EMPLOYMENT TRIBUNALS

Claimant **Ms K Gasparovav**

Respondent **essDOCS EMEA LIMITED**

Heard at: London Central

On: 12, 13, 14, 15, 17, 18 & 19 April 2023

Before: Employment Judge E Burns
Mr R Baber
Ms H Craik

Appearances
For the Claimant: Represented herself
For the Respondent: Lucina Harris, Counsel

RESERVED JUDGMENT

The unanimous judgment of the Employment Tribunal is as follows:

(1) The Claimant's claims of direct sex discrimination found in list of issues contained in the appendix at numbers 7.9 and 7.10 succeed.

(2) The Claimant's claim of breach of contract arising from non-payment of her bonus in April 2021 succeeds.

(3) All of the Claimant's other claims fail and are dismissed.

(4) The Claimant is ordered to pay the Respondent's costs in the sum of £5,000.

REASONS

THE ISSUES

1. This is a claim arising from the Claimant's employment with the Respondent. Her employment commenced on 4 November 2019 and ended on 16 July 2021 when she resigned with immediate effect.

2. The issues to be determined had been previously agreed. They are set out in the appendix, although the parties will note that we have altered the numbering.

THE HEARING

3. The hearing was a remote hearing. From a technical perspective, there were a few minor connection difficulties from time to time. We monitored these carefully and paused the proceedings when required. The participants were told that it was an offence to record the proceedings.

4. The Claimant gave evidence. In addition, her estranged husband, Dmitry Zhdannikov gave evidence on her behalf.

5. For the Respondent we heard evidence from:

   - Marina Comninos Co-Head of the Respondent
   - Alexander Goulandris Co-Head of the Respondent
   - Andrew Constantinou, Vice President Product and Projects of the Respondent
   - Steve Rigby of the Respondent
   - John Pullen, IT Developer of the Respondent
   - Terri Baker, External HR Consultant
   - Paul Gordon, External HR Consultant

6. The tribunal ensured that each of the witnesses, who were all in different locations, had access to the relevant written materials which were unmarked. We were satisfied that none of the witnesses was being coached or assisted by any unseen third party while giving their evidence.

7. We took the witnesses slightly out of order, with Ms Comninos giving evidence first, before the Claimant and her estranged husband. The Respondent had been granted permission to do this in advance by Employment Judge Wisby because Ms Comninos had travelled to the UK to give evidence rather than give it from Greece where she lives.

8. There was an agreed hearing bundle of 1374 pages. We read the evidence in the bundle to which we were referred and refer to the page numbers of key documents that we relied upon when reaching our decision below.

9. We explained our reasons for various case management decisions carefully as we went along and also our commitment to ensure that the claimant was not legally disadvantaged because she was a litigant in person. We regularly explained the process, visited the issues and, where required, explained the law when discussing the relevance of the evidence.

10. At the end of the hearing, both parties provide written submissions for which we thank them. In addition, we heard a costs application made by the Respondent for its costs associated with the postponement of what would have been the final hearing in September 2022. Various findings were made by Employment Judge Wisby at the preliminary hearing that took place on 6 September 2022 instead of the final hearing which we have adopted (1354 – 1358). The only updates were:

    - we were taken to the other piece of evidence that the Claimant said she needed before finalising her witness statement. This was the document at page 1349 of the bundle;

    - the Respondent had provided a schedule of its additional costs, said to be incurred as a result of the postponement of the hearing; and

    - the Claimant provided information about her means to pay costs.

FINDINGS OF FACT

Introduction

11. Having considered all the evidence, we find the following facts on a balance of probabilities.

12. The parties will note that not all the matters that they told us about are recorded in our findings of fact. That is because we have limited them to points that are relevant to the legal issues.

13. When reaching our findings of fact, we have taken into account the undisputed fact that the Claimant made complaints during her employment on 22 September 2020, 19 January 2021, 12 February 2021, and 22 March 2021 which made no mention of allegations of inappropriate sexual conduct by Alexander Goulandris. The first time she told the Respondent that he had made sexual advances towards her was at a meeting with Marina Comninos and Andrew Constantinou held on 24 March 2021.

14. The Claimant did not describe all the individual allegations which are now pursued in the litigation at that meeting. She told Ms Comninos and Mr Constantinou that she believed that Mr Goulandris wanted to have a sexual relationship with her, but because she had rejected his advances, he was behaving badly towards her. The sexual advances consisted of chatting her up, looking at her inappropriately in the office and sending her emails with tags with sexual content. The bad behaviour included shouting at her,

undermining her in meetings with clients and removing key elements of her work from her.

15. Following that initial meeting, the Claimant submitted a detailed formal grievance letter dated 16 April 2021 (355 – 358) with an accompanying log of events from 22 September 2020 to 10 April 2021, supported by documentary evidence (780 – 833). The letter expanded on her allegations, but although she had legal assistance preparing it, it did not contain a comprehensive set of allegations.

16. The letter sets out the events about which the Claimant wanted to complain at that time chronologically. It starts by saying:

"Throughout my time at the Company, I maintained a professional and amicable relationship with Mr Alexander Goulandris. At the beginning he was trying to be helpful. However, soon he started to send me some messages which included tags with sexual content. …… By that point I have been working in the company for about 6 months." (355)

Given that the date of the first email message alleged to include a tag with sexual content relied upon by the Claimant is 1 May 2020, the letter suggests that the matters about which the Claimant wished to complain began six months into her employment and did not arise any earlier than this.

17. The Claimant's grievance was considered by an external HR consultant, Terri Baker appointed by the Respondent. Ms Baker conducted a grievance meeting with the Claimant (who attended accompanied her by estranged husband) on 27 April 2021. The meeting was recorded and a transcript was contained in the bundle (492 – 516). The Claimant made a number of additional allegations at the grievance hearing. For the first time she mentioned allegations of inappropriate touching that she said had occurred as early as November 2019.

18. Following the meeting, Ms Baker conducted interviews with Mr Goulandris (526 - 537) Mr Constantinou (569 – 574) and another of the Respondent's employees, Katerina Anagnostara (575 – 583). All of these subsequent meetings were recorded and transcripts contained in the bundle. Although Ms Baker found that on one occasion Mr Goulandris had overstepped the mark in the way he spoke to the Claimant during a call, she did not uphold any of the Claimant's allegations of sexual harassment, discrimination or victimisation.

19. The Claimant was unhappy with the outcome of the grievance and appealed on 13 May 2021 (603). The appeal was considered by a different external HR consultant, Paul Gordon. He met with the Claimant (who was again accompanied to the meeting by her husband) on 11 June 2021. The meeting was recorded and a transcript was contained in the bundle (672 – 688). She

raised a further new allegation at this meeting and also provided some detail that she had not previously provided.

20. Following the meeting with the Claimant, Mr Gordon interviewed Mr Goulandris (708 - 714) and Ms Anagnostara (1331 – 1332) and two further members of the Respondent's employees, John Pullen (705 – 707) and Steve Rigby (719 - 720). Mr Gordon did not uphold the Claimant's appeal.

21. During the course of the litigation, the Claimant added some additional allegations not raised during her employment as well as some additional detail to her existing allegations.

22. The Claimant's explanation for not complaining about Mr Goulandris' alleged behaviour earlier during her employment was because she was aware that raising allegations of inappropriate sexual conduct can be an enormously difficult matter to prove. She did not want to put herself through the stress of doing so at a point in time when she felt able healthwise to carry on working and where she felt the conduct by Mr Goulandris was not having a significant impact on her work. She told us that she changed her mind when Mr Goulandris began to remove key responsibilities from her and when her health was being impacted.

23. We consider this to be an entirely plausible explanation. We have not based any of our findings of fact on the timings of when the Claimant first raised specific allegations. It is common for people who complain about sexual harassment to delay making complaints for a variety of reasons. In addition, it is not unusual for them to tell their version of events in a way that does not initially form a coherent chronological narrative.

24. Our primary reasons for rejecting the Claimant's account of events were that we considered her perception of everyday events was skewed, she demonstrated a tendency to make extraordinary allegations without evidence and she contradicted herself in a way that could not be attributable to a fallible memory.

25. A key part of the Claimant's case was that none of the incidents of unwanted sexual conduct were overt. Instead, her case was that Mr Goulandris, described by her many times as a "rich and powerful man," made it obvious by his conduct that he wanted the Claimant to offer to have sex with him and then when she did not, he treated her badly as a result. Her case was that a man in his position would be too clever to make overt advances.

26. As a result, her case rested on interpreting seemingly innocent interactions between her and Mr Goulandris and finding a sinister motive in them. In our judgment, this led her to take a skewed perception of such interactions.

27. This was particularly evident from her reliance on the two emails said to contain tags with sexual content and her assertion that Mr Goulandris was somehow making a sexual advance to her by accepting outlook calendar

invites multiple times. Even taking into account that an individual's perception of behaviour and the general context in which it occurs are relevant considerations when determining whether or not something constitutes harassment, we consider no-one other than the Claimant would have interpreted any of these three things to be sexual advances.

28. One of the several extraordinary allegations that concerned us the most was when the Claimant asserted during the grievance hearing that Mr Goulandris had slept with multiple women employees of the Respondent. She admitted that she had no factual basis for asserting this.

29. She made another extraordinary allegation when giving evidence at the hearing. She suggested that Mr Goulandris must have spoken to Ms Comninos and asked her to help with his plan to punish the Claimant because she was refusing to have sex with him in early March 2021. This contradicted her previous version of events, but was the only way the Claimant could explain, on her case, why Ms Comninos suggested that weekly calls with users on the BDT project should not take place before the Claimant had raised any complaints of sexual harassment.

30. A significant contradiction in the Claimant's case for us was the fact that the Claimant invited Mr Goulandris to lunch at around the end of September 2020. She told us that she did this to get some peace because he was sending her lots of messages, but this was not supported by the evidence. In our judgment, although probably unlikely, it is not inconceivable that a women who believes her boss is making sexual advances to her would invite him to lunch. However, it is inconceivable that if he was, he would refuse such an invitation. The Claimant's explanation for why Mr Goulandris refused her invitation was that lunch involved romance and he only wanted sex with her.

31. Notwithstanding the above, we nevertheless went through all the evidence available to us for each allegation. This included considering the contemporaneous documentation, the transcripts of the interviews conducted as part of the grievance and appeal processes and the witness evidence at the hearing. We made our own findings, based on that evidence and did not simply adopt the findings made by Ms Baker or Mr Gordon.

32. Only one of the people that Ms Baker interviewed did not attend the hearing as a witness. That was Ms Anagnostara. She told Ms Baker that she had never witnessed any inappropriate behaviour by Mr Goulandris to any women. She had worked at the Respondent with him since 2011 and travelled with him. She described Mr Goulandris as able to be "demanding and difficult", but was emphatic about saying that he was most definitely not the "type of guy" that she thought would sexually harass anyone.

33. After issuing proceedings, the Claimant wrote to several former employees of the Respondent who had worked with Mr Goulandris to ask them if they would be prepared to attest that Mr Goulandris had made sexual advances

to other woman such as leering, winking and touching. None of them responded to confirm that they had witnessed anything of that nature (1335 – 1338).

Background

34. The Respondent was founded in 2005. It essentially develops digitised software solutions for the shipping industry that facilitate lawful paperless trade. It has developed a number of bespoke software solutions for clients which have then been successfully sold to new prospective clients. It also provides ongoing support to clients beyond the development stage.

