



Neutral Citation Number: [2025] EAT 137

EA-2022-001142-AT

Case No: EA-2022-001142-AT

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 05 November 2025

Before:

THE HON. LORD FAIRLEY, PRESIDENT

Between :

Mrs D Jallali

Appellant

- and -

(1) The Commissioner of Police of the Metropolis

First Respondent

(2) The Secretary of State for the Home Department

Second Respondent

Mr D Leach (instructed by **Penningtons Manches Cooper LLP**) for the **Appellant**
Ms J Lanigan (instructed by **Capsticks LLP**) for the **First Respondent**
Ms C Darwin KC (instructed by **Government Legal Department**) for the **Second Respondent**

Hearing dates: 07 - 08 May 2025

JUDGMENT

SUMMARY

Police Regulations 2003; part-time Inspectors; pay for hours worked; accrual of holiday entitlement; indirect discrimination; part time-workers; equal pay.

The terms and conditions of police officers are determined by the second respondent in Ministerial Determinations (also referred to as “Annexes”) made pursuant to powers conferred by **The Police Regulations 2003**.

The appellant complained that the terms applicable to part-time Inspectors relating to (a) pay (Annex F) and (b) accrual of days of leave entitlement (Annex O) were each being incorrectly interpreted and applied by the first respondent in a way that amounted to less-favourable treatment of part-time Inspectors contrary to regulation 5 of **The Part-time Workers (Prevention of Less Favourable Treatment) Regulations, 2000** and indirect sex discrimination contrary to section 19 of the **Equality Act, 2010** (“EqA”). In the alternative, she submitted that if the Annexes were being correctly interpreted and applied by the first respondent, the Annexes themselves breached part 5, chapter 3 of the **EqA**. The Tribunal dismissed her complaints. On appeal:

Held:

- (1) The Tribunal had erred in dismissing the complaints against the first respondent in relation to pay. The first respondent’s construction and application of Annex F, part 11 was erroneous and resulted in less favourable treatment of part-time Inspectors and indirect sex discrimination;
- (2) The Tribunal had not erred in dismissing the complaint made about accrual of holiday entitlement. On a correct construction of Annex O, accrual of entitlement to days of annual leave was not related to hours of work.

The grounds of appeal in relation to the pay complaints against the first respondent (grounds 1 to 4) were, accordingly, upheld. The remaining grounds (grounds 5 to 9) were dismissed.

THE HON. LORD FAIRLEY, PRESIDENT:**Introduction**

1. The appellant joined the police force in 1997. Since March 2005, she has served in London. She was promoted to the rank of Inspector from September 2006. In June 2010, she returned to work following a period of maternity leave and moved to part-time hours. She continued to be employed on a part-time basis until 14 June 2021 when she reverted to full-time hours.

2. In a claim form (ET1) presented on 28 May 2021, the appellant made various complaints about her pay and annual leave entitlements in respect of the period when she worked part-time hours. She relied *inter alia* upon section 19 of the **Equality Act, 2010** (“EqA”) and regulation 5 of **The Part Time Workers (Prevention of Less Favourable Treatment) Regulations, 2000** (“PTWR”).

3. The terms and conditions of police officers are determined by the second respondent pursuant to powers conferred by **The Police Regulations 2003**, as amended (“**the 2003 Regulations**”). This appeal concerns the arrangements for the calculation of salary and the accrual of leave entitlement to part-time police Inspectors.

4. Under the 2003 Regulations, the second respondent makes “Ministerial Determinations” (also known as “Annexes”). In the first part of her appeal, the appellant relies upon Annex F, which sets out the basis on which part-time Inspectors are paid. In the second part, she relies upon Annex O which relates to the number of days of paid annual leave to which Inspectors are entitled.

Statutory provisions

5. Section 19 of the **EqA** states:

Indirect discrimination

(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

- (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
- (c) it puts, or would put, B at that disadvantage, and
- (d) A cannot show it to be a proportionate means of achieving a legitimate aim.

