

THE INDUSTRIAL TRIBUNALS

CASE REF: 3870/24

CLAIMANT: Anna Owens

RESPONDENT: Westville Hospitality Limited

DECISION

The unanimous judgment of the tribunal is that the claimant suffered a loss of wages arising from respondent's breach of contract, unlawful indirect sex discrimination, and dismissal within the meaning of Article 127 (c) of the Employment Rights (Northern Ireland) Order 1996 [ERO] and that dismissal unfair under Article 130 ERO. The claimant's claim of detriment on grounds of part time status is dismissed. The respondent shall pay the claimant in total compensation of **£ 20,488.79**.

CONSTITUTION OF TRIBUNAL

Employment Judge:

Members: Mrs U Short
Mr M McKeown

APPEARANCES:

The claimant was represented by Mr Barry Mulqueen, Barrister-at- Law, instructed by Therese Connolly of the Equality Commission for Northern Ireland.

The respondent was represented by Mr Sean Doherty, Barrister-at-Law, instructed by Mr Peter Bowles of Peter Bowles & Co, Solicitors.

1. The claimant in her claim complained that she had been constructively unfairly dismissed by the respondent, suffered detriment as a part time worker, indirect sex discrimination and a loss of wages in breach of contract.
2. The respondent in its response resisted the claimant's claims.

ISSUES

3. The legal and factual issues remaining for determination by the tribunal at hearing were identified by the parties as follows:

Legal Issues

UNFAIR CONSTRUCTIVE DISMISSAL

1. *Was the Claimant constructively unfairly dismissed contrary to Article 127(1)(c) of the Employment Rights (Northern Ireland) Order 1996?*

The Claimant identifies the following matters, individually and/or collectively, as a breach of contract:

- (a) Failing to afford the Claimant flexible working arrangements.*
 - (b) Removing the Claimant's flexible working arrangements.*
 - (c) Imposing a work rota which varied week by week.*
 - (d) Failing to have any or adequate regard for the Claimant's childcare responsibilities.*
 - (e) Failing to allocate the Claimant her contracted hours.*
 - (f) Changing the Claimant's terms and conditions of employment without consent.*
 - (g) Refusing a request for flexible working hours.*
 - (h) Failing to provide any or adequate support and assistance to the Claimant.*
 - (i) Failing to deal with the Claimant's grievance in time, adequately or at all.*
2. *Was the Claimant entitled to treat the Respondent's conduct as a fundamental breach of her contract of employment entitling her to resign?*
 3. *If the Respondent's conduct did amount to a repudiatory breach, did the Claimant unequivocally and unambiguously resign in response to said breach?*
 4. *Is the Claimant entitled to rely on the last straw doctrine? If yes, what was the last straw?*

The last straw [contended by claimant] was confirmation by the Respondent on 3rd November 2023 that they would not restore the Claimant's original working hours and shift patterns.
 5. *If there was a breach, did the Claimant delay in resigning from employment, was the delay significant and did she affirm any breach and waive her right to resign?*

INDIRECT SEX DISCRIMINATION

6. *Was the Claimant subjected to an act(s) [of] indirect sex discrimination?*

The acts of indirect discrimination relied on by the Claimant are:

- (a) Failing to afford the Claimant flexible working arrangements.*
- (b) Removing the Claimant's flexible working arrangements.*
- (c) Imposing a work rota which varied week by week.*
- (d) Failing to have any or adequate regard for the Claimant's childcare responsibilities.*
- (e) Failing to allocate the Claimant her contracted hours.*
- (f) Changing the Claimant's terms and conditions of employment without consent.*
- (g) Refusing a request for flexible working hours.*

7. *What is the provision, criterion or practice (PCP) which placed the Claimant at a disadvantage?*

The PCP[s] relied on by the Claimant are

- (a) The imposition of new working hours, shift patterns and/or work rota.*
- (b) The imposition of full flexibility in working hours.*

8. *What was the particular disadvantage when compared to persons of a different sex?*

The disadvantage [contended by claimant] suffered by the Claimant was her inability to undertake the new working hours, shift patterns and/or work rota, provide childcare, the requirement of the Claimant to pay additional childcare costs and stress/anxiety.

9. *If the PCP relied upon by the Claimant placed the Claimant at a disadvantage was there a legitimate aim on the part of the Respondent that was proportionate, appropriate and necessary?*

PART-TIME (LESS FAVOURABLE TREATMENT)

10. *Was the Claimant treated less favourably on the grounds of her part-time status as compared to full-time Receptionists?*

(a) Failing to allocate the Claimant her contracted hours.

- 11. Is the Claimant entitled to damages for injury to feelings, psychiatric personal injury and/or financial loss?*
- 12. Is the Claimant entitled to aggravated damages.*
- 13. Is the Claimant entitled to any uplift in damages for the failure by the Respondent to have any or adequate regard to the LRA Code of Practice (Grievance Procedures)?*

Factual Issues

- 1. What were the Claimant's child caring responsibilities?*
- 2. What child caring arrangements did the Claimant have in place?*
- 3. What was the cost of the Claimant's child caring arrangements?*
- 4. Who offered the Claimant employment with the Respondent?*
- 5. What were the terms and conditions of employment offered to the Claimant at the commencement of her role with the Respondent.*
- 6. What working hours and shift patterns were agreed between the Claimant and Respondent at the commencement of her role with the Respondent.*
- 7. What hours and shift patterns did the Claimant initially work for the Respondent.*
- 8. When did Mr Martin Daly commence employment with the Respondent as manager of the Westville Hotel?*
- 9. In or about July 2023, did Mr Daly request the Claimant to work different hours and shift patterns? If yes, why?*
- 10. Did the Respondent consult with the Claimant regarding the implementation of different working hours and shift patterns? If not, why not?*
- 11. Did the Claimant agree to any change to her working hours and shift patterns?*
- 12. Did Mr Patrick McCanny and Mr Martin Daly discuss the Claimant's contractual hours and shift patterns. If yes, when?*
- 13. When were the new working hours and shift patterns imposed by the Respondent?*
- 14. What was the precise nature of the new working hours and shift patterns*

imposed by the Respondent on the Claimant?

15. *Did the work rota vary week by week?*
16. *How did the imposition of the new working hours, shift patterns and rota affect the Claimant's ability to organise childcare?*
17. *What was the childcare cost to the Claimant pre/post implementation of the new working hours, shift patterns and rota imposed by the Respondent?*
18. *Was the Claimant allocated her contracted hours following the implementation of the new working hours, shift patterns and rota imposed by the Respondent? If not, why not?*
19. *How many Receptionists were employed by the Respondent?*
20. *How many Receptionists employed by the Respondent had child caring responsibilities?*
21. *How many Receptionists employed by the Respondent were part-time?*
22. *Were the remaining Receptionists allocated their contracted hours following the implementation of the new working hours, shift patterns and rota imposed by the Respondent?*
23. *What was the nature and outcome to the grievance raised by the Claimant?*
24. *Did the Respondent delay unreasonably in the determination of the Claimant's grievance? If yes, why?*
25. *Why did the Claimant resign from employment?*

EVIDENCE

4. The tribunal considered the claim, response, agreed bundle of documentation, additional documentation requested by parties and provided in the course of the hearing, written witnesses statements of the claimant and that of Regina Jones (Group Commercial Director for The Cassidy Hospitality Group which includes the respondent company) for the respondent, together with their oral evidence.

FINDINGS OF FACT

5. In early November 2021 the claimant whilst visiting the respondent's hotel premises was approached by Mr McCanny, the hotel general manager with whom she had previously worked at another hotel and was made aware the respondent was looking for a receptionist. Mr McCanny was the brother-in-law of the Chief Executive of the Respondent Company, Mr Nicky Cassidy.

Mr McCanny had HR responsibility for all the hotel's employees and asked if the claimant would be interested in the position. The claimant was working elsewhere at that time and declined.

6. The claimant lived with her young son at a separate address from her partner and had primary responsibility for her son's care as well as helping to care for her father. The claimant's partner was required in his job to work at weekends. The claimant had a place with a registered child minder for the care of her son each week on a Tuesday, Wednesday and Thursday at a daily rate of £30. The claimant's childminder did not work at weekends. The claimant was responsible for childcare costs for the fixed childcare days arranged whether or not made use of. Whilst the childminder occasionally provided some flexibility for the claimant to change the fixed childcare days arranged where able to accommodate it, this was entirely subject to the childminder's agreement given restrictions on numbers of children allowed to be cared for at one time.
7. On 16 November 2021 the claimant received a telephone call from Mr McCanny asking to speak with her about the possibility of coming to work as a receptionist at the respondent's hotel. The claimant met with Mr McCanny and informed him that she would require a three-day working week schedule of Tuesday, Wednesday and Thursday due to her childcare responsibilities and arrangement she had in place with her child minder as per the arrangement she had in place with her current employer as well as had with previous employers.
8. On 24 November 2021 the claimant confirmed her interest in the position to Mr McCanny. Mr McCanny arranged to speak to the respondent's Front Office Manager Mr Clarke McWilliams who was responsible for preparing weekly reception shift rotas. Mr McCanny subsequently confirmed to the claimant that both he and Mr McWilliams were agreeable to her request of a set three-day week. The claimant agreed that she would where possible facilitate emergency rota variations provided she could acquire childcare.
9. On 30 November 2021 the claimant commenced employment as a receptionist at the respondent's hotel.
10. On 1 December 2021 the claimant completed a Medical History Form for the respondent, indicating that she had foot, back and slight vertigo issues.
11. On 5 December 2021 the claimant signed a written contract of employment for employment as a *Receptionist* which set out under *HOURS OF WORK*, '*Your normal hours of work are 24 hours per week, as per rota, working Monday to Sunday*'; and under *ACKNOWLEDGEMENT* 'I understand and accept that an up to date copy of the employee handbook is stored at the office and available to me on request'.
12. The claimant considered the contract to be a standard generic one and that her verbal agreement with Mr McCanny to allocate her shifts on a Tuesday, Wednesday and Thursday would be noted.
13. The claimant did not receive a copy of the respondent's employee handbook. The respondent's employee handbook contained a:-