35. By the time the events occurred that were the subject of the claim, the Respondent had grown into a team of eleven staff in the UK and 35 worldwide with offices in nine countries. It did not have its own HR department, but outsourced HR matters to an external consultancy.

36. Mr Goulandris was one of the co-founders of the Respondent. He was one of two co-Heads of the Respondent. The other co-Head was Ms Comninos. She had joined the Respondent in 2006 as part-time general counsel, but became more involved in the business and became co-Head in 2018. Both Mr Goulandris and Ms Comninos are lawyers by back way of background.

37. As co-Heads, Mr Goulandris and the Ms Comninos split business responsibilities with Mr Goulandris being responsible for product, partnerships, and sales and marketing and Ms Comninos being responsible for operations, finance and legal. In these roles, Mr Goulandris was heavily involved in the design and development of new products. Once a product had been developed, it then became Ms Cominos' responsibility to ensure its successful rollout, as well as providing ongoing security and support to clients using the product.

38. As well as being responsible for developing new products, Mr Goulandris also led the process of creating enhancements to established products to ensure that they are constantly updated. He is responsible for determining what enhancements should be made and when. Assuming the Respondent wants to proceed with an enhancement, Mr Goulandris oversees scoping, commercials and development for such enhancements, called releases.

Claimant's Employment

39. The Claimant commenced employment with the Respondent as a Project Manager on 4 November 2019. Her line manager was Mr Constantinou, Vice President of Product and Projects. Mr Constantinou had worked for the Respondent for around seven years at this point, having himself started as a Project Manager.

40. The Claimant was issued with a contract of employment (117). Under clause 1.2 of the contract, once the Claimant had completed her probationary

period she was entitled to notice or required to give notice of varying lengths depending on her length of continuous service.

41. Under the contract, the Claimant was also said to be entitled to a bonus. All that the contract said was:

"Commencing in 2nd year of employment; 10% annual bonus, payable quarterly in arrears based on company, team and personal targets."

42. All that the Handbook said on the topic of bonuses was:

"Your starting salary is detailed in your contract of employment. Depending of your role, you might be eligible for certain allowances and additional payments, such as discretionary bonuses, which will be advised in the same document." (114)

We were told that the practice within the Respondent was to pay a bonus which took into account company, team and personal performance on the ratio of 40:30:30.

43. At the time of the Claimant's employment, only three of the Respondent's thirty five employees were eligible for bonuses. One was located in Greece, the second was Mr Constantinou and the third was the Claimant. The Respondent operated on the basis of the calendar year with the four quarters being 1 January to 31 March, 1 April to 30 June, 1 July to 30 September and 1 October to 31 December. When payable, bonuses were paid in the payroll of the month following the end of the quarter. Ms Comninos was responsible for deciding whether to pay bonuses to the eligible employees, and if so, how much, in consultation with their relevant managers. On her own evidence the decision making process was not "robust" and the rationale for the decisions made was not recorded in writing.

The BDT Project

44. The Claimant's allegations span the time period from late 2019 to her resignation on 19 July 2021. Throughout this period, she was working on a project that she was assigned to shortly after the start of her employment. That was the Barge Digital Transformation ("BDT") Project. This was a high profile and complex project. The Claimant was the Project Manager and Product Owner for the project.

45. In October 2019, the Respondent had won a tender to develop a product for the National Grain and Feed Association in the US. It was one of the largest projects that the Respondent had ever been involved in and a tight timetable had been agreed. Mr Goulandris was therefore heavily involved in it which required him to have various interactions with the Claimant.

46. The BDT product was a bespoke product that was initially developed as a standalone product. It was always intended, however, to be integrated with

the other products offered by the Respondent. Although the project was a significant one for the Respondent, the number of users was limited compared to other products offered by the Respondent. There were only forty compared to 40,000 for one of the Respondent's other products and 80,000 for its main product.

47. From around the middle of 2020 onwards, it became apparent that the project was not going to generate as much revenue as had been projected. This was because the client had overestimated the volume of transactions there would be. The Respondent's pricing model was based on the volume of transactions and so this had a direct impact on the profitability of the product.

48. In addition, developing the product was more complex and taking longer than at first envisaged. Although planned to go live in August 2020, the go live date was delayed until November 2020. There was then a period of further active development which continued until around mid-February / early March 2021. From this period onwards it was envisaged that the project would transition to a business as usual stage.

49. The consequences of the transition from the initial development stage to the business as usual stage was that the requirements of the Claimant's role as Project Manager for the BDT project changed. In addition, the expectation was that she would work on other projects instead. We note that after the Claimant's resignation, no-one was assigned to project manage the BDT project. Our finding is that this was because there was no need for anyone to undertake this role because the project had been delivered and had fully moved to business as usual by this time.

COVID-19 and the Claimant's Personal Circumstances

50. At the start of her employment, the Claimant was based in the Respondent's London office, along with its other UK based employees. She sat in an open plan area and her desk was directly opposite that of Mr Constantinou. The office also had a meeting room.

51. As the COVID-19 pandemic began to unfold in March 2020, the Respondent moved to remote working. Initially this was on a phased basis, but it quickly became full time as of 12 March 2020. There was no return to office based working prior to the Claimant's resignation and all calls from then in were conducted remotely. The Claimant was caring for three young children at this time.

52. The Claimant's father died from COVID-19 in July 2020. This was very upsetting for the Claimant as she was not able to travel to be with him because of the pandemic. In October 2020, she separated from her husband who moved out of the family home.

November 2019 to March 2020

53. The first seven of the Claimant's allegations of unwanted sexual conduct by Mr Goulandris towards her were said by her to have occurred in the office prior to lockdown.

54. Mr Goulandris denied all allegations of inappropriate touching and staring at the Claimant. He said that although he had at one time been more tactile with colleagues and would, for example, greet people by kissing them on the cheeks, he had made a conscious decision not to be tactile with colleague in recent years. This was part a response to the Me Too movement that started in late 2017. He accepted that he might have accidentally touched the Claimant on occasions, although he could not recall doing so.

55. Mr Constantinou confirmed that Mr Goulandris was not a tactile man. He told us that he was sure that if he had seen him touching the Claimant or something had occurred that was unusual, he would have noticed and remembered it. He also confirmed that there was no basis to the Claimant's allegation that Mr Goulandris had had multiple relationships with women working for the Respondent and he had not told her this or tried to hint at this to her. Ms Comninos also corroborated this.

56. The first allegation of unwanted touching was said by the Claimant to have occurred on **18 November 2019**. According to her evidence, during a meeting both she and Mr Goulandris were attending, Mr Goulandris touched her leg with his leg under the table, and stared at her. According to the Claimant, the touch made her jump and she felt anxious and uncomfortable.

57. According to the Claimant's evidence, Mr Constantinou noticed that she jumped. Mr Constantinou's evidence was that he had no recollection of this.

58. Our finding is that this incident did occur, but that the conduct was not intentional and it was not of a sexual nature. Touching legs under a table during a meeting is a common form of meaningless and accidental contact between colleagues. When it occurs, it is common to look up and around to see how it might have occurred, but not to interrupt the meeting. Therefore, the Claimant's memory of this incident occurring is plausible. We would not expect Mr Goulandris or Mr Constantinous to have any memory of such an innocuous event.

59. The next allegation is said to have occurred on **21 November 2019**. According to the Claimant's witness evidence to the tribunal, Mr Goulandris approached her desk and sat next to her where he stared and winked at her. This made her feel anxious. She was startled and looked away. Shortly after this he stood up and announced that he was going to Germany. According to the Claimant, it was unusual for Mr Goulandris to announce where he was going.

60. She told us that she was certain Mr Constantinou and Mr Rigby witnessed this behaviour, but they both denied this. Mr Constantino told us that, based on the position of his desk he would have witnessed this had it occurred and was sure he would have remembered if he had seen Mr Goulandris winking at someone. Mr Rigby told us that his desk was not in a position where he would have seen this. Mr Rigby told us it was not uncommon for Mr Goulandris to inform staff of his whereabouts, including his traveling plans, for communication purposes.

61. Mr Goulandris told us that he had a vague memory of having to leave the office to catch a flight and did not think it was odd that he would have said where he was going. He denied winking at the Claimant.

62. Our finding is that Mr Goulandris did mention leaving to catch a flight to Germany, but did not wink at the Claimant. His behaviour did not constitute conduct of a sexual nature.

63. The next two incidents are said to have taken place on the same day. The Claimant could not recall the date, but said they occurred in **December 2019**. Her evidence was that Mr Goulandris sat next to her and motioned as if to toucher her computer mouse, but missed it and touched her hand. Later on, on the same day, she told us that while she was sitting with her hands on her head, and Mr Goulandris was talking to Mr Constantinou, he approached her and when she asked him a question he deliberately, but briefly touched her elbow as he walked past her.

64. The Claimant's evidence was that Mr Constantinou witnessed these incidents, but this was denied by him.

65. Mr Goulandris could not recall the incidents. He said that he could imagine he might have accidently touched the Claimant's hand if he had taken her mouse and used it to navigate her screen to show her something, but denied doing this deliberately or with any sexual motive. When the Claimant demonstrated how he had touched her elbow, according to her, Mr Goulandris denied the incident had happened and said he could not even imagine it happening accidently.

66. Our finding is that Mr Goulandris did accidently touch the Claimant's hand when trying to move her mouse, but he did not touch her elbow as alleged. In our judgment, the elbow touching is unlikely to have been accidental and we consider if it had occurred, Mr Constantinous and Mr Goulandris would have remembered it and would have told us about it. In any event, neither incident of touching was conduct of a sexual nature.

67. The next allegation is said by the Claimant to have occurred on a different date in **December 2019**. Mr Gouldandris sat next to the Claimant and at her desk and poked her upper arm several times as he was asking her questions. She told us that Mr Constantinou was initially in the meeting room

when this was happening, but he came out as it was happening and put his head in his hands as a result. Mr Constantinou denied this.

68. Mr Goulandris denied that he poked the Claimant's arm and could not even imagine it happening accidently.

69. Our finding is that this incident did not occur. As with the incident above, had it occurred, we consider that Mr Goulandris and Mr Constantinou would have recalled it and told us about it. On any event, it was not conduct of sexual nature.

70. We note that according to the evidence given by the Claimant and her estranged husband, the Claimant informed her estranged husband that she thought her boss was trying to make sexual advances towards her at around this time. Her estranged husband was not able to tell us about specific examples that the Claimant told him. Nor was he able to be precise about any timings. We did not disbelieve that the Claimant said something to her estranged husband and possibly on more than one occasion, but we didn't find his evidence at all helpful to our fact finding task.

71. The next allegation the Claimant complains about occurred on **12 March 2020**. According to the Claimant she was taking a call with users for the BDT project in the office meeting room and noticed that the other members of staff had left. This was the last day that staff were in the office before they moved to remote working. At this time, people were leaving early in order to avoid traveling at peak times. We find that this is the most likely reason why staff were leaving early.

72. The Claimant remained on her call and Mr Goulandris came in and joined her. At the end of the call, according to her, he stayed talking to her for about an hour. Her evidence to the tribunal was that although he was just talking about work matters, Mr Goulandris was constantly running his hand through his hair and pushing his head back and started staring at the Claimant for a prolonged time between the questions. She said she felt he was giving her "leering looks" as if he was waiting for something from her.

