EMPLOYMENT TRIBUNALS

Claimant:	**Ms Frances Fricker**
Respondents:	**Gartner UK Limited**
Heard:	**Watford Hearing Centre**
On:	**2, 3, 4, 5, 6, 9, 10, 11 and 24 August 2021**
Before:	**Employment Judge G Tobin**
Members:	**Mr P English** **Mr P Miller**
Representation	
Claimant:	**In person**
Respondent:	**Mr M Palmer (counsel)**

RESERVED JUDGMENT

It is the unanimous decision of the Employment Tribunal that:

1. **The claimant was sexually harassed and treated less favourably by the respondent following her harassment, in breach of s26 Equality Act 2010.**

2. **The claimant was not victimised, in breach of s27 Equality Act 2010.**

3. **The claimant was constructively unfairly dismissed pursuant to s95(1)(c) Employment Rights Act 1996.**

4. **The claimant was not discriminated against on the grounds of her sex, in breach of s13 Equality Act 2010.**

5. **The respondent's defence to sexual harassment, under s109(4) Equality Act 2010 was wholly without merit.**

6. The case will now be listed for a remedy hearing.

REASONS

The proceedings

1. The claimant was employed by the respondent as a Accounts Executive from 1 September 2017 until 15 October 2019 when she treated herself as constructively dismissed. The respondent sold research and advice to businesses across the world and the claimant's role was to sell such services to existing businesses and prospective clients in England and Wales.

2. The claimant originally issued proceedings on 31 January 2019 (in respect of claim number 3303546/2019) after a period of ACAS conciliation from 4 December 2018 to 3 January 2019. The claimant contended that she had been subject to harassment on the basis of her sex, sexual harassment and less favourable treatment for rejecting the harassment, in breach of s26 of the Equality Act 2010 ("EqA"). The claimant also claimed victimisation in breach of s27 EqA. The claimant contended that she was sexually harassed by her line manager, Mr Giuseppe Ajroldi, and a subject to further harassment for rejecting her harassment in respect of, amongst other things, Mr Ajroldi's implementation of a performance review against her. The claimant claimed victimisation in her employer's response to her complaints and her formal grievance. The claimant contended that for any acts or omissions complained of prior to her contact with ACAS, these represented part of a continuing act or pattern of discriminatory behaviour, pursuant to s123(3) EqA, such that the claim was presented in time. Alternatively, the claimant asserted that because she was attempting to put in place measures to stop the discriminatory treatment through continued internal processes without having to resort to a Tribunal claim and also because she had been through significant stress and upset, the Tribunal ought to extend the appropriate time limit, if necessary, as being just and equitable under s123(1) EqA.

3. The respondent denied all allegations of discrimination in its Response dated 28 March 2019. The respondent contended that, even if harassment of the claimant took place by Mr Ajroldi, that the respondent acted reasonably in the handling of her complaint at the grievance stage, that it effected the departure of Mr Ajroldi, and it upheld the claimant's grievance. The respondent denied victimisation and contended that the claimant is time-barred and "in the circumstances of her own behaviour" it is not just and equitable to allow the claims to proceed.

4. The claimant issued claim number 3326025/20192 on 20 November 2019. This claimed further discrimination for raising the sexual harassment grievance and also referred to victimisation. The claimant said that she had resigned on 15 October 2019 with immediate effect due to several fundamental breaches of contract.

5. The second Response denied constructive unfair dismissal [under s95(1)(c) Employment Rights Act 1996 ("ERA")] and sex discrimination. The respondent contended that the claimant resigned of her own accord because she had found another job and/or she wanted to add another claim to the first claim, and that she had

waived any alleged breach by her actions. The respondent again contended that the Tribunal did not have the jurisdiction to hear the claimant's claim for any incidents complained of before the 3-month limitation period as extended by the ACAS conciliation period.

6. The following a direction or order of the Tribunal the respondent provided particulars of its statutory defence under s109(4) EqA.

7. Employment Judge Palmer made an order that these claims be heard together on 4 December 2019. The parties had agreed a list of issues. The list of issues sets out all the legal and factual disputes to be determined by this Tribunal and is as follows.

The list of issues

8. The issues to be determined by the Tribunal were as follows:

A. Harassment

1. Did the respondent engage in unwanted conduct related to the claimant sex, or unwanted conduct of a sexual nature, which had the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?
S26(1) and (2) EqA.

2. Did the respondent subject claimant less favourable treatment for rejecting the alleged unwanted conduct?
S26(3) EqA.

3. The allegations of harassment are as follows (factual allegation – relevant date – person responsible) [extracted from Scott schedule[1]]:

H1. ~~Sexual advances made to the claimant, including being told that "sleeping with GA could further her career/provide her with job security and using her womanly ways and appearance to befriend analyst"~~
~~7 November 2017~~
~~Giuseppe Arjoldi ("GA")~~[2]

H2. ~~GA ate claimant's food and drank her drink. The claimant claims this was a demeaning and humiliating act which was related to her sex.~~
~~11 December 2017.~~
~~GA~~[3]

H3. GA repeatedly pressurising claimant to update pictures on intranet and Linked-In and making comments about her appearance such as the claimant was "beautiful" and that her "photo would help her to sell".
9 November 2017, 21 November 2017, 16 December 2017, 17 December 2017, 22 December 2017, 8 January 2018
GA

H4. ~~The claimant received messages on a mobile phone rating her out of 10 on her appearance.~~
~~12 December 2017~~
~~GA~~[4]

[1] No comparator is required for a claim of harassment under s26(1) and S26(20 EqA. The statutory language is "unfavourable treatment" as opposed to "less favourable treatment".
[2] Allegation withdrawn by claimant, 16 August 2021
[3] Allegation withdrawn by claimant, 16 August 2021
[4] Allegation withdrawn by claimant, 16 August 2021

H5. ~~GA attempted to kiss the claimant and car park after a client meeting.~~
~~19 January 2018~~
~~GA~~[5]

H6. Over a period of several months GA referred to the claimant as a "good girl". This was harassment on the grounds of the claimant sex which she found demeaning.
19 January 2018, 5 February 2018, 12 February 2018, 23 February 2018, 15 March 2018, 24 April 2018
GA.

H7. Over a period of several months GA criticised the claimant's weight and said he thought she looked fat, including comments on Facebook photos. The specific allegations were as follows;

H7.1 3 April 2018: GA pulled a picture of the claimant's Facebook account where he thought she looked fat and sent it to her laughing (via messages)

H7.2 9 April 2018: in the office GA pulled his phone out where he'd save the pictures and was pointing in the claimant's face, laughing which was making her feel degraded and humiliated (in person).

H7.3 26 April 2018: as soon as the claimant walked into the office GA got the picture out on his phone and started laughing again, later on that day the claimant walked back to the desk and he puffed his cheeks out pretending to be an overweight person, again making her feel degraded and humiliated (in person).

H7.4 22 May 2018: GA pulled picture out on his phone again during the meeting, laughing (in person).

H7.5 14 June 2018: more references being made about the claimant's weight, more degrading comments about how much she'd put on since joining Gartner and whether she needed to buy a new wardrobe while looking her body up and down, especially at her glutinous maximus [hips and bum] (in person).

H7.6 28 June 2018 GA "joking" around said that he was going to display the "fat" picture it saved on his phone on PowerPoint in the next team meeting.

H7.7 29 June 2018: GA asked whether the claimant had lunch and said to take it easy, you'll be back to being fit again very soon (via messages)

The claimant claims this behaviour was an act gain power and control over her and to be made to feel uncomfortable. The comments made about the clothes the claimant should be wearing was related to her sex.

H8. Unwelcome sexual advances made in a hotel room, including attempts to kiss and touch
7 August 2018
GA

H9. GA said he would join a dating website, pretend to be someone else and try to link up with the claimant to meet with her. This was in the office. The claimant felt threatened by this.
Allegation in respect of this as follows:
10 September 2018: while in the office with GA, he asked about what the claimant had done over the weekend. She mentioned that she went on another date with someone she had been seeing. GA asked how they met and the claimant told him that she met him on a dating website, he then went on to say that he was going to join the same website and pretend to be someone else so that he can try to link up with the claimant and meet up with her. The claimant was shocked, felt threatened and deleted her account shortly after.

H10 Threatening behaviour (being aggressive and shouting) and using historical "issues" against her; and EP fallout (which was never a problem at the time) and stating that everyone had an issue with her. GA also said the claimant just needs to do as she's told (less favourable treatment for rejecting harassment).
19 September 2018: there were regular team meetings with consulting, during this call they discussed the significant progress the claimant was making with Welsh government (meeting with the Executive Directors of NHS Wales, her direct reports and head of Wales digital etc) as the claimant was able to demonstrate significant progress, consulting became quite hostile, GA was involved in the meeting and it felt that he was making a situation worse rather than trying to

[5] Allegation withdrawn by claimant, 16 August 2021

support claimant by agreeing to actions with her prospects that she may not be able to deliver etc.
The claimant alleges that this is behaviour from GA was a direct result of her having rejected GA's advances towards her.
13 September 2018, 19 September 2018
GA

H11 Threatening behaviour on a phone call including shouting and asking the claimant whether she should still be working for Gartner.
The claimant alleges that this behaviour from GA was a direct result of her having rejected GA's advances towards her.
19 September 2018
GA

H12 Instigating performance management proceedings against claimant with no formal or informal issues raised prior.
24 September 2018
GA

H13 Continuing hostile and intimidating behaviour following the claimant raising informal grievance with HR on 27 September 2018 and 12 October 2018
H13.1 27 September 2018: GA called the claimant into an office and started to read out the criteria for the CTA; 100k in 4 weeks, 2 accompanied (GA) client visits per week, 4 new added prospects per week and weekly face-to-face meetings with GA & GA copied in on every correspondence. The claimant became upset and he aggressively said that "as long as the claimant does everything he tells her, she'll be fine". He then went on to say that he knew the claimant was trying to speak to HR & Roger and that whatever the claimant does or say, he will be informed about as that is how Gartner works.
H13.2 15 October 2018: [GA] created a hostile environment at work, not speaking to the claimant once she was in the office and generally been very aggressive if she approached him for a question (in person).
H13.3 22 October 2018: during to stay in the office GA was still very hostile in his mannerisms, when the claimant asked a question he ignored her, not speaking to the claimant at all during the day, very angry facial expressions and making remarks about people doing as they are told, made the claimant feel very uncomfortable and exposed.

4. The allegations of less favourable treatment for rejecting the alleged unwanted conduct are as H10, H11 and H12.

5. Did the respondent take "all reasonable steps" to prevent the employee from doing the alleged discriminatory acts from doing anything that description: see s109(4) EqA. The respondent relies on the reasonable steps defence set out in the respondent's Particulars of Statutory Defence of 15 November 2019.

B. <u>Victimisation</u>

6. Did the claimant commit a "protected act" under s27 EQA? The protected act relied upon are:
   a. On 27 September 2018 and 12 October 2018 the claimant raised informal grievances with HR regarding the complaints of harassment and less favourable treatment
   b. On 30 October 2018 the claimant raised a formal grievance with HR regarding the complaints of harassment and less favourable treatment.
   c. On 18 December 2018 appeal meeting held as a result of the grievance regarding harassment, less favourable treatment and victimisation.
   d. On 17 January 2019 the claimant responded to outcome of the appeal hearing, complaints of harassment, less favourable treatment and victimisation.