For these purposes, sex is a protected characteristic.

6. Regulation 5 of the **PTWR** states:

Less favourable treatment of part-time workers

5.—(1) A part-time worker has the right not to be treated by his employer less favourably than the employer treats a comparable full-time worker—

- (a) as regards the terms of his contract; or
- (b) by being subjected to any other detriment by any act, or deliberate failure to act, of his employer.

(2) The right conferred by paragraph (1) applies only if—

- (a) the treatment is on the ground that the worker is a part-time worker, and
- (b) the treatment is not justified on objective grounds.

(3) In determining whether a part-time worker has been treated less favourably than a comparable full-time worker the pro rata principle shall be applied unless it is inappropriate.

(4) A part-time worker paid at a lower rate for overtime worked by him in a period than a comparable full-time worker is or would be paid for overtime worked by him in the same period shall not, for that reason, be regarded as treated less favourably than the comparable full-time worker where, or to the extent that, the total number of hours worked by the part-time worker in the period, including overtime, does not exceed the number of hours the comparable full-time worker is required to work in the period, disregarding absences from work and overtime.

The 2003 Regulations and relative Annexes

Basic salary

7. Under regulations 22 and 24, the second respondent is responsible for determining the normal period of duty and salary of police Inspectors. In 1994, an increase to the annual salary of all Inspectors was negotiated, in return for which their right to paid overtime ceased.

8. The normal period of duty of a full-time Inspector is 40 hours per week (ET§7), resulting in an annual total of 2080 hours (being 40 x 52 weeks). In terms of Annex F, part 4, full-time inspectors are paid an annual salary. Annex G contains terms about overtime and does not apply to Inspectors. This reflects the 1994 agreement.

9. Part-time Inspectors are engaged on what are known as “determined hours” as agreed with the chief officer of police. The determined hours for part-time officers are usually reviewed on an annual basis having regard to the number of hours actually spent on duty during the interval preceding the review. Determined hours may then be changed by mutual agreement following such review. The pay of part-time Inspectors is calculated on the basis of a formula contained within Annex F, part 11:

“The hourly rate of pay of a part-time member shall be calculated by multiplying by 6/12520 the appropriate annual rate of pay.”

The reference to the “appropriate annual rate of pay” is to the salary that would be paid to a full-time Inspector at an equivalent point on the pay scale.

10. For operational reasons, full-time Inspectors are asked, on occasion, to work more than their normal hours and part-time Inspectors more than their determined hours.

11. Prior to 2011, part 11 of Annex F was interpreted by police authorities, including the first respondent, as meaning that part-time Inspectors were entitled to be paid only for their determined hours, even if they worked longer hours. The practical effect of such an interpretation was that, where a part-time and full-time Inspector each worked the same number of hours in a week and the hours worked by the part-time worker were more than her determined hours, the full-time worker would receive a higher hourly rate as he would be paid in full for up to 40 hours, whereas the part-time Inspector would be paid only for her determined hours.

12. In **Clark v. (1) Metropolitan Police Authority; and (2) Commissioner of the Police of the Metropolis** [2011] EqLR 1026, however, HHJ Birtles, sitting as a judge of the Mayor’s and City of London Court, held that such an interpretation and application of Annex F was wrong. On a proper construction, part-time Inspectors were entitled to be paid the applicable hourly rate for all hours actually worked up to the same 40-hour cap applicable to full-time Inspectors. Alternatively, **Clark** determined that if the correct construction of part 11 of Annex F was that it purported to limit the pay of part-time Inspectors to a maximum of their determined hours multiplied by the hourly rate, the equality clause implied by what was then section 1 of the Equal Pay Act, 1970 created an entitlement to payment for the extra hours.

13. After the decision in Clark, the terms of Annex F, part 11 were amended. The current version of part 11 states:

- “1) The hourly rate of pay of a part-time member shall be calculated by multiplying by 6/12520 the appropriate annual rate of pay... [A] part time member up to and including the rank of Chief Superintendent shall be paid at the hourly rate in respect of each hour of duty, up to a maximum of 40 hours per week.”