73. The Claimant talked a little about this alleged incident at the grievance meeting with Ms Baker. She was not sure of the date when mentioning it to her and incorrectly said she thought it may have been on 8 or 9 March. She did not describe feeling threatened to Ms Baker, but told her that although Mr Goulandris was just speaking to her about business, she interpreted his behaviour as trying to chat her up as he was spending so long doing it. She did not say anything to her about "*leering looks*".

74. When the Claimant came to describe this incident to Mr Gordon, however, she said she was very afraid and that she thought Mr Goulandris was going to try and rape her. It is quite staggering that, if this was the way she genuinely felt about this incident, she did not mention this earlier.

75. Mr Goulandris told us that he recalled having a discussion with the Claimant after a BDT user meeting in March 2020, but that it was totally focussed on work and lasted around ten minutes. He denied behaving inappropriately at all at the meeting and was shocked when he learned that the Claimant had alleged that she was so afraid and had mentioned that the thought of him raping her had been in her mind.

76. Our finding is that the meeting took place as described by Mr Goulandris.

May 2020

77. On **1 May 2020**, the Claimant sent a draft presentation to Mr Goulandris to review. He sent the file back by email as an attachment with an adding "ajg" in brackets in the file name so that it appeared to be called: NGFA Steering Committee Presentation 05 May 2020 (ajg).pptx (188). The email was not just sent to the Claimant, but copied to three other employees. Mr Goulandris explained that he had made amendments to the presentation in red and set out in the body of the email a number of additional things that needed to be worked on before the presentation would be ready to deliver.

78. The Claimant told us that she interpreted "ajg" as being an abbreviation for "A Jumbo Genital". In her evidence to the tribunal, she admitted that she did not know this possible meaning of the initials "AJG" until she searched on the internet for it. She did not tell us when she did this search, however.

79. Mr Goulandris told us that his middle name is John and it was his habit to amend file names by adding his initials to the names of documents which he had reviewed. Another example was included in the bundle. Rather than accept the obvious and simple explanation for Mr Goulandris adding "ajg" to the document name, the Claimant alleged the document had been forged.

80. The Claimant's rationale for refusing to accept that the use of "ajg" in the file name was Mr Goulandris's initial was because he had used lower case letters. She said that a man as rich and powerful as Mr Goulandris would never put his initials in lower case letters but would always use capitals. We found this extraordinary.

81. We find that the "ajg" was simply a reference to the initials of Mr Goulandris and that the other document was genuine (157).

82. The Claimant described that the email made her feel disgusted. She said having received it, she "*didn't want to work and speak with Alexander Goulandris any longer*."

83. The real significance of the email for the Claimant was what she says Mr Goulandris did next. According to her there was a weekly call for the BDT project on the following **Tuesday 5 May 2020**. She told us Mr Goulandris "*sensed [her] disgust [about the email] when [she] said hello to him which*

made him furious." She alleged that as a result, during the call, Mr Goulandris started shouting at her and did not let her speak.

84. The Claimant said that John Pullen, a developer for the BDT solution, witnessed Alexander Goulandris' behaviour, but he denied this when giving evidence to the hearing. Mr Pullen told us that he had never heard Mr Goulandris shout at anyone during a work meeting. He told us that there were sometimes quite heated debates, but he personally had not witnessed Mr Goulandris behaving in a way that he considered overstepped the mark.

85. Mr Goulandris accepted when giving his evidence that it was possible, he might have cut the Claimant off. He told us that he had a tendency to do this in meetings when people were going off on tangents and not focussing on what he wanted to focus on, or were not being sufficiently direct. He also accepted that on occasions he could raise his voice and be abrupt, but denied that he ever resorted to shouting. We have seen other examples of Mr Goulandris using perfectly polite, but abrupt language in his business communications and find that this a part of his communication style.

86. He said he could not recall this specific incident, but it was possible that he had expressed some frustration during a call at around this time as it was becoming evident that the BDT project was taking more developer time than at first envisaged.

87. Our finding is that Mr Goulandris did raise his voice to the Claimant during the call and cut her off, but this behaviour did not extend to shouting at her. and was not linked in any way to the email or his perception of any disgust shown by the Claimant.

88. The Claimant told us that Mr Goulandris again shouted at her during a meeting on 6 July 2020. She recalled asked him, "*Why are you shouting at me?*" According to her, he responded at the time apologising and saying it was "*just frustration*".

89. Mr Goulandris told us that he could not recall the incident, but accepted that he had subsequently sent the Claimant an email with an apology and may have raised his voice out of frustration in the meeting. That frustration was again because the BDT project was not going to plan at this time. The email says:

"*And apologies again. Really appreciate the fantastic work you have done on this project and cant wait to see us get this whole industry up and digital."* (190)

90. Our finding is that Mr Goulandris did not shout at the Claimant during this call, but did raise his voice to her. However, he acknowledged that he had done this and apologised to her when she challenged him on it and praised her for the work she was doing. He would have done the same thing had she raised a concern in the May call.

Sept 2020

91. The next incident was said by the Claimant to have taken place in another internal meeting on **22nd September 2020**. According to her evidence, when the Claimant was discussing the progress of the BDT solution project and provisional go live date, Mr Goulandris asked her when the project would be delivered and she responded by telling him late October. She says he suddenly burst out shouting with an extremely angry voice, saying "I need date, date, date". She interpreted this as Mr Goulandris demanding her to tell him, *"the exact date when I would finally agree on sexual contact with him".*

92. Mr Goulandris did recall this meeting. He said that the Claimant was being very vague about when the BDT project would be delivered. He accepts he did raise his voice to her, but this was because he was frustrated that she was not being specific about a go live date. He told us that any reference to a date was to the project 'go live' date.

93. The Claimant's evidence was that Mr Rigby and Mr Pullen were both witnesses to what she described as Mr Goulandris' aggressive behaviour. behaviour. Neither of them could recall this incident.

94. Following the meeting, the Claimant sent a Slack message to Ms Cominos asking if she could speak to her (769). She subsequently emailed her before Ms Comninos had had a chance to respond. In her message the claimant said:

"Hi Marina,

I would like to raise one issue with you. Alex Goulandris has been harsh on me and this was quite often the case when he put me down during our internal calls as well shouting at me. Today he spoke to me with an extremely angry voice. I do not see any good reason for that. If I am not doing my job well, I would rather him say this to me outright.

It is quite often the case that I burst out crying after our calls end and it is very stressful and distressing to me. As I said, I do not see any reason for such rude behaviour. I do not want to talk to him as I find this really stressful after today's call. You have known Alex for many years, could you explain to me what causes such inappropriate and unacceptable behaviour?" (195)

95. Ms Comninos spoke to the Claimant shortly after receiving the email. She told us that she was not completely surprised to receive the complaint because Mr Goulandris could be abrupt and short with people. She was, however, surprised to see that the Claimant appeared to believe that there was a problem with her performance as her understanding was that the Claimant was a very good project manager.

96. Ms Comninos arranged for Mr Constantinou to speak to the Claimant, which he did. They exchanged following Slack messages afterwards.

Mr Constantiou said at 7:29 pm

"Spoken with [the Claimant], yep shes very upset. Feels disrespected and thinks shes seen as an 'idiot' by [Mr Goulandris]

Assured her that is not the case, and we will sort it out – that it is not personal, but of course its unacceptable. I'll leave to you to speak to [Mr Goulandris. She's having a half day tomorrow and off on Friday. Thanks"

Ms Comninos replied at 9:53

"Great thanks for speaking to her, we'll sort it, the crazy thing is [Mr Goulandris] really rates her."(769)

97. The Claimant told us that she felt Mr Constantinos and Ms Cominos were very supportive when she raised this matter with them. We consider that the messages reflect the genuine understanding of both Ms Cominos and Mr Constantinou. Neither of them disbelieved what the Claimant had told them.

98. Ms Comninos also spoke to Mr Goulandris after the call with the Claimant. He agreed to apologise to the Claimant and he believes he did, but could not evidence this.

99. Shortly after this, the Claimant invited Mr Goulandris to have lunch with her. He declined the invitation.

October – December 2020

100. On **Monday 12 October 2020**, the Claimant received multiple messages from Mr Goulandris accepting a meeting with the title BDT Internal weekly call. The one meeting invite that can be clearly seen from the screen shot included in the bundle was an older meeting that had been scheduled to take place on 3 March 2020 between 12:20 and 12:20. The screen shot also partly shows another meeting on an unknown date finishing at 12:00. We have therefore concluded that the entries relate to a series of meetings rather than a single meeting. (1326 - 1327).

101. Mr Goulandris denied deliberately sending multiple acceptance messages to the Claimant.

102. Our finding is that Mr Goulandris did not deliberately send multiple acceptance messages to the Claimant, but they were sent from his computer. In any event, this was not conduct of a sexual nature or sent in response to the Claimant's reaction to any sexual advances as none had been made.

103. On 6 November 2020, the BDT project went live. Mr Goulandris sent an email to everyone in the respondent in which he praised the entire team involved. The email gave "special shoutouts" for key people which include the Claimant (218). In the email Mr Goulandris summarised the current position for the project and the next steps.

104. On 25 November 2020, Mr Constantiou conducted an annual review meeting with the Claimant. He sent Ms Comninos a slack message about it later. His message (770) said:

"Annual review went really well with [the Claimant]. She seems really happy. loves the trust we gave her to deliver BDT and the fleixibility of the days/hours she's worked when she's needed to look after her kids.

Seems she's over any issues she had with [Mr Goulandris], and see's him being a lot more supportive and trusting now

Also thanks you and I for the support she's received…."

105. The Claimant accepted in her evidence that the message reflected what she told Mr Constantinou at the annual review meeting. We note that Mr Constantinou had no hesitation discussing his understanding of the relationship between the Claimant with Mr Goulandris with Ms Comninos. Following the review the Claimant received a pay increase.

106. On Thursday 10 December 2020, the Claimant again received multiple acceptances to a meeting called BDT Internal meeting (220). The meeting we can see in the screen shot was dated 6 August 2020 (15:00 to 16:00).

107. Mr Goulandris denied deliberately sending multiple acceptance messages to the Claimant. Our finding is the same as with earlier allegation relating to multiple acceptances.

January 2021

108. The next allegation of unwanted sexual conduct is said by the Claimant to have occurred during a work-related telephone call on **4th January 2021**. The Claimant's evidence was that Mr Goulandris was flirting with her. She recalled that he asked some friendly questions about the Russian Christmas also said, "*Have a nice evening*" in an "*alluring voice*".

109. The Claimant provided evidence confirming that Mr Goulandris had rung her on 4 January 2021 (832). He did not deny this, but said he was simply being polite during the call and that the Claimant misinterpreted this as flirting.

110. Our finding is there was no flirting and nothing that Mr Goulandris said constituted conduct of a sexual nature.

111. The Claimant's accusation is that having spoken to her in an alluring voice, Mr Goulandris expected the Claimant to contact him shortly after the call and offer him sex. However, when she did not do this, he began to behave vindictively again towards her.

112. According to the Claimant's evidence, on **14 January 2021** during another weekly BDT call with clients, while she was discussing an issue with BDT users, she was abruptly interrupted by Mr Goulandris who told the clients that the claimant was incorrect.

The Claimant's view of this was:

"He undermined me in front of the clients, telling the clients that what I was saying was wrong. His behaviour was very unprofessional. I was indignant. I felt abused, humiliated, undermined, and intimidated."

113. Mr Goulandris could not recall this incident, but he thought it was entirely possible that he would have corrected incorrect information provided by the Claimant to the users. He did not believe he would have done this abruptly, but would have wanted to ensure that users had the correct information.

