
10. On 1 April 2018 the Claimant was promoted to Client Experience Lead for FX in EMEA and APAC. This was part of an organisational move from a global reporting structure to a regional reporting structure. The Claimant continued to project manage

key clients and managed a team of 3 people. At this time Jack Jeffreys was appointed as lead for the service delivery Credit & Risk Team for EMEA; James Shelton was appointed as the service delivery lead for Securities for EMEA. The Claimant, Mr Jeffreys and Mr Shelton then reported to Mr McKenzie. Mr McKenzie was responsible for the global operations team in the Respondent which had 101 people.

11. Mr McKenzie stated that he understood at the time from what he was told when the Claimant was promoted, that she would continue to focus on managing client projects, she was pregnant and would be commencing maternity leave later in the year. However, his understanding was incorrect, the Claimant was managing a team of 3 people.

12. On 2 November 2018 the Claimant handed over her responsibilities and commenced maternity leave. Instead of recruiting cover for the Claimant's position whilst she was on maternity leave it was agreed that Mr Jeffreys would assume the Claimant's line management responsibilities. The Claimant had prepared comprehensive handover documents to assist operations during her absence.

13. Prior to the commencement of her maternity leave it was a requirement in the organisation structure to have a team to be considered as a leader. However, on 2 November 2018, the CME Group acquired the NEX group of companies, which included the Respondent. The CME group policy was such that an employee could be considered as a lead without having direct reports.

14. On 24 June 2019, Julie Holzrichter from the HR department informed the Claimant by email of changes being implemented by CME to the organisational structure going forward. The Claimant was informed that she would be employed in the Global Operations Division, reporting to Mr Errol McKenzie in the position of Client Experience Lead, FX. She was informed that her job level was Manager/Professional – Interim and that Mr McKenzie would meet with her over the next few weeks to discuss further. A question and answer factsheet was enclosed. One such question was:

“Does an employee need to be a people manager to hold a leadership level?”

No, it is not the case that someone needs to be a people manager to hold a leadership level (Director and above). Higher level roles for individual leaders (employees without direct reports) are available at nearly every level, including many leadership levels.”

15. The Claimant had a call with Mr McKenzie on 4 July 2019 where further information on the changes was provided. The Claimant sent Mr McKenzie an email on 4 July 2019 thanking him for the call, sending her personal email address and informing him that she was due to return to work from maternity leave on 4 November 2019.

16. As part of the CME Group proposed changes Mr McKenzie's position was at risk of redundancy.

17. On 16 September 2019 Mr McKenzie held a service region and individual coverage planning session with Hanit Tzaidi and Jack Jeffreys. The Claimant was on maternity leave and was not informed about this meeting. The meeting discussed the

current coverage model and planned for what would happen from December 2019. The notes of the 16 September 2019 meeting outlines the maternity cover situation with Mr Jeffreys covering the Claimant's team and makes no reference to what is going to happen with the Claimant's team on her return. Specifically the plan did not record that the Claimant would return to managing her team. The plans were made with the Claimant's peers while she was on maternity, without consultation with her or getting her input.

18. During October 2019 the Claimant and Mr McKenzie corresponded by email regarding her accrued holidays. Mr McKenzie was the Claimant's line manager, there was no discussion about any changes to the Claimant's role when she would return during this time.

19. The Claimant returned to work from maternity leave on 4 November 2019. Mr McKenzie informed the Claimant that given the impending reorganisation, which was supposed to be completed in January 2020, her direct reports would continue to report to Mr Jeffreys. The Claimant had no issue with this then, she understood that it would be for a temporary period until the reorganisation was complete. The effect of her team being managed by Mr Jeffreys in the short term meant that she had to work very closely with him in managing her own work and utilising the resource of the team. However, we do not accept Mr McKenzie's evidence that the Claimant was informed that she would have to report to Mr Jeffreys as well. We find that the Claimant would have objected to this. Further, the Claimant continued to get operational sign off from Mr McKenzie for work matters in the Respondent's Workday system throughout November and December 2019, which she would not have done if she reported to Mr Jeffreys.

20. On 6 January 2020 the Claimant and Mr McKenzie met to discuss her 2019 performance review. Mr McKenzie recorded out of context, off the cuff comments that the Claimant made about Mr Jeffreys' abilities as a manager. The Claimant was appraised as meets all or most expectations. It is clear that Mr McKenzie was acting as the Claimant's line manager at the time he gave this appraisal.