14. For reasons that were not discussed in this appeal, part-time Inspectors are also apparently entitled to be paid for a period of 30 minutes beyond the end of a shift (ET§13). That apparent exception aside, no overtime is payable to either full-time or part-time Inspectors for hours worked in excess of 40 hours per week. Overtime hours worked may, however, be taken as time off in lieu (otherwise known as “managed time”) (ET§9).

15. At ET§10, the Tribunal summarised the effect of these provisions as they are currently interpreted and applied by the first respondent:

“Part time Inspectors are able to claim additional pay for additional hours worked above their determined hours subject to the cap of 40 hours per week. This means that a part-time Inspector who works more than 40 hours in a week will only be paid for 40 hours in that week. Any additional time is taken as ‘managed time’. **The part time inspector cannot allocate the hours above 40 to a different week when she is working less than 40 hours.**” (emphasis added).

The highlighted section is important to the first part of this appeal.

Annual leave accrual

16. Regulation 33 allows the second respondent to determine leave entitlements. Annex O contains terms and conditions about leave. It states that the number of days of annual leave to which a police officer is entitled is based upon rank and length of service. Annex O does not, therefore, distinguish between full-time and part-time Inspectors. The total number of days of leave due to an Inspector is calculated in exactly the same way for full-timers as it is for those who work part-time.

17. The position of part-time Inspectors arises, however, in Annex E, part 6 in the definition of what constitutes a “day” and also in Annex F, part 11 in a related adjustment to the rate of pay.

18. Part 6 of Annex E states that a “day” of annual leave for a part-time Inspector is a period of duty of 8 hours, multiplied by the “appropriate factor”. In terms of part 6(b)(iii):

“the appropriate factor is A/B, where
A is the number of determined hours, and
B is 40 times the number of weeks in the relevant period”

The relevant period for these purposes is defined as the period of a duty roster.

19. Part 11(2) of Annex F states:

“2) A part-time member’s pay for days of annual leave shall be 8 times the [hourly] rate of pay... reduced in proportion that the number of determined hours bears to 40 times the number of weeks in the relevant period.

The definitions of “determined hours” and “relevant period” are as set out in part 6(b) of Annex E.

20. The effect of part 11(2) of Annex F is that that the rate of pay for a part-time Inspector on a day of leave (as the word “day” is defined in Annex E) is 8 times the hourly rate, multiplied by a fraction in which the numerator is the determined weekly hours and the denominator is 40. By way of illustration, for a part-time Inspector whose determined hours are 30 per week, the hourly rate of pay (calculated in terms of part 11(1)) would be multiplied by 8 and then by 30/40 to give the applicable daily rate of pay for a “day” of leave.

The complaints

21. In the period between 2010 and 2021, the appellant had determined hours. In the initial months of her part-time employment, her weekly determined hours were set at 29. In the period between 30 January 2011 and 14 September 2020, her determined hours were varied by agreement on four occasions to 35, 33, 22.5 and 27 per week. She reverted to full-time hours on 14 June 2021.

22. The ET1 claim form contained seven separate complaints, some of which were advanced on alternative statutory grounds. Four of the seven complaints succeeded. It is not necessary to rehearse the successful complaints in any detail as they do not form part of this appeal. In summary, however, the appellant was successful in claiming (i) an entitlement to pay for additional hours worked by her up to the 40-hour cap in certain weeks within the period between 5 September 2016 and 25 September 2020 (claim 1); (ii) an entitlement to additional London Weighting and London Allowance consequent upon claim 1 (claim 5); and (iii) an entitlement to payment for periods of up to 30 minutes beyond the end of a shift (see paragraph

14 above) between 25 September 2020 and 28 May 2021 (claim 7). She also succeeded in establishing the principle of a part-time worker discrimination complaint based upon the proposition that the first respondent had failed to implement a process to allow her to claim additional pay (claim 6). A further claim in respect of holiday pay (claim 4) was withdrawn.