114. Our finding is that Mr Goulandris did correct the Claimant, but that he did not this do in an unprofessional manner and any humiliation felt by her was in her own mind. In addition, we find that there was no link between Mr Goulandris's behaviour on this call and the telephone call with the Claimant on 4 January 2021.

115. This call was followed a few days later by a BDT internal call on 19 January 2021. The Claimant alleges that during the call Mr Goulandris became rude towards her and did not let her speak during the call. She says that when she wanted to express her opinion, Mr. Goulandris did not let her speak and stopped her abruptly twice. The Claimant was very upset and left the meeting in tears. She re-joined the call later, however, to finish off the meeting.

116. Mr Goulandris appreciated that he had upset the Claimant and messaged her later saying;

"Karina, sorry, I wasn't trying to interrupt you – I was frustrated by Steve [Rigby] wanting another meeting on something that I thought we had fully scoped and agreed. If you answer the questions on how this performance testing would run, he will not take ownership, and only he (and his team) can do this work.

Essentially, I was trying to put him on the spot to explain why he wanted a meeting and what he was expecting to ger out of it, so you have a specific deliverable for him." (221)

117. Steve Rigby was also in the meeting and witnessed this. He told us at the tribunal hearing that he could not now recall the event, but believed that this was the incident he had told Mr Gordon about when Mr Gordon interviewed him for the purposes of the Claimant's appeal.

118. In that meeting he confirmed to Mr Gordon that he had witnessed one occasion when he felt Mr Goulandris had behaved badly towards the Claimant. He described the incident as follows:

"there was one meeting where Karina got very upset, very distressed because Alex I guess shot her down several times which, at the time I thought was quite harsh, but I don't think Karina helped herself because she just tried to raise the same point over and over again, even though that had already been discussed and in my mind a conclusion had already been delivered, so I think Alex got a bit frustrated with her that she was raising the same thing over and over again and it got a bit heated between them." (720)

119. We find this to be an accurate account. Several of the Respondent's witnesses described how the Claimant could become dogged when advocating for something she felt was right, to the point of stubbornness and intransigence.

120. We also found that the explanation that Mr Goulandris gave to the Claimant following the meeting was genuine.

121. The Claimant complained to Ms Comninos about the behaviour of Mr Goulandris at the meeting.

122. On 30th January 2021, Mr Goulandris emailed the Claimant as follows:

"Can you please complete the following:

The solution us currently used by xx Agris companies and yy Barge lines in corn cargoes in south-north flows in the ???? waterways.

Also, can you remind me of what the balance of the rollout will be and the approx. timing.

Thanks" (231)

123. The Claimant's case is that this was an email that constituted a sexual advance. The basis for this was that the "xx" (marked in red in the original) refers to kisses, and "yy" (also red) refers to sexual contact of some nature with the "????" (also red) being a coded way of Mr Goulandris asking her when she would be ready to engage in sexual acts with him.

124. The Claimant told us that Mr Goulandris already knew the information he was asking for in the email which was the main reason why she interpreted

it as she did. She directed us to look at the email of 6 November 2020 where he described the project.

125. Mr Goulandris told us that this was a typical email he sent to colleagues asking for information. He told us that it was not true that he knew the information requested already. Although he had set out the status of the project and where it was operating as at 6 November 2020 in his earlier email, this was now coming up to three months later and he wanted the latest statistics to share with a board member.

126. Evidence gathered in the course of the investigation confirmed that Mr Goulandris had sent similar emails to others. This was also confirmed by Mr Constantinou. Despite having been shown copies of the similar emails, the Claimant chose to persist in her interpretation when cross examined. Her justification for this was that in the other emails she was shown Mr Goulandris had not included "????".

127. Our finding is that the email was a genuine request for information and did not constitute conduct of a sexual nature.

128. The Claimant was paid a bonus of £1,260 gross in the January 2021 payroll (1313). This was for the quarter period from September to December 2020, during which the BDT project had gone live. This was the full amount of the possible bonus that could have been paid to her, even though strictly speaking company revenues were down. This was to reflect the fact that the Respondent was very happy with the Claimant's performance on the BDT project.

February 2021

129. The Claimant claims to have complained about Mr Goulandris's behaviour to Mr Constantinou on 12 February 2021. This was disputed by Mr Constantinou. He told us that the Claimant did complain to him on this date, but her complaint was about the behaviour of one of her colleagues during a team meeting that morning and not about Mr Goulandris.

130. Following his conversation with the Claimant, Mr Constantinou sent a Slack message to Ms Comninos summarising his conversation with the Claimant. in that message he said:

"Just off a call with [the Claimant].and she's really quite upset. Feels people have been rude to her over the last few weeks. On Monday Haotian was really short with her, and she basically couldn't work on Mon/Tues and took Wed off." (771)

131. Ms Caminos and Mr Constantinou discussed what they could do. The incidents the Claimant had referred to had occurred in a daily team meeting called the Scrum. They decided that it would be helpful to send a message to everyone attending that meeting of the requirement to maintain

professional standards of communication. They were conscious that everyone was in a lockdown and all meetings were taking place remotely (232). Mr Constantinou accordingly sent an email dated 15 February 2021 (233 to 234) to various staff. This did not include Mr Goulandris. The Claimant has invited us to find that Mr Constantinou was afraid of Mr Goulandris because of his senior position. We do not consider this should be inferred from the circulation list of the email. Mr Goulandris was not part of the Scrum meeting and Mr Constantinou felt no need to include him for that reason.

132. On 18 February 2021, during a BDT call with users, the Claimant informed the users that that additional functionality would be available on a particular date. According to Mr Goulandris, there had been discussions between him and the developer working on the product and the Claimant about the date when this increased functionality could be made available. He was keen to see it released earlier so that the Respondent could invoice for it earlier. During the call he messaged the developer who confirmed the functionality could be released a few days earlier. He therefore informed the users of this good news. The Claimant felt undermined by this intervention by him.

March 2021

133. On 1 March 2021, the Claimant messaged Mr Goulandris using Slack to say that she was unwell and would need to miss a call about BDT releases and put back the BDT steering co call. Mr Goulandris replied to say the call could be moved but added "*Let's also cancel the call going forward as we move to BAU.*" He explained that he did not have any fixed calls for the Respondent's other products and said that BDT would be run like the other products going forwards where calls were more ad hoc. The Claimant replied saying "*Thanks we agreed with [Ms Comninos] that we will discuss transitioning to BAU first with Steer co before changing or cancelling calls*." Mr Goulandris explained that was for external calls and he meant internal calls. He said "*for internal calls, we dont need regular product calls any more*." He then added, "*Stop working and go to bed. Feel better."* (1349).

134. The Claimant's evidence was that no-one from the Respondent explained anything about a transition to business as usual (BAU) at any time prior to her raising allegations of sexual harassment. Based on the communication set out above, this was clearly not correct. Mr Goulandris was making it clear to her that they were moving to BAU and he wanted to run BDT like the Respondents other products going forwards. In addition, the Claimant's own comment demonstrates that she had been discussing a transition to BAU with Ms Comninos and how this would be communicated with the BDT client group.

135. On 4 March 2021, the Claimant emailed Mr Goulandris to ask him about managing the backlog list and the new releases list. She said she wanted to understand the process. He replied telling her that he would own the release list and she would own the backlog list. He asked her to maintain the backlog

list and add anything that had been raised and was still an issue. He added that he would "*discuss all releases with Brittany [the purse holder for the BDT client group) going forward*" saying "*I don't need you to be involved in that any more thanks.*" He added that, "*For items to move form the backlog to a release it becomes a commercial matter, so I will deal with that*." (240)

136. The Claimant says that this is a key email in which Mr Goulandris treated her vindictively. Mr Goulandris denied this. He explained that while the BDT project was in its initial intense stage of development there was a much greater need for a project manager to liaise with the users. At this stage, the Respondent was working to deliver the functionality that had been scoped and agreed with the client at the start of the project. However, as they transitioned towards business as usual, there was a change in this dynamic.

137. Rather than the client driving decisions about what functionality to include in new software releases, the Respondent took back control of this. This was because it was for the Respondent to decide what improved functionality it could introduce to best service its overall commercial needs once the BDT product was fully developed and integrating with the Respondent's other products.

138. We accepted this explanation as can appreciate the inherent logic of it. In addition, we accepted the Respondent's explanation for wanting to stop having Project Manager led user feedback calls with the BDT users which was another of the Claimant's complaints.

139. The necessity for such calls after the transition was discussed between her and Ms Comninos in early March. On 8 March 2021, they exchanged emails about a presentation to be made to the BDT Steering committee which was to include slides (184 – 185) covering exactly this topic. Ms Comninos explained to the Claimant that her preference was not to have such calls, but to align the method for adopting user feedback with that used for the Respondent's other products. She later agreed a compromise with the Claimant who was adamant that the calls should continue (241).

140. The communication between Ms Comninos and the slides also confirm that there were ongoing discussions with the Claimant about the transition to business as usual. The Respondent was keen to free the Claimant up to work on other project work.

141. The Claimant's evidence was also inconsistent on the topic of the transition to business as usual. At the same time as telling us that no-one explained it to her until after she raised sexual harassment, she told us that she had had no difficulty with handing over any aspect of BDT. She relied on what her colleague Ms Anagnostara told Ms Baker when interviewed by her for the purposes of her grievance investigation to support her position. Although Ms Anagnostara does explain that the Claimant initiated some handover activity some parts of the project (paragraph 4, 579) when her interview is read as a whole, she is clearly saying that the BDT project had been delivered and

that she did not understand why the Claimant felt she was being cut out from it.

142. Our finding is that there were parts of the project that the Claimant was happy to handover, but there were other parts where she felt her input was still required. The essential difficulty was that her view of where she was still needed differed from that of Mr Goulandrias and Ms Comninos and she took this very personally.

143. On 17 March 2021, the Claimant completed an on-line consultation request for her GP's surgery. In it, she said:

"I have sleep disorder because of sexual harassment and woman abuse at work. [Mr Goulandris] has been abusing and harassing me. I have sleep disorder due to stress and anxiety. Find it difficult to concentrate and do my daily work. Please can you help to sort out this sleep problem." (246)

and

"I have sexual harassment at work and woman abuse. Mr Goulandris is trying to chat me up and sending me some messages with some tags (such as yy and yy) hinting that he wants to have sex with me. He is expecting me to guess this and contact him to offer him sex. When I do not do this, he gets angry and vindictive. He removes me from mails and calls and is trying to remove me from projects." (247)

144. On 19 March 2021, Ms Comninos had surgery. She did not therefore see an email that the Claimant sent to her and Mr Constantinou at 11:50. In the email, the Claimant complained that Mr Goulandris had been "harsh" on her and was trying to remove her from projects. She also said that she had to call her GP to ask for some help and they had prescribed her some sleeping pills. She said she needed to take that day as sick leave (287 – 288).

145. Mr Constantinou replied the same day to say that the Claimant should please rest and suggested that they speak the following week if she was feeling better (249). Ms Comninos replied in similar terms on Sunday 21 March at 17:01 (251). The Claimant sent a further email on 22 March 2021 with some specific complaints contained in it. This included a complaint about the BDT users call on 18 February 2021 and the email from Mr Goulandris to her of 4 March 2021. She added:

"… I have been running this project from the very start, having weekly calls with the users. The clients have said many times that I am doing a great job. I am in the best position to comment on clients' needs.

