EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Miss S Kaur	v	Dudley MBC

RESERVED JUDGMENT ON AN OPEN PRELIMINARY HEARING

Heard at: Birmingham **On:** 9, 10, 11, 12 and 16 October 2017. 1 November 2017 (Judge sitting alone)

Before: Employment Judge Dimbylow

Appearances:

For the claimant: In person

For the respondent: Mr P Epstein, One of Her Majesty's Counsel

JUDGMENT

Upon the claimant's claim that the respondent's Job Evaluation Study (the JES) was invalid: I declare that there are no reasonable grounds for suspecting that the JES was based on a system that discriminates because of sex or is otherwise unreliable to render it invalid for the purposes of section 131 (6) of the Equality Act 2010. Therefore, the claimant's claim fails, and is dismissed.

REASONS

1. The claim and background. By a claim form presented on 24 June 2013, the claimant (and 93 others) brought complaints of sex discrimination and equal pay. The respondent defended the claims in a response form lodged on 1 August 2013. Over time, all claims in this sub-multiple (it being part of a much larger multiple claim) have been resolved, one way or another, except that of the claimant. I arranged for a Closed Preliminary Hearing ("the CPH") to take place before me on 12 June 2017. Some equal pay claims were withdrawn in relation to specific comparators at the CPH by the claimant. In essence the claimant's claims arise out of 2 things, which I summarise briefly: (1) the claimant's assertion that she was paid less than male comparators who did work of equal value to hers, giving rise to a claim for compensation for the period of 6 years before the issue of the claim form; and (2) the

assertion that the disparity in pay continued beyond the implementation of Single Status (SS) on 1 April 2012 to date, because the JES upon which SS was founded was defective as it was based on a system or process that discriminated on grounds of sex or was otherwise unreliable. At the CPH we discussed the best way forward. It was agreed that we would deal with the claimant's challenge to the JES first, and once that had resolved move on to tackle the equal value claim. This was just, fair and proportionate. At the CPH the claimant's case when challenging the JES was to adopt several generalised headings. However, she confirmed then that she had carried out some statistical analysis and research, understood the need to give more detail about this part of the claim and consented to supply further information to enable the respondent and the Tribunal better to understand the case. This information was provided on 14 July 2017 and the respondent replied to it on 1 August 2017.

2. The original large group or multiple claim litigation commenced in 2007 under the lead name of Ms Whitehead. There is a substantial history to it, which is described in numerous judgments and orders made over the years. There is no need for me to repeat the history of it all here. However, there was a significant preliminary hearing in September and October 2011 and the decision arising from it was sent to the parties on 25 November 2011. I was the Judge on that occasion, sitting with 2 lay members. This was a long and complex hearing dealing with the respondent's GMF defence to the multiple claims. The outcome, stated shortly, was that the defence failed. SS was agreed in January 2012 and implemented, as I said before, on 1 April 2012.

3. The respondent takes the defence of this claim very seriously as it could have great implications for it if its JES defence fails. There have been several thousand claims disposed of in this litigation since the preliminary hearing in 2011 and SS; but the claimant is the only person to challenge the JES and SS agreement. I have been case managing this litigation since the summer of 2011, and conducting many hearings and disposing of numerous issues along the way.

4. The issue. At the CPH I discussed with the parties the way forward, and we agreed there should be an OPH, the purpose of it then defined as being to determine this question: does the respondent establish on the balance of probabilities that the JES that it relies upon satisfies the requirements of section 131 (6) of the Equality Act 2010 (EqA) so that it acts as a complete defence to the part of the claim which arises from the date of the introduction of SS on 1 April 2012 and continues thereafter? Subsequently, I was to give such directions as were necessary for the just disposal of the claim and fix the date of any further hearings as were necessary. For various reasons, we ran out of time for me to give a judgment in the 5 days allocated to the OPH and I had to reserve my decision. In the circumstances, we agreed there would be a further CPH by telephone on Wednesday 31 January 2018 at 10am with a time estimate of 1 hour before me.

5. By the time of this OPH both parties agreed that the issue of the burden of proof had changed in accordance with the decision of the Court of Session, Second Division, Inner House in Armstrong & Others v Glasgow City Council [2017] CSIH 56 handed down in August 2017, and they asked me to decide the case on the basis that the burden of proof was now on the claimant. I agreed to their request. It was also

agreed by the parties that the respondent would proceed with its case first, and would therefore close the hearing with its submissions.

