EMPLOYMENT TRIBUNALS

Claimant: Ms S Dutkowska

Respondent: Sumi Agro Europe Limited

Heard at: London Central

On: 14, 17, 18, 19 & 20 June and 1 July 2019

In chambers: 7, 8 & 23 August 2019

Before: Employment Judge Khan
Ms S Saggar-Malik
Mr S Ferns

Representation
Claimant: Ms N Patel, Counsel
Respondent: Mr M Sethi QC, Counsel

RESERVED JUDGMENT

The unanimous judgment of the tribunal is that the claims are not upheld and are dismissed.

REASONS

1. By an ET1 presented on 15 November 2017, the claimant brought complaints of direct maternity discrimination, harassment related to sex, direct sex discrimination, indirect sex discrimination and unfair dismissal. The respondent resisted these complaints.

2. The claimant's claim was amended on 23 February 2018 to include a complaint of detriment on the ground that she had made a flexible working application.

3. The claimant's complaint of direct discrimination by reason that she had taken compulsory maternity leave was dismissed on withdrawal on 5 April 2018. Her complaint of indirect sex discrimination was struck out on the same date.

4. The claimant applied to amend her claim on the first day of the hearing to add a new allegation that the respondent had breached its own Flexible Working Policy and to add new wording to paragraphs 78, 90 and 94 of the claimant's primary witness statement, and to rely on these as new allegations of detriment and repudiatory conduct (paragraph 94 only). The respondent objected to this application. Having considered the balance of hardship and interests of justice we refused this application save that the claimant was permitted to rely on paragraph 94, as originally drafted, as an allegation of repudiatory conduct.

The Issues

5. This list was refined by the tribunal following discussion with the parties to include the specific factual allegations being relied on with reference to the claimant's primary witness statement. These issues are set out below (cross-referenced to the claimant's primary witness statement, where applicable):

A. Direct maternity discrimination because of exercising the right to ordinary and additional maternity leave (sections 18(4) and 39 of the Equality Act 2010 ("EQA"))

1. The claimant relies on the following allegations of unfavourable treatment:

a) Lack of welcome on 15 May 2017: she was given a deep-end introduction and there were no welcome drinks organised (paragraph 40)

b) Screens in first week: her request to have a second screen restored on 15 May 2017 was ignored and no explanation was given (paragraph 41)

c) Business cards in first week: her request for new business cards was ignored and no explanation was given (paragraph 42)

d) Initial team meeting: Mrs Lennon had a resistant and dismissive attitude (paragraph 51)

e) Meeting on SAU application on 16 May 2017: Mrs Lennon made stylistic comments and made her search for information that was either unavailable or she had withheld (paragraph 45)

f) Mr Tayama's visit on 1 June 2017: Mrs Lennon arrogantly dismissed her suggestion to meet with Mr Tayama (paragraph 52)

g) SAU application on 5 June 2017: Mrs Lennon micromanaged her (paragraph 50 & 53)

h) Cosmos meeting 13 June 2017: Mrs Lennon repeatedly cut her off and made unfavourable comments about a previous insurance renewal (paragraph 65)

i) SAROM write off application 19 June 2017: Mrs Lennon allocated her work to be completed the same day without highlighting its urgency or discussing it with her (paragraphs 46 & 47)

j) 20 June 2017 meeting: Mrs Lennon gave unbalanced feedback and did not give her a chance to speak (paragraph 58 & 59)

k) Dun and Bradstreet meeting 22 June 2017: Mrs Lennon talked over her and criticised a previous agreement (paragraph 64)

l) Monitoring: Mrs Lennon often looked over her shoulder at her screen (paragraph 61)

m) File note 22 June 2017, 23 June 2017 meeting and 5 July 2017 correspondence on performance and SAROM application: Mrs Lennon raised performance concerns and gave unbalanced feedback (paragraphs 48 & 62)

n) 27 June 2017 emails: Mrs Lennon micromanaged her and continuously reported her to Mr Hall (paragraphs 50 & 67)

o) Team meetings: Mrs Lennon patronised and belittled her (paragraphs 66)

p) Flexible working trial: the claimant made repeated requests for a trial period on 6, 7 and 11 July 2017 which were ignored (paragraph 74)

q) Treatment on 20 July 2017: Mrs Lennon reminded her to complete all of the jobs she had been given and told her that she may have to work her full notice and may not be granted references if she did not complete this work (paragraphs 99 & 100)

r) Truncated deadline on 20 June 2017: Mrs Lennon asked her to handover work at short notice and threatened to come in to work on the weekend to collect her work (paragraph 103)

s) Treatment on 21 July 2017: Mrs Lennon sent emails requesting that she completed additional work, she telephoned the claimant to chase her outstanding work and she threatened weekend work collection (paragraphs 105, 106 & 112)

2. Did the respondent (through Mrs Lennon) so treat the claimant because of the protected characteristic of maternity? The claimant says that this treatment was because she had exercised her right to both ordinary and additional maternity leave. She says that as a result of taking this leave she had, for example, accrued substantial leave and a new baby that required her to seek flexible work arrangements.

B. Harassment related to sex (sections 26(1) and 40 EQA)

3. The claimant relies on the same allegations set out above as amounting to unwanted conduct.

4. Did the respondent (through Mrs Lennon) so engage in unwanted conduct related to the protected characteristic of sex? The claimant says that this conduct was related to her sex because it related to her return from maternity leave and / or her request to use accrued leave that had accumulated because of her maternity leave and / or her requests to seek flexible working arrangements due to having a new baby.

5. If so, did such conduct have the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading or offensive environment for the claimant?

C. Direct discrimination because of sex (sections 13 and 39 EQA)

6. Alternatively, the claimant relies on the same allegations set out above as amounting to less favourable treatment.

7. Did the respondent (through Mrs Lennon) so treat the claimant less favourably than it would have treated others? The claimant compares herself with Yoshiaki Araki and a hypothetical male comparator.

8. If so, did the respondent (through Mrs Lennon) so treat the claimant because of the protected characteristic of sex? The claimant says that this treatment was because she had recently returned from maternity leave and wished to utilise accrued leave and have temporary flexible working arrangements to assist with a new baby.

D. Detriment on the ground of making a flexible working request (sections 80F and 47E(1)(a) of the Employment Rights Act 1996 ("ERA"))

9. It is accepted that the claimant applied to the respondent for a change to her terms and conditions of employment in accordance with section 80F ERA on 7 July 2018.

10. The claimant relies on the same acts set out above at issues (p) – (s) as amounting to detrimental treatment.

11. Did the respondent (through Mrs Lennon) so treat the claimant detrimentally on the ground that she made this flexible working request?

12. If so, did the respondent (through Mrs Lennon) so treat the claimant on the ground that she had made an application under section 80F ERA?

E. Constructive dismissal (section 95(1)(c) ERA)

13. Was the claimant constructively dismissed within the meaning of section 95(1)(c) ERA?

    13.1 The claimant claims that the respondent breached the implied term of mutual trust and confidence, namely, that the respondent would not, without reasonable and proper cause, act in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.

    13.2 Was the respondent's conduct in repudiatory breach of contract?

        13.2.1 The respondent refused the following requests for:

            aa) annual leave on 25 January 2017 (paragraph 18)

            bb) annual leave on 31 January 2017 (paragraph 20)

            cc) annual leave on 20 June 2017 (paragraph 59)

            dd) a flexible working trial on 6, 7 and 11 July 2017 (paragraph 74)

            ee) flexible working on 11 July 2017 (paragraph 78)

            ff) part-time working (paragraph 90) – the claimant's complains about the speed of this refusal

            gg) a flexible working trial on 19 July 2017 (paragraph 94).

        13.2.2 Mrs Lennon treated the claimant with an overbearing and undermining attitude and unreasonably criticized her work and micromanaged her as set out above at issues (a) – (p).

    13.3 If so, did the claimant resign in response to the breach?

        13.3.1 The claimant resigned on 19 July 2017.

        13.3.2 The claimant says that the respondent's refusal of her request for a part-time role and for a flexible working trial, on 19 July 2017, was the final straw.

F. Unfair constructive dismissal (sections 94 and 98 ERA)

14. If the claimant was dismissed then this was unfair. This is because the respondent does not rely on a potentially fair reason for dismissal.

G. Jurisdiction: time limits

15. The respondent says that any claims about events taking place before 30 June 2017 are out of time.

16. In respect of the section 47E ERA complaint, the claimant says that this was a relabelling of her claim so that it was presented in time. The respondent says that this was a new complaint and it was presented on 23 February 2018 and therefore potentially out of time.

17. If relevant, in relation to the claimant's section 47E ERA complaint:

    17.1 Was there an act or failure to act which was part of a series of similar acts or failures, such that the tribunal has jurisdiction to consider detriments that would other be out of time?

    17.2 In relation to any detriment that is out of time, is the tribunal satisfied that it was not reasonably practicable for the claim to be brought within the primary limit of three months?

    17.3 If so, what further period does the tribunal consider was reasonable for the claim to be presented within?

    17.4 Did the claimant bring the claim within such further period?

18. In relation to the claimant's complaints brought under the EQA:

    18.1 Was there conduct which extended over a period, such that the tribunal has jurisdiction to consider detriments that would otherwise be out of time?

    18.2 In relation to any detriment that is out of time, is the tribunal satisfied that it is just and equitable to extend the primary time limit?

    18.3 If so, what further period does the tribunal consider was just and equitable for the claim to be presented within?

    18.4 Did the claimant bring the claim within such further period?

The Relevant Legal Principles

Maternity discrimination

6. Section 18(4) EQA provides that:

> 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.

7. By analogy with the approach adopted in disability discrimination (see Trustees of Swansea University Pension & Assurance Scheme v

Williams [2015] IRLR 885, [2015] ICR 1197, EAT) unfavourable treatment is to be measured against an objective sense of that which is adverse as compared with that which is beneficial:

> "Persons may be said to have been treated unfavourably if they are not in as good a position as others generally would be."

