EMPLOYMENT TRIBUNALS

Claimant
Respondents

Ms E Wilson **v**

1. **AGK Partnership Limited**
2. **Mr A Christofis**
3. **Ms N Galazis**

Heard at: Watford **On**: 25 to 28 July and 3 & 4 October 2022

Before: Employment Judge R Lewis
Members: Ms P Barratt
Mr N Boustred

Appearances
For the Claimant: In person
For the Respondents: Mr S Joshi, Consultant (R1 and R2)
Mr Q Hunt, counsel (R3)

RESERVED JUDGMENT

1. The claimant was fairly dismissed by R1, and her claim of unfair dismissal fails and is dismissed.

2. The claimant's claims of sex discrimination all fail and are dismissed.

REASONS

Litigation history

1. This was the hearing of a claim presented on 31 August 2018. Day A was 23 August and Day B was 24 August. The claimant has at all times acted in person. Citation Limited informed the tribunal of its interest on 19 September 2018 and on 12 October 2018 submitted a response on behalf of all three respondents.

2. A first case management hearing took place before Employment Judge Smail on 23 March 2019. The claimant appeared in person and Mr Joshi's predecessor appeared on behalf of all three respondents. The hearing was then listed for five days in October 2019.

3. On 19 September 2019 Mr Hunt was instructed on behalf of the third respondent on a direct public access basis. As we understand it, he has continued to act on that basis ever since.

4. The October 2019 hearing was postponed because of insufficient judicial resource.

5. On 29 January 2020, the case was relisted for five days commencing 27 July 2020. That turned out to be a time when five day hearings could not proceed because of the pandemic. It appears that due to office error Mr Hunt's availability was overlooked and he was not notified of the July 2020 listing. As a result, and in order to review the position, particularly in light of the pandemic and lockdown, a telephone preliminary hearing was listed. It was conducted by Employment Judge Skehan on 30 June 2020. Her Order was sent on 27 July. The parties appeared respectively in person, through Mr Joshi's predecessor, and by Mr Hunt.

6. Judge Skehan's order records that the claim was reported by the parties to be fully prepared. In our judgment, for reasons given below, the case was not fully prepared by the first day of this hearing, some two years later, and we find it difficult to understand how professionally represented parties could have told a judge that it was. In the event Judge Skehan listed the case for the five days starting 25 July 2022**.**

7. Early in 2021, the tribunal initiated correspondence with a view to bringing forward the hearing dates to fill slots which had become available. In the event this could not be accommodated. In July 2021 the parties were notified that the hearing would take place by video, and the present dates were listed.

8. Following the development towards in person hearings, the parties were notified a year later, by letter of 20 July 2022, that this hearing was converted to proceed in person. Mr Joshi replied almost at once to point out that that ran contrary to the understanding of the parties of the previous two years. Later the same day, Mr Joshi asked for a postponement on grounds that Mr Christofi (R2) was abroad on family business and had understood that he could gave evidence remotely. That in turn opened the issue of whether he could give evidence at all, in light of the Presidential Direction of April 2022, addressing the issue of evidence given from abroad.

9. The file was referred to Employment Judge Quill, who reinstated the direction for a fully remote hearing, but left the question of Mr Christofi's participation to be decided by this tribunal.

10. We began as a full tribunal at a private hearing for the purposes of case management. The entire first day was taken up with case management.

11. We here set out the case management issues which arose in the course of the hearing.

Postpone or proceed

12. Mr Christofi was in Cyprus. He had made his travel arrangements on the understanding that he could give evidence remotely. We understood that he had not told Citation that he would be abroad, and we accept that he saw no reason to do so. Likewise, Citation had seen no reason to advise Mr Christofi that he could not give evidence while abroad. The first application made on his behalf for the Foreign Office procedure to be initiated was made in the course of the Friday before the first day of this hearing. The judge advised the parties that he understood that Cyprus was then not a country which has given approval to overseas evidence, and that while the tribunal has limited experience of requests, he had been advised that at least one month must be allowed for a request, and possibly longer. There was no prospect of the Cyprus government giving permission in the week of this hearing.

13. The tribunal did not regard it as sensible to direct Mr Christofi to travel at short notice from Cyprus to London. We did not regard it as fair to exclude Mr Christofi's evidence as a consequence of being unable to give it. Adjourning this hearing in full and resuming would involve a delay of at least a further year in a case which was starting over four years after the effective date of termination. It seemed to us therefore that the least undesirable option was to hear all witness evidence other than that of Mr Christofi, and to adjourn for his evidence and closing submissions. We could see that this might give Mr Christofi a slight advantage in theory, but he would be limited to his written statement. The parties agreed.

Events at this hearing

14. The tribunal met in public session on the second listed day, Tuesday 26 July. The claimant gave evidence for the whole of that day and until 11am on the third day, Wednesday 27 July.

15. Mr Marcus, former director/partner, gave evidence on behalf of R1 from about 11.30am until 2.30pm (with lunchbreak) on 27 July. Mr J Anderson, former colleague, gave evidence for about an hour the same afternoon on behalf of R3.

16. On the fourth day, 28 July, it was confirmed that Mr Patel was not available to give evidence, and R3 began evidence at about 10.10am. It became apparent that R3 was using technology which was not fit for purpose. At around 11.15am, the tribunal adjourned so that the witness, as she agreed to do, could attend the tribunal venue in person. She gave evidence in person from1.15pm until shortly before 4pm. In adjourning to enable R3 to travel to the venue, the tribunal offered the claimant the opportunity of attending in person, so that she would not feel that there was any inequality of arms between her remote participation and R3's participation face to face. The claimant elected not to attend.

17. During cross examination of R3, the claimant became distressed. We took breaks and we offered her the opportunity of cutting short cross examination that afternoon and finishing the following morning. The claimant expressed a strong wish to complete cross examination that day, which we respected. We therefore adjourned at the end of four of the five listed days, and the tribunal sent a case management order the following day, 29 July. The order forms the second appendix to this order.

18. The hearing resumed on Monday 3 October. There was an additional bundle of 31 pages, which included chronologies, a cast list, and Mr Joshi's submissions. Mr Christofi gave evidence for the morning. We heard closing submissions during the afternoon, and reserved judgment to a deliberations meeting, which took place the next day.

Rule 50

19. Mr Hunt applied on 25 July on behalf of his client for a restricted reporting order on grounds that they were a person who was accused of sexual misconduct. His application went no further than Rule 50 and s.12(1)(e) Employment Tribunal's Act 1996. It was not opposed. It appeared to the tribunal that the appropriate tests were met. An Order was issued separately. This final Judgment discharges the Order.

Evidence of Mr D Patel

20. R3 had served the witness statement of Mr D Patel. Mr Hunt told us on 25 July that Mr Patel had become unavailable and uncontactable in the period before this hearing. No application was made for a witness order.

21. The point was left on the understanding that the witness had by his conduct shown his unwillingness to give evidence; and that if Mr Hunt wanted to call him after the two month adjournment, the tribunal would have to be shown, at least, why he was unavailable for this hearing.

Other witnesses

22. The bundle contained a document (637) which purported to be an email from Ms Tudor, who we understood was a former employee of R1, who had joined after the claimant left. The email broadly stated that her experience and opinion of R1 as a workplace coincided with that of the claimant. No formal application was made but when it was referred to on one occasion in cross examination, the tribunal excluded it as evidence. It was not a document which constituted evidence; it was on its face what purported to be an email, not signed by any prospective witness.

23. The claimant had produced the witness statement of Ms Kate Pockett. Mr Joshi applied on 25 July for its exclusion. He stated that it had been served in June 2022. That was some 23 months after Judge Skehan had been told that the case was fully prepared. The statement contained potentially a modest amount of corroboration of part of the claimant's case, but also contained matters of opinion, hearsay, and the witness' own grievances. In

resisting the application to exclude the witness's evidence, the claimant failed to tell the tribunal, as she plainly should have done, that she and Ms Pockett are sisters.

24. We excluded the statement, not because we disapproved of the claimant keeping her relationship with the witness from us, but because the attempt to introduce the evidence showed disregard of the discipline of case management. In doing so, we made allowance for the claimant's inexperience as a litigant in person. We understood that Ms Pockett had remained in the employment of the first respondent until the summer of 2020, ie for about two years after the claimant had left, and that she may have been reluctant to give witness evidence while still an employee of R1. We understood however that there had been a lapse of a further two years between her leaving R1's employment and service of her statement.