7. If so, did the respondent treat the claimant less favourably because she did any such protected act?

8. The allegations of victimisation are as follows:

V1 Confidentiality not kept up following the claimant submitting her grievances, with increased hostile and bullying behaviour by GA towards the claimant.
V1.1 16 October 2018: The claimant called GA to discuss the meeting she'd had with a prospect and answered the phone without saying hi, he said "what do you want". She said she wanted to give him an update and then said that he didn't want to talk, why don't you go and speak to Roger and hung up on the phone.
V1.2 12 October 2018: The claimant had requested a private meeting with RV and asked RV to keep this confidential as it was highly sensitive. The claimant believes that GA and Emmanuele were still informed. (22 October was when the claimant had the meeting with RV to inform him).
V1.3 25 October 2018: During a call with KW, the claimant requested that her grievance was kept confidential due to the relationship GA had with Emanuele and how that could damage the investigation.
V1.4 1 November 2018: During the call with HR the claimant asked whether Emanuele knew about the grievance and she was told by KW that he did know but only top-level information.
V1.5 3 December 2018: the claimant and asked for an investigation to be carried out on how GA found out about the confidential meeting she'd requested with RV, this came back as inconclusive.
The claimant claims singularly and/or cumulatively these detriments amounted to conduct that would destroy the relationship of trust and confidence.
GA, RV

V2 Confidentiality not kept following the claimant requesting a confidential meeting with Roger Vestey, which increased harassment and bullying behaviour by GA towards the claimant.
12 October 2018

V3 The claimant noticed a change in behaviour towards her from colleagues.
V3.1 From November 2018 after the claimant submitted her evidence (31 October 2018) team communication disappeared, from this point she felt as though they had been warned off speaking to her.
V3.2 From November 2018 after the claimant submitted our evidence on 31 October 2018, she didn't hear anything from Roger or KW, until she started to receive grievance hearing meeting invites for 16 November 2018. During all this time she was expected to continue to work with GA.
V.3 1 December 2018: received a call from a team member Hannah Mills who informed the claimant that Tony Wood had called her to speak to her about GA and the reasons for his departure, the rest of the team had met with GEA after he "left".
Claimant's team, KW & RV

V4 GA informed claimant that he was stopping the performance review as he wanted claimant to have a nice Christmas with family and that her performance had improved.
29 October 2018
GA

V5 Breach of confidentiality in that Emanuele was informed of the claimant's grievance.
30 October 2018
KW

V6 The grievance process was not handled properly and allowed the harassment to continue by not allowing team members to support the claimant as there will be a conflict of interest, and holding the meeting at a time there was a strong chance the claimant would see GA. The claimant was expected to work with the respondent during the investigation.
19 November 2018
KW, RV

V7 The claimant had the impression she was not believed in her grievance meeting.
21 November 2018
RV, KW

V8 The claimant was not given the opportunity to counter respond to the evidence produced by GA.
22 November 2018

RV, KW

V9 Grievance outcome did not acknowledge harassment after February 2018 and that it appeared to be reciprocated. Additionally the claims were not properly investigated.
23 November 2018
RV, KW

V10 The claimant was newly informed in the grievance outcome that Roger Vestey instigated the performance review not GA.
the claimant believes that the respondent changed who was responsible for starting the CTA in an attempt to cover up any wrongdoing by GA.
23 November 2018
KW, RV

V11 The claimant informed by colleagues that GA was speaking to people around the respondent's business about his version of events.
26 November 2018
GA & persons not specified

V12 The claimant complaint to HR about not feeling protected by business after GA's voluntary departure; nothing was put in place to stop GA from speaking to people around the business & he was allowed to keep his phone. Concerns about the claimant's role being untenable and a future at Gartner.
3 December 2018
KW

V13 The Claimant raised concerns about GA departure and nothing was done to protect wellbeing/brand, HR described claimant as "clutching at straws"; HR demonstrated no concern or support and responded with "I'm going to the pub, she can wait till Monday".
1 December 2018
JW, RV, LD

V14 Appeal meeting was prejudiced, claimant wasn't given the opportunity to respond to GA evidence/story.
The claimant went through the appeal meeting with Alan Miller and Leonie Dorkins, the call was closed off with Alan informing the claimant that he needed to complete more internal investigations. Alan Miller then said that he didn't know whether the claimant would like the outcome of the appeal. This made the claimant feel the outcome was prejudiced.
Outcome of appeal shows that grievance was not investigated properly. Claimant was newly informed of several areas why the performance review was requested, which the claimant alleges were falsified:-

1. Poor pipeline; which the claimant claims was 1 of the strongest in the team.
2. Fall out with EP, which was never an issue.
3. Fall out with a team member (Tony Wood) who the claimant had also made a complaint against for inappropriate behaviour.

18 December 2018
LD, AM

~~V15 No response was received to the claimant's response to the appeal~~
~~17 January 2019~~
~~LD~~[6]

C. Dismissal - claims arising out of claimant number: 3326025/2019

9. What was the reason for the claimant's resignation? The respondent contends that the claimant resigned in order to commence new employment and therefore for her own reasons. The claimant contends that she was unfairly constructively dismissed and relies on matters contained below in paragraphs 10 and __ below.

[6] Allegation withdrawn by claimant 16 August 2021.

10. Did the claimant resign in response to a repudiate re-breach the contract of employment? The claimant relies upon the matters set out in the claimant's appendix schedule together with the following matters as continuing acts or omissions which taken individually or cumulatively amount to a breach of the terms of trust and confidence implied into a contract of employment?
    a. Did the respondent provide a safe working environment for the claimant?
    b. Did the respondent address any alleged failings in performance with the claimant, formally or informally?
    c. Did the respondent fail to appropriately consider a reasonable adjustments request or move into another team where she would not be at a severe disadvantage?
    d. Was the claimant victimised and treated less favourably due to her mental disability or her state of health as a result of the sex harassment?
    e. Did the respondent act unreasonably by refusing to look at a workplace adjustment and did this contribute towards the unfair dismissal.

11. If the claimant did resign in response to any alleged breach(es) of her contract of employment – did she resign in good time or by reason of any delay, did she affirm or waive any breach of contract?

12. If the claimant was dismissed in breach of contract in accordance with s 95(1)(c), was her dismissal unfair within the meaning of s98(2) ERA?

13. If the claimant was unfairly dismissed within the meaning of s98(4) ERA, did she contribute to a dismissal by any actions or omissions on her own part and should her compensation be reduced accordingly by reference to s123(6) ERA?

D. Sex Discrimination

14. Was the claimant treated less favourably as a woman who had made a sex harassment grievance by the respondent contrary to s13 EqA by reference to the following acts (set out in the claimant's own words):
    a. Was the claimant provided with a fair and unprejudiced platform to raise a sex harassment grievance within the wider team?
    b. Was the claimant able to raise a grievance for being treated less favourably by HR and senior management for escalating a sex harassment grievance without being treated unfairly and without prejudice?

15. Was the claimant subjected to victimisation contrary to s27 EqA following her making of a sexual harassment grievance? The claimant relies upon her grievance made on 27 September 2018, 12 October 2018 and 31 October 2018 as being protected acts within the meaning of s27 EqA.

16. Were the incidents relied upon by the claimant as founding her complaint sex discrimination brought in good time within 3 months of the claimant presenting her claim within the meaning of s123 EqA or did any single act falling outside such period form part of a continuous series of acts, the last of which was within 3 months' prior to the presentation of her claim?

E. Time Limitation

17. Were the claims in respect of harassment brought in time?

18. If there were not brought in time, do they mount conduct extending over a period within the meaning of section 123(a) EqA.

19. If there were neither brought in time nor amount conduct extending over a period within the meaning of s123(3) EqA, is it just and equitable to extend time for submission of these claims: s123(1) EqA.

F. Remedy

20. If to be determined in future.

The relevant law

9. The relevant applicable law for the claims considered is as follows.

Protected characteristics

10. Under s4 EqA, a protected characteristic for a claimant includes her sex.

Direct discrimination

11. S13(1) EqA precludes direct discrimination:

> *A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.*

12. The examination of *less favourable treatment because of the protected characteristic* involves the search for a comparator and a causal link. When assessing an appropriate comparator, "there must be no material difference between the circumstances relating to each case": s23(1) EqA.

Harassment

13. The definition of harassment is set out in s26 of EqA:

> (1) A person (A) harasses another (B) if—
> (a) A engages in unwanted conduct related to a relevant protected characteristic, and
> (b) the conduct has the purpose or effect of—
> (i) violating B's dignity, or
> (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
>
> (2) A also harasses B if—
> (a)A engages in unwanted conduct of a sexual nature, and
> (b)the conduct has the purpose or effect referred to in subsection (1)(b).
>
> (3) A also harasses B if—
> (a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,
> (b) the conduct has the purpose or effect referred to in subsection (1)(b), and
> (c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.
>
> (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
> (a) the perception of B;
> (b) the other circumstances of the case;
> (c) whether it is reasonable for the conduct to have that effect.
>
> (5) The relevant protected characteristics are—
> - age;
> - disability;
> - gender reassignment;
> - race;
> - religion or belief;
> - sex;
> - sexual orientation.

14. Sexual harassment encompasses any conduct of a sexual nature which has the purpose or effect of violating a person's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment. Conduct of a sexual nature is not defined in the EqA. The example given by the Equality & Human Rights Commission's unwelcome sexual advances – touching, standing too close, the displaying of offensive pictures. The explanatory note provides an example: an employer who displayed any material of a sexual nature, such as a topless calendar, maybe harassing her employees where this makes the workplace an inventive place to work for any employee, female or male.

Victimisation

15. Victimisation under s27(1) EqA is defined as follows:

> *A person (A) victimises another person (B) if A subjects B to a detriment because –*
> *(a) B does a protected act, or*
> *(b) A believes that B has done, or may do, a protected act.*

16. A "protected act" includes bringing proceedings under the EqA, as well as giving evidence or making allegations that a person has contravened the EqA. There is no need to find a comparator for victimisation as it is only the treatment of the victim that matters in establishing causation; it is possible to *infer* from the employer's conduct that there has been victimisation.

Employer's liability and the statutory defence

17. S109 EqA states:

> (1) Anything done by a person (A) in the course of A's employment must be treated as also done by the employer.
> (2) Anything done by an agent for a principal, with the authority of the principal, must be treated as also done by the principal.
> (3) It does not matter whether that thing is done with the employer's or principal's knowledge or approval.
> (4) In proceedings against A's employer (B) in respect of anything alleged to have been done by A in the course of A's employment it is a defence for B to show that B took all reasonable steps to prevent A—
> (a) from doing that thing, or
> (b) from doing anything of that description.

18. So s109(4) EqA sets down a strict defence where discrimination has occurred, which is why it is not frequently relied upon, as if, for example, a Tribunal were to conceive of a step that it thought would have been reasonable for the employer to take, but which was not taken, the admission of that step would mean that not all reasonable steps were taken with the consequence that the defence might fail.

19. The onus rests on the employer to establish the defence.

20. In *Canniffe v East Riding of Yorkshire Council 2000 IRLR 555*, the EAT set out the relevant 2-stage test:
    1. Whether there were any preventative steps taken by the employer, and
    2. whether there were any further preventative steps that the employer could have taken that were reasonably practicable.

The burden of proof and the standard of proof

21. S136 EqA implements the European Union Burden of Proof Directive. This requires the claimant to prove facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the employer has committed an act of unlawful discrimination, and it is then for the employer to prove otherwise.

22. The cases of *Barton v Investec Henderson Crosthwaite Securities Ltd [2003] ICR 1205* and *Igen Ltd v Wong [2005] EWCA Civ 142, [2005] ICR 931* provide a 13-point form/checklist which outlines a two-stage approach to discharge the burden of proof. In essence, this can be distilled into a 2-strage approach:

    a. Has the claimant proved facts from which, in the absence of an adequate explanation, the tribunal could conclude that the respondent had committed unlawful discrimination?

    b. If the claimant satisfies (a), but not otherwise, has the respondent proved that unlawful discrimination was not committed or was not to be treated as committed?

23. The Court of Appeal in *Igen* emphasised the importance of *could* in (a). The claimant is nevertheless required to produce evidence from which the tribunal could conclude that discrimination has occurred. The tribunal must establish that there is prime facie evidence of a link between less favourable treatment and, say, the difference of race and that these are not merely two unrelated factors: see *University of Huddersfield v Wolff [2004] IRLR 534*. It is usually essential to have concrete evidence of less favourable treatment. It is essential that the employment tribunal draws its inferences from findings of primary fact and not just from evidence that is not taken to a conclusion: see *Anya v University of Oxford [2001] EWCA Civ 405, [2001] ICR 847*.

24. So, the burden is on the claimant to prove, on a balance of probabilities, a prima facie case of discrimination. The Court of Appeal, in *Madarassy v Nomura International plc [2007] EWCA Civ 33* at paragraph 56. The court in *Igen* expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the Tribunal could conclude that the respondent *could have* committed an unlawful act of discrimination. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a Tribunal *could conclude* that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination. It was confirmed that the claimant must establish more than a difference in status (e.g. sex) and a difference in treatment before a Tribunal will be in a position where it *could conclude* that an act of discrimination had been committed.