8. The tribunal must consider whether the claimant was treated unfavourably because of her maternity leave. This requires some causal connection (see Johal v CEHR UKEAT/0541/09). The reason for the treatment must correspond to the maternity leave, it is not enough for this to be part of the background. The employee's maternity leave must to be an effective cause of the treatment complained of (see O'Neill v Governors of St Thomas Roman Catholic Voluntary Aided Upper School [1996] ICR 33).

Harassment

9. Section 26(4) EQA provides that:

> (1) A person (A) harasses another (B) if –
> (a) A engages in unwanted conduct related to a relevant protected characteristic, and
> (b) the conduct has the purpose or effect of –
> (i) violating B's dignity, or
> (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
> …
>
> (4) In deciding whether conduct has the effect referred to in section (1)(b), each of the following must be taken into account –
> (a) the perception of B;
> (b) the other circumstances of the case;
> (c) whether it is reasonable for the conduct to have that effect.

10. In deciding whether the conduct "related to" a protected characteristic consideration must be given to the mental processes of the putative harasser (see GMB v Henderson [2016] IRLR 340, CA).

11. In Pemberton v Inwood [2018] IRLR 542, CA Underhill LJ re-formulated his own guidance in Richmond Pharmacology v Dhaliwal [2009] IRLR 336, EAT, as follows:

> "In order to decide whether any conduct falling within sub-paragraph (1)(a) of section 26 EqA has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section 4(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section 4(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also take into account all the other circumstances (subsection 4(b). The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the

claimant's dignity or creating an adverse environment for him or her, then it should not be found to have done so."

12. The claimant's subjective perception of the offence must therefore be objectively reasonable.

Direct discrimination

13. Section 13(1) EQA provides that:

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

14. There are two elements in direct discrimination: the less favourable treatment, and the reason for that treatment (see Glasgow City Council v Zafar [1998] IRLR 36, [1998] ICR 120).

15. It is unnecessary for the protected characteristic to be the sole basis for the less favourable treatment complained of provided it had a significant influence on the outcome (see Nagarajan V London Regional Transport [2000] 1 AC 510).

Detriment

16. Section 39(2) EQA provides that:

> An employer (A) must not discriminate against an employee of A's (B) –
> …
>
> (d) by subjecting him to any other detriment.

17. A complainant seeking to establish detriment is not required to show that she has suffered a physical or economic consequence. It is sufficient to show that a reasonable employee would or might take the view that they had been disadvantaged, although an unjustified sense of a grievance cannot amount to a detriment (see Shamoon v Chief Constable of RUC [2003] IRLR 285, HL).

18. The EHRC Employment Code provides that "generally, a detriment is anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage".

19. Any alleged detriment must be capable of being regarded objectively as such (see St Helens MBC v Derbyshire [2007] ICR 841).

Burden of proof

20. Section 136 EQA provides

> …
>
> (1) 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.

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

21. In many cases it will be appropriate to focus on the reason why the employer treated the claimant as it did and if the reason demonstrates that the protected characteristic played no part whatsoever in the adverse treatment, the complaint fails (see Chief Constable of Kent Constabulary v Bowler UKEAT/0214/16/RN). Accordingly, the burden of proof provisions have no role to play where a tribunal is in a position to make positive findings of fact (see Hewage v Grampian Health Board [2012] IRLR 870, SC).

22. Where the two-stage approach envisaged by section 136 is adopted a claimant must at the first stage establish a prima facie case. This requires the claimant to prove facts from which a tribunal could conclude that on the balance of probabilities the respondent had committed an unlawful act of discrimination. This requires something more than a difference in status and a difference in treatment (see Madarassy v Nomura International plc [2007] ICR 867, CA).

23. In exercising its discretion to draw inferences a tribunal must do so on the basis of proper findings of fact (see Anya v University of Oxford [2001] IRLR 377, [2001] ICR 847, CA).

24. Tribunals must be careful to avoid too readily inferring unlawful discrimination on a prohibited ground merely from unreasonable conduct where there is no evidence of other discriminatory behaviour on such ground (see Igen Ltd v Wong [2005] IRLR 258, CA).

25. Once the burden of proof has shifted, it is then for the employer to prove, on the balance of probabilities that the treatment was in no sense whatsoever on the grounds of the protected characteristic (see Igen).

Mutually exclusive complaints under the EQA

26. A tribunal cannot find both direct sex discrimination under section 13 EQA and pregnancy or maternity discrimination under section 18 EQA in relation to the same treatment. This is because section 18(7) EQA provides that:

> 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).

27. A tribunal cannot also find both direct discrimination under section 13 EQA and harassment under section 26 EQA in respect of the same treatment. This is because section 212(1) EQA provides that:

> 'detriment' does not, subject to subsection (5) include conduct which amounts to harassment

Flexible working

28. Section 47E ERA provides that

> (1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the employee –
> (a) made (or proposed to make) an application under section 80F [ERA]

29. Detriment is not defined by the ERA but it is analagous to the concept of detriment in the EQA.

Constructive dismissal

30. For there to have been a constructive dismissal the following three conditions must be met:

(1) There must be a fundamental breach on the part of the employer.

(2) The employee must not, by the time of the resignation, have conducted herself in such a way as to have relinquished the right to rely on the breach. This is known as affirmation. The respondent does not say that the claimant affirmed her contract in respect of the fundamental breach she relies upon.

(3) The fundamental breach must be a contributing cause of the resignation though it need not be the principal cause.

31. The implied terms of a contract of employment include the implied term of mutual trust and confidence i.e. that a party not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between itself and the other party to the contract. This breach can be the result of a single act / omission or of cumulative conduct which culminates in a last straw. A last straw need not amount to blameworthy or unreasonable conduct but it must contribute in some meaningful way to the overall breach.

32. Whether there has been a fundamental breach is an objective test. Accordingly, there will be no breach of trust and confidence simply because the employee subjectively feels that such a breach has occurred, no matter how genuinely this view is held.

33. If there has been a constructive dismissal, there may still be a dispute over whether the dismissal was fair. The respondent does not rely on a potentially fair reason under sections 98(1) and (2) ERA. We are not therefore required to consider the fairness of any dismissal under section 98(4) ERA.

Witnesses and documents

34. We heard evidence from the claimant.

35. For the respondent, we heard from: Ingrid Lennon, Deputy General Manager, Corporate Division 3 (formerly Manager); Wlodek Wleklik, President and Chief Executive; Simon Hall, Chief Financial Officer and Head of HR; and Kenji Nakamura, General Manager.

36. There was a hearing bundle which exceeded 650 pages. We read the pages in the bundle to which we were referred.

37. We allowed additional evidence relating to the position of the claimant's monitor.

38. Both parties gave oral and written closing submissions. These were fully considered even if they are not expressly referred to below.

The Facts

39. Having considered all the evidence, we find the following facts on the balance of probabilities. These findings are limited to points that are relevant to the issues in dispute.

40. The respondent specialises in the development and distribution of agricultural products, including plant protection products, fertilizers and seeds. It is a wholly owned subsidiary of Sumitoro Corporation which is based in Japan. It operates together with a network of companies and branches across Europe as part of the Sumi Agro Group.

41. The claimant commenced employment with the respondent on 3 April 2014, as a Senior Risk Analyst, Corporate Division 3 i.e. the Risk Management ("RM") team which was responsible for the credit risk function. The claimant was required to analyse risk factors affecting the respondent's decisions to accept applications to trade with existing and prospective business partners.

42. The claimant's salary was increased from £35,000 to £42,000 in January 2015. This was in recognition of her performance the previous year with which the respondent had been satisfied and impressed.

43. The claimant was initially line managed by Kenji Nakamura, General Manager of Corporate Division 2, until December 2014, when Koji Tayama, Corporate Division 3 and General Manager, joined the team.

44. In October 2015, following an announcement that Mr Tayama would be leaving the London office in 2016, he asked the claimant if she was interested in taking over his role. We accepted the respondent's unchallenged evidence that this approach was made by Mr Tayama on his own initiative.

45. Under the respondent's internal rules approval was required for each business partner who requested credit terms. Each local office had

authority for approval of between EUR300,000 – 500,000. In April 2016 the Tokyo office i.e. Sumitoro Corporation agreed that the respondent would have authority to approve credit applications of between EUR500,000 – 1M on three conditions: (1) it drafted a new credit application template for approval by Tokyo; (2) it reviewed all previous applications within this threshold; and (3) it looked into country by country industry indicators. This meant that the RM team would be busier and under greater demand from Tokyo. All applications exceeding EUR1M required approval by Tokyo.

46. Approvals which had to be completed by April of each year were authorised when the business plan was agreed the following January.

47. It is not in dispute that the claimant announced that she was pregnant on 14 March 2017.

48. On 21 March 2017 Mr Nakamura wrote to colleagues, including the claimant, to propose a case study regarding pre-authorisation of trademarks for the forthcoming Annual Risk Seminar. The claimant replied to say that this issue was not relevant to the RM team or the seminar. Mr Nakamura had to correct her and emphasised that this was an important issue for the team. He then emailed Wlodek Wleklik, President and Chief Executive, to complain that the claimant was too focused on her own work and did not like to work as part of a team (page 142 bundle). He also wrote “She isn’t my boss but is acting like one…and if she doesn’t show the sense that she still has a lot to learn, I don’t think she is fit for the job”.

49. At around this time claimant had been observed talking to another colleague, Kasia Odej, in the kitchen, on several occasions for sometimes up to 30 minutes, during her working time. This was noted by Mr Wleklik who instructed Mr Tayama to speak to the claimant about this issue. We imply from this that Mr Tayama was himself reluctant to address this issue with the claimant. The claimant emailed Mr Wleklik on 31 March 2016 to apologise (page 152).