Additional evidence

25. When R3 began her evidence, counsel entirely correctly asked her if she wished to make any correction to her witness statement. R3 said that she did, and then began to speak at some length about matters of detail and amplification. These were not corrections or replies to new evidence from the claimant. These were attempts to amplify her evidence beyond that which had been served well in advance of this hearing, and which would have taken a litigant in person (and apparently Mr Hunt) by surprise. The judge intervened and the tribunal took a short break. The tribunal released the witness from oath so that she could discuss the matter with Mr Hunt, and at the end of the break, Mr Hunt advised that his client had no additional evidence in chief.

Bundle and disclosure of documents

26. There was a pdf bundle in excess of 650 pages. It had been prepared by a member of Citation staff, not, we understand, by Mr Joshi personally. It fell short of the standard to be expected of a professional representative. Little effort had been made to organise the documents thematically or chronologically: it seemed instead that the bundle consisted of the respondent's documents and a 200 page section of computer records which were not easy to understand and then the claimant's documents. As a result, there was a significant degree of overlap, many documents appeared several times, and the tribunal was not assisted by repetitive email trails in reverse order, or by undated messages out of context.

27. The bundle contained correspondence between the claimant and R3 which originated in 2015, before the claimant came to work for R1. It contained a selection of business-related items, without any attempt, by any party, to redact any client name or details.

28. It was apparent that the claimant had failed to give disclosure in accordance with the rules. She had selected from some of the material which she had disclosed, eg incomplete trails of texts, messages and emails. She had in addition given no disclosure relevant to remedy. (Neither of these is unusual

in the case of an unrepresented claimant). It was not clear that either of the other parties had explained these issues to her or asked her to make good the shortcomings.

29. We are not convinced that R1 and / or R2 gave full disclosure. There were emails disclosed by the claimant which would have been disclosable by them; in evidence, Mr Christofi referred to his notes; and there were troubling gaps in the documentation. There were for example no notes or records of the claimant's grievance meeting with Mr Marcus in January; or of any of Mr Marcus' inquiries; or of any interaction between Mr Marcus and Mr Christofi about any of these issues.

30. We find that R3 did not give full disclosure. It was unclear whether R3 had been advised that the tribunal's disclosure obligations applied to her as a party. In the course of evidence, she repeatedly referred to her own emails, which were not in the bundle, and which Mr Hunt said were not relevant. No applications for further disclosure by R3 were made by either of the other parties.

31. One specific email which R3 produced, which did assist, was produced in the course of the hearing and identified as 217A to 217B, an email from R3 sent at 11.34 on 30 April 2018, to which the bundle contained the replies, but not the question, an omission of which the claimant quite rightly complained.

Identifying the issues

32. At the first preliminary hearing in March 2019, Judge Smail had directed the claimant to serve a Scott schedule. That was in the bundle at pages 31-34. The respondents had in reply produced a document called "Replies to claimant's" *(sic)* (34A-B). The claimant's Scott schedule could not be the basis of fair trial. It was not compliant with Judge Smail's order. It consisted largely of unclear generalities. The Replies document was at best cursory and contained no indication that there had been analysis of how the claimant's attempt to clarify the issues should be managed. No respondent had raised this issue before this hearing.

33. The afternoon of the first day was therefore taken up with the tribunal, of its own initiative, through the judge, going through the two documents, and producing at the end of that day a document called a "Roadmap" by which the tribunal meant in effect an outline list of the questions to be decided by the tribunal. It was sent to the parties for comment, and finalised on the morning of the second day, with incorporation of minor points made by the claimant. The document is annexed, and we follow the numbering which it contains, using the abbreviation RM for each item. Where we for example refer to RM3, that refers to item 3 in the roadmap.

34. It was not the task of the tribunal to produce this document. It should not have been required to be undertaken on the first day of a trial listed two years in advance. The roadmap is a document produced in haste and on the understanding that the trial would proceed the following morning. The

judge, who takes sole responsibility for its drafting, fully acknowledges its shortcomings. Its production and usage were however the alternative to an adjournment (of at least a year), which would have been ordered without confidence that the parties would prepare a better formulation.

Split hearing

35. The bundle contained a schedule of loss, which the claimant had recently updated. As stated, she had given no disclosure about remedy. Given the claimant's evident inexperience of the tribunal, and given the practical and time delays which emerged, it seemed to us right to limit this hearing to liability only. We explained the procedure and what this would entail in practice, and the parties agreed. Between the July and October hearing dates the claimant provided some disclosure on remedy.

Vicarious liability

36. On mid-morning of the third day of hearing, Mr Joshi informed the tribunal that Mr Christofi, with whom he was in contact, but who did not observe any of the July four day hearing, had instructed him that R1 wished to raise a point on vicarious liability. While the "statutory defence" (Equality Act s.109(4)) was not relied on, Mr Christofi on behalf of himself and R1, wished to argue that the actions complained of against R3 were in Mr Joshi's phrase "a frolic of her own". The argument would be, as we understood it, that if R3 had subjected the claimant to sexual harassment, she acted outside the scope of her employment and her employer could not be vicariously liable for her actions.

37. The tribunal did not call upon Mr Hunt or the claimant to reply before we adjourned briefly. We regarded Mr Joshi's submission as an application to amend, made almost as late as could be imagined. If allowed, it would have required adjournment so that evidence could be adduced as to the nature of the working relationship between R3 and R1. We noted that Citation had for the first year of these proceedings acted on behalf of all three respondents without any indication of conflict. Their pleadings were on behalf of all three respondents. Mr Joshi's predecessor had told Judge Skehan that the case was fully prepared. The proposed amendment further ran contrary to the authority of the Court of Appeal in Jones v Tower Boot Company Limited 1996 EWCA Civ 1185, in which the court had rejected an attempt to limit corporate vicarious liability on very similar grounds (although decided under the earlier provisions of the Race Relations Act 1976). It would have been an affront to the discipline of case management to permit the amendment. On all of those grounds, the application to amend the response and / or grounds of resistance was refused.

Chronology / who's who

38. There had been no order for either a chronology or a 'who's who' of those involved or named in the case. Either would have been a self-evident professional tool to assist the tribunal, particularly in a case which featured a claimant in person; a non-chronological disorganised bundle; and reference

to a large number of the first respondent's staff. An order was made at the July adjournment.

General approach

39. This hearing began 50 months after termination of the claimant's employment. When we consider the tribunal's file, we can see that there was an avoidable delay of about six months between the listing in July 2020 and the claimant's notification to the tribunal in January 2021 that that was not possible for her. Regrettably, that observation leads to this one: a delay of over four years between the end of employment and the start of hearing was not caused by any extraordinary factor. We record our concern that that should not be regarded by any tribunal user as a norm or as acceptable in the slightest.

40. The tribunal is familiar with the difficulties faced by litigants in person. The claimant was on unfamiliar territory and her ignorance and inexperience of the tribunal and the legal framework were clear. She had had ample time to prepare for the hearing and / or to look for advice, but either had not done so or did so at the last moment.

41. The absence of a list of issues had perhaps contributed to the claimant's unrealistic understanding and expectation of the tribunal process. It was repeatedly our task to ensure that this hearing focussed on the points in the roadmap, and not the points about which the claimant felt strongly, even after this passage of time. It was our task to decide the legal claims, not to adjudicate on personal grievances or office squabbles.

42. The claimant struggled to respect the discipline of the tribunal. She was courteous and respectful, but we noticed that after her sister's evidence had been excluded, she repeatedly put to witnesses what her sister's evidence would have been, and we record two concerns about this. First, we were alert to this unsubtle attempt to get round the exclusion of Ms Pockett's witness evidence; and secondly, the points which she put to the witnesses were not all set out in Ms Pockett's witness statement.

43. In this, as in almost all our cases, we heard evidence about a wide range of issues, many of which are not dealt with in this judgment at all, or not to the detail to which the parties went. That is not oversight or omission, but a reflection of the extent to which a particular point was truly of assistance to us. This observation is made in many of our cases and judgments but was particularly important in a case where both the claimant and R3 appeared to regard the tribunal as a forum for continuing their personal warfare.

44. When we consider evidence, we must do so realistically. Everyone who goes to works makes mistakes when they get there, and no one is to be criticised by us for an everyday error. If a workplace is a small office, it is likely that not everything that is said or written is said ir written well or thoughtfully. Media such as email and WhatsApp encourage responses which are fast rather than thoughtful.