- Grievance procedure which set out that it may be necessary for respondent '*to carry out an investigation into your grievance. The amount of any investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from you and any witnesses and/or reviewing relevant documents*' as well as providing for a written grievance outcome.
 - Equal Opportunities Policy which set out the respondent's commitment to ensuring equality of opportunity irrespective of gender within the workplace, not to discriminate on grounds of gender and for decisions regarding terms and conditions or any other benefit to be made '*fairly and objectively in the absence of any unlawful discrimination*'.
14. The respondent did not have a flexible working policy or provide equality training to its employees or management.
 15. The claimant thereafter worked for 24 hours per week. Shifts were allocated and worked by the claimant mainly on a Tuesday, Wednesday and Thursday (for at least 70% of the time in the 86-week period up to 16 July 2023) with occasional variations of working day or additional hours worked where the claimant with prior agreement was able to acquire childcare.
 16. The claimant was one of a team of four receptionists employed by the respondent made up of two part time and two full time staff. The reception team was predominately female but reception role at times was fulfilled by male staff members including front office management. Only one receptionist was put on duty, even during busy times. After staff changes the claimant became the longest serving receptionist and was the only receptionist with child caring responsibilities.
 17. Following Mr McCanny leaving his position with the respondent in mid-2022, subsequent hotel general managers, Mrs McIlveen and thereafter Mr Larkin accepted the fixed shift allocation to the claimant on the reception rota.
 18. In January 2023 Mr McWilliams left his employment with the respondent. Reception rotas were subsequently completed by managers in charge, including by Mrs Jones, Mr Cassidy and the duty manager with the assistance of the reception team. Shifts continued to be allocated to the claimant on Tuesday, Wednesday and Thursday each week, save where varied with claimant's agreement.
 19. In or around June 2023 Mr Martin Daly commenced employment as General Manager of the respondent's hotel.
 20. On 16 July 2023 Mr Daly telephoned the claimant and informed her that in the interests of fairness to all other receptionists from the following week the rota would be changing, and she would be required to commit to a flexible working week. The claimant advised Mr Daly that she had an agreement in place to allow for her childcare responsibilities and that this was not feasible. Mr Daly told the claimant her childcare arrangements had nothing to do with him and were her responsibility. The claimant considered Mr Daly dismissive of her situation and following their conversation felt

shocked, upset, deflated and unwell.

21. Mr Daly thereafter implemented a shift rota for the week ending 30 July 2023 allocating the claimant shifts on a Thursday, Friday and Saturday. The claimant informed Mr Daly this was not possible for her but offered to work one weekend shift every three weekends.
22. On 18 July 2023 the claimant emailed Ms Jones who oversaw Human Resources for the Cassidy Hospitality Group (which includes the respondent company) requesting a meeting.
23. On 19 July 2023 Ms Jones met with the claimant. Ms Jones' meeting notes record:

AO: I just wanted to talk about the changes Martin is asking me to make to my rota. When Paddy phoned & offered me the job it was for working 3 days during the week, either mornings or evenings. This was the only way I was going to accept the job was based on this. Martin is now asking me to work days at the weekend which I cannot do.

RJ: Can you let me know what you are able to do?

AO: I did offer him one shift at the weekend, every 3 weeks a late or early shift either Saturday or Sunday. The other 2 shifts would be an early Tuesday or late/ early on a Wednesday or Thursday.

RJ: You do understand Anna that your contract of employment does state Monday to Sunday & we don't have anything on file where you agreed anything different with Paddy. Did you get anything from him in writing to confirm this.

AO: No, it was agreed verbally.

But as I've been working the 3 days during the week since I started, it would then be implied surely that these are my shifts.

RJ: As mentioned Anna, your contract does not state this & you have in the past worked some weekend shifts.

AO: I can't work weekends and did so before to help out.

RJ: I will get Martin to ring you to see if there is anything that can be done to work around this. Possibly look at working in another depart that suits you better.

24. By e-mail on 20 July 2023 the claimant asked Ms Jones whether there was any update with Mr Daly and set out 'I'm really anxious to be honest this has put so much stress on me financially and mentally, I couldn't sleep last night for worrying.' Ms Jones responded to confirm the claimant would get a call that day. Ms Jones later emailed the claimant indicating having tried to ring the claimant from Mr Daly's mobile, without reply. The claimant responded requesting 'the outcome of the conversation?' Ms Jones replied asking the claimant to ring Mr Daly at the hotel. The claimant replied that she did not feel comfortable having a phone conversation with Mr Daly on the

issue after their last phone conversation and asked if another way of communication could be facilitated. Ms Jones replied by email, 'as mentioned yesterday, Anna, I had said that Martin would be ringing you today.

He is on annual leave from today and wanted to try and resolve this before he finished up.

He has asked me to let you know that your rota for next week is Thursday 27th AM shift & week after is the Wednesday and Thursday AM shifts. Martin is back from the annual leave Monday 31st July and will discuss your shifts at that point.'

25. On 3 August 2023 Mr Daly approached the claimant at reception and asked if they could have a chat the following day.
26. The claimant accompanied by her young son called to the hotel on 4 August 2023 to speak with Mr Daly. Mrs Jones joined the claimant and Mr Daly and a meeting took place in the hotel bar with Ms Jones taking notes. The claimant had not expected a formal meeting and felt distracted with her young son present. Meeting notes record at the outset the claimant confirmed at Mr Daly's request that in addition to three weekday shifts she could do one shift over the weekend every three weeks. Mr Daly put to the claimant they could '*guarantee her one shift during the week and if lucky, possibly another but not guaranteed.*' The claimant pointed out she had only received three shifts over the last two weeks. Mr Daly responded that other shifts at the weekend had been available but claimant had said she could not do these. The claimant put '*I was taken on working 3 days midweek. I left a job doing these days with the agreement I could do the same here.*' Mr Daly replied, 'your contract does not state this', the claimant responded that it was a verbal agreement with Mr McCanny. Mr Daly indicated shifts needed to be covered at the weekends and he had to be fair to all the girls and was not fair if the claimant '*only work during the week & not weekends*'. The claimant put that she was down money and could not commit to something she could not do. Mr Daly told the claimant this was something she needed to try to sort out herself and '*I can't sort out your childcare for you*' and respondent did not have it in writing that she only worked during the week. The claimant asked Mr Daly to get Mr McCanny in as he had agreed this with her verbally, but Mr Daly replied that Mr McCanny was not part of the business anymore. The meeting concluded with the claimant stating her availability for AM or PM shifts during the week, Mr Daly responded they needed her to cover weekend shifts also and not much more he could say in regard to it. The claimant expressed her disappointment and again that that she had been guaranteed shifts during the week. The Claimant left the meeting feeling shaken and emotional.
27. The tribunal is unable on the evidence before it to reach a determination whether Mr McCanny and Mr Martin Daly discussed the Claimant's contractual hours and shift patterns at any stage.
28. Shift rota's issued by Mr Daly from the week ending 30 July 2023 allocated varying working hours and shift patterns to the claimant, without consistency or prior consultation, giving between one to three days prior notice of shifts allocated. This significantly impacted the claimant's ability to organise childcare.

29. The respondent allocated the claimant for the weeks ending:
- 30 July 2023, one shift.
6 August 2023, two shifts.
13 August 2023, two shifts.
20 August 2023, one shift.
30. The claimant considered it to be extremely difficult in the area of where she lived to secure safe childcare and retained her fixed childcare days with her childminder at daily cost of £30 in the hope of a resolution and reversion to her fixed week day shift pattern.
31. On 21 August 2023 the Claimant sent a grievance letter to Ms Jones alleging breach of contract and indirect sex discrimination, raising therein:
- The change of her established Tuesday/Wednesday/Thursday Rota.
 - She was working under protest as she had a family to support.
 - Due to child caring responsibilities any change to her Rota would impact her role as a parent.
 - She held a protected characteristic under the Sex Discrimination Order.
 - She was unable to cover weekend shifts due to child caring responsibilities.
 - Her hours and income had been reduced due to her inability to undertake shifts over weekends.
 - The imposition of a flexible Rota, to include weekend work, equated to less favourable treatment as a working mother and same could constitute indirect sex discrimination.

The claimant clearly expressed her inability to work weekend shifts due to her child caring responsibilities and that she was requesting the Respondent to continue with what had been her established work schedule.

32. For the week ending 27 August 2023, the claimant was allocated three shifts.
33. On 21 August 2023 Ms Jones wrote to the claimant with an invite to attend a grievance meeting on 23 August 2023 setting out
- ‘At this meeting we will go through each point raised in your grievance letter
The meeting will be held in line with our Grievance Procedure’
34. The claimant attended a grievance meeting on 23 August 2023 with Ms Jones. Meeting notes in summary record that the claimant referred to her grievance letter, stating her points and referred to her verbal contract with Mr McCanny. Ms Jones put to the claimant that all the respondent had to go on was the contract the claimant

signed when she started which stated working as per rota from Monday to Sunday, and queried whether the claimant had 'a contract amendment to specify that you only work these specific 3 days that we were not aware of?' and that on looking back at rotas there were 13 different occasions the claimant had worked weekends and other days that were not Tuesday to Thursday. The claimant indicated these were by 'acceptance and to be reasonable', that she was continuing to work under protest and had lost earnings. The Claimant put that as a carer and working mother as well as only member of the Receptionist team with childcare responsibilities, the requirement to perform weekend work treated her less favourably than her colleagues and arguably constituted indirect sex discrimination. Ms Jones responded that all staff working on the desk were female with no males and she did not understand, as all were being asked to work a same mixed pattern of shifts. Ms Jones stated there were shifts in *Food & Beverages* and in *Housekeeping* and asked if the claimant would work there. The claimant indicated she would want to be on reception, referred to having a foot injury and fear of this affecting her in departments where the work was more physical including in *Housekeeping* and if she were required to work the evening shift in *Food and Beverages*. In conclusion the claimant added that the changes made disproportionately discriminated against her as a working mother and that she was unable to get childcare.

35. Ms Jones carried out an internet search but did not understand what the Claimant's complaint of discrimination was. No enquiry was made for the respondent as part of the grievance process of Mr McCanny, Mr McWilliams, Mrs McIlveen and/or Mr Larkin in relation to claimant's shift arrangement nor any external advice sought to seek to understand the claimant's discrimination complaint.
36. On 24 August 2023 Ms Jones by email sent a grievance meeting outcome letter to the claimant noting in reference to points discussed during their meeting:
 - *Signed contract of employment states Monday to Sunday-* there was no amendment to contract specifically stating that the claimant was only required to work Tuesday, Wednesday Thursday.
 - *3 shifts per week were previously offered by Mr Daly but no guarantee of a Tuesday, Wednesday, Thursday* - some shifts may fall at - weekends due to needs of the business with receptionists having to cover central reservation phones.
 - *Tuesday, Wednesday Thursday shifts previously offered in F&B* - claimant indicated she would only work the AM shift.
 - Tuesday, Wednesday & Thursday shifts offered in housekeeping - the claimant would prefer not to work any housekeeping shifts.