23. Two claims did not succeed. They related to (i) pay for hours worked in excess of 40 in a single week in February 2021 (claim 2); and (ii) the number of days of her annual leave entitlement (claim 3). Those two claims form the subject of this appeal.

Claim 2

24. The claimant contended that the first respondent had erroneously applied the Annex F part 11(1) 40-hour cap on a “week-by-week” basis. This, she argued, placed part-time Inspectors – who are predominantly female – at a particular disadvantage in terms of section 19 of the **EqA**. Separately, she submitted that the “week-by-week” approach to the cap was less favourable treatment than a full-time salaried comparator contrary to regulation 5 of the **PTWR**, 2000. Alternatively, she submitted that if a “week-by-week” construction of part 11(1) was correct, the terms of the Annex were incompatible with the equality of terms provisions of Part 5, chapter 3 of the **EqA**.

25. In developing those submissions before the Tribunal, the claimant submitted that the application of the 40-hour cap on a weekly basis meant that if she worked for more than 40 hours in any single week, but fewer than 2080 hours in a year in aggregate, she would be paid a lower aggregate amount than a full-time Inspector for the same number of hours. This arose from the annualised application of the 40-hour per week cap to salaried full-time Inspectors. As in **Clark** therefore, she would receive a lower average hourly rate than her full-time comparator for the same number of hours worked. Whilst accepting that she could potentially take “managed time” for hours worked in excess of 40 in any single week, the claimant contended that she should not be required to do so until she had accrued a total of 2080 hours in a year – that being the position applicable to the full-time Inspectors.

26. On the issue of the composition of the cohort of part-time Inspectors, the Tribunal accepted (at ET§32) that:

“...the statistics of male and female part-time and full-time inspectors shows that female inspectors are more likely to be part-time and are therefore more likely to be disadvantaged.”

In relation specifically to the claimant, it stated:

“We understand that the claimant worked part-time when she had small children so that she could undertake childcare responsibilities. We take judicial notice that women are more likely to have childcare responsibilities and to work part-time.”

27. In the claim of section 19 **EqA** indirect sex discrimination against the first respondent, however, it stated:

- “46. It is accepted that the PCP is the practice of paying for no more than 40 hours worked in any given single week. We find that this does not put female inspectors at a particular disadvantage in comparison with male inspectors as they both have the opportunity to take excess hours over 40 as “managed time”. The part-time inspector can work for fewer hours than her determined hours in another week and she will still be paid for the notional determined hours in that week, even though she has worked fewer hours. This is the same system as is operated for full-time inspectors.
- 47. We find that, simply because the part-time arrangement could allow the part-time inspector not to have to take managed time, there is no reason why the managed time provision should not be used. We do not accept that the claimant should be allowed to claim additional money instead of taking managed hours.
- 48. If we are wrong about this, we find that there is an objective justification in preferring part-time inspectors to take managed time, rather than further paid overtime in that it levels out the hours worked by the part-time inspector. If the part-time inspector regularly needs to work more hours, this should be addressed via a change in determined hours, not by frequently paying for additional hours.
- 49. We also note that the claimant (and part-time inspectors) receive the same salary (pro-rated) as full-time inspectors. Built into this higher salary is an expectation of some unpaid overtime. We heard that full-time inspectors regularly work without pay, particularly if they are unable to take their managed hours. It would be unfair on full-time inspectors if part-time inspectors were never expected to do any unpaid overtime, despite receiving the rate of pay to reflect this expectation.

28. The Tribunal accordingly refused the complaint under section 19 of the Equality Act, 2010.

29. For essentially the same reasons, the Tribunal also found that there was no “less favourable” treatment of the claimant contrary to regulation 5 of the PTWR. In contrast to the **EqA** complaint, it did not find, in the alternative, that the statutory defence of justification under regulation 5(2)(b) **PTWR** had been made out.