6. The law. I shall keep this part brief, because the history of the legislation and transition from the Equal Pay Act 1970 to the EqA, including the influence of Europe, is described amply in the case law and other documents produced to me by the parties. However, the EqA at section 131 includes this:

131 Assessment of whether work is of equal value

(1) This section applies to proceedings before an employment tribunal on—

(a) a complaint relating to a breach of an equality clause or rule, or

(b) a question referred to the tribunal by virtue of section 128(2).

(2) …

(3) …

(4) …

(5) Subsection (6) applies where—

(a) a question arises in the proceedings as to whether the work of one person (A) is of equal value to the work of another (B), and

(b) A's work and B's work have been given different values by a job evaluation study.

(6) The tribunal must determine that A's work is not of equal value to B's work unless it has reasonable grounds for suspecting that the evaluation contained in the study—

(a) was based on a system that discriminates because of sex, or

(b) is otherwise unreliable.

(7) For the purposes of subsection (6)(a), a system discriminates because of sex if a difference (or coincidence) between values that the system sets on different demands is not justifiable regardless of the sex of the person on whom the demands are made.

(8) …

(9) …

The respondent accepted that the words “reasonable grounds for suspecting” in s.131 (6) provided for a lower threshold than, by way of example, proof on the balance of probabilities. This was of help to the claimant who had understood the burden on her to be on the balance of probabilities (page 20 of exhibit C3).

7. The evidence. I received oral evidence from: Mr Colin Williams, and Mrs Sharon Harthill on behalf of the respondent, and Miss Kaur gave evidence in her own cause. I also received various documents which I marked as exhibits in the following way:

C1 claimant’s witness statement, 21 pages
C2 claimant’s skeleton argument, 11 pages
C3 claimant’s closing submissions, 20 pages
R1 agreed bundle of documents (2,296 pages), with supplementary bundle “JE Index” (192 pages)
R2 witness statement of Mr Williams, 13 pages
R3 witness statement of Mrs Harthill, 7 pages
R4 respondent’s opening submissions, 6 pages
R5 respondent’s chronology – agreed, 2 pages

R6 respondent's reading list – agreed, 5 pages
R7 respondent's bundle of authorities:
i) Armstrong Op. cit.
ii) Brennan & Others v Council of the City of Sunderland & Others Employment Tribunal decision dated 31 January 2012
iii) Hartley & Others v Northumbria NHS Foundation & Others Employment Tribunal decision dated 6 April 2009
R8 respondent's closing submissions, 10 pages

8. Findings of fact. I make my findings of fact based on the material before me taking into account contemporaneous documents where they exist and the conduct of those concerned at the time. I have resolved such conflicts of evidence as arose on the balance of probabilities. I have considered my assessment of the credibility of witnesses and the consistency of their evidence with the surrounding facts. I have made my findings of primary fact. I have considered what inferences I should draw from them for the purpose of making further findings of fact.

9. The claimant commenced work with the respondent as a Business Support Assistant on 24 April 2007. She became a Relief Support Assistant with effect from 1 September 2008. Her job changed again on 1 September 2014, following the Remodelling of Services and Teams, when she obtained a new Business Support Assistant job within the newly formed Central Purchasing Team, created via the Council-wide Customer Journey. The claimant is still an employee. Unfortunately, the claimant has had difficulties at home and at work. There is no need for me to go into any detail; but the claimant had a welfare meeting in connection with work-related stress and harassment in January 2010 and has been the subject of an Occupational Health report in May 2012, when the respondent's bullying policy was discussed. The claimant asserted that she had been subjected to continuing workplace harassment and bullying for a number of years. These factors are relevant in that the claimant used them when she made an application, via her union Unison, for her appeal against her result arising out of the JES Pay and Grading Scheme implementation. The claimant contacted Unison on 14 November 2013, and it submitted a request that the appeal be allowed to proceed out of time due to exceptional circumstances on 18 November 2013. The application was refused by the respondent on 20 November 2013. There has been no appeal by the claimant under the JES Pay and Grading Scheme following her new appointment on 1 September 2014. Part of the respondent's approach to its defence to the issue before me was to assert that the claimant was upset in not being allowed to proceed with her appeal, and stated shortly, this was an appeal via the back door.