50. The claimant was told by Mr Wleklik on 7 April 2016 that she was not being considered for Mr Tayama’s role. She emailed Mr Wleklik to complain that this decision related to her impending maternity leave. We accept Mr Wleklik’s evidence that he felt it was too risky to take on someone without management experience at time when the business was expanding rapidly and the RM function was becoming more important. In 2016, the RM team registered 374 applications. This number increased to 552 in 2017. This was because the respondent had increased credit authorisation rights. We also accept Mr Wleklik’s evidence that some initial consideration was given to promoting the claimant but the feedback from Mr Tayama was that she was not ready to take on this new role. The recent incidents with Mr Nakamura and Ms Odej had also led her managers to question her attitude. We find that the claimant’s inexperience combined with the increasing demands on the RM function were the reasons why she was not promoted.

51. We accept the claimant's evidence that she told Mr Wleklik and Simon Hall, Chief Financial Officer, that she intended to continue working for as long as possible through her pregnancy and to take the maximum 10 KIT i.e. keeping in touch days during her maternity leave. Mr Wleklik knew that the claimant wanted to return to work after three or four months, working one day a week and to resume her full-time hours after six months. He also knew that the claimant was keen to use KIT days. The claimant referred to KIT days at a meeting on 19 April 2016 and in emails on 6 June 2016 and 8 July 2016. She wanted to remain involved.

52. The claimant continued to work until the end of her pregnancy. Her last day at work before commencing maternity leave was 8 July 2016. Her child was born on 10 July 2016. Maternity cover for her role was provided by Emma Luo.

53. On 28 July 2016, Mrs Lennon commenced employment as Manager of Corporate Division 3. She had been recruited by Mr Tayama in May 2016. Mrs Lennon had the designation of Deputy General Manager. The respondent accepted that she was the only woman in that role at this time.

54. Mrs Lennon and Mr Tayama worked on the new application template.

55. When Mr Tayama left in October 2016, he was replaced as General Manager by Mr Hall.

56. The claimant visited her office in mid-October 2016. She met with Mr Wleklik and Mr Hall when they told her about Mrs Lennon's appointment. The claimant asked about KIT days and was told to speak to Mrs Lennon as she was now in charge of business planning. The claimant approached Mrs Lennon afterwards when she offered to come into work to help with business plan preparation, knowing that the approval deadline was 31 January 2017.

57. We find that the respondent's witnesses, particularly Mr Hall, who was also Head of HR, had a poor understanding of KIT days. Although he agreed that the respondent and claimant had a reciprocal responsibility for KIT days, he expected the claimant to take the initiative if she wanted KIT days. He understood incorrectly that an employer was not permitted to contact an employee in the first six months of maternity leave. Similarly, Mr Hall had a mistaken belief that an employee did not accrue annual leave during maternity leave. He therefore lacked the basic knowledge expected of someone to whom the management of the HR function had been delegated. This meant that the respondent failed to facilitate the claimant's repeated attempts to arrange KIT days until January 2017.

Refusal of annual leave request on 25 January 2017

58. The claimant contacted the respondent on 5 January 2017 to arrange a meeting to discuss her return to work. This meeting took place on 16 January 2017 with Mr Wleklik, Mr Hall and Kazuma Suzuki, Chief Operation Officer. The claimant confirmed that she intended to return to

work on 20 March 2017. She requested annual leave from 8 – 30 May 2017. She also asked to attend the Annual Risk Seminar in February 2017 as a KIT day.

59. The claimant explained that she had requested this leave because of a family gathering. She did not give any other reasons for this request. As the claimant wrote in her statement "Since such opportunity does not arise often I wanted to make the most of that time" (her statement paragraph 14).

60. The claimant was told that Yoshiaki Araki would be joining the RM team to replace Ms Luo. Mr Araki was seconded from 17 January 2017 until 11 October 2017.

61. The claimant then emailed Mr Wleklik and Mr Hall in which she confirmed her request for annual leave. Mr Hall replied to the claimant on 25 January 2017 (199). He agreed that she could use a KIT day to attend the seminar. He refused her request for leave because May was the "busy season" for the respondent. He noted that the RM team had dealt with 80 applications in May 2016 and it was envisaged that it would be the same in 2017.

62. As Mr Hall had not been in the business the previous year, he relied on information provided by Mr Wleklik. He said that the peak period for the RM team was from October – December for business planning and through to April / May. Mr Wleklik said that May was a busy period in agriculture. He said that May – June could also be busy for the RM team depending on crop yields as this could result in more ad hoc applications. Mrs Lennon said March – June was the busiest period for sales. All of the respondent's witnesses said that May was busy.

63. Although the claimant says that the busy period for the RM team was between November – February, we find that the respondent had a legitimate business need for the claimant to be at work in May 2017. We find that this was the reason why the claimant's leave request was refused.

<u>Refusal of annual leave request on 31 January 2017</u>

64. The claimant replied to Mr Hall on 26 January 2017 (204) when she requested two weeks' leave in May; or three weeks' leave in April; or three weeks' leave consisting of the last week in April and the first two weeks in May. She said that she wanted this leave because of shared parental leave as well as her family gathering, although she did not explain how this related to shared parental leave.

65. This leave request was refused by Mr Hall by email on 31 January 2017 (210) when he explained "to protect the company we are sorry but it will not be possible to take holiday during the period up to the end of May".

66. The claimant responded to Mr Hall acknowledging this decision and confirmed that she now intended to return to work on 15 May 2017 to accommodate her "family obligations". This was agreed.

67. As the claimant had been on maternity leave since July 2016, the respondent paid her an annual bonus based on her performance in 2015. This meant that she was not put at a disadvantage, in relation to her bonus, because of her maternity-related absence.

68. At the Annual Risk Seminar on 28 February 2017 the claimant had a brief meeting with Ms Lennon. We accept that Mrs Lennon told her that having a baby was life-changing and many of her friends had struggled balancing professional life with childcare, despite Mrs Lennon's evidence to the contrary. This is because Mrs Lennon agreed that she had asked the claimant about her child and we find it unlikely that the claimant would have invented this. However, we find that Mrs Lennon's comments were neither discouraging nor unsupportive, although this was the claimant's perception.

69. The claimant also spoke to Mr Hall about her accrued annual leave and he advised her to put her request in writing. The claimant requested leave in July and August 2017 which was agreed. There was no further correspondence about accrued leave at this stage.

70. We accept Mrs Lennon's unchallenged evidence that at around this time she was approached by the claimant's partner, who worked in the same building, when he said that the claimant was anxious about returning to work with a new manager and this was based on her past experience with Mr Tayama. Mrs Lennon told him that she was a fair and firm manager, and the claimant had nothing to worry about.

The claimant's first week back at work following maternity leave

71. The claimant returned to work on 15 May 2017. She had an initial meeting with Mr Hall to discuss HR issues. Mrs Lennon joined them after around 20 minutes. Later that morning, the claimant attended an RM team meeting with Mrs Lennon and Mr Araki. She complains that this was a deep-end introduction i.e. she was thrown in at the deep end in which Mrs Lennon referred to a new risk analysis template and allocated responsibilities with deadlines. We find that Mrs Lennon was demarcating areas of responsibility to the claimant and Mr Araki, setting objectives and laying out her expectations from the outset. This was good practice. We do not therefore find that when viewed objectively this put the claimant at a disadvantage.

72. Although the claimant denies saying this, we find that she told Mrs Lennon that it would take "some months to settle back to work". The claimant was trying to manage the expectations of a new manager about whom she had some anxiety. As she had not worked since July 2016 she was also emphasising the impact of not having had any KIT days in the intervening period on her reintroduction to the office.

73. Afterwards Mrs Lennon emailed the claimant and Mr Araki (258) with a table allocating offices and financial assessments up to October 2017 together with a summary of their meeting. Although the claimant agreed that this summary was accurate, she complains that this email was overbearing and patronising. However, she replied the next day (264) to

thank Mrs Lennon for a "very warm welcome back to the office". Her evidence was that she was happy to be back at work, she was trying to be encouraging to her new manager and this was a leap of faith. We do not find that Mrs Lennon's email was overbearing or patronising. She was setting out objectives and expectations to the team.

74. The claimant also complains that there were no welcome drinks. We accept Mrs Lennon's evidence that this was not a practice in the office. The claimant did not say that there was such a practice. We do not therefore find that this put the claimant at a disadvantage.

Second screen

75. It is accepted that before she went on maternity leave the claimant worked with two screens on her desk. One screen was removed during her absence. The claimant does not complain about the removal of this second screen.

76. The claimant asked Mrs Lennon for her second screen to be reinstated on 15 May 2017. We accept her evidence that she told Mrs Lennon that she required two screens for easier cross-referencing of information. However, we find that it was reasonable for Mrs Lennon to conclude that this was more about convenience for the claimant. In her evidence to the tribunal, the claimant agreed that this was also a matter of preference based on how she had been used to working. No one else in the team required a second screen.

77. Mrs Lennon did not ignore the claimant's request. She emailed IT on the same date (260 – 261) to enquire about the cost of leasing a second screen. She was told that this would require authorisation from Mr Hall. Mrs Lennon responded to say that she had "declined [this request] as I don't see the necessity". We find that Mrs Lennon drove this decision, although we accept her evidence that she consulted Mr Hall who agreed with her as he did not want to set a precedent in the office. Mrs Lennon felt that a second screen was unnecessary and she was not therefore prepared to make a business case for one. She told the claimant the next day that her request had been declined. She did not explain what steps she had taken. She did not feel that this was necessary. We do not find that the reason for this was because the claimant had taken maternity leave or because she was a woman or that this was related to her sex. The claimant did not ask about a second screen again.

Business cards

78. The claimant's telephone number changed when she returned to work. She therefore required new business cards which she requested from Mrs Lennon.

79. The claimant complains that Mrs Lennon ignored this request. We do not find that she did. Mrs Lennon approved this request and told the claimant to email Nuzoni Arai, the Office PA, to order new cards, and copy her into this email. Although the respondent did not produce any evidence of this email we find that Mrs Lennon sent this email to the claimant who did not

comply with this instruction. This is because the claimant's evidence was that she did not email Ms Arai because she did not have authority to order the cards. This was a reasonable management instruction which the claimant did not follow.