45. We must also bear in mind that the events which we were hearing about took place mainly in spring 2018, nearly five years before this hearing. Witnesses who give evidence about a distant event may genuinely say that they have no recollection of it, in particular if at the time they did not perceive it as important. Witnesses' perspectives may change, and the more thoughtful witnesses may in evidence distinguish between something said or done at the time in question, and contrast it with how the event presents at the time of giving evidence. We face those questions with many witnesses, but that said, we were struck that Mr Anderson's evidence indicated that he had remembered almost nothing of what happened throughout his employment with the first respondent.

Findings of fact: scene setting

46. In our findings, we depart from strict chronology where we think it clearer to do so. We have found it more helpful to set out the conclusions which follow from our findings as we go along in the body of the text of these Reasons. Where we refer below to 'the respondent' we refer to the company, the first respondent. We intend no discourtesy to either the second or third respondents when we refer to them below as R2 or R3.

The business

47. We start with setting the scene. The claimant, who was born in 1971, met R3 when both were employed elsewhere in about 2015. R3 introduced the claimant to the first respondent, for whom she started working on 16 April 2016. Her employment ended after 25 months, in May 2018. Her role involved a variety of support tasks for the practice.

48. The respondent is a finance and accountancy advice practice. In the ET3 it stated that it employed 35 people, six of them at the claimant's workplace; Mr Christofi's evidence was that there were about 20 employees at the claimant's workplace at Kings Avenue, London, N21.

49. At the time in question, the respondent was operating within a slightly different structure from that which it later adopted. It had at that time been formed by the merger of two accountancy practices, which in October 2016 de-merged. At that point, the respondent adopted its present name and structure.

50. While we did not go into the details of the business structure, Mr Christofi said that he is formally a partner in the professional practice, in which he has equal voting rights with his fellow partners; but in so far as the respondent is a limited company, he is the largest single shareholder, and therefore the senior figure in the business. We did not go into the question of whether it is right to call him owner or proprietor; everybody knew, we find, that he was the boss.

51. The respondent operated on two sites, which were relatively close to each other, with back office support from an office in Kathmandu, Nepal. There

was some evidence that working across split sites was an occasional source of stress: we noted emails in which the claimant and R3 were in touch about the whereabouts of Mr Christofi, and early in February 2018, that Mr Christofi instructed R3 to move to work at the Kings Avenue site, and not to send instructions to the Kings Avenue staff from another site to tell them to carry out her work.

52. In order to set the scene, we make a number of general findings about the workplace. We make no comment or finding about the professional service which any respondent gave to clients: we are not qualified to do so and it is not necessary to do so.

53. We find that as a business the respondent was driven by the demands of clients who entrusted it to give financial and accounting advice; and by the demands and deadlines set by HMRC, financial providers such as banks, and any other material external factor. As a result, the workload was cyclical, and was well known to be within the office. Timeliness, accuracy in its work, and accurate record and file keeping were of the essence.

54. In evidence, Mr Christofi more than once spoke of himself as working "20 hours per day." We do not find that that was literally the daily truth, but we do accept that that form of words reflects Mr Christofi's understanding of his own role, and of what he had to do to make the business a success.

55. Mr Christofi and R3 had been acquaintances, friends and colleagues for over 15 years. At the time of these events, R3 was considered a self-employed consultant, advising the respondent primarily on regulatory and money laundering matters. We understood that by the time of this hearing she had become an employee of the respondent.

56. We noted that the names of employees which appeared in the respondent's emails and documentation strongly suggested that this was a diverse office, reflecting the diversity of its North London location. It was common ground that Greek was the common language of a number of the leaders of the business, and was used in conversation between Greek speakers. We comment only that use in the workplace of a language not shared by many employees creates the potential for division. That potential was illustrated by reference in evidence to conversations in Greek between Mr Christofi and R3, which were about other employees, including the claimant, and the gist (or alleged gist) of which was fed back to the claimant (and others) by another Greek speaking employee.

<u>HR points</u>

57. The bundle contained a contract of employment issued to the claimant in June 2017, some 14 months after she started employment (35). It appeared to be a perfectly proper draft. The bundle also contained the respondent's employee handbook, prepared by Citation Ltd and dated 23 May 2017 (44). It set out a number of procedures which might be expected in a relatively modest sized employer.

58. The evidence before us was that no one employed at the business had HR expertise or background, and that the respondent had an arrangement with Citation for obtaining HR advice. It was not at all clear to us how this arrangement worked in practice, and we accept the claimant's evidence, which was that it was not clear to staff how the HR function worked.

59. Mr Christofi said that the role of Staff Partner rotated among the partners: in an organisation of modest size that evidence was suggestive of an unwanted chore of low status. Mr Marcus said that he communicated with Citation to obtain employment advice. There was no written evidence of email communication with Citation, or of an online record created by Citation about its contacts with the respondent. Ms Wilson repeatedly said that R3 was the HR person and widely regarded as such. We accept that on occasion R3 carried out the functions which might have been those of an HR lead person within the business. She also acted as an occasional intermediary for communications between Mr Marcus or Mr Christofi and Citation. We accept however that she had no formal HR role, or expertise, or authority over other staff.

60. The claimant appeared at times to criticise the respondent for failing to work to an HR model of the type seen in much larger organisations, where HR might provide a business partner available to be consulted by employees about problems or work related issues. No such service was available at this workplace, and we make no comment or criticism of that.

61. In so saying, we note that whatever the respondent's HR procedures on paper, the only written evidence of one to one management of the claimant at any time in her employment was an incomplete appraisal form, which she wrote in about July or August 2017, which was never completed by any respondent.

Work responsibilities

62. The claimant's work supported the administration of the office, and the work of client-facing fee earners. We find that the support service provided for the fee earners at R1 showed lack of structure, clarity, and leadership, and that those absences contributed significantly to the problems about which we heard and to the disputes which were before us. We find further that those absences appeared in large part to be the responsibility of Mr Christofi, who either did not understand the need for them, or did not regard them as important.

63. Like any office, R1 required basic administrative support, of the type related to for example premises, office equipment, organisation of holidays and the like. It also required a category of work to be done which did not require accountancy expertise, and which was administrative, but which required knowledge, understanding and organisational skills. In a lawyer's world, that would perhaps be the division between facilities and office management, and various types of paralegal work.

64. We find that the claimant's tasks drew on both counts, but without clarity as to focus, organisation or priority. We find that there was considerable turnover of the administrative and support staff, and therefore loss of time and resource given to recruiting, training, handing over and replacing staff. We find that to the extent that Mr Christofi's model of office support was a simplistic one that everybody would help out with everything, and everybody would muck in as required, there was lack of structure or clarity. The claimant had been in post for two years when Mr Marcus (rightly but belatedly) advised that a job description should be prepared for her. We noted in evidence that Mr Christofi referenced a period within the office when there were two people with the job title "Office Manager;" that was simply a sign that the two individuals' roles and relationships had not been thought out.

65. While the office was informal and no doubt amicable, it lacked structure. It was not clear who was whose line manager, and we noted in emails resentment about attempts to impose leadership and instruction. R3's role added to this confusion: she was known to be friendly with Mr Christofi, but it was not clear that she had any leadership role. Her emails showed an ability to draw to Mr Christofi's attention daily problems which were his responsibility to solve, and to do so bluntly and fearlessly (eg on 13 January 2018, 155, when she drew to Mr Christofi's attention the poor behaviour of an individual called Mat, to whom we refer below). At the same time, her communications with the claimant and Mr Christofi showed unclear boundaries between friendship and professional relationships.

Informality

66. We accept that office informality is often consistent with a contented successful workplace, but note that informality demands self-discipline by those who work within the structure. We accept that there was between colleagues informal and/or sexualised conversation: the only specific examples we were given were those of interactions between the claimant and R3. The email traffic in autumn 2017 between the claimant and R3 shows a number of these features. On 7 July, R3 sent the claimant a picture of a penis-shaped keyring (106); there was clearly a period of discontent and uncertainty in early October 2017 (115); there was an email about an intimate medical procedure; at the beginning of November R3 emailed the claimant, "for fucks sake how much can I possibly do and we have Christina doing fuck all" (120). We bear in mind that R3 and the claimant were working friends (but not personal friends outside of work) before the claimant came to work at R1. Their emails were jokey, informal and gossipy; and in addition to work based emails, they were in contact by text and WhatsApp. None of this is a matter of criticism, and is set out simply by way of scene setting.