10. Mrs Harthill is employed in the respondent's Chief Executive's Directorate, and is Head of HR Services, having joined the respondent in 1991. Her evidence to me was largely an overview of the case and an historical perspective. Many of the people involved in the JES and SS processes have now left the respondent's employ, and many documents relating to SS job evaluation have been destroyed, either physically or electronically in view of the lapse of time; the respondent not being aware of the claimant's challenge to the JES until the summer of 2017.

11. At the time of the JES there were around 1,000 different job roles at the respondent, and the same is the case today, although the number of employees has significantly reduced. The terms and conditions of the respondent's employees, in the majority of cases, is the subject of collective bargaining arrangements between the respondent and three recognised unions: Unison, the GMB and Unite. Mrs Harthill explained the development of the national agreement between local government employers and the recognised trade unions in 1997 known as the Single Status Agreement, also called the Green Book. Certain employment terms and procedures came into effect then, but pay and conditions were left to individual local authorities to reach by way of their own local Green Book job evaluations and pay structures. As stated before, this type of agreement did not come about until 1 April 2012 for the respondent, and it was one of the last local government authorities to do so. However, this was a notable event in that it was a collective agreement with the three recognised trade unions, based on new job evaluations and the new grading system that was based on the scores arrived at in the job evaluations. It was notable because many, if not most, such schemes were not agreed with the unions.

12. Against the background of the multiple litigation commencing in 2007, the respondent was trying to negotiate the SS agreement; but without success. In early 2011 Mr Williams was commissioned to provide support to the respondent by leading the implementation of the nationally negotiated SS agreement. Mr Williams is employed by and holds the job title of "Director" at West Midlands Employers. He is not a statutory director, as his employer is not a limited company, but has certification as an Employers' Association. His background is that for 17 years he was Assistant Director of Industrial Relations at Sandwell MBC. He has been with his present employer for 20 years. Before his engagement with the respondent, he had been involved as a project manager or adviser in SS implementation projects in a number of county councils, city councils and district councils of various sizes. He has delivered training to most councils within the West Midlands and many outside the region. His work during the period 2001 to 2014 has been to achieve SS agreement through the use of a factor-based analytical job evaluation process. The SS agreement contained a new national JES, designed for that purpose. His engagement with the respondent continued until about 18 months after implementation of SS on 1 April 2012, at which time the appeal processes had run their course. Mr Williams is a specialist in local government schemes. They were designed by local governments and trade unions to implement SS in local government. Most authorities used the national scheme, as did the respondent. These can be paper-based or computerised (and when the latter is adopted it is called "Gauge"). The respondent adopted the JES using the Gauge system.

13. By the time of Mr Williams' appointment with the respondent it had already undertaken the majority of job evaluations or any decisions about creating generic job roles for certain groups of employees; and the focus when he was taken on board was to ensure an effective implementation with a view to reaching a collective agreement with the trade unions. The two-people undertaking the bulk of the evaluations were men, and they were identified in the documents before me. They have left the respondent's employ, on different dates during the period 2014 to 2016. They had been trained in the process by Mr Williams and his organisation. Mr Williams saw the importance of finding that the JES for the new scheme was sufficiently robust to deliver a sustainable outcome and achieve a collective agreement for what was a

substantial change and would require significant financial investment from the respondent.

14. Once in post, he found no concerns in relation to the process. He then led the negotiations with regional and national Unison officers. The union scrutinised the proposed pay and grading structure, the approach to job evaluation and the key outcomes. The respondent also commissioned a review of the Equality Impact Assessment separately to the work being done by Mr Williams. This was undertaken by Northgate Arinso. One of the advising officers of Unison that Mr Williams directly negotiated with was Ms Sue Hastings, who was a co-designer of the scheme. Queries were raised by the union, and these were addressed. Thereafter, the collective agreement was signed by: Mr Philip Tart, Corporate Resources Director on behalf of the respondent on 16 January 2012, Ms Anita Edwards, Team Leader for Unison on 17 January 2012, Ms Susan Martin, Convener for Unite the union on 16 January 2012, and Mr Mohammed Khalik, GMB Organiser on 17 January 2012. The agreement and appendices were at pages 48 to 82. There is no need for me to explain the contents here. However, amongst the detail, it included: 15 new grades replacing former grades, described how assimilation into the new grade structure would take place and set out the job evaluation appeals procedure. The unions were then in a strong bargaining position, given their success at the preliminary hearing when the respondent's GMF defence failed.