21. On 8 January 2020, unbeknownst to the Claimant and without seeking HR advice, Mr McKenzie instructed that HR the Workday system be updated to record that the Claimant's line management be changed to show that she reports to Mr Jeffreys.

22. The Claimant was unhappy with the appraisal assessment given to her and on 21 January 2020 sought to challenge the rating to achieve an 'exceeds expectations' appraisal.

23. On 27 January 2020 the Claimant accessed the Respondent's Workday system and discovered that she was now shown to be reporting to Mr Jeffreys, not Mr McKenzie. The Claimant was upset by this and complained by email dated 30 January 2020. The Claimant was concerned she was no longer Client Experience Lead and was only doing the Service Delivery role. She believed that she had not been invited to or attended any Client Experience Meetings. By this point the Claimant believed that she had been overlooked whilst she was on maternity leave and that the changes had happened because Mr McKenzie did not have the detail and

understanding of what each team actually did. The reorganisation had still not taken place and the Claimant requested her pre maternity position to be restored in terms of reporting to Mr McKenzie and managing her team. We accept that whilst the Claimant's grade and salary had not changed, the Claimant reasonably perceived what had happened to be a demotion in operational status and this formed the focus of her concern.

24. On 3 February 2020 the Claimant had meetings with Nicky Valmas, Interim HR Business Manager in an effort to address her complaints informally. This was not satisfactory for the Claimant and she escalated her complaints to on 2 March 2020 to Ms Chowdhury, Head of HR. A meeting was subsequently arranged with Ms Abudarham, Executive Director on 11 March 2020 where the Claimant's complaints about her performance reviews and changes to her reporting structure and direct line reports was discussed. Ms Abudarham was prepared to reinstate Mr McKenzie as the Claimant's line manager but given the ongoing global reorganisation and the change fatigue that she had been aware staff were complaining of, she decided that the Claimant's line reports should remain with Mr Jeffreys until the reorganisation was fully implemented.

25. On 16 March 2020 the Claimant sent Ms Chowdhury an updated grievance letter, she wrote

Dear Sir or Madam,

I am writing to raise a formal grievance. I have a complaint about my line manager Errol McKenzie (Executive Director, Optimization Service Delivery, Global Market Solutions & Services) who I strongly believe has discriminated me:

1. Upon return from my maternity leave on 4th November 2019 by not returning the direct reports from my deputy back to me;
2. And after 6th January 2020, the Performance Review completion, by making an unsanctioned change, not discussed with me, of my line manager in the CME HR system WorkDay from Errol McKenzie to my maternity leave deputy.

26. The Claimant submitted her claim to the Tribunal on 14 April 2020.

27. Ms Seaman was appointed to consider the Claimant's formal grievance. We find that, contrary to the criticisms the Claimant levelled about the scope of the investigation and failure to interview witnesses, Ms Seaman undertook a conscientious and appropriate process. However, despite the focus of the Claimant's grievance, discrimination following maternity leave, Ms Seaman stated that discrimination was a matter for a tribunal to determine and that there were cases where the Tribunal had been hostile in circumstances where companies or employers had sought to make their own determination. She stated that she obtained her own legal advice on this issue and that it is solely within the authority of a court or tribunal to interpret the law around discrimination.

28. In her grievance outcome letter Ms Seaman stated that she had been told by the Respondent's legal team that it was not her role to make a ruling on discrimination. She added that there is nothing in the relevant policies which requires that the company, HR or grievance officers to make a determination regarding whether the actions in question are discriminatory.

29. The Respondent's discrimination, harassment and bullying policy suggests that discrimination matters should be raised and will be addressed. Paragraph 2.8 of the policy states:

Where investigation reveals evidence of discriminatory behaviour on the part of any employee, the employee may be subject to the Company's disciplinary procedure.

30. Whilst we cannot go behind the legal advice given to Ms Seaman, to the extent that it was given we find that this was perverse. The logical conclusion of the advice is that the Respondent would never be able to consider a discrimination complaint under its policy if legal advice forbade it. This is not written in the policy. In the context of this case, the legal advice that Ms Seaman followed meant that the focus of the Claimant's complaint, namely maternity discrimination, was strategically side stepped.

31. Having said that we find that Ms Seaman was scrupulous in her grievance findings given on 22 May 2020 which were ultimately very critical of Mr McKenzie's actions. Ultimately, she did not consider there to be any malice.

32. The relevant parts of Ms Seaman findings are as follows:

Communication

...