Monitoring of the claimant's personal internet use (1)

80. In the claimant's first week back at work, Mrs Lennon noted significant internet use. We accept Mrs Lennon's evidence that she saw the claimant looking at a job search in Twickenham in her first week. We do not believe that it is likely that she invented this. She also saw that the claimant was using Amazon, Gmail and LinkedIn. The claimant agreed that she used these websites. She says that she kept the webpages open using tabs open in her browser which she accessed only outside her working hours.

81. Mrs Lennon was concerned about the claimant's personal internet use and she discussed this with Mr Hall who advised her to monitor the claimant's internet use. The claimant was not initially informed of this concern.

82. Mrs Lennon says that the claimant accessed the internet for up to two hours a day in May 2017 and on average for between one to one and a half hours thereafter. She did not keep any record of the claimant's use. The claimant accepted that she used personal websites during her working hours. We find that she did this regularly and to the extent that Mrs Lennon was genuinely concerned about its impact on her work.

Initial team meeting in late May / early June 2017

83. The claimant complains that at an initial team meeting in late May / early June 2017 Mrs Lennon had a resistant attitude and was dismissive of her. Mrs Lennon denies this. The claimant's evidence was that when she shared feedback about a Bulgarian practice and purchase plan she did not feel that Mrs Lennon acknowledged this and disregarded it. It is agreed that Mrs Lennon made no comment about this feedback. We do not find that this demonstrated a resistant attitude or that Mrs Lennon was being dismissive.

Meeting on SAU application on 16 May 2017

84. In 2017 the RM team was required to conduct a retrospective assessment of all customers across its European businesses who had been approved for credit of between EUR500,000 – 1M. This was the second of the three conditions set by the Tokyo office.

85. The claimant requested a meeting with Mrs Lennon so that she could better understand what information was required for these assessments. They met on 16 May 2017 when they discussed the SAU i.e. Ukraine retrospective applications. The claimant explained that she was having difficulties obtaining financial information. She complains that Mrs Lennon asked her to provide information that was not available. She also alleges that Mrs Lennon withheld some of this information which would have been required when prior approval was obtained in January. She

also complains that Mrs Lennon provided feedback on style and told her to do things that she was already doing.

86. We find that Mrs Lennon's feedback was not just about style because there was missing information which was available. There was no evidence that Mrs Lennon had withheld any of this information. The claimant had asked for clarification from Mrs Lennon and this is what she was given. Although the claimant says that this work did not impact on the approval process, we accept the respondent's unchallenged evidence that this information was required by the Tokyo office. In so far as Mrs Lennon's feedback dealt with style we do not find that viewed objectively this put the claimant at a disadvantage. The claimant was working on a new template. Mrs Lennon was being thorough.

Mr Tayama's visit on 1 June 2017

87. The claimant suggested to Mrs Lennon that she should meet Mr Tayama when he visited the London office on 1 June 2017. Although Mrs Lennon denied this, we find that she declined this suggestion. This is because the claimant was very clear in her recollection whereas Mrs Lennon was not. The claimant was upset by this. She felt that because Mrs Lennon was not showing any interest in her former manager she was not showing that she was interested in her. The claimant does not say that the manner of this refusal was arrogant, she complains that the refusal itself was arrogant. We do not find that viewed objectively Mrs Lennon's refusal was arrogant or that it placed the claimant at any disadvantage as Mrs Lennon was not required to meet Mr Tayama nor was this necessary as she had worked alongside him for several months in 2016 during her handover.

SAU application on 5 June 2017

88. Following a team meeting earlier that day, Mrs Lennon emailed the claimant on 5 June 2017 (309 – 310) instructing her to complete a draft consultation for SAU's use of a promissory note. Although this was one of Mr Araki's lead allocations Mrs Lennon asked the claimant to work on this consultation because he was engaged on projects in Germany and Turkey. Mrs Lennon provided details about how this consultation was to be structured. She asked the claimant to forward her draft by 13 June 2017 so that she could submit the final version to Tokyo a week later.

89. The claimant was working on other applications. She replied to Mrs Lennon (310) to say that she would work on this consultation once she had completed her work. As this other work was not urgent Mrs Lennon instructed the claimant to prioritise the consultation work. It is evident that the claimant was unhappy with Mrs Lennon prioritising her work but we find that this was a reasonable management instruction as the SAU work was urgent.

90. On 8 June 2017 Mrs Lennon asked the claimant to provide her with a draft on 9 June 2017 so that she could review this over the weekend.

91. The claimant complains that Mrs Lennon was micromanaging her. She had sent her detailed instructions. She had imposed a truncated deadline. She had insisted on seeing her draft before this deadline had elapsed. She felt that Mrs Lennon was not trusting her to plan her work. She also takes issue with the fact that Mrs Lennon had treated this as a consultation when this was a less urgent report. The claimant felt that she was an experienced risk analyst. She had never been managed in this way before. She had been used to a different way of working with Mr Tayama. She found Mrs Lennon's directive management style challenging and undermining. The fact that Mrs Lennon worked from home was also different.

92. We do not find that Mrs Lennon was micromanaging or managing the claimant in an overbearing manner. We find that Mrs Lennon was being thorough. Mrs Lennon genuinely, although mistakenly, treated this work as a consultation. She therefore prioritised this work. It was the first consultation that the claimant had worked on since her return from maternity leave. The claimant had already requested a meeting with Mrs Lennon about the SAU assessments and she had been unable to source financial information for this work. Mrs Lennon was being thorough. We do not agree that this put the claimant at a disadvantage.

Cosmos meeting on 13 June 2017

93. The claimant attended a meeting with Mrs Lennon and Mr Hall and Cosmos Insurance brokers on 13 June 2017. This was an introductory meeting set up by Mrs Lennon who had worked with Cosmos before. As the claimant had been involved with the previous brokerage service Mrs Lennon asked her to attend to provide background information. The claimant complains that Mrs Lennon repeatedly cut her off and disparaged the previous credit insurance arrangements. She gave one example of this which was that Mrs Lennon interrupted her when she was sharing historic data and said "never mind, let's focus on how to make it better". We accept the claimant's evidence that Mrs Lennon interrupted her on this one occasion because of the clarity of her recollection. However, we do not find that Mrs Lennon was disparaging this agreement or the claimant. We find that she acted because she wanted the focus of the meeting to be on the new credit insurance agreement. The claimant agreed that Mrs Lennon was responsible for driving this meeting. Mrs Lennon had set up this meeting to discuss a new agreement. In so far as we have found that Mrs Lennon interrupted the claimant once to make this comment we do not therefore find that this was because the claimant had taken maternity leave or that she was a woman or that this was related to her sex.

94. Nor do we find that Mrs Lennon repeatedly interrupted the claimant as she gave no other particulars of this allegation.

Meetings on 16 June 2017

95. The claimant understood that she was required to use up her 27.5 days of accrued annual leave by the end of the calendar year. She asked Mr Hall if she could use this leave by taking two days a week (Monday and

Thursday) from September – December 2017. The claimant felt that this would help her secure childcare.

96. At a catch up meeting with Mrs Lennon on 16 June 2017, when they discussed the applications that the claimant was working on, the claimant asked Mrs Lennon to chase up the status of her accrued annual leave request. We accept Mrs Lennon's evidence that the claimant told her that she did not want to take this leave in July and August 2017 as her parents were visiting. This is consistent with the claimant's witness statement (paragraph 24) and her repeated requests to work reduced hours from September 2017. Mrs Lennon emailed Mr Hall (315) about this outstanding request.

97. Mrs Lennon discussed this request with Mr Hall around 20 minutes later. They agreed that a four-day week was more feasible as the business planning season was between September – January and Mr Araki was due to return to Tokyo in the autumn. The claimant's internet use was also a factor for this decision. Although Mrs Lennon says this decision was subject to HR approval, she agreed that this decision had already been made i.e. by Mr Hall and herself. We do not find that Mrs Lennon considered the issue of the claimant's use of personal time, including the claimant taking extended lunch breaks, at this stage because there was no reference to it in any contemporaneous documents.

98. Mrs Lennon and Mr Hall agreed to raise the issue of the claimant's internet use when they met with her on 20 June 2017 to discuss her accrued leave request as they felt this impacted on the feasibility of this request.

99. In her evidence to the tribunal the claimant said that her first month back at work was "relatively okay" and the detrimental treatment only started after she had discussed her childcare and her outstanding accrued leave request with Mrs Lennon on 16 June 2017.

SAROM write off application 19 June 2017

100. Mrs Lennon emailed the claimant on 19 June 2017 at 11.10am (319) to allocate an urgent SAROM i.e. Romanian application. This was to approve a 50% write down of debt for a company which was expected to be put into insolvency by the end of the week. Mr Araki, who was responsible for SAROM applications was away. The claimant was instructed to complete this work on the same day. Mrs Lennon did not flag this as being of high importance nor did she discuss this with the claimant herself.

101. The claimant complains that Mrs Lennon waited until 19 June 2017 to allocate this work and that Mrs Lennon failed to discuss this assignment with her on the day. She says if Mrs Lennon had done this, she would have understood that this task was urgent. Instead, having seen this email in her inbox in the morning she only read it after her lunch break. We accept that this was close to 3.45pm as this is consistent with a file note that Mrs Lennon sent the claimant which she did not challenge at the time. The claimant says that she did not immediately deal with this

email as it concerned one of Mr Araki's allocations. When she realised that this was urgent she asked Mrs Lennon for additional time to complete this work which was agreed. We therefore find that the claimant returned from her lunch break shortly before 3.45pm as she would have realised that this work was urgent immediately upon reading this email. The claimant submitted her draft SAROM application the following day.