67. The priority of the partners was of course to maintain relationships with clients, look after their financial requirements and grow the business by attracting more clients, carrying out the professional instructions which they had been given. As a result, and despite the relatively modest size of the business, they were not hands-on leaders or managers, and they were

reliant on leadership of their support staff, which we find was simply not there. We accept that R3 worked long hours, and supported the professional work of R1. We do not find that she gave managerial leadership or direction, or that she was formally tasked with doing so. At best, she was an intermediary or communication point between employees and the partners/Directors.

68. Taken together, the setting could be described as a muddle, a word which is generous to R1. The muddle created difficulty in the evidence, because the passage of time, the turnover of people, and the relative unimportance of many of the details about which the claimant questioned, left the witnesses unable to give a clear specific chronology of for example who was in what job and when. The other difficulty which the muddle created for this tribunal was that it built up a backlog of points of detail, many of them insignificant, and some of them even trivial, which the claimant wanted to pursue, and on which it was repeatedly necessary to intervene to divert her to the proper work of the tribunal.

69. Within that setting, there were no significant areas of dispute for the first 18 months or so of the claimant's employment. That seemed to us a sign that what we describe as muddle could nevertheless be made to work well. It seemed to us an indication of a positive relationship that the claimant's sister joined the respondent's employment in January 2017, some eight months after the claimant had joined. (She remained with the respondent for over two years after the claimant's resignation). We take that as an indication that whatever the day to day problems or shortcomings, the claimant saw no need to discourage her sister from joining the same employer. Following the de-merger, and in June 2017, the claimant had been issued for the first time with a contract of employment which described her as Office Manager. It was common ground at this hearing that December and January are particularly busy times in the respondent's business, allowing for the Christmas closedown and the HMRC filing deadline. We heard of no problems or issues over Christmas 2016/2017, and as we have said, the claimant's sister joined just after. We find however that relationships began to deteriorate significantly in late 2017. The issues with which we were concerned date from then.

Fact find from late 2017

70. We heard some disputed evidence about the events of autumn 2017, and this was evidence around the questions of, did the relationships between the claimant and R3 deteriorate; if so when; what was the reason or reasons; and, related to those questions, did the claimant and R3 cease to be on speaking terms and if so when. This group of issues is difficult for a fact find nearly five years after the events, particularly as it is partly subjective (eg how does the tribunal measure a deterioration in working relationships); and partly because, as the claimant readily agreed, there were work requirements of communicating with R3, which she had to observe even when she considered herself as "not speaking" to her. Mr Marcus and Mr Christofi had relatively little to contribute on these points, and Mr Anderson was not employed at the time. The respondents' general

view was that a deterioration in personal relationships led to a deterioration in the quality of the claimant's work, a point on which the evidence was at best incomplete.

71. We find that between October and December 2017 the claimant became discontented, and the potential for conflict arose, because of a number of factors.

72. The claimant at this hearing remained angry that during or immediately after a medical absence, a new employee, Christina was appointed, to be Mr Christofi's PA (as the claimant understood it). The respondent's system for recruitment seemed haphazard. There does not seem to have been any process by which a need for a new role was identified, analysed, described and advertised. Existing staff were not told of the arrival of new colleagues, and how work would be affected. Christina had been in post for a short time when the claimant and R3 were sending each other emails criticising her. The claimant's perception was that it would become her role to carry out the tasks which Christina could not or would not carry out. There was uncertainty as to who was her line manager, and as to who was authorised to give her instruction. The claimant's email to Mr Christofi of 28 November 2017 (487) illustrates the points. We do not make a finding as to whether each and every word in the email was justified or well said; our finding is that a business model in which a senior partner who perceives himself as working 20 hours per day, is also asked to give direction about who answers the phone and when, clearly is flawed.

> "I'm really struggling with answering the phones as Christina keeps leaving her desk/office. Yesterday I was on the phone talking to a client and asked her to pick up the phone as it was ringing and she had a go at me for asking! She then had another go, when I asked her not to leave Nadia's work at my desk. How can we work as a team when she is being so rude and never at her desk, as I am writing this she has gone outside on the mobile?"

73. When Christina left, shortly before Christmas, her absence generated the work of handing over her tasks, at least in the short term before her replacement would be found. It will be recalled that this was at the start of the peak working period in the practice.

74. An incident took place in about December, when R3 reported to Mr Christofi that the claimant had criticised his management of staff, using words to the effect of he did not look after them or that he did not care about them. The exact chain of communication is not clear to us. We find that the claimant made a remark to R3 to that effect. It is the sort of everyday comment made by a disgruntled employee. We accept that the comment found its way to Mr Christofi, almost certainly through R3. We accept that the claimant was angry and upset, and particularly felt that her friendship and confidence in R3 had been betrayed. That seemed to us an important factor in the deterioration of their relationship.

75. During the Christmas closedown 2017, when the office was closed to clients, the claimant was at work. She came across a copy of Christina's contract of employment. The question of how she came across it, although interesting, is not our concern. Even if she searched Christina's desk (which she denied doing) there was no dispute about what she found: Christina, whom she regarded as of subordinate skill and importance to her, was being paid £10,000 pa more than the claimant.

76. The claimant was still on good enough terms with R3 to email her about this and for R3 to express surprise and scepticism. However, there was an important email which the claimant sent Mr Christofi on 28 December (137), describing that this information "makes you feel worthless and that I'm breaking my back for nothing."

77. Although the claimant wrote to Mr Christofi in relatively calm and measured tones about the pay discrepancy issue, she made clear her true feelings in messages to R3 (232 and 236):

> "It doesn't matter how I know but I definitely know she gets £35,000 a year. I'm so fucking angry I can't tell you. 10K more than me!!!!"

> "I must have Mug written on my fucking face. No wonder she thinks she's too above me to listen."

78. This was a tense basis for the return in January 2018, which everyone in the practice knew was the busiest time of the year. There were four important emails from the claimant in the first three weeks of the new year.

79. On 8 January she wrote to Mr Christofi and two other partners. The subject of the email was "Struggling in the absence of everyone." She wrote (493),

> "On top of covering for the jobs that were done by Syed and Christina I have to do the following as priority so please bear with me."

She then set out twelve bullet point of tasks, and concluded,

> "The rest of my work I will have to do when I get the chance but I'm working as fast as I can."

80. On 15 January she emailed Mr Christofi (496):

> "I know you want me to do the fee notes, which I've been trying to do all morning and didn't get very far because of the phone and emails. I've had back accounts which need to be emailed… I am struggling to concentrate on any one thing at a time, do we have a person coming soon even to do the post and help with the phones?"

81. Later the same day in an email addressed to "Dear Partners" she wrote:

> "I am sorry to say, please could you start looking for my replacement. I haven't found another job yet as I'm so busy here but I will now be looking and I don't want to leave you without anyone as I do care about HEK.

82. She then set out a detailed and clear complaint about turnover, over work, and short-term demands, and a sense of being blamed for mistakes of others (497).

83. On 19 January she wrote to the partners an email in similar language, stating that she was "close to resignation" (157).

84. This fourth email led to a response from Mr Marcus, who was then staff partner, in which he wrote that the 19 January email was identified as a grievance. He invited the claimant to a grievance meeting (500).

85. At the hearing before us, the claimant adopted the respondent's reading of the 19 January email as a grievance, and said that it was a grievance against Mr Christofi and R3, although (apart from the address) the email contained none of the words grievance, Galazis or Christofi.

86. On 26 January Mr Marcus, acting on what he said was the HR advice of Citation, had the meeting with the claimant about her grievance. There was no note or record of this meeting. We take the absence of a contemporaneous record as an indication of the modest understanding and status of employment procedures within the respondent's management. We accept that there was a conversation about the issues raised in the claimant's email of 19 January. Although Mr Marcus' witness statement said that he looked into the matter further, there was no note or record of his having done so, or what steps he took. We do not know why the outcome of the grievance was not communicated to the claimant until 5 March (189). The outcome letter reads as something of a brushoff. Although it refers to a number of the complaints, it simply states that Mr Marcus has investigated and can find no evidence to support the claimant's complaints. It does not address at all the level of payment made to Christina, rather simply records that "Your remuneration is commensurate with your position and role." It concludes:

> "Lastly you have made comments about R3 intimating [sic] you to Alex. My investigations had found after speaking to Alex Christofi, that at no time has she made any comments about you, and I'm not sure how you could assert and make such allegations when in fact you are not present in any meetings between Alex and Nadia."

87. That finding is troubling, because we do not accept that there were no conversations between Mr Christofi and R3 which concerned the claimant, and the formalistic point fails to acknowledge the power of office chat or gossip, and the need for good management to address it.

88. The letter concluded with reminding the claimant of her right of appeal. The claimant did not exercise it. There was a dispute about an informal conversation on the appeal question. We find that Mr Marcus advised the claimant that while she had a right of appeal under the procedure, and was free to exercise it, reiteration of the case which he had heard and rejected would probably not lead to any different outcome unless the claimant had additional or better evidence. We do not find that Mr Marcus threatened the

claimant against appealing. We accept that in a small business, she may well have felt that it was pointless to appeal to a senior partner against the decision of another partner.

The 'cocksucker' message

89. Departing slightly from chronology: Mr Christofi had been instrumental in offering a work opportunity to Mat, a relation of a client, a young man for whom there appeared to be no real role, and indeed whose employment appeared to be the personal decision of Mr Christofi, as a favour to a business client. There was a complaint from another partner before Christmas 2017 about Mat's language and behaviour (153), from which it appeared that while Mat lacked the interpersonal skills which colleagues expected, only Mr Christofi had authority in the matter.

90. On 13 January R3 emailed Mr Christofi to ask what was to be done with Mat, following another incident (170). She wrote:

> "He was swearing at him words I cannot believe would come out of someone's mouth, you, fucking cocksucker, son of a bitch don't you fucking knock!"

91. On Monday 22 January at 11.45pm R3 sent the claimant a text, which contained the single word, "Cocksucker." The bundle did not contain the preceding or succeeding texts. The claimant's evidence was that R3 had called her 'cocksucker' in retaliation for a work disagreement. Her case was that it was a one word piece of abuse, with self-evidently sexualised content, sent gratuitously by R3. R3's evidence referenced the incident with Mat, which she said had led to the word becoming adopted in the office as a sort of general joke (there was no other evidence of this, and it would be at odds with R3's own email to Mr Christofi of 13 January, quoted above, in which R3 had clearly indicated that Mat's language crossed a boundary). We accept that at the time, the word was topical in the workplace.

92. In the absence of any other immediate correspondence around the 'cocksucker' text, we note the other jokey and uninhibited exchanges between the claimant and R3, including the picture of the penis-shaped keyring, and their liberal use of the word 'fucking' about many aspects of the workplace.

93. Taking those points together, we decline to conclude that the single one word text met any element of any definition of discrimination. We do not find that it was unwanted conduct, or that it created a hostile environment. Mr Hunt asked us to bear in mind that the text allegation, if standing alone, was out of time. In light of our findings, we need not decide the limitation issue.

Relocation of R3

94. We accept that Mr Marcus had been tasked with investigating what had been identified as a grievance, and that he considered that he had completed his task and had no more to do. He had advised the claimant of her right of appeal, and he was entitled to take the view that the decision

about whether to exercise that right, and the consequences of the decision, rested with the claimant. It Is not, we think, the wisdom of hindsight to add the comment that the final issue in the grievance outcome, quoted above, gave a signal that the claimant and R3 needed proactive management and leadership, if they were to resume a harmonious working relationship. That management and leadership were not available. Instead, within days, R3 returned permanently to work at Kings Avenue, in a setting where the claimant had an unresolved sense of grievance against her.

95. During February at the latest, Mr Christofi had expressed the wish that R3 relocate to the Kings Avenue office. She did so on Friday 9 March 2018. Mr Christofi was not concerned with the geography and the allocation of desks. We accept that R3 had a desk in the same workspace as the claimant, Mr Anderson, and the other administrative staff about whom we heard. (It would have been helpful for this tribunal to have seen a plan or even better a photograph of the open plan workspace). The final stage of these events began the following week, Monday 12 March 2018, and concluded with the claimant's resignation orally on Friday 27 April, confirmed in writing the following Monday.

96. The claimant implied that R3's relocation to Kings Avenue was a decision made not for proper business reasons, but made by Mr Christofi and/or R3 in the knowledge that she and R3 had fallen out, and that R3's presence in Kings Avenue as an office base would create pressures and stresses on the claimant which would contribute or to lead to her resignation. We reject that notion for four main reasons.

97. First, we remind ourselves that this was a business driven by targets and deadlines. The claimant had a work history which was by and large one of commitment and achievement. There were no criticisms of her performance in about the first 18 months of her employment. It does not seem to us that any respondent had any reason to want the claimant to leave, and there was no evidence to that effect.

98. Secondly, the business had an organisational problem of turnover, and covering for departing, absent and incoming staff; the claimant had relatively long employment, something which the respondents wished to retain.

99. Thirdly, although we had no evidence of any respondent's understanding of employment rights, or of Citation having been consulted about the matter, we note that Mr Marcus had recently been in touch with Citation about the claimant. It seems to us that Citation must have noticed that the claimant did not at the relevant time have two years' service, and may well have advised Mr Marcus of the consequences. Put more bluntly, the position around 9 March, whether everyone knew it or not, was that the claimant would have had only limited redress if she were dismissed at that time on the spot.

100. Finally, and most importantly, we noted email traffic between Mr Christofi and R3 in earlier 2018, when Mr Christofi had commented adversely on the impact at Kings Avenue of R3 working from another site, but requiring her

work to be serviced at Kings Avenue, and for organisational reasons requiring her to maintain her base at Kings Avenue (eg 166). That was a sound proper organisational reason for her relocation, which we accept was a genuine reason.

Sexual harassment

101. The claimant confirmed that she made no allegation of sexual harassment having taken place before R3's relocation to Kings Avenue, and that the only individual against whom she made that allegation was R3. She alleged that in the period between 9 March and 27 April 2018 R3 harassed her by the unwanted conduct of (1) on two occasions in April squeezing her breasts; (2) on many occasions touching her bottom and genital area with a finger or pen or pencil; and (3) by often asking, in general language addressed to others in the office including herself, three questions which the claimant summarised as: have they had sex that day; had they "wanked" that day; had they "rimmed" that day (we were assisted by the online urban dictionary definition of the last). R3 denied all three allegations.

102. For reasons which we now discuss, we find that the allegations have not been made out, and therefore all claims based on them fail. Our reasons overlap, and we therefore deal with all three allegations in the following discussion.

Lack of contemporaneous complaint

103. We ask first what contemporaneous evidence there was of these allegations. We accept that the claimant, as evidenced by her emails in December 2017 and January 2018, was well able to express herself to the partners in writing, and seemingly unafraid to do so. Those are not the only instances of the claimant raising her concerns, and doing so robustly if politely. She knew that there was a grievance procedure, as she had recently had use of it.

104. We attach weight, against the claimant, to the absence at any time between mid-March and mid-July of any specific complaint of what on her account was wholly unacceptable behaviour.

The 1st May responses

105. In her resignation letter of 30 April the claimant wrote that R3 "verbally and physically harassed" her and referred to R3's "unprofessional behaviour". It was common ground at this hearing that that was the first time the claimant had made any written complaint abut R3's behaviour towards her.

106. On the same day, and evidently in response to the claimant's resignation email, R3 sent an email to five colleagues, copied to Mr Christofi and Mr Marcus, to which we attach very considerable weight (217a):

> "As you are aware I have moved to the Kings Avenue only a few months ago, can you all please confirm to Alex if you've ever heard me speak inappropriately to Emma or enter into an argument with her or even had a dialogue with her? She

> has allegedly said that I have harassed her. Please email Alex and Mike directly, there is no need to copy me in and be truthful. Thank you."

107. This was sent by R3 within about an hour of the claimant's resignation, so it was R3's immediate response. R3 had no control whatsoever (and, we find, deliberately surrendered control), over what might come back in reply. She could not prevent any recipient from forwarding her email to another person or people. Perhaps the most significant section is, "there is no need to copy me in." That was a wise and thoughtful phrase, which offered the recipients the option of candid anonymity and confidentiality. It is not the wording used by somebody who knew that she had much to hide, and could not control what information was received by the partners. The three replies which the email elicited (217) were in the bundle and none of the three confirmed any of the claimant's allegations.

108. The claimant's case was that all the language and behaviour took place in the open plan space, was visible and/or audible to colleagues, and that the impact on her was seen or heard by others. The immediate response of three colleagues on 1 May (217) was denial. Mr Anderson's evidence to us was less than convincing, but we could not from that infer that his denials were untruthful.

109. Similarly, the claimant gave evidence that her distress at the time of resignation, or before resignation and in response to the alleged behaviour of R3, was extreme and visible. She said that she had been heard to shout "Stop" at R3's behaviour; that she had cried in the meeting room and in the kitchen, and had been seen to do so; and that R3 had screamed at her. These are all allegations of events which were said to have taken place in the presence of others, and which could not have been missed by others if they had happened. Indeed, it was part of the claimant's case that no attempt was made at any form of concealment by any respondent. We repeat a point we have made. If events of this nature had taken place, we would expect at least one colleague to have expressed a concern, or raised an issue, or wished to speak out in support of the claimant. None of that took place.

110. The point for the tribunal was that the behaviour alleged by the claimant was serious, public, and repetitive. Any other person who witnessed it would have had good cause to object, and to speak out about what was clearly behaviour beyond the bounds of any workplace. No other person did so. In so saying, we note that the sexual language allegation purports to be corroborated in the witness statement of the claimant's sister, which we have excluded for reasons set out above, and which has therefore not been tested by the numerous lines of questioning which would have been open to Mr Hunt).

<u>The grievance outcome</u>

111. On 22 June, the claimant wrote a further letter to R1 (223) and for the first time put in writing an allegation of a sexual content. She was asked to give

details, which for the first time were given on 11 July (224). Mr Christofi interviewed R3 on 14 July (230) for the purposes of investigating.

112. Following the claimant's particularised complaint, Mr Marcus wrote a detailed rejection of her allegations (240). He named those whom he had spoken to as R3, Mr Anderson, Mr Patel, Mr Ioannou and Ms Salgani.

113. He wrote that the office was one in which sexual banter and non-sexual physical contact took place consensually between the claimant and R3; that would not be inconsistent with what we read of the cordial relationship between them before about Christmas 2017. He set out at length the detailed response of the purported witnesses to the allegations. There were general and specific denials, by which we mean general denials that such events had taken place and specific denials that the individual had seen any specific point alleged by the claimant.

114. The closest he came to a factual basis for upholding an allegation was as follows:

> "Ms Galazis does not accept that she touched, let alone squeezed your breasts. She states that at the time of the incident you wore a very tight and revealing blouse. Ms Galazis accepts that she touched your blouse under your breast and made a reference to you and your breast size. This version of events is confirmed by Mr Anderson, who has also indicated that all of three of you were laughing at the time and that you were a willing participant. My investigations have also shown that prior to this incident there were numerous conversations between you and Ms Galazis about breasts. The conversations revolved around breast size and comparisons of her breast size and your breast size. You had no objection to these conversations and were again a willing participant."

115. We accept that conversation took place between the claimant and R3 about breasts. We accept that Mr Anderson was an occasional if embarrassed participant. We accept there was an occasion when R3 made contact with the claimant's blouse, touching the claimant outside the blouse. We do not accept that it has been shown that she squeezed the claimant's breasts as alleged. We find that the claimant made no objection or sign of objection to any of these contacts or events at the time, and that they were not unwanted conduct. They were part of the jokey informal relationship which we have written about above.

116. Mr Anderson broadly stood by the evidence which he had given at the time, while being unable to add anything because, he said, of failed recollection.

<u>Conclusion on sexual harassment</u>

117. Taking these allegations in the round, we find that they have not been made out. We say so because the allegations are of workplace behaviour which is unusual, was said to take place in the presence of many observers or witnesses, and was alleged to have taken place many times over seven weeks. We know that the claimant was not shy to express concerns or grievances about events at work. We know from R3's email about Mat that others in the workplace objected to bad language. We attach considerable

weight to R3's immediate reaction to learning of the allegations, which was to invite independent observation or corroboration to be sent without going through her. We do not and cannot accept that the repeated events described by the claimant took place without a single adverse comment or intervention or objection from any other person in the workplace. Our experience of workplaces leads us not to accept the possible proposition that every other potential witness was too frightened to describe what he or she had seen.

The disciplinary

118. In considering the disciplinary point, we bear in mind that the claimant was at that time, in general terms, unhappy at work. She did not any more like working at close quarters with R3, with whom she was no longer on good terms. She was unhappy about the outcome of her grievance, and misunderstood the nuance of Mr Marcus' remark about a possible appeal. The claimant's case is that R3 was using sexualised language and possibly behaviour, which we do not accept.

119. In that setting, on the late morning of 29 March the claimant emailed Mr Christofi to ask, could she assist Mr Kakouris, with preparation of fee notes. Later the same day, she received an invitation to a disciplinary investigation. The claimant was convinced and repeated a number of times, that the latter was caused by the earlier. We do not agree. We find that it is a common error to mistake chronology for causation and we do not think the point is of any importance in any event. The bundle contained two different versions of the letter inviting the claimant to a disciplinary (201 and 536). We are simply not in a position to make any finding about this discrepancy: neither side gave any evidence which explained it, but there did not in any event appear to be any material differences between the two drafts.

120. It was something of a mystery as to how the disciplinary procedure had been triggered. There had been, from the correspondence, a recurrent theme in which Mr Christofi complained that the work of supporting him in relation to client fee notes was delayed and backlogged, and that the responsibility for clearing it lay with the claimant. There were detailed comments from the claimant, which fell into two broad categories: first that she was overwhelmed by other demands and other work priorities; and secondly that the material given to her by Mr Christofi and other fee earners was insufficiently accurate for her to be able to undertake her tasks on fee notes.

121. What was missing from the evidence was the analysis (which we accept took place in March), in which Mr Christofi decided that the claimant's performance was inadequate in this respect, and that Mr Marcus would be asked to investigate a disciplinary allegation. The invitation letters appear to be template wording from Citation. We note that both refer to "first stage of the formal disciplinary procedure" and neither indicates that the claimant's employment might be terminated. We take that as an indication that the claimant was not at risk of dismissal. The allegation against the claimant was "consistent failure to achieve to raise the firm's fee notes… to bring the

firm's fee notes up to date" (201). It does not appear that any specific instance was given to the claimant.

122. The disciplinary meeting took place on 10 April. The claimant and Mr Marcus were present, along with a notetaker and another colleague.

123. The bundle contained two versions of the meeting notes at 205-206 and 207-208. Although the claimant was suspicious of the existence of two sets of notes, we see nothing sinister in this, and we regard Mr Marcus' explanation as no more than common sense. The notetaker sent a first draft (205-206) to him to review. The second version (207-208) contained his corrections of the notetaker's first draft.

124. The notes indicate a sensible problem solving approach. The outcome was set out in Mr Marcus' recommendations (208):

> "Emma [the claimant] needs to have a detailed job specification to be given to her so that everyone knows what she should be doing. This will avoid any confusion as to what her duties are.
>
> Alex's [R2] procedures for the generation of fee notes should be reviewed to see if it can be streamlined.
>
> Aman's email was an isolated incident which does not affect Emma's performance."

125. Mr Marcus' evidence was that having discussed matters with the claimant he formed the view that the disciplinary path was inappropriate, and that the claimant's performance needed to be managed. He also commented that Mr Christofi needed to "up his game" in relation to the clarity of his own procedures. The recommendation of a detailed job description was one which of course should have been addressed when the claimant joined in 2016 or, at the latest, in June 2017 when her contract of employment was issued.

126. Mr Marcus gave a subtle outcome, which was certainly open to him as a matter of judgement and discretion. The claimant did not see it that way. She first of all regarded herself as having been fully acquitted of the disciplinary allegations against her; she told us many times that she had 'disproved' the allegations against her. She also regarded it as unfair that she was called to a disciplinary in the first place, and, in her words, unfair that the ground shifted so that she was disciplined for something else. We do not agree with the claimant on either of her points.

127. The claimant's reaction to the outcome showed both emotion and inexperience of such matters. Mr Marcus deserves credit for an objective analysis, in which he recognised his own partner's contribution to muddle, and made sensible concrete suggestions which, if followed up promptly by Mr Christofi, might have avoided this dispute. We can only wonder what the outcome would have been if in the days immediately after 10 April Mr Christofi had written to the claimant to send her a job description, and had

streamlined (in Mr Marcus' word) a billing procedure which on paper looked hideously complicated.

128. Mr Marcus had reached his conclusions on 10 April: they had not been communicated to the claimant in writing by the time of her resignation on 27 April. This was a serious failure on the part of the respondent; and it is a matter of speculation again whether a prompt letter would have averted the present dispute.

129. The parties' email trails after 10 April and until 27 April appear cool and professional, if not cordial. We note that on the afternoon of 27 April the claimant raised an issue in an email to a colleague that it is "really unfair for my name to be used all the time when I've not said anything or instructed anyone, only Alex has the authority to do so" (213): That was an indication that Mr Christofi had not acted on Mr Marcus' guidance about the need for a job description and clarity.

130. The claimant spoke to Mr Christofi on the afternoon of Friday 27 April and said that she would resign. The claimant said that he laughed in response. We accept that he may have been taken by surprise and may have smiled, but we do not read anything sinister into the claimant's interpretation of an immediate response.

131. The claimant resigned on the morning of Monday 30 April, and the letter should be read in full (216). She wrote that, "I feel I have been pushed into doing so won't come as a surprise to most." She then set out a complaint about covering others' work and workload, and without in context giving the point specific weight, wrote, "I've been verbally and physically harassed by Nadia" to whom she attributed, "Manipulative and unprofessional behaviour." That letter triggered R3's email to colleagues, and the replies of 1 May, discussed above.

132. Mr Marcus replied the following afternoon with acceptance of the resignation (219). He placed on paper a denial of overload, and stated that there had been no corroboration of allegations of harassment, which he wrote, correctly, had not been made before. He sent the claimant copies of colleagues' replies to R3's email of the previous day.

133. He asked for a hand over to be completed that day and for the claimant to go on gardening leave and wrote:

> "Following the disciplinary meeting held with you on 10 April we have provided you with the meeting minutes and associated documents and had ongoing discussions via email regarding an action plan and future expectations. However, considering your resignation I can confirm that it will no longer be necessary to implement a formal improvement plan or issue any formal warning, and therefore no further action will be taken in this regard".

134. That is odd drafting, which may have been driven by belated realisation that no outcome letter had been sent after 10 April. There was nothing in the minutes of 10 April which indicated implementation of a formal warning or

formal improvement plan, and it is not clear why it was necessary to confirm something which never happened.

135. On 22 June the claimant wrote a letter (223) under the heading "Constructive dismissal" which opened, "Having had no contact from you in regard to the sexual harassment.." and made what appeared to be an enquiry into her claim of constructive dismissal and sexual harassment. The letter may have been drafted by an advisor following contact with Acas.

136. On 27 June Mr Marcus asked for "specific examples of the actions/incidents that you consider having been harassment/discrimination" (223(b)) to which the claimant replied on 11 July, setting out allegations which we have discussed in this judgment (224).

137. Mr Christofi interviewed R3 the next day and a lengthy outcome letter was sent by Mr Marcus on 28 August (240-246) which should be read in full.

Legal framework

138. The claimant brought a claim of constructive unfair dismissal. The great majority of the claim is for the claimant to prove. The claimant must prove on balance of probabilities that actions of the employer took place, and that individually or taken together they amounted to conduct calculated (in the sense of deliberately intended) or likely (in the sense of an objective assessment of their reasonable impact in all the circumstances) to destroy or seriously damage the relationship of trust and confidence between employer and employee.

139. The respondent's actions in question must have taken place without proper cause. The question of whether there was proper cause is also for the tribunal to assess.

140. When the tribunal has to consider these points, it must do so objectively, and so the strength of the claimant's feelings, no matter how profound or genuine, is not usually a relevant consideration. In other words, a claimant is not constructively dismissed just because she feels she has been. The assessment of the respondent's proper cause is on the same basis. It must be the objective assessment of the tribunal, in all the circumstances.

141. The tribunal must bear well in mind that the overall analysis is contractual, not one of reasonableness. That leads to the fundamental difficulty which arises in almost all constructive dismissal claims which are based on the outcome of a grievance or disciplinary process. The difficulty is that provided the respondent has followed the contractual framework, and done so in broad and general terms (because not every minor breach of a contract of contractual procedure may lay the basis of a claim of constructive dismissal) resignation based on disappointment with the outcome of a grievance or disciplinary process can rarely meet the test of constructive dismissal. The reason is that the logic of such a claim would be that the claimant had a contractual right to a different outcome.

142. It was obvious at this hearing, many years after the events, that the claimant remained passionate about what she perceived as the unjust outcome of her grievance and of her disciplinary. While we share some of the claimant's concerns about process, we do not find that the test of a claim of constructive dismissal has been met. We do not accept the claimant's analysis of the disciplinary process, the outcome of which on paper appeared to us to be reasonable, sensible and constructive, and certainly capable of constituting the groundwork of a future working relationship. We fault the respondent for its failure to put the outcome to the claimant promptly in writing.

143. The claimant's claims of harassment arose under s.26 Equality Act 2010. It was for the claimant to prove that the respondent committed unwanted conduct related to sex, which in all the circumstances had the intention or outcome of creating a hostile work environment for her. The burden of proving such conduct rests on the claimant, and the claim fails because we find that that burden has not been discharged on the evidence before the tribunal.

Conclusions

144. We have considerably more sympathy for the claimant in all of these respects than the outcome of this judgment might suggest. When we come to consider the claimant's constructive dismissal we accept as stated above that the office was under-managed, muddled (at times even chaotic), and that job roles and responsibilities were left unclear. We accept that there was an expectation of the claimant that she would fill in gaps left by the arrival and departure of new staff and by short-term business needs. We have commented above that the work was cyclical, and was subject to external drivers. We accept that from November 2017 if not before the claimant voiced concerns about overwork, and that like anyone her emotions about her work and her commitment to it were badly affected by a feeling of being undervalued and under rewarded. We accept that she felt that her grievance outcome was not satisfactory.

145. We find that as stated by Mr Marcus in his letter of 28 August, the respondent genuinely and legitimately formed an assessment that the claimant's core tasks were 2.5 weeks per month, leaving the remainder of the month for other tasks. Those estimates are working averages; no single month presents with all variables in place.

146. Our overarching view is that it has not been shown to us that any conduct which led to the claimant's resignation was conduct for which there was no proper cause, or which was calculated or likely to damage or destroy the relationship of trust and confidence. We find that there were workplace difficulties, and we find that the claimant felt at times under undue pressure as a result. But we also find that the grievance outcome was a decision to which Mr Marcus was legitimately entitled to come on the material before him, and the disciplinary outcome falls into the same category with the added comment that it was potentially favourable to the claimant. We have

rejected the allegation that throughout April, she was subjected to harassment by R3.

147. Although we may strictly not have to decide why the claimant resigned, we find that she had undergone a period of disaffection from the first respondent, of which the major emotional trigger was the discovery of the pay differential in December 2017. She was disappointed by the outcome of the grievance in March, and unhappy about the outcome of the disciplinary in April. We find that the accumulation of those events, along with her sense of being overworked and undervalued, led her to feel that she had had enough of working for the first respondent.

The tribunal's road map

148. When we turn to the appended road map, we answer the material agreed questions as follows. We do not answer questions which were self evident, or which, in our judgment, had no bearing on the outcome of the case.

149. RM1: We accept that the email was sent. We do not accept that the short-term work pressures which the claimant describes were, taking an overview, sufficiently serious to constitute conduct without proper cause calculated or likely to destroy or damage the relationship of trust and confidence. They were not calculated to do so, because there we find firmly that the respondent did not want to bring about the claimant's departure from the business. They were not objectively likely to do so, because they were the visible short term consequence of a number of events, not all of them in the respondent's control: the Christmas rush and closure; the HMRC deadline; and the poor management of the business as a whole.

150. We make the same findings about RM2.

151. We have analysed the text which forms RM3 separately. We do not accept that it has been shown to be hostile and nasty as alleged. We do not accept that it was part of the matrix which led to the claimant's resignation.

152. We accept that the grievance outcome, RM5, was as stated above, and we note that the claimant was upset about it at the time (529). In our judgment, it represented Mr Marcus' honest opinion on the material before him, and we add the comment that the claimant might have been better served by reflecting whether she could prepare her case more effectively and therefore pursue an appeal to another partner.

153. We have accepted above (RM6) that R3 moved to Kings Avenue for proper professional reasons.

154. At RM7, we accept that the claimant was involved in offering to support Mr Kakouris. We find that the immediacy between her offer to help him, and the disciplinary notification on 29 March was a coincidence of timing and no more. We add: we could see no logic in the claimant's allegation that offering to support Mr Kakouris led to her dismissal; and that it would have been out of keeping with the respondent's inattention to employment issues

to have put together a disciplinary allegation in a matter of hours in the course of that day.

155. We have dealt above with our analysis of the outcome of the disciplinary (RM8). We do not accept any part of this composite question. We do not find that the allegations were not substantiated. We repeat our observation that Mr Marcus gave a thoughtful nuanced outcome, which was that the claimant's performance shortcomings should be addressed by a non-disciplinary avenue. We do not agree that that constituted substituting allegations; it constituted applying a different analysis to the issue which had been identified as a disciplinary case.

156. Allegations RM9 to 13 inclusive all relate to sexual matters and have all been found not to be made out on balance of probabilities. RM14 and RM15 were not pursued. RM16 was an evidential reference and no more. We make no finding on RM17 to 20, which do not appear to assist us.

_____

Employment Judge R Lewis

Date: 8 November 2022

Sent to the parties on: 11 November 22

For the Tribunal Office

Appendix 1: The 'road map'

With reference to the C's 'Scott Schedule' (31-34 of the bundle), the following questions arise for the tribunal. The claimant's additions to the Judge's draft have been incorporated.

1
Did C send an email on 8 January 2018 at 12.25 (493)?
The email is relied on as an event forming part of the matrix of resignation ('RE').
C also relies on the overload of work which it describes.
It is not sex discrimination (' SXD').

2
Did C send an email on 15 January 2018 at 1635 (497)?
It is relied on as an event forming part of the matrix of resignation ('RE').
C also relies on the overload of work which it describes.
It is not SXD.

3
Did R3 send C the 'cocksucker' text on 22 January 2018 at 23.12 (199? 458?)
Its 'hostility, nastiness' are relied on as an event forming part of the matrix of resignation ('RE').
It is relied on as a claim of SXD.

4
Did C meet Mr Marcus on 26 January 2018? (His invitation to meet is at 500).
Does the bundle contain a note of the meeting (189)
The meeting is a step in the narrative, not relied on as RE or SXD.

5
C met Mr Marcus on 5 March.
He sent the grievance outcome that day, (526-528).
Did C speak to Mr Marcus informally on 8 March?
Did C message Kate Pockett after the conversation (529)?
The grievance outcome is relied on as an event forming part of the matrix of resignation ('RE').
C also relies on the events about which she grieved.
It is not SXD.

6
Did R3 move her work place to Kings Avenue on or about 9 March 2018?
Her move is relied on as an event forming part of the matrix of resignation ('RE').
It is not SXD.

7
On 4 & 5 March 2018 was there correspondence about billing procedures involving Mr Kakouris (523-525)?
Did C offer to help Mr Kakouris on 29 March (535)?
Did C receive notice of a disciplinary shortly ('within an hour') later? (536)?
It is relied on as an event forming part of the matrix of resignation ('RE').
It is not SXD

8
Were allegations made in the disciplinary invitation at 536 not substantiated (as shown by the C at 537-539), and then substituted with other allegations (540)?
This sequence is relied on as an event forming part of the matrix of resignation ('RE').

9, 10, 11
Did R2 make unwanted physical contact with C on occasions at Kings Avenue during April 2018 (not during March?)
C alleges the events took place in the open plan office, and one event in the kitchen.
C alleges all events took place during ordinary office hours.
Did Kalpana see the event in the kitchen?
Did Dharmesh hear C shout 'Stop' or 'Stop touching me'? (It is not alleged that he saw any event).
Did Joshua see the events on multiple occasions?.

The events are each relied on as an event forming part of the matrix of resignation ('RE').
Each is relied on as a claim of SXD.

12
Did R3 and Joshua have a conversation on one occasion about C's breasts, in C's presence and hearing, in the open plan area?
The event is relied on as an event forming part of the matrix of resignation ('RE').
It is also relied on as a claim of SXD.

13
Did R3 ask C about sexual behaviour in the open plan office in ordinary office hours?
Did she do so before her work base moved to Kings Avenue?
Did she ask 'loads' of other colleagues, male or female, the same questions?
The events are relied on as an event forming part of the matrix of resignation ('RE').
Each is relied on as a claim of SXD.

14
All events took place at Cartwrights or Gardening Club – C agrees to withdraw this box in its entirety

15
Did R2 give C additional work on 27 April (212)?
~~(Further details required)~~

16
Did C resign on 30 April at 1029 (216)?
The letter of resignation references R3's behaviour and language and is a claim of discrimination by constructive dismissal, as well as ordinary constructive dismissal.

The remaining items (17-22) may contain relevant evidence, but do not form part of the claim.

17
Did C speak to Saroj?

18
Did Mr Marcus write to C twice on 1st May 2019 (219, 221) and accept notice, placing her on garden leave for the rest of her notice period?
C has said that this was not in response to any conversation with Saroj

19
Did R3 'scream' at C and threaten her?

20
Does this refer to Mr Marcus' letter of 27 June at 223B?

Other

Is any claim against R3 as an individual out of time? If so, is it just and equitable to extend time?

If successful, to what remedy is the claimant entitled?

Appendix 2: Extracts from Case Management Order

Purpose of this Order

1. This has been a hearing listed in July 2020 for a five day hearing to start on 25 July 2022. The tribunal has been unable to proceed after the fourth day. This Order records the stage at which matters have been left, and gives directions for the rest of the case.

2. By consent, this hearing has been for liability only. If necessary, remedy will be decided separately at a separate hearing.

3. The only steps to be taken at the adjourned hearing on 3 October 2022 are:

   (1) the evidence of Mr Patel;
   (2) the evidence of R2;
   (3) closing submissions;
   (4) provisional listing for a remedy hearing.

4. The parties are reminded that even at this late stage the option of settling their differences remains open to them.

…….

ORDERS

Made pursuant to the Employment Tribunal Rules of Procedure

157. **Adjournment**

157.1 This hearing is adjourned part heard to resume before the same tribunal for one day at 10 am on **Monday 3rd October 2022** to deal with the matters set out at #3 above. The adjourned hearing is to take place by CVP.

158. **Evidence of Mr D Patel**

158.1 If R3 proposes to call Mr D Patel as a witness, they must apply in writing to the tribunal by **2 September 2022**, explaining his unavailability to give evidence in July 2022, and attaching any relevant document (eg medical certificate).

159. **Remedy disclosure**

159.1 The claimant has been advised that the existing disclosure obligations apply to any documents relevant to remedy, eg (1) any record of benefits claimed when unemployed; (2) any record of short term or temporary or agency work and the income from it; (3) records of her appointment and earnings in the job which she took up in September 2018; (4) any medical or eg counselling records relevant to a claim for injury to feelings.

159.2 The claimant is to provide such disclosure to the respondents by **2 September 2022.**

159.3 R1 is responsible for creating a bundle in pdf format of the remedy documents and for sending it to the other parties and the tribunal by **23 September 2022.**

159.4 The parties remain under a duty of disclosure. That means that if a party later finds an item which should been included in any list but wasn't, the item must be disclosed at once.

160. **Chronology and Cast list**

160.1 It helps the tribunal to have a neutral chronology of the major relevant events, cross referred to relevant pages of the bundle, and a list of the names of those mentioned in evidence, and their roles.

160.2 The respondents are to send the claimant a joint first draft of both by **19 August 2022.**

160.3 The claimant is to inform the respondent of any comments on their draft by **2 September 2022.**

160.4 The final version of both (which should be agreed so far as possible) is to be sent to the tribunal by **23 September 2022.**

161. **Closing submissions**

161.1 A party who wishes to put their closing arguments in writing is free to do so.

161.2 The claimant should not feel under any obligation to do so. If the respondents' closing arguments discuss technical legal points, the claimant does not have to reply to those points, but is free to do so if she wishes.

161.3 The respondents should send their closing arguments to the claimant and the tribunal by **9 September 2022**.

161.4 If the claimant wants to reply in writing, she should send her reply to the respondents and the tribunal by **23 September 2022**.

161.5 The oral arguments in closing are given in the order R1, R3, claimant. Oral arguments will be limited to 30 minutes per side.