I am not saying I should be making decisions on what issues should go to releases but I should be DEFINITELY [Claimant's emphasis] involved…" (289)

146. A meeting was arranged for 24 March 2021. In the meantime, on 23 March 2021, the Claimant took legal advice.

147. The only note of the meeting on 24 March 2021 was a handwritten note made by Ms Comninos (278 – 283). However, both she and the Claimant summarised their understanding of what had been discussed in subsequent emails written on 25 March 2021 (284, 289 and 301)

148. There was no dispute between the parties that at the meeting the Claimant informed Ms Cominos and Mr Constantinou that Mr Goulandris was behaving vindictively towards her because she had rejected sexual advances that he had made towards her. This was the first time she had made such allegations. The Claimant told them that Mr Goulandris had chatted her up and looked at her inappropriately in the office. She said that he had sent her emails with sexual messages in them and forwarded them a copy of the "xx, yy, ????" email dated 30 January 2021 (231). The Claimant did not mention any allegations of inappropriate touching.

149. There was a dispute between the parties regarding how Ms Cominos and Mr Constantinou reacted at the meeting. The Claimant says that although they had been supportive when she had complained previously, they did not show the same level of support at this meeting. She accused Mr Constantino of reacting aggressively and telling her that she needed "to grow up." She accused Ms Comninos of saying that "it was a shame…thought you would have a great future at the company…" (284)

150. Our finding is that Ms Camninos and Mr Constantinou found it extremely hard to accept what the Claimant was saying about Mr Goulandris's behaviour given that she was basing her case on the email. They tried to explain to the Claimant that she had misinterpreted the email and the decisions being made by him on the BDT project, but she would not accept this. The Claimant accused Mr Constantino of shouting at her during the call. He did not accept that he was, but out of politeness apologised that she was getting upset by what he was saying.

151. It was not in dispute that Ms Camninos concluded the meeting on 24 March by saying that she would contact the external HR consultant the Respondent had experience of using and ask her to get involved, including introducing her to the Claimant.

152. On Friday 25 March 2021 Ms Comninos engaged HR advisers to assist her and prepared a draft response to the Claimant's subsequent emails (289). Mr Constantinou's reaction to the Claimant's subsequent emails was to write to Ms Comninos and say he did not know how to deal with the matter and would leave it to her. He expressed the view that the Claimant had wrongly accused Mr Goulandris of sexual harassment (284)

153. Ms Comninos became unwell over the weekend. She spent Monday 28 March 2021 in bed and was rushed to hospital by ambulance on Tuesday

29 March 2021. While she was in hospital she did two things. One was to make sure the was payroll went through and the other was to send an email to the Claimant and Mr Goulandris to interject in a discussion they were having about user input on future releases. Ms Comninos could see the discussion descending into an argument and wanted to intervene to prevent this happening (321).

154. On her first day back in work, on 6 April 2021 Ms Comninos wrote to the Claimant summarising her understanding of the Claimant's complaints and setting out her initial reaction to them. She introduced the Claimant to Ms Baker and added that if she wished, one option was that the Claimant could submit a formal grievance (333-335).

Grievance

155. The Claimant was due to take a few days off on holiday and replied to Ms Comninos saying she would consider her position during that time (337). She subsequently submitted a formal grievance letter on 16 April 2021 as outlined in the introductory section.

156. On 8 April 2021, the Claimant and Mr Constantinou exchanged Slack messages. Although he had asked her to send a holding reply to a query sent by client not connected with the BDT Project, she had not done so, despite having told the client on 31 March 2021 that she would respond the following day. When Mr Constantinou gently enquired about this, she replied to say that he was putting her under too much pressure and added that he had not done this previously. Mr Constantinou denied this and reminded the Claimant that he was deliberately not sending her additional work, but the holding reply would take only a few seconds and was to an important client. He asked if the Claimant would like to speak. She refused saying she was too busy (778).

157. On 21st April 2021 the Claimant emailed Mr Constantinou and Ms Comninos to say that there had been a further incident of Mr Goulandris undermining her and creating a hostile environment (400). On this occasion, the Claimant was upset because Mr Goulandris had not used a file she had created and sent him of updates required to the BDT software. Mr Goulandris accepted that he had created his own file rather than use the Claimant's file, but this was because he was in charge of deciding what would be included in future releases and he wanted to record his thinking in his own way. He did not ignore the Claimant's work. But used it when creating his own version.

158. The Claimant was signed off as medically unfit to work between 22 April 2021 and 13 May 2021 by her GP. She provided a fit note to Ms Comninos and Mr Constantinou (405) by email. The Respondent decided that the Claimant should be paid full sick pay for this absence even though she had no contractual entitlement to full sick pay.

159. The Claimant's meeting with Terri Baker to discuss her grievance took place during her absence on sick leave. The Claimant was given the opportunity to postpone it until she felt better, but chose for it to proceed. Ms Baker told the Claimant at the end of their meeting, that the Claimant could send her additional information following the meeting if she realised that she had missed anything out. The Claimant did not send anything further.

160. Having conducted the interviews referred to in the introductory section, Ms Baker prepared a grievance report (585 – 587). Although she made a finding that on 22 September 2020 Mr Goulandris had spoken to the Claimant in a harsh manner, for which he had apologised at the time, she concluded that there was no evidence to substantiate the allegations of sexual harassment, discrimination or victimisation made by the Claimant. She prepared an outcome letter dated 10 May 2021 which informed the Claimant of this conclusion (599 – 601).

Appeal

161. As explained above the Claimant was not happy with the outcome of the grievance and submitted an appeal. At her interview with Mr Gordon, her asked her what outcome she wanted. She was not sure and said she wished to speak to her legal adviser about this question. Following the interview, the Claimant emailed Mr Gordon on 11 June 2021. In it she said:

"If for whatever reason it is not possible to adjust my role so that I don't come into contact with Mr Alexander Goulandris I would be open to offers of settlement and termination of my role with the company as a matter of last resort.

I want the company to take disciplinary action, officially registered against Alexander Goulandris on his file, an apology from Alexander Goulandris with an acknowledgement that he ruined my prospects at the company with his behaviour, and compensative for being exposed to inappropriate treatment at a workplace."

The Claimant had also cut and pasted a picture into the email (691).

162. The Claimant had not told Mr Gordon that Mr Goulandris had looked at her in a leering way. She did, however, say in her appeal letter that Mr Goulandris had kept looking at her in "a suggestive way."

163. When Mr Gordon had asked the Claimant to describe the look, she explained that it was very difficult to put it into words and what she meant was the way a man looks at a woman when he wants to have sex with her. When Mr Gordon said this didn't help him because he was a man, she suggested that women look at men in the same way. Mr Gordon said this did not help him either because he did not think anyone had looked at him in that way and pushed her to describe it (678).

164. Although Mr Gordon did not ask her to, when the Claimant sent further information to him after the meeting, she included a picture of a man with the type of look she meant. The picture is of the face of what appears to us to be a male model.

165. Mr Gordon asked Ms Comninos and Ms Anagnostara whether they had ever seen Mr Goulandris look at the Claimant with the same type of look, but also whether they thought that the man in the picture wanted to have sex.

166. Mr Gordon did not uphold the Claimant's appeal. He confirmed this in an outcome letter to her dated 28 June 2021. He also informed the Claimant in the letter that he had shown the picture the Claimant had sent him to "*female personnel within [the Respondent] and they all stated that have never seen Mr Goulandris look this way and that it did not necessarily indicate that the man in the picture wanted sexual relations*" (744 – 746).

Events Leading to Resignation and Claim

167. On 28 June 2021, the Claimant asked Mr Constantinou if she could take 5 days leave in July, with 3 days as unpaid leave as she had not got any holiday entitlement remaining. He messaged Ms Comninos about this but she did not answer (774). The Claimant also emailed Ms Comninos to say the same on 30 June 2021, as well as express her disappointment with the outcome of the grievance appeal (751). Ms Comninos did not reply. She apologised to the Claimant at the tribunal hearing saying that that she was sorry but she had missed the requests about unpaid leave. The Claimant took 30 June 2021 as a day of sick leave.

168. Having not had a response from Ms Comninos, the Claimant sent a follow-up email on 14 July 2021. In her email she said that Mr Goulandris was continuing to try and remove her from the BDT project and she needed to take time off. She asked for both "unpaid sick leave" and "*leave to go through everything that has happened because it is difficult for me to continue working and communicate with Mr Goulandris even by email*." (750).

169. Ms Comninos replied on the same day to say that the Claimant was not being removed from the BDT project, but that the project had moved to business as usual. She told the Claimant that having time for the reason she had requested was not legitimate (749 – 750). The Claimant took 15 July 2021 off as sick leave. In a separate email exchange with Ms Comninos, the Claimant continued to challenge the decision making about what should and should not be included in releases (756 – 759).

170. The Claimant resigned without notice on 19 July 2021. Her resignation letter said:

"I was subjected to conduct which amounts to sexual harassment. I have submitted official grievance and appeal providing my reason and asking for

help. My employer (essDOCS) didn't deal with my grievance in satisfactory way. I have no other choice but to resign immediately effective today in response to sexual harassment and company failure to deal with my grievance." (765)

171. The Claimant was paid her salary up to and including 19 July 2021 in the July payroll. She was not paid a bonus for the April to June 2021 quarter. The other two eligible employees did receive bonus payments.

172. The Claimant commenced ACAS Early Conciliation on 1 October 2021 and the ACAS Early Conciliation Certificate was issued on 4 October 2021. She was presented a claim to Employment Tribunal on 18 October 2021.

THE LAW

Harassment

173. Section 40(1)(a) of the Equality Act 2010 provides that an employer must not, in relation to employment by it, harass a person who is one of its employees. The definition of harassment is contained in section 26 of the Act.

174. Section 26(2) of the Equality Act 2010 provides:

"A person (A) harasses another (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).

175. Whether conduct is of a sexual nature is a matter of fact for the tribunal to determine taking into account the factual circumstances and context.

176. Subsection (1)(b) says:

(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."

177. Harassment does not have to be deliberate to be unlawful. If A's unwanted conduct (related to the relevant protected characteristic) was deliberate and is shown to have had the *purpose* of violating B's dignity or of creating an

intimidating, hostile, degrading, humiliating or offensive environment for B, the definition of harassment is made out. There is no need to consider the effect of the unwanted conduct.

178. If the conduct was not deliberate, it may still constitute unlawful harassment. In deciding whether conduct has *the effect* of creating an intimidating, hostile, degrading, humiliating or offensive environment for B, we must consider the factors set out in section 26(4), namely:

(a) the perception of B;
(b) the other circumstances of the case;
(c) whether it is reasonable for the conduct to have that affect.

179. Section 26(3) says the following:

"A also harasses B if—

(a) A or another person engages in unwanted conduct of a sexual nature …..,
(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 less favourably than A would treat B if B had not rejected or submitted to the conduct."

180. A claim under section 26(4) cannot succeed unless there is conduct in accordance with section 26(2). If there is, however, a further claim arises if someone subjects the victim to less favourable treatment. The perpetrator of the unfavourable treatment need not be the original perpetrator of the unwanted conduct of a sexual nature. There needs to be a causative link between the reaction of the victim to the unwanted conduct of a sexual nature and the unfavourable treatment, in that the reason for the unfavourable treatment must be because of the reaction.

Direct Sex Discrimination

181. Section 39(2) of the Equality Act 2010 prohibits an employer discriminating against one of its employees by dismissing her or by subjecting the employee to a detriment.