15. The JES takes into account that it is not really practical to evaluate every single different job role. Because of the volume of job roles that existed at the respondent a process of grouping jobs was undertaken, as had been the case with other local authorities and councils. The claimant's job, which was similar to that of other administrative jobs, was grouped into one of six generic role descriptors, each reflecting different levels of overall responsibility. Representative job holders from each group were interviewed as part of the job evaluation process. This arrangement is recognised in the Green Book. There were other generic job groups for example teaching assistants and social workers. There was no objection by Unison, locally, regionally or nationally, in relation to the use of administrative job families, although it had raised other issues which were resolved. I find as a fact that in such a large analysis of so many individual roles and job group allocations, there will undoubtedly be some individual jobs which could potentially score higher due to the specific circumstances of them, or where scores were awarded that did not apply to that specific job. However, protection was given to individual employees by virtue of the appeal process, when categorisation could be challenged. I was able to see examples during the hearing of such appeals; and they were dealt with fairly and properly.

16. The claimant was not an employee who was requested by the respondent to complete a JES questionnaire for her job role nor was she invited to attend for a JES job role interview either with the respondent and/or any analyst. When the claimant's job was evaluated in her position held on 1 April 2012 it came in at a JES level 3 with a total score value of 331 points (420). This resulted in a grade 4 allocation with the associated pay scale. There was an appeal by a group of the claimant's colleagues against their job role being assessed at grade 4, level 3. This appeal was unsuccessful. Had it been successful it is likely to have had a positive impact on the claimant's position as she was part of the same employee team group. In an exercise

of such magnitude as this, I found there were likely to be, and were in fact, both winners and losers. Some of the biggest losers in salary were male.

17. The claimant made a number of specific challenges to the JES which appeared in her particulars dated 14 July 2017. These included criticisms or flaws of the approach in relation to the factors under the headings of: (1) Physical Skills, (2) Mental Demands, (3) Physical Demands, (4) Responsibility for Financial Resources, and (5) Interpersonal Skills, Mental Skills, Initiative and Independence and Responsibility for Supervision factors. The bundle contained the Evaluation Factor Breakdown under Gauge, for Administrative/Clerical Level 1 to 5, Administrative Manager Level 6 and various PA/Secretarial positions (238-246). These contained the different levels for each factor and the number of points to be scored. Looking at the Physical Skills factor, as an example, I could see how the evaluation proceeded. Under the Gauge system there is a "Question Library" starting at page 707, and Physical Skills started at 720. This also contains an "Elimination Diagram" which set out what is called "Question Tree" logic to apply the scheme. The job evaluator or analyst is assisted with "Help Text" for each factor, and for Physical Skills it runs from pages 577 to 581. This help is drawn together by use of national and local guidance, and is used for over 900 questions available within the Gauge system. The purpose of it is to support consistent implementation of the scheme at a local level. Under this factor, the claimant saw the emphasis on "keyboarding" as opposed to what she saw as an alternative of "precision and speed" utilised in the comparators' evaluations. I use this as an example, and I do not propose to repeat here all the claimant's arguments deployed to support her case that the JES was invalid, as it would not develop a greater understanding of the claimant's case.

18. The claimant's particulars argue, with a strength of feeling, that there were deliberate acts or failures, designed with bias in the minds those devising and using the JES to arrive at an undervaluation of job role requirements for predominantly female job roles. The claimant asserted that the respondent did not ensure a consistent method of JES evaluation between her job role and the male comparators she used, namely: "Waste Collectors/Loaders (Refuse and Green)", and "Sheltered Housing Support Worker/Handyman". However, the claimant's argument here over consistency was difficult to follow. The sense of her narrative leads me to conclude that the respondent did apply consistency to the evaluation process, but the claimant wanted it to adopt different scores for her which would have been inconsistent with the process. The claimant imported the concept of "reasonable care" into her argument, and the failure by the respondent to ensure this took place by excluding sex discrimination from the JES. The claimant also talked about the: "…..essential requirements for my job role…", and: "The reason for this difference was because of my sex." The essential feature that I found emerging from her particulars, was the claimant's belief that she should have scored higher, at grade 5, the same as the Waste Collector/Loader comparators, and grade 6 when considering the Sheltered Housing Support Worker/Handyman. I re-read the claimant's explanations as to why there were flaws which supported her case to try to understand them better. Unfortunately, the claimant's narrative demonstrated how the JES was applied impartially and objectively. An element of subjectivity was introduced in the appeal process, which was capable of beneficial use to men and women, as demonstrated by the examples described to me by the claimant relating to Mr DW and Ms AE, who were both successful.