102. The email which prompted this urgent application was sent to Mrs Lennon at 4.10pm on 16 June 2017. We accept Mrs Lennon's evidence that she only saw this email after the Monday morning meeting ("MMM") which took place every week from 9.00 – 9.30am. She had meetings on 16 June 2017 with the claimant between 4.00 – 4.30pm and with Mr Hall from 5.00pm until she left the office. Although she emailed Mr Hall at 4.40pm which was 30 minutes after the SAROM email was sent to her, we find that she would have acted on this email had she seen this then. We do not find that Mrs Lennon deliberately withheld this email. In any event, had she emailed the claimant on Friday afternoon, this would not have given the claimant any more time to complete this task as she left the office at 5pm.

103. We find that Mrs Lennon should have flagged that this was an urgent task on 19 June 2017 especially because she was concerned about the claimant's internet use. We do not find that Mrs Lennon deliberately failed to do this. She had sent the email to the claimant at 11.10am. Had the claimant read this email before her lunch break she would have understood that this was an urgent task which had been allocated to her and she would have been able to prioritise her work accordingly. We do not find that Mrs Lennon failed to flag this piece of work or to discuss this with the claimant directly because the claimant had taken maternity leave or that she was a woman or that this was related to her sex.

104. Mrs Lennon says that the claimant was using the internet improperly and she took a longer lunchbreak on 19 June 2017. As we have found, the claimant returned to the office from her lunchbreak shortly before 3.45pm. We find that it is likely that the claimant took a longer lunch break on this occasion. We accept that Mrs Lennon felt that both factors had impacted on the claimant's failure to complete the SAROM application on time.

Refusal of request to use accrued leave on 20 June 2017

105. Ahead of the meeting on 20 June 2017, Mrs Lennon met with HR on 19 June 2017 who agreed with the decision she and Mr Hall had already made on 16 June 2017 that the claimant could take only one day's leave each week from September.

106. Mrs Lennon emailed Mr Hall on 19 June 2017 (328) to say

> "I am concerned that when days are reduced to a 3 a week [awaiting your decision], if a similar style was to be maintained as work required to be completed isn't feasible especially where overtime or working to catch up is not available. I have noted throughout the day the levels of use is high so would like to nip it in the bud".

She made no reference to personal time.

Meeting on 20 June 2017

107. This decision was conveyed to the claimant at her meeting with Mrs Lennon and Mr Hall the next day. The claimant was told that her request to use her two days' accrued leave each week had been refused because of the business planning season and other work projects, and also because Mr Araki would be returning to Tokyo in September 2017 (the decision to extend his secondment to October 2017 had not yet been made). The claimant was offered the alternative working pattern of a four-day week working 8am – 4pm each day. She would be required to work on the same four consecutive days. She could choose which day she took as leave. This arrangement would then be reviewed in February 2018, when a three-day week could be considered. The claimant was told that she could carry over her accrued leave so that she was not required to utilise this by the end of the year.

108. It is not disputed that during this meeting Mr Hall said that his wife had given up work to look after their children who had had a lot of sickness from exposure to other children at their nursery. We do not find that in saying this Mr Hall was suggesting that the claimant should also give up work to care for her child, although this is what the claimant felt. As will be seen, at a subsequent meeting on 18 July 2017, when Mrs Lennon told the claimant that the respondent would be flexible around emergency childcare if her child became unwell, the claimant said that her preference was to work on a part-time basis so that she would be available to pick up her child from nursery if this arose. We find that the evidence therefore shows that the claimant was more concerned about the impact of her child's sickness on her work than the respondent.

109. We find that the respondent refused the claimant's request because of the potential impact on the team's work and because it was concerned about the claimant's internet use and the impact of this on her productivity over a reduced a three-day week as set out in Mrs Lennon's email dated 19 July 2017. We do not therefore find that this was because the claimant had taken maternity leave or that she was a woman or that this was related to her sex.

110. The claimant initially agreed to the respondent's proposal before she asked for more time to consider it. It was agreed that the claimant could respond in the week commencing 3 July 2017.

111. The claimant understood that the purpose of this meeting was to discuss her accrued leave request. She was shocked when Mrs Lennon told her that she was concerned about her personal internet use and its impact on her work. It does not appear to us that the claimant was told at this meeting that her personal internet use was linked to the decision to refuse her request to work three days a week and to the concern about the impact on her working four days a week. The claimant agreed that she kept personal internet pages saved as tabs on her browser. In her evidence to the tribunal the claimant said that she only accessed these pages before work and at lunchtime, however, we find that she used the internet for personal use intermittently during her work hours. This is what Mrs Lennon recorded in her file note on 22 June 2017 which was

forwarded to the claimant and she did not challenge this account at the time.

112. The claimant complains that Mrs Lennon's criticism about the SAROM application was unbalanced in that her positive contributions to the team since returning from maternity leave had not been acknowledged. We do not agree that this feedback was unbalanced. We have already found that Mrs Lennon was concerned about the impact of the claimant's internet use on her work. The claimant accepted that these concerns were valid. In her evidence to the tribunal, the claimant agreed that her employer was entitled to have highlighted this issue at this meeting. We have also found that Mrs Lennon was concerned about the impact that this would have if the claimant's working hours reduced.

113. The claimant also complains that Mrs Lennon did not give her a chance to speak. We do not find that she was prevented from speaking. The meeting lasted for an hour or more during which the claimant had ample opportunity to speak. We find that she was upset because her leave request had been refused and because she had been criticised. She also felt that anything she said would not make any difference to the outcome but she was not prevented from speaking.

114. After this meeting the claimant told Mrs Lennon that she had already agreed with a nursery to take her child for two days a week. She had therefore assumed that her request would be agreed. She said that her partner was considering working a four-day week. The claimant emailed Mrs Lennon and Mr Hall (333) when she said that she would need to discuss the respondent's proposal with him "to decide how this will work for us, including nursery arrangements". The claimant made no reference to a nanny.

File note 22 June 2017

115. Mrs Lennon followed up this meeting with a file note on 22 June 2017 (349 – 350). In relation to internet use, Mrs Lennon wrote that the claimant had

> "high use of internet during working hours and lately affected team workflow. She agreed her usage could possibly [be] seen in this manner but it is how she works in that she checks in and out during work matters and then goes back to the items [she] has been working on".

116. The claimant replied the next day (348) when she agreed that Mrs Lennon's comments about her internet usage were "valid" although she did not accept that her internet use had affected her work. She also complained that Mrs Lennon's feedback was unbalanced as there was no acknowledgement of her positive contribution to the team.

117. We do not find that this feedback was unbalanced for the reasons given above [paragraph 82]. These were valid concerns which Mrs Lennon had been entitled to raise at the meeting on 20 June 2017. The file note was a note of that meeting.

Monitoring of the claimant's personal internet use (2)

118. The claimant was now aware that her internet use was being monitored. She complains that following this meeting Mrs Lennon looked over her shoulder several times a day to see her screen.

119. There was a dispute about the orientation of the claimant's screen on her desk and the corresponding angle of sight that Mrs Lennon had from the adjacent desk. We find that regardless of this orientation, Mrs Lennon was able to see the claimant's screen from her desk. It was agreed that if Mrs Lennon wanted to see the claimant's screen she could. This meant that Mrs Lennon was able to see the claimant's screen and monitor her internet use without looking over the claimant's shoulder. We accept Mrs Lennon's evidence that she would not have been able to see the tabs on the claimant's screen from a seated position but she could see when the claimant opened a webpage.

120. The claimant says the monitoring of her internet use increased after she wrote to Mrs Lennon on 22 and 23 June 2017 to object to her feedback.

121. The claimant complains that this was micromanaging and overbearing and made her feel intimidated. We have found that Mrs Lennon had a genuine concern about the claimant's internet use from May 2018 and the impact of this on her work. The claimant had agreed that Mrs Lennon's criticisms of her personal internet use were valid. Mrs Lennon felt that this had impacted on the delayed SAROM write off application on 19 June 2017. We do not therefore find that the reason that Mrs Lennon was monitoring the claimant's internet use was because the claimant had taken maternity leave or that she was a woman or that this was related to her sex.

Dun and Bradstreet ("DNB") meeting on 22 June 2017

122. The claimant attended a meeting together with Mr Araki and Mrs Lennon with a DNB representative on 22 June 2017. The purpose of this meeting was to train the claimant and Mr Araki to use a new credit management platform that was being supplied by DNB. The claimant complains that Mrs Lennon talked over her at this meeting. She also complains that Mrs Lennon criticised the previous arrangements which were undermining as she had been responsible for them. In her evidence to the tribunal, the claimant said that Mrs Lennon made a few comments which were not favourable. She gave only one example which was that Mrs Lennon said "Ok, this does not need to be discussed now" when she discussed challenges the team faced getting financial information.

123. We find that Mrs Lennon did interrupt the claimant in order to maintain the focus of the meeting. The claimant wanted to discuss background issues relating to the previous arrangement. The focus of the meeting was training on the new platform. We accept Mrs Lennon's evidence that her criticism related to past arrangements on DNB pricing and she was unaware that the claimant had been responsible for setting these up. We do not find that this was because the claimant had taken maternity leave or that she was a woman or that this was related to her sex.

Appraisal meeting on 23 June 2017

124. The claimant had an appraisal meeting with Mrs Lennon on 23 June 2017 the purpose of which was to agree the claimant's objectives for the next year.

125. The claimant asked Mrs Lennon to provide specific examples of how her internet use had impacted on her work. Mrs Lennon referred to the delay in completing the SAROM write off application. She said that she had seen the claimant accessing shpock, Gmail and Amazon. The claimant agrees that she fell silent as she felt that anything she said would not make any difference.

126. Mrs Lennon noted that she had raised the issue of her internet use at their previous meeting because of the potential impact if the claimant worked a four-day week. The claimant complains that Mrs Lennon unreasonably concluded that her performance required improvement and her feedback was unbalanced.