Claim 3

30. Before the Tribunal, claim 3 was originally advanced on the basis that it related to annual leave entitlement *and* to the calculation of holiday pay. By the stage of closing submissions, however, the issue of holiday pay was no longer a part of the complaint. As the claimant's skeleton argument in the Tribunal proceedings stated (at paragraphs 74 to 78):

- "74. As already explained, this aspect of the claim is not concerned with holiday pay or the calculation thereof. It is simply concerned with a part-time Inspector's accrual of annual leave entitlement.
75. Annual leave entitlement is governed by regulation 33 and Annex O, which is silent on the pro-rating of annual leave entitlements. However, a convoluted process of deduction from para. 2 of part 11 of Annex F, indicates that the amount of leave available will not exceed that which results from pro-rating the full-time entitlement by reference to the part-time Inspector's determined hours.
76. If that construction is right, part-time Inspectors do not accrue any additional leave in respect of additional hours worked over and above their determined hours. Again, on an annualised basis, full-time Inspectors accrue annual leave in respect of all hours worked up to 40 per week.
77. Within R1 (and presumably other forces), part time Inspectors do receive a '*Bear Scotland* uplift' when they take annual leave, to reflect the fact that additional hours worked will have changed their 'ordinary remuneration', but [the claimant] does not bring any claim in relation to that."

31. In the alternative sex equality clause claim under section 66 **EqA**, the claimant's skeleton stated that the relevant term was:

"... calculating [the claimant's] leave entitlement (**i.e the number of days due**) by reference to determined hours only." (emphasis added)

32. The Tribunal rejected claim 3 for reasons it set out at ET§59 to 73. At ET§62 it stated:

"A full-time employee who works more than their contracted hours does not have their annual leave entitlement increased."

Grounds of appeal / appellant submissions

33. There are nine grounds of appeal. Grounds 1 to 5 relate to claim 2 and grounds 6 to 9 to claim 3.

Ground 1

34. In ground 1, the appellant submits that the Tribunal failed to engage with the central question of the interpretation of Annex F, part 11. Had it done so, it would have concluded that

the correct interpretation of the expression “up to a maximum of 40 hours per week” was that it referred to an annualised calculation rather than a week-by-week one.

Grounds 2 to 4

35. If the hypothesis in ground 1 is correct, the Tribunal erred:

- (a) in dismissing the complaint of indirect sex discrimination under section 19 **EqA** (ground 2). The first respondent’s erroneous practice (or PCP) of adopting a “week-by-week” construction of part 11 placed female part-time Inspectors at a particular disadvantage by compelling them to make use of “managed time” prematurely before they had worked for a total of 2080 hours in any year;
- (b) in concluding that the PCP was a proportionate means of achieving a legitimate aim. The first respondent had not pleaded the statutory defence. It had not identified any legitimate aim or attempted to suggest why any such aim was proportionate. A PCP that was contrary to the legally correct interpretation of Annex F could not amount to a legitimate aim (ground 3); and
- (c) in dismissing the separate complaint under the **PTWR**. The adoption of a “week-by-week” construction of part 11 in relation to the cohort of part-time Inspectors was also less favourable treatment in comparison to their full-time comparators, and could not be justified (ground 4).

36. If, contrary to the submissions under grounds 1 to 5, the “week-by-week” construction was correct, the Tribunal had erred in dismissing the complaints against both respondents under the equality of terms provisions of Part 5, chapter 3 of the **EqA** (ground 5).

Grounds 6 to 9

37. The Tribunal erred in failing to decide whether, in combination, Annex O and F part 11(2) led to the conclusion that the number of days of annual leave entitlement was linked to determined hours or to hours actually worked. Had it considered that question, it would have concluded that the entitlement should be linked to hours worked rather than to determined hours (ground 6).

