

**EMPLOYMENT APPEAL TRIBUNAL**  
FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8AE

At the Tribunal  
On 21 December 2017  
Judgment handed down on 11 April 2018

**Before**

**THE HONOURABLE MRS JUSTICE SLADE DBE**

**(SITTING ALONE)**

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CAPITA CUSTOMER MANAGEMENT LIMITED

APPELLANT

(1) MR M ALI  
(2) WORKING FAMILIES (INTERVENOR)

RESPONDENTS

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Transcript of Proceedings

JUDGMENT

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## SUMMARY

**SEX DISCRIMINATION - Direct**

**SEX DISCRIMINATION - Indirect**

**VICTIMISATION DISCRIMINATION - Detriment**

A father who wished to take shared parental leave so that his wife could go back to work claimed direct sex discrimination in not being entitled to pay at the higher maternity pay rate for 12 weeks after the 2 weeks compulsory maternity leave but only that paid for shared parental leave.

The Employment Tribunal erred in failing to consider or have regard to the purpose of maternity leave with pay which is the rationale for domestic law provision for maternity leave and pay and the European legislation which it implements. That purpose is for the health and wellbeing of a woman in pregnancy, confinement and after recent childbirth. The Employment Tribunal erred in holding that the circumstances of the Claimant father were comparable within the meaning of the **Equality Act 2010** section 23(1) to those of a woman who had recently given birth as both had leave to care for their child. Such a finding fails to have regard to the purpose of maternity leave and pay. A mother will care for her baby but that is a consequence not the purpose of maternity leave and pay. Whether and for how much there is an entitlement to pay depends upon and is inseparable from the type of leave taken. Shared parental leave is given on the same terms for men and women. **Hofmann v Barmer Ersatzkasse** [1985] ICR 731 and **Betriu Montull v Instituto NSS** [2013] ICR 1323 considered. Further the ET erred for similar reasons in holding that the payment to a woman who had recently given birth and was on maternity leave at a higher rate than that given to parents of either sex on shared parental leave the purpose of which was different, the care of the child, did not fall within **Equality Act 2010** section 13(6)(b). **Eversheds v Legal Services De Belin** [2011] ICR 1137 considered.

**A** THE HONOURABLE MRS JUSTICE SLADE DBE

**B** 1. This appeal is linked to that of Mr A Hextall v The Chief Constable of Leicestershire  
**C** Police. Both appeals raise the issue of whether it is sex discrimination giving rise to a claim,  
for an employer not to pay a man who takes shared parental leave following the birth of his  
child, at the same rate as women on maternity leave. Two different Employment Tribunals  
hearing the claims by the different Claimants reached different conclusions. Mr Ali succeeded  
in his claim. The claim by Mr Hextall was dismissed.

**D** 2. Capita Customer Management Limited (“the Respondent”) appeal from the decision of  
Employment Judge Rogerson and members (“the ET”) who by a Judgment sent to the parties  
on 17 March 2017 (“the Judgment”) upheld the claim by Mr Ali (“the Claimant”) of direct sex  
discrimination for not being entitled to pay at the same rate as that paid to a woman on  
maternity leave for twelve weeks after the expiry of his two weeks entitlement to paternity  
leave and paternity pay.

**E** 3. At first reading the claim appears, as characterised by Employment Judge Camp in  
**F** Hextall v The Chief Constable of Leicestershire Police, “bold and ingenious”. The  
arguments advanced by Mr Panesar, counsel appearing for the Claimant in the Employment  
Appeal Tribunal (“EAT”) seek to defend the conclusion reached by the ET by a careful analysis  
and application of the statutory provisions underpinning the respective rights of parents to leave  
and pay following the birth of their child. The position of Mr Burns QC and Ms Harris for the  
Appellant Respondent characterises the issue on appeal more simply. Counsel for the  
Respondent set the tone in the introduction to their skeleton argument:

**G** “1. This Appeal raises two issues. The first is straightforward: it is not sex discrimination for  
an employer to make different payments for maternity leave and for shared parental leave.  
The two types of leave are not comparable. ...”  
**H**

**A** Appeal from Finding of Direct Sex Discrimination

Outline Facts

**B** 6. The ET set out the Respondent's maternity, paternity and adoption leave policies which applied to transferring Telefonica employees. Telefonica policies applied to the Claimant. The ET held:

"4. The 'entitlement' to pay for maternity and parental leave was not a contractual term but was contained in separate Telefonica policies that transferred with the transferring employees.

**C** Female Telefonica transferring employees were entitled to maternity pay in accordance with the Telefonica maternity policy dated December 2011. The policy provides three options for maternity pay of up to 39 weeks. If an employee had 26 weeks service she was entitled to receive the most favourable of 3 options from:

*"1. 14 weeks company maternity pay followed by 25 weeks lower rate statutory maternity pay.*

*2. 6 weeks higher rate statutory maternity pay followed by eight weeks company maternity weeks and then 25 weeks lower rate statutory maternity pay.*

**D** *3. 6 weeks higher rate statutory maternity pay followed by 33 weeks lower rate statutory maternity pay."*

Clearly the most favourable option was 14 weeks basic pay followed by 25 weeks statutory maternity pay for the balance of the leave.

**E** 4.1. The Claimant as a father and male employee was entitled to paternity leave and pay under the Telefonica policy. That policy also applied to same sex couples providing you were the partner of the mother and would "*share responsibilities for bringing up your new baby*". Page 47 of the policy deals with paternity leave and provides up to 2 weeks paid Ordinary Paternity Leave (OPL) and up to a further 28 weeks Additional Paternity Leave (APL), which 'may or may not be paid'.

*"Ordinary Paternity Leave (OPL) is paid time out to enable you to spend time with your newly born baby (or newly adopted child). Ordinary paternity leave is up to two weeks leave. The earliest you can choose to start your paternity leave is immediately your baby is born or within eight weeks after the birth. The payment provisions for the leave are that you will be paid as usual during your ordinary paternity leave"*.

**F** The Claimant was therefore entitled to, and was paid the benefit of his full pay for two weeks after the birth of his daughter to spend time with his "newly born baby". A parent adopting a child would also get that leave and pay.

**G** 4.2. For parents of either sex adopting a child the statutory provisions applied and provided for Statutory Adoption Leave ('SAL') of up to 52 weeks and an entitlement to 39 weeks of Statutory Adoption Pay (SAP). SAL comprises of 26 weeks Ordinary Adoption Leave (OAL) which can start from the date of the child's placement or from a fixed date up to 14 days before the expected date of placement, followed immediately by 26 weeks of Additional Adoption Leave (AAL).