25. Even if the Tribunal believes that the respondent's conduct requires explanation, before the burden of proof can shift there must be something to suggest that the treatment was due to the claimant's race. In *B and C v A [2010] IRLR 400 EAT* at paragraph 22:

> The crucial question is on what evidence or primary findings the tribunal based its conclusion that C would not have feared further violence from a female alleged aggressor (and so would have accorded her due process). As we have already noted (paragraph 19), the tribunal does not spell out its thinking on that point. There was no direct evidence on which such a conclusion could be based; no such situation had ever occurred, and the tribunal refers to no admission by C, or other evidence of his attitudes, that might have supported a view as to how he would have behaved if it had. It is of course true that the tribunal was in

> principle entitled to draw appropriate inferences from the nature of the behaviour complained of. C's behaviour was certainly sufficiently surprising to call for some explanation: in the public sector in particular, it is second nature to executives to follow appropriate procedures, and the explanation offered by C for his failure to do so in the present case – namely that he was seeking to avoid repeat violence (see paragraph 16 above) – is irrational since he could have mitigated the risk to precisely the same extent by suspending the claimant. But the fact that his behaviour calls for explanation does not automatically get the claimant past 'Igen stage 1'. There still has to be reason to believe that the explanation could be that that behaviour was attributable (at least to a significant extent) to the fact that the claimant was a man. On the face of it there is nothing in C's behaviour, all the surrounding circumstances, to give rise to that suspicion.

26. It is not sufficient to shift the burden onto the respondent, that the conduct is simply unfair or unreasonable if it is unconnected to a protected characteristic. In *St Christopher's Fellowship v Walters-Ellis [2010] EWCA Civ 921* at paragraph 44:

> The respondent's bad treatment of the claimant fully justified findings of constructive unfair dismissal, but it could not, in all the circumstances, lead to a finding, in the absence of an adequate explanation, of an act of discrimination. Non-racial considerations were accepted as the explanation for the respondent's similar treatment of the claimant in the other instances in which the claimant alleged race discrimination in relation to participation in recruitment. In the case of Ms Hayward, the respondent made a genuine mistake about the nature of the relationship, which they would not have made if they had properly investigated the nature of the relationship with the claimant and communicated with her, but their failure to do so was accepted to be the result of a genuine belief. The fact that it was mistaken could not, in the context of scrupulous attention to recruitment procedures, reasonably be held to have the effect of indicating the presence of racial grounds and so shifting the burden of proof to the respondent to prove that he had not committed an act of race discrimination.

27. In the case of *Nagarajan v London Regional Transport [2000] 1 AC 501*, Lord Nicholls stated at 512-513:

> Decisions are frequently reached for more than one reason. Discrimination may be on racial grounds, even though it is not the sole ground for the decision. A variety of phases, with different shades of meaning, have been used to explain how to legislation applies in such cases: discrimination requires that racial grounds were a cause, the aggravating cause, a substantial and effective cause, a substantial reason, an important factor. No one phrase is obviously preferable to all others, although in the application of this legislation legalistic phases, as well as subtle distinctions, are better avoided. So far as possible. If racial grounds or protected acts has a significant influence on the outcome, discrimination is made out.

28. Employment Tribunal's adopt the civil standard of proof, which is on the balance of probabilities, i.e. more likely than not.

<u>Time limits for discrimination proceedings</u>

29. Claims of discrimination in the Employment Tribunal must be presented within 3 months of the act complained of, pursuant to s123 EqA. Acts of discrimination often extend over a period of time, so s123(3)(a) EqA goes on to say that "conduct extending over a period is to be treated as done at the end of the period". In addition, Employment Tribunals have a discretion to extend the 3-month period if they think it *just and equitable* to do so, under s123(1)(b) EqA.

<u>Unfair Dismissal</u>

3 Section 95(1) ERA provides that an employee is dismissed by her employer for the purposes of claiming unfair dismissal if:

> (c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

4 An employee may only terminate her contract of employment without notice if the employee has committed a fundamental breach of contract. According to Lord Denning MR:

> If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed. *Western Excavating (ECC) Ltd v Sharp [1978] ICR 221.*

5 *Courtaulds Northern Textile Ltd v Andrew [1979] IRLR 84 (EAT)* held that a term is to be implied into all contracts of employment stating that employers will not, without reasonable or proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee.

6 Brown-Wilkinson J in *Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666 (EAT)* described how a breach of this implied term might arise:

> To constitute a breach of this implied term it is not necessary to show that the employer intended any repudiation of the contract: the tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it.

7 *Western Excavating* established that a *serious* breach is required. In *Hilton v Shiner [2001] IRLR 727* the Employment Appeals Tribunal confirmed that the employer's conduct must be without reasonable and proper cause. According to *Morrow v Safeway Stores [2002] IRLR 9* if a breach of mutual trust has been found, this implied term is so fundamental to the workings of the contract that its breach automatically constitutes a repudiation – a Tribunal cannot conclude that there was such a breach but, on the facts, hold that it was not serious.

8 If an employee contends that a particular matter amounted to a "last straw" entitling her to resign, the "last straw" must not be entirely innocuous. It need not be in itself a breach of contract, but it must contribute to the series of events alleged to amount to a breach of the mutual trust and confidence term: *Waltham Forest London Borough v Omilaju [2005] ICR 418.*

9 We have considered whether the claimant has established in the respects alleged by her a breach of the implied term of mutual trust and confidence. We have been careful to analyse not only the individual matters relied on by the claimant but also their cumulative effect.

10 Unfair dismissal proceeding must be commenced within 3-months from the effective date of dismissal under s111 ERA. S18A Employment Tribunals Act 1996 allows for a further period of up to 1-month (or in exceptional circumstances 1-month and 2-weeks) for ACAS Early Conciliation. There is some discretion to extend this time limit if it was not reasonably practical to issue proceeding within time and the complainant issued proceeding within a reasonable time thereafter.

The evidence

30. After a short case management conference and a review of the list of issues, we (i.e. the Tribunal) retired to read the witness statements and the documents that had been identified for preliminary reading.

31. The Tribunal was provided with a bundle of documents from the respondent of 1031 pages as well as a chronology and a cast list. The Employment Judge advised the parties at the commencement of the hearing that, as a matter of course, Employment Tribunals do not read the entire hearing bundle. If a document is important and relevant then that document needed to be referred to us, either in a witness statement or being specifically referred to the Tribunal at the hearing.

32. We heard direct (i.e. oral) evidence from the claimant. The claimant also called Mr John McAdams, a former Account Executive and work colleague of the claimant. We heard directly from 5 witnesses for the respondent: Mr Roger Vestey (Sales Managing Vice-President for UK Public Sector and Financial Services), who was Mr Ajroldi's line-manager and dealt with the claimant's grievance; Ms Katie Wyatt (Associate Director Human Resources) and HR Business Partner who advised Mr Vestey in respect of the claimant's management and grievance; Mr Andrew Bisset, (Sales Manager Public Sector South) and the claimant's line manager from June 2019; Ms Leonie Dorkins (Vice-President HR, Europe and Emerging Markets) and Mr Alan Miller, (Global Vice-President Human Resources) who determined the claimant's grievance appeal.

33. Having now heard the totality of the evidence, we assess the witnesses as follows.

34. The claimant was clear in her accounts of events. During her cross-examination she remain consistent in her account of the events complained and consistent with the contemporaneous correspondence and records of events. She did not appear to embellish events and we regarded her as an accurate historian and an honest witness. Her version of events was entirely credible.

35. Mr McAdam worked with the claimant and although he did not directly observe Mr Ajroldi harassing the claimant, he did give evidence in respect of the workplace culture and in respect of the conduct of another colleague Mr Tony Wood. The respondent contended that Mr McAdam's evidence was designed to cast the respondents in a deliberately bad light because he was pursuing a vendetta against the respondent that his evidence was made up or overstated. We found Mr McAdam to be a credible witness. He referred to his sexist behaviour and appeared genuinely contrite. He said that he wanted to fit in with the sexist culture that prevailed at the respondent, which we accept. We could not understand why Mr McAdam would seek to damage the respondent and cast himself in a very bad light if he was not being truthful. If he wanted to pursue proceeding against the respondent, which the respondent raised, then his evidence in this claim could not reasonably assist him.

36. We set out our concerns about the evidence of the respondent's witnesses in our findings of fact. Mr Vestey and Ms Wyatt were pivotal witness for the respondent. We were struck by their hostility to the claimant, which seemed prevalent at both the hearing and which we noted in the contemporaneous documents. Although it was not relevant to our findings of fact, we were surprised about Mr Vestry's complaint about the claimant's purported lewd behaviour at a work-related social. The claimant respondent to Mr Vestry's complaint of inappropriate behaviour saying that she merely kissed someone, and that her behaviour was not offensive in comparison with other

male colleagues at this boozy event. Mr Vestey's attitude typified that of other respondent witnesses in varying degrees. In the contemporaneous documents, we detected a closing of ranks in support of Mr Ajroldi, combined with an attitude of *nothing that wrong really happened, but if it did then the claimant brought it on herself*. The respondent's failure to properly address the sexual harassment from Mr Ajroldi was noteworthy.

37. Mr Bisset was not a credible (for reasons set out below) but his evidence only covered a relatively short period of this unfortunate dispute. It was surprising that Mr Bisset was able to organise meetings offsite in order to facilitate the claimant's return to work, yet Ms Wyatt and Mr Vestey refused such an arrangement when the claimant's alleged sexual harasser was on the premises. Mrs Dorkins evidence was significantly undermined by, we believe, her attempt to misinform the Tribunal about the circumstances of the departure of the claimant's sexual harasser.

38. The respondents did not call Mr Ajroldi to give evidence, nor did they proffer any witness statement. At the outset of the hearing, the Employment Judge asked why he had not been called and Mr Palmer could not provide a response other than that the respondent chose not to. The Employment Judge referred to the interest of justice and said that, even this late stage, this might be an instance where an application for a witness order could be favourably received. Nevertheless, no application was made.

39. We noted that apparently significant parts of the respondent's email chains were excluded in the hearing bundle and there appeared to be a considerable amount of redactions. When the Tribunal queried this incomplete picture in the respondent's documentation no satisfactory explanation was forthcoming for these omissions.

40. The whole tone of the respondent's case from the pleadings through the evidence of his witness was of hostility towards the claimant. Mr Palmer was a notable exception to this. This was a difficult case and whilst diligently presenting the respondent's case as pleaded, we record our appreciation of Mr Palmer's professional and courteous approach. The claimant presented he case with dignity in difficult circumstances, she became upset on occasions, but this never seemed inappropriate, and she acted professionally throughout.

Our findings of fact

41. We set out the following findings of fact, which were relevant to determining whether or not the claims and issues identified above have been established. We have not determined all of the points of dispute between the parties, merely those that we regard as relevant to determining the issues of this case as identified above. When determining certain findings of fact, where we consider this appropriate, we have set out why we have made these findings.

42. In assessing the evidence and making findings of fact, we placed particular reliance upon contemporaneous documents as an accurate version of events. We also place some emphasis (and drew appropriate inferences) on the absence of documents that we expected to see as a contemporaneous record of events and also on the absence of evidence which give an interpretation of what occurred. Witness statements are, of course, important. However, these stand as a version of events that was completed

sometime after the events in question and are drafted through the prism of either advancing or defending the claims in question. So, we regard them with a degree of circumspection as both memories fade and the accounts may reflect a degree of re-interpretation.

43. The claimant started work with the respondent as a Sales Executive on 1 September 2017. We accept the claimant's evidence that she was interview by her new line manager, Mr Giuseppe Ajroldi, amongst others.

44. On 9 November 2017 during the course of a WhatsApp exchange Mr Ajroldi told the claimant that she needed a better Linked-In picture [see HB428-429]. On 21 November 2017 Mr Ajroldi noted the claimant had changed her Linked-In picture and complained that she had not changed her picture on the company's intranet [see HB433]. Following a telephone discussion, which the claimant said Mr Ajroldi pressed her again to update her photograph (which we accept), the claimant sent Mr Ajroldi 2 further pictures of herself [HB445 and HB679].

45. On 17 December 2017 Mr Ajroldi again raised with the claimant whether she had taken a picture for the intranet [see HB446]. On 22 December 2017 Mr Ajroldi referred to a picture of the claimant as "It's a beautiful picture" [HB448] a discussion then followed during which Mr Ajroldi said "You are beautiful! For once trust your manager" [HB449]. On 8 January 2017 following a conversation with the claimant Mr Ajroldi wrote on WhatsApp "I forgot a thing… UPLOAD YOUR PICTURE ON THE INTRANET!!!" [HB451].

46. There is no documentary corroboration of Mr Ajroldi referring to the claimant as a "good girl" on 19 January 2019. however, Mr Ajroldi did not attend the hearing to possibly contradict claimant and because of the numerous references below we accept the claimant's contention that he referred to her in such terms on that specific date. Indeed, there is a plethora of documentary evidence to corroborate that Mr Ajroldi referred to the claimant as a "good girl" frequently, which was not, as Mr Palmer puts it, as jocular comments.