38. If the hypothesis in ground 6 is correct, the Tribunal erred:

(a) in dismissing the complaint of indirect sex discrimination under section 19 **EqA** (ground 7); and

(b) in dismissing the complaint under the **PTWR** (ground 8).

39. If the hypothesis in ground 6 is wrong, and holiday entitlement is linked only to determined hours, the Tribunal had erred in dismissing the complaints against both respondents under the equality of terms provisions of Part 5, chapter 3 of the **EqA** (ground 9).

Summary of respondents' submissions

40. Counsel for the first respondent submitted that whilst the claim 2 complaints under section 19 **EqA** and under regulation 5 of the **PTWR** were based on the premise that an annualised approach to the 40 hour cap in Annex F was correct, the Tribunal had found that no Inspector, whether full-time or part-time, was paid for hours worked in excess of 40 in any single week (ET§43). There was, therefore, no need for the issue of construction of Annex F to be resolved. The analysis of the section 19 **EqA** and regulation 5 **PTWR** complaints carried out by the Tribunal at ET§46 to ET§50 was otiose as part-timers were not treated any less-favourably than full-timers, and the relevant PCP did not place female inspectors at a particular disadvantage in comparison to male inspectors. Both groups had the opportunity to take excess hours over 40 as managed time.

41. In relation to the claim 3 complaint about leave entitlement, it was accepted by the first respondent that the appellant's annual leave was based upon her determined hours. The relevant term in the contract was, however, identical and applied equally to full-time and part-time Inspectors. It was not therefore discriminatory, nor was it in breach of the equality of terms provisions.

42. Counsel for the second respondent submitted that the premise of the equality of terms claim against the second respondent in claim 2 was an interpretation of Annex F, part 11 that "40 hours per week" meant "40 hours in any single week" rather than on an annualised basis. The Tribunal had found, however, that neither part-time or full-time Inspectors were entitled to be paid for more than 40 hours in any given week. As the appellant's terms were identical to her male comparators, there was no breach of the sex equality clause.

43. In relation to claim 3, the Tribunal held (ET§62) that a full-time Inspector who works more than their normal hours does not have their annual leave entitlement increased. The Tribunal was accordingly entitled to dismiss the equality term complaint against the second respondent as the relevant term in the contract was the same for full-timers as for part-timers (ET§71).

Analysis and decision

Claim 2 - pay - Annex F, part 11(1)

44. I agree with counsel for the appellant that the first question that the Tribunal had to address was how the words “up to a maximum of 40 hours per week” in Annex F, part 11(1) should be construed. I also agree that the Tribunal did not engage with that question (ground 1). The competing interpretations are: (i) a week-by-week basis; and (ii) an annualised basis. If the former interpretation is correct, hours worked by a part-time Inspector in excess of 40 in any single week are unpaid but may be taken as “managed time” if that is possible. On the latter approach, time worked should be aggregated over the year and paid in full up to the 2080 hour cap.

45. Guidance as to the correct approach to the interpretation of Annexes was given by LJ Simler in **Prior and others v. Commissioner of Police of the Metropolis** [2023] ICR 508 at paragraphs 72 to 74. The task is an objective one. The subjective intention of the Secretary of State is irrelevant. In **KSO and others v Commissioner of Police of the Metropolis** [2023] ICR 34, Heather Williams J agreed with a submission that the interpretation of Annexes “should be by reference to the ordinary canons of statutory interpretation”.

46. Annex F sets out the basis for calculating pay due to all Inspectors. Full-time inspectors receive an annual salary, the amount of which is determined by part 4. Although the pay of part-time Inspectors is calculated as an hourly rate, the clear intention of Annex F, part 11 is that part-time Inspectors should be paid pro-rata. As the normal duty period of a full-time Inspector is 40 hours per week (or 2080 hours per year) it is puzzling that the fraction adopted for the creation of an hourly rate for part-time Inspectors is 6/12520 rather than 6/12480. That point aside, however, part 11 of Annex F contains the basis for pro-rating the salaries of part-time Inspectors.