..."

**H** 7. The ET set out the background facts relating to the sex discrimination claim.

"5. The background facts to the sex discrimination complaint were not disputed and are as follows:-

A

...

(b) in a case where B is a man, no account is to be taken of special treatment afforded to a woman in connection with pregnancy or childbirth.”

Section 23:

B

“23. (1) On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case.”

Section 39:

C

“39. ...

(2) An employer (A) must not discriminate against an employee of A’s (B) -

...

(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;

D

...

(d) by subjecting B to any other detriment.”

*Employment Rights Act 1996 (“ERA”)*

E

*Maternity Leave*

Section 71:

“71. (1) An employee may, provided that she satisfies any conditions which may be prescribed, be absent from work at any time during an ordinary maternity leave period.

F

(2) An ordinary maternity leave period is a period calculated in accordance with regulations made by the Secretary of State.

(3) Regulations under subsection (2) -

(a) shall secure that, where an employee has a right to leave under this section, she is entitled to an ordinary maternity leave period of at least 26 weeks;

G

...

72. (1) An employer shall not permit an employee who satisfies prescribed conditions to work during a compulsory maternity leave period.

(2) A compulsory maternity leave period is a period calculated in accordance with regulations made by the Secretary of State.

(3) Regulations under subsection (2) shall secure -

H

(a) that no compulsory leave period is less than two weeks, and

(b) that every compulsory maternity leave period falls within an ordinary maternity leave period.

A

(2) Regulations under subsection (1) may provide that the employee's entitlement is subject to the satisfaction by P of specified conditions -

...

(c) as to caring or intending to care, with the employee, for the child, ...

B

(4) The Secretary of State may make regulations entitling an employee who satisfies specified conditions -

...

(b) as to relationship with a child or expected child or with the child's mother,

(c) as to caring or intending to care, with the child's mother, for the child,

..."

C

#### Section 75F:

"75F. (1) Regulations under section 75E are to include provision for determining -

(a) the amount of leave under section 75E(1) or (4) to which an employee is entitled in respect of a child;

(b) when leave under section 75E(1) or (4) may be taken.

(2) Provision under subsection (1)(a) is to secure that the amount of leave to which an employee is entitled in respect of a child does not exceed -

(a) in a case where the child's mother became entitled to maternity leave, the relevant amount of time reduced by -

E

(i) where her maternity leave ends without her ordinary or additional maternity leave period having been curtailed by virtue of section 71(3)(ba) or 73(3)(a), the amount of maternity leave taken by the child's mother, ...

(4) Provision under subsection (1)(a) is to secure that the amount of leave that an employee is entitled to take in respect of a child takes into account -

(a) in a case where another person is entitled to leave under section 75E in respect of the child, the amount of such leave taken by the other person;

F

(b) in a case where another person is entitled to statutory shared parental pay in respect of the child but not leave under section 75E, the number of weeks in respect of which such pay is payable to the other person."

G

#### Section 75G:

"75G. (1) The Secretary of State may make regulations entitling an employee who satisfies specified conditions -

...

(c) as to caring or intending to care, with another person ("P"), for the child,

H

..."

**A** Regulations

*Maternity Leave*

*Maternity and Parental Leave Regulations 1999 SI 1999 No 3312 ("MAPL")*

**B** Regulation 7:

"7. (1) Subject to paragraphs (2) and (5), an employee's ordinary maternity leave period continues for the period of eighteen weeks from its commencement, or until the end of the compulsory maternity leave period provided for in regulation 8 if later."

**C** Regulation 8:

"8. The prohibition in section 72 of the 1996 Act, against permitting an employee who satisfies prescribed conditions to work during a particular period (referred to as a "compulsory maternity leave period"), applies -

(a) in relation to an employee who is entitled to ordinary maternity leave, and

(b) in respect of the period of two weeks which commences with the day on which childbirth occurs."

*Paternity and Adoption Leave Regulations 2002 SI 2002 No 2788*

**D** Regulation 4:

"4. (1) An employee is entitled to be absent from work for the purpose of caring for a child or supporting the child's mother if he -

(a) satisfies the conditions specified in paragraph (2), and

(b) has complied with the notice requirements in regulation 6 and, where applicable the evidential requirements in that regulation."

**E** Regulation 5:

"5. (1) An employee may choose to take either one week's leave or two consecutive weeks' leave in respect of a child under regulation 4.

...

(3) Subject to paragraph (2) and, where applicable, paragraph (4), an employee may choose to begin his period on leave on -

(a) the date on which the child is born;

..."

**A** *Statutory Paternity Pay and Statutory Adoption Pay (Weekly Rates) Regulations 2002 SI 2002  
No 2818*

The Regulation as amended from time to time specifies the statutory paternity and adoption  
leave.

**B**

*Shared Parental Leave and Pay*

*Children and Families Act 2014*

**C**

*The right to parental leave and pay derive purely from domestic law*

*Shared Parental Leave Regulations 2014 SI 2014 No 3050 (“SPL Regulations”)*

*Shared Parental Leave (“SPL”)*

**D**

M is the mother      P is the partner      C is the child

A is the adopter      AP is the partner of the adopter

Regulation 4:

**E**

“4. (1) M is entitled to be absent from work to take shared parental leave in accordance with Chapter 2 to care for C if she satisfies the conditions specified in paragraph (2) and P satisfies the conditions specified in paragraph (3).

(2) The conditions are that -

(a) M satisfies the continuity of employment test (see regulation 35);

(b) M has, at the date of C’s birth, the main responsibility for the care of C (apart from the responsibility of P);

**F**

(c) M is entitled to statutory maternity leave in respect of C;

(d) M has ended any entitlement to statutory maternity leave by curtailing that leave under section 71(3)(ba) or 73(3)(a) of the 1996 Act (and that leave remains curtailed) or, where M has not curtailed in that way, M has returned to work before the end of her statutory maternity leave;

**G**

(e) M has complied with regulation 8 (notice to employer of entitlement to shared parental leave);

(f) M has complied with regulation 10(3) to (5) (evidence for employer); and

(g) M has given a period of leave notice in accordance with regulation 12.

(3) The conditions are that -

**H**

(a) P satisfies the employment and earnings test (see regulation 36); and

(b) P has, at the date of C’s birth, the main responsibility for the care of C (apart from the responsibility of M).