127. They went on to discuss objectives, although the claimant was initially reluctant to discuss these until her working pattern had been agreed. Afterwards, the claimant submitted an appraisal document (359 – 371) in which, in response to the question "what action could be taken to improve your performance in your current role by you and your manager", she made several suggestions including "better information sharing, regular meetings and discussions, new processes and best practices." The claimant's evidence was that information sharing was a contributing factor to the delayed SAROM application and her other suggestions were general comments made in the context of this appraisal. However, we find that the claimant was in fact asking for some of the things that she now complains amount to overbearing, undermining and micromanaging conduct by Mrs Lennon.

128. We do not find that this feedback was unbalanced. We have found that Mrs Lennon had justified concerns about the claimant's internet use and its impact on workflow and she was entitled to raise these with her at this appraisal meeting.

27 June 2017 emails

129. The claimant forwarded around 10 SAU applications to Mrs Lennon on 23 June 2017. These were incomplete as the claimant had not found all of the missing information. Mrs Lennon had allocated this work to the claimant on 15 May 2017.

130. Mrs Lennon reviewed and returned these applications to the claimant with comments written on post-it notes. She agreed that she had discussed the same comments with the claimant on 15 May 2017. As Mrs Lennon was due to be on leave from 28 June – 4 July 2017 she emailed the claimant on 27 June 2017 (374) with instructions on how to complete this work. She listed the following six headings which corresponded with the application template: (1) Comments by SAE RM; (2) D&B Report; (3)

Financial Assessment; (4) Other Remarks; (5) SAU Communication; and (6) Conditions.

131. Mrs Lennon forwarded her email to Mr Hall on the same date (379) with the comment "The below is a little hand holding but best to be clear". The claimant only became aware of this email during these tribunal proceedings.

132. The claimant accepted that Mrs Lennon was entitled to forward this email to Mr Hall. She complains that this email misrepresented and undermined her capabilities as it did not refer to their previous discussion and was therefore out of context. She took issue with items (1) – (4) as these were a reiteration of previous advice. She says that it gave a false impression that she needed support. Mrs Lennon agreed only that item (2) repeated earlier advice she had given.

133. The claimant had not completed the SAU applications. We accept that Mrs Lennon was concerned that despite their meetings between 15 May 2017 and 16 June 2017, the claimant had not found the missing data. Mrs Lennon's email contained new advice as well as some reiteration. This was reasonable oversight and management. The claimant had also requested more information in her appraisal document. We do find that viewed objectively this email put the claimant at a disadvantage.

134. We have already found that Mrs Lennon was concerned about the impact of the claimant's internet use on her work. She had already discussed this issue with Mr Hall. We find that because of this concern she forwarded this email to Mr Hall for oversight of the claimant's work, if necessary, whilst she was on leave. We do not find that she forwarded this email to Mr Hall because the claimant had taken maternity leave or that she was a woman. Nor do we find that this was related to her sex.

135. Mrs Lennon sent a second email to both the claimant and Mr Araki in which she set out a table of live RM matters with action points. We find that this was a reasonable management action. As noted, Mrs Lennon was about to go on a week's leave. Mr Araki would also be out of the office on the German project.

<u>5 July 2017 email</u>

136. Following her return to the office, Mrs Lennon replied on 5 July 2017 (405 – 406) to the claimant's email dated 23 June 2017. She explained that she had brought up the claimant's internet use on 20 June 2017 because she was concerned about her ability to discharge her duties if she worked four days a week. She also provided more detail regarding the SAROM write-off application which she had raised at the appraisal meeting. She noted that on 19 July 2017: the claimant had not sent her first email until 11am and she had approached her at around 3.40pm to say that she only now understood she was required to complete the application by the end of the day. Mrs Lennon concluded that there had been an improvement in the claimant's performance since the appraisal meeting, however, she noted

> "I also continue to reiterate that I would like to avoid having to undertake monitoring of an employee's intranet and personal time…However we work in a busy role and as such outside of deadlines, workplace etiquette should be maintained including respecting working hours and ensuring personal time is limited."

137. The claimant replied later that evening (405), from home, to say "I have accepted your comments about my internet usage and have acted accordingly". However, she complained that she had received unbalanced feedback since her return from maternity leave and she asked Mrs Lennon to acknowledge her positive contribution to the team.

138. The claimant had not completed the SAROM work on time. She had agreed that the criticism about her internet use was valid. However, she refused to accept that this had impacted in her work. We do not find that this feedback was unbalanced.

139. We find that the reason why Mrs Lennon highlighted this issue and provided the claimant with the level of detail she did was to underline her concern that this was impacting on her work. We do not therefore find that Mrs Lennon highlighted these performance concerns because the claimant had taken maternity leave or that she was a woman. Nor do we find that this was related to her sex.

The claimant's flexible working application ("FWA")

140. The claimant and Mrs Lennon had a meeting in a nearby café on 6 July 2017. Mrs Lennon had suggested this meeting in order to draw a line under the claimant's complaint that she had given unbalanced feedback. During this meeting the claimant told Mrs Lennon that she would have difficulty working four days a week from 8am – 4pm and she asked about part-time work. Mrs Lennon told the claimant that the business required at least two full-time staff to deal with the RM work. The claimant said that she wanted to work four days a week from 7am – 2.30pm with 30 minutes for lunch. We find that the claimant told Mrs Lennon that this working pattern would enable her to collect her child from nursery and did not refer to a nanny. This is consistent with an email Mrs Lennon wrote later that day (411) and with the FWA made by the claimant the following day (129 – 131) and with the fact that the claimant did not refer to a nanny in any contemporaneous documents.

141. The claimant told Mrs Lennon that she would make a FWA. We prefer Mrs Lennon's evidence that the claimant did not request a trial period on this occasion, over the claimant's evidence that she did. This is because the claimant was unable to recall the terms of the trial she requested or the date when this meeting took place and there were no contemporaneous documents in which she referred to a trial.

142. Mrs Lennon emailed Mr Wleklik and Mr Suzuki later that day, on 6 July 2017, when she reported that the claimant intended to make this FWA. She noted that the reason for this application was "to support nursery hours and keep costs lower when picking up before 3pm". She said that the claimant's preference had been to work part-time but she had advised her this was not possible. She wrote "Whilst I'm not adverse to flexible

hours and having a trial to start off with" she was concerned about the impact of a 7am start on the team as it would be difficult to monitor the claimant's productivity and because of the claimant's "recent performance issues" her preference was for the claimant's working hours to be more closely aligned with other team members. Mrs Lennon also forwarded similar comments to HR when she requested guidelines for considering a FWA.

143. The claimant submitted her FWA the next day, on 7 July 2017, in which she requested a working pattern of 7am – 2.30pm with a 30-minute break. She explained that the reason for this FWA was to pick up her daughter from nursery at 3.30pm. To support her application, she wrote "I have noticed the improvement in information sharing and work progress tracking. It is greatly appreciated." Her evidence was that this was a narrative to enable the respondent to visualize that there were already processes in place to monitor, control and follow-up when she was working without supervision. However, these comments echoed those made by the claimant in her appraisal document in which she was acknowledging the benefit of some of the same things that she now complains amount to amounted to overbearing, undermining and micromanaging conduct by Mrs Lennon.

144. The claimant also suggested that a 7.00am start would improve communication with the European offices she worked with which were mostly two hours ahead of UK time.

145. The claimant requested that this new working pattern ran from September 2017

> "until at least the end of December 2017. From January 2017…I would be happy to discussion this matter with the management again and potentially I would be in the better situation to start at 8am – 3.30pm (30min break)."

Although the claimant says that she subsequently clarified that her request was for four months only to end in December 2017, we accept the respondent's evidence that she did not say this so that it understood that her FWA was potentially open-ended. In her witness statement the claimant says that she had arranged for a nanny to start from January 2018 (paragraphs 26 and 28). However, as has been noted, she made no reference to a nanny in this FWA or any other contemporaneous documents. We find that had the claimant known at this stage what her childcare arrangements would be in January 2018 she would have been clearer about her commitments going forward.

146. A meeting between the claimant, Mrs Lennon and Mr Hall had been arranged that morning i.e. 7 July 2017 to discuss the claimant's accrued leave. They discussed the FWA instead. The claimant says that she requested a trial of her FWA proposal on this and other unspecified occasions. She complains that these were ignored. We do not find that she requested a trial. As we have already noted, there were no contemporaneous documents in which she referred to a trial.

147. Mrs Lennon discussed this FWA with Mr Hall and with her HR support, Liz Dos Santos. Ms Dos Santos emailed Mrs Lennon (423) to question

the benefit to the team of a 7.00am start as this would be two hours earlier than her colleagues started and noted that there was also "clearly a performance / conduct issue". Mrs Lennon replied (423) to confirm "we have made our decision regarding what is manageable to SAE" which reflected the HR view. Mr Hall had asked her to draft the decision letter.

FWA meeting on 11 July 2017

148. The claimant was told that her FWA had been refused at a meeting with Mrs Lennon and Mr Hall on 11 July 2017. She was handed the outcome letter (427 – 428) at the start of the meeting which set out the reasons for this decision under the following headings:

    a. Inefficiency of work during the periods the employee wishes to work.
    b. A detrimental impact on ability to meet customer demand.
    c. An inability to reorganise work amongst existing staff.
    d. A detrimental impact on quality or performance.

149. Although the claimant's FWA was not scrutinized or explored in any further detail we find that the respondent had reasonable grounds for its refusal. Mr Araki was scheduled to return to Tokyo in September 2017 when the RM team would consist of the claimant and Mrs Lennon. The claimant's proposal was likely to significantly disrupt and impair the way that this small team worked. The claimant's proposed hours would mean that she and Mrs Lennon would be in the office together from only 9am – 2.30pm excluding Mrs Lennon's lunch break (between 12 – 2pm) and the claimant's 30-minute break. A 2.30pm finish time would impact on the RM team's ability to deal with any urgent work that needed to be completed on the same day. This would also limit the time available to monitor and support the claimant's performance in respect of which we have found that there was a legitimate concern. If the claimant took Mondays off then there would be a lengthy time lag between Friday 2.30pm and 9am the following Tuesday when she and Mrs Lennon would both be back in the office. The European offices were used to the RM team being available to deal with enquiries between 9am – 5pm. We do not therefore find that the claimant's FWA was refused because the claimant had taken maternity leave or that she was a woman or because she had made a flexible working request. Nor do we find that this was related to her sex.