47. Applying the 40-hour per week cap to full-time Inspectors inevitably involves annualisation. On the findings of fact made by the Tribunal at ET§7 and 9, whilst the normal hours of full-time Inspectors are 40 per week, it does not ultimately matter how many hours a full-time Inspector works in addition to the basic 40 in any given week. He will still receive the same salary based upon part 4 of Annex F because he is not paid by the hour and has no entitlement to overtime pay. If the full-time Inspector ultimately works more than 2080 hours over a year, the managed time provisions will be engaged. The context of the finding at ET§43 that full-time Inspectors are not paid for more than 40 hours in any given week is that full-time Inspectors are expected to work at least their basic 40 hours in each week unless they are taking leave or managed time in lieu.

48. I agree with the submissions for the appellant that the clear objective intention of Annex F is that part-time Inspectors should be paid for the hours that they actually work, provided always that they are not ultimately paid more than a full-time Inspector would be paid for the same number of hours. This is in line with the reasoning in Clark with which I respectfully agree. The correct interpretation of the provisions for part-time Inspectors under part 11 of Annex F requires the same annualised approach to the 40-hour cap as is applied to full-time Inspectors. The correct construction is, therefore, that the words “up to a maximum of 40 hours per week” refers, in the case of part-time Inspectors, to an average over the pay year just as it does to full-timers.

49. Had the Tribunal addressed its mind to the issue of construction of part 11 of Annex F, it would have recognised that the “week-by-week” approach to the 40-hour cap applied by the first respondent in the case of part-time Inspectors (as described by the Tribunal in the final sentence of ET§10) is erroneous.

50. Once part 11 of Annex F is properly construed and applied, the relevant terms applicable to the appellant and her comparators are the same and should operate no less favourably for the appellant. The Tribunal was, therefore, correct to dismiss the sex equality clause complaint under section 66 **EqA**.

51. The Tribunal erred, however, in rejecting the argument that the way in which part 11 of Annex F has been applied by the first respondent is less favourable treatment of part-time workers in terms of regulation 5 of the **PTWR**. In light of the difference in application of the

40-hour cap to part-time and full-time Inspectors respectively, there was less-favourable treatment of the part-timers. In particular, it was less favourable treatment for the cap to be applied to part-timers on a week-by-week basis in comparison to the annualised application of the cap to their salaried full-time comparators. The effect of that was that part-time Inspectors who worked more than 40 hours in a single week would ultimately receive a lower rate of pay than the full-timers for the same aggregate number of hours worked. Correctly, in my view, the first respondent did not seek to advance any argument based upon regulation 5(4) of the **PTWR**.

52. The Tribunal was also in error in its conclusion that the way in which part 11 of Annex F was applied by the first respondent does not place female inspectors at a particular disadvantage in terms of section 19 of the **EqA**. The first respondent's PCP was the application of the 40-hour cap to part-time workers on a week-by-week basis. Part-time police officers are predominantly female. On the face of matters, the way in which the cap was applied to part-timers indirectly discriminated against women.

53. The justification defence identified by the Tribunal at ET§48 to the section 19 **EqA** complaint was not one that was pleaded by the first respondent, and is difficult to understand. The Tribunal did not define what it considered to be the first respondent's aim. It referred to there being a preference for part-time workers to take managed time "rather than further paid overtime" and stated that implementation of that preference "levels out" the hours worked by part-time Inspectors. It is unclear what the Tribunal meant by "further paid overtime" or "levels out". If, however, it meant that the first respondent has an aim of compelling part-time Inspectors to take managed time for worked hours for which they would have been paid had they been full-timers, that was simply a discriminatory practice and not a legitimate aim.