47. On 5 February 2018 Mr Ajroldi responded to the claimant saying that she will do some identified work with the comment "Good girl!". The claimant showed her irritation with 2 emojis - 🤦 ♀ - and then proceeded to make her feelings even clearer to her line manager "I'm an independent woman for goodness sake!! ;)". Mr Ajroldi played dumb: "Good girl is not appropriate…?" For which the claimant said "Hahah, just a little condescending". Not content with being told, apparently Mr Ajroldi wanted to retain the upper hand "Sorry… I didn't want to offend an independent woman" [see HB468-469].

48. On 12 February 2018 when complementing the claimant on a piece of work Mr Ajroldi steered the conversation in a different direction: "A part from when you tell me off I love working with you : -)". 30 Minutes later the claimant said "Good boy" to Mr Ajroldi and Mr Ajroldi said "Better… Good Girl" 15 minutes later. The claimant replied "Fuck off" for which Mr Ajroldi's response was "I love you too 😘".

49. On 23 February 2018 Mr Ajroldi said to the claimant during a lull in an otherwise amicable conversation, "Yeah… Listen good girl, any updated from CFS". For which the claimant responded: "I'm not even going to respond" Mr Ajroldi replied "😘" and then "Please". The claimant's response was "only if you promise not to use that

pharase again" and Mr Ajroldi responded "I promise". The claimant replied "Ok" and then "No I've not". Mr Ajroldi replied "Ok thanks good girl".

50. The WhatsApp record show an image downloaded on 3 April 2018 which is consistent with the claimant's allegation that Mr Ajroldi pulled an image off her Facebook account. That image was referred to by Mr Ajroldi "So you in this pic" [HB485]. We believe the claimant when she said that he thought that she looked fat and sent this image laughing as that is also consistent with his behaviour towards the claimant.

51. We find that Mr Ajroldi had saved some pictures of the claimant on his mobile phone and showed these pictures to the claimant on 9 April 2018 laughing and pointing to her face indicating that the claimant had put on weight. We accept the claimant's version of events that Mr Ajroldi thought that this was funny. However, it was clear to us that this fitted in with a pattern of controlling behaviour which made claimant feel degraded and humiliated.

52. Again, on 24 April 2018 during a conversation about money and pay Mr Ajroldi again referred to the claimant as "Good girl", which was the last reference in the documents. The claimant did not take issue with this comment, and it was clear to us that by this stage that Mr Ajroldi was not going to modify his behaviour [BB504-505].

53. The claimant was in the office on 26 April 2018. We accept her account as soon as she arrived at the office Mr Ajroldi got out a picture on his mobile phone which he laughed at. This is consistent with Mr Ajroldi's behaviour on 9 April 2018. We also accept the claimant's account that later that day Mr Ajroldi puffed out his cheeks and pretended to be an overweight person because he thought it was funny to embarrass the claimant.

54. Mr Vestey said in evidence that he had been meeting with the claimant around June 2018 in which the claimant asked to change teams. Mr Vestry said that he raised performance concerns with the claimant. We reject Mr Vestey's evidence. Having heard the totality of the evidence in this case, we determine that Mr Vestey did not tell us the truth. In such conflicts of evidence, we prefer to believe the claimant's account as more credible. In such a rigidly commercial environment, it is inconceivable that at this time there was not a shred of documentary corroboration about challenging this salesperson for her purported poor results.

55. Taking out his mobile phone and looking at pictures of the claimant and laughing and/or making degrading comments was a familiar aspect of Mr Ajroldi's behaviour. We accept the claimant's account of the instances on 22 May 2018, 14 June 2018 and 28 June 2018. On 29 June 2018 Mr Ajroldi demonstrated his preoccupation with the claimant weight when he changed the conversation to ask the claimant about her lunch. He and directed the claimant to what she should be eating stating "And you'll be back fit very soon". He then added "JUST JOKING" which anticipated the claimant's response that he had again overstepped the mark.

56. The claimant said that Mr Ajroldi's behaviour was improving around the summer of 2018, which appears to be corroborated with the contemporaneous documents. The claimant had a client renewal meeting which necessitated an overnight stay away from home and Mr Ajroldi insisted on coming with her. The claimant said in evidence that she was wary of his intentions, and she set out the circumstances of Mr Ajroldi's sexual

advances to her on 7 August 2018 in her statement at paragraph 21. We have no difficulty in believing that this is a true and accurate account. Mr Ajroldi apologised for his behaviour by text once he was rebuffed later that night [see HB546-547]. We find that Mr Ajroldi made unwelcome sexual advances to the claimant in her hotel room on the work-related stay and this included attempts to kiss and touch her as alleged.

57. Following Mr Ajroldi's harassment of the night before, the claimant reported that he was apologetic the following morning and promised it would never happen again. The claimant said in very clear terms that this behaviour needed to stop so if Mr Ajroldi did somehow believe that there might be some degree of reciprocation in the claimant's feelings, we accept the claimant's account that any possible doubt was removed by her clear rejection of Mr Ajroldi and her response both on the night that she rejected his advances and more tellingly on the following morning.

58. A seminal incident happened on 10 September 2018. While in the office Mr Ajroldi asked the claimant about her weekend and the claimant mentioned that she had gone on another date with someone that she had been seeing. Mr Ajroldi asked how they had met and the claimant told him that this was through a dating website. Mr Ajroldi responded by saying he wanted to join the same dating website but that he did not want to risk his wife finding out so he could pretend to be someone else. He said it would be funny if he organised a date with the claimant disguised as someone else and turned up instead of the person that she thought she was meeting. The claimant deleted the dating app and, we accept, that she felt shocked, disgusted and threatened. That is an entirely understandable reaction in the circumstances.

59. It was this point that Mr Ajroldi's relationship with the claimant changed. The claimant described him as becoming defensive and very aggressive towards her. This is reflected in the WhatsApp messages. The claimant contended that Mr Ajroldi also soured relationships with senior colleagues, and this appears to be evidenced by Mr Rachi Weerasinghe (a Senior Managing Partner) pronounced and excessive public criticism of the claimant on 19 September 2018 [HB573] with, from what we could detect, little justification. Indeed, that it was following Mr Weerasinghe's outburst that an emboldened Mr Ajroldi started shouting at the claimant on the telephoned and raised questions about whether she should be working for the respondent.

60. It was around this time that Mr Ajroldi approached Ms Wyatt (HR Business Partner) to instigate performance management proceedings against the claimant and having heard the totality of the evidence we believe the claimant and we do not believe Ms Wyatt and Mr Vestey.

61. On 24 September 2018 Mr Ajroldi told the claimant that he was implementing a performance improvement plan by issuing a "Call to Action" ("CTA") letter. The claimant said that came completely out of the blue, and we are satisfied with her account. The claimant said that Mr Ajroldi intimated that the CTA would happen in the first quarter of the year end. The claimant was understandably concerned and questioned Mr Ajroldi about this which led to a further deterioration in Mr Ajroldi's attitude towards her. It was the respondent's case at the hearing and Mr Vestry evidence that he pressed for the CTA. We reject Mr Vestry's evidence, propped up by Ms Wyatt, on this point and believe that this is a deliberate attempt to mislead the Tribunal so that the respondent can evade liability for Mr Ajroldi's sexual harassment of the claimant. This is an attempt to cover up Mr Ajroldi's sexually harassing

behaviour. At no stage in the various conversations that followed when the claimant raised repeatedly her concerns about the CTA did Mr Vestry "come clean" and say that he instigated this. There are no contemporaneous documents that might corroborate this assertion. Furthermore, as late as early November 2018 after the claimant's formal grievance, when the claimant specifically raised Mr Ajroldi's role in the CTA, Mr Vestry did not say that he pressed for this [see HB649-650]. It was not until after the claimant's grievance that Mr Vestey claimed that he started the CTA. We do not believe that Mr Vestry was deceitful to the claimant only, we find that he perpetuated this lie to us.

62. On 26 September 2018 the claimant approached Ms Wyatt for some advice [HB597]. Ms Wyatt said that she was not available, and the next day Mr Ajroldi met with the claimant to implement the CTA. Mr Ajroldi read out a criteria or indicator that set immediate performance objectives of: (1) achieving a £100,000 target; (2) adding 4 new prospects per week; (3) accompanying Mr Ajroldi to client visits; (4) having face-to-face meetings with Mr Ajroldi and copying every correspondence to Mr Ajroldi. Mr Ajroldi told the claimant that if she did as she was told she would be fine which the claimant regarded as threatening. He told the claimant that she needed to bring in revenue within the next 30 days, which contrasts with the draft versions of the CTA letters provided in the hearing bundle that set review periods of 60 days. However, the reduced review timescale is consistent with the version of the CTA document completed by Mr Ajroldi [HB590], such departure being approved by Ms Wyatt [HB588] (with the rest of the email chain in the hearing bundle obscured).

63. The claimant approached Mr Vestey (UK Public Sector and Northern Commercial Sales RVP) for guidance on a matter. She was out of her dept in responding to her line manager's behaviour and did not want to escalate matters. She indicated in evidence that she feared that she might be a casualty in any repercussions and given what ensued and, given our assessment of how this employer behaved, that fear was both justified and born out. The claimant met with Mr Vestey the following day, i.e., on 27 September 2018. The claimant did not take a note of this meeting, which is understandable; however, we are surprised that Mr Vestry did not make a record of this meeting, either at the meeting or shortly thereafter, particularly as he contended this was the second occasion that he raised concerns with the claimant about her performance and, he said, he was at that time pressing Mr Ajroldi for the claimant to be placed on a performance review process. We believe the claimant asked for a transfer to another team. Under the circumstances, she likely hinted that she was concerned about Mr Ajroldi's behaviour, but we do not think that she explicitly complained about Mr Ajroldi's sexual harassment or his unwanted behaviour. If she had complained formally or forcefully about Mr Ajroldi conduct then this would have escalated matters. Mr Vestey version of this meeting is rejected because if the claimant had raised concerns about her territory, then he would have addressed this and, if there were concerns about the claimant's performance (which we do not accept there was) then Mr Vestey would have responded to these also. We suspect that Mr Vestey guessed or somehow understood the nature of the claimant's concerns and directed her away from raising these either formally or clearly.

64. On 27 September 2018, Mr Ajroldi proceeded to tell the claimant that he knew that she had been trying to speak to Ms Wyatt and Mr Vestry and that he was informed of everything as that was how the respondent worked. He proceeded to threaten the claimant that if she did not deliver his objectives then he would manage her out of the

business. The claimant said, and we accept, that the standard time for a CTA was 60 days. We reject the contention from the respondent's witnesses that a 30-day review period was widespread because this was not consistent with the documents nor did such a shortened period appear tenable for such a formal assessment.

65. The claimant was genuinely perplexed about Mr Ajroldi's purported performance concerns, particularly as she thought that she was doing a good job – which was also born out on 18 October 2018 when both Mr Ajroldi documented his agreement that the claimant had done "an excellent job this year" [HB613] and in respect of a separate matter a colleague John Wright had praised the claimant for a deal which "was entirely Fran's doing. Great Job" [HB614]. We note that on the respondent's own target and their own figures at the "End of 2017 Stack Ranking" the claimant excelled, although this on a low target. Nevertheless, her performance was between 3 times and 5 times better than her colleagues [HB563]. This contrasts with the effort Mr Vestry went to at the hearing to portray the claimant as a poor performer. The respondent's case on this took some deciphering. The tables provided were not in any readily intelligible format and they require explanation from Mr Vestry. Mr Vestry referred to tables which he said were attached to contemporaneous emails from Mr Ajroldi. we could not see that there was any such attachment identified in the emails and the text of the emails was obscured or redacted so that we could not see any context for the text or email chain [see HB564, 565, 567, 568, 569, 604, 605, 606, 607]. When the Tribunal queried these emails, the respondent proffered no adequate explanation as to why the emails had not been fully reproduced. This was suspicious and contributed to our assessment that Mr Vestry in particular was an unreliable witness and caution need to be applied in accepting the respondent's evidence. He and others sought to portray the claimant in a manner so as to discredit her and to justify his treatment of her and the treatment of others. We are not at all persuaded that the claimant's performance was deficient and most significantly that a performance review has required at that stage.

66. On 14 October 2018 the claimant approached Mr Vestey again. She asked to keep "this between ourselves the moment as its highly sensitive" [HB738]. Mr Vestry said that he was ill at first and when the claimant attempted to rearrange twice it looked as though he could not avoid this appointment [HB737, 738].