Ms Jones summarised that the respondent had tried to meet the claimant's needs by offering her alternatives which were still on offer should she wish to avail of them but could not guarantee her shifts on reception every Tuesday, Wednesday and Thursday on an ongoing basis and advised claimant of a right to appeal the decision.

The verbal agreement alleged by the Claimant as reached with Mr McCanny and the claimant's allegations of indirect sex discrimination were not referred to or addressed.

The tribunal do not consider the respondent delayed unreasonably in issuing its determination of the claimant's grievance but consider the respondent failed to fully and adequately address all matters raised therein.

37. By email on 29 August 2023 the claimant wrote to Ms Jones seeking to appeal the grievance outcome. Ms Jones notified Mr Nicky Cassidy of the claimant's grievance.
38. On 4 September 2023 Ms Jones wrote to the claimant inviting her to a grievance outcome appeal meeting with Mr Cassidy on 8 September 2023, which claimant subsequently attended. At that meeting the claimant gave Mr Cassidy a detailed letter of appeal, raising therein in summary:
 - *Contractual entitlement.* That respondent had failed to recognise her established and agreed working pattern negotiated with and accepted by previous management and had taken a skewed view of her willingness to work outside her normal working pattern to counter a contracted working pattern rather than acknowledge flexibility shown by her.
 - *Legal entitlement.* No cognisance was taken of her protected characteristic of being a working mother with largely inflexible childcare arrangements, in location where childcare particularly for weekends, was at a premium.
 - *Management's Stated Primary Motivation.* Changes arising on basis that the claimant's present arrangement was unfair to other staff was questionable given proposal for her to work in *Food & Beverages* would have the same impact on *Food & Beverages* group of staff. She was the longest serving receptionist; her specific rota arrangements negotiated with Mr McCanny but despite this new staff had been hired and given her agreed days according to Ms Jones to make up their full-time hours.
 - *Managements Proposals.* She did not reject proposals but simply advised of the difficulties such arrangements would present. 'As Ms Jones determination is silent on the validity of the reasons for rejection I am assuming that my reasons have been accepted as sustainable.'
 - *No evident business reason for the change.* She believed the requirement for her to undertake fully flexible working was prompted by decision to extend central reservations to Saturday and Sunday while preserving weekday only working pattern for a recently appointed Central Reservations Manager, which was unfair.
 - *Procedural flaws.* That status quo should have been maintained pending grievance outcome, and she had suffered a loss of earnings of £800 arising from changes and had to pay out more than she was earning from available shifts to retain her childcare facility.
 - *Other material issues.* No acknowledgement or weight was given to the

excellent quality of her work and standing as a receptionist. She felt demeaned by the process and particularly by cavalier attitude and manner of Mr Daly.

39. The grievance outcome appeal meeting was brief. Meeting minutes record that Mr Cassidy put to the claimant *'... we want you to stay, but the issue goes back to Paddy who doesn't work here anymore. I can't and would not have agreed to three set days. From my understanding you have been offered to work in other areas'*. The claimant referred to her letter of appeal. Mr Cassidy responded, *'I don't want to get into the contractual law, however if this is the route you wish to take we can. Your contract states 7 days a week, Monday to Sunday. I want to try and work with you Anna however I can't agree set days.'* The claimant responded that it was agreed, and she felt like she was being accused of lying, put that one shift a week was not enough and asked what other days they could agree on and suggested a Friday or Monday. Mr Cassidy replied that he did, *'not know everyone's rota pattern on the front desk, but it would be different every week to make it fair on the other receptionists. I don't want to argue with you, but we can't agree to a set three day week'*. The claimant suggested two set days on reception and one in another department and that she could do AM or PM Tuesday to Thursday and one weekend a month. Mr Cassidy responded *'The rota needs to be done as and when. We would need you more than one weekend a month to make it fair on everyone else. All of the team needs one weekend a month off. I am responsible for over 100 employees.'* The claimant queried how it was helping with the business giving her set days to another receptionist, that she was down £800 and was responsible for herself and her child. Mr Cassidy responded *'I don't want to get into your personal life. This is about the business and we need you to be flexible for 7 days a week.'* The claimant put again that it was agreed with Mr McCanny. Mr Cassidy responded *'Paddy doesn't work here. If it had been brought to my attention I would not have let it happen and it is not in your contract.'* The claimant queried whether nothing was going to change. Mr Cassidy confirmed *'I am standing with the letter from Regina'* and advised they could give the claimant three shifts a week, but it would be between Monday and Sunday. The claimant replied that she could not do that or commit and they were going around in circles and she would leave it with Mr Cassidy. The points raised in the claimant's letter of appeal were not addressed during the grievance appeal meeting.

40. By email of 8 September 2023 to the claimant, Mr Cassidy confirmed

'after careful consideration of previous conversations and your points noted today I have decided to uphold the previous decision taken. The reasons are that the business has offered alternative shift options, but these have been rejected for various reasons by yourself, as previously noted, these shifts are still on offer should you wish to avail of them.'

41. The claimant contacted the Labour Relations Agency [LRA] in respect of her situation.

42. The respondent allocated the claimant for weeks ending:

3 September 2023, 1 shift (1 day's paid holiday & 4 days off).
10 September 2023, 1 shift.
17 September 2023, 2 shifts.
24 September 2023, 2 shifts.

1 October 2023, 2 shifts.
8 October 2023, 2 shifts.

But thereafter:

15 October 2023, 3 shifts (Tuesday, Wednesday, Thursday).
22 October 2023, 3 shifts (Tuesday, Wednesday, Thursday).
29 October 2023, 3 shifts (Tuesday, Wednesday, Thursday).

43. The claimant believed her shift pattern appeared to have been restored but on advice of LRA emailed Ms Jones on 2 November 2023 to seek clarification whether this would continue to be guaranteed once new staff were hired.
44. By e-mail on 3rd November 2023 Ms Jones confirmed to the claimant this was not the case, stating:

'Martin has stated that he is unable to run the business with the working pattern you had stated was agreed verbally with Mr Paddy McCanny'.

Also,

'We did offer alternatives to try and suit your requirements, of which, these were not options that suited you.'

*The business is just asking for the reception rota to be covered by all receptionists fairly over a 7 day rolling period.
Our situation has not changed since we last spoke.*

.... I appreciate your situation with childcare but as mentioned above we need to be mindful of everyone on reception whilst also ensuring this area is covered at all times.'

45. The respondent allocated the claimant, for weeks ending:

5 November 2023, 1 shift (and 2 days holiday).
12 November 2023, 3 shifts.

46. In the period from July 2023 to mid-November 2023 the claimant was allocated and worked 12 less shifts than she would usually have done under her previous working pattern.
47. By e-mail of 14 November 2023 to Mr Daly and Miss Jones the claimant noted following a period of receiving her normal contractual shift pattern it had been determined this would now move to a flexible shift pattern, given the unsuitability of which she was left with no alternative but to resign from her position with immediate effect.
48. On or about 28 November 2023 the claimant commenced a new job on minimum wage.

49. The claimant presented her claim to the offices of the industrial tribunals on 21 November 2023.
50. On 7 December 2023 Ms Jones emailed the claimant informing her the respondent was opening a new shop and wondering whether she was still looking for a part time position as they thought the hours she needed would suit the shop hours. The claimant did not pursue this as she felt the trust in her relationship with the respondent was gone and she had secured a new job with required days.
51. In 2024 the claimant spoke with Mr McCanny at the coffee shop in which she had secured a new job and understood from their conversation that he had made contact with the respondent to confirm the verbal agreement made with her.
52. No evidence was presented from Mr Cassidy (who was in attendance at the substantive hearing of this case) for the respondent.

THE LAW

Contract

53. *Harvey on Industrial Relations and Employment Law Division All Contract of Employment* discusses at 2. *Constructing a contract of employment* and has been taken into consideration.

The Parole Evidence Rule

54. *Chitty on Contracts* sets out at:

16-023

(a) *The Parol Evidence Rule*

Whether document conclusive: the “parol evidence” rule *It is often said to be a rule of law that:*

“If there be a contract which has been reduced to writing, verbal evidence is not allowed to be given ... so as to add to or subtract from, or in any manner to vary or qualify the written contract.”¹¹⁷

Indeed, in 1897, Lord Morris¹¹⁸ accepted that:

“... parol testimony cannot be received to contradict, vary, add to or subtract from the terms of a written contract, or the terms in which the parties have deliberately agreed to record any part of their contract.”

This rule is usually known as the “parol evidence” rule. Its operation is not confined to oral evidence: it has been taken to exclude extrinsic matter in writing, such as drafts,¹¹⁹ preliminary agreements¹²⁰ and letters of negotiation.¹²¹ The rule has been justified on the ground that it upholds the value of written proof,¹²² effectuates the finality intended by the parties in

recording their contract in written form,¹²³ and eliminates “great inconvenience and troublesome litigation in many instances”.¹²⁴

16-024

Exceptions to the rule *However, the parol evidence rule is and has long been subject to a number of exceptions.¹²⁵ In particular, since the nineteenth century, the courts have been prepared to admit extrinsic evidence of terms additional to those contained in the written document if it is shown that the document was not intended to express the entire agreement between the parties.¹²⁶ So, for example, if the parties intend their contract to be partly oral and partly in writing, extrinsic evidence is admissible to prove the oral part of the agreement.¹²⁷ In Gillespie Bros & Co v Cheney, Eggar & Co,¹²⁸ Lord Russell CJ stated:*

“... although when the parties arrive at a definite written contract the implication or presumption is very strong that such contract is intended to contain all the terms of their bargain, it is a presumption only, and it is open to either of the parties to allege that there was, in addition to what appears in the written agreement, an antecedent express stipulation not intended by the parties to be excluded, but intended to continue in force with the express written agreement.”

It cannot therefore be asserted that the mere production of a written agreement, however complete it may look, will as a matter of law render inadmissible evidence of other terms not included expressly or by reference in the document:

“The court is entitled to look at and should look at all the evidence from start to finish in order to see what the bargain was that was struck between the parties.”¹²⁹

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Scope of the rule *It follows that the scope of the parol evidence rule is much narrower than at first sight appears. It has no application until it is first determined that the terms of the parties’ agreement are wholly contained in the written document. The rule: “...only applies where the parties to an agreement reduce it to writing, and agree or intend that the writing shall be their agreement.”¹³⁰*

Whether the parties did so agree or intend is a matter to be decided by the court upon consideration of all the evidence relevant to this issue. It is therefore always open to a party to adduce extrinsic evidence to prove that the document is not a complete record of the contract. If, on that evidence, the court finds that terms additional to those in the document were agreed and intended by the parties to form part of the contract, then the court will have found that the contract consists partly of the terms contained in the document and partly of the terms agreed outside of it. The parol evidence rule will not apply. If, on the other hand, the court finds that the document is a complete record of the contract, then it will reject the evidence of additional terms. But it will do so, not

because it is required to ignore the additional terms or the evidence said to prove them, but because such evidence is inconsistent with its finding that the document does contain the entire terms of the parties' agreement.¹³¹ No doubt, in practice, where a document is produced which appears to be a complete contract, a party will experience considerable difficulty in proving, on the balance of probabilities, that further contractual terms were agreed outside the written terms of the document. But extrinsic evidence of such terms is not ipso facto excluded.

Failure to call a witness

55. In **Lynch v MOD [1983] NI 26** (a criminal case in which higher standard of proof of *beyond reasonable doubt* was applicable) the High Court cited with approval the principles stated by Newtown and Norris JJ. in **O'Donnell v. Reichard [1975] V.R. 916** at page 929:

“ . . . where a party without explanation fails to call as witness a person whom he might reasonably be expected to call, if that person's evidence would be favourable to him, then, although the jury may not treat as evidence what they may as a matter of speculation think that person would have said if he had been called as a witness, nevertheless it is open to the jury to infer that person's evidence would not have helped that party's case; if the jury draw that inference, then they may properly take it into account against the party in question for the purposes, namely (a) in deciding whether to accept any particular evidence, which has in fact been given, either for or against that party, and which relates to a matter with respect to which the person not called as a witness could have spoken; and (b) in deciding whether to draw inferences of fact, which are open to them upon evidence which has been given, again in relation to matters with respect to which the person not called as witness could have spoken.”

56. The Supreme Court confirmed in **Efobi -v- Royal Mail Group Ltd [2021] UKSC** tribunals were entitled to draw any inference by using common sense and without the need to consult law books. This approach was adopted in **Ahuja Investments Ltd -v- Victory game Ltd [2021] EWHR 2382** when HHJ Hodge stated whether a failure to give evidence was significant would depend on the context and circumstances of the case and whether the witness was available to give evidence, what evidence it was reasonable to expect they would be able to give, what other evidence there was on those points and the significance of those points in the context of the case.

Indirect Sex Discrimination

57. Article 3A of the Sex Discrimination (NI) Order 1976 provides –

- (1) In any circumstances relevant for the purposes of any provision of this Order, a person (“A”) discriminates against another person (“B”) if A applies to B a provision, criterion or practice which is discriminatory in relation to B’s sex.
- (2) For the purposes of paragraph (1), a provision, criterion or practice is discriminatory in relation to B’s sex, if –

- (a) A applies, or would apply, it to persons of a different sex,
- (b) It puts, or would put, persons of the same sex as B at a particular disadvantage when compared with persons of a different sex,
- (b) It puts, or would put, B at that disadvantage, and
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.

58. In ***Essop -v- Home Office; Naeem -v- Secretary of State for Justice [2017] UKSC 27***, Lady Hale identified shared salient features in all iterations of equality legislation since it began in the 1970's. In summary:

- a. There is no requirement for a claimant to explain or prove the reasons why a particular PCP puts one group at a disadvantage when compared with others (paragraph 24).
- b. Direct discrimination expressly requires a causal link between the less favourable treatment and the protected characteristic. Indirect discrimination does not. Instead it requires a causal link between the PCP and the particular disadvantage suffered by the group and the individual. It is dealing with hidden barriers which are not easy to anticipate or to spot (paragraph 25).
- c. The cause of the disadvantage need not be unlawful in itself or be under the control of the employer (paragraph 26).
- d. The PCP does not have to put every member of the claimant's group at a particular disadvantage (paragraph 27).
- e. It is common for the disparate impact, or particular disadvantage to be established on the basis of statistical evidence .Statistical evidence is designed to show correlations between particular variables and particular outcomes and to assess the significance of those correlations. But a correlation is not the same as a causal link (paragraph 28).
- f. It is always open to the respondent to show that his PCP is justified. There is no finding of unlawful discrimination until all four elements of the definition are met. There may well be very good reasons for the PCP in question. But, as Langstaff J pointed out in the EAT in ***Essop***, a wise employer will monitor how his policies and practices impact upon various groups and, if he finds that they do have a disparate impact, will try and see what can be modified to remove that impact while achieving the desired result.

59. Indirect discrimination can be intentional or unintentional. Intention is irrelevant as it is not necessary to show why the PCP had the alleged adverse effect [***Essop; Naeem***].

60. When considering the pool for comparison, all workers affected by the PCP should be considered (paragraph 41, ***Essop***).

61. The words 'provision, criterion or practice' must not be given a narrow meaning. The words are alternatives, not cumulative (**British Airways plc v Starmar [2005] IRLR 862**).
62. In **Homer v Chief Constable of West Yorkshire Police [2012] UKSC 15**, Lady Hale noted the move in indirect discrimination law from concept of disparate impact to particular disadvantage “*was intended to do away with the need for statistical comparisons where no statistics might exist.*” In **Games v University of Kent UKEAT/0524/13** the EAT set out:

[41]

It follows that it was not necessary for the Claimant, in order to establish particular disadvantage to himself and his group, to be able to prove his case by the provision of relevant statistics. These, if they exist, would be important material. But the Claimant's own evidence, or evidence of others in the group, or both, might suffice. This is, we think, as it should be: the experience of those who belong to groups sharing protected characteristics is important material for a court or tribunal to consider. They may be able to provide compelling evidence of disadvantage even if there are no statistics at all. A court or tribunal is, of course, not bound to accept such evidence. It should, however, evaluate it in the normal way, reaching conclusions as to its honesty and reliability, and making findings of fact to the extent that it accepts the evidence.

63. The issue of whether a claimant who can in fact comply with a condition can be said to be placed at a *particular disadvantage* was considered by the EAT in the religious discrimination case of **Eweida v British Airways Plc [2009] IRLR 78**. Elias P set out (at paras 44 and 45):

“... the concept [in reg 3(1)(b)(ii)] identifies particular disadvantage resulting from the application of a provision, criterion or practice, but it does not link it specifically to non-compliance with the provision or criterion in issue. There is some merit in the argument that the change in wording permits a court to find a particular disadvantage even with respect to those who can and do comply with the provision. An example might be a woman who wishes for childcare reasons to work part time but feels compelled to work full time, which is a job requirement, because her employer will not consider the possibility of part-time work and she cannot afford to lose her job. It may well be that the current definition would permit a claim of that nature. Equally, when determining whether there is a group disadvantage, such a person could be considered to be part of the disadvantaged group notwithstanding a reluctant willingness to comply with the requirement, although we suspect that examples of people prepared to compromise strongly held religious beliefs in that way would be rare.”

64. *Harvey on Employment Law, Div L/Equality/(3) Indirect Discrimination* sets out at:

[327]

There have been numerous cases in which claimants have argued that a PCP of working full time has had a disproportionate impact on women, or in the modern formulation of the indirect discrimination test, places them at a particular disadvantage by reason of their child care obligations. An example from 1984 is *The Home Office v Holmes* [1984] IRLR 299, [1984] ICR 678, EAT, where there was no challenge made on appeal to the industrial tribunal's 'unhesitating' conclusion that 'despite the changes in the role of women in modern society, it is still a fact that the raising of children tends to place a greater burden upon them than it does upon men'. In some cases this has been accepted by both parties, not infrequently looking at proportions within the UK labour market, or asking the tribunal to use their knowledge and expertise in the industrial field generally. This was the approach endorsed by the CA in *London Underground v Edwards (No 2)* [1999] IRLR 364, [1999] ICR 494, where it was acknowledged that tribunals 'do not sit in blinkers'. In that instance, it was held that the tribunal was entitled to take into account, for the purposes of finding discrimination, its knowledge about the proportionately larger number of women than men who work and who have primary childcare responsibilities, and also the fact that there are a high proportion of single mothers having care of a child. In *Dobson v North Cumbria Integrated Care NHS Foundation Trust* [2021] IRLR 729, [2021] ICR 1699, EAT, Choudhury P said that whilst men do now bear a greater proportion of child-caring responsibility than they did decades ago, the position is still far from equal. Therefore, the EAT held that an employment tribunal had erred when it failed to take judicial notice of the fact that women bear the greater burden of childcare responsibilities than men and that this can limit their ability to work certain hours. In reaching this conclusion reliance was placed by Choudhury P on a number of cases including:

'Essop v Home Office (UK Border Agency) and Naeem v Secretary of State for Justice [2017] UKSC 27, [2017] IRLR 558, where Lady Hale said: 'There is nothing peculiar to womanhood in taking the larger share of caring responsibilities in a family. Some do and some do not. But (in the context of equal pay) it has been acknowledged that a length of service criterion can have a disparate impact on women because they tend to have shorter service periods as a result of career breaks or later career starts owing from their child care responsibilities: see *Wilson v Health and Safety Executive (Equality and Human Rights Commission intervening)* [2010] ICR 302, following *Cadman v Health and Safety Executive (Equal Opportunities Commission intervening)* (Case C-17/05) [2006] ICR 1623; [2006] ECR I-9583...'

Shackletons Garden Centre Ltd v Lowe UKEAT/0161/10, [2010] EqLR 139, [2010] All ER (D) 98 (Sep). In a case involving a woman who did not want to return to the weekend working roster after maternity leave the EAT held that it 'is now well recognised that significantly more women than men are primarily responsible for the care of their children and accordingly the ability of women to work particular hours is substantially restricted in contrast to that of men.' However, although this established group disadvantage it was still necessary for the female claimant to go on to prove that the requirement of weekend working placed her at a 'particular disadvantage', as opposed to a 'self-inflicted detriment'.