19. However, having drawn attention to some of the difficulties in the claimant's arguments, I was mindful of the fact that I had to consider all of the material before me when coming to my decision as to the suitability of the JES to be relied upon. There is no requirement for cogent evidence or that an element of the study is actually unsuitable. As indicated in the case of Armstrong, the requirement is for reasonable grounds for suspicion, and I place the bar no higher than that.

20. Mr Williams gave an example of how the system of analysis worked, and he looked at question 401; and I quote part of what he told me in paragraphs 23 and 24 of his statement:

"…the first question within the system relating to the assessment of Physical Skills (page 577). This requires the job analyst to select from a range of options in respect to the question: "*Does the job require physical skills*" and the answers include "*Yes, for keyboarding"* and *"Yes, for other activities"* amongst other options. The Help Text guidelines for this question/options are nationally defined, with no local addition. This is because the answer choices are, in my view, fairly self-explanatory. The Help Text refers; "*Physical Skills" are manual or finger dexterity, hand-eye co-ordination, co-ordination of limbs, sensory co-ordination, etc. Many people using a computer will have to use both the keyboard and a "mouse" alternately. If a choice has to be made between these two answers, select the answer which identifies where the greater skill is required."*

The Tribunal will see from the Elimination Diagram on page 720 that selecting "*Yes, for keyboarding"* routes the question trace to Question 423, whereas selecting "*Yes, for other activities"* goes to Question 411. The Diagram allows the user to follow this through to reproduce the question trace on both routes. The next questions are identified and the score levels eliminated (upper and lower) until the final score is defined. Questions 423 to 427 are the determinant for the level where keyboarding is selected (rising to a maximum of level 4 (at 427). If selecting Question 411 (at Question 401), Levels 1 to 5 can be scored dependent upon subsequent answers. The Help Text at Question 411 (page 578ff) used by the Respondent is, again, nationally defined as an integral part of the scheme. There is no Help Text specific to the role of [the Claimant]. This question seeks to cover all tasks requiring Physical Skills which are not captured within 'keyboarding' or 'driving' ".

21. As Mr Williams observed, the claimant's contention meant that the design of the national scheme was at fault, as both Gauge and the written factor plan set out in Appendix 4 of the Green Book formed the basis of the respondent's analysis (page 1096).

22. The submissions. The claimant went first, and indicated to me that there was not much else that she could add to her written submissions exhibit C3. However, she emphasised that she knew the truth; and knew there was discrimination. She had put her case the best she could and asked me to find that she was open and honest. She challenged some of the contents of the respondent's written submissions. For example, Ms AE was not successful in her appeal. After the appeal, which had failed, the panel members advised her to put in an appeal based upon a unique job role, with

her manager's support and that this would succeed. Having done that, she did succeed and therefore it was not really an appeal. The claimant submitted that she should have been given a grade 5 with an extra 26 points above the initial mark of 318, the requirement being 340 points. She asked me to find that Mr Williams had contradicted himself, women's scores were suppressed deliberately, and that the trade unions may have colluded with the respondent in such suppression of marks. Women were still undervalued at the respondent. All the women in clerical groups AC 1 to 6 and the PAs were marked down deliberately. As a result, the women suffered a detriment through the evaluation process, in that the various factors were not all scored in connection with the skills or demands, as they should have been. Accordingly, all women would have been undervalued and not assessed properly. The JES was a PCP when considering indirect discrimination. Disadvantages arose out of: (1) the Physical Skills factor caused all women in AC 1 to 6 to be disadvantaged in getting lower scores, (2) Financial Resources disadvantaged AC 3 only in lower scores, and (3) Mental Demands disadvantaged AC 1 to 3 only in lower scores. Generally, the claimant submitted that there was no justification for the evaluation of the job roles in AC 3.