67. We accept the claimant's evidence that Mr Ajroldi perpetuated a hostile and intimidating environment throughout this period, specifically in respect of the incidents of 15 October 2018, 16 October 2018 and 22 October 2018 identified on the list of issues. We make this finding because as stated above we regard the claimant as an honest and credible witness. Mr Ajroldi has not attended the hearing to give his version of events and no credible explanation has been proffered to explain his non-attendance. We do not regard Mr Vestry as a truthful historian, nor do we regard Ms Wyatt as a credible witness, so we reject her version of events also.

68. Mr Vestey met with the claimant on 22 October 2018, which was a Monday. Mr Vestry accepted that the claimant raised a complaint of sexual harassment against Mr Ajroldi; indeed, that is confirmed by a near contemporaneous document [HB618]. This is a protected act pursuant to s27(2)(d) ERA. Furthermore, the claimant was explicit at this meeting that Mr Ajroldi had started the CTA as he was trying to protect himself against his harassing behaviour. The claimant said and we accept that Mr Vestry tried to shut down her complaint by saying that "he's done nothing wrong", however, the claimant was insistent in her protest about Mr Ajroldi's behaviour and by that stage it was clear

that her complaint was going to come out. Mr Vestry placed great emphasis that the claimant did not tell him about the exchange in WhatApp messages and the supposed flirty relationship that she had with Mr Ajroldi. This indicates to the panel a surprisingly closed mind and condemnatory attitude by Mr Vestry. In effect he blamed the victim of sexual harassment for bringing this on herself.

69. Given that the claimant had made a complaint of sexual harassment about her line manager, we were puzzled about Mr Vestry's way of addressing this. He said that he sent Ms Wyatt a meeting appointment for ½-hour on the Thursday, which was marked "urgent and confidential". Yet he did not seek immediate advice from his HR colleagues (as Ms Wyatt was on holiday). Ms Wyatt rang him the next day. She accepted that Mr Vestry mentioned that the claimant had reported that her line manager had sexually harassed her, but she proposed no immediate action. We thought the behaviour of both this manager and the human resources profession was odd and suspicious. We determine their evidence on this response was not credible.

70. Ms Wyatt telephoned the claimant after her ½-hour discussion with Mr Vestry on the 25 October 2018. She said that the claimant was unsure that she wanted to make a formal complaint and that the claimant also referred to Tony Wood's inappropriate behaviour. We accept the claimant's evidence that she asked that this matter be kept confidential from Mr Emanuele Oliveri del Castilo as he was Mr Ajroldi's friend, a very senior manager and the claimant feared that she would not get a fair hearing. Ms Wyatt subsequently confirmed that Mr Oliveri del Castilo was informed of her complaint, which breached the claimant's confidence.

71. On 29 October 2018 Mr Ajroldi told the claimant that he had decided to take her off the CTA. He said that was because there had been a significant improvement in her performance. This is recorded in the claimant grievance of the following day, so the claimant's version of events is corroborated with a near contemporaneous record. In contrast, Mr Vestry's account was that Mr Ajroldi approached him unsolicited and said that he wanted to *pause* the CTA. This dispute is significant both in determining a crucial part of the history of these events and in determining the credibility of the various historians. The claimant account is consistent with Mr Ajroldi knowing all about the claimant's initial complaint and her intention to pursue this formally. Mr Ajroldi realising that his conduct (and that of others) might be under scrutiny then sought to withdraw his attack on the claimant. There is no reason he would attempt to pause the CTA. This represents a clear and understandable narrative which is entirely consistent with both the paper-trail and with the lack of documents (where we expect to see appropriate documentation).

72. In contrast, Mr Vestry's version of events does not make sense. It is not credible that Mr Ajroldi would propose a ceasefire and effectively leaving the CTA hanging over the claimant. That makes no sense, nor does Mr Vestry agreement with Mr Ajroldi's proposal and the agreement of Ms Wyatt. It is also not consistent with any contemporaneous documentation or with the CTA process and the fact that none of these 3 recorded such an important development in any contemporaneous exchange is implausible. Mr Vestry was not able to explain convincing why Mr Ajroldi would propose a pause in the CVA, particularly when – he said – they did not discuss his behaviour with the claimant. Mr Vestry said that he was meticulous in not discussing the claimant's allegations with his direct-report which is incredible in the circumstances. We reject Mr Vestry's evidence on this point. This is a deliberately

attempted to mislead the Tribunal on such a crucial aspect of this case. Because Mr Vestry lied to us on this important aspect of his evidence, we are unwilling to accept anything he says, which is not independently corroborated. We note the consequence of this finding; we do not make this finding lightly. However, our over-riding objective is to do justice to this case.

73. The respondent had a very brief Equal Opportunity Policy [HB177-178]. It sets no plans nor targets so it is merely aspirational, at best, and rather rudimentary. The policy is not contractually binding which is puzzling as there are no tangible commitments. The document said that it was last reviewed on 1 January 2018 but the respondent has not disclosed any details of that review. If the Equal Opportunity Policy was, in fact, reviewed on 1 January 2018, it would be surprising if it was regarded as fit for purpose as it reads like a policy that might be drawn up decades before so as to demonstrate a paper-commitment to equality issues. The respondent has a policy that precludes personal and romantic relationships, but Ms Wyatt did not bring to the claimant's attention any policy in respect of addressing sexual harassment in the workplace, which is perplexing because the hearing bundle contained a "global" policy in this regard [HB198-203]. The policy referred to US legislation in detail and Australia legislation. There is one reference to the UK, in respect of the Equal Opportunities Commission; although the EOC ceased to exist 11 years before this policy was drawn up in 2018.

74. Mr Palmer referred us to a copy of the respondent's on-line course for preventing workplace harassment from 2009 and exported in November 2019 [HB278-334]. The tone of the course is light and simplistic and not at all challenging. Our reading of the course is that the example given might give the impression that a recipient of inappropriate behaviour might need to object for this to constitute harassment [see HB294-297] and this is an out-of-date approach. Where the course does talk about taking action, the assertion "Once you report a problem, your company will determine whether to **investigate**, if necessary" [HB323] is off-putting and fails to demonstrate a robust commitment to tackling harassment. In contrast to this document, we think investigating reported harassment is essential in all circumstances. The half-hearted indication that something might then happen is if harassment is reported is not really satisifactory. Given that the respondent undertakes much public sector work it is difficult to reconcile this insipid commitment with the Public Sector Equality Duty required for the clients upon whom the respondent seeks work. Mr Ajroldi training record showed that he completed the preventing workplace harassment course for 45 minutes on 16 February 2011 and almost 1-hour on the supervisor's course on 14 March 2013 [HB414-415]. There are no records of anyone else from the respondent's participating in these on-line courses.

75. The claimant was referred to the grievance procedure [HB195-197] by Ms Wyatt. The claimant raised her grievance the following on 30 October 2018 [HB626, 623-637]. Ms Wyatt shared the claimant's grievance with Mr Vestry promptly [HB639-640], which he replied "This doesn't look good" [HB639]. Nevertheless, it did not look so bad as to deter Mr Vestry parking the claimant's grievance while he went off to a symposium in Barcelona with Mr Ajroldi. This appears to be in breach of the global policy on discrimination and harassment which states that the company will promptly conduct a thorough investigation upon receipt of such a complaint [HB201]. Indeed, such a serious complaint was not promptly investigated, particularly as both Mr Vestry and

Ms Wyatt said that they did not think to remove Mr A from the workplace, either through suspension or working from home which it what the Tribunal would have expected.

76. The claimant contended that during a conversation with Ms Wyatt, which the claimant said occurred on 30 November 2018, she asked if Mr Oliveri del Castilo knew about the grievance and that Ms Wyatt said that she did. Ms Wyatt was less than satisfactory in answering this question at the Tribunal, which was one of the factors which lead to us not believing her. We also regarded the claimant as a fundamentally truthful witness, and we believe that it was important to her that this was kept confidential as she feared that if Mr Oliveri del Castillo knew then the senior managers would close ranks and her grievance would be doomed. Ms Wyatt was evasive about who she told or knew Mr Vestry told about the grievance, but could not explain adequately why senior managers needed to know about the claimant's allegations before they were investigated. This appears to be in breach of the respondent's global policy on discrimination and harassment [see HB201] and the grievance policy [see HB195] as both emphasise confidentiality.

77. The claimant contends that she felt that colleagues had been warned off speaking to her once she submitted her grievance. Other that finding that Ms Wyatt and/or Mr Vestry were not discreet about this confidential matter we make not further findings of fact. Unsurprising there is no evidence for us to make a finding that colleagues had been warned off speaking to the claimant. However, we heard evidence from Mr McAdam about a sexist and sexualised culture at the respondent, which we believe. Mr McAdam said that this behaviour was part of this culture and publicly admitted and apologised for his deplorable behaviour. We believe his evidence. We have also seen evidence of Mr Tony Wood's "jokes". We were truly astonished that despite the respondent being aware of this behaviour, it was not challenged, and this diminishes the respondent's witnesses in the eyes of the Tribunal. So, we find that Mr Vestry and other senior managers allowed an unacceptable culture to prevail at the respondent company. Against this background, it is understandable that when the claimant complained about her manager's behaviour, her colleagues shied away from her and kept their heads down. Those that behaved badly no doubt wanted to keep out of the spotlight and the bystanders typically avoided standing-up.

78. The first tangible step to investigate the claimant's grievance occurred over 2 weeks later on 14 November 2018, when Mr Vestry and Ms Wyatt met Mr Ajroldi. There is a record of this meeting at pages 654 to 671, but with this respondent we are reluctant to accept this as an accurate record of events. The whole respondent disclosures are riddled with unexplained redactions and partial email chains. The fact that these documents were only disclosed late in the process convinces us that this is a respondent that seeks to strictly control the flow of information and that in not the behaviour of an open or honest party to proceedings.

79. It is unusual in sexual harassment complaint's not to speak to the complaint first to clarify the issues and then commence the investigation with the complainant, when we asked both Mr Vestry and Ms Wyatt why they did not speak to the claimant at the outset they could provide no reason. Both said that the claimant's grievance was sufficiently detailed so that they had no further question. This is particularly unconvincing as no attempt was made to ascertain whether the claimant could identify any witnesses. The claimant contended that Mr Vestry and Ms Wyatt's priority was more to limit the scope of the investigation than address her concerns and her

contention appears the more credible, particularly as she was not given the opportunity to respond to Mr Ajroldi's evidence in advance of the grievance hearing.

80. So, the respondent's investigation of the claimant's grievance amounted to reading the claimant's complaint and speaking with Mr Ajroldi 2 weeks later, during which time the claimant heard nothing from Mr Vestry or Ms Wyatt. Ms Wyatt then set a date for the claimant's grievance hearing, yet she did not provide the claimant with a copy of or details of Mr Ajroldi's response. The claimant complained about the lack of information and support and that she was effectively bounced into the grievance hearing at short notice. The claimant asked to be accompanied by a workplace colleague whom she identified, and Ms Wyatt refused. This is in breach of s10 Employment Relations Act 1999, the ACAS Code of Practice on Disciplinary and Grievance Procedures and the respondent's own Grievance Policy. Mr Vestry said he played no part in this decision and Ms Wyatt purported to justify this exclusion on the basis that the claimant's female colleague was a team member and reported to Mr Ajroldi, that she was not there to take notes, and that she was concerned about confidentiality. These are not valid concerns and we resoundly reject them. At best this is a poor attempt to justify denying the claimant her statutory and contracts rights. However, this decision was not just a wrong choice made by an experienced HR practitioner and ratified by a senior manager, in the context of this case, we determine that this decision was so wrong, that it was intended to deliberately put the claimant at a disadvantage at the grievance hearing. It was aimed at isolating the claimant and precluded a fair, open and transparent process taking effect. When Mr Vestry said that the claimant chose to proceed unaccompanied at the hearing in the grievance outcome letter [HB749], this was window-dressing designed to cover up the transgression.

81. Grievance hearing proceeded on 21 November 2018. The claimant contended that she was not believed at the grievance hearing, and this is consistent with the evidence of Mr Vestry and Ms Wyatt. The had claimant founded herself in a difficult situation with her line manager, which she did not handle well. She hoped to extricate herself by side-stepping Mr Ajroldi's inappropriate behaviour rather than challenge this head on. When this did not work, she did not know what to do and it was then she went to Human Resources. The claimant did not receive a sympathetic reception from either Mr Vestry or Ms Wyatt, either because of a misplaced sense of protecting the organisation or because they felt that this particular victim of sexual harassment bore some culpability for the behaviour of her manager. What surprised the Tribunal was the condemnatory attitude of both Mr Vestry and Ms Wyatt towards the claimant at the hearing. Both were overtly sceptical of the claimant's version of events, both said that they regarded the claimant's behaviour as "reciprocal" and that she "participated" in the behaviour.