182. In subsection 212(1) of the Equality Act, a detriment does not include conduct that amounts to harassment.

183. Section 13 of the Equality Act 2010 provides that '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'.

184. Under section 23(1), where a comparison is made, there must be no material difference between the circumstances relating to each case. It is possible to compare with an actual or hypothetical comparator.

185. In order to find discrimination has occurred, there must be some evidential basis on which we can infer that the claimant's protected characteristic is the cause of the less favourable treatment. We can take into account a number of factors including an examination of circumstantial evidence.

186. We must consider whether the fact that the claimant had the relevant protected characteristic had a significant (or more than trivial) influence on the mind of the decision maker. The influence can be conscious or unconscious. It need not be the main or sole reason, but must have a significant (i.e. not trivial) influence and so amount to an effective reason for the cause of the treatment.

187. In many direct discrimination cases, it is appropriate for a tribunal to consider, first, whether the claimant received less favourable treatment than the appropriate comparator and then, secondly, whether the less favourable treatment was because of sex. However, in some cases, for example where there is only a hypothetical comparator, these questions cannot be answered without first considering the 'reason why' the claimant was treated as she was.

188. Section 136 of the Equality Act sets out the relevant burden of proof that must be applied.

189. Guidelines on the burden of proof were set out by the Court of Appeal in *Igen Ltd* v *Wong [2005] EWCA Civ 142; [2005] IRLR 258* and we have followed those as well as the direction of the court of appeal in the *Madarassy* case. The decision of the Court of Appeal in *Efobi v Royal Mail Group Ltd* [2019] ICR 750 confirms the guidance in these cases applies under the Equality Act 2010.

190. There may be times, as noted in the cases of *Hewage v GHB* [2012] ICR 1054 and *Martin v Devonshires Solicitors* [2011] ICR 352, where we are in a position to make positive findings on the evidence one way or the other and the burden of proof provisions are not particularly helpful. When we adopt such an approach, it is important that we remind ourselves not to fall into the error of looking only for the principal reason for the treatment, but instead ensure we properly analyse whether discrimination was to any extent an effective cause of the reason for the treatment.

191. When applying the shifting burden of proof, it is usual to follow a two-stage process followed. Initially it is for the claimant to prove, on the balance of probabilities, primary facts from which we could conclude, in the absence of an adequate explanation from the respondent, that the respondent committed an act of unlawful discrimination.

192. In assessing whether the Claimant has met the burden on her, we need to take into account the guidance of the Court of Appeal in *Madarassy*, where it was stated:

'*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*.' (56)

193. At the second stage, discrimination is presumed to have occurred, unless the respondent can show otherwise. The standard of proof is again on the balance of probabilities. In order to discharge that burden of proof, the respondent must adduce cogent evidence that the treatment was in no sense whatsoever because of the claimant's race. The respondent does not have to show that its conduct was reasonable or sensible for this purpose, merely that its explanation for acting the way that it did was non-discriminatory.

194. It can be appropriate on occasion, for the tribunal to take into account the respondent's explanation for the alleged discrimination in determining whether the claimant has established a prima facie case so as to shift the burden of proof. (*Laing v Manchester City Council and others* [2006] IRLR 748; *Madarassy v Nomura International plc* [2007] IRLR 246, CA.) It may also be appropriate for the tribunal to go straight to the second stage, where for example the respondent assert that it has a non-discriminatory explanation for the alleged discrimination. A claimant is not prejudiced by such an approach since it effectively assumes in his favour that the burden at the first stage has been discharged (*Efobi v Royal Mail Group Ltd* [2019] ICR 750, para 13).

195. Allegations of discrimination should be looked at as a whole and not simply on the basis of a fragmented approach *Qureshi v London Borough of Newham* [1991] IRLR 264, EAT. We must "*see both the wood and the trees*": *Fraser v University of Leicester* UKEAT/0155/13 at paragraph 79.

196. Our focus "*must at all times be the question whether or not they can properly and fairly infer… discrimination*.": *Laing v Manchester City Council*, EAT at paragraph 75.

Constructive Dismissal

197. As noted above, section 39(2) of the Equality Act 2010 prohibits an employer discriminating against one of its employees by dismissing her. This is supplemented by section 39(7) which tells us that the reference to dismissal includes constructive dismissal:

"by an act of B's (including giving notice) in circumstances such that B is entitled, because of A's conduct, to terminate the employment without notice."

198. This statutory formulation reflects the common law position. The common law position is relevant in this case because the claimant in pursing claims of discriminatory constructive dismissal and wrongful dismissal.

199. It is established law that (i) conduct giving rise to a constructive dismissal must involve a fundamental breach of contract by the employer; (ii) the breach must be an effective cause of the employee's resignation; and (ii) the employee must not, by his or her conduct, have affirmed the contract before resigning (*Western Excavating v Sharp* [1978] Q.B. 761)

200. The burden of proof lies with the Claimant to establish that, on the balance of probabilities, there has been a fundamental breach of contract.

201. In this case, the Claimant claims there was a breach of what is known as the implied term of trust and confidence. A breach of this implied term is necessarily a repudiatory breach of contract (*Morrow v Safeway Stores* 2002 IRLR 9)

202. The implied term of trust and confidence in full, as owed by the employer to an employer, is articulated as follows:

"The employer shall not without reasonable and proper cause conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of trust and confidence between employer and employee"

203. It is relevant to note that there are two limbs to it. When deciding whether or not it has been breached, we need to consider not simply whether there was conduct by the employer which destroyed trust and confidence, but also employer had reasonable and proper cause to act as it did.

204. It is the impact of the employer's behaviour, assessed objectively, on the employee that is significant - not the intention of the employer *(Malik v BCCI* [1997] IRLR 462). It is irrelevant that the employer does not intend to damage the relationship, if effect of the employer's conduct, judged sensibly and reasonably, is such that the employee cannot be expected to put up with it (*Woods – v- Car Services (Peterborough) Limited)* [1981] ICR 666.

205. Discriminatory conduct on the part of the employer will usually breach the term of mutual trust and confidence, but this is by no means certain (*Ahmed v Amnesty International* 2009 ICR 1450). As captured above, the tribunal must make an objective and context specific assessment of the employer's behaviour. The subjective view of the Claimant, while relevant, is not determinative.

206. Usually, in order to succeed in a claim of constructive unfair dismissal, an employee must act promptly in response to the employer's conduct said to amount to a breach and resign within a reasonable period. If this is not done, the employee is treated as having waived the breach and affirmed the contact of employment.

207. The breach of the implied obligation of trust and confidence can consist of a series of actions on the part of the employer which cumulatively amount to a breach of the term, though each individual incident may not do so. In such circumstances, known as "*last straw*" cases, the position in relation to affirmation of the contract is modified.

208. In *Kaur v Leeds Teaching Hospitals NHS Trust 2018 EWCA Civ 978* the Court of Appeal listed 5 questions that should be asked in order to determine whether an employee has been constructively dismissed in a "*last straw*" case:

    (a) What was the most recent act (or omission) on the part of the employer which the employee says cause, or triggered, his or her resignation? We note that in *Omilaju v Waltham Forest LBC [2005] ICR* the Court of Appeal said that the last act may be relatively insignificant, but must not be utterly trivial.
    (b) Has he or she affirmed the contract since that act?
    (c) If not, was that act (or omission) by itself a repudiatory breach of contract?
    (d) If not, was it nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the implied term of trust and confidence? (If it was, there is no need for any separate consideration of a possible previous affirmation)
    (e) Did the employee resign in response (or partly in response) to that breach? (*Nottinghamshire County Council v Meikle* [2004] EWCA Civ 859).

Time limits – discrimination cases

209. The relevant time-limit is at section 123 Equality Act 2010. According to section 123(1)(a) the tribunal has jurisdiction where a claim is presented within three months of the act to which the complaint relates.

210. The normal three-month time limit needs to be adjusted to take into account the early conciliation process and any extensions provided for in section 140B Equality Act.

211. By subsection 123(3)(b), a failure to do something is treated as occurring when the person in question decided on it. In the absence of evidence to the contrary. A person is taken to decide on a failure to do something when that person does an act which is inconsistent with doing it or, in the absence

of such an inconsistent act, on the expiry of the period on which that person might reasonably have been expected to do it.

212. In claims for reasonable adjustments, this means time will start to run when an employer decides not to make the reasonable adjustment relied upon *(Humphries v Chevler Packaging Ltd* [2006] EAT0224/06). Alternatively, in a claim when an adjustment has not been actively refused time runs from the date on which an employer might reasonably have been expected to do the omitted act (*Kingston upon Hull City Council v Matuszowicz* [2009] ICR 1170 CA). This should be determined having regard to the facts as they would reasonably have appeared to the employee, including what the employee was told by his or her employer (*Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] ICR 1194, CA).

213. By subsection 123(3)(a), conduct extending over a period is to be treated as done at the end of the period.

214. In *Hendricks v Metropolitan Police Commissioner* [2002] EWCA Civ 1686, the Court of Appeal stated that the test to determine whether a complaint was part of an act extending over a period was whether there was an ongoing situation or a continuing state of affairs in which the claimant was treated less favourably. An example is found in the case of *Hale v Brighton and Sussex University Hospitals NHS Trust* UKEAT/0342/17 where it was determined that the respondent's decision to instigate disciplinary proceedings against the claimant created a state of affairs that continued until the conclusion of the disciplinary process.

215. It is not necessary to take an all-or-nothing approach to continuing acts. The tribunal can decide that some acts should be grouped into a continuing act, while others remain unconnected (*Lyfar v Brighton and Sussex University Hospitals Trust* [2006] EWCA Civ 1548; The tribunal in *Lyfar* grouped the 17 alleged individual acts of discrimination into four continuing acts, only one of which was in time.

216. A refusal of a request, where it is repeated over time, may constitute a continuing act (*Cast v Croydon College* [1998] IRLR 318).

217. A distinction needs to be drawn between a continuing act and a one-off act that has continuing consequences (*Barclays Bank plc v Kapur and others* [1992] ICR 208;). This distinction will depend on the facts in each case. (*Sougrin v Haringey Health Authority* [1992] IRLR 416*, CA)*

218. Alternatively, the tribunal may still have jurisdiction if the claim was brought within such other period as the employment tribunal thinks just and equitable as provided for in section 123(1)(b).

219. The tribunal has a wide discretion to extend time on a just and equitable basis. As confirmed by the Court of Appeal in *Adedeji v University Hospitals Birmingham NHS Foundation Trust* [2021] EWCA Civ 23, the best approach

is for the tribunal to *assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time. This will include the length of and reasons for the delay, but might, depending on the circumstances, include some or all of the suggested list from the case of British Coal Corporation v Keeble* [1997] IRLR 36 set out below, as well as other potentially relevant factors:

- The extent to which the cogency of the evidence is likely to be affected by the delay.
- The extent to which the party sued had co-operated with any requests for information.
- The promptness with which the claimant acted once they knew of the possibility of taking action.
- The steps taken by the claimant to obtain appropriate professional advice once they knew of the possibility of taking action

220. It is for the claimant to show that it would be just and equitable to extend time. The exercise of discretion should be the exception, not the rule **(***Bexley Community Centre (t/a Leisure Link) v Robertson* [2003] EWCA Civ 576).

221. Where the reason for the delay is because a claimant has waited for the outcome of his or her employer's internal grievance procedures before making a claim, the tribunal may take this into account (*Apelogun-Gabriels v London Borough of Lambeth and anor* 2002 ICR 713, CA). Each case should be determined on its own facts, however, including considering the length of time the claimant waits to present a claim after receiving the grievance outcome.