**A** (b) where M's statutory maternity leave ends without her curtailing that leave under section 71(3) or section 73(3) of the 1996 Act, the number of weeks of statutory maternity leave taken."

Regulation 20:

**B** "20. (1) A is entitled to be absent from work to take shared parental leave in accordance with Chapter 2 to care for C if A satisfies the conditions specified in paragraph (2) and AP satisfies the conditions specified in paragraph (3)."

Regulation 22:

**C** "22. (1) Where A is entitled to statutory adoption leave, subject to paragraph (9), the total amount of shared parental leave available to A and AP in relation to C is 52 weeks less -

(a) where there is a leave curtailment date, the number of weeks of statutory adoption leave beginning with the first day of statutory adoption leave taken by A and ending with the leave curtailment date (irrespective of whether or not A returns to work before that date), or

**D** (b) where A's statutory adoption leave ends without A curtailing that leave under section 75A(2A) or section 75B(3) of the 1996 Act, either -

(i) the number of weeks of statutory adoption leave taken; or

(ii) 2 weeks,

whichever is greater.

**E** (2) Where A is not entitled to statutory adoption leave, but is entitled to statutory adoption pay, subject to paragraph (10), the total amount of shared parental leave available to AP in relation to C is 52 weeks less -

(a) where A returns to work without reducing A's statutory adoption pay period under section 171ZN(2A) of the 1992 Act, the number of weeks of statutory adoption pay payable to A in respect of C before A returns to work, or

**F** (b) in any other case, the number of weeks of statutory adoption pay payable to A in respect of C up to the pay curtailment date."

### Statutory Shared Parental Pay

### *Statutory Shared Parental Pay (General) Regulations 2014 SI 2014 No 3051*

**G** Regulation 4:

"4. (1) M is entitled to statutory shared parental pay (birth) if M satisfies the conditions specified in paragraph (2) and if P satisfies the conditions specified in paragraphs (3).

(2) The conditions are that -

**H** (a) M satisfies the conditions as to continuity of employment and normal weekly earnings specified in regulation 30;

(b) M has at the date of C's birth the main responsibility for the care of C (apart from the responsibility of P);

A

(c) M became entitled by reference to the birth, or expected birth, of C to statutory maternity pay or maternity allowance; and

(d) the maternity pay period or the maternity allowance period which applies to M as a result of her entitlement to statutory maternity pay or maternity allowance is, and continues to be, reduced under sections 35(3A) or 165(3A) of the 1992 Act.”

B

### Regulation 17:

“17. (1) A is entitled to statutory shared parental pay (adoption) if A satisfies the conditions specified in paragraph (2) and AP satisfies the conditions specified in paragraph (3).

(2) The conditions referred to in paragraph (1) are that -

C

(a) A satisfies the conditions as to continuity of employment and normal weekly earnings specified in regulation 31 (conditions as to claimant’s continuity of employment and normal weekly earnings);

(b) A has at the date of C’s placement for adoption the main responsibility for the care of C (apart from the responsibility of AP);

(c) A has complied with the requirements specified in regulation 19 (notification and evidential requirements);

D

(d) A became entitled to statutory adoption pay by reference to the placement for adoption of C;

(e) the adoption pay period that applies as a result of A’s entitlement to statutory adoption pay is, and continues to be, reduced under section 171ZN(2A) of the 1992 Act;

E

(f) it is A’s intention to care for C during each week in respect of which statutory shared parental pay (adoption) is paid to A;

(g) A is absent from work during each week in respect of which statutory shared parental pay is paid to A (except in the cases referred to in regulation 27 (entitlement to statutory shared parental pay (adoption): absence from work); and

(h) where A is an employee (within the meaning of the Employment Rights Act 1996) A’s absence from work as an employee during each week that statutory shared parental pay is paid to A is absence on shared parental leave in respect of C.

F

(3) The conditions referred to in paragraph (1) are that -

(a) AP has at the date of C’s placement for adoption the main responsibility for the care of C (apart from the responsibility of A); and

(b) AP satisfies the employment and earnings conditions in regulation 29 (conditions relating to employment and earnings of claimant’s partner).”

G

### Regulation 18:

“18. (1) AP is entitled to statutory shared parental pay (adoption) if AP satisfies the conditions specified in paragraph (2) and A satisfies the conditions specified in paragraph (3).

(2) The conditions specified in paragraph (1) are that -

H

(a) AP satisfies the conditions as to continuity of employment and normal weekly earnings specified in regulation 31 (conditions as to continuity of employment and normal weekly earnings);

**A** Regulation 6:

**“6. (1) A leave curtailment notice must be in writing and must state -**

**(a) where M curtails her ordinary maternity leave period, the date on which M’s ordinary maternity leave period is to end;**

**(b) where M curtails her additional maternity leave period, the date on which M’s statutory additional maternity leave period is to end.**

**B**

**(2) The date specified in the leave curtailment notice must be -**

**(a) at least one day after the end of the compulsory maternity leave period;**

**(b) at least eight weeks after the date on which M gave the leave curtailment notice to her employer; and**

**C**

**(c) where M curtails her additional maternity leave period, at least one week before the last day of M’s additional maternity leave period.**

**(3) In paragraph (2) “the end of the compulsory maternity leave period” means whichever is the later of -**

**(a) the last day of the compulsory maternity leave period provided for in regulations under section 72(2) of the 1996 Act; ...”**

**D**

Regulation 7:

**“7. (1) Where M has brought forward the date on which her ordinary maternity leave period or additional maternity leave period ends in accordance with regulation 5, her statutory maternity leave period will end on the leave curtailment date.**

**E**

**(2) In this regulation “statutory maternity leave period” means the period during which M is on statutory maternity leave.”**

Regulation 9:

**F**

**“9. (1) A may bring forward the date on which A’s ordinary adoption leave period or additional adoption leave period ends by giving A’s employer a leave curtailment notice and either -**

**(a) a notice of entitlement; or**

**(b) a declaration of consent and entitlement.”**

**G**

Regulation 11:

**“11. (1) Where A has brought forward the date on which A’s ordinary adoption leave period or additional adoption leave period ends in accordance with regulation 9, A’s statutory adoption leave period will end on the leave curtailment date.”**

**H**

A Article 11:

**“Employment Rights**

**In order to guarantee workers within the meaning of Article 2 the exercise of their health and safety protection rights as recognised in this Article, it shall be provided that:**

...