82. The claimant raised some further issues the following day in respect of Mr Ajroldi's attempts to discredit her and asked that Mr Vestry and Mr Wyatt interview 4 named individuals, including Mr Oliveri del Castilo. Neither Mr Vestry nor Ms Wyatt spoke to these individuals so it was deliberately misleading for Mr Vestry to write to the claimant to say "these have also been considered as part of my investigation" [HB749] because they were not, these further concerns were dismissed without further enquiry. To say that they were unable to find further evidence of breaches of confidentiality [HB750] is a gross distortion of the truth, because these 2 individuals chose not to investigate the claimant's concerns and yet dismiss them. This undermines the integrity of both.

83. The grievance outcome upheld the claimant's complaints [HB749-751]. Mr Vestry concluded that there was inappropriate behaviour and comments made towards the claimant from Mr Ajroldi. He placed particular evidence on the "incontrovertible proof" of the WhatsApp messages. Mr Vestry remarked that:

> It is unfortunate that the WhatsApp exchanges between you appeared to be reciprocated on a number of occasions. I do not believe that the behaviour exhibited by either Giuseppe or you in these exchanges was in line with our expectations of associates generally and including under the Companies Code of Conduct.
> Despite this, in his position as your line manager, it is clear that Giuseppe had the greater responsibility. As such, I hold Giuseppe accountable for these exchanges and the effect that they have had on you. I will therefore be recommending that formal disciplinary proceedings be commenced against Giuseppe under the Company's Disciplinary Policy.

84. The claimant appealed against the grievance outcome on 23 November 2018 [HB756]. The claimant contended that the grievance outcome did not properly acknowledge the harassment after February 2018 and determined that Mr Ajroldi's behaviour appeared to be reciprocated. The claimant also complained about the process and the effect that it had on her health. The claimant went off on certified sick leave that day and did not return to work until 7 May 2019.

85. Mr Ajroldi either resigned on 29 November 2018 or left the respondent's employment amicably. He was not dismissed. It came out at the hearing that Mr Ajroldi had entered into a settlement agreement although no further information was forthcoming from the respondent.

86. On 4 December 2018 claimant wrote to Ms Dorkins [HB798-799]. She mentioned that she was still having counselling sessions and expressed her concerns about resolving her grievance. She restated/contended that she had a problem with Mr Wood's harassment and inappropriate behaviour when she first started with the respondent.

87. Mr Alan Miller wrote to the claimant with the grievance appeal outcome [HB813-816]. He recognised that the claimant felt under pressure to please her boss and keep a job and quoted some examples to justify his conclusion that the exchanges between the claimant and Mr Ajroldi appeared to be reciprocated. It is difficult to ascertain whether Mr Miller's conclusion stem from an inability to understand workplace coercive behaviour or whether he was merely towing what we believe to be the company line. Nevertheless we regard his conclusion as not just wrong, but also a poor reflection upon his credibility. Mr Miller also accepted Mr Vestry and Ms Wyatt's assertion that Mr Vestey pressed Mr Ajroldi to give the claimant a CTA, despite the concerning lack of contemporaneous evidence, the apparent failure to follow the proper process and the lack of consistency and substance of the Vestry-Wyatt explanation. The claimant responded to this outcome on 31 December 2018 [HB819]. This should stand as the appropriate – and honest – response to her grievance. We noted the ongoing upset that both Mr Vestry and Mr Miller caused the claimant by their handling of the claimant's internal complaints. This was not a matter of merely coming to the wrong conclusion. It was a matter of choosing to come to an obviously unsustainable conclusion.

88. The only other female member of the claimant's sales team - who also happened to be the claimant's debarred representative - left the respondent's employment in mid-February 2019.

89. On 11 February 2019 Mr Dorkin wrote to the claimant to confirm that a decision had been made to remove her territory and recruit for her position as she had been off for almost 3 months [HB825].

90. In early March 2019, Mr McAdams (the claimant's witness) created another WhatsApp group that included Mr Andrew Bissett, the claimant's new line manager. This was outside the work group WhatsApp, and we note that the claimant was not included in this apparently male-only group. Mr Bissett posted a message on this alternative group on 3 April 2019 to caution the members that the claimant was now on the work group chat. For which Mr McAdam replied, "no mention of slappers with shaven minges" and Mr Wood referred to the claimant as an "oxygen thief". Mr Bissett said in evidence that he contacted both by telephone to make clear that he would not tolerate this language or comments, but we do not believe him. If he was going to take informal action then he could easily do this by posting a message, which would serve as an example to the others, and there is no contemporary evidence to corroborate such a limited response. A more formal response would be appropriate from this new manager, especially in the circumstances of this workplace, but it is clear Mr Bissett made no reference to an equal opportunities process, human resources guidance or an informal response. We are also aware of posts made by Mr Bissett to his former sales team during late 2015 to mid-2016 which appear both inappropriate and sexist [see HB1014-1024]. This indicates a toxic culture where such posts are tolerated and suggests Mr Bissett was part of the problem.

91. The claimant was referred to occupational health report on 21 March 2019 [HB827-831]. This confirmed that claimant suffered stress and anxiety. The occupational health practitioner was satisfied that the claimant provided a clear picture and did not exaggerate her symptoms. She detailed her current symptoms, recorded the claimant's antidepressant medication and that the claimant had undertaken counselling. The report noted that the claimant was anxious about her territory and that she found this upsetting. She recommended the claimant return to work with support structure that she set out.

92. Despite the respondent's occupational health practitioner's approval and the claimant's readiness to return to work, Ms Dorkins was insistent upon the claimant's GP's formal sign-off of her fitness to return to work. The claimant regarded this a placing another obstacle in her path as this requirement was outside the policy and ran counter to another colleague who had been absent for a longer period [see HB835-838]. Ms Dorkins requirement for the extra sign-off stands in marked contrast to the respondent's unwillingness to demonstrate either a flexible or supportive approach with regard to the claimant's territory and target. Furthermore, on 24 May 2019 the claimant was so concerned about her territory and the prospects thereto that her occupation health nurse wrote to Ms Dorkins on her behalf [HB863].

93. On 15 May 2019 the claimant provided Ms Dorkins with a detailed objection to the territory that she had been assigned. She objected to both the quantity and the quality of the leads that had been assigned to her. She said that she was not being given the opportunity to have a successful return to work because of the limited opportunities and she said that this is making her anxious [HB854-855]. Ms Dawkins said she was not clear that the leads were any better or worse than elsewhere and suggested a 3-month review. She said that the allocation of territories was a business decision and the company's discretion which did not just depend upon the claimant but also the rest

of the team [HB 866-867]. The claimant came back with a more expansive reasons why the prospect she had been given was not a good opportunity [HB865-866].

94. Ms Dawkins told off the claimant for not interacting with Mr Woods on 2 August 2019 [HB894-895]. She refused the claimant a move to another team.

95. The claimant was given a number of clients marked red at time which meant that, prior to her involvement, the clients given were known to cancel. At around the same time Mrs Dorkins relayed the refusal to reduce the claimant's target. The renewals for the claimant old territories were not set against the claimant's target and we accept the claimant's evidence that 1 of the 3 accounts handed to her had already been cancelled and the claimant was not protected from the revenue loss.

96. There were alternative roles that the claimant could undertake [see HB993 for a list of vacancies] yet the respondent would not consider a move.

97. On 12 September 2019 the claimant said that she could not work with Mr Wood due to his inappropriate historical behaviour [HB907-908]. She was also clear that she had no confidence that this would be investigated properly due to her experience of how the respondent handled these types of grievances. The claimant had complained about Mr Wood's behaviour, originally to Mr Ajroldi and then during the investigation into Mr Ajroldi's behaviour. To say as Ms Dorkins did that the respondent was unaware of these complaints is disingenuous and to insist that the claimant raise another formal grievance in order to address this is unfathomable.

98. On 23 September 2019 Ms Wyatt remarked to Mrs Dorkins that it was getting too much for the claimant.

99. On 24 September 2019 the claimant Mr Vestey and Ms Dorkins in respect of a forthcoming telephone conference call. She said

> After a couple of conversations with Andrew [Blisset] regarding Thursday call, I've been advised to outline what I'd like to gain clarity on by the end of our conversation.
> After four months of desperately trying to reintegrate into the business, we have several fundamental areas why this hasn't been successful; the assigned poor territory/clients and my refusal to work with another Colleague who has previously been inappropriate and created a hostile work environment.
> I assume by the blatant last-minute, out of the blue, allocation of decent prospects after I told Andrew of my intentions, this is an attempt to cover up the less favourable treatment/victimization I've been complaining about for the last four months.
> Why else would Andrew randomly assigned a decent number of good prospects to me when that was never an option before now,

100. Following this conference call on 26 September 2019, Ms Dorkins wrote formally to the claimant about a number of matters [HB933-935]. She complained about the claimant's relationship with Mr Wood, particularly as, she said, the claimant had not raised a grievance against him. Ms Dorkins rejected that the relationship with the company had broken down, yet she refused to consider alternative roles or work in alternative teams. The claimant corrected Ms Dorkins in her equally formal letter of 3 October 2019 [HB945-947]. The Tribunal regards the claimant's version of events as the more accurate as we prefer the claimant more honest account than Ms Dorkins' respondent-orientate gloss on events. It is clear to us at this stage that the relationship had broken down irreparably at this stage.

101. The claimant resigned on 15 October 2019, with immediate effect [HB966]. The claimant referred to her recent experiences as follows:

> Fundamental breach of contract; significantly change my territory, recruiting for my position when I was still employed, not investigating a sexual harassment complaint at the time it was raised.
> Last straw doctrine; even though I waved your breaches in the past, I'm no longer willing to do so. The continued bullying and victimization and less favourable treatment I've received as a result of a previous harassment grievance, not creating a safe environment to work in, forcing me to work in a hostile environment and not sporting a reasonable request to move into a different team to allow me to perform well is the final act and one I can no longer tolerate.
> Breach of trust and confidence; I've recently become aware of the business deformation of my character as a result of a previous grievance which is damage my reputation and career prospects
> Failing to appropriately respond to a reasonable adjustment request.

102. The list of issues identified the following as amounting to a fundamental breach of contract individually:
    (a) the lack of a safe working environment.
    (b) The respondents alleged failings in the claimant's performance
    (c) the respondent's failure to appropriately consider a reasonable adjustments request, i.e. moved to another team where she would not be at a severe disadvantage
    (d) that the claimant was victimised and treated less favourably due to her mental disability or state of health as a result of the sexual harassment.
    (e) The respondent unreasonably refused to look at workplace adjustments.

103. Notwithstanding the claimant contended that the above represented a repudiation of her employment, she said in evidence that she regarded the following 2 matters as key which by themselves destroyed the employment relationship:
    (i) The provision of the new territory and the recruitment for someone to take over her patch while she was off on sick leave.
    (ii) The respondent failed to address ongoing matters particularly in respect of Mr Wood.

    The claimant said it was those 2 issues that caused a deterioration of her health, and these 2 over-riding concerns was consistent with the claimant's email to Mr Vestry and Ms Dorkins of 24 September 2019.

Our determination

104. We accept that it might be difficult to understand the dynamics and context of the early exchanges without hearing from a key protagonist. Nevertheless, the respondent was given every opportunity to call Mr Ajroldi to explain his version of events and to respond to the claimant's allegations. Yet they chose not to call him nor to provide a credible explanation as to why they did not call him or attempt to call him to give evidence.

105. The respondent's position at the Tribunal was difficult to understand. Essentially, the respondent disputed that discrimination occurred but contended that if it did, then it was not significant because the claimant brought this on herself "in the circumstances of her own behaviour".

106. The claimant described being recruited by her line manager who then supervised her induction, training, work allocated, and targets given. In effect Mr Ajroldi had near-total authority over her. The claimant did not complain about Mr Ajroldi's behaviour at first, instead she sought to deflect this. This perhaps reflected her inexperience with such conduct or perhaps an instinct not to make a fuss. The claimant was not allocated a mentor and there was no workplace network for women or for new employees where she might discuss or raise concerns and receive some support. Her new job was fairly well paid, and the claimant was a single parent with a child to support. We believe the claimant and Mr McAdam that the respondent's culture was laddish and probably toxic and all encompassing, particularly as we have seen evidence of posts from Mr Wood, Mr Bisset and Mr McAdam [see HB557, 558, 559, 899, 1014-1031]. We are an experienced Tribunal and note that documentary evidence indicating such a discriminatory culture is rare, so when we read nasty and sexist posts written by 3 of the claimant's colleagues, we see the credence in her criticism of the respondent.