23. The claimant submitted that the decision of the tribunal at the preliminary hearing in November 2011 had not worked for the women at the respondent. I asked the claimant why the trade unions had signed up to SS which was detrimental to their women members given they were negotiating in a position of strength in January 2012. The claimant replied by telling me that the trade union had not supported her or given her help when she needed it. She told me that she did not know why the trade unions did not fight the JES implementation, and by not doing so they had failed all the female dominated workgroups. She submitted that she was not wrong, and it was not just her opinion. As far as Mr Williams was concerned, he was not independent, and not an expert.

24. I then heard from Mr Epstein with the respondent's submissions. He relied upon his written document exhibit R8, and again, as with the claimant, there is no need for me to repeat it all here. He emphasised some preliminary points. As to the burden of proof, he reminded me that both parties agreed that it was upon the claimant. This was an analytical JES, and the claimant was not challenging that point. If she had, the burden of proof would have been on the respondent. The claimant's challenge to the JES was in effect a challenge to the Green Book analysis. Mr Epstein submitted that I should find the JES was proportionate: it had been equality tested, it had been agreed between the trade unions and employers at a national level, with significant input from Ms Hastings of Unison; and there was nothing discriminatory in the scheme. He submitted that I should look at the JES as a whole, and that I could not "carve it up" as the claimant was suggesting. This claim was about the claimant wanting her score to be increased. The claimant's case was difficult to follow, and he gave an example arising out of paragraph 10 of R8. If the generic AC3 post should be set aside, so should those of the comparators. It was not clear if the claimant was saying both her roles were wrongly assessed. She was saying that there was a possibility that there was an incorrect allocation, but it was hard to disentangle her argument. Nevertheless, it was open to me to say that there was an incorrect allocation. In relation to the appeals process, the only way there would have been an unsatisfactory evaluation was if all factors were looked at together. Whole job comparisons were required. The difference in view about differential scores in individual cases would not

succeed. The appeals process would allow an appeal based upon the wrong allocation to a generic role profile and that is why the appeal of Ms AE succeeded.

25. Mr Epstein then focused on rebutting some of the claimant's submissions. He drew attention to some points which he submitted had not featured in the claimant's case before. Furthermore, because of the trade union involvement in evaluation of the AC posts (295), it undermined the very serious allegation of manipulation against the job analysts, and in any event, this was a baseless assertion. When coming to my decision he urged me to strip out deliberate manipulation and suppression, find no indirect discrimination; and I would then conclude that what the case was really about was a difference of opinion in scoring, which was not the purpose section 131 (6) (a) or (b). The way in which the claimant had proceeded with her case, to the end of her submissions, demonstrated that the claimant had not been convinced by the evidence. She told the tribunal: "I know the truth"; and this demonstrated, regrettably, that the claimant could not see another point of view as regards the evaluation of her posts. He urged me to find that the JES was not flawed nationally or locally, there was no deliberate manipulation, and no reasonable grounds for suspecting the evaluations and/or allocations of the claimant's roles were unreliable.

26. My conclusions and reasons. I apply the law to the facts. There are a variety of methods of job evaluation. The one before me is based upon a points assessment, with 13 headings or demand factors, some of which are grouped under: skills, demands and responsibility. This analysis involves breaking the jobs under consideration down into component factors and it is an analytical evaluation. Both parties recognised that to be valid, the JES must satisfy a number of requirements, and I considered them. I found that the study encompassed both the claimant's job and those of her comparators. It was thorough in its analysis and I found it to be capable of impartial application. It took into account factors connected only with the requirements of the job rather than the person doing the job. It was analytical when it assessed the component parts of the particular job, rather than their overall content. The facts before me demonstrated no significant defect which would cause the JES not to be thorough in analysis or incapable of impartial application or both. I found that it was objective, avoiding subjective judgements. The defects put forward by the claimant did not cause or demonstrate the JES not to be thorough in analysis or incapable of impartial application to make it invalid. The faulty reasoning, if I can put it that way, put forward by the claimant, for example, over the combination of speed and accuracy, would not of itself show that the study was not thorough in its analysis. There was an element of subjectivity about the claimant's own job and why she thought it should have scored higher than it did. The subjective element could to a degree have been considered in the appeal process, but the claimant fell outside of its ambit, having missed the time limit and having her application to have it considered out of time rejected. It was a significant factor to me that the JES was accepted by both the respondent and three recognised trade unions.