B 2. in the case referred to in Article 8, the following must be ensured:

...

(b) maintenance of a payment to, and/or entitlement to an adequate allowance for, workers within the meaning of Article 2.

C 3. the allowance referred to in point 2(b) shall be deemed adequate if it guarantees income at least equivalent to that which the worker concerned would receive in the event of a break in her activities on grounds connected with her state of health, subject to any ceiling laid down in national legislation.”

*Directive 2006/54/EC (“Recast Equal Treatment Directive”) replacing Directive 76/207/EC (“Equal Treatment Directive”)*

D Article 28:

“1. This Directive shall be without prejudice to provisions concerning the protection of women, particularly as regards pregnancy and maternity.”

E The exception was implemented in EqA section 13(6)(b).

*Directive 96/34/EC (“Parental Leave Directive”)*

F Article 1: This Directive puts into effect the revised Framework Agreement on parental leave concluded on 18 June 2009 by the European cross-industry social partner organisations

G ANNEX: Whereas in many Member States encouraging men to assume an equal share of family responsibilities has not led to sufficient results; therefore, more effective measures should be taken to encourage a more equal sharing of family responsibilities between men and  
H women.

A

If you don't complete one full calendar month of employment after you come back from maternity leave (this is excluding holiday or time out) you'll have to pay back any company maternity pay paid to you. You'll not be required to pay back any statutory maternity pay."

B

11. The Telefonica policy on shared parental leave and pay provides:

"Eligible parents will be able to share a maximum of 50 weeks leave and 39 weeks statutory pay for the purpose of caring for a child within the first year of the child's life or in the year after the child is placed for adoption.

SPL cannot be taken until after the birth/placing of the child and only applies to babies born or children placed on or after 5th April 2015."

C

The mother and the other parent must give the necessary statutory notices and declarations including notice to end any maternity leave, statutory maternity leave, or maternity allowance periods.

D

The first stage of opting into SPL is to bring maternity or adoption leave to an end by giving a curtailment notice stating when maternity or adoption leave is to end. The notice must provide that maternity leave is to come to an end no sooner than the two weeks compulsory maternity leave period and no later than one week before the end of the additional maternity leave period.

E

F

12. Shared parental pay was paid at £139.58 at the relevant time or 90% of average weekly earnings whichever is the lower.

*The Judgment of the ET*

G

13. The ET set out the claim by the Claimant:

H

"2. Dealing with the sex discrimination complaints first. The Claimant complains that as a male employee he was entitled to only two weeks paid leave following the birth of his child in April 2016, whereas a female Telefonica transferred employee, would be entitled to 14 weeks pay following the birth of her child. The Claimant accepted there was a material difference in circumstances/justified special treatment of a hypothetical female employee for the first two weeks of that leave because that female, the mother, was required to take 'compulsory maternity leave' which is related to her biological/physiological condition and recovery following childbirth. For that 2 week period the comparator was in a position unique to women who have given birth. However in that 2 week period, he was also paid his full pay for taking parental leave, so was not less favourably treated in relation to his pay/leave. His

**A** 19. The ET then considered at paragraph 5.39 whether the exception for special treatment of women because of pregnancy or childbirth applied.

**B** 20. The reasoning of the ET for rejecting the 'special treatment' exception is set out in paragraph 5.41:

**C** "5.41. It was not clear why any exclusivity should apply beyond the 2 weeks after the birth. In 2016, men are being encouraged to play a greater role in caring for their babies. Whether that happens in practice is a matter of choice for the parents depending on their personal circumstances but the choice made should be free of generalised assumptions that the mother is always best placed to undertake that role and should get the full pay because of that assumed exclusivity."

**D** 21. The ET applied the principles they had adopted to the facts. At paragraph 5.42 they held:

"5.42. ... The caring role he wanted to perform was not a role exclusive to the mother. It was not special treatment in connection with pregnancy and child-birth it was about special treatment for caring for a newborn baby. This was not about denying full pay to a [woman], it was about equality of treatment in relation to pay for the Claimant to access the same benefits for performing the same role."

**E** 22. The overarching submission made by Mr Burns QC for the Respondent is simple and straightforward. The leave the Claimant states he was deterred from taking, shared parental leave ("SPL"), is available to men and women on equal terms. There is no discrimination **F** between the sexes either on the ability to take such leave or on the payment made by the Respondent to those who take such leave.

**G** 23. The Telefonica Shared Parental Leave Policy applies to birth parents and to parents of an adopted child. The policy on SPL provides:

"... Up to 50 weeks' leave and 39 weeks' pay can be shared between the parents if the mother brings her maternity leave and pay to an end early."

**H**

**A** leave and pay is primarily for the health and wellbeing of the mother rather than for the care of the baby. There is no eligibility for shared parental leave or pay if there is no baby to care for.

**B** 29. Mr Burns QC stated that the ET failed to refer to the purpose of maternity leave as being for the health and wellbeing of the mother. Maternity leave clearly has that purpose as demonstrated by the European Directive which the domestic law implements and the domestic law provisions themselves. This purpose is reflected in the Telefonica policy.

**C** 30. The **Pregnant Workers Directive** was introduced under Article 118a, the health and safety provision in the Treaty. The preamble to the Directive and Article 1 state as its purpose  
**D** the implementation of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or who are breastfeeding. Article  
**E** 8 recognises that more than two weeks leave are needed by a woman who has given birth. Member States are required to take necessary measures to provide for a continuous period of maternity leave of at least fourteen weeks allocated before and/or after confinement.

**F** 31. Whilst under domestic law, **MAPL Regulation 8**, compulsory maternity leave of two weeks commences on the day of childbirth, Mr Burns QC submitted that the fact that in accordance with Regulation 6(1) ordinary maternity leave of twenty six weeks can start up to eleven weeks before the expected date of confinement, demonstrates that maternity leave and  
**G** pay are primarily for the benefit of the health and wellbeing of the mother as there is no child to care for when it can start.

**H** 32. Mr Burns QC also referred to the statutory provisions governing adoption leave and pay. Under the **Paternity and Adoption Leave Regulations 2002** SI 2002 No 2788, ordinary

A 34. Mr Burns QC submitted that the ET failed to take into account the particular purpose of  
maternity leave and pay, as explained both in European and domestic legislation and in  
B authorities in erroneously deciding in paragraph 5.37, that a claimant who wished to take shared  
parental leave could compare his treatment with a hypothetical female comparator paid at the  
maternity pay rate.

