

## Working Mothers: Workplace Travel Requirements Do Not Automatically Amount to Indirect Discrimination

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Ms Perkins (the Claimant) was employed as head of Enforcement Local Taxation in the Helmshore office of MH Ltd's enforcement company (the Company). The Company restructured its enforcement services so that work in Darlington, Epping and Birmingham transferred to Helmshore.

As a consequence of this change, Ms Perkins was told that she would have to travel to these other offices, prompting her to raise a grievance against that requirement. The Company stated that such travel could be limited to one day per month, but if this was refused the options were (i) enforcement of the changes; (ii) fire and rehire under a new contract; or (iii) redundancy. Ms Perkins confirmed that if her employment were terminated, she would advance down the redundancy route.

Ultimately, Ms Perkins was dismissed by reason of redundancy. Ms Perkins claimed:

1. **unfair dismissal** – contending it was not a genuine redundancy; and
2. **indirect sex discrimination** – claiming the *travel requirement placed women with childcare* duties at a disadvantage.

### The Employment Tribunal (ET)

The ET upheld both of Ms Perkins's claims, accepting that:

1. **unfair dismissal** – the real reason for dismissal was Ms Perkins's inability to meet the travel demands, not redundancy; and
2. **indirect sex discrimination** – the travel requirement created a disadvantage for women with childcare responsibilities, and it was not proportionate to require significant travel to achieve the legitimate aim of business efficacy and staff morale.

The Company appealed.

### The Employment Appeal Tribunal (EAT)

On appeal, the Company was successful for the following reasons:

1. **unfair dismissal** – the ET allowed Ms Perkins to challenge redundancy as the reason for dismissal despite her earlier concession; and
  2. **indirect sex discrimination** – the ET failed to sufficiently analyse whether the childcare disparity applied specifically to Grade 3 Managers and instead relied on the existence of a childcare disparity (that is, women are more likely to be primary carers). The EAT found that the travel requirement was proportionate to the Company's business aims.
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## Implications for Flexible Working

This case highlights important considerations for employers regarding flexible working, such as:

- **Proportionality of Requirements.** Employers should ensure that any workplace requirements, such as travel, are necessary and proportionate, especially when they may disadvantage certain groups.
- **Childcare Disparity.** Tribunals may “judicially note” that women are more likely to face childcare challenges, but employers should assess how such disparities apply within their workforce.
- **Flexible Working Requests.** Employers must engage in meaningful consultation before imposing rigid requirements.

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## CONTACTS

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