Breach of Contract – Bonus Claim

222. Ordinary rules of construction apply when interpreting the terms of a written employment contract. The proper approach was helpfully summarised by Lord Hoffmann in *Investors Compensation Scheme v West Bromwich Building Society* [1998] 1WLR 896. In addition to stating that words should be given their ordinary meaning, he stated that:

"Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract."

223. The term "background knowledge" is construed widely, to include "*absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man*."

ANALYSIS AND CONCLUSIONS

Harassment pursuant to section 26(2) Equality Act - Allegations 2.1 to 2.10

224. Based on our factual findings, all of the Claimant's allegations of sexual harassment fail. There was no unwanted conduct of a sexual nature at any time.

225. We add that although some of the incidents did take place, none of the conduct was as presented by the Claimant. This was not the type of case which arises quite often, where there is conduct which had the purpose or effect proscribed by section 26(1)(b) of the Equality Act, 2010, but fails because of the lack of a relationship to a protected characteristic. In this case, the Claimant interpreted entirely innocent work-related conduct, some of it accidental, by Mr Goulandris as having a sinister intent. For this reason, we also conclude that none of that behaviour that actually occurred amounted to a breach of the term of implied trust and confidence.

Allegations under Section 26(3) Equality Act 2010 – Allegations

226. As we have concluded that there was no unwanted conduct of a sexual nature that had the proscribed purpose or effect in section 26(1)(b) of the Equality Act 2010, all of the Claimant's claims under section 26(3) of the same Act also fail.

Direct Sex Discrimination - Allegations 7.1 – 7.12

227. The same allegations of unfavourable treatment pursued under section 26(3) were also pursued as allegations of direct sex discrimination.

228. We found that on 5 May and 6 July 2020 Alexander Goulandris raised his voice when discussing work-related matters with the Claimant during internal calls. Something similar occurred on 22 September 2020, when he was abrupt with the Claimant and demonstrated his frustration at her not giving an actual date for when the BDT project would be able to go live. He also shut her down during a call that took place on 19 January 2021.

229. In addition, we also found that on 14 January 2021, during a weekly BDT project call with clients, Mr Goulandris corrected some information that the Claimant gave to the users on the call. Our finding was that he was not rude or abrupt when doing so.

230. The Claimant's own evidence was that Mr Goulandris was only ever abrupt in meetings with her. She told us that he only undermined her in front of clients and only ever shouted at her. She expressly said that he did not behave the same way with her other colleagues, men or women. This contradicted her assertion that the treatment was because of her sex.

231. Although Mr Goulandris gave a different interpretation to a number of the incidents, he accepted that they occurred but told us that they were typical of his style with all his colleagues. He did not believe he behaved any differently with men and women in the workplace. All of the Respondent's witnesses who gave evidence at the tribunal hearing and as part of the grievance and appeal processes said the same thing about him.

232. Our conclusion is that none of these incidents amount to direct sex discrimination, but were typical of the way Mr Goulandris behaved towards his colleagues, both male and female.

233. The next allegation concerns the email Mr Goulandris sent the Claimant on 4 March 2021 about not being involved in discussions with he BDT project client about future releases. Although only one of the allegations in the list of issues concerns the Claimant's role as project manager of the BDT project and her perception that she was being removed from it, based on her questioning of witnesses and her closing submissions, this was an important part of her case. As well as this example, she pointed to other examples of Mr Goulandris making decisions which she said shows he was removing her from the project. This included cancelling weekly internal product calls, both him and Ms Comninos wanting to stop calls with users and him failing to include her in decision making over future releases.

234. We do not consider that any of these decisions were made because the Claimant was a woman. The reason these decisions were made was because the BDT product development stage had been completed and there was no need for the Claimant to be so involved with it once it had moved to business as usual.

235. The next sub-set of allegations concern the grievance and grievance appeal. It is factually correct that Ms Baker and Mr Gordon failed to uphold either her grievance or appeal. We do not consider that either of them were influenced in any way by the Claimant's sex in reaching the conclusions. They did not uphold her allegations of sexual harassment because they genuinely found that there was no such harassment based on their investigations.

236. There was one aspect of the process that concerned us. That was the sharing of the picture the Claimant sent to Mr Gordon with female personnel at the Respondent. Mr Gordon did not ask the Claimant to send him the picture, but did create the circumstances where she felt she had to send him something because of his insistence that he did not understand what she meant by a suggestive look. The Claimant found a picture to try and illustrate her point and sent it to Mr Gordon in confidence. He then shared it with two women in order to ask them if the look on the man was sexually suggestive, without checking with the Claimant if she was happy for him to do this.

237. Although Mr Gordon only shared the picture with two people, the way he described what he had done in the appeal outcome letter suggested he had

shared it with all of the Respondent's female staff. The Claimant felt embarrassed by this, and in our judgment was right to feel that way. It was a bizarre thing for Mr Gordon to do.

238. Based on the questions Mr Gordon asked the Claimant and, in particular, when he said he could not understand the look she was referring to because he was a man, and the fact that he showed the picture to two women we consider his behaviour was because the Claimant was a woman. In our judgment, he would not have done the same thing had he been investigating a man claiming he had had been looked at suggestively by a women. For this reason, we have found that the claimant's allegations of direct discrimination numbered 7.9 and 7.10 succeed.

239. These allegations were presented out of time. The date the Claimant learned that Mr Gordon had shown her females colleagues the picture was 28 June 2021, when she read the grievance appeal outcome letter. Time therefore starts to run from this date. We have decided that the Claimant should be given an extension on just and equitable grounds for presenting her claim in relation to these two allegations. The delay was only a short one and arose because the Claimant calculated the time for presenting her claim based on her termination date.

240. Mr Gordon was acting as an agent of the Respondent when investigating the grievance appeal. His conduct was in the course of the Claimant's employment and therefore the Respondent is liable for it under section 110 of the Equality Act 2010.

Discriminatory and Wrongful Dismissal

241. Having upheld two of the Claimant's allegations of discrimination, but none of her other allegations of discrimination, we went on to her allegation of discriminatory dismissal. We did not uphold this for two reasons.

242. Firstly, the conduct of Mr Gordon in connection with the picture, although amounting to direct sex discrimination, was not so serious so as to represent a breach of the term of implied trust and confidence. It was not, of itself, a significant enough act to repudiate the claimant's contract of employment.

243. Secondly, the claimant did not resign in response to that conduct. The reason for her resignation was expressly stated in her letter of resignation. She resigned because of the sexual harassment that had taken place and because the Respondent had failed to uphold her grievance and appeal. As we have found that there was no such sexual harassment and no other discriminatory behaviour, we do not uphold her claim for discriminatory dismissal.

244. We confirmed in the section above dealing with the sexual harassment claims that we did not think any of the behaviour that actually happened was otherwise inappropriate so as to amount to a breach of the implied term of

trust and confidence. For the sake of completeness, we add that that the same is true of the occasions when Mr Gouldandris was abrupt with the Claimant or raised his voice and shut her down.

245. Although the Claimant was upset by his behaviour on these occasions, we do not consider it was reasonable for her to be as upset as she was or to jump to the conclusion that Mr Goulandaris did not rate her performance. In our judgment, none of the behaviour amounts to behaviour that reaches the threshold to constitute a breach of the implied term of trust and confidence when considered in isolation or cumulatively. It was not that serious and was very sporadic. For this reason, the Claimant's claim of wrongful dismissal fails.

Bonus

246. We decided that the Claimant's claim for her bonus for the first quarter of 2021 should succeed.

247. We interpret the bonus clause in the Claimant's contract, as operated by the Respondent, as entitling her to a bonus of 10% of her annual salary subject to certain satisfactory performance by the Respondent, her team and herself in the ratio 40:30:30 measured quarterly. In our judgment, the bonus was intended to be a reward for performance in the previous quarter. If performance was satisfactory, this meant the bonus was payable. There was no discretionary in this regard.

248. The Respondent's performance was considered not be satisfactory when the Respondent was meeting its revenue target. This was not the case throughout the first half of 2021.

249. The measurement of satisfactory personal and team performance was much more subjective. Mr Constantinou who managed the team that contained the Claimant received a bonus in April 2021 in an amount that rewarded him for his team and personal performance, but not the Respondent performance element. We conclude this meant that his team and personal performance were assessed as satisfactory. Given that the Claimant was in the same team, it follows that she should have been paid the team element of her bonus.

250. When it came to the Claimant's personal performance between 1 January and 31 March 2021, Ms Comninos and Mr Constantinou told us that they discussed the Claimant's performance towards the end of April. They decided she should not be paid a bonus because she was taking too much time off and was not picking up work on new projects. In our judgment, this decision took into account the Claimant's performance in April and did not focus on what she had done before April. Although we considered there was clear evidence of a drop in her performance from April onwards, we were not convinced that this started earlier.

251. We have therefore decided that the Claimant was entitled to be paid her quarterly bonus in April 2021 based on her own and her team's performance. As the Respondent failed to do this, there was a breach of her contract. The Respondent did not act in breach when it decided not to pay her anything in July 2021, however.

252. The Claimant is therefore entitled to damages for breach of contract in the sum of around £600. Her full gross bonus for the relevant quarter would have been £1,260.00. She was only entitled to 60% of this, excluding the Respondent performance element and her compensation would be based on the net amount rather than the gross amount.

253. The bonus claim was presented in time because it was an extant claim as at the termination of the Claimant's employment.

COSTS APPLICATION

The Law

254. The tribunal rules enable a legally represented party in employment tribunal litigation to make an application for a cost order.

255. When considering whether or not to award costs, the relevant tests (known as the "threshold test") which the tribunal must apply are found in Rule 76 which says:

> *(1) "A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that—*
>
> *(a) a party (or that party's representative) has acted …. unreasonably in the way that the proceedings (or part) have been conducted; or*
>
> *(2) A Tribunal may also make such an order where a party has been in breach of any order ……..."*

256. The tribunal must consider an application in three stages:

- we must first decide whether the relevant threshold test is met
- if we are satisfied the relevant threshold test has been met, we should then decide if we should exercise our discretion to award costs (the rules say "may" rather than "must")
- we should then decide the amount of the costs to be awarded

Each case depends on the facts and circumstances of the individual case.

257. Where a costs application is based on the merits of the case, we should take into account what the party knew or ought to have known about the merits of the case. Where a costs application is based on breach of an order or unreasonable conduct, we must consider whether, the threshold having been met, it is appropriate for a costs order to be made.

258. A factor relevant to the exercise of our discretion may be whether there has been any warning of a risk of costs, but such a warning is not a prerequisite to the making of an order; nor is it a prerequisite that the receiving party must have put the paying party on notice of any application.

259. Rule 84 is also relevant. It says:

*"In deciding whether to make a costs, preparation time, or wasted costs order, and if so in what amount, the Tribunal **may** have regard to the paying party's (or, where a wasted costs order is made, the representative's) ability to pay." (emphasis added)*

260. We emphasise the word "may" because the tribunal is permitted but not required to have regard to the means of the party against whom the order is made. A tribunal can make an award even if the paying party has no ability to pay, provided that we have considered means. We must do this even when the paying party does not raise the issue of means directly. We must say whether or not we have taken the paying party's means into account.

Reasons for Our Decision

261. The reason for the Respondent's application was because it should have been possible for the final hearing in this case to proceed in September 2022. The hearing could not proceed, however, because of the Claimant's failure to exchange witness statements.