C 35. Even if the ET did not err in holding that the Claimant seeking shared parental leave  
could compare himself with a woman on maternity leave, Mr Burns QC submitted that the ET  
erred in holding at paragraph 5.42 that the claim for the equivalent of maternity pay was not  
D about special treatment in connection with pregnancy and childbirth and therefore did not fall  
within ERA section 13(6)(b).

E 36. Counsel for the Respondent referred to the judgment of the CJEU in Betriu Montull v  
Instituto NSS [2013] ICR 132 in which the court considered the connection between the  
difference of treatment in men and women in connection with pregnancy and childbirth  
provided for in ETD Article 2(3); this provision is implemented in EqA section 13(6)(b) and  
was considered by the ET. In Betriu the CJEU were dealing with a national measure which  
F provided for a difference in treatment between the sexes. The court held:

“61. With regard to the justification for such a difference in treatment, Article 2(3) of Directive 76/207 lays down that that Directive is without prejudice to provisions concerning the protection of women, particularly as regards pregnancy and maternity (see *Roca Alvarez v Sesa Start Espana ETT SA* (Case C-104/09) [2011] All ER (EC) 253, para 26).

G 62. In that regard, the court has repeatedly held that, by reserving to the Member States the right to retain or introduce provisions which are intended to protect women in connection with pregnancy and maternity, Article 2(3) of Directive 76/207 recognises the legitimacy, in terms of the principle of equal treatment of the sexes, first, of protecting a woman’s biological condition during and after pregnancy and, second, of protecting the special relationship between a woman and her child over the period which follows childbirth: see, inter alia, *Hofmann*, para 2, and *Roca Alvarez*, para 27.

H 63. A measure such as that at issue in the main proceedings is, in any event, intended to protect a woman’s biological condition during and after pregnancy.”

A Mr Burns QC distinguished the issue in De Belin from that in this appeal. This appeal is not  
B about a procedure or scoring in a redundancy exercise which applies to both women and  
C maternity leave and men and women not on maternity leave, which was designed, to but was  
D held to exceed what was reasonable to compensate women on maternity leave. It was  
submitted that by contrast, this appeal is one in which the male Claimant seeks the leave and  
pay required to be given specifically to pregnant women and birth mothers by the **Pregnant  
Workers Directive**, in respect of whom legal protection is required to be implemented in  
domestic law. Accordingly, if the ET did not err in comparing the Claimant with a woman on  
maternity leave they erred in failing to hold that maternity leave and maternity pay of twelve  
weeks after the two weeks of compulsory maternity leave fell within EqA section 13(6)(b) as it  
was special treatment afforded to a woman in connection with pregnancy or childbirth.

39. Mr Panesar submitted that this is not a case about leave but about pay. It was said that  
there is no provision which requires an employer to pay a man less than a mother if he takes  
leave to care for his child. It was submitted that this is simply a case of an employer choosing  
to treat men and women differently and to pay men less.

40. Counsel submitted that the difference in pay for a woman and a man during their leave  
of twelve weeks after the two weeks compulsory maternity leave period is not imposed upon  
the Respondent by any external requirement. It is the choice of the Respondent. It was  
submitted by Mr Panesar that the fact that the Claimant was or would have been on shared  
parental leave, and the female comparator on maternity leave, is not a material difference.  
Counsel submitted that the material elements in deciding whether the Claimant could compare  
himself with a woman who had given birth and who was a transferred Telefonica employee was  
that they both were caring for their newborn child in the twelve week period commencing two

A 43. Based on their analysis of the purpose of the legislation applying to leave after the first  
two weeks from birth, Mr Panesar contended that the ET did not err in their conclusions at  
B paragraphs 5.41 and 5.42. Having concluded that the introduction of SPL showed that men  
were being encouraged to play a greater role in caring for their babies, the ET did not err in  
C holding that the choice of who takes parental leave should be given to the parents. That choice  
should not be governed by an assumption that this was the mother's role and that therefore she  
should get full pay but the father is not so entitled.

D 44. As for whether the claim to the same pay as a mother on maternity leave was precluded  
by EqA section 13(6)(b), Mr Panesar contended that the ET did not err in paragraph 5.42 in  
E which they held that the difference in pay between that to which the Claimant would have been  
entitled on SPL, and a woman on maternity leave did not fall within the exception. It was  
submitted that the ET was correct to hold that the increased pay for the mother was not special  
F treatment in connection with childbirth. It was about special treatment for caring for a newborn  
baby.

G 45. Mr Panesar relied upon De Belin to contend that in any event the ET were entitled to  
conclude that, in the particular circumstances of this case, the health and safety of the mother  
was a factor in favour of her returning to work. The difference in pay between the increased  
pay the Claimant would receive in that period of leave if he stepped into her shoes in caring for  
H their child and that a woman would receive in maternity pay did not fall within EqA section  
13(6)(b). As explained in De Belin paragraph 29, the difference went beyond what was  
reasonably necessary to compensate the woman for the disadvantages occasioned by her  
condition.

**A** 50. As in the statutory scheme, under the Telefonica policy maternity pay is paid to those on  
maternity leave and shared parental pay to those on shared parental leave. In accordance with  
**B** statutory requirements, under the Telefonica scheme maternity leave can start at any time after  
the beginning of the 11<sup>th</sup> week before the expected week of confinement and no later than the  
expected week of childbirth. Therefore maternity leave and pay can start before a child is born.  
For those expectant mothers who fulfil service requirements and plan to return to work, the  
maternity pay option which was the basis of the claim by the Claimant was 14 weeks Company  
**C** Maternity Pay. This was at the rate of full pay in respect of which the Claimant claimed 12  
weeks, either because he accepted that the first two weeks compulsory maternity leave and pay  
after birth were attributable to the health of the mother or because he received two weeks' full  
**D** pay for his paternity leave.

**E** 51. As in the statutory scheme, under the Telefonica policy shared parental leave can be  
taken provided that the mother has formally expressed her intention to bring her maternity leave  
and pay to an end. A notice of curtailment cannot bring maternity leave to an end before the  
two week compulsory maternity leave period or after at least one week before the end of the  
additional maternity leave period. Shared parental leave of a maximum of 50 weeks may be  
**F** taken for the purpose of caring for the child within the first year of the child's life.