27. I am conscious of the fact that I am not permitted to go behind the results of the JES and substitute my own assessments for the value of the claimant's and comparators' jobs in the absence of discrimination or a fundamental mistake in the process. The claimant relied upon her belief that there was blatant discrimination, including direct discrimination at various levels, including by the men carrying out the

evaluations and by the women signing up to SS on behalf of the unions. The claimant's belief that the JES was tainted by indirectly discriminatory features contained in the JES was not supported on the facts. She asserted that the JES undervalued qualities inherent in work traditionally undertaken by women (for example the manual dexterity required using a keyboard). Whilst there is some compression or aggregation of speed and accuracy this was a feature which corresponded to the requirements of the job, and was only part of the analysis, with these things being separated later following Gauge. I looked at this part of the claimant's case very carefully; but when I stood back and looked at all the facts I still concluded that the JES was capable of impartial application and objective. I found no potential for indirect discrimination arising out of section 65(4) EqA. The same facts might also have lead me to conclude that the JES was otherwise unreliable and should not be relied upon. However, I did not come to that conclusion. The claimant's case in the main relies on her personal evaluation, as opposed to the evaluation system generally. I could not see or suspect direct discrimination or any sort of conduct motivated by bad faith or improper motive. This JES follows nationally agreed guidelines, further ratified at local level. I could see no reason to conclude that the respondent could not rely on the JES. Whilst the respondent may have been reluctant or just slow, for whatever reason, to adopt the JES and SS agreement, when it did so, the outcome could be described as exemplary. When the Green Book was adopted the respondent was accepting a system which had been agreed at a national level; with both the EOC and CRE having been consulted and had given it a welcome. I am conscious of the fact that if I had found for the claimant and supported her belief that the JES did not satisfy the requirements of section 131 (6) then this would have meant that all of the local government sector SS agreements would have been flawed for the same reason. However, had I come to that conclusion I would not have hesitated to say so. I would hope that the claimant can see that I have brought an independent and impartial mind to the process, notwithstanding the adverse outcome to her.

28. If it is not plain already, the claimant has not persuaded me, on the basis of all the material before me, that there were reasonable grounds for suspecting that the JES was unsuitable to be relied upon. The JES was not new and had been tried and tested many times before. Whilst Mr Williams was not entirely independent, in the sense that his employer was paid by the respondent to implement SS, I found that he adopted a neutral approach in his analysis on the methodology used in the process. He accepted that the JES was not 100% perfect; but the appeal process brought further equality into the process.

29. I do not propose to analyse every point raised in the claimant's argument. Some were difficult to analyse in any event. On the face of it, one of the claimant's more appealing challenges came about through the AC3 profile evaluation. The claimant advanced the argument that in relation to AC roles and the physical skills factor, there was a design flaw, since the analysts had to consider precision and speed for keyboarding skills at the same time, and this was indirectly discriminatory. However, the JES, as designed and agreed by the respondent and the unions, takes into account many jobs, including a number which are female dominated that do not involve keyboarding (for example, cleaning, and catering). The claimant asserted that this type of fault undermined the JES as a whole. I did not come to that conclusion. The appeal process provided grounds for appeal against the evaluation of that profile, but not in respect of an individual's duties within it. I did not find that the evaluation of

the AC3 role with the AC3 job description had led to an overall score which was wrong. Such an argument over the AC3 generic role profile evaluation did not work as a challenge under section 131 (6) (a), for either job undertaken by the claimant. The claimant also used keyboard skills marking as an example of deliberate manipulation and undervalue because of the predominantly female AC job. As the respondent pointed out, this can only be a challenge to section 131 (6) (b). Part of the claimant's case here involved what she said was "common knowledge" as AC post holders operated a keyboard for more than 50% of their time each year. Question number 425 (580) stated this: "Are keyboard skills integral to the main duties of the job, as in computer programming, systems analysis or the constant use of computerised management systems?" The Help Text answer is: "This would suggest that the employee is confident in keyboard skills as in word processing, typing, data input etc. To answer 'yes' the jobholder must over a 12-month period be using a keyboard for more than 50% of their working time. The job, for example, must involve at least one of the following elements: data input, word processing, benefit processing, interrogation or analysis of computer management information systems." I agree with the respondent's submission that to apply common knowledge would be introducing subjective analysis and, in effect, it would fly in the face of the objective system. The claimant is mounting a scoring challenge, and deliberate downward manipulation of the score, based upon a belief which is unsupported by any independent evidence.