It appears that EM did not raise the subject of changes in the reporting line arrangements for her and her direct reports with DL in a clear and direct manner and, as a result, she did not appreciate what he was saying. The fact that she did object once the changes became clear to her indicates that she would, in all likelihood, have objected strongly in the conversation with EM if she understood what he said he communicated to her. I believe EM failed to communicate the changes (i.e. (i) not returning her direct reports; and (ii) changing her reporting line from EM to JJ) to DL in a clear and direct way and, therefore, she did not understand the changes and could not have consented to them.

I would have anticipated that an experienced manager might have had a clearer view of such changes in any employee's role, to have prepared for any such conversations carefully and in coordination with HR, and to have followed up any conversations with time for reflection and clarification. I would also have expected any relevant agreement/changes to have been confirmed in writing. It appears that none of this happened

Process

EM confirmed that he did not adequately seek advice from HR around any process necessary to effect the proposed changes to DL's role both in changing her manager and removing her direct reports. EM has extensive management experience and I find it difficult to accept he was unaware that material changes to a role need to be effected via a proper HR process. I also find it difficult to accept that EM was not aware that additional requirements apply to any changes to roles of employees who are pregnant or have exercised their entitlement to maternity leave. It is difficult to understand why EM would have failed to check on such requirements or adequately seek guidance from HR on how to achieve his objectives. ..

EM's Intentions

...

Whilst there has been a period of uncertainty and wider change across the whole CME Group organisation as a result of the acquisition which can lead to difficult team dynamics, EM should have anticipated or appreciated the more immediate and substantive concern that DL was likely

to experience on receiving the news that the reporting line for her and her prior direct reports were to be changed. Had EM consulted with HR prior to making such changes the potential for DL having concerns would likely have been contemplated and managed.

Impact on DL

...

The period when an employee is pregnant, on maternity leave and returning from leave can be a difficult time for that employee. A complex legal regime sits around these circumstances with the aim of protecting women from experiencing unfavourable treatment as a consequence of exercising their right to leave. Accordingly, it is understandable and important to note that DL had, and continues to have, a legitimate expectation that she will be treated fairly throughout this period. It is equally important to acknowledge the likely frustration, anxiety and concern that this sequence of events must have caused DL at what is often a stressful time for women returning from maternity leave.

However, I do not believe that EM set out maliciously to cause DL any upset either on, or shortly after her return from maternity leave. It is also not within my remit to reach a conclusion as to whether EM's actions or inactions constitute discrimination.

However, in concluding, I do recognise, firstly, that there *were* failures on EM's part and secondly, that his failures (both in communication and procedure) *coincided* with DL's return from maternity leave and have ultimately had the net effect of causing great upset and frustration on her part; the fact that DL had just returned from a period of maternity leave certainly magnified and exacerbated the effects of EM's failures.

Outcome

CME Group expects high standards of ethics and behaviour of its managers and employees. In this case the poor communication, failure to consult with HR regarding the appropriate HR processes and then to follow those processes have fallen below CME Group's expectations.

As discussed already, it is my belief that the net effect of EM's communication and procedural failures has been exacerbated further by the very fact that the impacted employee, DL, had just returned from a period of maternity leave. Further, EM ought to have been aware of the potential additional sensitivities in such circumstances.

33. Ms Seaman made recommendations that Mr McKenzie received training and coaching on managing employees regarding family friendly leave benefits.

34. The HR review had been completed and the recommended actions in Ms Seaman's grievance outcome letter regarding Mr McKenzie were put into a detailed training plan, including specific training courses/development opportunities and a corresponding timetable determined by HR. Mr McKenzie subsequently undertook the training.

35. We set out the grievance findings in detail above because whilst Ms Seaman declined to address whether there was discrimination we find that had she done so it is almost inevitable that, on her findings, she would have concluded that there was maternity discrimination. The motivation or possible malicious intent of Mr McKenzie was not strictly necessary for her to have drawn such a conclusion.

36. The Claimant was not content with the grievance outcome, she appealed and sought a discrimination finding and for Mr McKenzie to be disciplined and dismissed. Her appeal was subsequently dismissed. Whilst the Claimant was upset, we do not consider the Claimant was reasonable in focusing on seeking the dismissal of

Mr McKenzie which was at the forefront of her mind then and created a general distrust of the Respondent's other processes, especially matters involving Mr McKenzie.

Claimant's conduct in 21 May 2020

37. On 21 May 2020, Mr McKenzie chaired the EMEA & APAC Global Operations stand up meeting. This is a meeting which includes updates from various teams in the business. When Mr Jeffreys was called upon provide an update on Credit, Risk & FX, in accordance with the agenda, the Claimant abruptly interjected and told everyone at the meeting that she leads the FX team and would be providing the FX update. She told the audience of around 50 staff that Mr McKenzie had neglected to include her on the agenda and that she had been leading the FX team since April 2018. The Claimant accepted before us that her conduct was unprofessional.

38. On the afternoon of 27 May 2020, Mr McKenzie was informed by Mr Jeffreys that the Claimant had sent him a text to say that her grievance had been upheld. The Claimant was informed that the grievance process was confidential and by this stage Mr McKenzie had not been informed of the outcome. The Tribunal is critical of the Claimant's breach of confidentiality concerning this matter.

39. Ms Chowdhury discussed the concerns which had been raised about the Claimant's behaviour both in relation to her interrupting the meeting on 21 May 2021 and messaging Mr Jeffreys about the outcome of the grievance on 27 May 2021. It was resolved that no formal disciplinary action would be taken against the Claimant but that she would be informally spoken to about her behaviour. This was done in a meeting on 17 June 2020. The Claimant's position before the Tribunal was not that the conversation should not have taken place but that it should not have taken place in the context of other topics including her grievance appeal.

Reorganisation/Promotion opportunities

40. The global reorganisation was continuing and plans to appoint to the new structure were being concluded. This involved the creation of Global leader roles. Interviews were planned. The Claimant applied for Global Team Leads Service Delivery (FX and Credit) and Special Projects Manager and Global Lead of Credit & Risk / Global Head of Service Delivery FX on 27 May 2020. These applications were separately considered by two panels, one consisting of Ms Abudarham and Mr McKenzie.

41. The Claimant had first and second interviews for each role on 1 and 2 June 2020 respectively. She was unsuccessful. Mr Jeffrey was successful for the Global Team Leads Service Delivery (FX and Credit) and Special Projects Manager role; and Ms Debbie Planer was successful for the Global Lead of Credit & Risk / Global Head of Service Delivery FX role.

42. We find that the recruitment panels scored candidates objectively against the criteria that was required at interview. The interview score determined who got the role. Contrary to the Claimant's suspicions, previous experience, performance ratings and perceived visibility was not included in the assessments for the roles.

43. The Claimant challenged whether there was even a need for a global role and

she accepted that she did not perform as well as she could have at the interviews because she was stressed about her grievance outcome and the fact that Mr McKenzie was on a panel. The Claimant was concerned about the delay in receiving her grievance outcome and wanted to know whether Mr McKenzie was being disciplined. She wanted him to be dismissed. The Claimant's mindset evidently undermined her performance at interview and the impression she gave of her effectiveness to the undertake role. We accept the evidence that both Mr Jeffreys and Ms Planer performed better at interview than the Claimant in demonstrating the competencies for the roles that she applied for. Further, on the evidence before us, we do not accept the Claimant's assertion that she was better qualified than Mr Jeffreys for the FX and Credit service delivery role.

44. On 8 June 2020 the Claimant was appointed to the role of Team Manager for Service Delivery FX, which was similar to her pre maternity leave role, managing a team of 5, albeit she now reported to Ms Planer.

Law

45. Section 11 and 13 Equality Act 2010 (EqA) provides for direct sex discrimination

Section 13 Direct discrimination

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

46. Section 18 EqA provides for maternity and pregnancy discrimination.

18 Pregnancy and maternity discrimination: work cases

(1)This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of pregnancy and maternity.

(2)A person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably —

(a)because of the pregnancy, or

(b)because of illness suffered by her as a result of it.

(3)A person (A) discriminates against a woman if A treats her unfavourably because she is on compulsory maternity leave.

(4)A person (A) discriminates against a woman if A treats her unfavourably because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave.

(5)For the purposes of subsection (2), if the treatment of a woman is in implementation of a decision taken in the protected period, the treatment is to be regarded as occurring in that period (even if the implementation is not until after the end of that period).

(6)The protected period, in relation to a woman's pregnancy, begins when the pregnancy begins, and ends—

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

47. Section 27 EqA provides for unlawful victimisation.

Section 27 Victimisation

Victimisation

- (1) A person (A) victimises another person (B) if A subjects B to a detriment because—
 - (a) B does a protected act, or
 - (b) A believes that B has done, or may do, a protected act.
- (2) Each of the following is a protected act—
 - (a) bringing proceedings under this Act;
 - (b) giving evidence or information in connection with proceedings under this Act;
 - (c) doing any other thing for the purposes of or in connection with this Act;
 - (d) making an allegation (whether or not express) that A or another person has contravened this Act.
- (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.
- (4) This section applies only where the person subjected to a detriment is an individual.
- (5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

48. The burden of proof provisions are found at section 136 of the Equality Act 2010. This states:

136 Burden of proof

- (1) This section applies to any proceedings relating to a contravention of this Act.
- (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
- (3) But subsection (2) does not apply if A shows that A did not contravene the provision.
- (4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.

49. The burden is on the Claimant to prove, on a balance of probabilities, to establish a prima facie case of discrimination. The Court of Appeal, in Madarassy v Nomura International Plc [2007] EWCA Civ 33, at paragraph 56. The court in Igen v Wong expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the tribunal could conclude that the respondent 'could have' committed an unlawful act of discrimination. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination), confirmed that a Claimant must establish more than a difference in status (e.g. sex and a difference in treatment before a tribunal will be in a position where it 'could conclude' that an act of discrimination had been committed.

Conclusions

50. In respect of the factual allegations outlined in paragraphs 3.1 to 3.10 our factual conclusions are as follows:

- 50.1 Allegation 3.1 – The Claimant was not demoted on her return from maternity leave on 4 November 2020. However, she reasonably perceived that she had been demoted when she discovered changes on the Respondent's Workday system relating to her reporting to Mr Jeffreys. This change was requested by Mr McKenzie on 8 January 2020 and discovered by the Claimant on 27 January 2020. Until this date the Claimant understood that she was reporting to Mr McKenzie.
- 50.2 Allegation 3.2 – The Claimant's direct reports were removed from her when she returned from maternity leave, on the basis that there was a pending reorganisation. They were not returned to her when she requested them to be on 30 January 2020 when the reorganisation still had not taken place. There was no indication in the meeting on 16 September 2019, that took place without the Claimant's input, that her team would be returned to her.
- 50.3 Allegation 3.3 - The Claimant was not provided an opportunity to apply for and/or lead the team when she returned from maternity leave. There was no combined team, the reorganisation was being implemented and the Claimant accepted in the short term continuation of Mr Jeffreys managing her team was expedient. However, the reorganisation was not implemented in short term and the Claimant wanted to resume the management of her team and was not given the chance to take assume management of the entire team that Mr Jeffrey was managing.
- 50.4 Allegation 3.4 - The Claimant's seniority, in respect of grade, was not reduced on her return from maternity leave. However, the Claimant reasonably perceived that there was a reduction in her seniority of status when she discovered that she was reporting to Mr Jeffreys on 27 January 2020.
- 50.5 Allegation 3.5 - On 6 January 2020 the Claimant was given a performance evaluation rating for 2019 of "Meets all or most expectations" having said it

'pro-rated' "Exceeds expectations" for two months worked in 2019 following her return from maternity leave. The Claimant's maternity absence therefore undermined her appraisal rating.

- 50.6 Allegation 3.6 – The Claimant was not given a performance evaluation rating in respect of the seven months she worked in 2018 because she was on maternity leave when a performance review was due. The Claimant had completed her side of the performance review before going on maternity leave. The Respondent does not make performance reviews mandatory for employees on maternity leave or other periods of extended leave.
- 50.7 Allegation 3.7 – Following the Claimant's grievance HR implemented Ms Seaman's recommendations and Mr McKenzie received bespoke training. The Claimant wanted Mr McKenzie to be disciplined and dismissed. This was not realised and she was not entitled to know the detail of the specific action taken against Mr McKenzie.
- 50.8 Allegation 3.8 – The Claimant was given informal feedback on 17 June 2020 in respect of her conduct at the meeting on 21 May 2020 and breaching confidentiality regarding the grievance. The feedback was justified in the circumstances.
- 50.9 Allegation 3.9 – It was appropriate to include Mr McKenzie in the global restructure process, albeit that her grievance had been upheld against him. The restructure had been ongoing for some time, there were two independent panels assessing matters objectively and there was no evidence or indication that the Claimant's grievance and outcome affected the scoring and selection process.
- 50.10 Allegation 3.10 – The Claimant was not one of the strongest candidates which was necessary in order to be selected for promotion during the global restructure process that was considered using objective processes.

Sex discrimination

51. When considering the Claimant's sex discrimination complaints, the Claimant compares herself to Mr Jeffreys. However, we do not conclude that any of the allegations specified amount to less favourable treatment because of sex.