Cumming v British Airways Plc [2021] IRLR 270 where the EAT (HHJ Shanks) stated that: '...in the light of Lady Hale's observations [in *Essop*], I do not think that there was any need for evidence to show that female cabin crew (like any other group of females) bear the bulk of child care responsibilities'.

See also the cases considered at para [301]. Note however that, as Choudhury P observed in Dobson at [50], taking judicial notice of the childcare disparity does not necessarily mean that the group disadvantage is made out. Whether or not it is made out will depend on the interrelationship between the general position that is the result of the childcare disparity and the particular PCP in question (as Choudhry P pointed out) and also the impact of that PCP on the particular pool of workers under consideration (see Marston (Holdings) Ltd v Perkins [2025] EAT 20, [2025] IRLR 318 where the ET had failed to address that issue adequately).

[327.01]

However, this approach has not always been accepted and in a number of cases claimants have been required to prove (at least a prima facie case) a particular disadvantage to those who share their protected characteristic. Some of these cases may be reconciled with the principle that judicial notice should be taken of the greater burden of childcare responsibilities on women and it is submitted that the weight of authority shows that these cases must now be considered, in the light of the authorities referred to in para [327] above, to be wrong.

65. There are four issues to be considered when considering the question of justification:
- Whether there is a legitimate aim?
 - Whether the PCP is appropriate way of achieving the legitimate aim?
 - Proportionality in the sense of the PCP being necessary, or reasonably necessary, to achieve the aim.
 - Proportionality in the sense of the balance between the discriminatory effect of the measure and the legitimate aim.

Burden of Proof

66. Under Article 63A of the Sex Discrimination Order 1976 a two-stage (shifting) burden of proof applies. In a claim of indirect sex discrimination, the claimant must establish facts from which the tribunal could conclude that a PCP was applied, that it put persons of the claimant's sex at a particular disadvantage when compared with others, and that the claimant personally suffered that disadvantage. If those facts are proved, the burden shifts to the respondent to show that the PCP was a proportionate means of achieving a legitimate aim. If the respondent fails to do so, the tribunal must find that unlawful indirect sex discrimination has occurred.

Remedy

67. Remedies a tribunal shall grant as it considers just and equitable, where it finds a complaint well founded, are dealt with under Article 65 of the Sex Discrimination (Northern Ireland) Order 1976, include a declaration, compensation, and recommendation for the purpose of obviating or reducing the adverse effect on the complainant of any act of discrimination to which the complaint relates.
68. In ***Vento v The Chief Constable of West Yorkshire Police [2002] EWCA Civ 1871*** the Court of Appeal (EWCA) identified three broad bands of compensation for injury to feelings (figures for which were updated in Presidential Guidance issued for England and Wales and Scotland for claims presented on or after 6 April 2023 to: lower band £1,100 to £11,200 (less serious cases); middle band £11,200 to £33,700 (cases that do not merit an award in the upper band); and upper band £33,700 to £56,200 (the most serious cases), with the most exceptional exceeding £56,200).
69. Case law in Northern Ireland diverges from that in Great Britain in relation to aggravated damages in discrimination cases. In ***McConnell v Police Authority [1997] IRLR 625*** the Northern Ireland Court of Appeal set out
- ‘an award of aggravated damages should not be an extra sum over and above the sum which the tribunal of fact considers appropriate compensation for injury to the claimant’s feelings. Any element of aggravation ought to be taken into account in reckoning the extent of the injury to his feelings, for it is part of the cause of that injury. It should certainly not be treated as an extra award which reflects a degree of punishment of the respondent for his behaviour.’*
70. Interest on awards and compensation orders made by industrial tribunals in sex discrimination cases is provided for under the Industrial Tribunals (Interest on Awards in Sex Discrimination and Disability Discrimination Cases) Regulations (Northern Ireland) 1996.
71. Any award made by the tribunal in relation to specified jurisdictions listed in Schedule 4A of the Industrial Relations (Northern Ireland) Order 1992 (which include discrimination, unfair dismissal and breach of employment contract) may be increased, by no more than 50%, if the tribunal considers it just and equitable in all the circumstances to do so, where it appears that the claim to which the proceedings relate concerns a matter to which a relevant code of practice applies; and to which a statutory dispute resolution procedure does not apply; the employer has failed to comply with that code in relation to that matter; and that failure was unreasonable [Article 90AA].

LRA Code of Practice on Disciplinary and Grievance Procedures

72. The Labour Relations Agency [LRA] Code provides practical guidance on good employment practice and reasonable behaviour relating to dealing with disciplinary and grievance issues. Provision at paragraph 82 therein includes that following a grievance meeting the employer should decide on what action, if any, to take and in particular, *‘The decision, and a full explanation of how the decision was reached, should be communicated to the employee, in writing, without unreasonable delay.’*

Unfair (Constructive) Dismissal

73. Under Article 126 of The Employment Rights (Northern Ireland) Order 1996 [ERO] an employee has the right not to be unfairly dismissed by his employer.
74. Circumstances in which an employee is dismissed by his employer include at Article 127(c) ERO if the employee terminates a contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.
75. The Court of Appeal (EWCA) in **Western Excavating (EEC) Ltd v Sharp [1978] ICR 221** confirmed the correct test to be applied when determining whether there has been a constructive dismissal is a 'contract test' not one of 'reasonableness'. Four conditions must be met for an employee to be able to claim constructive dismissal:-
- (1) There must be a breach of contract (actual or anticipatory) by the employer.
 - (2) That breach must be sufficiently important to justify the employee resigning, or else it must be the last in a series of incidents which justify his leaving. Possibly a genuine, albeit erroneous interpretation of the contract by the employer will not be capable of constituting a repudiation in law.
 - (3) The employee must leave in response to the breach and not for some other, unconnected reason.
 - (4) The employee must not delay too long in terminating the contract in response to the employer's breach, otherwise he may be deemed to have waived the breach and agreed to vary the contract.

Lawton LJ added whilst he did not find it either necessary or advisable to express any opinion as to what principles of law operate to bring a contract of employment to an end by reason of an employer's conduct, Sensible persons have no difficulty in *recognising such conduct when they hear about it*, and, *what is required for the application of this provision is a large measure of common sense*.

76. The implied duty of trust and confidence in the employment contract was affirmed by the House of Lords in **Mahmud and Malik v Bank of Credit and Commerce International SA [1997] IRLR 606** in the following terms:-

'The employer shall not without reasonable and proper cause conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of confidence and trust between the employer and employee.'

The use of the word 'and' has since been considered to be an error of transcription of the previous authorities, and that the relevant test is satisfied if either of the requirements is met, that is, *calculated or likely*.

77. Whilst the correct approach to constructive dismissal is to ask whether the employer was in breach of contract and not whether the employer acted unreasonably, if the

employer's conduct is seriously unreasonable this may provide sufficient evidence that there has been a breach of contract. [**Brown v Merchant Ferries Ltd [1998] IRLR 682 NICA**].

78. In **Pedersen v Camden London Borough Council [1981] IRLR 173**, Lawton LJ distinguished three separate issues which may arise in determining whether there is a constructive dismissal or not: *What are the terms of the contract of employment? Did the facts as found by the tribunal constitute a breach of contract by the employer? Was that breach a fundamental breach of contract?*
79. The breach of contract must be sufficiently important to justify the employee resigning, or else it must be the last in a series of incidents that justify his leaving. The Northern Ireland Court of Appeal, in **Brown v Merchant Ferries Limited [1998] IRLR 682 NICA** set out "... the question becomes did the appellant's conduct so impact on the applicant that viewed objectively the applicant could properly conclude that the appellant, his employer, was repudiating the contract?"
80. *Harvey on Industrial Relations and Employment DI Unfair Dismissal 3. Termination by the Employee: Constructive Dismissal C. Breach of contract by the employer (6) The 'last straw' doctrine sets out at:-*

[480]

[....] Many of the constructive dismissal cases which arise from the undermining of trust and confidence will involve the employee leaving in response to a course of conduct carried on over a period of time. The particular incident which causes the employee to leave may in itself be insufficient to justify his taking that action, but when viewed against a background of such incidents it may be considered sufficient by the courts to warrant their treating the resignation as a constructive dismissal. It may be the 'last straw' which causes the employee to terminate a deteriorating relationship.

[481.01]

In **Omilaju v Waltham Forest London Borough Council [2005] EWCA Civ 1493**, [2005] IRLR 35 the Court of Appeal (having cited with approval para [480] above) held that where the alleged breach of the implied term of trust and confidence constituted a series of acts the essential ingredient of the final act was that it was an act in a series the cumulative effect of which was to amount to the breach. It followed that although the final act may not be blameworthy or unreasonable it had to contribute something to the breach even if relatively insignificant. As a result, if the final act did not contribute or add anything to the earlier series of acts it was not necessary to examine the earlier history; [....]

81. A constructive dismissal is *not* necessarily unfair and a tribunal that makes a finding of constructive dismissal will err in law if it assumes that the dismissal is unfair without making explicit findings on the reason for the dismissal and whether the employer has acted reasonably in all the circumstances. Whether a constructive dismissal is fair or unfair is to be determined under Article 130 ERO as follows:-

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

- (a) the reasons (or if more than one the principal reasons) for the dismissal, and*
- (b) that it is either a reason falling within paragraph 2 or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*

82. Where a potentially fair reason is shown under Article 130(1) ERO, then determination of the question of whether the dismissal is fair or unfair, having regard to the reason shown by the employer, depends on whether the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and shall be determined in accordance with equity and the substantial merits of the case (under Article 130 (4)).
83. Where an Industrial Tribunal finds the grounds of complaint of unfair dismissal are well-founded the Orders it may make are set out at Articles 146 ERO and include reinstatement, re-engagement and otherwise compensation. How compensation is to be calculated is set out in Articles 152 to 161 ERO. The overriding duty imposed on a tribunal on a finding of unfair dismissal is to award compensation which is just and equitable in the circumstances.

AUTHORITIES

84. The parties in their submissions referred to:

Claimant:

Essop -v- Home Office; Naeem -v- Secretary of State for Justice [2017] UKSC 27

Homer v Chief Constable of West Yorkshire [2012] IRLR 601

London Underground v Edwards (No2) [1999] IRLR 364, [1999] ICR 494

Dobson v North Cumbria Integrated Care NHS Foundation Trust [2021] IRLR 729, [2021] ICR 1699, EAT

Wilson v Health and Safety Executive (Equality and Human Rights Commission intervening) [2010] ICR 302

Cadman v Health and Safety Executive (Equal Opportunities Commission intervening) (Case C-17/05) [2006] ICR 1623; [2006] ECR I9583...