150. The claimant was offered an alternative working pattern of Tuesday – Friday, 8am – 4pm, using one day's accrued leave each week. This was essentially the same proposal that the respondent had made on 20 June 2017. This was offered on a trial basis to be reviewed by 15 December 2017. The claimant was given until 19 July 2017 to agree to this proposal.

151. We find that once again it was Mrs Lennon who made the decision not Mr Hall. The decision letter was drafted by Mrs Lennon. Mr Hall made no substantive changes to this.

152. The claimant took sick leave the next day. She had pre-booked 13 and 14 July 2017 as leave.

Part-time working refusal

153. The claimant returned to work on 17 July 2017. She drafted a resignation letter which she left on her screen for Mrs Lennon to see. She attended the MMM after which she asked to speak with Mr Wleklik when she told him that she was considering resigning because her working pattern was not compatible with her childcare needs. Mr Wleklik told her that the business required two full-time specialists in the RM team. As he later wrote to Mrs Lennon (434) this was because

> "Expectations from SC Tokyo regarding RM issues are getting more and more strict and complex..[the] decision to have 2 RM person working at the same time (starting at the same time) was taken in purpose to have effective RM team".

Mr Wleklik also wrote to Mr Hall about this (505)

> "I also pointed, comparing with time which she may remember from period before her [maternity], requirement from Tokyo much increased and that's why bot[h] S and I expected much wider involvement than she proposed".

The claimant therefore understood that a part-time role in the RM team was not feasible. Mr Wleklik suggested that the claimant should discuss her options with Mr Hall and Mrs Lennon before she made a final decision. Mr Hall would be back in the office the next day.

154. Later that day, on 17 July 2017, Mrs Lennon wrote to Ms Dos Santos (435) to note that the claimant had taken a 1.5 hour lunch break without explanation and she now felt that the claimant was not motivated to improve her performance.

155. The next day, on 18 July 2017, the claimant requested a meeting with Mr Hall and Mrs Lennon. Ahead of this meeting, the claimant spoke to Mr Wleklik again when she told him that she wanted to explore alternative support roles outside the RM team. Mr Wleklik updated Mrs Lennon and Mr Hall about this. Mrs Lennon then replied (441) to say that the claimant had previously suggested a part-time administrative role in the RM team when she noted "as her title is senior credit analyst and her salary reflects this, to have her working on more unrelated menial tasks would not be cost efficient in my view". The claimant complains that Mrs Lennon took only six minutes to reply to Mr Wleklik. However, Mrs Lennon was not refusing this request as one had not yet been made by the claimant. All Mrs Lennon was doing was conveying her view that a part-time support role was not viable which the claimant already knew from her discussion with Mr Wleklik.

156. When the claimant met with Mr Hall and Mrs Lennon, on 18 July 2017, she told them she could not accept their proposal of a four-day week working 8am – 4pm. She explained that working full time would impact on her performance as there would be occasions when she would need to collect her child from nursery if she was sick. Mrs Lennon told her that the respondent would be flexible around any illness her child had. The claimant said that she would rather take up a part-time role and she suggested a role supporting RM, an IT project, Internal Control or Internal

Audit which were corporate functions. She would be available to work for two or three days a week, within the hours 8am – 4pm. The claimant was now available to work up to 4pm. She said that we would have to resign if this could not be agreed. Mr Hall told her that he would need to some time to consider this proposal. The claimant emailed them the next day (445) to formally decline their FWA proposal and to request a permanent change to a part-time role working 20 hours per week and within the hours 8am – 4pm. She did not refer to a trial period.

157. Mr Hall wrote to the claimant on 19 July 2017 (447 – 448) to refuse this request. The reasons for this decision was set out under the following headings:

    a. The burden of additional costs
    b. An inability to reorganise work among existing staff
    c. An inability to recruit staff
    d. Inefficiency of work during the periods the employee wishes to work

158. We find that the respondent had reasonable grounds for this refusal. The respondent required two full-time specialists in the RM team. The claimant was asking for a new role to be created for which there was no budget. We do not therefore find that the claimant's request to work part-time was refused because she had taken maternity leave or that she was a woman or that this was related to her sex.

159. The claimant says that having received this letter she asked Mrs Lennon for a trial period of her FWA in September 2017 which Mrs Lennon refused. We find the claimant did not request a further trial period. It was clear that by this date she knew that Mr Wleklik was insistent that a full-time role was required. Even had we found that the claimant requested a trial period which the respondent refused, for the reasons we have given in relation to the respondent's refusal of the claimant's FWA, we would not have found that that such a refusal was because the claimant had taken maternity leave or that she was a woman or because she had made a flexible working request. Nor would we have found that this was related to her sex.

Resignation

160. Later that day, on 19 July 2017, the claimant sent a letter of resignation to her managers (450 – 450.1) in which she cited the respondent's failure to "accommodate my flexible working request". She made no reference to Mrs Lennon's management conduct. Referring to her 8-week notice period she said that she would not be available for work from 4 September 2017 because of childcare arrangements. She therefore asked that her termination was effective on 1 September 2017. Mrs Lennon replied on the same date when she reminded the claimant of her right to appeal the FWA decision. She also suggested that the claimant took a few days to reconsider her resignation.

Treatment on 20 July 2017

161. Mrs Lennon had sent a reminder to the claimant and Mr Araki on 18 July 2017 (436) about outstanding applications which were due on 21 July 2017. Mrs Lennon had allocated this work on 15 May 2017 and 23 June 2017.

162. On 20 July 2017 Mrs Lennon saw that the claimant was on the LinkedIn website when she came into the office. When Ms Lennon told the claimant that she would be rescheduling a meeting the claimant said "It doesn't matter any more" (459). Mrs Lennon subsequently reminded the claimant about her outstanding work. There is a dispute about where this discussion took place. We find that this discussion started at their desks and moved to a meeting room. The claimant complains that Mrs Lennon made inappropriate comments in an aggressive way but she was unable to say what these comments were. We find that Mrs Lennon, who was accountable for these deadlines, was concerned that the claimant was no longer motivated to complete this work. Mrs Lennon had seen the claimant accessing the LinkedIn website earlier that day. She knew that the claimant was due to take 15 days' leave from 7 – 25 August 2017 and she had requested that her notice period ended on 1 September 2017. In these circumstances Mrs Lennon reminded the claimant to complete this outstanding work in the limited time available.

163. The claimant also complains that Mrs Lennon told her that if she did not complete this work then she might be required to work her full notice period and she might not provide her with a reference. We find that Mrs Lennon made this comment in relation to the notice period only. This is consistent with the email that the claimant sent to Mrs Lennon and Mr Hall (458) to complain about this exchange when she asked not to be "additionally pressured as I am not coping very well at the moment with stress levels" and she referred only to her notice period. Mrs Lennon agreed that she reminded the claimant that her contractual notice period extended beyond 1 September 2017. She also told the claimant that she was working on her reference. We accept that the notice period comment made the claimant feel "additionally pressured". However, we find that it was made because Mrs Lennon was concerned that the claimant was not motivated to complete her outstanding assignments in the limited time available and not because she had taken maternity leave or that she was a woman or because she had made a flexible working request. Nor do we find that this was related to her sex.

164. Later that day, on 20 July 2017, Mrs Lennon emailed the claimant (477) to ask her to forward the assessments that she had completed so that she could review them over the weekend. Mrs Lennon noted that she would be on leave the next day which was the deadline for this work. The claimant complains that Mrs Lennon was asking for this work one day early and she was in effect bringing forward the deadline by one day and she would have known that this would put additional pressure on her. We find that Mrs Lennon was only asking for any assessments that the claimant had already completed. She was not instructing the claimant to complete these assessments one day earlier. In fact, when the claimant asked if she could submit all of the assessments on 21 July 2017, Ms

Lennon agreed and told her that she could come into the office over the weekend to collect them. We do not find that this put the claimant at a disadvantage as she was being required to complete this work to the agreed deadline of 21 July 2017.

Treatment on 21 July 2017

165. Mrs Lennon forwarded two emails to the claimant on 21 July 2017 (479 & 484). The claimant complains this placed her under additional pressure. In her evidence to the tribunal, the claimant agreed that neither email required significant work. We find that although neither email was urgent the claimant was being asked to complete limited tasks in response to queries that had arisen that day. She had been asked to complete this work as she was the only member of the RM in the office that day. We do not therefore find that this was because the claimant had taken maternity leave or that she was a woman or because she had made a flexible working request. Nor do we find that this was related to her sex.

166. Although the claimant says that Mrs Lennon telephoned her that afternoon, we accept Mrs Lennon's evidence to the contrary. We were taken to records of Mrs Lennon's personal and work mobile telephones which did not show that she made any calls to the respondent on that date.

167. The claimant emailed Mrs Lennon at 4.35pm (495) to say that owing to an "unforeseen situation" she would be leaving work early. She told her that she had not completed the assessments. Mrs Lennon did not therefore come into the office over the weekend as this was no longer necessary.

168. The claimant was signed off work for two weeks until 4 August 2017. This was extended by her GP until 30 August 2017.

The claimant's FWA appeal

169. The claimant came into work on 24 July 2017 to discuss her FWA with HR. She met with Mrs Lennon and Mr Hall when she told them that she wanted to appeal the FWA decision. She submitted this appeal (509 – 511) when she referred to negative feedback and "an overbearing work environment" since her return from maternity leave.