107. In any event, the claimant's narrative was clear, consistent with the documents and credible – and it reflects the coercive conduct that is prevalent in such claims of persistent sexual harassment. The harassment started slightly at first with comments, particularly about the claimant's appearance and her standing (i.e. good girl) which then escalated into inappropriate advances. When he was rebuffed Mr Ajroldi took revenge upon the claimant and/or tried to cover his tracks by implementing a performance programme designed to manage her out of the business. When the claimant challenged this various managers attempted to cover Mr Ajroldi's tracks by pretending Mr Vestey had started the performance process, they denied the claimant's complains and eventually further attempted to manage her out of the business.

<u>Harassment</u>

108. There are 3 essential elements of a harassment claim under s23(1) EqA: (a) unwanted conduct; (b) that has the prescribed purpose or effect; and (c) that it relates to a relevant protected characteristic.

109. Under sexual – as distinct from sex-related – harassment, according to s26(2) EqA league claimant needs to establish that the respondent or its employee or representative, engaged in unwanted conduct of a sexual nature, and is conduct of the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

110. In *Driskel v Peninsular Business Services Ltd & Others 2000 IRLR 151*, the EAT determined that sexual harassment should be defined on a common-sense basis by reference to the facts of each particular case.

111. A claim under s26(3) is similar to and victimisation claim in that it gives a remedy to a person who is treated detrimentally because of her refusal to tolerate the unlawful conduct. However, the claimant does not need to establish a *protected act* but she must show *less favourable treatment* i.e. by reference to an actual or hypothetical comparator; unfavourable treatment is not enough. That said, the less favourable treatment may be perpetrated by the person who carried out the original harassment or by a different person. Not many claims are brought under s23(3) EqA because the claimant has to make out all of the elements under s26(1) and s26(2) EqA as well as less favourable treatment and a causal link.

112. In respect of allegation H3, there are 6 documented instances of Mr Ajroldi pressing the claimant to post a better or different picture on her Linked-In account and for the claimant to post a picture suitable to him on the respondent's intranet. In addition to the documented cases, the claimant said that Mr Ajroldi chased her continually about her picture, which is entirely credible and which we believe. The claimant already had a picture uploaded to her Linked-In account and Mr Ajroldi's first request was made just over 2 months after the claimant commenced work with him and continued for another 2 months. We accept the claimant's evidence that Mr Ajroldi was looking for her to post a sexually attractive picture on the internet because he did not believe that the picture that she had previously posted made the most out of her looks. This was an wholly inappropriate exchange between a manager and his female subordinate. It was sexual harassment because Mr Ajroldi appears to have raised and pursued his requests as he was sexually attracted to the claimant, and we believe the claimant's evidence that he pursued her for a sexual relationship. In respect of sex-related harassment, we do not believe that Mr Arjoldi would have been so insistent that a new male employee change is internet photograph and provide one in which he was "beautiful". Various respondent witness referred to this as banter, suggesting that this was harmless. It was not. It was persistent, at least until Mr Arjoldi got his way and the claimant updated her photograph externally and posted a picture to satisfy him on the intranet. Mr Ajroldi's behaviour was unwanted because the claimant said so in evidence and, if there was any doubt on this, her unwillingness is demonstrated by the length of time this new employee took to comply with her manager instruction. It was demeaning that a younger woman was so obviously judged upon her looks and her photograph was regarded as a trophy.

113. H6. Language evolves over time. Words and phrases that might once have seemed harmless are now regarded as racial, homophobic and sexist slurs. Some phrases, whilst not regarded as taboo, are generally regarded as inappropriate in the workplace and referring to a woman in her late-30s with a school-age child as a girl is demeaning. Mr Ajroldi was a mature man, not elderly. We do not believe that he would have referred to a female client or Ms Wyatt or Mrs Dorkins or HM or any other employee as a girl, so this was used to assert or reinforce his authority or power over her.

114. We have no doubt that this is a respondent that would and did scour every piece of available correspondence to find something to discredit the claimant. Indeed, the respondent often raised documents to challenge the claimant where the context was obscured. There was no evidence that the claimant or anyone else referred to men as

"boys". So, this was not jocular, particularly as Mr Ajroldi continued to refer to the claimant as a girl after she objected and after she referred to him as a boy in an attempt to make him see how offensive she regarded this language.

115. H7. The claimant's complaints and the 7 instances quoted from 3 April 2018 to 29 June 2019 are entirely credible. We accept that these incidents occurred and that they represent harassing behaviour. It is self-evident that this is sexual harassment as it related to the claimant's appearance and Mr Arjoldi's perception of her attractiveness. The claimant found Mr Ajroldi's persistent mocking of her weight humiliating and offensive and which is incontrovertible.

116. H8. Our findings of fact make clear that we believe the claimant's account that Mr Ajroldi pressed her to attend the client visit in April 2019. Mr Arjoldi made unwelcome sexual advances to the claimant, which included an attempt to kiss her and touching her, so this was serious sexual harassment. The fact that the claimant was upset by the harassment she encountered from Mr Arjoldi was not in any way vitiated by the fact that she dated other men. We reject Mr Vestey's outdated attitude towards women (displayed in his criticism of the claimant at the work social). Even if the claimant was sexually assertive, which we do not find that she was, it was her right to express her sexuality without prejudice to her right to decide what she found offensive. It indicated a rather skewered moral compass for respondent managers to tolerate the behaviour of the claimant's male colleagues with no formal action to date, yet criticise the claimant for reciprocal behaviour.

117. H9. The incident of 10 September 2018 in respect of the dating website clearly amounts to sexual harassment. The incident occurred as described by the claimant and had such a profound effect upon her that she changed her behaviour and deleted the dating app.

118. The claim under H10 is brought under s26(3) EqA. We did not hear from Mr Weerasinghe (or Mr Ajroldi) and there was little credible investigation undertaken by Mr Vestey in respect of the claimant's grievance, so it is difficult to understand the respondent's evidence in respect of this allegation. Mr Weerasinghe might be the type of manager that fires off intemperate correspondence with little thought or he may have been influenced by Mr Ajroldi. The claimant did not contend that Mr Ajroldi manufactured the incident, merely that Mr Weerasinghe got hold of the wrong end of the stick and that instead of clarifying the situation Mr Ajroldi offered no assistance and stirred the pot a little. The allegation is against Mr Ajroldi for his role in Mr Weerasinghe's intemperate outburst. We heard the claimant's account and read the documents, we believe the index issue was overplayed at this stage to cast the claimant in a bad light and to attempt to justify the CTA. We accept the claimant's contention that at the time that it just was not that big a deal. It was a minor incident, and that Mr Weerasinghe's criticism of the claimant was both inappropriate and undeserved. In respect of the s26(3) EqA analyses, we set out above our factual findings and legal determinations that Mr Ajroldi sexually harassed the claimant. The claimant rejected his advances, and the claimant was subject to this unmerited criticism. This is less favourable treatment. With this claim there is a comparator required. As there was no actual or identified comparator proffered, the comparator is a hypothetical male Sales Executive, with about 1-year service, who had progressed past his probation, and preformed the same as the claimant. As the respondent has not persuaded us that the criticism of the claimant was warranted, we do not accept

claimant 's performance was sub-standard. The respondent has not persuaded us that Mr Ajroldi would not have supported a male subordinate in this matter and we accept the claimant's contention that Mr Ajroldi saw an opportunity to make the claimant uncomfortable and enjoyed it.

119. H11. We also believe the claimant's account in respect of Mr Ajroldi's aggressive and shouting behaviour, again occurring as it did in Mid-September 2019. This fitted a pattern of escalating harassing behaviour from Mr Ajroldi for which the claimant gave entirely persuasive evidence. Mr Ajroldi sexually harassed the claimant, the claimant rejected his advances, and the claimant was subject to this aggressive and shouting behaviour. The behaviour manifest from Mr Ajroldi was indicative of a work relationship breaking down because of the sexual harassment. A hypothetical male would not have been treated in this manner, so this claim is proved also.

120. The claimant brings H12 as a complaint under s26(3) EqA. The claimant was subject to a punitive performative review that was not merited, at that time or, from what we can see, at all. This is less favourable treatment that flows from the claimant's rejection of Mr Ajroldi's sexual advances. The comparator is identified above, i.e. a male Sales Executive, with about 1-year service, who had progressed past his probation, and preformed the same as the claimant. As the respondent has not persuaded us that the claimant's performance was sub-standard, we do not accept that she was put through the CTA genuinely and a comparator would not have been treated in a similar manner. So the claimant was treated less favourably following her harassment.

121. H13. 13.1 is effectively a more detailed version of H12 (although not brought under s26(3) EqA) coupled with the claimant being told that Mr Ajroldi would be made aware of anything relayed to Mr Vestey or HR. We accept that the attempt to implement a CTA was another example of hostile and intimidating behaviour by Mr Ajro;di, the claimant's harasser. So far as the threat that Mr Vestey and HR had a informed Mr Ajroldi, this is entirely credible and consistent with hoe we determine events unfolded. Consequently, we believe that this was said and also that Mr Ajroldi was telling the claimant how Gartner worked and that this was harassment. We have found as a matter of fact that the incidents referred to at H13.2 and H13.3 occurred. Under the circumstances we accept the claimant's evidence that this form part of an ongoing intimidating and hostile environment created by her harasser.

<u>Victimisation</u>

122. We do not accept all of the alleged protected acts. We identify a number of the protected acts complained of occurred as follows;
    a. On 22 October 2017 in respect of the claimant's complaint to Mr Vestry about Mr Ajroldi's harassment.
    b. The claimant's formal grievance to Ms Wyatt on 30 October 2018.

    The claimant also contended that her appeal meeting of 18 December 2019 amounted to a protected act (because she complained of harassment, less favourable treatment and victimisation) and also a response on 17 January 2019 to the outcome of the appeal hearing. These 2 latter incidents are, of course, protected acts but at the hearing the claimant contended that causally nothing turned on issues 6(c) and 6(d).

123. The key test to establish a detriment is: "Is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to

[her] detriment?" see *Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337* HL. Detriment is to be interpreted widely in this context. It is not necessary to establish any physical or economic consequence. Although the test is framed by reference to a reasonable worker, it is not a wholly objective test. It is enough that a reasonable worker might take such a view. This means that the answer to the question cannot be found only in the view taken by the Employment Tribunal itself. We might be of one view, and be perfectly reasonable in that view, but if a reasonable worker (although not all reasonable workers) might take the view that, in all the circumstances, it was to her detriment, the test is satisfied. It should not, therefore, be particularly difficult to establish a detriment for these purposes.

124. In respect of the causation or "reason why" question. The question was whether the protected act had a significant influence on the outcome see *Chief Constable of West Yorkshire v Khan [2001] 1 WLR 1947 HL, Nagarajan v London Regional Transport [2000] 1 AC 502, Chief Constable of Greater Manchester v Bailey [2017] EWCA Civ 425* and *Page v Lord Chancellor [2021] ICR 912 CA.*

125. The crucial issue for the Tribunal was the reason for the claimant's treatment, i.e. what motivated the employer to act as it did. If the reason Mr Vestey dismissed the claimant's grievance was, wholly or in substantial part because the claimant had done a protected act (talking about grievance or bringing a grievance) then it was liable for victimisation. If that was not the reason, then the respondent is not liable. Mr Vestey was never going to give the claimant a fair hearing neither was Mr Miller in respect of the appeal. The reason they were not going to give the claimant a fair hearing was not because she bought a complaint or grievance (i.e. the protected acts) as that does not make sense and the rejection of every complaint in cases of discrimination would always amount to victimisation. So far as we could see, there was a combination of inter-related features: the motivation of denying potential liability, the desire to uphold the status quo and the propensity to support a manager against the complaint of a more junior employee which worked to deny the claimant a proper outcome of her complaint and also a fair hearing.

126. We accept the claimant's evidence that the incident identified at V1.1 and V1.2 occurred as identified in the list of issues. However, this occurred before the protected act. Whilst we have no problem in attributing V1.1 to Mr Ajroldi's ongoing harassment (particularly as it fitted into the timeframe and pattern of sexually harassing behaviour). V1.2 was based upon the claimant's fear that Mr Ajroldi and his friend and senior manager Mr Oliveri del Castilo would undermine the investigation. Nevertheless, we do not determine this to be victimisation because it predates the protected act therefore it cannot be causally linked to it.