52. Allegations 3.1 – 3.6 arise out of or relate to the Claimant's maternity leave. We conclude that these matters revolve around the management of operations during the Claimant's absence and following her return from maternity leave. We are very critical of Mr McKenzie for changing line management reporting lines without consulting with the Claimant and HR. However, we considered and accepted Mr McKenzie's evidence that he would have managed any long term absence in a similar way given the ongoing global reorganisation. Mr McKenzie was overseeing significant change, his role was previously at risk and he adopted an unthinking solution based approach to reduce his operational management responsibilities. We do not conclude that he would have taken a more favourable approach to a man who was on long term absence, whether

paternity leave, sickness absence or otherwise. The Claimant's claims for direct sex discrimination in this regard fail and are therefore dismissed.

53. In any event, section 18(7) EqA precludes the Tribunal from concluding both sex discrimination and maternity discrimination in respect of the same matters. Insofar as is relevant to the issues in this case the 'protected period' for section 18 EqA claim is 2 November 2018 to 3 November 2019. Section 18(5) EqA provides that decisions made in the protected period are to be considered even if the implementation is after the protected period. The Tribunal therefore considers allegations 3.2, 3.3 and 3.6 separately under section 18 EqA.

54. The Claimant has failed to establish allegations 3.7 – 3.10 and as such these claims for direct sex discrimination fail and are dismissed.

Maternity discrimination

55. The protected period for the purposes of Section 18 EqA is 2 November 2019 to 3 November 2019. Having regard to section 18(5) EqA the only allegations relating to the protected period, or decisions within the protected period, are allegations 3.2, 3.3 and 3.6.

56. The decision to change the Claimant's reporting lines to Mr Jeffrey was an idiosyncratic thoughtless decision taken by Mr McKenzie on 8 January 2020 to reduce his operational management responsibilities. Before this date Mr McKenzie was in fact acting as her line manager and appraising her. The act was not done in the protected period.

57. Therefore, save for allegations 3.2, 3.3 and 3.6, all other allegations of maternity discrimination fail and are dismissed. They were not done or decided in the protected period.

58. In respect of allegations 3.2 and 3.3, the Claimant's direct reports were removed from her when she returned from maternity leave, on the basis that there was a pending reorganisation. Given that there was no indication in the meeting on 16 September 2019, that took place without the Claimant's input, that her team would be returned, we conclude that the decision took place during her maternity leave.

59. Whilst the Claimant did not consider this to be initially unfavourable on her immediate return to work from maternity leave given the ongoing reorganisation, by 30 January 2020 when she asked for her team back it clearly was unfavourable. Her team was not returned to her when she requested them to be on 30 January 2020 and the reorganisation still had not taken place.

60. We conclude that the decision to remove her team (or not return them to her) amounted to unfavourable treatment because she was on maternity leave. Had the Claimant been at the meeting on 16 September 2019 she would have been able to fight her corner and object to Mr Jeffrey's continuing to manage her team or suggest that she should be the lead to manage the combined team going forward. This opportunity was not afforded to her.

61. The Claimant's claims for maternity discrimination for allegations 3.2 and 3.3 therefore succeed.

62. In respect of allegation 3.6 the Claimant did not receive an appraisal in January 2019 for the 2018 year. This was because she was on maternity leave. The Claimant was not able to maintain her record of exceeds expectation appraisals and her 7 months work for 2018 was marked. This is therefore of unfavourable treatment because she was on maternity leave.

63. The Tribunal considered this to be conduct of Mr McKenzie extending over a period, namely his closed mind towards a person on maternity absence. The claim is therefore in time for the purposes of 123 EqA.

64. The Claimant's maternity discrimination claims in respect of allegations 3.2, 3.3 and 3.6 therefore succeed.

Victimisation

65. The Claimant made a protected act by submitting her grievance on 15 March 2020 and her ET complaint. However, the Claimant has not established her allegations under 3.7, 3.8 and 3.10 and as such her claims for unlawful victimisation fail and are dismissed.

Remedy hearing

66. If remedy cannot be agreed a remedy hearing is listed to take place on 23 November 2020 for 1 day by CVP.

67. By 25 October 2021 the Claimant is ordered to send the Respondent and the Tribunal a schedule of loss and desired outcomes and a witness statement in support.

68. By 8 November 2021 the Respondent is ordered to send the Claimant and the Tribunal a counter schedule of loss and any supporting witness statements.

Employment Judge Burgher

1 October 2021