**G** 52. Pay for shared parental leave is receivable for a maximum of 39 weeks less any weeks  
of statutory maternity pay. If the mother curtails her entitlement to maternity leave and pay,  
before she has used her full entitlement, shared parental leave and pay can be claimed for the  
remaining weeks.

**H**

**A** The rate of maternity pay is inextricably linked to the purpose and circumstances of maternity leave. That leave is for the health and wellbeing of women who are pregnant and have given birth. The rate of pay is required to be an “*adequate allowance*”.

**B**  
**C**  
**D** 56. The purpose of the **Parental Leave Directive** is to encourage men to assume an equal share of family responsibilities (an entitlement of up to 4 months’ unpaid parental leave in respect of each child up to their 18<sup>th</sup> birthday). In addition, current domestic law provisions in the **Children and Families Act 2014** allow a woman to bring her statutory maternity leave and pay to an end by curtailing it and sharing the balance with her spouse or partner as shared parental leave and pay. The pay is at the weekly statutory rate, whether paid to a man or to a woman.

**E** 57. The purpose of the Telefonica policy on shared parental leave and pay is expressed to be:

“... for the purpose of caring for a child within the first year of the child’s life.”

**F** A woman has to curtail her maternity leave and pay before her partner (male or female) can claim shared parental leave and pay. The rates of shared parental pay are the same for a man and for a woman.

**G** 58. The Claimant sought to be paid at the rate paid to a woman on maternity leave. He claimed that it was direct sex discrimination for the Respondent not to pay him at that rate if he were to take leave to care for his child in weeks three to fourteen of the baby’s life.

**H** 59. A claimant alleging direct sex discrimination asserts that a Respondent discriminates against them in that because of his sex they treat him less favourably than they treat or would

A requirement for the level of such pay. The level of pay and the type of leave, maternity leave, are inextricably interlinked.

B 63. The primary purpose of the **Pregnant Workers Directive** is the health and wellbeing of the pregnant and birth mother. Clause 2 of the Framework Agreement on Parental Leave (Revised) annexed to the **Parental Leave Directive** 2010/18/EU makes clear that the purpose of parental leave is for parents or adopters to care for their child. Importantly there is no European Law requirement for Member States to introduce legislation requiring employers to provide pay for parental leave. Domestic law had given additional rights to parents in the legislation providing for shared parental leave and pay. Domestic law provides for a statutory minimum payment for shared parental leave. This is reflected in the Telefonica policy.

C  
D  
E 64. Mr Panesar sought to rely on the judgment of **De Belin**. It is noted that the EAT decided at paragraph 13 to focus on the exception in **Sex Discrimination Act 1975** (“SDA”) section 2(2), now **EqA** section 13(6)(b), and consider whether the favourable treatment of the female comparator was afforded “*in connection with pregnancy or childbirth*”. The EAT did not decide whether the Claimant could compare himself with a woman on maternity leave. F Counsel for Eversheds accepted that the issues were the same on the facts of that case whether **SDA** section 2(2) or 5(3) (now **EqA** section 23) were considered.

G 65. The claim is made under the Telefonica policy not directly seeking to enforce statutory provisions. The Telefonica policy complies with the statutory provisions and reflects their purpose and effect.

H

A section 13(6)(b). They considered whether the Claimant could compare himself with a woman  
on maternity leave. The comparison required by the EqA is that of a claimant and comparator  
in no materially different circumstances. In this case the Claimant was claiming a rate of pay  
B which was directly attributable to the particular type and purpose of leave taken by his  
hypothetical comparator.

C 69. In my judgment the ET erred in paragraphs 5.36 and 5.37 in determining the issue of  
whether a woman on maternity leave was a proper comparator for the purposes of the claim to  
be paid at the rate of maternity pay for the Claimant's parental leave. The ET decided the  
comparator question on the basis that after two weeks' compulsory maternity leave immediately  
D following the birth of her child the subsequent twelve weeks of maternity leave are given to and  
taken by a woman for the care of her child. As the Claimant sought leave for this purpose the  
ET concluded that he could compare himself with a woman on maternity leave.

E 70. The ET did not seek to construct an atypical comparator. They therefore must be  
understood to have proceeded on the basis that all women who have the benefit of the  
Telefonica scheme are comparators in respect of whom maternity leave after the first two  
F compulsory weeks and for a further twelve weeks is paid at the higher maternity pay rate. The  
decision of the ET is based on the proposition that the reason a woman is given maternity leave  
after the first two weeks following birth and therefore the purpose of the statutory maternity  
G leave and pay is for the care of the child. Such a decision or assumption is contrary to the  
purpose of the **Pregnant Workers Directive** which requires Member States to introduce  
legislation to enable women to take maternity leave with adequate remuneration of a minimum  
H of fourteen weeks. Article 1 of the Directive makes clear that its purpose is to implement  
measures to encourage improvements in the safety and health at work of pregnant workers who

A domestic law. There is no European law requirement for Member States to provide for shared parental leave with pay.

B 72. As is made clear from European and domestic legislation reflected in the Telefonica scheme, the purpose of maternity leave is to safeguard the health and wellbeing of a pregnant woman, one who has recently given birth and/or who is breastfeeding. There is a requirement to provide pay for leave taken for these reasons. Whilst a woman on maternity leave will no  
C doubt take care of her baby, that is not the expressed or primary purpose of such leave. By contrast the purpose or reason for shared parental leave is for the care of the beneficiaries' child.

D 73. The CJEU in Hofmann in paragraph 10 rejected the argument of the plaintiff that the main object of German legislation enabling mothers to take maternity leave after a period of eight weeks from birth was not to give social protection to the mother but rather to protect the  
E child. The claim made by the father was for pay in respect of a period of leave after eight weeks from birth. The Court based their decision on the predecessor to the provision in the **Recast Equal Treatment Directive** which is the basis for EqA section 13(6)(b). The Court  
F stated at paragraph 26 that the purpose of maternity leave after the compulsory protective period in German law is the protection of a woman in connection with the effects of pregnancy and childbirth.

G 74. Many examples exist in the employment context of different rates of pay or no pay attached to different types of leave. Whether and if so how much payment is made is  
H inextricably linked to the reason for the leave. Pay for leave taken for a holiday may be

A 78. Applying the approach of Mummery LJ in paragraph 36 of Aylott v Stockton-on-Tees Borough Council [2010] ICR 1278 the purpose of identifying the correct comparator is to assist in determining the reason for the difference in the treatment of which complaint is made.