Shackletons Garden Centre Ltd v Lowe UKEAT/0161/10, [2010] EqLR 139, [2010] All ER (D) 98 (Sep)

Cumming v British Airways Plc [2021] IRLR 270

Marston (Holdings) Ltd v Perkins [2025] EAT 20, [2025] IRLR 318

Starmer -v- British Airways [2005] IRLR 862]

Pedersen v Camden London Borough Council [1981] IRLR 173

Malik v Bank of Credit and Commerce International SA [1997] IRLR 462

Omilaju v Waltham Forest London Borough Council [2005] EWCA Civ 1493

***Courtaulds Northern Spinning Ltd v Sibson [1987] ICR 329
Lynch -v- MOD***

Efobi -v- Royal Mail Group Ltd [2021] UKSC

Ahuja Investments Ltd -v- Victorygame Ltd [2021] EWHR 2382

Respondent:

R (on the application of E) v Governing Body of JFS [2009] UKSC 15, [2010] IRLR 136

Homer v Chief Constable of West Yorkshire Police [2012] UKSC 15, [2012] IRLR 601

***Essop v Home Office; Naeem v Secretary of State for Justice [2017] UKSC 27
CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia [2015] IRLR 746***

McNeil v Revenue and Customs Commissioners [2019] EWCA Civ 1112

British Airways plc v Starmer [2005] IRLR 862

Games v University of Kent UKEAT/0524/13

Eweida v British Airways Plc [2009] IRLR 78

***Bilka-Kaufhaus GmbH v Weber Von Hartz. (Case 170/84) [1986] IRLR 317 R
(Elias) v Secretary of State for Defence 2006) EWCA Civ 1293, [2006]
Freitas v Permanent secretary of Ministry of Agriculture, Fisheries, Lands And
Housing [1999] 1 AC 69 80***

***Hardy & Hansons plc v Lax [2005] EWCA Civ 846, [2005] IRLR 726 (31),
MacCulloch v ICI [2208] IRLR 846***

Starmer v British Airways [2005] IRLR 862 at [31]

Rainey v Greater Glasgow Health Board (HL) [1987] IRLR 26

***Harrod v Chief Constable of West Midlands Police [2017] EWCA Civ 191
Rainey v Greater Glasgow Health Board [1987] IRLR 26, HL***

Western Excavating (ECC) Ltd v Sharp [1978] 1 ALL ER 713

Mahmud & Malik v Bank of Credit and Commerce [1997] IRLR 462

Baldwin v Brighton and Hove City Council [2007] ICR 680, [2007] IRLR 232

Hutchings v Coinseed Ltd [1998] IRLR 190

Mayer v British Broadcasting Corporation [2004] All ER (D) 34 (Nov), EAT

SUBMISSIONS

85. The respondent provided oral and written submissions on 7 November 2025; thereafter written submissions for the claimant were provided dated 10 November 2025; claimant's reply to respondent's submissions dated 14 November 2025; respondent's reply to claimant's submissions dated 28 November 2025 and commentary relied upon therein on 12 December 2025.
86. The claimant's submissions were in summary:
- No evidence was presented disputing the claimant's evidence on true nature of her contractual relationship.
 - The claimant's evidence that Mr McCanny told her he had contacted the respondent to confirm the verbal agreement made in relation to her working days was uncontested.
 - It was significant the agreement made with Mr McCanny was made with the knowledge and approval of the front office manager.
 - Mr McCanny held the HR function for all the hotel employees.
 - The claimant worked most of her working time in line with the agreement reached with Mr McCanny and arrangement was accepted by subsequent managers Mr Larkin and Ms McIlveen.
 - Significant inferences are to be drawn from respondent's failure to call evidence from following witnesses:
 - Mr McCanny should have been an essential witness for the respondent and he, Mr McWilliams, Ms McIlveen, Mr Larkin, Mr Daly and Mr Cassidy would have been able to provide significant evidence on the contractual status of the claimant, the measures put in place for her childcare needs and/ or the grievance appeal process and could have been compelled to attend. The respondent's choice not to present witness evidence to dispute the claimant's assertions was noteworthy, deliberate and conscious, a means of obstructing the true nature of the working relationship between the parties and necessity for same, and claimant's evidence unchallenged.
 - Mr Cassidy as CEO of respondent organisation and person who heard grievance appeal could and should have provided evidence on all issues of dispute before the tribunal (relating to constructive dismissal identified in legal

and factual issues at point 1) and failure to do so an effort to silence any challenge to unlawful conduct.

- It would be open to tribunal to conclude the relevant express written terms relating to Rota were a mistake and void.
- No evidence was presented addressing why it was necessary for Mr Daly to approach the claimant in July 2023 and inform her that her Rota was changing and this was a clear recognition she had an agreed and established working day arrangement on account of her child caring responsibilities.
- Not correct to say the claimant had no issue with her grievance appeal, her evidence regarding grievance process (para 25-32 witness statement & para 10 supplementary statement) was uncontested and she further confirmed in direct evidence that no attempt was made by respondent to resolve any of her issues; she was critical of Mr Cassidy (para 32-36 witness statement) and clearly disagreed with grievance appeal outcome and worked under protest (para 37 witness statement).
- The claimant consistently articulated her contractual position to the respondent and right not to be subjected to unlawful discrimination and respondent aware at all relevant times of the claimant's need to undertake set working days to accommodate her childcare needs.
- The clear intention of the parties supported by initial oral agreement and resultant rota record for the claimant was that her contracted working days were Tuesday, Wednesday and Thursday of each week and days outside this only where childcare arrangements could be put in place to cover same.
- The claimant clearly articulated in her grievance the inability to work weekend shifts due to her child caring responsibilities and was requesting the respondent to continue with what had been her established work schedule.
- It is unfair to criticise the claimant for not making a flexible working request in context of respondent not having a flexible working policy, not promoting employment policies in the workplace, not providing equality training to staff, or providing employee handbook to the claimant. Her grievance clearly constituted a request for specified working arrangements.
- The respondent wrote to the claimant stating it would go through each point in her grievance letter; its grievance policy required investigation into specifics of grievance and for a written answer to be provided. It was a fundamental error of the respondent to make no effort to contact Mr McCanny, Mr McWilliams, Mrs McIlveen and or Mr Larkin to clarify true contractual position, necessity for same and accommodation of claimant's child caring responsibilities up to July 2023 now being removed/ rejected.
- At grievance meeting the claimant confirmed the requirement to perform weekend work constituted indirect sex. Ms Jones failed to understand the claimant's complaint or had no real interest in it. She carried out an internet

search and did not otherwise seek advice. The outcome letter did not refer to verbal agreement alleged or allegations of indirect discrimination made by the claimant. The respondent failed to investigate and determine each complaint presented and made no attempt to resolve any of her issues.

- No effort was made by Mr Cassidy to address each of the issues articulated by the claimant in relation to grievance outcome appeal and the tribunal asked to concluded respondent simply had no desire to investigate and or determine the important issues presented by claimant.
- Ms Jones although aware of LRA Code of practice on Disciplinary and Grievance Procedures did not have any or adequate regard to same in particular necessity (at para 82) to provide full explanation of how any grievance decision reached and communicate it to employee and this repeated with grievance appeal outcome.
- The claimant remained in employment under protest. In email of 2 November to Ms Jones claimant believed her set days had been restored and sought confirmation in relation to same, but Ms Jones replied on 3 November '*I appreciate your situation with childcare but as mentioned above we have to be mindful of everyone on reception.*' The claimant resigned on 14 November stating no other option given failure to accommodate her working shift requirements.
- It is unclear how respondent concludes the PCP was a requirement to work outside Tuesday and this not articulated in pleadings, agreed issues or evidence.
- Claimant's issue with PCP was working outside her agreed days subject to accommodating respondent's Rota if childcare could be put in place. Authorities regarding judicial notice make abundantly clear that requirement to work weekends places women at a particular disadvantage; and of note claimant lived alone with then four year old child; partner worked for Royal Mail, lived at different address and worked weekends; the claimant was accountable for her child's care and welfare- an honourable position which respondent sought to discredit suggesting father helped by taking child to a few local GAA matches.
- The claimant's evidence that obtaining suitable childcare in area was difficult was uncontested and respondent did not question in cross examination arrangement reached with childminding; and arrangements clearly within ambit of general care caring responsibilities and fact specific.
- No case of justification ever pleaded or articulated or put to claimant in cross examination.
- The claimant clearly articulated her reason for leaving in her witness statement and contents not challenged during cross examination. The claimant clearly stated in her evidence she believed verbal agreement reached would be honoured, it was put in place for over 20 months until arrival of Mr Daly and

noteworthy that status of contractual terms was not set out in legal and factual issues.

- Suggestion of resignation because of a new job had never been part of respondent's pleaded case or the limited witness evidence presented. The claimant correctly stated in her evidence she had financial responsibilities related to her childcare.

87. The respondent's submissions were in summary

- Constructive dismissal
 - The written statement of employment particulars signed by the claimant post dating alleged oral agreement with Mr McCanny is clear and best evidence of what the claimant's contract was between the parties from that date and earlier discussions and whether any agreement reached with Mr McCanny irrelevant.
 - In the alternative, if set days were guaranteed why was a written note not sought or provided or request to redraft the contract not made?
 - The claimant should be held to the signed written document requiring her to work her hours on any day of the week.
 - The claimant's evidence of Mr Daly on 16 July advising she would be required to be available for a flexible working week was not unchallenged, but case put that contractual terms were as set out in the written contract.
 - Resignation because being asked to work in accordance with her written contract of employment is the opposite of a breach of contract.
 - The claimant obtained new employment before her resignation and whether this was the reason for resignation is to be considered.
- It was not reasonable for respondent to have called former employees:
 - Mr McCanny, whose evidence the claimant alleged would be favourable to her, had not called him herself.
 - Mr Cassidy:
 - Regarding constructive dismissal, could add nothing to Ms Jones' evidence and it was not stated that any issue with grievance appeal caused claimant to resign.
 - Regarding indirect discrimination, grievance process findings are irrelevant; this is solely a matter for the tribunal; and relevant matters already covered by Ms Jones' evidence.
 - The respondent had no need to call evidence as to claimant's contractual

status – the written contract was willingly signed, without mistake and was only evidence necessary to prove her contractual terms, otherwise signed written contracts are worthless.

- Criticism for failing to do so is misconceived as it violates the parole evidence rule '*that means it is not permissible to adduce evidence, oral or written, to contradict or vary the terms of a contract (Chitty on Contract Vol 1. Para 16-025)*'.
- To accept invitation to conclude express written terms relating to Rota were a *mistake and void* would be in breach of the parole evidence rule and to fall into error.
- *Indirect Discrimination*

PCP

- Whilst requirement to be capable of working any day of the week is a PCP, the actual PCP complained of was requirement to work outside of Tuesday.

Group disadvantage

- The indirect discrimination claim should fall at this hurdle, *whether requirement put women at a particular disadvantage when compared with men*, as:
 - Some evidence is essential; and claimant's issue clearly requirement to work weekends, not just about set days; and question posed *does working weekends place women at particular disadvantage?*
 - It cannot in this day and age be accepted on judicial notice that burden of childcare falls mainly on women and surprising no evidence called by claimant albeit studies and evidence will exist.
 - It is logical to presume the burden of childcare falls differently at weekends and evenings, if a father is the primary earner working 9-5 Monday to Friday, so available to provide childcare to enable partner to work outside those hours, but no burden on respondent and the burden on the claimant to prove the PCP places women at a particular disadvantage, but the only evidence from claimant shows the entire female reception team were not disadvantaged by relevant PCP.

Individual Disadvantage

- The claimant has failed to prove working outside a set 3 weekdays caused her a disadvantage rather than it merely a pattern she would prefer not to have.
- The claimant's evidence was woefully lacking and was clear the claimant capable of working other days; absent precise nature of arrangement with

childminder; why set weekdays and whether a flexible pattern/ weekend provision was possible with childminder or claimant's partner who on her evidence was clearly available at weekends.

Justification

- There was a clear legitimate aim of ensuring employees could be scheduled to work in a flexible manner to meet variable guest or business demands.
- The PCP (requiring staff to be available to work on any day) was merely requiring a degree of flexibility and was a proportionate way of ensuring staff would be available to meet business demands.

APPLICATION OF THE LAW TO FACTS FOUND

The tribunal find:

88. The claimant's evidence was clear, concise and credible.
89. More persuasive and in the majority accept the claimant's submissions save as set out below.
90. Whilst there is a very strong implication or presumption when parties arrive at a written contract that it is intended to contain all the terms of their bargain the tribunal is entitled to look at and should look at all the evidence from start to finish in order to see what the bargain was that was struck . If it finds that the document is a complete record of the contract then it will reject extrinsic evidence that further contractual terms were agreed outside the document as inconsistent with that finding, not because required to ignore it.
91. Looking at all the evidence, the tribunal consider on balance the terms of the parties' agreement are not wholly contained in the written statement of employment particulars so as to take precedence over antecedent express stipulation or appropriate to reject or exclude extrinsic evidence under the parole evidence rule.
92. Whilst mindful that it was also open to claimant to seek to call Mr McCanny, the tribunal consider more notable the absence of any enquiry of him by respondent in consideration of claimant's grievance and appeal or any evidence from him or any of the members of management who would have been able to provide significant evidence on the contractual status of the claimant, the measures put in place for her childcare needs, the grievance appeal process and who could have been compelled to attend to dispute the claimant's assertions albeit no longer in respondent's employment. The tribunal accepts there is an inference to be drawn that their evidence would not have been favourable to the respondent and the claimant's evidence unchallenged. Likewise, the tribunal accept Mr Cassidy as CEO of respondent organisation and person who heard the claimant's grievance appeal could and should have provided evidence on all issues of dispute before the tribunal as identified in legal and factual issues (at point 1) and absence appears an effort to silence challenge of respondent's conduct.

What were the contractual terms of the claimant's contract of employment?

93. Mr McCanny, the respondent's general manager with hotel employee HR responsibility, effectively head hunted the claimant for position of receptionist. With specific knowledge and agreement of the manager responsible for reception Rota Mr McCanny expressly assured the claimant that she would be provided her required fixed shift pattern to match existing childcare provision with variation only with her agreement on foot of which she accepted and left her current job with similar fixed working pattern. The claimant believed the written statement of employment particulars given to her was a generic document and signed it trusting her oral agreement with Mr McCanny, whom she had worked with previously, would be noted and honoured. This shift pattern (amounting to 24 hours per week) with variation only by agreement was subsequently honoured and reflected in claimant's usual working pattern for over 20 months until changes were introduced by Mr Daly. Mr Daly's action of contacting the claimant to announce the need for a change it is accepted was a clear recognition of claimant's agreed and established working days.
94. The tribunal find the clear intention of the parties, as agreed orally at outset and supported by resultant Rota for the claimant thereafter was that the claimant would work for 24 hours each week on contractual working days of a Tuesday, Wednesday and Thursday and that she would perform working days outside her stated Rota to accommodate the respondent but only where childcare arrangements could be put in place by her to cover same. The tribunal is satisfied these terms formed part of the claimant's contract of employment based on original oral agreement and alternatively implied from conduct from beginning of contract or otherwise as a variation of written terms.

Indirect Sex discrimination

95. On 16 July 2023 Mr Daly informed the claimant she would be required to be available for a flexible working week and was dismissive when claimant reminded him of her agreement made with Mr McCanny and reasons for same.
96. The tribunal find the respondent thereafter imposed a PCP for reception staff to work flexibly any day of the week. It is accepted the claimant's issue with this was not just the requirement to work at weekends but also to do so flexibly outside her agreed days, subject to accommodating respondent's Rota if childcare could be put in place. The claimant's disadvantage was requirement to work flexible shifts *any day* of the week, given her child caring responsibilities and resultant impact was a loss of shifts and income, stress, anxiety and end of claimant's employment.
97. In relation to the claimant's assertion that the imposition of the PCP had a disproportionate impact given women are placed at a particular disadvantage because of their childcare obligations, it is accepted that the relevant comparator group is all receptionists' male and female required to work flexibly Monday to Sunday.
98. It is furthermore accepted that authorities regarding judicial notice are clear that women continue as a group to bear a greater proportion of childcare responsibilities

and a requirement to work at particular times may place women at a particular disadvantage. In particular:

- In ***London Underground v Edwards (NO2) [1999]*** that tribunals ‘do not sit in blinkers’; and tribunal entitled in that case to take into account, for the purposes of finding discrimination, its knowledge about the proportionately larger number of women than men who work and who have primary childcare responsibilities, and also the fact that there are a high proportion of single mothers having care of a child.
- In ***Dobson v North Cumbria Integrated Care NHS Foundation Trust [2021]*** that whilst men do now bear a greater proportion of child- caring responsibility than they did decades ago the position is still far from equal; and tribunal held to have erred when it failed to take judicial notice of the fact that women bear the greater burden of childcare responsibilities than men and that this can limit their ability to work certain hours; and cases relied upon including ***Essop v Home Office (UK Border Agency)*** and ***Naeem v Secretary of State for Justice [2017]*** where Lady Hale said

*‘There is nothing peculiar to womanhood in taking the larger share of caring responsibilities in a family. Some do and some do not. But (in the context of equal pay) it has been acknowledged that a length of service criterion can have a disparate impact on women because they tend to have shorter service periods as a result of career breaks or later career starts owing from their child care responsibilities: see ***Wilson v Health and Safety Executive (Equality and Human Rights Commission intervening) [2010] ICR 302***, following ***Cadman v Health and Safety Executive (Equal Opportunities Commission intervening) (Case C-17/05) [2006] ICR 1623; [2006] ECR I9583...***’*

Choudhury P observed therein at [50], taking judicial notice of the childcare disparity does not necessarily mean that the group disadvantage is made out. Whether or not it is made out will depend on the interrelationship between the general position that is the result of the childcare disparity and the particular PCP in question and also the impact of that PCP on the particular pool of workers under consideration (see ***Marston (Holdings) Ltd v Perkins [2025] EAT 20, [2025] IRLR 318*** where the ET had failed to address that issue adequately).

- In ***Shackletons Garden Centre Ltd v Lowe UKEAT/0161/10, [2010] EqLR139, [2010] All ER (D) 98 (Sep)***, where a woman did not want to return to the weekend working roster after maternity leave that it is ‘now well recognised that significantly more women than men are primarily responsible for the care of their children and accordingly the ability of women to work particular hours is substantially restricted in contrast to that of men.’ However, whilst this established group disadvantage it was still necessary for the female claimant to go on to prove that the requirement of weekend working placed her at a ‘particular disadvantage’, as opposed to a ‘self-inflicted detriment’.

- In **Cumming v British Airways Plc [2021] IRLR 270** where the EAT (HHJ Shanks) stated that: '...in the light of Lady Hale's observations [in **Essop**], I do not think that there was any need for evidence to show that female cabin crew (like any other group of females) bear the bulk of child care responsibilities'.
99. The tribunal note the claimant lived alone with her then four year old child; her partner worked for Royal Mail, lived at different address and was required to work at weekends; the claimant was accountable for her child's care and welfare; she considered it difficult to find safe child care in her area, her childminder did not work at weekends, the claimant was responsible for payment of arranged childcare provision for set days whether or not used unless her child minder agreed to a variation and this subject to availability due to restrictions on numbers of children allowed to be cared for at one time . The claimant only took on the role with the Respondent based on working specified days linked to her childcare responsibilities. The Claimant did work outside these days on occasion but only when childminding arrangements could be put in place to accommodate same. The Claimant was the only Receptionist with child caring responsibilities. The PCP the tribunal consider is more difficult for those with primary childcare responsibilities because childcare arrangements usually require advance planning. The tribunal find in the circumstances of this case, absent statistical evidence concerning effect of the PCP upon male and female employees, taking judicial notice of fact that women are more likely than men to bear primary childcare responsibilities and taking account of the impact of the stated PCP upon the claimant as a member of relevant comparator group , that group disadvantage has been made out . The tribunal is satisfied the PCP placed the claimant at a particular disadvantage, are not persuaded sole issue was weekend work and or logical that burden of childcare falls differently at weekends, or that this was simply a choice by the claimant not to work outside set days and her detriment was a self-inflicted one.
100. The burden of proof is on the Respondent to establish justification [**Starmer -v-British Airways [2005] IRLR 862**]. It is accepted that the respondent did not articulate any defence of justification in its pleadings (ET3 and reply to notice for additional information) and/or in witness statement evidence and whilst reliance on same identified at Item 9 of the Legal and Factual Issues that no legitimate aim on the part of the Respondent that was proportionate, appropriate and necessary was identified. In submissions Mr Doherty put that there was a clear legitimate aim of ensuring employees could be scheduled to work in a flexible manner to meet variable guest or business demands and PCP of requiring staff to be available to work on any day merely requiring a degree of flexibility and was a proportionate way of ensuring staff would be available to meet business demands. The tribunal is not persuaded the respondent has met the burden of establishing that the PCP was a proportionate means of achieving a legitimate aim and accordingly finds that unlawful indirect sex discrimination has occurred.

Unfair (Constructive) Dismissal

101. The tribunal is persuaded on balance the claimant was contracted to work 24 hours each week on a Tuesday, Wednesday and Thursday save where variation by agreement where childcare arrangements could be put in place to cover same. Mr

Daly however imposed a requirement to be able to work any day of the week. The claimant explained clearly her agreement with Mr McCanny and childcare responsibilities and sought to find some solution, but respondent failed to properly investigate, consider and fully address the concerns and difficulties she raised, and thereafter did not honour the claimant's contracted hours. On 14 November 2023, the Claimant resigned from her employment stating that given the failure of the Respondent to accommodate her working shift requirements she had no other option but to resign.

102. The tribunal find the respondent's unilateral variation of the claimant's hours, shift pattern and flexible working arrangement alone amounted to a breach of fundamental express oral and otherwise implied terms of her contract of employment and otherwise collectively by removal of claimant's flexible working arrangements; imposition of work rota which varied week by week; failure to have adequate regard for claimant's childcare responsibilities; failure to allocate her contracted hours; change of claimant's terms and conditions of employment without consent; refusal of claimant's request for flexible working hours; failure to provide adequate support and assistance to the claimant and failure to deal with the claimant's grievance that the respondent without reasonable and proper cause conducted itself in a manner calculated and/or likely to destroy or seriously damage the degree of trust and confidence the claimant was reasonably entitled to have in it as her employer, in breach of the implied contractual term of trust and confidence. The tribunal consider the claimant was entitled to rely on the last straw doctrine and find *last straw* was respondent's confirmation on 3 November 2023 to the effect it would not restore the claimant's original working hours and shift patterns. The tribunal reject that the new job was reason for claimant's resignation but rather respondent's conduct caused her to seek new employment and reasonable that she sought to do so before her resignation because of her financial responsibilities. The tribunal find the claimant's resignation was unequivocally and unambiguously in response to respondent's conduct and that the claimant did not delay so as to affirm the breach or waive her right to resign but acted without delay terminating the contract under which she was employed in circumstances in which she was entitled to do so without notice by reason of the respondent's conduct. The tribunal find that the claimant was accordingly dismissed within the meaning of Article 127 (2) (c) ERO.
103. Whilst a business need for flexibility to respond to customer demand could amount to *some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held*, the tribunal is not on the evidence before it persuaded that the respondent has established it as a fair reason for dismissal nor otherwise that on consideration of all the circumstances, taking into account equity and the substantial merits of the case (including the size and administrative resources of the respondent's undertaking) based thereon that it acted reasonably in treating the claimant as it did leading to the claimant terminating her contract of employment. The tribunal find that the claimant's constructive dismissal was unfair under Article 130 ERO.

FINDINGS OF FACT RELEVANT TO REMEDY ONLY

104. The Claimant sought compensation by way of remedy.

105. In period following changes introduced by Mr Daly until her resignation the claimant was allocated twelve less 8-hour shifts than her contractual entitlement. Whilst the claimant paid to retain her childcare provision for same fixed days, this would have been so if contractual hours had been honoured.
106. The claimant's normal gross weekly pay for three 8-hour shifts was £258.
107. The claimant commenced new employment approximately two weeks after EDT thus mitigating her loss and sought only one week's loss of wages.
108. Where a dismissal is both unfair and an act of unlawful discrimination, the tribunal ordinarily award compensation on the basis of discrimination. Recoupment and the statutory cap do not apply and *restoring the claimant's position* could produce a higher figure than the just and equitable test. The tribunal consider it is appropriate in this case to award compensation on the basis of discrimination and find it just and equitable to award compensation by way of remedy.
109. In assessing the claimant's actual loss, the tribunal has to consider what sums the claimant would have received had the unlawful act not occurred, this is not an exact exercise, and tribunal has adopted a broad-brush approach.
110. The claimant's evidence is accepted that this episode left a very damaging mark on her; that she had found it extremely stressful throughout; found trying to communicate with respondent's management very challenging and upsetting; felt betrayed and deflated by treatment received; had been made to feel less of a contributing team member because she was a mother with childcaring responsibilities; had been made to feel upset and embarrassed that other team members were making sacrifices for her; and that the sacrifices and efforts she had made in her job to put respondent's professional image first and her family life undervalued. The tribunal consider the claimant's upset was aggravated by high handed approach of respondent introducing changes without regard for concerns raised by the claimant, failure to meaningfully engage with her, not adequately investigating or fully addressing claimant's grievance and appeal and despite claimant's willingness to try to find a solution and that this took place over a period extending over five months. We consider that the claimant's injury to feeling taking into account aggravation thereof falls in the lower to middle end of middle band of **Vento** and that an appropriate amount of compensation is £ 13,000.
111. Mr Mulqueen sought a 50% uplift for the respondent's failure to comply with the LRA Code of Practice in particular at paragraph 82 providing a full written explanation for grievance decision reached. The respondent was aware of the LRA Code of Practice but all of the matters raised by the claimant in her grievance were not adequately addressed in grievance or appeal outcomes and despite respondent's grievance acknowledgement stating it would go through each point in claimant's grievance letter and that its own grievance policy provided for investigation and written answers to be given. The tribunal find the respondent failed to investigate and determine each complaint presented and made no attempt to resolve any of the claimant's issues. No effort was made by Mr Cassidy to address each of the issues articulated in relation to grievance outcome appeal and tribunal is persuaded the respondent had no desire to investigate and or determine the issues presented by the claimant. The tribunal

consider the respondent unreasonably failed to have regard to the LRA code by seeking to adequately address grievance issues raised and this contributed to circumstances leading to the claimant terminating her employment. Mindful of award for injury to feeling and aggravation of claimant's injury to feeling by same procedural failing and not double counting the tribunal find just and equitable to make an increase of 10% under Article 90AA of the Industrial Relations (Northern Ireland) Order 1992 to compensation awards made.

112. The tribunal is obliged to consider making an award of interest. There is no evidence before the tribunal amounting to exceptional circumstances such that serious injustice would be caused if an award of interest were made and tribunal considers appropriate that interest be awarded.

113. The tribunal awards as follows: -

(A) Basic award:

1 year x 1.5 (age factor) x £258 (gross wage)	£ 480.00	
10% uplift	<u>£ 48.00</u>	
		£528.00

(B) Compensatory award (other than injury to feelings)

Loss of statutory rights	£ 500.00	
Financial Loss		
1 week's loss of earnings	£ 258.00	
12 lost shifts (of 8 hours @ £10.75)	£ 1032.00	
10% uplift	<u>£ 179.00</u>	
	£ 1,969.00	
Interest (mid-point date to calculation date)		
(mid-point between 16/07/23 to 23/07/26)		
Say 78.5 weeks @ 8% p.a.:	<u>£ 237.79</u>	
Total including interest		£2,206.79

(C) Injury to feelings compensation:

lower to mid Vento	£13,000.00	
10% uplift	<u>£ 1,300.00</u>	
	£ 14,300.00	
Interest (discrimination to calculation date)		
(16/07/23- 23/07/26)		
Say 157 weeks @ 8 % p.a.:	<u>£ 3,454</u>	
Total including interest		<u>£17,754.00</u>

Total Compensation: **£20,488.79**

CONCLUSION

114. The claimant suffered a loss of wages arising from respondent's breach of contract, unlawful indirect sex discrimination, was dismissed within the meaning of Article 127 (c) of the Employment Rights (Northern Ireland) Order 1996 [ERO] and dismissal was unfair under Article 130 ERO. The claimant's claim of detriment on grounds of part time status was not addressed or made out at hearing and is dismissed. The claimant is awarded in total compensation of **£ 20,488.79**.
115. This is a relevant decision for the purposes of the Industrial Tribunals Interest Order (Northern Ireland) 1990 and the Industrial Tribunals Interest in Awards in Sex and Disability Discrimination Cases (Regulations) (Northern Ireland) 1996.

Employment Judge: *E J Bell*

Date and place of hearing: 4,5,7 November 2025, Belfast.

This judgment was issued to the parties on: 24 July 2026

This judgment will be entered in the register within 21 days.

INTEREST NOTICE INDUSTRIAL TRIBUNALS INTEREST ON AWARDS IN DISCRIMINATION CASES

The Industrial Tribunals (Interest) Order (Northern Ireland) 1990 provides that interest shall accrue on a sum of money payable as a result of an award of an industrial tribunal where that sum remains unpaid in whole or part 42 days after the decision containing the award was issued to the parties.

In relation to awards made under the Equal Pay Act (Northern Ireland) 1970, the Sex Discrimination (Northern Ireland) Order 1976, the Disability Discrimination Act 1995, or the Race Relations (Northern Ireland) Order 1997, the Industrial Tribunals (Interest on Awards in Sex and Disability Discrimination Cases) Regulations (Northern Ireland) 1996, the Race Relations (Interest on Awards) Order (Northern Ireland) 1997 and the Industrial Tribunals (Interest on Awards in Age Discrimination Cases) Regulations (Northern Ireland) 2006 determined that interest shall accrue from the day immediately following the day the decision containing the award is issued to the parties. However no interest is payable on the award if the full amount of the award is paid within 14 days after the day of issue of the decision to the parties. Interest does not accrue on costs or expenses awarded by the tribunal.

In this application, please note that -

1. The decision day is 24 July 2026 being the day the decision was sent to the parties;
2. The calculation day is 4 September 2026 being the day immediately following the decision day; and
3. The stipulated rate of interest is 8% being the rate of interest in force on amounts awarded by decree in the county court on the decision day.

E J Bell

Employment Judge