54. The Tribunal also referred to there being an "expectation of some unpaid overtime" for full-time Inspectors such that it would be unfair if part-time Inspectors were never expected to do any unpaid overtime. Again, however, the reference to "overtime" is apt to cause confusion. The 1994 pay deal resulted in an increase in the annual rate of pay for full-time Inspectors in return for an end to all overtime pay for hours worked above 2080 in any year. In that context, what amounts to "overtime" is not calculated by reference to determined hours. Instead, there is an upper limit on annual hours beyond which no Inspector is entitled to be paid. Where a part-time Inspector works more than their determined hours, that can only be due to operational

need. Once these factors are recognised, the objective intention is clear: part-time Inspectors should be paid for the hours actually worked by them up to the 2080 annual cap.

55. In relation to claim 2, therefore, the appeal succeeds on grounds 1 to 4. I will return below to the issue of disposal.

Claim 3 – annual leave accrual

56. Holiday entitlement – defined by the appellant in this claim as “the number of days due” – see paragraph 31 above) is regulated entirely by Annex O. Before the Employment Tribunal (as in this appeal), claim 3 was advanced solely by reference to the accrual of leave days in terms of Annex O. As is clear from the sections of the claimant’s skeleton argument quoted above, no part of her position before the Tribunal on claim 3 related to the definition of a “day” in Annex E. In particular, the claimant did not seek to suggest that the definition of a “day” per Annex E was contrary to any of the statutory provisions upon which she relied.

57. At ET§11 the Tribunal concluded that:

“Holiday entitlement is based on determined hours and is not increased by additional hours worked even if these are paid.”

58. The second part of that conclusion – that entitlement to annual leave does not increase as a result of additional hours worked – is an accurate reflection of Annex O. The conclusion in the first part of ET§11 – that holiday entitlement is based upon determined hours – seems to have been based upon a concession by the respondents. Once it is recognised, however, that the appellant’s reference to “holiday entitlement” in claim 3 meant “the number of days due”, that concession, and the resultant conclusion by the Tribunal that entitlement is based upon determined hours, is plainly not a correct interpretation of Annex O.

59. Contrary to the submissions made on behalf of the claimant / appellant, nothing in part 11(2) of Annex F leads to a conclusion that Annex O should be interpreted as pro-rating of the number of days of leave available to part-time Inspectors by reference to determined hours. Part 11(2) of Annex F is concerned only with the rate of pay and the amounts properly due for days taken as annual leave (as “day” is defined in part 6 of Annex E).

60. The key premise of grounds 6 to 9 is that accrual of the number of days of annual leave under Annex O, when read with Annex F, is linked to hours of work. That premise is wrong. As noted above, Annex O forms the basis for calculation of the number of days of annual leave to which police officers are entitled. It does so solely by reference to rank and length of service. No distinction is made between part-timers and full-timers. It follows that the basis on which days of leave accrue to part-time Inspectors under Annex O is not indirectly discriminatory, nor does it amount to less favourable treatment in comparison to full-timers. For the same reasons, the mechanism for accrual of days of leave by part-time Inspectors under Annex O does not breach the implied sex equality clause in section 66 **EqA**. Grounds 6 to 9 must, therefore, be refused.

61. I do not rule out the possibility that, in another case, arguments might be made under the **EqA** or the **PTWR** about the terms of Annex E – in particular, about the different issue of what constitutes a leave “day” for a part-time Inspector. That was not, however, how this case was argued below or, for that matter, in the grounds of this appeal. As a result, I do not have before me any findings of fact or the Tribunal’s legal analysis of that issue in this appeal.

Disposal

62. I will, therefore, sustain grounds 1 to 4 and refuse grounds 5 to 9. In respect of grounds 1 to 4, and since no other conclusion is possible on the facts, I will add the following additional paragraph to the Tribunal’s Judgment of 24 June 2022:

“3A. The complaint in respect of unpaid hours worked in a single week in February 2021 (“claim 2”) succeeds against the first respondent under regulation 5 of The Part-time Workers (Prevention of Less Favourable Treatment) Regulations, 2000 and section 19 of the Equality Act, 2010.

63. I will thereafter remit the case to the Tribunal to determine remedy in all of the claims that have succeeded, in principle, on liability.