B 79. Having decided that a woman on maternity leave in the twelve weeks after the first two weeks following the birth of her child was a correct hypothetical comparator for the Claimant, the ET decided that paying a woman her full pay whilst she was on maternity leave was not  
C “special treatment afforded to a woman in connection with pregnancy or childbirth” within the meaning of EqA section 13(6)(b). Accordingly, the ET held that the Respondent had no  
D defence to the claim for pay for leave to take care for his child at the same rate as an employee on maternity leave in the same period.

E 80. The ET observed that the care of a child is not exclusive to women who have recently given birth. At paragraph 5.41 the ET held:

“5.41. It was not clear why any exclusivity should apply beyond the 2 weeks after the birth. In 2016, men are being encouraged to play a greater role in caring for their babies. Whether that happens in practice is a matter of choice for the parents depending on their personal circumstances but the choice made should be free of generalised assumptions that the mother is always best placed to undertake that role and should get the full pay because of that assumed exclusivity.”

F The **Employment Rights Act 1996** (“ERA”) section 75E, enables the making of Regulations entitling an employee who satisfies certain conditions “to be absent from work on leave under  
G this subsection for the purpose of caring for the child”.

H 81. The ET concluded at paragraph 5.42:

“5.42. ... The caring role he [the Claimant] wanted to perform was not a role exclusive to the mother. It was not special treatment in connection with pregnancy and child-birth it was about special treatment for caring for a newborn baby. This was not about denying full pay to a [woman], it was about equality of treatment in relation to pay for the Claimant to access the same benefits for performing the same role.”

A **Hofmann** was referred to with approval by the CJEU in **Betriu** at paragraph 62.

84. Underhill P in **De Belin** held in paragraph 32 that the **Sex Discrimination Act 1975** section 2(2), now **EqA** section 13(6)(b):

B “32. ... should be construed so far as possible so as to conform to the underlying principles of EU law ... In our view it follows from those principles that it is necessary to read the words “special treatment afforded to women in connection with pregnancy or childbirth” as referring only to treatment afforded to a woman so far as it constitutes a proportionate means of achieving the legitimate aim of compensating her for the disadvantages occasioned by her pregnancy or her maternity leave. ...”

C Having regard to the fact that the maternity leave and pay in issue in this appeal are exactly aligned with the requirements of the **Pregnant Workers Directive**, the proportionality test does not fall to be considered. It was not the basis of the decision of the ET nor is it raised in the Respondent’s answer lodged on behalf of the Claimant.

D  
E 85. Even if the ET had not erred in finding that a hypothetical woman on maternity leave was an appropriate comparator, they erred in holding that providing a woman with maternity leave and full pay for fourteen weeks after childbirth was for her to care for her child. In so holding the ET erred in disregarding the statutory purpose of and reason for such leave and pay on which the Telefonica policy was founded. The purpose of and reason for such leave and pay is the health and wellbeing of the expectant and new mother. The ET erred in holding that such leave and related pay for the period at issue were not to be disregarded as they did not fall within **EqA** section 13(6)(b) as special treatment afforded to a woman in connection with pregnancy or childbirth.

F  
G  
H 86. The claim at issue in this appeal was for a father to be paid at the rate of pay a mother receives for maternity leave in the first fourteen weeks after birth. It may be that, as suggested in the helpful written submissions by the Intervenor, Working Families:

**A** 91. In August 2015 the Claimant was asked to move to the Business Retentions Team (“BRT”) from the BE Team because of his good performance and experience. He worked as a customer adviser in both teams. In the BRT the Claimant was entitled to participate in a better  
**B** bonus scheme than that in the BE Team.

92. Following the birth of his child and the wish of his wife to return to work to assist recovery from post natal depression the Claimant, through his union, asked to benefit from “the  
**C** same maternity pay his employer offers to mothers absent during the same period”.

93. On 9 March 2016 a meeting took place between the Claimant, Debbie Oddie from HR  
**D** and Laura Tummons, his manager and team leader. The Claimant was told he was eligible for shared parental leave (“SPL”) under the Capita policy but would only be entitled to statutory pay.

**E** 94. When pay for parental leave at the same rate as for maternity leave was refused by email of 5 April 2016 the Claimant raised a grievance alleging sex discrimination. He asserted that it was discriminatory to refuse to give him the same enhanced pay for leave he proposed to take  
**F** to care for his child as a female member of staff would have on maternity leave. The grievance was not upheld. The Claimant presented an ET1 on 22 June 2016 claiming the “*same treatment with regards to enhanced maternity pay whilst taking shared parental leave*”.

**G** 95. The Claimant was absent from work with work related stress from 22 April 2016 until 25 July 2016 when his sick note expired. The fit notes recorded the reason he was unfit was a  
**H** “*stress related problem*”. The Claimant was seen by Occupational Health.

A           “6.26. It was not clear from the statistics Ms Tummons referred to, why the Claimant’s performance was of concern in July, when those statistics were available in [to] her in June and July 2016, but had not caused her any concern. In fact she tells the Claimant his performance at work was not an issue, he just needed to get back to work by the 25 July 2016.”

B           99.     The ET concluded that the Respondent had victimised the Claimant on 14, 27 and 28 July 2016 for doing protected acts, bringing a grievance and lodging an ET1 alleging sex discrimination. The ET held at paragraph 6.27:

C           “6.27. ... Without any adequate explanation from the Respondent for that treatment we find that the Claimant was victimised by Laura Tummons on the 25, 27 and 28 July 2016 because he had done a protected act. ...”

D           100.    The final act of alleged victimisation took place on 21 December 2016. It appears that the victimisation alleged was that Sarah Shillito, Laura Tummons’ successor as the Claimant’s manager, conducted a meeting with him on 21 December telling him that it would be informal. It then transpired that the meeting was being treated as a trigger for disciplinary action. Ms Shillito asked the Claimant to sign a note of the meeting. The Claimant refused. He thought E           the Respondent was using “*sneaky ways*” to:

            “6.32. ... try to get him to sign documents to manage him out of the business because he was being threatened with disciplinary meetings in the future.”

F           101.    The ET recorded that Ms Shillito was a relatively inexperienced manager. The ET held:

G           “6.33. ... She accepts that she had misunderstood the dependant’s leave policy and treated it as if it was sick leave and was applying triggers for disciplinary action when this was not the correct procedure. She says she was instructed by her manager Helen Marriott to “*take it to the next stage and the next stage was disciplinary action*”. We had no explanation from Helen Marriott why she would have told a more junior manager seeking advice to ‘take it to the next stage’ when that was not the procedure that should be followed. We did not know why it was necessary to have the meeting recorded in the formal way it was, when none of the examples produced for other employees were carried out in that way.”