170. The claimant's appeal was heard by Mr Nakamura on 2 August 2017. The appeal was refused. In confirming his decision the next day Mr Nakamura wrote (520 – 521):

> "The function of the Risk Management Department has, as you correctly explained during the Hearing, increased drastically in the past 3 or 4 years. This is especially due to the conditions stipulated by the Shareholder when the delegation of decision making powers were made to SAE, putting a strong obligation on SAE to enhance the quality of risk management capabilities of SAE…In the past year this has ultimately led to a significant increase in workload and, at the same time, increased scrutiny of the quality of work of SAE as a company. I am of the opinion that at least two full time employees working hand in hand during the same shift is absolutely

> necessary to maintain the quality required to satisfy the needs of the shareholder…The coming years will be a key period in SAE's development and the flexible working hours pattern you suggested does not support the Department in its development…"

The claimant does not complain about this decision.

171. Mr Wleklik wrote to the claimant on 4 August 2017 (523.002) to confirm that because she had been signed off work with stress and had booked annual leave for most of August, her employment would end on 31 August 2017 which would not affect her notice pay or payment in lieu of accrued leave.

Conclusions

The claimant's complaints under the EQA

172. The claimant contends that the issues at (a) – (s) amount to:

172.1 Unfavourable treatment because she exercised the right to ordinary and additional maternity leave; or

172.2 Harassment related to sex because it related to her return from maternity leave and / or her request to use accrued leave that had accumulated because of her maternity leave and / or her requests to seek flexible working arrangements due to having a new baby; or

172.3 Less favourable treatment because of her sex because she had recently returned from maternity leave and wished to utilise accrued leave and have temporary flexible working arrangements to assist with a new baby.

173. We do not uphold these complaints for the following reasons.

Mrs Lennon's overbearing and undermining attitude towards the claimant

174. We take issues (a), (b), (c), (d), (f), (h), (i), (k), (l), (o), (p) and (s) together.

174.1 We have found that issues (c), (d), (f), (h) and (p) fail on the facts.

174.2 We also find that issue (o) fails on the facts because the claimant has failed to provide sufficient particulars of this alleged detriment.

174.3 We have found that issue (a) did not amount to a detriment.

174.4 In respect of issue (b) we have not found that Mrs Lennon ignored the claimant's request for a second screen but we have found that she failed to explain the reasons why this request was declined.

174.5 In respect of issue (s) we have not found that Mrs Lennon telephoned the claimant but we have found that she sent two emails in which she asked the claimant to carry out limited additional work.

174.6 In respect of issues (b), (i), (k), (l) and (s) which we have found to be detriments:

(1) We have not found that an effective cause of this treatment was that the claimant took maternity leave.

(2) Nor have we found that an effective cause of this treatment was that the claimant was a woman.

174.7 In respect of (a), (b), (i), (k), (l) and (s) which we find to be unwanted conduct:

(1) We have not found that this was related to the claimant's sex.

(2) Even had we found that this treatment related to the claimant's sex we would not have found that it was intended to violate the claimant's dignity or create an intimidating, hostile or degrading or offensive environment for her.

(3) Nor could it reasonably be said to have had that effect. We take account of the claimant's evidence that her first month back at work was "relatively okay" and the detrimental treatment only started after her discussion with Mrs Lennon on 16 June 2017. This is inconsistent with a perception that she was being harassed prior to this date (the same applies to issue (e) below). Overall, we have not found that Mrs Lennon actions evinced an overbearing or undermining attitude towards the claimant and we do not find that they had the prescribed effect under section 26(1)(b) EQA.

<u>Mrs Lennon's unreasonable criticism and micromanaging of the claimant</u>

175. We take issues (e), (g), (j), (m), (n), (q) and (r) together.

175.1 We have found that issues (g) and (j) fail on the facts.

175.2 We have found that issues (e), and (r) did not amount to detriments.

175.3 In respect of issue (n) we have not found that Mrs Lennon micromanaged the claimant but we have found that she reported her concerns to Mr Hall.

175.4 In respect of issue (q) we have found that Mrs Lennon referred to the claimant's notice period but she did not threaten to withhold a reference.

175.5 In respect of issues (m), (n) and (q) which we have found to be detriments:

(1) We have not found that an effective cause of this treatment was that the claimant took maternity leave.

(2) Nor have we found that an effective cause of this treatment was that the claimant was a woman.

175.6 In respect of issues (e), (m), (n), (q) and (r) which we find to be unwanted conduct:

(1) We have not found that this was related to the claimant's sex.

(2) Even had we found that this treatment related to the claimant's sex we would not have found that it was intended to violate the claimant's dignity or create an intimidating, hostile or degrading or offensive environment for her. Nor could it reasonably be said to have had that effect. We have found that Mrs Lennon neither criticised the claimant unreasonably nor micromanaged her and we do not find that they had the prescribed effect under section 26(1)(b) EQA.

Burden of proof

176. As we have found that the respondent provided cogent reasons for this treatment it was unnecessary to apply the burden of proof provisions. For completeness, had we applied these provisions, we would not have found that the claimant established a prima facie case so that the burden of proof would not have been reversed.

Overview

177. We also considered whether an inference could be drawn in any respects from considering one or more of the incidents together. We find that it cannot. The respondent was able to provide cogent reasons for the treatment we have found. The claimant returned to work from maternity leave to work under a new line manager who had a more directive management style that she had been used to under Mr Tayama. For example, whilst Mr Tayama had to be instructed by Mr Wleklik to deal with the concern that the claimant was spending too much time speaking with Ms Odej instead of working, it is evident that Mrs Lennon had no such reluctance to intervene when she became concerned about the claimant's internet usage and its impact on her work performance. We have found that these concerns were genuinely held and reasonable. The claimant had also returned to work at a time when the RM function was expanding and was under greater demand and scrutiny from the Tokyo office. These performance concerns and external pressures combined to make the claimant's requirement for flexible working within her small team unviable. Accordingly, we found that even taking account of the respondent's failure to facilitate KIT days or the fact that Mrs Lennon was the only woman in the position of Deputy General Manager at the time, there was insufficient evidence to shift the burden of proof.

Comparator

178. For completeness, we do not find that Mr Araki was in all respects in materially the same position as the claimant as he was required to work abroad on the German project unlike the claimant who was required to

remain in the London office. A consequence of this was that the claimant was asked to support Mr Araki's work when he was out of the office. The claimant accepted that this reallocation of work was appropriate.

179. In any event, we find that Mrs Lennon applied the same management approach to both the claimant and Mr Araki. We were taken to various emails in which Mrs Lennon gave the same instructions to both the claimant and Mr Araki and in which Mrs Lennon applied the same directive management style and gave similar feedback to both.

The claimant's complaints under the ERA

Detriment on the grounds of making a statutory flexible working request

180. The claimant contends that the alleged treatment at issues (p) – (s) was done on the ground that she made a statutory flexible working request on 7 July 2017.

180.1 We have found that issue (p) fails on the facts.

180.2 We have not found that issue (r) was a detriment.

180.3 In respect of issues (q) and (s) we have not found that this treatment was done on the ground that the claimant made this flexible working request.

181. This complaint is not upheld.

Constructive dismissal

182. We do not find that the claimant was constructively dismissed by the respondent for the reasons set out below.

183. The claimant contends that the issues at (a) – (p) and (aa) – (gg) had the effect of breaching the implied term of mutual trust and confidence.

183.1 We have found that issues (c), (d), (f) – (h), (j), (o) and (p), (dd) and (gg) fail on the facts.

Mrs Lennon's overbearing and undermining attitude

183.2 In respect of issues (a), (b), (i), (k) and (l) we have not found that Mrs Lennon had an overbearing or undermining attitude towards the claimant for the reasons already given. Nor do we find that this conduct was calculated or likely to destroy or seriously damage the relationship of trust and confidence:

(1) In respect of issues (a), (k) and (l) we find that Mrs Lennon had reasonable and proper cause for this conduct: setting objectives and allocating work at the introductory meeting on 15 May 2017 was appropriate; there was no practice in the office of welcome drinks; Mrs Lennon's intervention at the DNB

meeting on 20 June 2017 was valid; Mrs Lennon had reasonable cause to monitor the claimant's internet use.

(2) In respect of issues (b) and (i) we have found that Mrs Lennon failed to explain why she had refused the claimant's request for a second screen on 15 May 2017 and she failed to highlight and discuss the urgent SAROM write-off application on 19 June 2017 but we do not find that this conduct was calculated or likely to destroy or seriously damage the relationship of trust and confidence.

Mrs Lennon's unreasonable criticism and micromanaging of the claimant

183.3 In respect of issues (e), (m), (n) and (q) we have not found that Mrs Lennon unfairly criticised or micromanaged the claimant for the reasons already given. Nor do we find that this conduct was calculated or likely to destroy or seriously damage the relationship of trust and confidence:

(1) We find that Mrs Lennon had reasonable and proper cause for this conduct: the feedback she provided on the SAU application on 16 May 2017 included stylistic comments which was appropriate as the claimant was working on a new template and formed part of her feedback which included substantive concerns relating to content; Mrs Lennon's feedback on the SAROM application was valid and it was appropriate for her to have highlighted this in the circumstances she did; it was reasonable for Mrs Lennon to forward her email to Mr Hall on 27 June 2017 for oversight; as was reminding the claimant of her outstanding work and her contractual notice period in circumstances in which Mrs Lennon was concerned that the claimant lacked motivation to complete this work in the limited time available.

The refusal of the claimant's leave and flexible working requests

183.4 In respect of issues (aa) – (cc) and (ee) – (ff) we have found that the respondent had reasonable grounds for refusing the claimant's request for accrued annual leave, her FWA and her part-time working requests. We therefore find that the respondent had reasonable and proper cause for this conduct.

184. This disposes of the claimant's unfair dismissal complaint which is not upheld.

Jurisdiction

185. It is not necessary to make any findings on jurisdiction because of our findings above.

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Employment Judge Khan

Date 14 January 2020

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

17 January 2020

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FOR EMPLOYMENT TRIBUNALS