RESERVED

EMPLOYMENT TRIBUNALS

Claimant:	**Miss. Nicola Mercer**
Respondents:	**Hand Held Products (UK) Ltd (R1)** **Jason Burrell (R2)**
Heard at:	**Nottingham**
On:	**24th November 2017 (Reading day)** **27th, 28th, 29th, 30th November & 1st December 2017** **6th December 2017 (in Chambers)**
Before:	**Employment Judge Heap**
Members:	**Mrs. L Scott** **Mr. K Rose**
Representation	
Claimant:	**Mrs. J Harrison - Solicitor**
Respondent:	**Mr. M Purchase - Counsel**

RESERVED JUDGMENT

1. The complaints of direct discrimination on the protected characteristic of sex fail and are dismissed.

2. The Tribunal has no jurisdiction to entertain the complaints of harassment related to sex regarding alleged incidents which it is said took place in December 2015 and January 2016 on the basis that those complaints have been submitted outside the statutory time limit provided for by Section 123(1) Equality Act 2010 and it is not just and equitable to extend time for those complaints to be considered.

3. The remaining complaints of harassment related to the protected characteristic of sex fail on their merits and are accordingly dismissed.

4. The complaints of victimisation fail and are dismissed.

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REASONS

BACKGROUND & THE ISSUES

1. This is a claim brought by Miss. Nicola Mercer (hereinafter referred to as "The Claimant") against her now former employer, Hand Held Products (UK) Limited (hereinafter referred to as the "First Respondent") and also against her former Line Manager, Mr. Jason Burrell (hereinafter referred to as the "Second Respondent").

2. The Claimant presented her claim by way of an ET1 Claim Form received by the Tribunal Service on 3rd February 2017 following her having entered into ACAS Early Conciliation on 15th December 2016. The complaints pursued by the Claimant at the stage of presentation of that Claim Form were of unfair dismissal and of discrimination relying on the protected characteristic of sex. It is common ground however, that the Claimant did not have the requisite qualifying service required by Section 108 Employment Rights Act 1996 so as to give her the standing to bring a complaint of unfair dismissal. Her complaint therefore relating to her dismissal is one which she now pursues only as an act of direct discrimination, contending that she was constructively unfairly dismissed contrary to Section 39 Equality Act 2010.

3. The Claimant's claims were (and indeed still are) resisted in their entirety by the First and Second Respondents by way of an ET3 Response submitted and received by the Employment Tribunal on 7th March 2017.

4. Following submission of that ET3 Response, the claim came before Employment Judge Camp at a Preliminary Hearing for the purposes of Case Management on 3rd April 2017. At that hearing, Employment Judge Camp set out the complaints of discrimination raised by the Claimant as they were understood at that time (see pages 40 to 48 of the hearing bundle).

5. However, following that Preliminary hearing the Claimant, via her solicitors, made an application to amend the claim to add complaints of victimisation. That amendment application was dealt with at a further Preliminary hearing which took place before Employment Judge Clark on 4th July 2017. Leave was given to the Claimant at that hearing to amend the claim to include complaints of victimisation (see pages 49 to 53 of the hearing bundle).

6. Thereafter, the Claimant's solicitors made a further application to amend the claim by letter of 9th November 2017 and which was therefore made shortly before the commencement of the hearing before us. We determined that application at the outset along with a similar application made by the Respondent in respect of complaints of harassment, which it is alleged occurred in December 2015 and January 2016, to deal with the question of whether those alleged acts took place "in the course of employment".

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7. We granted both of those amendment applications with reasons given orally at the time. Neither party has asked that those reasons be embodied within this Judgment and therefore we say no more about them, save as to reflect that the nature of the Respondent's application was to contend that, insofar as any harassment may have been perpetrated in respect of complaints involving a Mr. Jeff Taylor in December 2015 and January 2016, then in addition to it being contended that the Tribunal had no jurisdiction to entertain those complaints as they had been submitted outside the appropriate statutory time limit contained within Section 123 Equality Act 2010, it was also contended that any such conduct complained of did not take place in the normal course of Mr. Taylor's employment and therefore the First Respondent could not and should not be held liable for them.

8. We dealt also with a further issue relating to case management at the outset of the hearing. In this regard, the Claimant's solicitors had included within the hearing bundle a number of photographs of Mr. Taylor, who has now sadly passed away, which had been taken towards the end of his life and at a time when he was clearly very ill. The Respondent sought either the removal of those photographs from the hearing bundle or otherwise a direction that they not be considered in public at the hearing given the capacity that they may have had to cause distress to Mr. Taylor's family. We gave directions under Rule 50 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, that whilst the Claimant's solicitor would be permitted to cross-examine on those matters if necessary (and in the final event there was in fact no cross-examination in that regard) the photographs would be excluded from the otherwise public hearing bundle. Again, our reasons for making that Order were given orally to the parties at the time and neither of them has requested that those be embodied within this Judgment.

9. At the outset of the hearing, we also discussed with the parties a draft list of issues which we had produced following our reading in to the papers on the first day of the hearing. That list of issues and the schedule of allegations appended to it were agreed by the parties. That list of issues and schedule of allegations now also encapsulates the amendment applications that we permitted from both the Claimant and Respondent to which we have referred above. Those matters therefore reflect the issues that the Tribunal has had to determine and the complaints as they were before us. They reflect also the respective positions of the Claimant and Respondent and given that we have attached a copy of that list of issues and schedule of allegations to this Judgment, we do not rehearse those matters or the respective positions of the parties in further detail here.

THE HEARING

10. During the course of the hearing we heard evidence from the Claimant and also from Karen Hollingsworth on her behalf. Ms. Hollingsworth was a former colleague of the Claimant, albeit for a relatively brief period, and a former employee of the First Respondent. We also considered a witness statement provided by the Claimant's sister on her behalf. We did not hear oral evidence from her, however, on the basis that Mr. Purchase confirmed that it was not

necessary to cross-examine on her evidence. We have therefore taken that statement into account where necessary for the purposes of our decision, although we would observe that it cannot assist us in any material way as to the events which we are to determine given that the Claimant's sister was not a direct witness to any of those issues.

11. On behalf of the First and Second Respondent, we heard evidence from the Second Respondent; from Caroline Spain of the First Respondent's Human Resources Department and from Jeff Maidment, an employee of the First Respondent who dealt with the Claimant's appeal against the outcome of her grievance.

12. We make our observations in relation to matters of credibility in relation to the witnesses from whom we have heard below.

13. In addition to the witness evidence that we have heard we have also paid careful reference to the documentation to which we have been taken during the course of the proceedings, which includes a hearing bundle running to in excess of 1150 pages, and also to the oral and written submissions made by both representatives.

14. Despite the parties having assisted the Tribunal with regard to timetabling there was nevertheless insufficient time within the six day listing to allow the Tribunal to give judgment and reasons. We were, however, able to accommodate a further day of hearing time on 6th December 2017 during which the Tribunal could meet for the purposes of deliberating so as to enable us to give a later Reserved Judgment.

15. It should be noted that there was a not insignificant delay in this Reserved Judgment being promulgated following the hearing. The Judge wishes to apologise to the parties in that regard and to thank all of them for their patience. The parties will be aware from correspondence sent after the hearing so as to keep them informed, that whilst the Judgment was dictated within a short time after the Tribunal met on 6th December 2017, there was an unfortunate delay in the typing of the same with the result that this Judgment was not returned to be considered by the Judge (and thereafter the members) until 19th April 2018. Thereafter, there was a delay in fairing up the Judgment as a result of judicial and other commitments, periods of leave taken and the need for the members to also consider and have input into the Judgment. Again, the patience of the parties in respect of the delay has been much appreciated and they can be assured that the Judge has paid careful regard when fairing up the Judgment to her notes of evidence, notes of deliberations on 6th December 2016; witness statements and the documents adduced. Whilst the delay is both unfortunate and regrettable, we are satisfied that this has not affected the findings or conclusions reached within this Reserved Judgment.

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CREDIBILITY

16. One issue that has invariably informed our findings of fact in respect of the complaints before us is the matter of credibility and we therefore say a word about that matter now.

17. We begin with the Claimant. We found the Claimant, on the whole, to be a consistent witness and someone who we consider genuinely believes that she was bullied and treated unfairly by the Second Respondent. During the course of the hearing, we observed that she was at times clearly very upset and her body language towards the Second Respondent was indicative of her strength of feeling. We are satisfied that she had a genuine belief in the account which she gave, although we are equally satisfied that that was prone to exaggeration, examples of which we deal with below. That exaggeration was no doubt prompted by the Claimant's strength of feeling about the matters of which she complains and her steadfast belief that she was treated unfairly.

18. We are also satisfied that whilst we accept that the Claimant also genuinely believes that she had been discriminated against on the grounds of her sex that was not something which was not rooted, as we shall come to, in any form of fact but more as a strident view point that the Claimant has adopted in these proceedings as she clearly finds it very difficult to accept that there was genuine criticism of her performance and it is not, of course, open for her to bring an "ordinary" unfair constructive dismissal claim.

19. There were parts of the Claimant's evidence which made it difficult not to accept the force of the submission made by Mr. Purchase on behalf of the Respondents that the Claimant is not a person who finds it easy to accept criticism and it appears to us that this sadly lies at the root of a number of her complaints and, ultimately, her belief that she has been treated unfairly by the Second Respondent. As we shall come to in our findings of fact below, there were instances in the Claimant's employment where she could not (and still cannot) see that she was at fault and instead sought in strident terms to blame others for her own actions (the ScanSource email exchange with Mr. Pike which we set out in detail below being a prime example). We consider her evidence to have been given through the prism of being unable to see her own shortcomings and as a result viewing others as being the root cause of why things went sour in her employment at the First Respondent. The Second Respondent has become the focus for those matters in the context of these proceedings.

20. Whilst we accept, therefore, that the Claimant's evidence was a genuine reflection of how she viewed, and continues to view, matters that was nevertheless not rooted in any evidence. Her strength of feeling led to exaggeration and a tendency to view innocuous matters as a conspiracy against her. Examples of that are set out below in respect of the Descartes event and a number of the handwritten annotations that the Claimant had made to the documents in the hearing bundle which, when viewed objectively, simply did not reflect the spin that the Claimant sought to put on them.

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21. The Claimant's evidence was also problematic as a result of her tendency on occasions to steer away from the questions put to her by Mr. Purchase so as to give a speech on a rather unrelated topic. That was despite it having been made clear by the Tribunal what was expected of each witness in cross-examination. Whilst we do not go so far as to find the Claimant evasive in her evidence, her approach did belie in our view a lack of focus in relation to the complaints that she was actually bringing and an inability to see matters from any other viewpoint other than her steadfast belief that she had been discriminated against and treated badly by the Second Respondent.

22. Although not a matter strictly relevant to the issue of credibility, it is perhaps worthy of note here that it has often been a difficult task to get to the nub of a number of complaints that the Claimant makes in these proceedings. There is often nothing other than the bald contention that a male member of staff would not have been treated in the same way as the Claimant in support of a number of her many complaints of discrimination. It might perhaps be said in this regard that anything with which the Claimant takes issue has simply been labelled as a complaint of discrimination without a great deal of thought as to whether that is supported by the facts and there has been, with respect to the Claimant, something of a scattergun approach to this litigation. That is also evidenced by the fact that many of the allegations, despite the Claimant's lengthy witness statement, were not properly particularised and as can be seen from our conclusions below, it transpired than many overlapped with each other or occurred on dates and in circumstances other than those which had been pleaded.

23. We mention those issues as observations only and they have not negatively affected our view as to the Claimant's credibility in these proceedings other than the position supports our overall view that the Claimant appears to see conspiracy at every turn. The lack of specificity in respect of a number of the Claimant's complaints, despite the various incarnations of the pleadings and the length of her witness statement, have also not assisted us in our determination but we have done our utmost to deal with the claim as articulated before us.

24. Turning then, to Karen Hollingsworth. Whilst we considered her to be an essentially honest witness, we did take the view that her ability to see things objectively now, having had her views doubtless coloured by the Claimant's allegations and their contact with each other, significantly compromised the accuracy of her evidence. We say that on the basis that it was clear from answers given in cross examination that there was no complaint of any form of discrimination made by Karen Hollingsworth at the time of her employment or it ending. We consider that someone in her position and having the confidence that she displayed in the hearing would have been inclined to have complained, at the very least in the immediate aftermath of her own departure from the First Respondent, if she genuinely believed herself to have been the victim of discrimination.

25. We consider therefore that had there been issues of the severity which Ms. Hollingsworth's witness statement now suggests, and if she genuinely felt that she had been discriminated against at the time, then those would have been

the subject of complaint at a much earlier stage. She accepted in cross examination by Mr. Purchase that she had not made any complaints in respect of the Second Respondent despite her assertion otherwise in her witness statement.

26. Her evidence and view of events has, it appears to us, simply been coloured by the viewpoint of the Claimant and that she is in retrospect giving events a new significance. We observe in this regard that Ms. Hollingsworth left employment with the Respondent under something of a cloud relating to her own performance. Given that the Claimant also, as we shall come to, had performance criticisms made of her by the First and Second Respondents, it is not difficult to see how Ms. Hollingsworth may have had her recollections coloured by the Claimant's allegations in these proceedings.

27. Moreover, we would observe that the Second Respondent in fact recruited Karen Hollingsworth to the First Respondent and that simply does not square with her evidence and that of the Claimant that he disliked working with women; that he did not want them in the team and that his intention was therefore to target and remove female account managers. It appears far more likely to us that if that was the Second Respondent's viewpoint then he would never have recruited Karen Hollingsworth in the first place.

28. We therefore viewed Ms. Hollingsworth's evidence with some degree of caution given the matters described above.

29. We turn then to the Respondent's witnesses. Contrary to the representations of Mrs. Harrison on behalf of the Claimant, we considered the Second Respondent to be a credible witness who was providing a genuine and honest account. He was consistent in the account that he gave to the Tribunal with the only rare exceptions to that being where there appeared to be confusion or a lack of clarity around the cross-examination questions put by Mrs. Harrison. Unlike the Claimant, the Second Respondent was willing to make concessions where appropriate and equally to consider that things might, in hindsight, have been done differently and perhaps rather better. We considered the Second Respondent to have given us a credible account and we had little hesitation in accepting the evidence that he gave to us.

30. We then turn to Caroline Spain. While we considered her to be providing a genuine account insofar as she was able to recollect matters, her evidence was disorganised and we considered her to be ill prepared. It was not only her evidence that presented in this way but also preparation for the hearing and, particularly, in respect of disclosure. For example, that there had been late disclosure of a note book in which Caroline Spain had taken a number of hand written notes but which she had previously indicated that to the Claimant did not exist. We are ultimately satisfied that this was not an attempt to mislead the Claimant or suppress the documentation but simply on the basis that she had not appreciated the importance of such a document and had made insufficient attempts to locate what the Claimant had been asking her for. She had relied on her own recollection rather than having made any diligent searches. Her recollection was perhaps, it has to be said, wanting in a number of areas and

reliance upon it was certainly not the most reliable way to deal with issues such as disclosure.

31. Whilst her actions in that regard are both concerning and surprising for someone in a relatively senior Human Resources position, we are satisfied from our own observations of Ms. Spain at the hearing before us that this was an issue of disorganisation and ill preparedness. We are satisfied that the note book was therefore genuinely overlooked and found some time later rather than deliberately suppressed and that Caroline Spain had overlooked it because she had not been sufficiently diligent. Issues such as that, however, were clearly ones which simply went to fuel the fires of the Claimant's mistrust of the First and Second Respondents and to see conspiracy against her at every turn.

32. Whilst we found Ms. Spain's evidence to be essentially honest, we did consider her to be a somewhat inaccurate historian and generally lacking in a knowledge of the events that she was being asked about. We have therefore been reluctant to take her evidence at face value where it is not supported by other evidence before us.

33. Finally, then we turn to Jeff Maidment. We found Mr. Maidment to be a credible, genuine and honest witness. Particularly, like the Second Respondent, he accepted in hindsight that in some cases things could have been done better and he made appropriate concessions when it was sensible to do so. We are satisfied that in his dealings with the grievance appeal particularly he was impartial and tried to get to grips with and understand matters. That was also something which manifested itself in the hearing before us and he took the time and trouble to try to assist the Tribunal in the evidence that he gave. We had little hesitation in view of those matters in accepting the account that he provided.

THE LAW

34. Before turning to our findings of fact, we remind ourselves of the law which we are required to apply to those facts as we have found them to be.

35. The Claimant's discrimination complaints all fall to be determined under the Equality Act 2010 ("EqA 2010) and, particularly, with reference to Sections 13, 26 and 27.

36. Section 39 EqA 2010 provides for protection from discrimination in the work arena and provides as follows:

> *(1) An employer (A) must not discriminate against a person (B)—*
>
> *(a) in the arrangements A makes for deciding to whom to offer employment;*
>
> *(b) as to the terms on which A offers B employment;*
>
> *(c) by not offering B employment.*
>
> *(2) An employer (A) must not discriminate against an employee of A's (B)—*

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(a) as to B's terms of employment;

(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;

(c) by dismissing B;

(d) by subjecting B to any other detriment.

(3) An employer (A) must not victimise a person (B)—

(a) in the arrangements A makes for deciding to whom to offer employment;

(b) as to the terms on which A offers B employment;

(c) by not offering B employment.

(4) An employer (A) must not victimise an employee of A's (B)—

(a) as to B's terms of employment;

(b)in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for any other benefit, facility or service;

(c) by dismissing B;

(d) by subjecting B to any other detriment.

(5) A duty to make reasonable adjustments applies to an employer.

(6) Subsection (1)(b), so far as relating to sex or pregnancy and maternity, does not apply to a term that relates to pay—

(a) unless, were B to accept the offer, an equality clause or rule would have effect in relation to the term, or

(b) if paragraph (a) does not apply, except in so far as making an offer on terms including that term amounts to a contravention of subsection (1)(b) by virtue of section 13, 14 or 18.

(7) In subsections (2)(c) and (4)(c), the reference to dismissing B includes a reference to the termination of B's employment—

(a) by the expiry of a period (including a period expiring by reference to an event or circumstance);

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(b) 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.

(8)Subsection (7)(a) does not apply if, immediately after the termination, the employment is renewed on the same terms.

Direct Discrimination

37. Section 13 EqA 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".

38. It is for a Claimant in a complaint of direct discrimination to prove the facts from which the Employment Tribunal could conclude, in the absence of an adequate non-discriminatory explanation from the employer, that the employer committed an unlawful act of discrimination (**Wong v Igen Ltd [2005] ICR 931**)

39. If the Claimant proves such facts, the burden of proof will shift to the employer to show that there is a non-discriminatory explanation for the treatment complained of. If such facts are not proven, the burden of proof will not shift.

40. In deciding whether an employer has treated a person less favourably, a comparison will in the vast majority of cases be made with how they have treated or would treat other persons without the same protected characteristic in the same or similar circumstances. Such a comparator may be an actual comparator whose circumstances must not be materially different from that of the Claimant (with the exception of the protected characteristic relied upon) or a hypothetical comparator.

41. Guidance as to the shifting burden of proof can be taken from that provided by Mummery LJ in **Madarassy v Nomuna International Plc [2007] IRLR 246**:

"'Could conclude' ….. must mean that 'a reasonable tribunal could properly conclude' from all the evidence before it. This would include evidence adduced by the complainant in support of the allegations of …… discrimination, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. It would also include evidence adduced by the respondent contesting the complaint. Subject only to the statutory 'absence of an adequate explanation' at this stage …. the tribunal would need to consider all the evidence relevant to the discrimination complaint; for example evidence as to whether the act complained of occurred at all; evidence as to the actual comparators relied on by the complainant to prove less favourable treatment; evidence as to whether the comparisons being made by the complainant were of like with like….. and available evidence of the reasons for the differential treatment.

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The absence of an adequate explanation for differential treatment of the complainant is not, however, relevant to whether there is a prima facie case of discrimination by the respondent. The absence of an adequate explanation only becomes relevant if a prima facie case is proved by the complainant. The consideration of the tribunal then moves to the second stage. The burden is on the respondent to prove that he has not committed an act of unlawful discrimination. He may prove this by an adequate non-discriminatory explanation of the treatment of the complainant. If he does not, the tribunal must uphold the discrimination claim."

42. The protected characteristic need only be a cause of the less favourable treatment but need not be the only or even the main cause. A Tribunal when considering the cause of any less favourable treatment will be required to consider that question having regard not only to cases where the grounds of the treatment are inherently obvious but also those where there is a discriminatory motivation (whether conscious or unconscious) at play (see **Amnesty International v Ahmed [2009] ICR 1450**.)

Harassment

43. Harassment is prohibited by virtue of Section 26 EqA 2010 which provides as follows:

(1) A person (A) harasses another (B) if-
(a) A engages in unwanted conduct related to a relevant protected characteristic, and
(b) The conduct has the purpose or effect of –
i. Violating B's dignity, or
ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

44. The conduct complained of, in order to constitute harassment under Section 26, must relate to the protected characteristic relied upon by the complainant.

45. As set out by the Employment Appeal Tribunal in **Nazir & Anor v Aslam [2010] UK EAT/0332/09** the questions for a Tribunal dealing with a claim of this nature are therefore the following:

a) What was the conduct in question?

b) Was it unwanted?

c) Did it have the purpose of violating dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the complainant?

d) Did it have the effect of doing so having regard to an objective, reasonable standard and the perception of the complainant?

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e) Was the conduct on the grounds of the protected characteristic relied upon?

Victimisation

46. Section 27 EqA 2010 provides that:

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5)The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

47. In dealing with a complaint of victimisation under Section 27 EqA 2010, Tribunal will need to consider whether:

(i) The alleged victimisation arose in any of the prohibited circumstances covered by Section 39(3) and/or Section 39(4) EqA 2010 (which are set out above);
(ii) If so, was the Claimant subjected to a detriment; and
(iii) If so, was the Claimant subjected to that detriment because he or she had done a protected act.

48. In respect of the question of whether an individual has been subjected to a detriment, the Tribunal will need to consider the guidance provided by the ECHR Code (as referred to further below) and the question of whether the treatment complained of might be reasonably considered by the Claimant concerned to have changed their position for the worse or have put them at a disadvantage. An unjustified sense of grievance alone would not be sufficient to establish that an individual has been subjected to detriment (see paragraphs 9.8 and 9.9 of the ECHR Code).

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49. If detriment is established, then in order for a complaint to succeed, that detriment must also have been "because of" the protected act relied upon. The question for the Tribunal will be what motivated the employer to subject the employee to any detriment found. That motivation need not be explicit, nor even conscious, and subconscious motivation will be sufficient to satisfy the "because of" test.

50. A complainant need not show that any detriment established was meted out solely by reason of the protected act relied upon. It will be sufficient if the protected act has a "significant influence" on the employer's decision making (**Nagarajan v London Regional Transport 1999 ICR 877**). If in relation to any particular decision, the protected act is not a material influence of factor – and thus is only a trivial influence - it will not satisfy the "significant influence" test (**Villalba v Merrill Lynch & Co Inc & Ors 2007 ICR 469**).

51. In any claim of victimisation, the Tribunal must be satisfied that the persons whom the complainant contends discriminated against him or her contrary to Section 27 EqA 2010 knew that he or she had performed a protected act (**Nagarajan v London Regional Transport [1999] ICR 877**). As per **South London Healthcare NHS Trust v Al-Rubeyi (2010) UKEAT/0269/09** and **Deer v Walford & Anor EAT 0283/10**, there will be no victimisation made out where there was no knowledge by the alleged discriminators that the complaint relied upon as a protected act was a complaint of discrimination.

The ECHR Code

52. When considering complaints of discrimination, a Tribunal is required to pay reference to the Equality & Human Rights Commission Code of Practice on Employment (2011) ("The Code") to the extent that any part of it appears relevant to the questions arising in the proceedings before them.

Constructive Unfair Dismissal

53. A dismissal for the purposes of Section 39(7)(b) EqA 2010 (as set out above) includes a situation where an employee terminates the employment contract in circumstances where they are entitled to do so on account of the employer's conduct – namely a constructive dismissal situation.

54. Tribunals take guidance in relation to issues of constructive dismissal from the leading case of **Western Excavating – v – Sharp [1978] IRLR 27 CA**:-

> *"If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract; then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without*

giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains; or, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract."

55. Implied into every contract is a term that an employer will not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and the employee. Breach of that implied term, if established, will inevitably be repudiatory by its very nature.

56. Where an employer discriminates against an employee, then those acts of discrimination may represent a breach of the implied term of mutual trust and confidence.

57. However, not all incidents of discrimination will be repudiatory breaches of contract entitling the employee to terminate the contract and treat themselves as dismissed. A finding of unlawful discrimination will not inevitably of itself mean that the employer has breached the implied term of mutual trust and confidence (**Amnesty International v Ahmed 2009 ICR 1450**).

58. The question of whether or not there has been a repudiatory breach of the duty of trust and confidence is to be judged by an objective assessment of the employer's conduct. The employer's subjective intentions or motives are irrelevant. The actual effect of the employer's conduct on an employee are only relevant in so far as it may assist the Employment Tribunal to decide whether it was conduct likely to produce the relevant effect.

59. If there is a fundamental breach of contract, an employee must, however, resign in response to it. That requirement includes there being no extraneous reasons for the resignation, such as them having left to take up another position elsewhere or any other such reason if that is unrelated to the breach relied upon.

60. However, if the repudiatory breach was part of the cause of the resignation, then that suffices. There is no requirement of sole causation or predominant effect; **Nottinghamshire County Council v Meikle [2004] IRLR 703**.

61. It is possible for an employee to waive (or acquiesce to) an employers breach of contract by their actions. In those circumstances, an employee will affirm the contract and will be unable to rely upon any breach which may have been perpetrated by the employer in seeking to argue that they have been constructively dismissed.

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Time limits

62. Section 123 provides for the time limit in which proceedings must be presented in "work" cases to an Employment Tribunal and provides as follows:

> *"Proceedings on a complaint within section 120 may not be brought after the end of—*
>
> *(a)the period of 3 months starting with the date of the act to which the complaint relates, or*
>
> *(b) such other period as the employment tribunal thinks just and equitable.*
>
> *(2)Proceedings may not be brought in reliance on section 121(1) after the end of—*
>
> *(a) the period of 6 months starting with the date of the act to which the proceedings relate, or*
>
> *(b) such other period as the employment tribunal thinks just and equitable.*
>
> *(3)For the purposes of this section—*
>
> *(a) conduct extending over a period is to be treated as done at the end of the period;*
>
> *(b) failure to do something is to be treated as occurring when the person in question decided on it.*
>
> *(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—*
>
> *(a) when P does an act inconsistent with doing it, or*
>
> *(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it."*

63. Therefore, Section 123 provides that proceedings must be brought *"within a period of three months starting with the date of the act to which the complaint relates or any other such period as the Tribunal considers to be just and equitable".*

64. For the purpose of those provisions, conduct which extends over a period is to be treated as done at the end of that period and the failure to do something is to be treated as occurring when the person in question decided upon it. Therefore, in the event of conduct which extends over a period, time will not begin to run until the last act done in that period. The appropriate test for a "continuing" act" is whether the employer is responsible for an "an ongoing situation or a continuing state of affairs" in which the acts of discrimination occurred, as opposed to a series of unconnected or isolated incidents (**Hendricks v Metropolitan Police Commissioner [2002] EWCA Civ 1686**).

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65. If a complaint is not issued within the time limits provided for by Section 123 Equality Act, that is not the end of the story given that a Tribunal will be required to go on to consider whether it is "just and equitable" to allow time to be extended and the complaint to proceed out of time.

66. In doing so, the Tribunal must have regard to all of the relevant facts of the case and is entitled to take account of anything that it considers to be relevant to the question of a just and equitable extension. A Tribunal has the same wide discretion as the Civil Courts and should have regard to the provisions of Section 33 Limitation Act 1980, as modified appropriately to employment cases (see **British Coal Corporation v Keeble [1997] IRLR 336**).

67. In considering whether to exercise their discretion, a Tribunal must consider factors relevant to the prejudice that each party would suffer if an extension were refused, including:

- The length of and reasons for the delay.
- 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.

68. The emphasis is on whether the delay has affected the ability of the Tribunal to conduct a fair hearing and all significant factors should be taken into account. However, the burden is upon a Claimant to satisfy a Tribunal that it is just and equitable to extend time to hear any complaint presented outside that provided for by Section 123 EqA 2010.

FINDINGS OF FACT

69. We should observe that we have confined our findings of fact to those matters which are relevant in order to make a proper determination of the claim. We have not therefore dealt with each and every point in dispute between the parties if those matters are not necessary for that determination.

The business of the First Respondent

70. The First Respondent is a part of the Honeywell Group and is a manufacturer and supplier of hardware such as printers, handheld data collection devices and scanning equipment, such as the handheld scanning devices which are used in retail and warehousing environments.

71. We have little doubt that the sales environment within the First Respondent, and which the Claimant was later to join, was and is a pressurised

and fast paced one. That, in our experience, is akin to the sales environments of many large organisations.

The Claimant's interview and appointment

72. The Claimant was employed by the First Respondent as an Enterprise Account Manager in the retail division between 15th June 2015 and 31st January 2017 when her employment terminated following a period of notice which she had tendered on 7th December 2016. We shall come further below to the role of an Enterprise Account Manager but we firstly say a word here about the way in which the Claimant came to be recruited to the role. In this regard, the Claimant did not in fact come to apply in what might be described as a conventional way for a role with the First Respondent.

73. The Claimant has a young son who, at the material time, attended school with the children of one of the First Respondent's then Territory Directors, Jeff Taylor. The Claimant and Mr. Taylor therefore knew each other due to that connection and would exchange a greeting when they saw each other. The Claimant also knew in passing Mr. Taylor's wife, Claire, as a result of that same connection and also as they attended the same gym.

74. There was a chance meeting between Mr. Taylor and the Claimant, in or around April 2015, at a McDonald's service station where they had both stopped to take a break from their respective journeys. They exchanged greetings and during their conversation, Mr. Taylor mentioned a vacancy for a role of Enterprise Account Manager within the First Respondent's retail business.

75. The Claimant expressed an interest in the position and it was agreed that she would submit her Curriculum Vitae ("CV") to the First Respondent, which she subsequently did.

76. The Claimant was invited for an interview for the position which was held with Mr. Taylor and another senior member of staff. Mr. Taylor was impressed by the Claimant and wanted to offer her the position. He discussed that with the Second Respondent, who at that time was the First Respondent's EMEA[1] Sales Director for the retail division. The duties of the EMEA Sales Director at that time included working closely with the UK retail sales team and particularly the Territory Directors, although the responsibility for direct line management of the team at that time lay with Mr. Taylor. However, we do not consider there was anything unusual in Mr. Taylor discussing a key appointment to the UK sales team with the Second Respondent given his overall involvement with that team as part of his own role.

77. It is not disputed that the Second Respondent expressed some reservation about the Claimant being appointed to the Enterprise Account Manager position. We accept in this regard that that was a relatively key appointment within the UK sales team. The reason for that reservation was that

[1] A reference to the territory or geographic area of Europe, the Middle East and Africa.

the Second Respondent did not consider the Claimant to have the requisite skills and experience to take up a key sales position.

78. We accept the evidence of the Second Respondent that that was a genuine concern which came from consideration of the Claimant's CV, which did not show any recent key sales experience. The Claimant had in fact for a number of years been running her own photography business on a small scale and did not have any significant up to date relevant sales experience and particularly not in the rather technically complex field in which the First Respondent operated and in which the successful appointee to the role would have to adapt.

79. The Second Respondent also conducted a telephone interview with the Claimant following the suggestion by Mr. Taylor that she be appointed to the Enterprise Account Manager position and we accept his evidence that he also had reservations about her suitability for the position after that conversation. We accept the evidence of the Second Respondent in this regard that he had asked the Claimant a question regarding what she considered to be the biggest challenges for retailers and she had provided what he perceived to be a weak answer. He ultimately considered that the Claimant did not have the relevant experience for the role and discussed that with Mr. Taylor accordingly.

80. We are also satisfied that Mr. Taylor accepted that the Claimant did not have significant recent or relevant sales and retail experience but that he expressed to the Second Respondent that he believed that those matters could be overcome; that he needed to appoint someone to the role quickly and that he was prepared to take a risk on appointing the Claimant. That is supported by a text message exchange between the Claimant and Mr. Taylor which appears at page 873 of the hearing bundle where Mr. Taylor expressed to the Claimant that he had spoken to the Second Respondent who had a "couple of concerns" but that this was nothing that could not be resolved. If, as the Claimant contends, the Second Respondent was vehemently opposed to the appointment of a woman to the position, we might imagine that he would have put forward rather more of a strident view than expressing a "couple of concerns".

81. The decision as to whether to appoint the Claimant to the position was ultimately that of Mr. Taylor as Territory Manager and shortly after that text message to the Claimant he sent a further message describing matters as "All sorted" and that he would get an offer of employment sent out to her (see page 873 of the hearing bundle).

82. Although we have not heard from Mr. Taylor, given that he had sadly passed away before the commencement of these proceedings, it appears to us from the aforementioned text messages, what the Second Respondent told us and the later appointment of the Claimant, that Mr. Taylor was satisfied, at that time at least, that any shortcomings in experience could be overcome and that the Claimant should be offered the role. She was in that regard duly made an offer of employment as Enterprise Account Manager by the First Respondent.

83. We should note here that a key part of the Claimant's case in relation to much if not all of this claim rests on the fact that she contends that she was told at some stage by Mr. Taylor that the Second Respondent did not like women and did not like working with women. That is something which the Second Respondent denies to be the case. We accepted his evidence in this regard and we do not accept that the Claimant was ever told by Mr. Taylor that the Second Respondent did not like women and/or did not like working with them.

84. We considered this to be an area of the Claimant's evidence which has either been exaggerated or has been created in her own mind, given that it is clear to us that she genuinely believes that she was bullied by the Second Respondent, and that she has equally convinced herself that that was on the grounds that she was female. We are entirely satisfied, however, that at no stage has the Second Respondent indicated a dislike for women, or for working with women, and this was in fact not the view that he holds. Indeed, we accept his evidence that he works well with women in the business environment and that included individuals such as Caroline Spain of Human Resources, Georgina Lamb and Erin Townsend amongst others.

85. Although we have not heard from Mr. Taylor as to what he told the Claimant, given that we have accepted that the Second Respondent did not hold those views, we consider it highly unlikely that Mr. Taylor would have suggested to her that he did.

86. We find further support for the fact that the Second Respondent did not have an issue with working with women from the fact that he himself was responsible for the appointment of another female Enterprise Account Manager, Karen Hollingsworth. Whilst Ms. Hollingsworth, as we have already observed above, now contends that she too was the victim of sex discrimination whilst working for the First Respondent, it seems to us inherently unlikely that if the Second Respondent was actively set against working with women or having them within the sales team he would have himself appointed a woman to a key sales position. That simply does not make sense. If he had been against the appointment of women in the sales team as the Claimant contends, then we have little doubt that he would not have taken the step of appointing Karen Hollingsworth in the first place.

<u>The culture within the First Respondent organisation</u>

87. The Claimant contends as part of the claim before us that in addition to the alleged attitude of the Second Respondent towards women, a matter which we have already dealt with above, there was also a wider culture of sexism and the demeaning of female members of staff within the First Respondent organisation. She refers to the UK sales team as a "boys club" or similar.

88. Other than a somewhat generalised assertion that this was the case, the Claimant has only been able to point to four matters upon which she relies in support of her position in that regard.

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89. The first of these is an email message from a member of the sales team which referred to "lipsticks and handbags" in respect of criticism that had been made of Karen Hollingsworth over her dealings with Boots, which was one of the accounts that had been allocated to Ms. Hollingsworth at the time of her employment by the First Respondent.

90. That email was sent to members of the sales team, including the Second Respondent.

91. We accept that, on the face of it, the tone of the email referred to a female member staff (Karen Hollingsworth) in demeaning and perhaps somewhat misogynistic terms. We do not accept the submissions of Mr. Purchase that the use of the terms "lipsticks and handbags" in the message more than likely referred to products that Boots sold and we have not heard from the author of that email. However, we equally do not accept the Claimant's position that this isolated email was demonstrative of a culture of inherent sexism and anti-female views either championed by, or condoned by, the Second Respondent.

92. One isolated email alone cannot possibly evidence such a position. The email was not sent by the Second Respondent nor did he comment upon it or endorse the views reflected. It is fair to say that perhaps the Second Respondent should have taken the sender to task for his comments, something the Second Respondent himself accepted in cross examination that he should have, but this is not indicative of a culture of sexism as the Claimant contends.

93. The second matter to which the Claimant points in her contention that the environment of the First Respondent was inherently discriminatory and prejudiced against women is a note of an online conversation on LinkedIn following the termination of her employment with the First Respondent. That was a conversation with an employee of the First Respondent, Giovanni Di Santo, concerning the Claimant's departure from the Company on garden leave.

94. The relevant parts of that conversation - and we have emphasised in bold type the parts on which the Claimant places particular reliance - said this:

95. The Claimant to Mr. Di Santo:

> *"Hi I'm so glad you messaged*[2] *as Jason informed HR that everyone hated working with me. The reality hit this week that I wasn't coming back which was really sad as really liked working with the majority of people but couldn't work for Jason anymore. I raised a grievance against him and they let me continue to work for him for 6 months and the bullying intensified. It's so bad Love the job I'm doing not so far as people are lovely and have the scope to change a business I'm just setting up a partnership channel now as a new route to market Lots of hard work but all good and glad I'm out of it Definitely keep in touch so nice to hear from you"*

[2] The earlier messages had dealt with the Claimant saying goodbye and Mr. Di Santo wishing her luck for the future.

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96. Mr. Di Santo replied as follows:

> *"Hi Nicola – that is shocking. I can't believe that That is news to me, maybe it was a ply to cover tracks* ***But it seems to make sense what you are saying as I have picked up signs about certain "behaviours" from the team.*** *Really sorry that you had to put up with that – it must have been terrible but as I said* ***it seems to stack up now.***
> *Main thing is that you have been able to move on positively and make a fresh start. I don't think that there is anything HR could or would have done anyway which is sad too*
> *To be able to make impact with what you are doing and to work in a friendly supporting environment is very uplifting – I am sure you will be really successful as well as happier."*

97. The Claimant replied as follows:

> *"HR were shocking and never supported me through out (sic) it. I asked to be moved to be managed by Tim as I was in tears every week and they refused. I raised the grievance and they said I had no grounds for it so had to appeal and then seemed to step up their game Emerson said that the SA's hated working with me and that Marketing felt I didn't do anything Just a joke really as why would anyone speak to Emerson about it The most heartbreaking was Rob Page as I thought he was a friend but I guess he has known Jason longer than me All a total cover up really and their stories were all the same Quite amusing but when about you and you know its (sic) not true it was awful I have decided to take it to Tribunal though so will see what happens It's just shocking in this day and age you can be treated that way"*

98. Mr. Di Santo then replied as follows:

> *"That sounds awful -* ***I think one of the problems is that they have all been there together for a long time throughout various acquisitions and maybe covered for each other which is bad. Or they may be fearful for their own positions."***

99. The Claimant has not called Mr. Di Santo as a witness to explain what the "behaviours" referenced in his message were nor to explain the other references on which she places reliance. Whilst, the Claimant contends that the reference to "behaviours" must be a reference to what she contends to be the inherently sexist nature of the team and their views of women in that environment, we do not accept that. The message says nothing of the sort. Behaviour can have many different connotations, not simply the one that the Claimant ascribes to it. The messages from the Claimant made no reference at all to discrimination or allegedly sexist attitudes and so it simply cannot follow that that is what Mr. Di Santo must have been referring to. There are many other things that his references might have meant.

100. Moreover, despite the Claimant's repeated mention of the Second Respondent in her messages, there is nothing within the replies from Mr. Di Santo in response which is overtly critical of him, less still any suggestion that the Claimant had been targeted by him or discriminated against.

101. The Claimant contends that she had bumped into Mr. Di Santo after her employment had ended and that he had during that time referred to the sexist nature of the team. There is no documentation to support that suggested comment and as we say, the Claimant has not called Mr. Di Santo as a witness in these proceedings despite being legally represented throughout.

102. Moreover, the messages sent by Mr. Di Santo to which we have referred above did not suggest that he viewed the team or the Second Respondent as sexist or a having a sexist culture or that the Second Respondent did not like working with women. That is despite the suggestion made by the Claimant at paragraph 139 of her witness statement to the contrary. Again, akin to a number of annotated comments made by the Claimant on documents in the hearing bundle, when the content is read objectively, they simply do not say what the Claimant contends them to say.

103. Given that we have formed the view from the evidence given in these proceedings that the Claimant has a tendency to exaggerate matters to fit her view of the situation, we cannot accept, given the lack of any corroborative evidence, that Mr. Di Santo made any such comment to the Claimant. However, even had we accepted that evidence it would not in our view materially assist the Claimant in these proceedings given that we have not heard from Mr. Di Santo to provide any basis on which he may have reached any such conclusion or viewpoint.

104. We therefore do not accept that such a comment was made or that the messages provide any basis for an inference to be drawn about the culture of the First Respondent, the Sales Team or the actions or views of the Second Respondent.

105. Thirdly, the Claimant points to the fact that she contends that Mr. Taylor congratulated her in front of the sales team for "taking one for the boys" in December 2015. She contends that this was in the context of a suggestion that she was having an affair with an individual who worked for a partner of the First Respondent. However, as Mr. Purchase points out, cross examination was the first time that the Claimant had mentioned the alleged affair and that, contrary to her witness statement, the evidence of Ms. Hollingsworth under cross examination was that nothing had been said about such an affair by Mr. Taylor.

106. We have not heard of course from Mr. Taylor and have no idea of the full and proper context in which he made the comment about "taking one for the boys". We would observe however that it is not a particularly unusual turn of phrase and it does not suggest to us, as the Claimant seeks to portray, an inherently sexist environment or one that did not value and sought to demean women in the workplace. Given the Claimant's tendency for exaggeration, it appears to us that she has simply read more into the comment in hindsight than it

is reasonable to attribute to it. That isolated comment by Mr. Taylor – the very person who championed the Claimant's appointment in the first place – is not in our view indicative of a sexist culture, that Mr. Taylor held such views or, perhaps more importantly in this context, that that had anything to do with the Second Respondent and his views of women in the workplace.

107. Finally, the Claimant points to the belief of Karen Hollingsworth that she was also discriminated against whilst in employment with the First Respondent. However, for the reasons that we have already explored with regard to the issue of credibility above, we do not accept that the difficulties experienced by Ms. Hollingsworth were either acts of discrimination or that she perceived them to be such at any point prior to her discussions with the Claimant and that those events have simply as a result of those interactions taken on a new significance. Moreover, it is clear that she had her own difficulties in respect of her performance (see page 908 of the hearing bundle for example) and that she herself left the First Respondent on perhaps not the best of terms.

108. We also do not infer anything from the fact that the Claimant and Ms. Hollingsworth were both subject to consideration of performance improvement processes. Simply because they are both female it does not follow that any such consideration was on account of gender. As we have said above, it is clear that Ms. Hollingsworth was perceived to have performance issues and, as we shall come to, we accept that there were also a number of performance concerns with the Claimant.

109. We therefore do not find that there is any inference to be drawn from the matters described in Ms. Hollingsworth's evidence nor that there was any endemic discriminatory or sexist culture within either the First Respondent or its UK retail sales team or, indeed, from the Second Respondent.

110. We should observe that in closing submissions it is also suggested by Mrs. Harrison that the Respondent has been less than candid in respect of disclosure issues and thus that an inference should be drawn in respect of those matters. That must be set against the backdrop of a perhaps surprisingly voluminous amount of correspondence from Mrs. Harrison seeking further information and documentation, the relevance of much of which was disputed by the Respondents.

111. The eventual bundle for the hearing ran to in excess of 1150 pages when additional documents were handed up during the course of the hearing. The fact that documents were disclosed late in view of those matters, and the fact that in our experience it is not unusual for further documents to come to light as a hearing draws close or even during the course of a hearing, is not of any degree of significance and certainly does not come close to allowing us to draw an inference of unlawful discrimination. Mrs. Harrison is not, for example, able to point to a "smoking gun" in respect of evidence that was not initially disclosed to her so as to suggest that the Respondents had been suppressing such material for ill purpose or to mislead the Claimant or the Tribunal.

RESERVED

112. We do not accept, therefore, that there was a culture of sexism as the Claimant alleges or that there is evidence of discriminatory behaviour on the part of the Second Respondent or the UK Retail Sales Team on the basis of the information before us. The Claimant's evidence simply comes nowhere near any such position.

The role of an Enterprise Account Manager

113. There is some degree of complexity to the operations of the First Respondent in respect of sales personnel. As we understand matters, the Retail UK Sales Team ("The Team") are responsible for the sales of what the Second Respondent refers to as "Productivity Products" which include scanners, printers and the sort of handheld devices that we have already referred to above. The client base of the retail team is, as the name suggests, retailers such as Wilkinsons, Morrisons, Boots, Sainsbury's, Dunelm, Tesco and other such household names.

114. The team is effectively split into two with an enterprise division and what is known as a "channel" division. We accept that the enterprise team have the predominant purpose of selling directly to new and existing retailer clients and developing and maintaining a relationship with them. Those in that team are assigned a number of accounts in respect of which they are therefore expected to deal directly with, develop and maintain that direct sales relationship.

115. The Channel Account Managers make their sales not directly with the end user client but through what the First Respondent calls "partners" or "channel partners" who are an intermediary between the First Respondent and the eventual end user client. The channel partners, as we understand it, provide services to support the products that the First Respondent provides to its clients such as software to update or support the hardware that the First Respondent manufactures and supplies.

116. We accept that where there is no intermediary relationship as the Channel Managers enjoy, the Enterprise Account Managers are expected to have existing and strong sales skills and a good working knowledge of the sector and the products which they are marketing on behalf of the First Respondent. That is not required to the same degree with a Channel Account Manager who has the buffer of a partner or partners to assist in securing sales. We understand that the Channel Account Managers are seen as being at something of a more junior level to the Enterprise Account Managers.

117. To add some degree of confusion, despite the divide between Enterprise Account Managers and Channel Account Managers and the way in which they operate, it is possible for a "partner" to be involved on occasion with the sales on an Enterprise Account. As we understand it, that might for example depend on the "tier" of account that was being operated or to source an ad hoc "add on" product for the end user client that the First Respondent did not themselves manufacture, so as to provide what might be looked at as a more holistic service or offering. However, we accept the evidence of the Second Respondent that

this nevertheless still required the Enterprise Account Manager responsible for that account to take the lead with the end user.

118. Whilst there is some dispute between the Claimant and Karen Hollingsworth on the one hand and the Second Respondent on the other about the role of the Enterprise Account Manager and what is expected, we prefer the evidence of the Second Respondent on this point on the basis of his understanding of the sector and the operations of the First Respondent and the fact that this is supported by the job descriptions for each of the two positions which appear in the hearing bundle at pages 192(i) to (k) and page 192(l) to (n).

119. We are equally satisfied that the apparent misunderstanding of the nature of the role and what was required and expected no doubt led to the difficulties that both the Claimant and Ms. Hollingsworth experienced in succeeding in Enterprise Account Manager roles and the criticisms of the performance of both of them as a result.

Commencement of the Claimant's employment and the induction period

120. As set out above, Mr. Taylor decided to offer the position of Enterprise Account Manager to the Claimant and she was formally offered the position on 15th May 2015 by letter enclosing a statement of terms and conditions of employment (see pages 120 to 142 of the hearing bundle).

121. The terms and conditions, which were duly signed and accepted by the Claimant set out the following relevant matters:

- Her hours of work were 37.5 per week but she was required to work additional hours over and above that without payment for overtime in order to properly fulfil her duties;

- She reported to the First Respondent's Bracknell office but would be based at her home address;

- Her salary was to be set at £48,000.00 per annum (a level which we consider indicative of the relatively senior role that the Claimant had been offered) with the possibility for bonus and incentive payments based on performance against targets and with various other benefits also being provided such as a company car, healthcare, pension and income protection plan;

- That her employment would be subject to a six month probationary period, which might be extended and in such circumstances written notification of such extension would be provided;

- That employees were expected to abide by the Honeywell Code of Business Conduct, a copy of which was available on the intranet; and

- That there was a grievance procedure which employees could follow and details of where to obtain a copy were provided.

122. The Claimant accepted the offer of employment on the terms set out by the First Respondent and she duly commenced employment in the role of Enterprise Account Manager on 15th June 2015.

123. There is a dispute on the facts as to whether or not the Claimant met with the Second Respondent during the first week of her employment. The Claimant denies that this was the case and she contends that she did not meet the Second Respondent until much later. The Second Respondent contends to the contrary and says that they met at some point in that first week of employment for a meeting at a hotel in Stratford-upon-Avon. We have not been able to reach a definitive conclusion in relation to this issue given that both the Claimant and Second Respondent are steadfastly convinced that they are right about this and there is no documentary evidence to particularly assist us on the point.

124. Clearly, whilst they both believe that they are right about the events of that first week, ultimately only one of them can be. One of them has simply got it wrong. That is perhaps understandable given the passage of time between the first week of the Claimant's employment and this matter coming on for hearing before this Tribunal.

125. However, we are satisfied that in reality little, if anything, in fact turns on whether this meeting took place in the first week of employment or at a later stage. On any account, the Claimant clearly met with the Second Respondent at some stage in the early weeks of her employment and in our view it does not matter in reality whether this was in the first week or subsequently. Particularly, the Claimant does not, for example, allege that the Second Respondent had met with other male members of the team in the first week of their employment and had excluded her or otherwise singled her out in this regard. We also accept that during the early weeks of her employment the Second Respondent spent time with the Claimant explaining to her his approach to how accounts were managed and offering his support if it was required (see paragraph 16 of the Second Respondent's witness statement which was not challenged in cross examination by Mrs. Harrison). That does not square with the Claimant's contention that the Second Respondent was against her (and female account managers) from the get go.

126. Upon commencement of employment the First Respondent conducted an induction with the Claimant and also another new starter by the name of Simon Jones who had joined the First Respondent Company at the same time as the Claimant. Details of the induction programme and ongoing training that the Claimant participated in can be found at pages 192(a) to (d) of the hearing bundle. Whilst the Claimant contends that the induction process was deficient and did not properly prepare her for the Enterprise Account Manager position, she accepted in cross examination that Mr. Jones had had an almost identical induction to that which had been provided to her. She cannot point to any other male members of staff who had a more in depth induction and it appears to us

that the appropriate comparator here would be Mr. Jones who had commenced his employment at precisely the same time.

127. As such, whilst as it transpired in due course the Claimant might have benefitted from a greater degree of ongoing support and intervention to account for her lack of industry knowledge and recent significant sales experience, she was treated no differently and certainly no less favourably than Mr. Jones was in respect of the induction programme.

128. There is also no evidence that the Claimant was treated any differently to any other member of staff (whether male or female) in respect of ongoing training needs. She did have some additional training provided to her (see pages 192(b), (c) and (d) of the hearing bundle) and accepted in cross-examination that she was able to turn to the rest of her team for support if required. However, it is clear, as we shall come to, that the Claimant nevertheless struggled significantly in the role and would no doubt have benefitted from some more tailored support.

129. There is, however, nothing at all before us to suggest that any other member of staff was treated more favourably than the Claimant or that, as she contends, she was being set up to fail. It was perhaps a failing on the part of Mr. Taylor not to recognise that the Claimant needed more support than he had previously anticipated and, indeed, he recognised that the Claimant had not been adequately trained and mentored "in a large deal environment" in an email to her in February 2016 and sought to re-assure her that she was not at fault for that (see page 338 of the hearing bundle). Mr. Taylor was in that regard being supportive of the Claimant and there can be no reasonable suggestion either that the Second Respondent (who was not the Claimant's line manager at this juncture) had any responsibility for that. Indeed, Mr. Taylor's email makes it clear that he took the blame for any training and mentoring deficiencies and nor can there be any reasonable suggestion that the Claimant was being set up to fail.

130. It is unfortunate that the Claimant was not given a greater degree of support at an early stage but there is quite simply no evidence that she was treated any differently in this regard to any other member of staff nor that, even if she had been, her sex had anything at all to do with the matter.

Targets

131. It is common ground that at the outset of the Claimant's employment and for the first six months thereafter, she was not allocated a target by Mr. Taylor.

132. Although we have not heard from Mr. Taylor, of course, we are satisfied from the evidence of the Second Respondent that he himself was not involved in the decision not to allocate a target to the Claimant for that period of time. That would be logical given that it was Mr. Taylor at that time who was the Claimant's Line Manager and who would be responsible for the allocation of targets. It would appear to us unusual if Mr. Taylor had sought to subject the Claimant to detriment in respect of targets after the commencement of his employment given that he had championed her appointment to the position of Enterprise Account Manager in the first place.

133. Although the Claimant had no target to meet during the first six months of her employment, she did nevertheless have guaranteed commission which was paid to her in addition to her basic salary. We accept the rationale behind not providing a target in these circumstances was to ensure that the individual had time to "bed into" the new role. That is entirely understandable in a sales role of this nature. Particularly, we accept that it takes time to build up a pipeline of business and prepare for the year ahead and so it appears to us to be sensible for no target to be set for new starters for an initial period so that they are not under undue pressure in the first few months of employment. We note particularly in this respect that the sales team in which the Claimant was based concentrated on large scale sales or annual replacement of existing products and therefore setting up a pipeline generally takes some time.

134. We therefore accept that it made sense that for the first six months while the Claimant was developing her accounts and pipeline business that she did not have a target to meet.

135. The Claimant relies, however, on the fact that Mark Vatcher, another member of the Retail Sales Team, was set a target at the commencement of his employment. However, we note that Mr. Vatcher was employed in a different part of the business and not in the same part of the retail team as the Claimant. He also had a great deal more relevant experience than the Claimant. That latter point is evident from the LinkedIn profile that we have seen for Mr. Vatcher (see pages 845 and 846 of the hearing bundle).

136. Even assuming that that difference did not exist, however, then the Claimant has not provided anything, other than a general contention that this was the case, to suggest that Mr. Vatcher was given a target because he was male and she was not because she was female.

137. Moreover, we cannot see, and the Claimant has not been able to assist us in this regard, how not allocating her a target upon the commencement of her employment was to her detriment. As we have observed above, the Claimant was paid guaranteed commission to ensure that she did not suffer any financial disadvantage by not being allocated a target and it is noteworthy that once the Claimant was allocated a target she was in all events unable to hit it. We shall come to that further in due course. It was therefore, if anything, somewhat to her advantage not to have a target at the very outset of employment given that this was not to her financial detriment and it allowed her the opportunity to try to bed into an unfamiliar and complex sales environment.

138. Conversely had the Claimant been provided with a target from the outset she may very well have complained in the course of these proceedings that that was unfair and that she was being set up to fail.

<u>The Claimant's accounts and handover</u>

139. At the commencement of her employment with the First Respondent, the Claimant was allocated a number of accounts upon which she was to work and

develop. Some of those were accounts had previously been managed by Karen Hollingsworth, who was exiting the business and so was handing over her accounts to others. As the Claimant was coming into the business, some of Ms. Hollingsworth's accounts were therefore to be transferred to her to manage going forward.

140. The Claimant of course relies upon the alleged treatment of Ms. Hollingsworth as evidence of a discriminatory regime within the First Respondent organisation and/or evidence of the sexist culture of the sales team and the Second Respondent. For the reasons that we have already set out above, we do not accept that there was any such regime or culture in place, but we are satisfied from the evidence before us that there were problems in relation to Ms. Hollingsworth's performance (see for example page 908 of the hearing bundle) which were entirely unconnected with her gender but which have no doubt led her to view the First Respondent in a somewhat negative light. That negative perception has doubtless been reinforced by what the Claimant has to say about her time and alleged treatment during the course of her employment.

141. It is clear from the evidence before us that the Claimant did not receive an adequate handover in relation to the accounts which were to be transferred from Karen Hollingsworth. Ms. Hollingsworth asserts in her evidence that she was told by the Second Respondent that he would deal with the account handovers and that she had passed over the information to him to enable him to do so.

142. The Claimant contends that she was told by the Second Respondent that Karen Hollingsworth should be dealing with the handovers. The evidence of the Second Respondent was that his understanding was that Karen Hollingsworth should have been dealing with the matter and that of course accords with the Claimant's evidence as to what she had been told.

143. Moreover, contemporaneous emails from the Claimant certainly indicate that she was under the impression from the Second Respondent that the handover would come from Karen Hollingsworth and she later complained that Ms. Hollingsworth had not handed over the accounts properly.

144. The Claimant contends now that the Second Respondent had deliberately engineered the situation so that a proper handover of the accounts was not carried out so as to disadvantage her in being able to effectively manage them upon taking over as the relevant Enterprise Account Manager. However, other than the Claimant's general assertion that this is the case, there is no evidence to that effect and we accept the evidence of the Second Respondent that he neither did so nor would it have been in his interests to do so.

145. We accept that the position of the Second Respondent, as communicated to the Claimant at the time, was that he had understood that Karen Hollingsworth would be dealing with the handover of the relevant accounts. That would appear to us to make sense given that she was responsible for the running of the accounts on a day to day basis and the Second Respondent was not. He only looked at the accounts, at that time at least, from an arms length perspective and

we remind ourselves that at that point it was Mr. Taylor and not the Second Respondent who line managed both Karen Hollingworth and the Claimant.

146. We do not find therefore that the Second Respondent told Ms. Hollingsworth that he would be doing the handovers himself. We accept that it was his understanding and intention that she would attend to that with the Claimant. It appears to us that there might simply have been a breakdown in communication in relation to that matter.

147. We accept, however, given Ms. Hollingsworth's apparent belief that the Second Respondent was undertaking the handovers that she did not take steps to deal with that herself and to that end the Claimant had an unsatisfactory handover of the accounts. Whilst that was clearly undesirable and the matters should have been dealt with much better, we do not accept that the Second Respondent manipulated the situation or set the Claimant up to fail and there is no evidence whatsoever that her sex played any part in the matter. It appears to us to simply be a misunderstanding.

The Morrisons account

148. One of the accounts provided to the Claimant during the first few months of her employment was Morrisons supermarkets. That account had previously been allocated to Karen Hollingsworth but was allocated to the Claimant after Ms. Hollingsworth was placed on garden leave in December 2015.

149. We must observe that we have had a great deal of difficulty ascertaining what the accurate position is in relation to the Morrison's account (and as it happens in relation to accounts allocated to the Claimant generally) as a result of a lack of clarity in account lists which appear in the bundle in various incarnations and from various sources at various times.

150. The Claimant contends that the Morrison's account was allocated to her on a permanent basis before being taken away from her by the Second Respondent and allocated to somebody else. The Second Respondent's position is that the Morrisons account was, as far as he was aware and from the account lists that had been provided to him, only ever allocated to the Claimant on a temporary basis following the departure of Karen Hollingsworth on garden leave. Furthermore, it had always been intended that the account would be allocated on a permanent basis to another member of the team but that having temporary ownership of, or involvement with, the account would provide the Claimant with good experience.

151. As we have already indicated above, there is a great deal of difficulty in ascertaining what accounts were actually allocated to the Claimant at any given time. There are several different accounts lists within the hearing bundle before us, emanating from different times and compiled by different individuals. We have no way of knowing which of those accounts lists is accurate and, indeed, none of the witnesses from whom we have heard have been able to materially assist us on that issue either, nor why there are so many incarnations of the varying account lists. Indeed, even some account lists compiled by the Claimant

herself do not include accounts which she now asserts had been transferred to her.

152. Clearly, the fact that there remains confusion about the matter is indicative, in our view, of the fact that there was likely also some degree of confusion about the allocation of the Morrisons account at the time. We accept that the Claimant believed that having been allocated the account, that was to be on a permanent basis but we equally accept the evidence of the Second Respondent that he had only understood that to be a temporary position and that was reflected in the account lists that he had before him at the time. His intention to allocate the account elsewhere on a permanent basis would also make sense given that he had concerns about the Claimant's experience and Morrisons was a key account for the First Respondent. We accept, however, that whilst that was the Second Respondents understanding and intention, the temporary allocation position may not have been made sufficiently clear to the Claimant or there may have otherwise been some misunderstanding.

153. We accept the evidence of the Second Respondent that it was Mr. Taylor who was responsible for the allocation of the account on a temporary basis in the first instance and the later re-allocation of the account at a later point. However, we accept that the Second Respondent saw and sees no issue in that given his understanding that Morrisons had only ever had been a temporary allocation of the account to the Claimant in all events.

154. The member of the team to whom the account was later transferred was a male employee, Adrian Lawson. Following Mr. Lawson's own departure from the First Respondent to move on elsewhere, the account was then allocated to Mark Vatcher. The Claimant contends that the account was therefore removed from her and allocated to him on the grounds of sex. We are entirely satisfied that the reason for the reallocation of the account was nothing at all to do with the Claimant's gender and there is, quite simply, nothing at all before us to suggest to the contrary other than, again, the Claimant's own belief that that was the case. Indeed, there is evidence within the Claimant's own witness statement of accounts being allocated away from other male members of the sales team and we come to that matter further below. Account reallocation was simply something that happened within the team, irrespective of gender. We are satisfied, therefore, that the reason for the reallocation was to place the account permanently with the Manager that it was felt was best placed to manage that particular account and the reallocation of accounts was neither unusual nor a matter which was limited to the Claimant nor to female members of the team.

155. In particular, the rationale for giving the account to Mr. Lawson was his experience in handling large clients – something that the Claimant did not possess – and in respect of allocation thereafter to Mr. Vacher that was, we accept, on the basis that he had a strong relationship with Fujitsu, who also had partnership dealings with Morrisons and therefore the First Respondent sought to build on that link in allocation of this account. The fact that Mr. Vatcher had an established relationship with Fujitsu is supported by his LinkedIn profile which appears at pages 845 and 846 of the hearing bundle and demonstrates his previous position as Channel Partner Manager at Fujitsu Technology Solutions

for a period of just over two years. We are satisfied that that was the reason that the account was allocated to Mr. Vatcher and that it had never, in all events, been permanently allocated to the Claimant and thus it was not removed from her to her detriment and to the benefit of Mr. Vatcher.

156. The Claimant raises a further complaint in respect of the Morrisons account as she contends that the Second Respondent, in or around August 2015, failed to or refused to provide her with assistance for a proposal to Morrisons. This related to the fact that the Claimant had been asked to assist in completing a Request for Proposal ("RFP") for Morrisons. We deal later with the presentation in respect of that RFP below.

157. The Claimant contends that when she asked the Second Respondent for assistance she could not contact him or he was not willing to assist her (see paragraph 22 of the Claimant's witness statement). However, there are no examples at all provided of those occasions when the Claimant contends that she had asked for help and it had been ignored or refused. It is conceivable that there might have been times when she could not get in contact with the Second Respondent – that is not unusual in a pressured business environment and we accept that the Second Respondent was kept very busy as a result of his own role. Indeed, there is evidence within the bundle before us that other male employees had tried to contact the Second Respondent but had been unable to reach him (see for example page 344 of the hearing bundle).

158. However, we have not been taken to any documents within the bundle that demonstrate that the Claimant asked the Second Respondent for assistance but received no or a negative reply. In fact, in almost all email trails that we have seen within the bundle before us, when the Claimant asked for assistance the Second Respondent provided it to her (see for example page 997 of the hearing bundle). It may not have always been the answer that the Claimant wanted (and we deal with this further in relation to "Wilko's" below, but there is not an occasion that we have seen when she was ignored by the Second Respondent, where he refused to answer her or refused her assistance.

159. The Claimant also contends that around a similar time the Second Respondent "shouted and screamed" at her. We understand this to relate to a call regarding Morrisons and the RFP which the Claimant was at that time preparing (see paragraph 22 of the Claimant's witness statement) and that she was taken to task for the inclusion of an unapproved case study within the proposal. Whilst we accept that the Second Respondent may well have questioned work that the Claimant had prepared (as indeed he did in other instances where necessary) we do not accept that he shouted and screamed at the Claimant as alleged. Again, we have found the Claimant prone to exaggeration and it is notable that there is no complaint made about this issue in an email or similar document at the time. As we shall come to, when piqued about a matter, the Claimant was quick to email an often detailed and lengthy response or complaint about the matter and so had she been treated here as she complains of now before us, we have little doubt that it would have been documented.

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160. Whilst the Claimant did raise concerns with Mr. Taylor about the Second Respondent (see page 324 of the hearing bundle) nothing at all was documented about "shouting and screaming". The Claimant at page 342 had raised complaint about a seemingly innocuous instruction from the Second Respondent and therefore, again, had the "screaming and shouting" genuinely occurred we have no doubt an email complaint would have followed.

161. We should note here that the Claimant uses a similar phrase in respect of the fact that she also contends that Mr. Taylor "screamed" at her during a telephone call regarding forecasting (see paragraph 26 of the Claimant's witness statement). It is again perhaps notable in this regard that there is no documentary evidence to which we have been taken in respect of that incident. The Claimant was quick to raise issues of displeasure with Mr. Taylor over other incidents – an example being the way in which she perceived that he had mishandled an incident with Erin Townsend in the ScanSource car park to which we shall come in due course. Had she been "screamed at" on this occasion, we have no doubt that an email complaint to Mr. Taylor would have followed almost immediately but we have seen nothing in that regard. Again, that apparent exaggeration casts doubt on the Claimant's account of the very similar sort of treatment alleged by the Second Respondent. It appears that the more likely position is that this perception of ill treatment is simply a manifestation of the Claimant's inability to accept criticism, even when it is justified.

162. At a similar time to the Morrisons call with the Second Respondent, the Claimant contends that the Second Respondent also "mocked and belittled her". We understand this allegation to relate to her dealings with partners (see paragraph 15 of the Claimant's witness statement). However, other than the Claimant's assertion that the Second Respondent had said that she did not have direct relationships with any of her accounts, she has provided no details whatsoever, including when asked about that matter in cross examination by Mr. Purchase, about how she was mocked or belittled. The Second Respondent candidly accepts that he had questioned her reliance on channel partners – a matter that was quite legitimate given her position as an Enterprise Account Manager and not a Channel Account Manager – but that is a far cry from mocking and belittling the Claimant. It was simply steering her in the directions that she should have been taking from the get go.

163. Again, given the Claimant's tendency for exaggeration in respect of otherwise innocuous incidents, we do not accept that she was mocked or belittled as claimed, particularly in view of the fact that she was not able to give us any example of how that manifested itself. Whilst the Second Respondent did, as we have observed already, expressed concern about her reliance on partners, he was entitled so to do. The Claimant, we have also already expressed, finds it difficult to accept criticism and so she may well perceive this as mocking or belittling, but that is not rooted in any facts, evidence or detail to which we have been taken.

164. In a similar vein, the Claimant also alleges that in April 2016 she was shouted at by the Second Respondent whilst on a conference call. Again, the Claimant's evidence on this point is somewhat scant but we understand this to be

a matter referred to at paragraph 46 of her witness statement regarding questioning about what accounts she was working directly with. We find it likely that that questioning did occur as the Second Respondent candidly admits that he spoke with the Claimant around his concerns that she was too reliant on Channel Partners. Again, it was legitimate for him to do so. We do not accept, for the same reasons as we have already given surrounding a tendency for exaggeration, that the Claimant was shouted at on this occasion. Whilst she points to the fact that none of her male colleagues were questioned about such matters (see paragraph 46 of the Claimant's witness statement) that would be perfectly understandable given that none of the other Enterprise Account Managers did, on the basis of the information before us, have an overreliance on Channel Partners to manage direct enterprise accounts.

Tesco and Marks & Spencer's accounts

165. The Claimant's Claim Form had also set out that she had had accounts with Tesco's and Marks & Spencer removed from her during the course of her employment. Despite that specific allegation with regard to those accounts featuring quite clearly at paragraph 6 of her original ET1 Claim Form, the Claimant accepted during cross-examination that those were never her accounts in the first place. Therefore, it was entirely obvious that those accounts had never been removed from her despite what was clearly stated to be part of her claim. Again, this appears to us to be a further instance of the Claimant having perhaps changed the facts to fit the claim or little thought in reality being given to some of the complaints being advanced.

166. The position changed at the point of that evidence for the crux of the matter to be that the Claimant says that those accounts should have been allocated to her in preference to other individuals within the sales team. There is quite simply no basis, however, for that particular assertion. Other members of the team also needed to be allocated accounts. The Claimant herself had already been allocated a number of accounts and other than her general opinion to that effect, there is nothing at all to say that those accounts should have been given to the Claimant simply because she might have wanted them.

167. As it was, Marks & Spencer was allocated to Mark Vatcher and Tesco's to Simon Jones. We are satisfied that the decision to allocate Tesco's and Marks and Spencer's to other members of the team related again to existing relationships which those team members had with Fujitsu, who were facilitating relations in respect of both Tesco and the Marks & Spencer's accounts. That decision had nothing at all to do with the Claimant's sex and, again, she has not adduced - anything other than the fact that the accounts were allocated to men - to suggest that that was the case.

168. This is with the exception of the fact that the Claimant contends that when she had raised the issue of allocation of the Tesco account with the Second Respondent, he had said that this had been given to Simon Jones because he was the "best man for the job". The Second Respondent refutes that and his evidence was that he had said that Simon Jones was the best person for the job.

That would accord with the fact that accounts were allocated by the First Respondent to those who it was felt were best placed to manage them.

169. However, irrespective of whatever turn of phrase was used, it is clear to us that even if the words "best man for the job" were said by the Second Respondent, that is not evidence of a discriminatory motive. The term is a common phrase and it is not indicative of a suggestion that the Second Respondent had given the account to Mr. Jones in preference to the Claimant because he was male. This is, it seems to us, the Claimant seeing a conspiracy where there was none and using an otherwise innocuous statement (assuming of course that it was in fact said) to fuel the same. Given the Claimant's perception of matters and her deep mistrust of the Second Respondent, she has simply read more into things than she should objectively have done.

Sainsbury's

170. The Claimant alleges that an account with Sainsbury's was taken away from her and allocated to Mark Vatcher in preference and without explanation. We have been taken to very little regarding the Sainsbury's account and, particularly we have not been taken to any documentation demonstrating that that account was ever allocated to the Claimant. Given the confusion with the account lists, even if we had we would not have been able to definitively determine that such allocation had taken place.

171. However, even assuming that the account was removed from the Claimant and transferred to Mark Vatcher, the fact that he is male and the Claimant is female is woefully insufficient to make out a discrimination complaint. As the Claimant's own evidence demonstrates, accounts were also removed from male members of the team and, in particular, an account was removed from Mr. Webster and allocated to her in preference to him. The Claimant does not, of course, suggest that that was an act of sex discrimination towards Mr. Webster.

172. Again, as we understand matters, Sainsburys had a relationship with Fujitsu and given Mr. Vatcher's previous history with that company, it made sense to allocate the account to him. There is nothing at all to suggest that the Claimant's sex played any part in that matter.

Wilkinsons

173. One account that the Claimant was involved in was with Wilkinsons (or "Wilko's" as it has been termed during the hearing before us). There are a number of the allegations brought by the Claimant in the course of these proceedings that centre around this particular account.

174. The first of those allegations relates to the fact that it is alleged that the Second Respondent refused the Claimant's requests for assistance with this account and shouted at her about it.

175. The Claimant has not taken us to anything to demonstrate that she had requested assistance from the Second Respondent and that that assistance had

been refused. Again, there are no emails that we have seen where the Claimant asks for assistance and where she has received no or a negative response nor does her otherwise detailed witness statement set out other occasions when she contends that she had contacted the Second Respondent for such assistance. The one email to which we have been taken of 4th March 2016, is not in our view demonstrative of a lack of support and we say more about that particular email below.

176. The Claimant accepted that the Second Respondent had set up an innovation or technology day with Wilko's and we accept his evidence that the purpose of that was to introduce the Claimant to the key contacts at Wilko's and to assist her in her dealings on that account. Those are not the actions of an individual who is refusing to provide assistance and we do not accept the Claimant's unsupported and unevidenced account that that was what happened.

177. The Claimant was interested in pursuing an opportunity to obtain a contract with Wilko's in regards to handheld devices used in their stores. That opportunity had presented itself in or around February 2016. However, she contends, in short, that she was effectively stymied by the Second Respondent in pursuit of that opportunity.

178. The evidence from the Claimant and the Second Respondent as to whether the First Respondent was in a position to successfully advance a product to fit the requirements of Wilko's in respect of the contract in question is in dispute. The evidence of the Second Respondent is that the First Respondent could not hope to win that contract on the basis that they did not have the right solution at that time that Wilko's were looking for. However, the Second Respondent also told us that it had been hoped that a proposal could be put forward and developed in due course which would have seen them being able to position themselves to win additional work from Wilko's in the future.

179. The Claimant contends to the contrary and that the First Respondent was, or could have been with the assistance of channel partners, well placed to win the new business at that time and that she had been looking at an appropriate offering in that regard.

180. We are satisfied that the way in which matters were described in evidence by the Second Respondent is an accurate representation of how matters were and that the Claimant had either misunderstood the position (given that, as we shall come to below, she had difficulties with her product knowledge and her skills and experience for the Enterprise Account Manager role) or that she simply believed that she knew better than the Second Respondent despite his considerable experience in the field. The Second Respondent was considerably more senior to the Claimant and part of the senior management team. We accept the evidence of the Second Respondent therefore that at the time that the Claimant was chasing the opportunity with Wilko's, he did not see that as being business that the First Respondent was at that time able to win as they did not have an existing solution to run with.

181. However, there can be no reasonable suggestion that the Second Respondent failed to support the Claimant in relation to the Wilko's account and in fact he went above and beyond to support her, including arranging the aforementioned innovation day where she was able to meet key contacts from Wilko's. There is not once piece of evidence to support the suggestion that the Second Respondent did not support the Claimant in respect of the Wilko's account. The simple fact is that they disagreed on the strategy to be adopted.

182. In this regard, the basis upon which the Claimant contends that the Second Respondent did not support her on the Wilko's contract appears to emanate from an email chain of 4th March 2016 (see pages 350 and 351 of the hearing bundle) which read as follows.

> *"Hi Jason*
>
> *You mentioned yesterday that we should be working with Wilkinsons to assist in upgrading their software and just wanted to understand your thinking around this.*
>
> *From my discussions with Wilkinsons they have no plans to upgrade their software from Norand, as they do not have financial or man power investment. It also concerns me that if we do upgrade to allow them to use D75 or CT50 then this will allow an open door to our competitors. At present they can only use our CK3 series of device with the Norand software and I am currently working with them on trialing the CK3R's with a view to upgrading the whole estate. They are happy with the end of life date as we are attempting to replace the whole estate before end of 2017.*
>
> *Your feedback would be appreciated."*

183. The Second Respondent replied to the Claimant less than 20 minutes later and he said this.

> *"Nicky*
>
> *Please talk this through with your SA, I don't see Wilko replacing their estate. It is too costly and an unnecessary spend, I can only see them rolling out new stores.*
>
> *We should be looking to position HON[3] as the trusted advisor and get you and Rob in a position to advise Wilko on what is required to take to them to the next generation. It will be a risk as it will open the door to our competitors, however if we position this correctly they will appreciate that Honeywell are not trying to replace their old tin for a product that will EOL[4] in 12 month…… which is your current strategy.*

[3] A reference to Honeywell

[4] A reference to End of Life which we understand to relate to when a product reaches the end of its likely lifespan.

Jeff and I both know the pain that this can create.☺

Good selling."

184. The Claimant replied as follows:

"Hi Jason

I will discuss with Rob but feel that he would be of the same thinking as me.

Wilkinsons are fully aware of the end of life of the CK3R's and I have discussed what will be following this with the procurement team and Darren and they are comfortable with this. From my understanding it was due to them being unaware of the end of life that caused the issues last time but I have ensured that they are fully aware this time. We are talking to Wilkos about a lease option to allow them to be able to replace the whole estate over the year and they are keen on exploring this further. The first 100 will be coming through shortly if we can get the balancing right.

I don't believe it's unnecessary to upgrade as some of these devices are being held together by tape and in need of replacing.

I will speak to Rob and come back to you."

185. We do not accept the Claimant's criticism that this email response from the Second Respondent was indicative of him refusing her request for assistance with the Wilko's account. The Second Respondent replied to the Claimant's email requesting feedback less than twenty minutes after she had asked him about the matter. The real issue is not that the Second Respondent did not assist the Claimant but because he disagreed with the strategy that she had proposed. He did not close the door on her but suggested that she speak to Rob Page about what she was proposing. We considered this email, when read objectively, to be supportive and they did not in our view belie the Claimant's contention that the Second Respondent was not assisting her or that he was otherwise out to get her. In fact, the addition of a smiley face and the comment "good selling" suggest anything but.

186. The Claimant had very limited experience in this sector and we accept that the Second Respondent was simply trying to point her in the right direction using his own considerable industry experience. Whilst the Claimant is clearly unhappy about that and seemingly remained of the view that her approach was preferable, the Second Respondent was entitled to disagree with her and that is a considerable way removed from failing to support her on the account or refusing or failing to provide her with assistance. We do not have anything before us to suggest that the Claimant fed back to the Second Respondent again after speaking to Mr. Page.

187. We accept that the Second Respondent saw Wilko's as a key client and it is simply nonsensical to suggest that he would have acted to the detriment of the First Respondent in relation to a sales opportunity simply to undermine the Claimant. If he had seen the proposals that the Claimant made as being achievable, we are satisfied that he would have run with it. He simply did not see matters in that way.

188. The contention that the Claimant raised in her evidence before us that the Second Respondent was setting her up to fail in respect of the Wilko's account simply does not bear scrutiny. Furthermore, it is clear to us that the Second Respondent would have nothing to gain from doing so. Part of his commission was based on revenue generated by the team, including the Claimant, and so to set her up to fail would not only reflect badly upon him but also cause him financial detriment. It seems to us that if the Second Respondent had wanted to disadvantage the Claimant in respect of this account, he would simply have transferred it to another member of the team rather than set her up to fail and lose business from a valued client.

189. In addition to the opportunity referred to above, the First Respondent was also chasing another prospect with Wilko's. That other business was not given to the First Respondent and following that the Claimant write a lengthy e-mail to the Vice President of Sales, Horst Mollik, setting out in quite surprisingly strident terms her concerns about the matter.

190. Following that exchange, Mr. Taylor wrote to the Claimant by email on 12th February 2016 (see page 338 of the Hearing bundle) and said this.

> *Nicky, we need time together and how we win these deals and I think it is best and prior to the Dunelm meeting with Kai on 3/3/16 – that one has become must win.*
>
> *I am suggesting 24th or 25th in the office – can you do either of those.*
>
> *Don't blame yourself for this – it's my fault. You haven't been trained correctly or mentored correctly in a large deal environment. I cannot truthfully say no one is going to look at you in this, but honestly, they will be looking at me a hell of a lot closer and with scrutiny.*
>
> *So turn the phone off, shut the lap top, forget it. Have a great weekend and we will start over on Monday."* ☺

191. The Claimant seizes upon the third paragraph of that email as evidence that she was not trained or mentored as she should have been from the outset. We are satisfied that more support could indeed have been offered to the Claimant, who clearly was out of her depth within the retail sales team, a matter which of course the Second Respondent had been concerned about from the outset. However, again there is nothing at all to suggest that that lack of training or mentoring was anything to do with the Claimant's sex. The inference appears to be that she was set up to fail but as it was Mr. Taylor who had taken responsibility for any failure to train and mentor her and he had been the very

person to have not only recruited her but to have championed that recruitment against the misgivings of the Second Respondent, her contentions in this regard quite simply do not make sense.

192. The Claimant also alleges that she was shouted at about the Wilko's account by the Second Respondent. The Claimant's evidence on any shouting is scant to say the least. She alleges that she was shouted at by the Second Respondent, told not to contact Wilko's numerous times as that was not how they worked (see paragraph 23 of the Claimant's witness statement). No details about that incident are given. However, we are satisfied that in reality what happened was that the Second Respondent simply sent an email to the Claimant about Wilko's in reply to her plan for securing the business to ask her to let him speak to a contact, Karl Grainger, at the company first in order to ask what was needed to get an order (see page 301 of the hearing bundle). If anything, that was a supportive measure to try to assist the Claimant to win business.

193. Thereafter, the Second Respondent was informed by Mr. Grainger that he did not want to "be pushed" in relation to the proposal and the Second Respondent passed that feedback to the Claimant. That was an obvious step to take so as not to damage the relationship and to take heed of what Mr. Grainger had said. Again, we consider it exaggeration on the part of the Claimant to contend that she was shouted at and told to leave Wilko's alone. We accept that she was simply told that Wilko's should not be chased given what Mr. Grainger had fed back to the Second Respondent. That was a supportive measure, not one designed to disadvantage or stymie the Claimant.

194. There is no evidence at all that the Claimant was shouted at and again this would have been something that we are sure that she would have been swift to record in an email at the time had it actually occurred. We prefer the version of events of the Second Respondent in respect of this incident.

195. A further complaint arises in respect of the Wilko account given that it is common ground that on 17th August 2015, the Second Respondent conducted a telephone call with that client without the Claimant being present. We accept the evidence of the Second Respondent that there was nothing unusual in that and he would often make contact with clients directly in this way without the account manager also being present on the call. That was particularly the case where, like Wilko's, the Second Respondent had worked with the business previously and where they were a valued client.

196. Whilst the Claimant asserts, in fairly vague terms, that that would not have occurred with male members of staff she ultimately has no way of knowing that and there is no evidence at all that she was singled out in this regard. In fact, we accept the evidence of the Second Respondent that the purpose of the call was to seek to assist the Claimant given that clients such as Wilko's would expect there to be an ongoing relationship at a senior level and, as we shall come to below, he was seeking an advantage to try and win business. That level of contact therefore assisted in furthering the relationship with the client and could only have been of benefit to the Claimant. Other than the fact that the Claimant was the account manager, she has not been able to demonstrate that there was

a need for her to be present on the call nor to gainsay the evidence of the Second Respondent that this is simply how he dealt with high level contact with clients and would do so irrespective of the gender of the account manager.

197. Moreover, to any degree that it is suggested the Second Respondent was seeking to undermine the Claimant by undertaking the call without her present, it would seem to us to be an unusual decision for him to have advised her about that call before it took place (see page 301 of the hearing bundle). It is clear from that email that he was intending to use his contacts at Wilko's to try and win business. That could only have been to the benefit of the Claimant.

198. The Second Respondent also updated the Claimant regarding what had been achieved on the call and placed the Claimant in contact with Wilkos as the account manager and direct contact in his absence (see pages 303 and 304 of the hearing bundle).

199. Far from undermining the Claimant's position with Wilko's we are satisfied that the Second Respondent sought to positively advance it.

200. Therefore, we are satisfied that there is nothing in the Claimant's argument that she was set up to fail, that she was not supported in the Wilko's account or that the Second Respondent had done anything wrong in conducting the call on 17th August 2015 without her being present. Whilst the Claimant now contends that the actions of the Second Respondent were to place her as the "admin girl" (see her handwritten annotations at page 679 of the hearing bundle) that perception is ill conceived having regard to the Second Respondent's attempts to assist her with the account, his reference to her as the point of contact and the fact that the First Respondent's ethos was to maintain contact at a senior level with important clients.

<u>Conduct of Mr. Taylor and the Second Respondent towards the Claimant</u>

201. The Claimant contends that during the course of her employment the Second Respondent, and to a lesser degree, Mr. Taylor, "shouted and screamed" at her during conversations both in person and also on the telephone. The Second Respondent denies any such treatment or being aware that Mr. Taylor had treated the Claimant as alleged. We have, of course, not heard from Mr. Taylor.

202. Having considered matters carefully, we do not accept the Claimant's account that she was shouted and screamed at either by Mr. Taylor or the Second Respondent and, again, we consider it likely that the Claimant has re-written history and given matters a new slant given her deep seated feelings of dissatisfaction with both the First and Second Respondents.

203. We have reached the conclusion that there was no shouting and screaming at the Claimant for the following reasons:

(i) The Claimant has not been able to give us any proper particulars of the occasions when she says that these incidents occurred such as the

tone and the words which she says were used towards her. If one was being screamed at, it would clearly be a distressing matter and therefore would be likely to stick in the mind so that actual details of the events could be given. No such details featured in either contemporaneous documents or the Claimant's account before us;

(ii) Had the Claimant been shouted and screamed at, a matter which would be serious by any standards, we have no doubt whatsoever that she would have drawn that matter to the attention of senior members of staff at the Respondent at the time that it occurred as, indeed, she had done with other matters when she was concerned about perceived treatment meted out to her. For example, page 341 of the hearing bundle amply demonstrates that the Claimant was not afraid of raising issues with senior managers when people had upset her in the workplace. Had there been therefore shouting and screaming as the Claimant contends by either Mr. Taylor or the Second Respondent, we have no doubt that she would have raised those matters by email or similar means at the time; and

(iii) It seems to us unlikely that Mr. Taylor would have shouted and screamed at the Claimant given that he had championed her for appointment despite the misgivings of the Second Respondent and had taken the time to apologise to her and reassure her when things had gone wrong previously – for example in respect of the training point.

204. We therefore accept and prefer the evidence of the Second Respondent that the Claimant was not shouted or screamed at by him and that he would never treat any member of the team in such a manner. Similarly we make no finding that Mr. Taylor acted in such a fashion either.

205. We find it far more likely given that the sales environment at the First Respondent – akin to many sales environments generally – is a pressured one and that as a result conversations could be robust and to the point. Given that the Claimant feels that she has been treated unfairly by the First and Second Respondents -and also views Mr. Taylor as playing a part in the events that were to lead to her later resignation - it seems to us more likely as we have said that the Claimant has re-written what in fact happened during those conversations and that robust discussions have now in her mind become instances of bullying conduct and of "shouting and screaming".

206. It is in our view no more than exaggeration in hindsight of robust management of a Claimant who was out of her depth and struggling within the First Respondent organisation.

207. However, even had we found that Mr. Taylor and the Second Respondent had "shouted and screamed" at the Claimant, there is nothing at all before us to suggest that this was on account of sex given that we have dismissed the Claimant's overarching theory that the Second Respondent disliked working with women and/or held sexist attitudes. Additionally, insofar as Mr. Taylor is

concerned, if that was his position then it was an odd choice for him to have encouraged the Claimant to apply for a job that he had specifically mentioned to her and appoint her to it despite the misgivings of the Second Respondent.

208. Whilst the Claimant maintains that she did not hear the Second Respondent speak to male members of staff in the way that she contends that she was spoken to, this of course presupposes that she heard each and every conversation which the Second Respondent had with other members of staff and that such discussions were on similar topics to that which he was having with her.

209. The Claimant ultimately has no way of benchmarking how the Second Respondent spoke to male members of staff over the telephone, for example, and whether this differed in any way from the words or tone which he used to her. Again, this appears simply to be an attempt to fit the circumstances of which she complains to the claim now advanced.

210. We therefore do not accept that there was any "shouting and screaming" as the Claimant contends or that there is evidence of any marked difference in the treatment of others within the team.

211. The Claimant also contends that she was mocked and belittled by the Second Respondent in August 2015. There is a significant dispute on the events in relation to that matter. We are entirely satisfied that the Second Respondent did not mock and belittle the Claimant as she contends and that he simply advised her that she needed to focus more on engaging with the end client rather than seeking to securing business through partners. We accept that that was a concern of both the Second Respondent and also Mr. Taylor (which was evident from his email concerns as expressed about the Claimant) and as such we accept that this was a matter which the Second Respondent felt that he needed to vocalise with the Claimant.

212. Given the difference between the Channel Account Manager role and the Enterprise Account Manager role that we have described above, we can see why the Second Respondent would have felt it necessary to raise those matters with the Claimant given his concerns that she was focusing her attentions on building relations with channel partners rather than the end user client and thus had a fundamental misunderstanding, which continued in the hearing before us, as to what was expected of an Enterprise Account Manager.

213. Whilst the Claimant, who it is clear to us had a deteriorating relationship with the Second Respondent, would doubtless have been vexed about her abilities being called into question in this way, we are satisfied that it was a reasonable step for the Second Respondent to have taken and it in no way "mocked or belittled" her. It was simply an attempt to steer her onto the right course.

<u>The probationary period</u>

214. As we have already observed, the Claimant was subject to a probationary period in respect of her employment with the First Respondent. As her line

manager, Mr. Taylor was responsible for dealing with whether the Claimant successfully passed out of her probationary period, whether she failed probation or whether that probationary period needed to be extended. We accept the evidence of Caroline Spain that a line manager would be notified by way of an automated email from Human Resources that a person was coming up to the end of their probationary period and that action needed to be taken to deal with confirmation of successful completion or otherwise. We also accept her evidence that on occasions there were difficulties with the system and that the automated email did not always go out as intended. There is support for that evidence in emails between Ms. Spain and Mr. Taylor which we detail below.

215. On 12th October 2015, Mr. Taylor emailed Ms. Spain indicating that he wanted to "approve" and move on the probation of Simon Jones (who as we have already observed above had commenced employment on the same day as the Claimant) but that he was not *"convinced at the moment"* about the Claimant and that he would like to see a three month extension of the probationary period. Ms. Spain replied the same day to say that the Claimant's probationary period did not end until 15th December 2015 and if he was still unsure at that point then it could be extended for three months. She told him that he would receive an automated email from Human Resources near the end of the probationary period and that he should complete the checklist and return it to her so that a letter confirming the decision could be issued to the Claimant.

216. Mr. Taylor picked the matter up again with Ms. Spain on 19th November 2015 when he wrote to her as follows (see page 328 of the Hearing bundle):

> *"Caroline*
>
> *I got the automated e mail that Simon Jones' probation was reaching a close but not for Nicky who started on the same day.*
>
> *Simon is going to clear probation no problem.*
>
> *Nicky we are looking at an extension – now can this be 3 months or does it have to be 6 months? The Retail Team for the UK is going to change shape a little next year with Adrian coming in as the lead Enterprise Account Manager.*
>
> *As a team (Jason B, Adrian, myself and Horst) we agree that we see good things in Nicky but that she is a little naive or inexperienced in the way our business works and also in the way retail works. We want Nicky to pick up the 2nd tier retailers and be seen as an account manager rather an enterprise account manager. She would be mentored by Adrian and myself to see her develop and hone the skills required to pick up the bigger accounts once better qualified to do so.*
>
> *Can you please let me know what the ramifications are of having this type of conversation with her? What can I and what can't I say? The back up to this if she doesn't like it is that she hasn't quite made the grade as Enterprise and we wouldn't pass her out of probation.*

We probably need a call."

217. Caroline Spain responded as follows:

"Hi Jeff

We can extend her probation only once for 3 months so you will need to make sure that we address any issues during that time or decide that she will need to leave.

I will contact the team to find out why you have not had the link for Nicky and this will give full instructions.

Once you receive the link, please contact me and we can discuss."

218. It is not clear what happened after that point and we observe again that we have not heard of course from Mr. Taylor to see if he did receive the link and what steps he took to complete the checklist. However, whatever the position in that regard we accept that the Claimant was not informed that she had not successfully passed her probationary period nor was she informed that it was going to be extended. Upon passing the six-month mark, the Claimant therefore naturally assumed that she had passed her probation and doubtless assumed that the First Respondent must accordingly be satisfied with her performance.

219. However, whilst something clearly went amiss in terms of carrying out Mr. Taylor's instructions about the Claimant's probationary period, it is entirely clear that it was not only the Second Respondent who by that stage had concerns about the Claimant's abilities in the role. We have no doubt having regard to the evidence to which we have been taken to that those were genuine and legitimate concerns. They had nothing to do with the Claimant's gender and, again, there is nothing before us at all to suggest that her sex was an issue. Whilst Mr. Taylor did not raise any concerns about Simon Jones, that is doubtless on the basis, as his emails record, he considered that Mr. Jones was performing well.

220. We did not accept the Claimant's evidence that Mr. Taylor had described her performance as being "exemplary" and that therefore when the Second Respondent raised performance issues at a later date (in circumstances that we shall come to below) that was for an improper motive because in reality she was performing well. Mr. Taylor clearly did not view the Claimant as an exemplary performer as his emails to Caroline Spain of 12th October and 19th November clearly evidence. We therefore find it unlikely that he would say one thing to Human Resources whilst telling the Claimant the polar opposite. However, even assuming that Mr. Taylor did make such a comment to the Claimant at some stage, it was clearly not indicative of his actual views as advanced in the emails to which we have already referred.

221. Moreover, we must observe that, as raised by Mr. Purchase on behalf of the Respondents at the hearing before us, it is perhaps noteworthy that the suggestion that Mr. Taylor had told her that her performance was "exemplary" was never raised at any stage by the Claimant prior to the death of Mr. Taylor.

222. Whilst it is therefore quite obvious that Mr. Taylor has not had the opportunity to make comment on that suggestion, it appears to us somewhat curious that the Claimant would not have raised such an important matter at an early stage and, particularly, when concerns over her performance began to be raised. We shall come to the details of those matters further in due course.

223. We accept on the basis of the evidence before us that both Mr. Taylor and the Second Respondent had legitimate concerns about the Claimant's performance in the Enterprise Account Manager role and that that fed into the decision of Mr. Taylor to look to extend her probationary period. Whilst the Claimant contends that this was an act of sex discrimination, we observe that had the Second Respondent (or indeed Mr. Taylor) wanted to remove or exit the Claimant from the business – whether on account of her sex or otherwise - they could simply have terminated her employment on two weeks' notice under the terms of her Contract of Employment (see page 129 of the hearing bundle). It was not necessary to consider extending her probationary period in circumstances where there were, as we accept, performance issues, and this suggests to us that there was an intention to seek to support rather than oust the Claimant.

224. Indeed, the proposal made by Mr. Taylor in this regard was that the Claimant be given a further chance to improve and his e-mail to Caroline Spain set out an action plan for how that was to be handled. Despite the fact that there was clearly a wholesale failure, either on the part of Mr. Taylor - or more likely given our earlier observations as to the efficiency of Ms. Spain of Human Resources - to communicate those matters to the Claimant, that does not undermine the fact that Mr. Taylor clearly at the time had concerns over performance and that he wanted steps to be taken to attempt to address that.

225. Whilst we cannot ascertain precisely, and particularly without having heard from Mr. Taylor, what went wrong in respect of the probationary period extension issue, it is clear that there was something of a significant hiccup in relation to those matters being communicated to the Claimant. Clearly, if they had been this might have been a greater advantage to all concerned, but we are satisfied that ultimately that was an error on either on the part of Mr. Taylor or Human Resources and there was nothing more sinister to it than that. Moreover, it was a matter that clearly had nothing at all to do with the Second Respondent.

Retail shows

226. The Claimant also complains before us that she was not invited to conference calls regarding retail shows that other male colleagues were invited to. The Claimant's witness statement, which we found to be somewhat confusing on this issue, does not set out the details of the event nor the male colleagues that she contends were invited. However, doing the best that we can to unpick

matters as we understand it from the page reference at paragraph 37 of the Claimant's witness statement it appears that this complaint relates to the Retail Business Technology Expo ("RBTE") event.

227. The evidence of the Second Respondent was that the Marketing Department in the United States were in fact responsible for invitations to retail shows and that was not a matter over which he had any sway or any responsibility. The Claimant has no evidence to suggest that what the Second Respondent says about that matter is incorrect and we accept his evidence in that regard.

228. There is no evidence whatsoever that the Claimant was deliberately excluded by the Marketing team or that the failure to invite her in the first instance had anything whatsoever to do with her sex. The Claimant has adduced nothing at all to suggest that sex played any part in the lack of invitation in the first instance.

229. In all events, the Claimant's own evidence was that she raised that matter with Mr. Taylor and he thereafter secured her an invitation onto the calls. It is perhaps a hallmark of the confusing nature of some of the allegations made by the Claimant that it was Mr. Taylor who assisted her with regard to this matter when she at the same time accuses that self same individual of having discriminated against her with regards to issues such as the non-allocation of targets.

230. However, we accept that the issue of invitations to retail events was a matter for marketing and not the Second Respondent. There was no detriment caused to the Claimant given that as soon as she raised the issue she was duly invited and attended the event accordingly.

Meeting with the Barcode Warehouse

231. The Barcode Warehouse was a channel partner of the First Respondent at the material time with which we are concerned. The Claimant worked with the Barcode Warehouse in relation to certain accounts with which she was involved as part of her Enterprise Account Manager duties (albeit there is an issue as to the extent on which she relied on them given the nature of an Enterprise Account Manager role).

232. The Claimant complains as part of the claim before us about a meeting which was arranged on 8th February 2016 between Martin Broadhead of the Barcode Warehouse and the Second Respondent and to which she was not invited or otherwise involved.

233. She contends, in effect, that she was deliberately excluded from that meeting by the Second Respondent. It is notable perhaps in that context, however, that this meeting was not one which was instigated by the Second Respondent. It is clear from the e-mail chain which appears at page 347 of the hearing bundle that was prompted by Mr. Broadhead following a discussion that he had had with the Second Respondent at a recent conference.

234. We are satisfied from the Second Respondent's evidence that this was a meeting which, in his view, he quite simply did not consider the Claimant needed to be invited to or be present at because it was a high level meeting. We accept that part of the ethos of the First Respondent was to continue to involve high level management with both clients and partners in order to demonstrate the continued importance of the relationship to the First Respondent. There is support for that position within the documents before us as to attempts of the Second Respondent for the Claimant and others to arrange visits whereby senior management from the United States could accompany members of the team and have on the ground involvement and show the importance of the client relationship (see for example page 513 of the hearing bundle).

235. We therefore accept that there was an ethos within the First Respondent to continue to maintain relationships with clients and partners at a high level so that it was not unusual for senior managers such as the Second Respondent to hold meetings and have communications with contacts such as Mr. Broadhead at the Barcode Warehouse.

236. The Claimant became aware of the meeting as a result of her having received an email from one of her contacts, Miles Warriner, at the Barcode Warehouse in which he had copied her into the e-mail chain between Mr. Broadhead and the Second Respondent and expressing an opinion that he did not see why she had not been copied in previously.

237. We are entirely satisfied that this matter was simply a difference of opinion as between the Second Respondent and Mr. Warriner about whether the Claimant needed to be present. Mr. Warriner may well have believed that the Claimant should have been invited, although we have not heard from him about that in the course of these proceedings.

238. We are satisfied however, that there was nothing sinister at all in the Second Respondent not inviting the Claimant from the outset. As we have already observed, we accept that his view was that this was a high level meeting and that there was no need for the Claimant's presence. It is of course not unusual that higher level meetings might take place without more junior members of staff being present, even when that member of staff had an existing relationship with the client or partner concerned. There is absolutely nothing to suggest, however, other than the Claimant's continued assertion to that effect, that she was excluded from the meeting and/or that she was not invited because her sex.

239. We should also observe that the Claimant also complains as to being excluded or not invited to meetings in November and December 2015 as part of the complaints in this claim and that is reflected at paragraph 36 of her witness statement. However, we have not heard or seen any evidence as to exclusions from meetings in November or December 2015 and the only reference which the Claimant makes in her evidence as to such alleged exclusion is to page 346 of the hearing bundle. That relates only to the meeting of 8th February with the Barcode Warehouse. Akin to the exaggeration at paragraph 28 of the Claimant's statement which we shall come to below, we consider the references to

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November and December 2015 incidents to also be embellishment and certainly we have not heard any evidence about any such matters.

The Next account

240. Next was an account that had been allocated to the Claimant. As we shall come to later, the business on that account was later lost to the First Respondent.

241. It is the Claimant's case that the Second Respondent failed or refused to assist her in respect of the Next account when she had requested such help. In this regard, on 6th March 2016, the Claimant asked the Second Respondent whether he could use his business relationship with a contact at Next as leverage for the First Respondent to gain a way back into business with the company (see page 663 of the hearing bundle). The Claimant's evidence was that this individual was the Chief Executive Officer, but we accept the evidence of the Second Respondent that the Claimant had misunderstood that position and in fact he was the Head of Loss Prevention. We also accept the Second Respondent's evidence that he felt uncomfortable about using a contact in that way and felt that the relationship should be developed by way of more traditional means. Again, that was a judgment call that the Second Respondent was entitled to make given his experience in the industry and with the account. He fed that back to the Claimant in perfectly reasonable terms in his reply and provided her with guidance about how to move forward with the account (see page 662 of the hearing bundle).

242. Again, this is an instance of the Second Respondent simply not agreeing with the strategy that the Claimant wanted to take. It cannot reasonably be said that he did not assist the Claimant. He simply did not assist her in the way that she had proposed. There is absolutely no evidence whatsoever that the Second Respondent would have acted any differently in respect of a male member of staff.

The Coop

243. The Coop had been allocated to the Claimant at some stage during her employment with the First Respondent. It was an account that had previously been managed by Karen Hollingsworth and it appears common ground that things had not gone smoothly and that the client was somewhat disengaged with the First Respondent as a result. Again, that is indicative of the performance issues that resulted in Ms. Hollingsworth leaving the First Respondent.

244. The Claimant asked the Second Respondent for assistance with the account and for him to attend a meeting with the Coop with her (see page 394 of the hearing bundle). The Second Respondent agreed to do so but asked the Claimant for background about the account such as who they would be meeting, goals, objectives for the account and the like. We do not consider that unusual as it is clear that the Second Respondent would want to be prepared for the meeting.

245. The Claimant contends that the Second Respondent already had all of that information from her and therefore she did not respond to his email request other than to provide background. We do not accept that evidence. Had the Claimant already provided all of the necessary information then we see no reason why she would not have replied to the Second Respondent to say so. As we have already observed, the Claimant is not slow to communicate in emails if she is dissatisfied. If she felt that she was being messed about by the Second Respondent about this issue we have no doubt at all that she would have said so. Whilst the Claimant did later provide some information (see pages 406 and 407 of the hearing bundle) we accept that it was still not at the level that the Second Respondent had been expecting.

246. The Claimant contends that the Second Respondent failed to support her at the meeting. Whilst we accept that his input may well have been limited as a result of the fact that he had not been provided with all of the information that he had requested, we do not accept that he was deliberately difficult at the meeting. Indeed, it would hardly be in his interests to do so given that such an attitude would clearly have looked most unprofessional to a client that he was keen to retain.

247. The Claimant complains as part of the claim before us that the Second Respondent had sent an email on 14th October 2016 questioning her work relating to the Coop account. This is referenced, in relatively brief terms, at paragraph 86 of the Claimant's witness statement. There is no page reference to the specific email within the bundle, however, that the Claimant relies upon in respect of this aspect of the claim. We have not been able to locate, in the quite voluminous bundle, the email that the Claimant refers to in this regard as those dated 14th October 2016 appear to relate to the Claimant's grievances lodged around a similar time and not to the Coop account. As best as we can fathom based on the evidence before us this complaint may relate to the email at page 1002 of the hearing bundle which is an email dated 31st October 2016 regarding the Coop. We would observe it is not unusual that the dates set out in the pleaded case do not unfortunately in many cases actually correlate with the substance of the actual allegation.

248. Assuming that the email at page 1002 is the one in respect of which the Claimant complains, this email was sent to the Claimant by the Second Respondent and referred to the fact that he had been contacted by the senior team at the Coop who were "not happy with the current guidance". The Second Respondent asked for a copy of the word documents covering the minutes of monthly meetings and for an explanation as to the approach taken. We have no reason to assume – nor was this a matter put to the Second Respondent – that there was not a concern raised by Coop and on that assumption there is also no reason to suggest that it was not legitimate for the Claimant to have been asked about that position. We cannot appear to locate a response from the Claimant and we would have presumed, had she disputed the accuracy of the Second Respondent's email, that a reply in those terms would have been forthcoming.

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The Morrisons meeting in Bradford

249. As we have already observed above, Morrisons was an account in which the Claimant had been involved but we do not accept that at any point, certainly insofar as the Second Respondent understood the position to be, was the Claimant allocated that account as her own and on a permanent basis. As we have already observed above, the allocation of accounts appears to us to be somewhat chaotic and we accept that the Second Respondent's understanding was that the Claimant had only been involved on a temporary basis on the grounds that he considered that it would be good experience and development for her.

250. Morrisons arranged for the First Respondent to attend at their premises in Bradford on 4th November 2016 in order to give a presentation. The presentation was scheduled, as we understand, it for 12.30 to 14.15. Prior to the meeting, the Second Respondent forwarded on the details to members of the team, including the Claimant, setting out the following narrative when doing so (see page 322 of the hearing bundle):

> *"We have been able to reschedule the Morrison's presentation for next Monday, this is a result!*
>
> *However, I am very conscious that this is a Monday morning and would like to ask for your view and availability for Sunday afternoon? I totally understand if this doesn't work as family is more important and we will do all we can to get the presentation closed out this week. However, I am planning to stay up at the Marriott of Sunday evening due to the Monday morning traffic on the M1 and if anybody would like to meet up for a tea, coffee or something stronger?"* (sic).

251. We remind ourselves that the majority of the team were based in or worked out of Bracknell (although there was of course the opportunity for home working) and this is located some considerable distance away from Bradford. Our own geographical knowledge and experience of the difficulties which can be met travelling on busy stretches of the motorway such as the M1, M62 and M606 which would be necessary to reach Bradford for the meeting lead us to have little hesitation in concluding that it would not be unusual for individuals to want to travel up the night before a particularly important meeting so as to ensure that they were there on time and were well rested and able to perform. We are satisfied from the email that that was what the Second Respondent had anticipated at the time that he would do (although as we understand it he did not in fact stay in Bradford the night before the meeting) but that there can be no suggestion from that e-mail that he was pressuring members of the team to travel up on Sunday and stay over.

252. However, we also have an extract of a text message conversation between the Claimant and the Second Respondent relating to the Bradford meeting. The exchange that features in the bundle at page 323 in that regard clearly was a document disclosed by the Claimant given that it is taken from her mobile telephone as it names "Jason Burrell" at the top of the message to identify

who the messages have been sent to and from. Perhaps somewhat oddly we have not seen all of the text messages within that exchange but the one from the Second Respondent upon which the Claimant relies in the context of her complaint concerning the Morrison's meeting said this:

> *"Let's catch up on Monday, you do not need to be in the rfp[5] presentation as it will send mixed messages to the customer. However, you should be at the hotel if it goes ahead as you need to see the process for next time around."*

253. We are satisfied that that was not an instruction as the Claimant contends it to be to attend the hotel on Sunday to the detriment of her family life. Indeed, again this an area of the Claimant's evidence that is exaggerated given that her witness statement (paragraph 28) suggests that the Second Respondent arranged a number of meetings on Sunday afternoons in Bradford "ensuring that [she] would be unable to attend due to family commitments". There was, in fact, no other meeting arranged in Bradford other than this one isolated incident. There is no evidence whatsoever that it was engineered to inconvenience the Claimant. The whole of the team were included within the email seeking to suggest a Sunday meeting to discuss the presentation the following day.

254. The Second Respondent had already made it clear in his email set out above that family was more important and that he would understand if individuals could not attend. The Second Respondent was also, as we shall come to below, understanding in respect of the Claimant's family circumstances when she wanted to attend a sales meeting late so that she could drop off her son on his first day of school. Had the Claimant said that she could not attend the hotel because of family commitments, we accept that there would have been no issue about that and that the Second Respondent had simply said that she should be at the hotel for the meeting as it would be good experience.

255. As we have already observed, the Second Respondent saw the Morrison's meeting as being a good learning and development opportunity for the Claimant and hence his comment that she would be able to see the process for the next time around if the meeting at the hotel went ahead.

256. However, we accept the Second Respondent's evidence that the meeting in the hotel never in fact took place and as such the Claimant never attended a pre-presentation meeting on the Sunday before the Morrison's pitch. The Second Respondent's position in relation to that issue has been consistent before us and also in his responses to a later grievance raised by the Claimant that although he had anticipated that he would be staying the night in the Marriott hotel he did not in fact do so and therefore there was no meeting on the Sunday with the team.

[5] A reference to a Request for Proposal which we understand to be a pitch for business from the First Respondent to Morrisons.

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The Morrisons hardware issue

257. In anticipation of the fact that there was to be a presentation to Morrisons, the issue of hardware for a potential demonstration had been raised.

258. On 15th October 2015 the Claimant wrote to Emmerson Whicher regarding the RFP pitch to Morrisons. Her e-mail, which appears at page 312 of the hearing bundle, said this:

> *"Hi Emmerson*
>
> *Morrison's are looking to trial devices into 5 to 10 stores, they are asking for lead times for the kit. Do you think we should order them now?*
>
> *If so, how many and what will be the lead times for these? Including buffer stock?"*

259. The Second Respondent was copied into that e-mail by the Claimant and he replied to her around an hour later saying this:

> *"Nicky*
>
> *I wouldn't order the kit now as we need to get through to the next round.*
>
> *I would give the business a heads up of the volumes and technology and advise that we will need this very quickly, based on the next round.*
>
> *The document should read our standard lead time is 6-8 weeks (Emerson could you please confirm) without forecasting, however this can be significantly improved by working together on a regular review bla bla.*
>
> *Jason"*

260. Having read that exchange for ourselves, we do not consider it to have been an unreasonable stance for the Second Respondent to have taken given that, at that stage at least, the demonstration would not take place until the next stage of the tendering process and it would make sense only to order the necessary kit if and when the First Respondent got through to that next stage. The Second Respondent was simply advising the Claimant, based on his experience, of what she needed to do to put things in train in the event that the First Respondent was successful in reaching the next round.

261. However, the position later changed and Morrisons contacted the First Respondent and asked for sample devices to be provided to them ahead of the next stage of the tendering round.

262. We accept that that had not been something which had been raised by Morrisons previously and certainly not at the time that the Second Respondent had given his guidance on 15th October to the Claimant. The fact that Morrisons had altered their position in relation to the handsets had the result that the

Second Respondent needed to amend the direction which he had previously given to the Claimant. We accept that there was nothing untoward in relation to that arrangement and it was simply a result of a change in stance by Morrisons that required earlier availability of sample handsets. There was quite simply nothing more to it than that. Again, this is simply an example of the Claimant seeing a conspiracy in an otherwise innocuous act where there was in fact none.

263. The Second Respondent emailed the Claimant on 2nd November 2015 to ask her how she was getting on with procuring the handsets. He did so in perfectly measured tone and we do not accept, as the Claimant contends, that there was any "shouting and screaming" by the Second Respondent about the matter. Again, there is no evidence to that effect other than the Claimant's account and we have made our observations in respect of the "shouting and screaming" issues above.

Conference calls

264. The Claimant complains as part of these proceedings that the Second Respondent had been conducting conference calls on her accounts without her knowledge in December 2015, on 24th February 2016, on 1st March 2016 and on 26th July 2016.

265. We take each of those calls in turn insofar as we are able to do so on the basis of the evidence before us. However, before doing so we would point to the fact that we accept that the ethos of the First Respondent was to maintain contact with clients at a high level so as to demonstrate the importance of the relationship. That would manifest itself in contact being maintained and developed from senior managers such as the Second Respondent and we accept his evidence that in respect of those types of calls or high level strategy discussions, it would not be necessary or appropriate for the account manager to be involved on the call. The Claimant has nothing to gainsay that position nor is she able to point to anything other than a generalised view that male colleagues would not have been excluded from the calls.

266. However, taking each of the calls in question we begin first with the calls in December 2015. The Claimant's witness evidence did not address specifically which call she is referring to in this regard (and we remind ourselves that the Claimant has at all material times been legally represented and it is the Claimant's case to make out) but doing the best we can from the page references given by the Claimant at paragraph 37 of her witness statement, we understand that to be a reference to the RBTE retail show to which we have already referred above. That being the case, we do not repeat our findings of fact in respect of that matter here as they have already been addressed under our findings under "Retail Shows" above.

267. The call on 24th February 2016 relates, as we understand it, to an account which the First Respondent had with Specsavers. The Claimant contends that she was allocated that account in early 2016 and the Second Respondent contends that that was not the case and that it was managed by other account managers and by himself at a high level.

268. Again, there is a certain amount of confusion surrounding this account given the various incarnations on the account lists and, we note, the Claimant did not in fact include Specsavers on an account list that she herself sent to the Second Respondent in June 2016 (see page 371 of the hearing bundle), although she did include the account in later incarnations of that list.

269. However, we are satisfied that even if the account had been allocated to the Claimant, the Second Respondent was not aware of that position and he understood that it was being managed initially be Adrian Lawson and thereafter by Mark Vatcher and Michael Shrimpton with whom he liaised in respect of opportunities on that account.

270. Moreover, as we understand it the call in respect of which the Claimant complains came about as a result of an email from Carsten Schindler, a Key Account Manager in the First Respondent's operations in Germany. This related to a large opportunity for 11,000 scanners and was sent directly to the Second Respondent by Herr. Schindler. The Second Respondent replied to ask for a conference call to be set up in respect of the opportunity and including other senior personnel – namely Emerson Whicher and Kai Thao. That email instruction was subsequently forwarded to the Claimant and Michael Shrimpton by Jeff Taylor. Mr. Shrimpton replied to Mr. Taylor and the Second Respondent with information about the account (supporting the assertion of the Second Respondent that he was involved in the management of it). The Claimant did not reply or suggest to the Second Respondent that she should be involved in the call nor, we note, did the Second Respondent indicate that either Mark Vatcher or Michael Shrimpton should be included.

271. The Second Respondent simply dealt at a high level with an account that he had continued dealings and an overview on in respect of an opportunity that had been sent to him directly by Herr. Schindler. The decision had nothing to do with the fact that the Claimant was female but as a result of the fact that the Second Respondent did not understand the account to have been allocated to her and, in all events, the call was at a high level and did not even, as we understand it, include Messrs. Vatcher or Shrimpton who the Second Respondent had actually been working with on the account.

272. It appears from the Claimant's case that at some stage her position is that Specsavers was removed from her and allocated in preference to Mark Vatcher. We accept that the Second Respondent did not understand the account to have ever been allocated to the Claimant and so in allocating the matter to Mark Vatcher, it was certainly not his understanding that the account was being removed from the Claimant. We accept the evidence of the Second Respondent that Specsavers had a relationship with Fujitsu and for that reason Mr. Vatcher had seemed the appropriate fit for the account given his previous experience working for that company.

273. The third calls in respect of which the Claimant complains are said to have occurred on 1st March 2016. We have found it somewhat difficult to discern what this particular allegation relates to as, again, there is only passing reference to

the matter in the Claimant's otherwise lengthy witness statement and like a number of the allegations before us, there are scant details within that witness evidence regarding this particular aspect of the claim.

274. However, as best as we can understand matters from notes that were made by the Claimant on certain pages of the hearing bundle, this allegation appears to relate to the Bargain Booze account. The handwritten annotation that the Claimant has made in relation to this issue is at page 348 of the hearing bundle which sets out a chain of emails with the Claimant and what would appear to be a contact at Bargain Booze. In that email, the Claimant was successful in setting up a meeting with the contact in question. However, the annotations that the Claimant has made to that email say this:

> *"Bargain Booze contact*
> *Calls re: Bargain booze taken place without my knowledge".*

275. However, that email chain shows absolutely nothing of the sort. It is simply the Claimant herself setting up a call. This is a further example of the annotations which the Claimant makes to a number of the documents within the hearing bundle that raise allegations that are simply not made out when one reads the substance of the actual document.

276. There is simply no evidence before us that the Second Respondent (or indeed anyone else) arranged calls in March 2016 with Bargain Booze (or any other account contact) without the Claimant's knowledge.

277. The Claimant also complains as part of the claim before us that the Second Respondent also arranged a call on 14th October 2016 without her relating to the Bargain Booze account.

278. There is a passing reference to that matter which features in the Claimant's witness statement at paragraph 85. There is no further detail about that such as, for example, a reference to an email relating to Bargain Booze on or around that date and we have not been able to locate any such items within the hearing bundle ourselves which might relate to this aspect of the claim.

279. We cannot therefore determine that such an incident did take place. However, even assuming that it did, as we have already observed it was not uncommon for calls to be scheduled at a high level without an account manager being present. The Claimant has nothing at all to suggest, other than her assertion to that effect, that that position was not the same for all account managers irrespective of their gender.

280. The final call to which the Claimant refers was one which took place on 26th July 2016 with a Channel partner to discuss the Next account which had been allocated to the Claimant. It should be noted that at the time this call took place the Claimant was on holiday. We accept the Second Respondent's evidence that he arranged the call at that time so that there was contact with the Channel Partner while the Claimant was away on leave. The Second Respondent himself was due to depart on leave the following week.

281. Contrary to the allegation that this was done "behind her back" the Claimant was fully appraised of what had occurred in relation to that call (see pages 420 to 422 of the hearing bundle) and the Second Respondent set out in reasonable terms why he had held the call. We accept that the reason for the call was that the Second Respondent wanted to keep the pace and momentum in relation to what was clearly an important account and relationship. His email to the Claimant was entirely consistent with that. Again, we accept that important accounts continued to have senior input from members of the First Respondent's management team.

282. There is nothing at all to suggest that the position was not the same for male members of the team and, again, other than a general assertion that this would be the case the Claimant is not able to take us to anything in support of that.

283. If anything, we consider that this was a situation where the Second Respondent was seeking to help the Claimant and support the relationship in relation to a strategy for Next with which he had already had involvement (as can be seen from the emails at pages 421 and 422 of the hearing bundle).

284. There was nothing wrong in the Second Respondents dealing with a call in respect of Next. This was not for the purpose of undermining the Claimant and again is simply an issue of the Claimant seeing conspiracy where ultimately there is none. Whilst the Claimant asserts that the call could wait until she had returned from leave, that is a matter of a simple difference of opinion with the Second Respondent who wanted to keep momentum in the relationship.

285. There is nothing whatsoever to suggest that this was done to undermine the Claimant or that the Second Respondent would not have held the call during the absence of a male account manager.

<u>Contact with Karen Hollingsworth</u>

286. In September 2015, there was an email exchange between the Claimant and Karen Hollingsworth. Ms. Hollingsworth was of course the Claimant's predecessor and she had by that stage left the First Respondent business and was out working elsewhere. This exchange centered around the Claimant seeking to gather evidence in order to support a complaint against the Second Respondent. It is notable in our view that there is no reference whatsoever to any allegations of sex discrimination within those particular e-mails and that the matters complained of, at that stage at least, centered on alleged bullying.

287. We have already made our observations in respect of the evidence of Karen Hollingsworth above and so we do not repeat those matters here.

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The ScanSource car park incident

288. In early May 2016, there was a difficulty in relation to a partner with whom the Claimant was working by the name of ScanSource. In this regard, concerns were raised about the Claimant with Mr. Taylor by that partner organisation.

289. On 12th May 2016, those matters came to a head during a meeting at ScanSource Offices at which the Claimant, Mr. Taylor and another member of the First Respondent's staff, Erin Townsend, were present along with representatives from ScanSource. We accept that matters became heated between the Claimant and Erin Townsend during the meeting and as such Mr. Taylor took matters out of the ScanSource Offices and into the car park to discuss matters between himself, the Claimant and Ms. Townsend. It appears to us that thereafter this deteriorated into something of a shouting match but we are entirely satisfied that this was as much the Claimant's fault as anybody else's.

290. Following the argument in the car park, the Claimant wrote a lengthy email of complaint to Mr. Taylor that evening timed at 21:48 (see pages 362 and 363 of the hearing bundle). It is in surprisingly strident terms and, again, this reinforces to us that the Claimant was not backward in coming forward with email communications where she perceived (rightly or wrongly) that she had been criticised or had cause for complaint.

291. Mr. Taylor replied just over an hour later to say as follows:

> *"As stated in our conversation earlier, you have taken the conversation totally out of context and blown it completely out of proportion. The situation was brought to my attention and I needed to get the facts from you and Erin. I had two choices, hold that conversation inside Scan Source Offices in front of Scan Source employees or stand outside just the 3 of us.*
>
> *I believe we should have further this conversation in the presence of Caroline Spain and will issue a meeting invitation tomorrow.*
>
> *Regards*
>
> *Jeff*"

292. The Claimant replied the following day to say that she would await the invite and Mr. Taylor thereafter replied as follows:

> *"I needed some facts from you in order to respond to the concerns and senior management at ScanSource. As part of that I wanted you to understand the areas you have made in your communications in order to learn and improve.*
>
> *The problem is you cannot accept criticism without thinking it as a personal attack. My concern is your e mail alleging unprofessional behaviour and lack of support. This is what needs discussing."*

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293. We would note that the observation by Mr. Taylor, in view of the email sent by the Claimant, was entirely justified and also a reflection of our own reflections on the Claimant as a result of the evidence in these proceedings.

294. Rather than leaving matters there, there was then a further e-mail from the Claimant as follows:

> *"Jeff*
>
> *Sorry but that's not the case at all, I can accept criticism when it is just but I do not believe that this was. The facts were not listened to by yourself or Erin and were completely deflected of responsibility from Georgina. The minute I walked into the meeting I was attacked by Georgina and then again from Erin when outside with yourself, who was criticising my character like it was a school girl fight. At this stage in my career I do not expect that and do not feel it's acceptable within the work place. I find hard to ensure that my accounts are well managed. I work to ensure that my accounts are well managed, who ultimately are the end users and I have never had any complaints from them on my work or the way I conduct myself.*
>
> *I took advice all the way through this process and communicated it back to Andy were promised via telephone and email. That week, I was out of the office all week and in meetings therefore unable to respond instantly to his emails but he was aware of the high rate of discount and that it takes slightly longer. He was also aware that I was waiting for the authorisation but in the meantime the decision was made by Georgina and Steve to only provide pricing to Ingram. I had to explain that to Andy, even though the decision was not made by myself. I have the emails from Georgina and Steve throughout the process which I have involved them from the offset* (sic) *as soon as Scansource came to me for pricing. The decision had not been made to not price Scansource until the Monday, when they could see the quote which I informed Andy of this. As far as I was aware, as I had been told, Scansource may of been able to price if the rates from Ingram were not satisfactory to Peak.*
>
> *I believe it was unprofessional for the meeting to have taken place as it did and for it to carry on within the Scansource office, where my colleagues were all listening to me being attacked again. I had calls from concerned colleagues following this who were also of that opinion. I had an email from Andy saying that he didn't blame me for this but I will call him when he return and apologise to him if need be. I feel that this was not the issue though as it took place at the start of April and surly* (sic) *someone would have said something prior to yesterday but my onion* (sic) *was not listened to and brushed off.*
>
> *I have to make decisions which will not please everyone but ultimately for the benefit of Honeywell. If you do not feel that they are correct decisions*

> *then lets discuss in a professional manner and not in a situation that occurred yesterday that's all I am asking."*

295. Again, this is demonstrative of the position that the Claimant was not a shrinking violet and someone who was not afraid to fight her corner. Had there been earlier instances therefore of "screaming and shouting" or inappropriate actions emanating from Mr. Taylor or from the Second Respondent then again we have no doubt that we would have seen similarly strident emails complaining about those matters.

296. We are satisfied that the Claimant knew that she had done something wrong in relation to the ScanSource incident and was seeking to deflect the blame elsewhere by way of somewhat inflammatory and exaggerated suggestions that she had been attacked (albeit verbally) by other members of staff.

297. We would note in this regard that of course those members of staff were female. The Claimant has not made any suggestion that her situation of angst in relation to those individuals was caused by sex. That is with the possible exception of suggesting that Georgina Lamb was biased against her because her boyfriend was a close friend of the Second Respondent. It is perhaps difficult in this regard not to accept the submissions of Mr. Purchase that by the end of the proceedings before us, the Claimant had built an ever increasing sphere of those who she contended were conspiring against her.

298. As evidenced by page 360 of the hearing bundle there was a conversation between the Claimant and Mr. Taylor following which he informed Caroline Spain that there was no need for any further HR involvement or a meeting about the matter.

299. However, the matter did not end there as the Claimant again wrote to Mr. Taylor on 16th May 2016 in quite surprisingly strident terms. Amongst other things, she maintained that she expected an apology from Georgina Lamb and Erin Townsend and that there should be a meeting with the latter making it clear that Mr. Taylor supported her about the decisions that she made on her accounts and that he had "not been clear about the facts at the time".

300. Mr. Taylor replied to include that he thought that the matter had been put to bed and that everyone had "moved on". His email also said this:

> *"Do you really want to pursue this? Think really carefully about it, do you want to open the can of worms? It might not end up with the result you want".*

301. The Claimant maintains before us that this was a threat about pursuing a complaint to HR about text messages that he had sent to her. This is an area of the Claimant's evidence which, again, makes little or no sense. She accepted that she had made no mention at all about the text messages and going to HR and there is nothing at all to begin to suggest that this is what Mr. Taylor was referring to in this email. It was clearly a reference to opening up the

ScanSource car park incident and, doubtless, that the Claimant should think carefully about that given her own part in the events in question.

Illness of Mr. Taylor

302. On 26th May 2016 the UK Sales Team were advised of the illness of Mr. Taylor, who was by that time suffering with what transpired to be terminal cancer. His condition was in an advanced stage and he sadly later passed away in August 2016. Despite his illness and the serious nature of it, Mr. Taylor nevertheless continued to undertake work for the First Respondent, including even from a hospital bed.

303. However, needless to say the day-to-day management of the team obviously had to be dealt with by somebody else. The Second Respondent picked up the mantle for that in addition to his continued duties that we have already described above. He therefore became the Claimant's Line Manager with effect from the end of May 2016. We accept that the Second Respondent was the natural fit for that particular position given that he had already been supporting the team, and the Claimant in particular, in relation to accounts that they were working on.

SEA documents

304. As part of his work with the UK Sales Team, we accept that the Second Respondent wanted to work with standardised documents for use on accounts that would, in his view, assist the team with account planning and management. That tool was known as an "SEA Deck". We accept that the Second Respondent wanted and instructed the retail team to use the SEA Deck for preparation on their accounts given that the same was to be rolled out more widely in the coming months across the First Respondent and he wanted the team to already be prepared for that. We do not accept the Claimant's position that she was singled out in respect of using the SEA Deck. All of the team were encouraged and instructed to use it as the Second Respondent also considered it a useful account planning tool where all relevant information could be stored on an account, including the thinking around the proposed strategy for the customer in question.

305. The Second Respondent asked the Claimant to prepare an SEA document for the Next account. Again, we are satisfied that she was not singled out in this regard. We are equally satisfied that contrary to the assertions that the Claimant makes, she never completed that SEA document as the Second Respondent had repeatedly requested that she do. Notably in this regard, the SEA document for Next which the Claimant appears to contend that she completed does not appear in the bundle before us. We accept that that was a source of frustration for the Second Respondent as the documentation that the Claimant had put together was not what was required and, in some instances, the Second Respondent believed it to have simply been cut and pasted from a customer's own website with little insight into the information that should have been included in the SEA documents.

306. We deal further below with a specific comment made in respect of the SEA document in the context of a meeting of 19th July 2016.

The "house" comment

307. The Claimant also contends that in June 2016, the Second Respondent asked her, in front of some of her colleagues in the team, why she was buying a house and was it "because [she] was just renting". The Claimant contends that that comment was made on the assumption that she was female and a single mother and that it would not have been said to a male colleague.

308. The Second Respondent denies making that comment. We accept his evidence that he did not. He appeared to us to be genuine in the account that he gave in that he had come from a council house background and would be pleased for the Claimant if she was buying a property.

309. However, even had we found the Second Respondent to have made the comment, it appears to us to be a rather innocuous enquiry. Other than the Claimant's belief that everything that occurred during the course of her employment which she perceives as being negative was an act of discrimination and a male colleague would not have been treated in the same way, there are, quite simply, no facts that support that.

Performance concerns

310. We accept the evidence of the Second Respondent that he began to have increasing concerns in respect of the Claimant's performance. The Claimant was not the only individual, however, who the Second Respondent had identified as being wanting in terms of performance issues. He had also identified that another account manager, Andrew Jackson, also had performance issues and met with that individual to discuss those matters. We accept that Mr. Jackson pulled his performance around after a number of meetings with the Second Respondent such that it was not necessary for him to be escalated to the more formal Performance Improvement Plan ("PIP") stage. The Claimant was not, therefore, singled out and we are satisfied that the Second Respondent, from his interactions with Mr. Jackson, also acted upon performance concerns in respect of male members of staff.

311. However, we accept the evidence of the Second Respondent that the Claimant was underperforming in the role and we are entirely satisfied that she was out of her depth. Particularly, we accept that the following issues in respect of the Claimant's performance were of significant concern to the Second Respondent:

(i) The Claimant was considerably off beam in respect of meeting her target and that, in particular, by November 2016 she was 30% behind her targets. We do not accept that that was manipulated by the First or Second Respondents with regard to removal of accounts or account allocation and we have already made our findings in that regard above. The Claimant had plenty of accounts

to work on, as can be seen from her own account lists, and we accept that her targets were as such achievable;

(ii) That the Claimant had still not produced a solid SEA document as the Second Respondent had asked her to do. We say more on the SEA documents below;

(iii) That review meetings were declined or cancelled by the Claimant at short notice including on 24th June 2016 (see page 399 of the hearing bundle); 30th June 2016; 7th September 2016; 4th and 7th October 2016 and 7th December 2016. We say more on the declining or cancellation of meetings below; and

(iv) That the Claimant was not engaging with the end user clients and was placing too much emphasis on channel partners.

312. The Second Respondent, as a result of those type of concerns over the Claimant's performance, considered that she should be placed on a PIP and we accept that he discussed those matters both with Mr. Taylor and with Caroline Spain of HR. The advice received from HR was that an informal meeting be held with the Claimant before considering the PIP process further.

313. We should observe that the Second Respondent accepted that recommendation from HR and did not progress the formal PIP at that stage. Again, had the Second Respondent been of the mindset to oust the Claimant from the First Respondent business as is contended, it was of course open to him to disregard that advice and press ahead regardless with the formal PIP process.

314. We should also observe that in relation to the above concerns, other issues also arose at a later stage of the Claimant's employment which gave the Second Respondent further cause for concern. Those included issues such as complaints from other members of the team and specific issues such as dealings with AS Watson and interactions with ScanSource which we detail further below. However, suffice it to say at this stage that far from the improvement that we accept that the Second Respondent saw from Mr. Jackson, the Claimant's performance continued to be a further cause of concern.

Complaint to Caroline Spain by the Claimant

315. On 17th June 2016 the Claimant made a complaint to Caroline Spain of HR regarding the Second Respondent. She asserted that he was constantly *"having a go at her, constantly bullying her and that this had been going on for the last year"* (see pages 367 and 368 of the hearing bundle).

316. This complaint, we are satisfied, was prompted from an issue that had arisen on that same day between the Claimant and the Second Respondent where he had made enquiries with her about her role and the work that she was doing. The Claimant perceived that as criticism of her (and as we have observed she does not take criticism well) when in fact we accept that it was the Second

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Respondent's attempt to understand how the Claimant was operating given his fundamental concerns over her performance and, particularly, the fact that she was placing too much reliance on partners, which was not what was expected of an Enterprise Account Manager.

317. The Claimant did not take well to what the Second Respondent had said during the call and she emailed him after the discussion in the following terms:

> *"Jason*
>
> *Further to our call today and your accusations that I am not now working directly with any Retail Accounts and do you not know what I do, please see attached my current account list. This account list includes, who I am working with and whether that is direct or via a partner. You will see that on 8 of my accounts, I am working directly i.e. visiting them and discussing requirements and mapping out engagement with the end customer and only 4 are currently through a partner. When working through the partner, I am planning to engage directly but sometimes the accounts are at a sensitive stage and by engaging directly could jeopardise the relationship rather than enhance it. I work closely with the partners and have built trust with the partners to allow them to openly discuss activities within the accounts directly with myself. Honeywell sell through partners, therefore it is my job to also work with the partners along with the end user accounts and hence us building a valuable proposition with TBW[6].*
>
> *It is a very confusing message when I have to sell through the partners but you are telling me continuously not to work with them, we are either a partnership channel or not.*
>
> *I have also sent over today to you an invite to attend a meeting with the retail side of Coop, which we have never been engaged with and it is only through building the relationships within the Coop that has allowed for this to happen. The relationship with Coop had pretty much broken down before I took the account over and since then I have built a strong relationship and I am now being sponsored into other areas of the business.*
>
> *You will also see that my greenfield account list is vast and I am attempting to engage with new accounts daily."*

318. The Claimant's email above belied her misunderstanding about the role of an Enterprise Account Manager and we have no doubt whatsoever from the Second Respondent's evidence that it was a source of ongoing concern and frustration that she continued to place heavy reliance on partners when her focus should have been direct dealings and development of a relationship with the end user client. The fact that the Second Respondent was concerned about those matters is evidenced, amongst other things, by communications with the Claimant which appear at pages 662 and 663 of the hearing bundle. It is also

[6] TBW is an abbreviation for The Barcode Warehouse.

clear from the evidence before us that Mr. Taylor shared those concerns that the Claimant was acting more as a Channel Manager and not an Enterprise Account Manager.

319. The concerns in respect of that reliance may have been referred to as a "closeness" to partners but we do not accept that at any stage the Claimant was ever accused of having an affair with a member of one of the partner organisations as she has alleged in these proceedings before us and as we have already touched upon above.

320. It is not in dispute that the Second Respondent asked the Claimant about her role and he also accepts that he said words to the effect that he did not know what accounts she was working on. Whether that was the exact phrase used or whether the Second Respondent said that he did not know what the Claimant did, we are satisfied that that was said against the background of the fact that the Second Respondent did not have an up to date account list of the Claimant's accounts nor did he have an overview of the accounts that she was working on or the actions that she was taking on the accounts. The comment was not designed to belittle the Claimant but simply as a result of the fact that he did not know what accounts were being worked on or how they were being managed. There is absolutely nothing wrong with that as it was in the circumstances a legitimate observation to make at the time.

321. The Second Respondent had also made a similar comment to the Claimant in May 2016 at which time he had been due to present at a ScanSource event. As the Second Respondent had been due to walk up to the lectern to present the Claimant had approached him and, indeed, had followed him up there seeking to discuss accounts. That was clearly inappropriate timing and we accept that the Second Respondent had made some comment that he did not know what the Claimant was working on or words to that effect as that was clearly not the right time to be discussing such matters. All that must also be viewed against the fact that the Second Respondent had concerns about how the Claimant was operating and his attempts to meet her to discuss matters and to obtain SEA documentation had not proved fruitful. Against that backdrop, it is not surprising that he would have made such enquiry but we are satisfied that the reason for it was to try to gain an understanding of the way of working and not for any reason related to the Claimant's sex. Again, there is nothing at all to suggest that a male member of staff about whom the Second Respondent had the same concerns would not have had the same enquiries made.

<u>Meetings with the Claimant and Second Respondent</u>

322. As we have already observed, the Claimant had proved difficult to pin down in respect of meetings with the Second Respondent. We are entirely satisfied that the Second Respondent sought to arrange meetings with all of the team and that the Claimant was not singled out in that regard (see for example page 412 of the hearing bundle where it is clear that the Second Respondent was seeking to arrange one to one's with all of the UK sales team in order to discuss their accounts and their strategy).

323. We are equally satisfied that the Claimant was the only person in the team to consistently cancel or decline meetings and that that was a source of concern and no doubt frustration for the Second Respondent, particularly in view of the fact that he wanted her to engage with the accounts and discuss her approach.

324. On 19th July 2016 there was a meeting between the Claimant and Second Respondent at which Caroline Spain attended as an observer. The Claimant contends that during that meeting[7], the Second Respondent had alleged that Morrisons had asked for the Claimant to be removed from dealing with their account.

325. The Claimant asserts in this regard that during that meeting the Second Respondent said that Morrisons had asked for her to be removed from the account but upon questioning, he had effectively backtracked and said that this must have been Ms. Hollingsworth. The Second Respondent contends that he did not make such a comment.

326. The notes taken by Caroline Spain in respect of this matter and which were disclosed late (a matter we have already referred to above) do not assist in determining this issue (see pages 367 to 377 of the hearing bundle). They are scant and are clearly not a verbatim account. Given the dispute as to whether the notes were taken at the meeting or not, we equally have no way of determining in reality when they were prepared. We have viewed the evidence of Caroline Spain and her recollection of matters with caution and as she had overlooked the notes previously at the point of being asked for them by the Claimant, we are far from sure that they were taken during the meeting and might just as well have been prepared from memory shortly thereafter. Accordingly, we do not treat them as an accurate account of the meeting and so they cannot assist us in relation to this issue.

327. Again, it is therefore difficult to determine this particular complaint given the lack of corroborative evidence one way or another. It is akin to the issue about whether the Claimant and Second Respondent met during the first week of her induction.

328. It may be that the Second Respondent did make such a comment and, upon realising that he was wrong about the matter, retracted the assertion as the Claimant's account suggests. Alternatively, given that the Second Respondent makes reference at paragraph 99 of his witness statement to a member of the Morrisons team saying that the Claimant did not add value to the account and they had not seen her, a comment to that effect may have been made and misconstrued by the Claimant.

[7] It should be noted that the Claimant's Claim Form at paragraph 21 cites the date of this incident as being June 2016 but it is clear from paragraph 59 of the Claimant's witness statement that she in fact alleges that this incident took place at the meeting on 19th July 2016.

329. However, whatever the position in that regard there is nothing whatsoever to suggest that any such comment, if made, was designed to denigrate or belittle the Claimant and there is equally nothing whatsoever to support the contention that this was done because of or for a reason relating to sex.

330. During the 19th July 2016 meeting, the Second Respondent also discussed the Next account with the Claimant. We accept that he had previously instructed her to prepare an SEA document detailing her plans for this account but that she arrived at the meeting again having failed to do so in an acceptable format. We also accept that during the meeting the Claimant had made reference when asked about the strategy for Next, which was an important account, she had referred to it being "in her head" or words to that effect and made reference to the fact that she had a business degree. That is consistent, we find, with the overall approach of the Claimant that she had a better idea of how to run the accounts than the Second Respondent did. The fact that a comment about matter being "in her head" was made is also supported by a later reference in an email to the Claimant from the Second Respondent where he referred to preparation of standard documents being better than "working from memory" (see page 409 of the hearing bundle).

331. At that meeting, the Second Respondent regrettably let frustration get the better of him and he described the SEA document produced by the Claimant as "crap". Clearly that was unprofessional and should not have occurred – a matter that the Second Respondent now acknowledges.

332. However, this comment needs to be viewed against the backdrop of the frustration that the Second Respondent had as to the Claimant cancelling or declining meetings and failing to produce the SEA documents to the required standard. It was a momentary comment that the Second Respondent should not have made – although he candidly accepts that it was said – but it is not indicative of antipathy towards the Claimant or suggestive that he had previously shouted or screamed at her.

333. There is nothing at all to suggest that had the Second Respondent been faced with the same situation with a male member of staff that he would not have reacted in the same way.

334. Whilst the Claimant had agreed that she would use the SEA deck to produce the documentation for Next, we accept that she never in fact did so. Despite the fact that the Claimant contends that a perfectly acceptable SEA document was completed for Next, it is noteworthy in our view that this does not feature at all in the otherwise substantial bundle of documents that are before us.

335. A further complaint regarding the Next SEA documentation made by the Claimant in these proceedings is that it is alleged that the Second Respondent "shouted and screamed" at her as to where she had obtained certain information from. Again, we do not accept that the Second Respondent ever shouted and screamed at the Claimant for the reasons that we have already given above and that includes on this occasion. We are satisfied that the issue with regard to this incident came about as the Second Respondent simply enquired of the Claimant

where information had been sourced from given his concern that, despite the instruction to produce the account information using the SEA deck, it appeared to the Second Respondent that the Claimant had simply cut and pasted generic information into a Word document from information taken from the internet. His enquiries were, therefore, understandable and again there is nothing to suggest that the same approach would not have been taken with a male member of the sales team who had produced unsatisfactory work on an important account after a number of times of being asked about that.

336. There was later a further meeting between the Claimant and the Second Respondent to discuss her accounts. Unfortunately, on that day a large proportion of time had to be taken up by the Second Respondent taking an urgent telephone call from the Vice President of the First Respondent. The Claimant is critical, it seems, of the Second Respondent for taking that call when he should have been discussing the position in relation to her accounts with her.

337. However, logically speaking given the fact that this call emanated from the Vice President of the First Respondent it is hardly surprising Second Respondent had to prioritise that call. In all events, the Second Respondent subsequently acknowledged to the Claimant the fact that they had not been able to go into detail and he sought to set up a further meeting for the purposes of dealing with that.

338. However, in reply to that attempt the Claimant emailed the Second Respondent to say that she believed that if it was considered essential that they have a meeting that was done with a third party present (see page 468 of the hearing bundle). That request was made for the first time on 12th September 2016 and at all other meetings thereafter, the Second Respondent arranged for accompaniment by HR. The Claimant complains as part of these proceedings that the Second Respondent requested that she attend a meeting with him alone and we understand that to relate to the meeting above at which the Next SEA documentation was reviewed for the second time. However, the Claimant accepted when cross examined by Mr. Purchase that that meeting pre-dated her request to the Second Respondent to have further meetings with a third party present and there is no evidence of any further meeting having taken place that did not comply with that request.

339. Prior to 12th September 2016, the Second Respondent had no idea that the Claimant did not want to meet him alone and it cannot reasonably be said to be inappropriate as her line manager to arrange such one to one meetings prior to that date. That was the same for all members of the team and there is nothing at all to begin to suggest that the Claimant's sex had anything at all to do with the matter.

<u>Dunelm</u>

340. Another account which the Claimant was working on was Dunelm. There were problems in relation to the hardware which had been supplied by the First Respondent to this client and in respect of which the Claimant was finding difficulty in resolving. The Claimant contends that she asked for support from the

Second Respondent in relation to this issue but that those requested were ignored or refused. We do not accept that to have been the case and there is no evidence before us to substantiate that position.

341. However, again the Claimant adopted the wrong approach with regard to this matter and suggested to the Chief Information Officer at Dunelm, Mr. Shaw, that he make contact with Remi Volpe. Mr. Volpe is an extremely senior member of the First Respondent company and we find it curious that the Claimant would have suggested escalation to such a high level. The email sent by Mr. Shaw was critical of the First Respondent's team and, despite her assertions to the contrary, we accept that that included the Claimant (see page 427 of the hearing bundle).

342. The fact that the matter had been escalated to Mr. Volpe came to the attention of the Second Respondent who asked the Claimant for an explanation as to the background of the situation.

343. The Claimant replied saying that she had called the Second Respondent previously and left him a voicemail but had not had her call returned; that she had needed to take action as she was due to take a period of annual leave and that Mr. Volpe was a friend of Mr. Shaw and the latter had requested a call with him and so she had escalated the matter.

344. The Second Respondent replied in perfectly reasonable terms indicating that he had not received the Claimant's voice mail, that he would continue to work through it and keep her informed of progress and he also wished her a "great holiday". We do not consider that that position is indicative of a lack of support as the Claimant contends. There was nothing to suggest that the Second Respondent was not being genuine about not having received the Claimant's voicemail message. If he did not receive that voicemail message then he could not have proffered assistance.

345. We would observe, however, that the Claimant could obviously have considered other methods of communication simply than leaving one voicemail message on a Friday afternoon before escalating the matter up to Mr. Volpe. She could, for example, have sent the Second Respondent an email or made a repeated telephone call to him.

PIP process

346. On 30th August 2016, the Second Respondent wrote to Caroline Spain of HR in relation to the proposal to place the Claimant on a Performance Improvement Plan ("PIP"). His email, which appears at page 451 of the hearing bundle, said this:

> "*Caroline*
>
> *Following up on our conversation I have discussed the matter with Jeff and he is an agreement that Nicola should be placed on a Performance Improvement Plan.*

> *We discussed how I was planning to meet with Nicola following our Leicester Enterprise Review meeting where she has still not complete* (sic) *any other account reviews other than the Next document which has taken over six months. At the meeting she only covered the accounts that were most recent on her to do list and no account planning reference had been presented.*
>
> *I have now sent Nicola an email with clarification in what I am expecting for our meeting next week and then will update you accordingly.*
>
> *Jason"*

347. The reference to Jeff within the first paragraph of that email is a reference to Jeff Taylor. By the time that this email was sent it is common ground that Mr. Taylor was in hospital and indeed he passed away only a few days later.

348. The Claimant's evidence before us was that Mr. Taylor could not possibly have sanctioned her being placed on a PIP as the Second Respondent's email suggested as he was far too ill to do so. She contends that the Second Respondent was therefore being untruthful or misleading about that.

349. The Second Respondent contends that what he had put in his email about Mr. Taylor agreeing that the Claimant should be placed on a PIP was entirely correct.

350. In support of her position, the Claimant had for the purposes of these proceedings adduced some photographs taken from a private Facebook account belonging, as we understand it, to Mrs. Taylor. We have already made reference to those photographs above and we did not consider it necessary for them to be included in the main hearing bundle for reasons that we gave orally at the time.

351. The Claimant's position as outlined to us during the hearing was that those photographs demonstrated that Mr. Taylor was in a medically induced coma such that it would have been impossible for him to have discussed with the Second Respondent the position in relation to putting her on a PIP. Whilst Mrs. Harrison did not take the Second Respondent to those photographs during cross examination, it is clear to us from having seen them that, in keeping in fact with a number of documents upon which the Claimant had made both oral and handwritten comment, they did not show what the Claimant contended them to show. In this instance, they clearly did not show, as we expressed to Mrs. Harrison when discussing whether those photographs needed to be in the hearing bundle, Mr. Taylor in an induced coma. They showed him looking gaunt and one photograph showed him in a hospital bed, albeit clearly in a state of consciousness. The photographs upon which the Claimant relies, therefore, take us nowhere near evidencing that Mr. Taylor did not discuss and agree with the assessment of the Second Respondent that the Claimant should be placed on a PIP.

RESERVED

352. It was abundantly clear from the evidence before us, including that in the hearing bundle and from Caroline Spain, that despite his illness and the severity of it, Mr. Taylor continued to be as involved as he could with the First Respondent and that included communications both with Ms. Spain and also the Second Respondent.

353. We find it entirely likely on that basis that the Second Respondent would have discussed the Claimant and whether to place her on a PIP with Mr. Taylor given his continued involvement in the business and the fact that he had recruited her. We accept therefore that such a conversation did take place between the Second Respondent and Mr. Taylor shortly before he passed away and that he did express agreement that the Claimant should be placed on a PIP. That would also be unsurprising given that he himself clearly had concerns over his abilities having regard to his communications with Caroline Spain over the probationary period irrespective of what the Claimant says he had said to her about being an "exceptional performer" and we have already made our observations in respect of that matter above.

354. Moreover, we have also had sight of a text message between Mr. Taylor and Caroline Spain which he had sent to her shortly before his death which clearly set out his views in relation to the Claimant's performance at that time. That text message is entirely consistent with the evidence of the Second Respondent that Mr. Taylor was in support of his views that the Claimant should be placed on a PIP.

355. That text message said this:

> *"I hear we have a problem with Nicky Mercer and it looks like time to say goodbye??"*

356. That text message was sent on 26th August 2016. It is consistent with Mr. Taylor having been informed by the Second Respondent that further issues had arisen with the Claimant's performance and we accept the evidence of the Second Respondent accordingly that he had had discussions with Mr. Taylor regarding the Claimant and placing her on a PIP.

357. Mr. Taylor's text message to Caroline Spain and the e-mail to which we have already referred regarding the Claimant's probationary period are entirely indicative of the fact that he, like the Second Respondent, had concerns over the Claimant's performance once she had joined the First Respondent.

358. Caroline Spain responded to the Second Respondent on 31st August 2016 attaching information around the PIP policy and with a PIP template for the Second Respondent to complete so as to commence the PIP process with the Claimant. As we shall come to in due course, however, as it happened there never came to be any formal start to that PIP process with the Claimant.

RESERVED

September 2016 team meeting

359. As part of the Second Respondent's intention to have regular team meetings with the UK Sales team, one was scheduled for 6th September 2016. That meeting had been notified to the team, including the Claimant, by the Second Respondent by way of an email on 24th July 2016 (see page 404 of the bundle).

360. Shortly before the meeting, on 1st September 2016, the Claimant sent an email to the Second Respondent asking him if she could attend late for the team meeting on the basis that it was her son's first day back at school and she wanted to drop him off. She indicated that she would arrive at around 10.30 a.m. for the meeting.

361. It is clear from his email in reply that the Second Respondent accepted that without question, indicating that he totally understood the position (see page 402 of the Hearing bundle). We would observe here that if the Second Respondent was bullying the Claimant as alleged, allowing her to arrive late for the meeting without question would appear to be an unusual response for him to have made. The same is true if his intention to arrange meetings on a Sunday in Bradford had been to ensure that the Claimant could not attend for childcare reasons.

362. The Claimant replied on 5th September 2016 thanking the Second Respondent and also indicating that she had been to see Mr. Taylor's wife that day (i.e. 5th September 2016). That visit was as we understand it to offer support to Mrs. Taylor given that by that point Mr. Taylor had recently passed away.

363. The relevance of that visit is that it is the Second Respondent's position that the Claimant arrived for the team meeting much later than the 10.30 a.m. arrival time that she had indicated in her email. The Claimant denies that position. The Second Respondent suggested in his evidence that the reason that he recalls the Claimant giving for having arrived much later than 10.30 a.m. was that she had gone to see Mrs. Taylor on the morning of the team meeting (i.e. on 6th September) on her way into work. His position is that he was concerned about that because that had not been the reason why she had told him that she would be late in. The Claimant denies that she visited Mrs. Taylor on the day of the team meeting or that she had told the Second Respondent that as she had in fact visited the day previously as her email to the Second Respondent of 5th September would appear to confirm.

364. We are satisfied that the Second Respondent is more than likely mistaken in his recollection given that it is clear from the Claimant's email that she saw Mrs. Taylor on 5th September and we accept her evidence that she did not visit for a second time the following day.

365. However, we do not accept, as Mrs. Harrison urges us to do, that the comments made by the Second Respondent in this regard were designed to paint the Claimant in a bad light and denigrate her character before the Tribunal. We simply find it likely that there is some error in the Second Respondent's

recollection in respect of that matter and no more than that. In our experience, being mistaken about a certain event is not unusual in proceedings such as this, particularly where the events in question are being recalled some considerable period of time after they occurred.

A S Watson

366. Around a similar time, a further issue of concern arose in respect of the Claimant's actions which came to the attention of the Second Respondent. This related to an account for a client of the First Respondent by the name of AS Watson. This was a Channel account which was allocated to one of the Channel Account Managers, Luke Webster. We remind ourselves that the way in which Channel accounts are dealt with is very different to the way in which Enterprise Accounts were conducted and involved heavy reliance on intermediate partners.

367. Despite that and the fact that the account was allocated to Mr. Webster, on 2nd September 2016 the Claimant approached a member of the Sales Support Team, Mark White, asking that the AS Watson Account be allocated to her (see page 458 of the hearing bundle). That had come about as a result of the fact that the Claimant had been passed details of an opportunity with AS Watson in error by another member of the team. However, she did not pass that opportunity to Mr. Webster but sought to deal with it herself despite the account being a Channel account and one which was already allocated to someone else.

368. Mr. White responded to say that that could not be done on the basis that the account was one which Luke Webster already had a deal with. The Claimant replied on the same date to say that she knew that but that she was having a call regarding the account and asked Mr. White "what he needed". That must invariably be a reference as to what he needed to transfer the account to her.

369. Mr. White e-mailed Mr. Webster to see if he was "ok" to transfer the account to the Claimant. Mr. Webster suggested that Mr. White would need to speak to the Second Respondent. That was duly done and the Second Respondent expressed his concern about the e-mail chain that he had received (see page 457 of the Hearing bundle) and that he would hold off dealing with it until he had spoken to the Claimant.

370. We accept that his concern was that account allocation should have been a matter for him but that it appeared that the Claimant was seeking to bypass that particular process and have an account allocated to Mr. Webster – a matter of which she was clearly aware – allocated to her. The Second Respondent accordingly wrote to the Claimant asking for an explanation about that position and his e-mail said this.

> *"Nicky, I hope you had a great weekend.*
>
> *Could you please respond to this email and give me some background as to who gave you the authority to request that this account be allocate (sic) to you.*

RESERVED

I was not copied in and I am assuming you had a conversation with Tim before our call on Friday afternoon at 15.30.

Thank you"

371. There is no response from the Claimant to that email within the documents before us. Mrs. Harrison contends that the reason for that is that the First and/or Second Respondent has manufactured the email after the event so as to portray the Claimant in a poor light. The basis of that assertion is that there is no "sent" section at the head of the email indicating the date and time upon which it had been dispatched to the Claimant as would normally be expected.

372. Whilst we consider it unusual that there would be no sent date and time on the e-mail, there is nothing at all to support the fact that this has been manufactured by the Respondents as Mrs. Harrison suggests with the aim of misleading the Tribunal. That is an extremely serious allegation to have made and there is nothing at all to support the suggestion that that is what has happened.

373. We would observe that the content of that email itself is, in the grand scheme of things, a relatively innocuous one when compared to others which are before us and in respect of which there is no allegation of manufacturing evidence. Had it been the case, therefore, that the Respondents were minded to manufacture evidence, then it seems to us they would have done so with rather more damning emails that this one as Mr. Purchase submits.

374. Whilst something has clearly happened to it, we would observe that the email chain has clearly been forwarded by the Second Respondent given that the name of the person who printed that document – Rachel Greenslade – appears at the top of that page. A technical or other issue could well have occurred when forwarding the email chain and that or a whole host of other innocuous explanations may be the cause of the missing "sent" section. Alternatively, it may be that the email was prepared as a draft and whilst the Second Respondent thought that he had sent it, it was in fact never transmitted. It does not follow, however, that the email has been manufactured as Mrs. Harrison contends and we make no finding at all to that effect.

375. Equally we make no negative findings in respect of the Claimant's apparent lack of response.

376. In all events, even if the email had been received by the Claimant, there was clearly a discussion about the AS Watson account in the afternoon of 2nd September (see page 463 of the hearing bundle). That was the date when the matter had been drawn to the Second Respondent's attention by Mr. Webster.

377. After that conversation, the Claimant emailed the Second Respondent to record that she was concerned about what had occurred during the call. She did not set out in that email any of the details as to her concerns but sought to assure the Second Respondent that she had not been "account chasing" but had been

working to ensure that Honeywell were the chosen supplier for the customer in question.

378. It has to be said that the email is perhaps not written in the most appropriate manner given that it was being sent to the Second Respondent as the Claimant's then Line Manager following the passing of Mr. Taylor. It is written in defensive and quite abrasive terms – including references such as *"is this not my job?*"

379. The tone of that correspondence, others with a Mr. Pike of ScanSource to which we shall come in due course and the incident which occurred in the ScanSource car park to which we have already referred support our view that the Claimant was not being bullied in employment by the Second Respondent or anyone else and was more than capable of fighting her corner, even when she was in fact in the wrong.

380. We are satisfied in this regard that the Claimant's email to the Second Respondent again belied her misunderstanding as to the difference between channel accounts and enterprise accounts which was at the heart of a number of the difficulties that she had during the course of her employment with the First Respondent. Of particular note in this regard are the following extracts from her email:

> *"I have then spoken with Steven today from A S Watson and they are very happy to have a meeting with myself as a representative from Honeywell to try and build a relationship with Honeywell (Is this not my job?)"*
>
> *and*
>
> *AS Watson are a massive company and should be managed by an Enterprise Account Manager, I believe. Luke doesn't have time to chase individual quotes and ensure that the partner has quoted."*

381. Again, the Claimant had failed to recognise that the AS Watson account was a channel account and not an Enterprise Account and that the First and Second Respondent's wanted those different types of account to be managed in a different way. Whilst the Claimant may well have had good intentions to seek to secure business with AS Watson, it was not her place to by-pass Luke Webster to whom the account was allocated or to deal in all events with Channel accounts.

382. The Claimant concluded her email by saying this:

> *"If you don't want me to work on this account then it is not a problem, but felt that on the call it was being implied that I was to* (sic) *being underhand in some way, when all I am attempting to do is to ensure that Honeywell get a chance to quote."*

RESERVED

383. The Claimant contends before us that she was spoken to inappropriately by the Second Respondent during the call. We observe that she makes no reference to that in her email. The Claimant is not someone who is slow to raise her dissatisfaction in relation to workplace events – her emails to Mr. Taylor concerning both the Second Respondent and the incident in the ScanSource car park are but two examples of this – and as such had she been spoken to by the Second Respondent in the manner that she now claims we have no doubt that she would have made reference to that in her email or, at the very least, escalated matters once again to Caroline Spain as she had done previously. Her email to the Second Respondent is of course in strident and forthright terms and had she been spoken to inappropriately, we have no doubt at all that that would have been mentioned.

384. The Second Respondent may well have been robust with the Claimant but that is the nature of the pressured environment within which the First Respondent operates and we are satisfied that the Claimant was not singled out or treated inappropriately during this call as she now alleges.

385. The Second Respondent replied to the Claimant in measured terms saying this:

> *"Nicola, could I thank you for your email.*
>
> *Firstly, could I apologise for joining the course slightly late; with that had happened last week I had an extended call with one of Jeff's close friends[8]. I did miss the beginning of the call but joined at the point you asked Mark to give a brief synopsis of the opportunity and you then covered why you had got involved.*
>
> *You also highlighted the conversation you had with Luke in the sales meeting, which I recalled due to it getting a little heated at the time across the table as Luke believed it to be a Channel account as it was not on the enterprise account list. I suggested at the time that we part the conversation, as it was not the appropriate forum.*
>
> *I understand that you have captured part of the conversation we had during our call on Friday, but you have missed off a number of the key points. I suggested that I would set up a session with Tim to understand his view as the UK Channel Leader and we would come back to you early next week when I had the full details.*
>
> *My recommendation is that we meet around the team meeting on Tuesday with the objective to agree the next steps plan. I would ask that you make no further actions on this account until we all understand the status. Thank you for your understanding and I look forward to discussing the opportunity next week."*

[8] The reference to all that had happened last week is a reference to Mr. Taylor having sadly passed away.

386. The Claimant replied as follows:

> *"Hi Jason*
>
> *It is really not a problem, I have accounts that I am working on and I am quite happy for it to remain a channel account. Following the call on Friday I also feel that's probably the best route.*
>
> *At no point within the sales meeting did the discussion get heated from my behalf. Luke is very precious about his accounts as from past experience, he's had had accounts take away from him by Enterprise but that was not my intention. For Honeywell not to have submitted a quote, when the customer has asked for one for over 3 months is unacceptable, I believe.*
> *We have an opportunity to make direct contact with the customer, therefore, could you please advise how you wish to proceed with it."*

387. Again, no reference is made within that email either that the Claimant had, as she now contends, been spoken to inappropriately by the Second Respondent during the call on 2nd September.

388. There was a meeting about the AS Watson account on 6th September 2016 during which the Second Respondent determined that the account should stay with the Channel account team where it had been originally allocated. It may well be as the Claimant alleges that the impression that she was given was that she should not attend a meeting that she had set up with AS Watson but that would of course be entirely natural given that the account was to stay with Mr. Webster.

389. We accept the evidence of the Second Respondent that the Claimant was far from happy about that decision irrespective of what she had said in her earlier email. That is belied by a text message later sent by the Claimant to Luke Webster indicating that she had not been trying to "take anything off him" but criticising the First Respondent by indicating that they were being made to "fight" each other. We do not accept that that was an accurate description of matters at all. The Second Respondent had simply directed that the account should stay where it had originally been allocated originally and the Claimant should have passed the opportunity to Mr. Webster in the first instance. The situation had therefore been entirely avoidable.

390. We also accept the evidence of the Second Respondent that Mr. Webster showed the Claimant's text message to him and that Mr. Webster expressed annoyance at how the Claimant had dealt with the matter.

<u>Descartes Event</u>

391. In early September 2016 there was an event for a client of the First Respondent, Descartes, which the Second Respondent had proposed that the Claimant should attend.

392. In email correspondence regarding that particular event from Justine Clark, the Industry Marketing Manager for Transport and Logistics in Europe, to Simon Jones, the Strategic Account Manager for Transport and Logistics, enquiries were made by the former if it would be the Claimant who was supporting at the event. Mr. Jones had replied to indicate that she should check with the Second Respondent before volunteering the Claimant as he (the Second Respondent) might want another member of the UK Sales team - Mark Vatcher - to go instead.

393. That email exchange was copied to the Claimant by Justine Clark. The Claimant immediately forwarded that email chain to the Second Respondent to ask him to "shed light" on the comments that Simon Jones had made. That appears to us to have been something of an over-reaction but is indicative of the level of mistrust that the Claimant had and still has in respect of the Second Respondent and her seeing a conspiracy in every action where in fact none lay.

394. At the same time, she also e-mailed Simon Jones to ask him why the Second Respondent would want Mark Vatcher to attend rather than her. Mr. Jones replied to the Claimant (see page 508 and 509 of the Hearing bundle) as follows:

"Only because Mark is also working with some retailers through his SI's, some of which are likely to be at the event.

It seemed only right to check with Jason rather than to make the decision myself."

395. The Second Respondent also replied to the Claimant as follows:

> *"Nicky*
>
> *I discussed this with Justine on Wednesday and confirmed that you would support. However, I suggested if you were not available we should look at an alternative as it would be great experience for Mark.*
>
> *Your call".*

396. The Claimant attended the Descartes event. As far as we are aware, Mark Vatcher did not.

397. That reply from the Second Respondent appears to us to be a perfectly reasonable response and explanation to the Claimant in respect of the point that she had queried as, of course, equally was the reply that she had received from Simon Jones.

398. Despite the explanation that she had received, the Claimant continues to maintain that the Second Respondent had not wanted her to attend the event and had wanted Mr. Vatcher there in preference. That was clearly, when one looks sensibly and objectively at the email responses, not the case. This is

merely again an example of the Claimant seeing conspiracy where there was none.

399. Again, we should perhaps also observe that if, as the Claimant contends, the Second Respondent was bullying and harassing her and setting her up to fail, it appears to us questionable as to why he would have put her forward to attend the Descartes event in the first instance.

The Grievance

400. On 8th September 2016 the Claimant wrote to Caroline Spain to raise a grievance against the Second Respondent.

401. The relevant parts of the Claimant's e-mail said this.

> *"Following on from our meeting with Jason, I am now requesting a formal meeting with HR to discuss how this can be resolved. The situation is worse than ever and I now feel that I am being undermined in front of my colleagues and bullied within the workplace.*
>
> *His behaviour towards myself includes accusations concerning my performance and undermining me in front of colleagues and peers. His general demeanor towards me and his manner of which he speaks to me I am now finding unbearable as I am now feeling threatened and intimidated by him.*
>
> *This means that I am effectively feeling unable to work with him and is affecting my well being."*

402. Caroline Spain replied to the Claimant the following day to confirm receipt of the email and that she would get back to her with regards to the next steps. She did so a few hours later saying this.

> *"Hi Nicola*
>
> *I assume from your e mail below that you wish to raise a formal grievance so please find attached the grievance policy and please complete the attached grievance form and return it to me.*
>
> *We will then arrange for your grievance to be heard but as I was involved in your previous conversation with Jason I will not with the HRG supporting this as it will be someone independent plus an independent manager."*

403. Caroline Spain chased that matter up again on 22nd September 2016 as she had not heard from the Claimant with completion of the relevant grievance forms (see page 512 of the Hearing bundle). The Claimant replied on the same day to say that she had been taking advice and attaching the duly completed grievance forms. It is accepted on behalf of both Respondent's that that

grievance amounted to a protected act within the meaning of Section 27 EqA 2010[9].

404. In the meantime, the Second Respondent had also raised his further concerns about the Claimant's performance with Caroline Spain on 20th September 2016. He had of course been in communications with her relating to the Claimant and the proposed PIP process and so we do not find it unusual that he had continued to keep her appraised of his additional concerns. His email to Caroline Spain said this (see page 515 of the Hearing bundle):

> *"Caroline as you know I have been requesting pretty standard information from Nicola for some time and at our last informal meeting she agreed to pull together the SEA decks for her targeted account list, the emphasis has been on Next which has now been running for over 12 months. I have subsequently asked for a follow up meeting which was scheduled for Wednesday 17 Sept @ 14.30 hours.*
>
> *At that meeting it became apparent that she hadn't completed any of the tasks requested and I suggested that we needed to set up an alternative time and date to map out the plan. Nicola then booked a meeting which wasn't essential and cancelled our appointment at short notice. As I discussed on the phone she has now sent through an email advising that she is not prepared to meet with me to present the account management documents.*
>
> *As a result, could I ask for your guidance as to who she would pass this process to ensure we have a 3rd party involved while Nicky presents her strategy and recovery plan.*
>
> *She hasn't yet sent through a copy of her schedule so I would propose Friday 23rd any time to work around you, or 29th AM as its very difficult for me to meet with her through the next two weeks."*

405. There is nothing at all to suggest that at that time the Second Respondent knew that the Claimant was intending to raise a grievance against him or what that grievance might encompass and we accept that his email was generated because of his continuing concerns about the Claimant. In fact, as we shall come to the Second Respondent was not made aware of the fact that the Claimant had raised a grievance until 22nd September 2016 and then he was not aware of the substance. The first time that he discovered that position and that it related to a complaint of discrimination was on 9th November 2016 when he attended a grievance investigation meeting.

406. As indicated above, the Claimant completed the grievance forms that had been sent to her by Caroline Spain in order to commence the formal process. The Claimant's grievance was extremely lengthy and we do not consider that it is necessary to set out the entire text here. It appears at pages 518 to 524 of the hearing bundle and we have paid careful regard to the content during the course

[9] See paragraph 20 of Mr. Purchase's Skeleton Argument on behalf of both Respondents.

of these proceedings. The Claimant's grievance included the following allegations which the Claimant contended were instances of bullying and intimidating behaviour:-

(i) Raising his voice and shouting, including in front of colleagues;
(ii) Speaking to her in an aggressive and demeaning way, again also in front of colleagues;
(iii) Arranging retail shows and retail meetings and purposely not inviting her;
(iv) Overlooking and dismissing her opinion when she requested accounts;
(v) Allocation of accounts to non-retail account mangers; and
(vi) Constantly disbelieving her and questioning her behaviour. She made a reference in respect of this allegation that that was behaviour which male colleagues did not receive.

407. The Claimant also included within her grievance what she termed as sexually intimidating behaviour which she said included the fact that she was targeted due to her gender and that meetings would be arranged when she could not attend due to family commitments such as on Sunday afternoon and evenings. This, we are satisfied, was a reference to the Morrison's presentation in Bradford to which we have already referred above.

408. Also included within the grievance was an allegation that the Second Respondent had professionally undermined her by questioning her work in front of peers; attempting to gain information from colleagues and undermining her position; contacting clients and partners without her knowledge; discussing her performance and role with her colleagues; purposefully jeopardising potential projects and reprimanding her for using her initiative. The grievance included complaints in respect of several accounts, including not being allocated accounts that she had requested, and an assertion that the PIP process had been raised on the basis that she had raised a formal complaint against the Second Respondent.

409. The Claimant also set out that she felt bullied and victimised and that as the Second Respondent behaved differently with male colleagues, she believed that the treatment complained of was as a result of her gender.

<u>Request for a change of line management</u>

410. During the course of the grievance process, the Claimant continued to liaise with Caroline Spain and as part of that she requested that Tim Alden, the Channel Account Manager, become her line manager in place of the Second Respondent. That request was ultimately refused. We accept the evidence of Caroline Spain that she referred the matter to Emily Simmonds, HR Director, and that the request was also referred to and discussed with Lynn Mitchell, Legal Counsel for the First Respondent, who took the decision that the request should be refused. There is no evidence whatsoever that the Second Respondent had anything to do with the matter.

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411. Whilst, as we shall come to below, Mr. Alden was allocated to manage the handover of the Claimant's accounts after her later resignation we accept that it would not have been practicable for him to have line managed the Claimant during the course of her employment. Particularly, Mr. Alden would have had to refer issues to the Second Respondent in all events given that he himself was line managed by the Second Respondent and, as Channel Account Manager, did not have any responsibility for overseeing the enterprise accounts that the Claimant was working on.

412. As it was, we accept from the evidence before us that the Second Respondent was asked to limit contact with the Claimant during the course of the grievance process and the Second Respondent adhered to that suggestion.

413. There is nothing at all before us to suggest that the decision taken by Emily Simmonds and thereafter ratified by Lynn Mitchell had anything whatsoever to do with the Claimant's sex.

Meeting on 4th October 2016

414. As we have already observed above, the Second Respondent had become increasingly concerned over the Claimant's performance given issues such as her position with her targets, concerns that had been raised by clients and other colleagues, her reluctance to meet, failure to attend team and other meetings and the failure to supply account information and SEA documentation in the required format. She had also supplied him with an account list that he had expected would set out her strategy which had amounted to a list with one word or one sentence placed next to the name of the customer. This was not the approach that he wanted or expected and it caused additional concern.

415. He had therefore determined that the Claimant should be placed on a PIP. The Second Respondent emailed the Claimant on 3rd October 2016 setting up a meeting, at which Caroline Spain of HR was also to be present, for 7th October 2016. Although it was not expressly said so to the Claimant in that email, the Second Respondent intended that meeting to be an informal PIP meeting. That meeting did not, in fact, proceed as it was held in abeyance so as to enable the First Respondent to determine the Claimant's grievance (see page 540 of the hearing bundle). The Claimant was in fact never formally placed on a PIP.

416. We would note that the Second Respondent specifically convened the meeting at a time convenient to the Claimant to ensure that she was able to drop off and pick up her son from school and that was referenced in his email. That does not appear to accord with the Claimant's allegation that the Second Respondent would arrange meetings (for example the Bradford meeting) so that she was unable to attend or it was difficult for her to attend because of childcare.

417. The Second Respondent did, however, have a meeting with the Claimant on 4th October 2016. Caroline Spain attended that meeting, albeit not in person but via a dial in on a conference call. During that meeting, the Second Respondent informed the Claimant that he intended to place her on a PIP but that was simply a precursor to the meeting that at that stage had been planned

for 7th October which was to be the start of the PIP process. The Claimant was not, however, placed on a PIP at this or any other meeting.

418. Moreover, we are satisfied that having regard to the significant and legitimate concerns that the Second Respondent had by this time over the Claimant's performance (and which we have already referenced above) it was not unreasonable or indeed unusual for him to have sought to commence the PIP process. We are satisfied that this was not done out of any dislike for the Claimant or for any reason to do with her sex but simply because her performance was found wanting. We are satisfied that had Andrew Jackson not significantly improved and turned around his own performance after issues being raised by the Second Respondent then he too would have been taken down the PIP route.

The grievance meeting and process

419. John Abbott, Field Service Manager, was appointed by the First Respondent to deal with the Claimant's grievance at the first stage and he was assisted in doing so by Nicola Lloyd of HR. She took the role to assist given that, by that stage, Caroline Spain had stepped away from the process given that she had been present at the earlier meeting between the Claimant and the Second Respondent on 19th July 2016.

420. The grievance meeting took place on 11th October 2016 and following that meeting the Claimant sent additional evidence to Nicola Lloyd and John Abbot in support of her grievance issues. In November 2016 she chased for updates and also continued to communicate with Ms. Lloyd to inform her and Mr Abbott that she considered that the Second Respondent was, amongst other things, trying to discredit her and that she wanted the grievance process to be resolved as soon as possible.

421. The Second Respondent was not interviewed by Mr. Abbott until 9th November 2016 and we accept his evidence that until that point he did not know what the substance of the Claimant's grievance was about and, in particular, that he did not know that it contained a complaint of discrimination. He had been informed by Caroline Spain on or around 22nd September 2016 that the Claimant had raised a grievance, but we accept his evidence that he was not told about the substance of the complaint at that time.

422. We accept that he was told about the substance for the first time at his meeting with Mr. Abbott and that when he discovered that the grievance contained allegations of discrimination that that came as a shock to him.

423. Following that meeting, the Second Respondent also provided further information to Nicola Lloyd and John Abbott. That was an extremely lengthy document and we do not therefore set out the content in full here. Within that document, however, the Second Respondent outlined his surprise that the Claimant's grievance had been based on bullying; constructive dismissal and gender discrimination and that supports his evidence that prior to the meeting, he

had not been aware of the specific content or allegations made in the grievance letter (see page 592 of the hearing bundle).

424. Part of that reply from the Second Respondent said this.

> *"I genuinely believe that Nicola has very limited respect for Honeywell, her colleagues and our customers. Nicola had decided to take the approach that she will run the business in her way, which is totally different to what we are trying to foster with the development of our long-term strategy. She has gone against many of the standard processes which we have tried to create, our aim being to give senior management team the ability to look at any account using the standard documentation.*
>
> *It is evident when colleagues disagree with her, or do not work in the way that Nicola has decided, then she responds in an aggressive way; an approach I have seen with her line manager, colleagues and our partners. I have received comments from the partner community that they cannot understand why Nicola is being allowed to represent Honeywell.*
>
> *The UK team have recently suffered a significant loss with the death of their Regional Director and friend, Jeff Taylor. We have all worked together in a spirit and ethos, which I find inspirational, to not let this have an adverse impact upon the team and we have set out to make sure we achieve the UK revenue goal. Nicola is the only member of the team that hasn't picked up or understood this ambition and she has been an extremely divisive individual."*

425. We accept that that represented the genuine belief of the Second Respondent regarding how the Claimant had conducted herself.

426. The Second Respondent also set out details of the Claimant's targets as against those with other members of the team, which demonstrated that she significantly behind target. He also referenced her reliance on partners, with particular reference to the Barcode Warehouse and to the AS Watson situation. In respect of the latter, he attached a copy of the text message which Luke Webster had provided to him from the Claimant stating that the management team were trying to divide them. He also referenced inappropriate communications with ScanSource, which we deal with further below, and raised issues about the Claimant's whereabouts and punctuality.

427. In respect of the allegation of gender discrimination, the Second Respondent said this.

> *"You suggested that Nicola had accused me of gender discrimination as I was more prepared to listen to a male member of the team rather than her regarding the RFID opportunity with Next. I am particularly disappointed by this accusation as I have a very positive relationship with the other female members of the team and at no time have my issues with Nicola ever related to the fact she is a woman. I am looking to support all team*

members in working together to achieve our goals irrespective of their gender.

The facts are that I have known David Evans, the Managing Director of TBW, for many years. I asked Nicola to explain why she had approached this partner without discussing the position first with her line manager. I asked her to stand down as I am aware that we have been working in the US on a new confidential RFID strategy with Hank Stevens and Mike Nicholls as the senior team. I explained it was not the right time to engage with David Evans as he has a very close relationship with our competitors Zebra and the HON senior team in the US is working on a strategy as to whom they will work with as our long-term partner. They are aware of TCS and Nordic who were also being considered. Nicola should not have approached this partner directly unless we had discussed the plan as a team."

428. Following investigations being undertaken, Mr. Abbott sent the Claimant an outcome letter dismissing her grievance. We deal with the content of that letter further below.

The 5th October 2016 Team Meeting

429. On 25th August 2016 the Second Respondent wrote to the Enterprise Team to arrange a meeting to review all UK Enterprise accounts. We accept that this was an important issue to the Second Respondent who considered it a helpful position if those within the team were able to share where they were up to with their own accounts and also share knowledge and experience in the sector which might in turn benefit other members of the team in progressing their own accounts.

430. We accept that the expectation of the Second Respondent was that all members of the Enterprise Account team would attend the meeting and the importance and purpose of the meeting was set out in his email of 25th October, which said this:

"Team Enterprise ☺

I have now been able to meet you and could I thank you for taking time out of your schedule to share the current account updates. Following these meetings I would like to propose that we implement a Project Review meeting for all UK enterprise accounts.

The objective is to discuss as a team the current status of the accounts, how we are performing and what support you may require from the extended team. I would like to propose that we cover with each account manager 6 accounts, a deep dive into 3 accounts and then 3 at a high level with more of a helicopter view of the account. I know we have a number of changes coming down the pipe line and I would like the UK to be ahead of the game for account management and share the rest of EMEA how we manage our large accounts.

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Today we do not have a dedicated document and I notice some of you use different forms of media, however I feel we should utilise the SEA deck as a planning tool to start capturing the majority of new information. Please use the SEA as your platform and utilise the opening questions, it is an overview of each account we are looking for and none the project. If you have 2 projects running for an account, please don't complete two SEA decks, use what you need from the platform.

I would like to propose we have the first session on 5th October. I will send through a draft of the running order as the plan would be to have each account manager cover their accounts with the SA and Service team representatives. I have cc Tim[10] if he would like to join the session to cover the channel support as required."

431. The Second Respondent followed up that initial email on 29th September 2015 to set up an agenda, which included a presentation from the Claimant and other members of the team. Although he was not scheduled to make a presentation, we accept the evidence of the Second Respondent that another team member by the name of Rob Page was also expected to attend the meeting. That is also evidenced by the fact that Mr. Page was a recipient of the 25th August email (see page 527 of the hearing bundle) and the fact that he later emailed the Second Respondent upon receipt of the agenda to say that he and the Claimant would not be able to make the meeting as they were due to meet with the Co-op, another client of the First Respondent, at 11.30 a.m on the day of the team meeting. A few days later the Claimant, who was away on annual leave at the time that the agenda was received, also emailed the Second Respondent to say that she and Rob Page were meeting with the Co-op in Manchester and that that appointment could not be rearranged as they had already cancelled once already. Again, therefore, the result was that neither was able to attend the scheduled team meeting.

432. The Second Respondent replied to the Claimant as follows:

"Thank you for your e mail and as you can appreciate this is disappointing.

I have allocated some time on Tuesday around the Sales Meeting to enable us to discuss the position.

I would also like to confirm the e mail you sent just before your vacation, can you please clear your diary as I have scheduled a meeting with you on Friday 7 @ 11.45am at the Bracknell office. I am proposing this time to ensure that you have the ability to drop of your son and return to pick him up. I will also drive to the office to enable Caroline to join us and she has confirmed the same.

I look forward to meeting with you later this week".

[10] This is a reference to Tim Alden, the Channel Account Manager.

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433. We accept the evidence of the Second Respondent that he was concerned about the Claimant not attending the team meeting given that this was set against a backdrop of him having sought, for some time and without success, to meet with the Claimant to discuss her accounts.

434. The Second Respondent sent an email to the team, including the Claimant and Rob Page, on 3rd October 2016. That email, which appears at page 531 of the hearing bundle, said this.

> *"All*
>
> *I would like to follow up on feedback I have received around our Wednesday meeting. It is disappointing that we will not be able to review the Enterprise Accounts as a team. It is very important if we are to be successful across our enterprise business that we work together to create a close group that understands each other's accounts and what's required to close out the larger deals. This will be more and more relevant when the extended Honeywell teams start overlapping and we join our colleagues within Intelligrated and Moviliser.*
>
> *It is also more important to me personally that we will review the account as a team, giving the account manager away to reflect, step back and look at what could be missing, improved or agree that all lights are green. This should always be performed as an extended team to help deliver a successful result and if any SA gets asked a question from the customer they are just as aware as the account manager. It is one of the key differentiators that Honeywell can show against our competition and we will always come through to the customer.*
>
> *I do appreciate and understand the work load and your commitment which I would like to thank you for. However, if we propose a session with over one month's notice, I would appreciate you blocking this out of your schedule and making yourself available."*

435. The email also set out a new running order for presentations by the Enterprise Account Managers who were attending the meeting. That omitted the Claimant of course given that she had informed the Second Respondent that she would not be attending the team meeting.

436. The Claimant contends, as is set out in her handwritten note at page 531 of the hearing bundle, that this email was designed to make an example of her. This is, however, quite clearly not the case. The Claimant was not specifically named in that email and the position about non-attendance applied as equally to Mr. Page as it did to her. Whilst the Claimant was perhaps more noticeably absent than Mr. Page given her removal from the running order set out in the email, there was little realistic option but to revise that running order so as to notify the remainder of the team what the schedule for their presentations now was. It is simply not accurate to say that the Claimant was made an example of by way of this email.

437. We are satisfied from that and from the Second Respondent's explanation that the purpose of the email was to make it clear that meetings of this nature where sufficient notice had been given should be attended as a priority. Given that the Second Respondent had made it plain as early as 25th August that he wanted to schedule a team meeting for 5th October, we find it difficult to understand why both the Claimant and Mr. Page made alternative arrangements for that date.

438. We are therefore unsurprised that the Second Respondent sent his email in the terms that he did and, again, given that it did not name the Claimant there can be no reasonable suggestion that it singled her out any more than it had Mr. Page.

The ScanSource email exchange issue

439. ScanSource were an important partner of the First Respondent and we accept that they were one of the largest, if not the largest, partner with whom they worked. ScanSource therefore held a great deal of importance to the Second Respondent and it was crucial to maintain a good relationship between them.

440. Unfortunately, despite that position in the Claimant entered into what might perhaps best be described as an ill-advised email "spat" with Steve Pike, the ScanSource Sales Team Leader in the UK and Ireland.

441. We consider it necessary, in order to give the context, for us to set out the full email exchange in that regard.

442. The Claimant made the initial contact with Mr. Pike and the exchange in this respect went as follows:

> *"Hi Stephen*
>
> *I understand that you were frustrated that I chased the order for Next and you suggested that I had been made aware of the order delivery date prior to my email Friday. Therefore please can you advise who you made aware of the delivery date and when this was, as neither myself or TBW[11] who were aware of when the delivery would arrive.*
>
> *If I was aware of the date then I would not have been chasing the confirmation for the order. I have checked all emails from Phil and I have no confirmation of this order date.*
>
> *Many thanks for sending the order out so quickly but all I required was confirmation of timings for my customer."*

[11] A shorthand for The Bar Code Warehouse.