H           102.    The ET concluded:

            “6.36. If the purpose of the meeting was ‘informal’ as indicated to the Claimant, why not use the ‘meeting notes’ or pro-forma as she had done previously. To do it in the way that she did created suspicion. It supported the Claimant’s perception of a ‘sneaky’ non transparent process designed to manage him out of the business. It was accepted that this was not the appropriate or right procedure to use to manage the Claimant’s dependents leave absences.

A 105. Counsel for the Respondent submitted that the ET gave insufficient reasons to enable  
the parties to know why the findings of victimisation had been made out. The judgment on  
victimisation was not Meek-compliant (Meek v City of Birmingham District Council [1987]  
B IRLR 250). The lack of findings on motivation for the acts alleged to be detrimental was an  
example of such insufficiency.

C 106. Mr Panesar submitted that all of the Respondent's grounds of appeal from the findings  
by the ET of victimisation are examples of the approach deprecated in ASLEF v Brady [2006]  
IRLR 576. It was said that the Respondent seeks to subject the reasons given by the ET to  
unrealistically detailed scrutiny for "*artificial defects*".

D 107. Counsel for the Claimant submitted that findings of fact made by the ET put the  
allegations of victimisation in context. The Claimant was off sick with stress at work which  
E was the result of being refused full pay for the parental leave he wished to take. He believed  
that the Respondent had failed to address his complaint of sex discrimination. The Respondent  
had displayed an attitude of wanting to sweep the complaint under the carpet. The ET held that  
F on 14 July Laura Tummons gave him an ultimatum that if he did not return to work on 25 July  
2016, when his sick note expired, he would not return to his role in BRT and would be demoted  
to a Customer Advisor role in BE or he could be "*released*". This was despite the report from  
G Occupational Health that it was anticipated that the Claimant would return to work within two  
to three weeks of the expiry of the sick note, on 25 July 2016, in mid August 2016. Further it  
was submitted that the ET were entitled to take into account that despite the assurance that he  
would return to BRT when the Claimant returned to work on 25 July 2016, the Respondent did  
H not tell him that they were looking for a job for him elsewhere in the business. The  
Respondent's evidence on this decision was contradictory.

A to the Claimant Ms Tummons stated that his performance was “*consistently not on target ... It is therefore with regret that*” the Claimant would not be returning to the BRT.

B 111. It was submitted that the ET did not err in taking all these matters into account in concluding that the burden of proof had shifted to the Respondent to show that the reason for the detriments was not the protected acts by the Claimant.

C 112. The detriment on 21 December 2016 by Miss Shillito was in effect conducting a formal meeting as a precursor to disciplinary proceedings when this was contrary to procedure and to what the Claimant had expected. The ET in paragraph 6.37 observed that Ms Shillito knew about the Tribunal claim and was being directed by her manager to take her dealings with the Claimant to the next stage. Counsel contended that the ET were entitled to reject the explanation of inexperience of Ms Shillito and consistency of treatment with others. In the absence of a credible explanation Mr Panesar submitted that the ET were entitled to conclude that the detrimental treatment of the Claimant on 21 December 2016 of proceeding to a formal meeting as a precursor to disciplinary proceedings was because of his protected disclosures.

F **Discussion and Conclusion on Victimisation**

*The Relevant Statutory Provision*

G 113. **Equality Act 2010** section 27:

“(1) A person (A) victimises another person (B) if A subjects B to a detriment because -  
(a) B does a protected act, ...”

H Section 136:

“(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.”

A 117. Laura Tummons was the manager and supervisor of the Claimant until August 2016  
when Sarah Shillito took over from her. Ms Tummons knew of the sex discrimination  
grievance raised by the Claimant and that he had started proceedings in the Employment  
B Tribunal alleging that not being entitled to full pay for shared parental leave was unlawful  
discrimination.

C 118. The complaints of victimisation asserting detriments on 14, 27 and 28 July are all  
related. They were all alleged to have been carried out by Ms Tummons.

D 119. The detriment alleged to have taken place on 14 July 2016 was Ms Tummons giving the  
Claimant an ultimatum that if he did not return to work on 25 July 2016 when his sick note  
expired he would not retain his role in BRT, he would be demoted to a Customer Adviser role  
in BE or he could be “released” from his job pending an “options meeting”. The ET held in  
E paragraph 6.12:

“6.12. ... Although the Claimant and Occupational Health anticipated a few more weeks of  
absence, he felt pressurised into returning earlier to keep his BRT role which caused further  
stress and upset.”

F 120. Laura Tummons did not accept that she had given the Claimant the ultimatum he  
alleged. The ET preferred the Claimant’s evidence that he was given an ultimatum by Laura  
Tummons and that she knew about the protected acts.

G 121. There was a connection between the perpetrator of the detriment and the protected acts.  
Ms Tummons gave the ultimatum to the Claimant and she knew about his protected acts. This  
situation is distinguishable from status and a detrimental act which are unconnected posited by  
H Mummery LJ at paragraph 56 of Madarassy.

**A** Claimant on 21 December 2016 as a precursor to a disciplinary process. Unlike their findings  
in relation to the complaints of the behaviour of Ms Tummons on 14, 27 and 28 July 2016, in  
**B** my judgment the ET failed to give adequate reasons for disbelieving Ms Shillito. They merely  
referred to “*evidence we saw*” as the basis for not accepting the reasons given by Ms Shillito for  
the way in which she conducted the meeting with the Claimant on 21 December 2016. In my  
judgment the decision of the ET to uphold the complaint of victimisation on 21 December 2016  
was not Meek-compliant. The decision does not give reasons or adequate reasons to enable the  
**C** Respondent to know why that complaint was upheld.

### **Conclusion**

**D** 126. The appeal from the findings of victimisation in relation to detriments on 14, 27 and 28  
July 2016 are dismissed.

**E** 127. The appeal from the finding of victimisation in relation to the detriment on 21  
December 2016 is allowed.

### **Disposal**

**F** 128. The finding of direct sex discrimination is set aside. The claim of direct sex  
discrimination is dismissed.

**G** 129. The appeal from the findings of victimisation in relation to acts of the Respondent on  
14, 27 and 28 July 2016 is dismissed.

**H**