262. We were satisfied, based on findings made by Employment Judge Wisby at the preliminary hearing held on 6 September 2020 and having reviewed the original documentation ourselves that the Claimant was in breach of the order to exchange witness statements. She was in breach of the original case management orders, as amended by agreement between the parties. This is what led to the order made by Employment Judge Snelson to exchange witness statements by 12 pm on 2 September 2022 as a last ditch attempt to make the hearing effective. Her failure to comply with that order led to the hearing having to be postponed.

263. The Claimant's solicitor ceased to act for her on 1 September 2022, but prior to that date had drafted a witness statement for the Claimant. The Claimant had plenty of time to review and amend that statement, even accounting for the fact that she was away on holiday for part of the time. All that was required was to amend some errors. There was no reason why exchange of the statement should have been held up because the document now found at page 1349 in the bundle was missing. She could have exchanged her

statement and then amended it during the hearing. This would have been a far more proportionate way of dealing with the matter, particularly as the document was background evidence and did not deal directly with any of the allegations in the list of issues.

264. In our view the threshold contained in Rule 37(2) was met and we then considered whether we should exercise our discretion to make an order for costs. The factors we considered in reaching our decision were as follows.

265. The consequences of the Claimant's failure was that a six day hearing was lost. Costs orders are not punitive, but we are entitled to consider the significance of the non-compliance when making an order. Losing a final hearing without justification is one of the most significant adverse consequences of a breach of an order that can arise.

266. We noted that the original case management order made by Employment Judge Beyzade on February 2022 included a clear warning that non-compliance with orders could lead to a costs award being made against the defaulting party (paragraph 46, page 1348).

267. Although she appeared before us as a litigant in person, the Claimant was represented at the time the original case management orders were made and up until a few days before the final hearing was due to take place. We are confident that her solicitor will have shared the case management orders with her and advised her about the rules on costs in the employment tribunal.

268. We also took into account the Claimant's means. She provided information that confirmed that although she had obtained a new job after leaving the Respondent, this employment came to an end in December 2022 and she has been unemployed since. She is looking for another job and accepted that she would find a job in the future, albeit that the current market for the roles she is seeking is very competitive.

269. The Claimant's latest bank statement for March 2023 shows that she has savings of £32,029.51. She is using her savings to pay for some outgoings. On her figures, which were unchallenged by the Respondent, this comes to around £2,000 per monthly. Her estranged husband is currently paying for other outgoings such as her mortgage and utilities in the sum of around £1,400 per month. The Claimant told us that her estranged husband is not happy about paying this level of contribution and they are commencing a process of mediation to seek to agree a financial settlement ahead of a divorce. She told us this because she could not be sure that her current financial position would continue.

270. Our decision taking into account all of the above, was that we would exercise our discretion to make a costs award against the Claimant, but that it should be at a level she could afford.

271. The Respondent's additional costs as result of the Claimant's default were, according to its schedule £12,370.08 plus VAT of £2,474.02 making a total of £14,880.10. The Respondent's costs included the costs incurred in making its unsuccessful strike out application at the previous hearing which arguably were not necessarily incurred as a result of the postponement of the final hearing, but because the Respondent chose to make the application. Although in our minds when deciding the figure to award, the primary reason for our decision as to the amount to be awarded was the Claimant's means to pay.

272. We settled on the figure of £5,000 because we considered this was an amount the Claimant could pay which would not cause her significant financial instability and would not impact on her ability to look after her children.

_____

Employment Judge E Burns
28 April 2023

Sent to the parties on:

28/04/2023

For the Tribunals Office

APPENDIX

List of Issues

Jurisdiction

1. The Claimant lodged her claim on 18 October 2021 and the allegations in her claim form date back to November 2019. Are any of the Claimant's claims out of time as:

    1.1. they occurred on or before 19 July 2021;
    1.2. they do not form part of a continuing act or state of affairs which continued after 19 July 2021; and
    1.3. it is not just and equitable to extend time?

Sexual harassment – s26 (2) and (3) EA 2010

2. Did the acts or omissions upon which the Claimant relies occur as alleged or at all? The Claimant relies on the following acts or omissions:

    2.1. on 12th October 2020 and 10th December 2020, Alexander sent the Claimant an invitation to the same meeting sixteen times without explanation;
    2.2. on 18th November 2019, Alexander Goulandris touching the Claimant's leg with his leg under the table and staring at her;
    2.3. on 21st November 2019, Alexander Goulandris staring and winking at the Claimant;
    2.4. on a date in December 2019, Alexander Goulandris approaching the Claimant at her desk and touching her hands;
    2.5. on the same date as in 2.1.4 above, Alexander Goulandris touching the Claimant's elbow whilst walking past her desk;
    2.6. on another date in December 2019, Alexander Goulandris sitting next to the Claimant at her desk and poking her arm;
    2.7. on 12th March 2020, following a weekly call with users for the Barge Digital Transformation ("BDT") project, Alexander Goulandris subjecting the Claimant to leering looks as if he was waiting for something from her;
    2.8. on 1st May 2020, Alexander Goulandris sending a file back to the Claimant with an added abbreviation "ajg" in brackets, which the Claimant understood to mean "A Jumbo Genital";
    2.9. on 4th January 2021, during a work-related telephone call, Alexander Goulandris flirted with the Claimant;
    2.10. on 30th January 2021, Alexander Goulandris sent an email to the Claimant purporting to ask for information, which included the insertion by him in red of the comments "XX", "YY" and "??" and which the Claimant understood to be references to acts of a sexual nature.

3. If so:

3.1. In each instance, was the act or omission unwanted conduct of a sexual nature?

3.2. In each instance, did such conduct have the purpose or effect of either (a) violating the Claimant's dignity or (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for her?

3.3. Was it reasonable for the conduct to have that effect?

3.4. Was the unwanted conduct carried out in the course of employment?

4. Did the Claimant reject or submit to the unwanted conduct?

5. If so, because of that submission or rejection, did the Respondent treat the Claimant less favourably than it would have treated her had the Claimant not rejected or submitted to the unwanted conduct? The Claimant relies on the following acts of less favourable treatment:

5.1. on 5th May 2020, during a call, Alexander Goulandris shouting at the Claimant and not letting her speak or express her opinion;
5.2. on 6th July 2020, during a meeting, Alexander Goulandris shouting at the Claimant;
5.3. on 22nd September 2020, during a meeting, Alexander Goulandris spoke to the Claimant in an extremely aggressive manner in relation to the delivery date of the project and shouted, *"I need date, date, date"*;
5.4. on 12 October 2020 and 10 December 2020, Alexander Goulandris sent the Claimant an invitation to the same meeting sixteen times without explanation;
5.5. on 14th January 2021, during a weekly BDT project call with clients, Alexander Goulandris interrupted the Claimant abruptly and undermined her in front of the clients, telling the clients that what the Claimant was saying was wrong;
5.6. on 19th January 2021, during a BDT internal call, Alexander Goulandris was rude to the Claimant and did not let her speak, resulting in the Claimant bursting into tears and leaving the meeting;
5.7. on 4th March 2021, Alexander Goulandris sending the Claimant an email informing her that she was *"not needed anymore"* and would no longer be managing releases for one of her largest projects;
5.8. on 10th May 2021 the Respondent (through Terri Baker) failing to uphold the Claimant's grievance in respect of Alexander Goulandris' sexual harassment of her;
5.9. during the course of the Claimant's grievance appeal, the Respondent (through Paul Gordon) showing a picture to other members of staff that the Claimant had provided in confidence in order to illustrate the way in which Mr Goulandris had looked at her on 12th March 2020 and during the period 4 November 2019 to 12 March 2020;

5.10. on 28th June 2021, Paul Gordon humiliating the Claimant by informing her that he had taken the action at (5.9) above;
5.11. on 28th June 2021, the Respondent (through Paul Gordon) failing to uphold the Claimant's grievance appeal;
5.12. constructively dismissing her on 19th July 2021.

6. Did the Respondent take all reasonable steps to prevent its employees from engaging in unwanted conduct of a sexual nature?

Direct Discrimination because of sex– s.13 Equality Act 2010 ("EA2010")

7. Did the acts or omissions upon which the Claimant relies occur as alleged or at all? The Claimant relies on the following acts or omissions:

7.1. on 5 May 2020, during a call, Alexander Goulandris shouting at the Claimant and not letting her speak or express her opinion;
7.2. on 6 July 2020, during a meeting, Alexander Goulandris shouting at the Claimant;
7.3. on 22 September 2020, during a meeting, Alexander Goulandris spoke to the Claimant in an extremely aggressive manner in relation to the delivery date of the project and shouted, *"I need date, date, date"*;
7.4. on 14 January 2021, during a weekly BDT project call with clients, Alexander Goulandris interrupted the Claimant abruptly and undermined her in front of the clients, telling the clients that what the Claimant was saying was wrong;
7.5. on 19 January 2021, during a BDT internal call, Alexander Goulandris was rude to the Claimant and did not let her speak, resulting in the Claimant bursting into tears and leaving the meeting;
7.6. on 4 March 2021, Alexander Goulandris sending the Claimant an email informing her that she was *"not needed anymore"* and would no longer be managing releases for one of her largest projects;
7.7. the Respondent failing to respond to an email sent by the Claimant on 25 March 2021 raising complaints about Alexander Goulandris' conduct until 6 April 2021;
7.8. on 10th May 2021 the Respondent (through Terri Baker) failing to uphold the Claimant's grievance in respect of Alexander Goulandris' sexual harassment of her;
7.9. during the course of the Claimant's grievance appeal, the Respondent (through Paul Gordon) showing a picture to other members of staff that the Claimant had provided in confidence in order to illustrate the way in which Mr Goulandris had looked at her on 12th March 2020 and during the period 4 November 2019 to 12 March 2020;
7.10. on 28th June 2021, Paul Gordon humiliating the Claimant by informing her that he had taken the action at (7.9) above;
7.11. on 28th June 2021, the Respondent (through Paul Gordon) failing to uphold the Claimant's grievance appeal;

7.12. constructively dismissing her on 19th July 2021.

8. If so:

8.1. in each instance, was the Claimant treated less favourably than her chosen comparator because of her sex?

The Claimant relies upon John Pullen and/or a hypothetical comparator in respect of each of her complaints of direct sex discrimination.

8.2. were the acts or omissions relied on carried out in the course of employment?

8.3. Did the Respondent take all reasonable steps to prevent its employees from doing the acts or omissions upon which the Claimant relies?

Breach of Contract/Wrongful dismissal

9. Did the Claimant terminate her contract of employment in circumstances in which she was entitled to terminate it without notice by reason of the Respondent's conduct?

10. Did the Respondent fundamentally breach the Claimant's contract of employment? For the avoidance of doubt, the Claimant relies upon the conduct identified at paragraphs 2, 5 and 7 above individually and cumulatively as giving rise to a breach of the implied term that the Respondent would not, without reasonable and proper cause, conduct itself in such a way as to destroy or seriously damage the relationship of trust and confidence between employer and employee;

11. If so, did the Claimant resign in response to that breach or for some other reason?

12. Did the Claimant delay for too long before resigning such that she ought properly to be taken to have waived any breach and/or affirmed the contract.

13. Did the Respondent breach the Claimant's contract of employment by failing to pay:

13.1. notice pay; and/or
13.2. a bonus for April and July 2021?

Remedy

14. Should the Claimant be reinstated or re-engaged?

15. Should the Tribunal make any recommendations?

16. What compensation is the Claimant entitled to?