127. Issue V1.3 occurred after the first protected act, although it is not clear when the claimant said the breach of confidentiality detriment arose. This also applies in respect of detriment V1.4 so we believe the claimant is saying that the breach of her confidentiality arose between 25 October 2018 and 1 November 2018. The claimant will, of course, not know when the breach of confidentiality arose because Mr Vestey and Ms Wyatt deny any such breach of confidence. We accept that the breach of confidentiality increased Mr Ajroldi's hostile and bullying behaviour towards the claimant; however, it does not make sense to us that Mr Vestey and Ms Wyatt breached confidentiality because the claimant had made a complaint of harassment. There has to be another motivation and they breach confidence because they did not

believe the claimant and they did not feel the need to follow a fair and proper process with the confidentiality that this entailed. The claimant rightly recognises that the failure to follow a proper investigation of her complaint against Mr Ajroldi, with the confidentiality that this implies, is conduct that would amount to a fundamental breach of contract but it is not conduct that was wholly or in substantial part caused by her complaint.

128. So far as V1.4, the respondents were not going to appropriately investigate their own breach of confidence because of the protected act, they denied any irregularity to cover their tracks and this reasoning applies to issue V2. Our findings of fact set out why we don't accept the causation required for victimisation in V3.1.

129. The claimant raised in correspondence her discomfort about working with her alleged harasser in correspondence with Ms Wyatt and the fact that Mr Ajroldi was not removed from the workplace (which is customary for investigations into such allegations) gives an indication of this employer's approach. Even offering the claimant some paid leave might have shown a degree of compassion or even that her complaint might have some validity whilst it was investigated, but the claimant was expected to carry on working with her (at this time) alleged harasser. However, for V3.2 similarly to above, we do not accept the causation point that suggests the respondent would defer putting in measures to stop the claimant working with Mr Ajroldi during the 2 to 3 weeks period between her complaint and mid November 2018 because she made a complaint of harassment. We agreed it was wholly inappropriate not to take interim measures to protect the claimant from further harassment, particularly when there was, at least, some veracity to her complaints. But this was a respondent determined to reject so far as possible any wrongdoing by its managers and any potential liability, which was the reason for its refusal to follow any proper investigatory process as opposed to the fact that the claimant had made a complaint of harassment.

130. Even with a wide definition of detriment at V3.3 and V4, we do not see how these allegations could amount to a detriment to the claimant so we reject these allegations.

131. We have dealt with the breach of confidentiality point and causation above so V5 is not accepted as victimisation.

132. Under V6 the detriment was profound. Ms Wyatt and Mr Vestey breached the respondent's own Grievance Policy, the ACAS Code of Practice and s10 ERelA. This was not an oversight or a mistake it was a deliberate departure from following a key requirement for a fair process. Neither Mr Vestey nor Ms Wyatt were able to explain their disregard for this crucial safeguard to ensure a properly fair process. However, again, consistent with our application of the *reasons for* test, neither of these 2 experienced and senior employees made the decision because the claimant had made a formal complaint. They did so because they were not interested in following a fair procedure.

133. We have explored the causation relevant V7, V8, V9, V13 and V14 above. The test is not a "but for" tests, i.e. but for the grievance the respondent would have rejected it or but for the grievance the respondent would not have followed a proper process. The test is more sophisticated. It looks to the reason why, motivation and whether the protected act had a significant influence upon a detriment. We are clear that the

respondent treated the claimant unfairly and dismissively. But this was not because of her complaint, it was in respect of the inter-related features identified above.

134. The allegation in V10 is credible but reflects Mr Vestey's motivation of protecting the respondent's interests as opposed to taking "a yellow card for the team" because of the claimant's complaint.

135. V11. We accept that the claimant was probably speaking to his erstwhile colleagues about his version of events and then later about his departure. We cannot see how the claimant speaking with his former colleagues, in itself, acted to the claimant's detriment so we do not determine that to unfavourable treatment.

136. In respect of V12, Mrs Dorkins, referred to the claimant being disciplined but there was not a shred of documentation to support this in the rather large bundle. No credible reason was given by Mrs Dorkins for this omission. It did come out at the hearing that Mr Ajroldi signed a settlement agreement, so the Judge offered to make an order for its disclosure if there was any non-disclosure provision binding upon the respondent. However, the respondent was keen to keep this agreement secret. Neither Mrs Dorkins nor other respondent witnesses could clarify when the claimant's disciplinary hearing been set for or the precise allegations made against him. We do accept the claimant resigned, he left the respondent sometime around late-November or December 2018. So, it appears that he negotiated his resignation or received some benefit from the company, hence he signed a settlement agreement. The respondent's contention that the claim was actually dismissed or effectively dismissed is rejected and is an attempt to mislead by suggesting appropriate disciplinary action was taken.

<u>Constructive unfair dismissal</u>

137. it is common with self-representing parties to adopt a scattergun approach in respect of identifying alleged fundamental breaches of contract.

138. The claimant had been treated appallingly by Mr Ajroldi. Mr Vestey and Ms Wyatt sought cover this up, particularly with regard to the CTA, which was disgraceful. We accept the claimant's criticism of the grievance and the grievance appeal and we regard this as demonstrating that the respondent's officers were committed to frustrate a proper outcome to the claimant's legitimate complaints.

139. The claimant said that taking away the territory and allocating her another patch with limited opportunity and the same targets was a deliberate message that she had no future with the respondent. Furthermore, the respondent's failure to address Mr Wood's previous behaviour, particularly as the claimant was not allowed to be moved from his team was also intolerable. Given that these 2 ongoing matters were prevailing upon the claimant's return to work and was not satisfactorily addressed we find that these amounted to fundamental breaches of contract; as did Mr Ajroldi's treatment of the claimant and as did the respondent's treatment of her complaints.

140. The claimant did not waive these breaches because she regularly complained of matters and her complaints about her territory and Mr Wood's behaviour was still outstanding at her resignation. We reject the respondent's contention that either the claimant did not resign because of the repudiation of the contract, or she waved the breach by waiting until she found another job. The claimant's resignation letter and the

correspondent and exchanges leading up to this demonstrate that the claimant asserted in various fundamental breaches of contract upon which she relied. The fact that the claimant sought to secure alternative work merely reflected the economic reality of a single parent with responsibilities. She needed to find alternative work fast, which she did so as to avoid unemployment. This does not mean that the claimant chose to leave freely (as opposed to resigning because of the respondent's behaviour) nor does it mean that she affirmed the contract.

141. Under the circumstances, we conclude that the claimant was constructively unfair dismissed.

142. The respondent's reference to both contributory conduct and to a possible deduction on the basis of blameworthy conduct is stupid in the circumstances. To suggest that the claimant contributed to these unfortunate events is astonishing as is the reference for the Tribunal to consider the claimant's purported blameworthy conduct. In the wake of what the claimant had to endure, particularly from Mr Ajroldi, such reference by the respondent would appear to be callous and offensive. Fortunately, Mr Palmer was more sensible in the way that he presented this case.

Direct sex discrimination

143. We struggled to understand the claimant's claims of direct sex discrimination under s13 EqA. The Employment Judge spent some time discussing this at the outset of proceeding. The claimant equated this to her harassment and equated her less favourable treatment to the unfairness which we have dealt with in the constructive dismissal.

144. Findings of harassment and direct discrimination are mutually exclusive because of the wording of s212(3) EqA as the concept of "detriment" does not include conduct that amounts to harassment. The claimant is able to bring a direct sex discrimination claim in the alternative, but we cannot find both harassment and direct discrimination from the same course of conduct. There is no detriment to the claimant in this regard because we find in her favour in respect of all of the harassment complaints. However, we do not find that the claimant was discriminated under s13 EqA so this claim is dismissed.

Time limits

145. The claimant's claims of harassment against Mr Ajroldi certainly represent a pattern of discriminatory conduct – under s123(3)(a) EqA, which we accept. This ran from early-November 2017 until 22 October 2018. The claimant's ACAS Early Conciliation Certificate is dated 3 December 2018 until 3 January 2019. Her first claim was received by the Employment Tribunal on 31 January 2019, so her complaint was presented well within the appropriate statutory time limit.

146. In respect of the second proceedings, the claimant has succeeded with her constructive dismissal claim only. Her constructive dismissal took effect on 15 October 2019 and her second claim was received by the Employment Tribunal on 20 November 2019. This was also well within the appropriate time limit set out in s111 ERA.

The statutory defence

147. What amounts to reasonable steps to prevent the discrimination will depend upon the circumstances, but as a minimum this should be: (a) the implementation and regular review of a properly drafted equal opportunities policy; (b) that the employer can demonstrate that steps were taken to ensure all employees and workers were aware of that policy; (c) that equal opportunities training was provided and regularly updated and; (d) there was an effective policy to deal with appropriate complains from employees or workers.

148. So, the respondent did have an Equal Opportunities Policy, which is something, but the policy was really in name only as its drafting is poor: generalised, outmoded and not really committing to anything more than laudable aspirations. But that is better than nothing. There is evidence that Mr Ajroldi received training in respect of harassment, but this was "entry-level" training for 45-minutes in 2011 and supervisor's training (which was not at all sophisticated) for almost an hour in 2013. Neither training was rigorous or likely to have been memorable. And there was not any follow-up or refresher training nor were updates given, which is surprising for an organisation in receipt of public sector money.

149. We did not see that there was any demonstrable commitment to ensure all staff were trained in equal opportunities or the avoidance of discrimination or harassment. There is some evidence that policies were reviewed, but we do not see that this happened often and there was no evaluation of the performance or any policy or training. So, the respondent paid lip-service to the prevention of discrimination.

150. An Employment Tribunal in *Quashie v Yorkshire Ambulance Service NHS Trust Case No: 1802401/2015* determined that having an equal opportunities policy and issuing the claimant with a training workbook with sections on dignity at work and equality and diversity, together with a multiple-choice questionnaire relating to the workbook's contents, and regularly updating the workbook (with another questionnaire) was not sufficient. This seems to have gone beyond the respondent's approach, with the provision of a workbook and updated training. Equal opportunities training that was delivered 2-years before the harassment and not followed up on, was held by the EAT to be "clearly stale" and not good enough in *Allay (UK) Limited v Gahlen 2021 ICR 645* so this suggests that the respondent lagged so distance behind.

151. We were not given evidence of how similar complaints of harassment have been dealt with to that of the claimant. We do not accept that the claimant's complain of harassment was addressed properly and that is the only gauge to assess the respondent's steps in preventing, responding to and deterring discrimination. In addition, we do not believe that Mr Ajroldi was appropriately dealt with. In fact, we believe Mrs Dorkins attempted to mislead us over the circumstances of his departure as this was a case where the respondent should either have continued to make some form of findings (to set a benchmark and deter future harassers) despite his contended resignation or pressed on with the process promptly and provided a copy of his warning or dismissal letter. Indeed, the fact that it required the claimant to succeed in her grievance before any steps were considered for Mr Ajroldi and the fact that no investigation was undertaken in respect of Mr Wood, despite the involvement of an experienced HR practitioner (Ms Wyatt) and her more senior manager (Mrs Dorkins) convinces us that the approach of this respondent to allegations of harassment is primitive.

152. So far as further preventative steps, the statutory test has succeeded in the past for the Tribunal members where, in addition to the minimum set out above, employers have set up a dedicated helpline or action line telephone number or intranet link. Indeed, we are aware of many employers utilising workplace posters, coasters or mousemats, etc to advertise helplines or advice webpages. There was no evidence that there was and new joiner's or women's networks or any mentoring provision. There was not even any structured exit interviews or questionnaires. For the material we have seen and from the claimant's evidence the respondent had a male-orientated and probably toxic environment. It is astonishing that this was not seen nor was there any discernible commitment to address this. Not only do we reject the respondent's statutory defence, we go as far as to say this was wholly without merit and should never have been raised in the first place.

Summary

153. We find that the claimant was sexually harassed and treated less favourably because of her rejection of the harassment. The claimant was constructively unfairly dismissed. We do not find the claimant was victimised nor was she directly discriminated on the grounds of her sex.

154. We hope that the parties may now be able to resolve all outstanding matters without the necessity of a further hearing. However, we will issue case management orders in due course to provide for remedy and the outstanding costs application should such resolution not be possible.

Employment Judge **Tobin**
21 March 2022

RESERVED JUDGMENT, REASONS & BOOKLET
SENT TO THE PARTIES ON

.....21 March 2022.....

.....GDJ.....
FOR THE TRIBUNAL OFFICE