30. Another significant factor for the claimant was responsibility for financial resources. The claimant's case was this; the lowest level for accounting for financial resources was too high and therefore sex discriminatory. The claimant had to account for financial resources, but did not normally exceed the level of £100,000 and she was wrongly grouped with jobs which did not account for financial resources, such as waste collectors, being predominantly male. The explanation from the respondent was that the levels were set according to the revenue budget of it; which was over £300 million at the time. Also, there were other predominantly female jobs which had no accounting for financial resources which would be given an advantage by this limit and score the same as the waste collectors (for example, in cleaning and catering). In relation to the claimant's second post in CPT, she also advanced the argument over financial resources, asserting that she exceeded the annual £100,000 limit. The respondent conceded that even if the claimant was right about that point, subject to what the processing of the money involved, the job description for CPT gave no indication that sums of this value were processed; and therefore, an analyst could reasonably conclude from the job description it was at level I. That is a compelling argument, and I do not need to mention the others put forward by the respondent. In this factor, the challenge to subsections 131 (6) (a) and (b) are not persuasive to demonstrate sex discrimination or the required degree of fault in reliability.

31. I do not set out in my conclusion detail in relation to the other individual factors where the claimant has advanced her opinion that the respondent's analysis was in error or there was a design fault. I summarise them, by saying that having considered them all, I concluded there were no reasonable grounds for suspecting the evaluations or allocations were unreliable, deliberately or otherwise, or there was a scheme design fault.

32. In coming to my decision I had regard to the way in which the witnesses presented to me. I found Mr Williams and Mrs Harthill to be articulate, intelligent, open and honest; they were entirely transparent. They could see another view of things. I found that they were credible. I know that is not the end of the matter, because credible witnesses can be mistaken. I considered that point carefully, but found they were not mistaken. Much of what they said was supported in the documentation, notwithstanding the fact that some relevant documents had been destroyed. I was assisted in my task by Mr Williams who is an expert in the field. He did not like to describe himself as an expert, out of modesty no doubt, but conceded that other people working in this area would regard him as an expert.

33. The claimant also presented to me as articulate and intelligent. This was a complex case and it would be very difficult for any litigant in person to conduct it. However, the claimant had a good understanding of the issues and the principles of law involved. She knew her way around the very large bundle and had prepared well for the hearing, including her questions for cross examination. She was more adept at representing herself than many litigants in person. She had an eye for detail. However, she was rather blinkered in her approach to the case, and could not see an alternative view of things. She was not at all trusting of the unions, or the respondent, its officers and processes. For example, it was put to her in cross-examination that the respondent was constantly keeping the JES under review, by way of equalities impact assessments. Her reply was: “I don’t know, I wasn’t there.” The claimant had a closed mind. She did not present as open. Some of her arguments were entirely unsustainable. For example, that the unions had signed up to the SS agreement knowing and accepting that it discriminated against women; and that the two job evaluators deliberately marked down the scores of women. The facts do not point to these things at all. Regrettably, I conclude that much of the force behind the claimant’s claim over the validity of the JES has been generated by her dissatisfaction and disagreement over scores allocated to her, and in not being allowed to appeal against her evaluation out of time. The claimant had an overwhelming sense of grievance over the evaluation of her job and this has given her a distorted view of the process at large and the conduct of a number of people involved in it.

34. When coming to my conclusions, I did finally stand back to reflect, look at the case as a whole, and consider all the material before me. Having done so, I found that it was just, fair and proportionate to conclude that the JES was not sex discriminatory or otherwise unsuitable to be relied upon. There were no reasonable grounds for suspecting it was sex discriminatory or otherwise unreliable.

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Signed by Employment Judge Dimbylow

On 8 November 2017

Decision sent to the parties on:

09/11/2017……..

For the Tribunal: