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## THE CASE OF DOLAN v RADIO CLYDE LIMITED

This case is an example of the Court's willingness, at times, to back the employer.

The employer refused to allow a Radio Sales Executive to work three days a week following maternity leave. A claim for indirect sex discrimination was brought but the Tribunal found the refusal justified notwithstanding its indirectly discriminatory effect.

The Tribunal was satisfied that the employer had carried out the necessary balancing exercise between saying 'yes' and saying 'no'.

There would have been an increase in cost in employing a part time sales executive, and if this was not done, other executives would be called on to deal with enquiries from the employee's clients when she was absent, which would impact on their ability to look after their own clients and earn commission.

Changing the way commission was paid was unreasonable for valid commercial reasons. It was OK to refuse a trial period on the basis it would not provide an accurate reflection of the working period in question given the nature of the work.

The lesson to be learnt is that where indirect sex discrimination can be justified for sound and well thought out reasons employers can avoid liability. Very careful justification is needed however and where refusal is being considered advice ought to be taken to ensure that the appropriate considerations are given to that refusal and the reasons for it so as to ensure that they can stand up to scrutiny before a Tribunal. Tribunals will expect cogent evidence to back decisions up.

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