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443. Mr. Pike replied as follows:

"Hi Nicola

Please see some of my grievances below:

- In the first attachment you have stated 04/11 "we still do not have a visibility of the order within our order management" but in the email (2nd attachment) you sent to Phil on 03/11 states "I now have the PO numbers and can chase with Alex so you are contradicting yourself with your request?
- In the 1st attachment, you have had to clarify the urgency of this order, when we ScSc are well aware of the urgency of this order and have done everything to facilitate this. I don't feel you needed to state a point that we are all very well aware of.
- I thought following our meeting the other week, we had built a level of communication and if you needed such information quickly, couldn't you have called me? I have stated over and over again to you that I am the point of escalation and will resolve any issues you have. Instead you copied in both Tim Alden and Jason Burrell in an e mail where there was no need to include Management let alone your Exec Management. As you know George and Erin were dealing with this and dealing with it correctly with ScSC and TBW.

I hope you can see from my comments above why I was very frustrated with the latest turn of events.

In the future please just call me and hopefully such issues can be avoided."

444. Despite the fact that relations with this partner were clearly important to the Respondent, far from seeking to adopt a conciliatory approach which would clearly have been the sensible stance irrespective of whether the Claimant believed Mr. Pike to be in the wrong, she replied in what can only be described as inflammatory terms as follows:

"Stephen

I was not contradicting myself at all, if you see the email that I sent to Phil after the one yours stated, (sic) I informed him what the PO's on the email was off a previous Order and not for the required order.

I was informed by Phil that you'd not have them in stock and therefore had to be ordered from ourselves. I spoke to our order management and they did not have visibility of an order from yourselves, hence the concern.

Although then the scanners had been delivered this week when I was told they were out of stock?

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I required delivery dates of the kit, therefore had to chase yourselves as the PO could not provide me with the delivery date, which is what I required to inform Next. Is this a (sic) unreasonable request?

I emailed your order management for an update and left messages for Erin and Georgina but still not (sic) reply and no date.

At no point did you provide myself or TBW with a delivery date therefore had to chase. The first information I had was from Tim on the Friday morning, which was only after I had to escalate it.

I am doing my job requesting delivery dates, as that's what my customer required and to be accused of jeopardising the relationship again is unacceptable."

445. Mr. Pike responded as follows:

"Hi Nicky

You have ignored my second 2 points about how you have worded your email and not tried to communicate things directly to me, ie. by calling me.

I am not getting into an argument over this and just wish to re-iterate, if you have an issue or an escalation please call me"

446. Again, clearly rather than entering into ongoing dialogue it would have been sensible for the Claimant to have left matters there so as to not potentially damage relations. However, the Claimant evidently felt compelled to reply and did so in the following terms:

> *"I understand your frustrations and I should of called you but I have been told that's what Erin is for and also Phil is the Account Manager and it should of come from him?*
>
> *It doesn't change the fact that I was not informed of delivery after numerous requests nor TBW. It shouldn't be that hard. Also to be accused of jeopardising the relationship to me has made me question where I place for future orders."*

447. We accept the representations of Mr. Purchase on behalf of the Respondents that the Claimant was effectively threatening ScanSource that no further business would be placed by her. Whilst the Claimant denies that, there can be no other reasonable interpretation of what the she had said in that email regarding the placing of future orders. It was inflammatory and in our view highly inappropriate given the nature of relations between the First Respondent and ScanSource.

448. Unsurprisingly, Mr. Pike responded to that email and he said this.

> *"As I have said in my previous email I don't want to get into an argument about this and it seems you cannot drop this point.*
>
> *I am copying in George and my boss Darren, as I have made this point and if this needs to be taken higher it can be but I am not wasting any more of my time in regards to this.*
>
> *I have stated my case, proved you are contradicting yourself and now your are threatening about placing business elsewhere so hence I am escalating this to George and Darren."*

449. The Claimant, again perhaps rather unwisely, still did not leave matters at that and sent a further response as follows:

> *"Stephen*
>
> *I am not threatening anything but to be accused of jeopardising a relationship again makes me concerned about working with you, all I wanted to understand was exactly what had gone on.*
>
> *I also didn't contradict myself as a PO who cannot inform me of when the order would arrive? All I required was an order delivery date, which we did not get and therefore I do not feel it is unreasonable to request this and to escalate if we do not get a response."*

450. Again, we must observe that the content of that email was clearly inflammatory. The Claimant persisted in ongoing dialogue and also reiterated what, again, can only be perceived as her previous threat, about an ongoing working relationship.

451. In an attempt to rescue what had clearly become a heated situation, Georgina Lamb, the Distribution Manager for the EMEA Team acknowledged Mr. Pikes' email reassuring him that the situation would not impact upon how business was directed, that the Second Respondent was aware of the situation and that the matter would be managed internally. He was also thanked for his understanding.

452. The Second Respondent had been made aware of matters by Georgina Lamb who emailed him on 4th November passing on details of a complaint that had been made by Mr. Pike following his communications with the Claimant in which he had asked that the Claimant be spoken to about her approach to ScanSource and how she was dealing with matters. Mr. Pike expressed his frustration at the Claimant's approach. Ms. Lamb sent a copy of that complaint to the Second Respondent indicating that the "challenge" was the way of working with the Claimant, her miscommunications and unnecessary escalations.

453. As a result, the Second Respondent sent an email to Georgina Lamb; the Claimant; Erin Townsend and Tim Alden to seek to arrange a conference call to discuss the situation. In our view, that is not an unreasonable approach given the heated exchange between the Claimant and an important partner of the First Respondent.

454. The Second Respondent's email said this:

> *"All*
>
> *I would like to follow up on feedback I have received based on our partnership with ScanSource. I am concerned with the current approach and feel that we may be damaging the strong the relationship we have fostered over the past few months with their teams. I would like to understand and agree the process to ensure that it is working correctly and how we can improve the line of communication into our partner.*
>
> *Apologies for the short notice, I have sent for an invitation for later today with the objective to resolve this issue and ensure that our approach is consistent."*

455. The Claimant's witness statement at paragraph 89 contends that that email stated that she had jeopardised relationships with ScanSource. This is another example of exaggeration or misinterpretation by the Claimant as it said nothing of the sort. Despite the fact that the Claimant clearly had caused significant difficulties as a result of her communications with Mr. Pike, the Second Respondent did not single her out or name her in that email. It was a measured and perfectly understandable email given the circumstances.

456. The call took place on 4th November 2016 as scheduled by the Second Respondent. Following that call, the Claimant emailed Georgina Lamb and Erin Townsend in the following terms:

> *"I've thought long and hard over the weekend following the call on Friday and I have checked all e mails that was sent between myself and Phil and I can come to no conclusion to your allegations. I would therefore request that you please explain via email, in full detail, where you feel that I was at fault this week and to warrant your accusations.*
>
> *Out of courtesy I called Phil on Monday to inform of the pending order and the issues that we are having with the firmware and he was fully up to speed on the process. I also called you both for support on the project around 8.30am Friday morning, with no response from either of you, therefore had no alternative but to escalate the issue as a date of delivery or order was required.*
>
> *As per previous accusations, I feel that you have no justification and are completely underhand to accuse me of jeopardising the relationships between ourselves and Scansource. Fortunately I*

> *have kept all emails as evidence of this. I acted on behalf of the real customer Next and the partner ordering the kit and therefore to be spoken to in such a way for doing my job, is unacceptable.*
>
> *I would also request that you forward to me the email that was sent for Phil on Friday, along with any other evidence that was mentioned on the call. If you do not feel comfortable sending this to myself, then I will supply details of an HR contact and you can send this direct to her. Please note this is not Caroline Spain.*
>
> *I also do not have any issues with order management or any other distributors, therefore I feel that for the immediate future until this can be resolved I place all my business direct cutting out any possibility of your accusations.*
>
> *I would request that you send the evidence over within a timely manner, as I will be discussing this with HR next week."*

457. It is clear from that email that the Claimant had problems in her relationships not only with the Second Respondent but also with others including Luke Webster (as a result of the AS Watson issue); Mr. Pike of ScanSource, Georgina Lamb and Erin Townsend. The Claimant does not accept any responsibility for those matters are considers that it is the others that are at fault and it is representative of a course of inappropriate conduct directed towards her. In some cases, the indirect blame for that is laid at the door of the Second Respondent. For example, in the case of Georgina Lamb the Claimant contends that she acted as she did on account that her boyfriend was a former close friend and colleague of the Second Respondent (see for example page 585) and Ms. Townsend was a close colleague of his. That latter assertion does fly somewhat in the face, however, of the Claimant's general contention that the Second Respondent does not like working with women. Her assertions, we are satisfied, was simply part and parcel of the Claimant being unable to accept her part in the events of which she complains or her own shortcomings.

458. Indeed, we are entirely satisfied that anybody else who had written such communications to a relatively senior contact at one of the Respondent's most important partner organisations would also have been taken to task for that matter and treated in precisely the same way as the Claimant. In fact, given that the Claimant had made an indirect threat regarding placing her business elsewhere on two occasions when communicating with Mr. Pike, had it been the case as she contends that the Second Respondent wanted to remove her from the First Respondent organisation, these communications would have been a good opportunity for him to have commenced disciplinary action. Although the Second Respondent escalated the matter to HR for advice (see page 585a of the hearing bundle) he did not propose disciplinary action against the Claimant.

459. We should observe that the Claimant claims as part of these proceedings that the Second Respondent "screamed" at her during the call on 4th November 2016. It is perhaps noteworthy that her email made no such reference to any such behaviour. We are again satisfied that this is simply further exaggeration on

the part of the Claimant of being, quite legitimately, taken to task for her frankly astonishing exchange with Mr. Pike. In view of her exaggeration or spin as to the content of the email at page 580 of the hearing bundle to which we have referred above and the lack of any reference to being "screamed at" in the communications to Ms. Lamb and Ms. Townsend, we prefer the evidence of the Second Respondent that he did not act inappropriately during this conversation.

460. We are satisfied that the Second Respondent did not "scream" at her at this point or, indeed, at any other and the Claimant has again exaggerated that position given that she cannot accept criticism of her conduct or performance, even where that is legitimate.

461. Having viewed the Claimant's exchanges with Ms. Lamb, Ms. Townsend and Mr. Pike particularly, it is clear to us that at best, they were extremely ill-advised and inappropriate and it is difficult not to see the strength of argument of the Second Respondent that in his view they were completely unprofessional. We accept that the Second Respondent was very concerned as to the content of the Claimant's emails to Mr. Pike and that this served to give him further doubts about her performance and conduct in her role as Enterprise Account Manager. We are also satisfied that the content of such correspondence gives credence to the account of the Second Respondent that he had received reports from partners and from other members of staff that they found the Claimant difficult to work with.

462. We have little doubt that the Claimant was struggling and that deep down she was aware that she was out of her depth in the Enterprise Account Manager role and that no doubt fed into the defensive and heated nature of her communications in this and other instances. However, we accept that the content of such communications and the possibility of damage to relationships with ScanSource were understandably of considerable concern to the Second Respondent.

<u>The Claimant's sickness absence</u>

463. On 24th November 2016 the Claimant obtained from her General Practitioner a Statement of Fitness for Work ("Fit Note") for a period of one month citing stress at work (see page 597 of the hearing bundle).

464. The Claimant did not submit the Fit Note on that day but the following morning, 25th November, she telephoned the First Respondent to report her absence. She spoke to Tim Alden as the Second Respondent was absent on annual leave on that day and later submitted the Fit Note. We accept the evidence of the Second Respondent that he knew nothing about the Claimant having telephoned in sick or having submitted the Fit Note at the time that he sent her an email later that day regarding the loss of the Next account.

465. That email had followed on from communications as to the loss of the Next account the previous day. That exchange had said this:

> *"Nicky*
>
> *I have been informed that we have lost Next? Could you please advise if this is correct and give the team some background."*

466. We accept that Next was a significant client of the First Respondent and that the Second Respondent was concerned to note that the account, one for which the Claimant was responsible, had been lost. We also accept that he was concerned that the Claimant had not informed him about that herself given the importance of the account and the fact that he was her Line Manager.

467. Furthermore, there was nothing at all wrong with the tone or content of the email. For a loss of a large account, we do not consider it unusual that the Second Respondent would seek confirmation from the Claimant about whether that was correct and ask her to feed back to the team. We remind ourselves that the Second Respondent made it a point to share information within the team as a learning point for all concerned.

468. The Claimant replied to the email from the Second Respondent the same day and forwarded an email from Miles Warriner of the Barcode Warehouse that had been sent to her early the previous day advising her about the loss of the contract.

469. The Barcode Warehouse were of course a partner working with the First Respondent and again the Second Respondent was concerned that the Claimant had found out about the position from a partner when Next was an Enterprise Account and the Claimant should have been liaising closely with Next.

470. The Second Respondent replied to the Claimant's email early in the morning on 25th November 2016. In that email he expressed his shock about learning about the loss of the contract from the Barcode Warehouse, the fact that he wanted the Claimant to set up a meeting with Next to understand their position directly and that she should complete a large loss review in a reply to the Claimant's email sent the following day. Although the email was sent early in the day, it appears that that was likely to have been after the Claimant informed Mr. Alden that she was absent on the grounds of ill health.

471. However, we do not accept the Claimant's account that that email had been sent deliberately at a time when the Second Respondent knew that she was absent from work under a Fit Note and suffering from stress. We accept that he did not know that at that time and she had of course reported her absence to Mr. Alden and not the Second Respondent. There is nothing to say that he knew about her being off sick at the time that the email was sent. Moreover, the content of the email was understandable and businesslike in tone given the loss of a significant account. It was not bullying or aggressive as the Claimant contends.

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472. The Claimant replied, in a manner which was perhaps somewhat confrontational (although we acknowledge of course that at this time she was suffering from stress) advising the Second Respondent that she was off sick and setting out her views as to why the account had been lost. The Second Respondent, having now been made aware that the Claimant was off sick, did not reply further.

Solicitors letter and resignation

473. On 25th November 2016, Mrs. Harrison, who by that stage had been instructed to act for the Claimant, wrote to the Firsts Respondent complaining about the treatment that it was said that the Claimant had received from the Second Respondent; the fact that she still had to continue to work with him and the fact that she had not yet received a resolution to her grievance (see pages 603 and 604 of the hearing bundle).

474. That letter was acknowledged by Lynn Mitchell, Legal Counsel for the First Respondent, on 7th December 2016 timed at 12.53pm (see page 163 of the hearing bundle).

475. The email said this:

> *"We refer to your letter of 25 November 2016 regarding the above which has been passed to the Law Department for a reply.*
>
> *Please ensure any further correspondence is with the undersigned.*
>
> *As Ms Mercer has made a number of allegations which are currently being investigated by an independent manager via our internal grievance process, it would be inappropriate to comment on the contents of your letter pending that entire process concluding."*

476. The email of course makes reference to the fact that the Claimant's grievance was still being investigated. The grievance outcome letter, which was sent to the Claimant the following day, appears at page 605 of the hearing bundle and it is dated 25th November 2016. However, it is clear that the letter was not sent to the Claimant on that date and we accept that this was the date on which the drafting of the outcome letter began. It was not finalised and sent to the Claimant until 8th December 2016 but the date of the letter was overlooked before it was dispatched. We deal with the outcome of the grievance further below.

477. In the meantime and the day prior to receipt of the grievance outcome, the Claimant gave notice to the First Respondent and tendered her resignation from employment. By the time that she did so, the Claimant had secured alternative employment elsewhere.

478. The Claimant's lengthy resignation letter appears at page 609 to 611 of the hearing bundle. It was sent at 21.09 which was after the point that Lynn Marshall had written to the Claimant's solicitor, Mrs. Harrison, in response to her communications of 25th November.

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479. We do not consider it necessary to record the content of the Claimant's resignation letter in its entirety here. However, the preamble to her resignation letter set out the following:

> *"I am disappointed and disgusted that I am left with no other option to provide to you my resignation due to the lack of acknowledgement or support of my grievance towards Jason Burrell."*

480. Clearly, the Claimant was saying at that stage that the reason for her resignation was the matter of her grievance and what she believed to be a lack of acknowledgment and support. The Claimant was, of course, aware that the grievance was being investigated and dealt with as the email to Mrs. Harrison the same day had also reinforced.

481. However, despite that being the Claimant's position at the time, she gave a differing explanation at the hearing before us as to why she had chosen to resign which was said to be the receipt of the email from the Second Respondent of 24th November 2016 which had been received while she was off sick.

482. The Claimant went on to reiterate the various heads of the grievance that she had raised and then to head a further section "constructive dismissal" under which she said this:

> *"Given the nature of the allegations, as made, I believe that Jason is attempting to force my resignation, as his behavior has made my position untenable within the company.*
>
> *Further, the firm itself, has failed to protect me from this behaviour, in its lack of response or action in response to my allegations made both informally in June 2016 and formally in the grievance made in September 2016. This has left me in a position where I continue to be bullied and victimised by Jason on a daily basis. The impact of this upon me has meant that my doctor has now signed me off work for 4 weeks due to stress.*
>
> *I have provided you vast evidence of Jason's bullying and victimisation and yet I have continued to be left reporting to him without any protection or support, even when I requested a change of manager.*
>
> *One such example is that even on Friday 25th November, I followed the company procedure advising that I will be on sick leave (as detailed above due to stress) and informed you at 7.30am, yet I received the bullying email from Jason shortly after this also including my colleagues within this email. Thereby perpetuating his aggressive behaviour.*
>
> *I have been forced to consult a Solicitor due to you lack acknowledgement or support with regards to the grievance and yet you have even ignored the basis of her letter and not responded to her requests, (please see attached) (sic).*

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I feel that this is unacceptable from a company such as Honeywell. I also now feel that the behaviour of both the Company and Jason have forced me into the position of submitting my resignation.

I am aware that my predecessor, Karen Hollingsworth, also experienced this type of bullying behaviour from Jason, behaviour that she also reported to you. However, despite being aware of that you left him to continue with his role and continue his bullying towards females within the Retail role.

I have been sexually harassed via text messages and bullied due to my gender and yet Honeywell still refuse to acknowledge this. I have now had to resign because of this.

As you have ignored by (sic) grievance towards Jason's Burrell and have failed to respond to the letter from my solicitor to request information, then I have no alternative but to pursue the matter further. I will therefore be contacting ACAS to start early conciliation."

483. Caroline Spain acknowledged the Claimant's resignation the following day and said this.

"I am writing to confirm acceptance of your resignation dated 7 December.

It is with regret you have chosen to resign prior to the grievance outcome being communicated to you.

It is not correct to say that Honeywell has failed to deal with queries from your solicitor. As you are fully aware, the company has being undertaken an independent investigation to the allegations you raised and it was therefore inappropriate, and not possible, for the company to reply to issues raised by your solicitor which were identical in nature to the issues raised in your grievance and, as late as yesterday, your solicitor was told the investigation was ongoing.

I note in your resignation letter some issues (specifically relating to text messages) that were not part of your original grievance. I have therefore asked John Abbot and Nicky Lloyd to discuss those new allegations separately with you. They will in the meantime respond to you on the original issues you raised as their investigation has concluded.

Your contractual notice period is 8 weeks and therefore your last day with Honeywell should be 31 January 2017 and not 7 February 2017."

484. The letter went on to say that the Claimant was to be placed on garden leave following a handover of her accounts. She was not required to hand over the accounts to the Second Respondent and for that brief period of time and for that limited purpose, she was allocated to the line management of Mr. Alden. The Claimant points to the fact that if there could be a change of line manager at

that stage, there was no reason why it could not have been done when she first requested that after submitting her grievance.

485. We accept, however, that that line management was for a significantly more limited period and scope than would have been the case when the Claimant had previously requested a change in line management following instigation of her grievance against the Second Respondent. The Claimant was not going to be undertaking any work and needed only to handover her accounts – a matter which Mr. Alden could easily facilitate. Had the change in line management occurred sooner, the Claimant would still have been continuing in her Enterprise Account Manager role but would have been reporting into a Channel Manager who in turn would and in all events have had to report in to the Second Respondent about the Claimant's accounts and activities. We accept therefore that there was a reasonable explanation for the change of stance as to the line management chain following the Claimant's resignation.

The grievance outcome

486. As indicated above, Mr. Abbott wrote to the Claimant in respect of the outcome of her grievance on 8th December 2016, albeit the letter was incorrectly dated 25th November as we have already observed above. The letter rehearsed each of the complaints that the Claimant had made and set out Mr. Abbott's determination in respect of each of the issues.

487. Mr. Abbott did not uphold the Claimant's grievance. The decision is a relatively lengthy one and we do not set it out in full here but the following points formed the basis of the decision:

(i) Retail accounts were allocated as a result of relationships that were already in place such as allocation of Morrisons; Marks & Spencer and Sainsbury's on account of their dealings with Fujitsu;
(ii) The Claimant was the only one of the team in respect of whom SEA documentation was outstanding;
(iii) Specsavers was not believed to be one of the Claimant's accounts on the basis that there were differing account lists and it was believed that she had allocated it to her own list but it was never an agreed or approved account for her;
(iv) That there was no evidence that the Second Respondent had acted in an inappropriate way;
(v) The Claimant had not been forced to attend a meeting on a Sunday in Bradford as the Second Respondent had enquired if the team wanted to travel up the day before the presentation but that was not compulsory and he himself had not attended[12]. The Claimant was not treated differently to any other member of the team;

[12] Mrs. Harrison on behalf of the Claimant strongly submits that the comment that the Second Respondent made that he did not attend the meeting is such as to demonstrate a lack of credibility as he was at the Bradford presentation. She contends that he therefore misled Mr. Abbott. However, it is clear that on a sensible reading of the grievance letter the meeting that is being referred to that the Second Respondent did not attend is the pre-presentation meeting on the Sunday which he had proposed take place but never in fact happened.

(vi) That references made regarding Mr. Taylor could not be investigated as the Claimant had refused to discuss the issue or provide any further details;

(vii) It was not unreasonable for the Claimant to be asked to complete a standard SEA document in respect of the Next account and she had not been treated any differently to any other member of the team in respect of the demands placed upon her; and

(viii) The Claimant's primary and secondary sales targets were achievable and it was reasonable to place the Claimant on a PIP as a result of the metrics that she had achieved. That would have supported the Claimant to seek to improve her performance and standard practice to meet to discuss a PIP with a line manager without HR present had been followed.

488. Having regard to the evidence that we have seen that was before Mr. Abbott when he made his decision, those were reasonable findings and conclusions for him to have reached. We do not deal with those matters in significant further detail here, however, as the grievance outcome is not complained of as an act of discrimination and we have made our own findings in respect of each of the matters complained of in the context of the grievance within this Judgment.

489. The Claimant was offered the right of appeal against the decision that Mr. Abbott had taken and she was informed of the way in which she could exercise that right.

Grievance appeal

490. The Claimant subsequently exercised her right of appeal against the decision taken by Mr. Abbott and an appeal meeting was held with Jeff Maidment, the EMEA Business Operations Leader. In that meeting and in respect of the appeal generally, Mr. Maidment was supported by HR. That HR contact, Alison Campbell, had not previously been involved in the grievance process and nor had Mr. Maidment had any involvement in the issues at any earlier stage.

491. The Claimant was accompanied to the grievance appeal hearing by Tim Alden who had line managed her during the brief period of her handover prior to being placed on garden leave. The Claimant contends that the fact that Mr. Alden had attended to support her was indicative of the fact that negative perceptions of her that had been ascribed to him were inaccurate. We cannot find that that naturally follows. Mr. Alden could well have attended the meeting despite having made negative comments about the Claimant and we have not heard from him about that matter. It does not follow, however, that because he accompanied her he had not been critical of her to others.

492. The grievance appeal meeting took place on 5th January 2017 and a note of that meeting appears in the hearing bundle at pages 683 to 693. We accept that that note is a reasonably accurate account of what happened during the meeting.

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493. Following discussion with the Claimant in respect of her grounds of appeal, Mr. Maidment subsequently met with Caroline Spain on 10th January 2017 (see page 704 and 705 of the Hearing bundle); with Emmerson Whicher on 23rd January 2017; with the Second Respondent on the same date and with Paul Murphy and Rob Page on 24th January 2017. He was also provided with detailed written notes by the Second Respondent (see pages 774 to 791 of the hearing bundle). Mr. Maidment also considered in addition to interviews with those individuals documentation from the previous grievance process and account lists that had been provided to him.

494. The Claimant contends there has been collusion in respect of the accounts given during the course of the grievance appeal process. Particularly, it is her case that there was collusion between Emmerson Whicher, Rob Page and the Second Respondent in relation to the responses given to Mr. Maidment to the matters that he asked them about. There is, however, no evidence of that at all and it appears to us more likely than not that all three held similar views about the Claimant and the matters that they were being asked about.

495. Particularly, we accept Mr. Maidment's evidence that the details of what was going to be asked at his meetings with each of those that he interviewed were not made known to them beforehand and there is no evidence of any collusion between them in respect of their interviews. Whilst the Claimant points to the suggestion that the answers given were similar, that is more easily explained away as those opinions being the genuine views of each of them about the Claimant at the time. We accept that the Claimant may well find that difficult to accept but there is certainly no evidence of any collusion in respect of the process.

496. We are satisfied from the information before us that Mr. Maidment did a thorough job in investigating and considering the grounds of appeal that the Claimant had put forward. Having undertaken his interviews, Mr. Maidment made his decision in respect of the appeal which he communicated to the Claimant by letter dated 30th January 2017. The relevant parts of that letter said this:

> *"During the meeting you explained that you had previous relevant experience including 10 years' retail experience with O2 and you had also run your own retail business for a number of years. Additionally, you had also recently completed a business degree with the intention of using this to move to the next level in your career.*
>
> *I have reviewed the material provided to me, plus re-interviewed Jason Burrell and others in order to provide a fair and independent view of your case. A number of the items you cited in your grievance appeal were clarifications all related to your former manager, Jeff Taylor and I look into these to determine the context on where possible the sequence of events.*

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Timing of the original grievance letter and the update to your solicitor needed to be clarified

With regard to the date/timing of the original grievance outcome letter, the feedback provided to your solicitor and the timing of your resignation. I understand that the letter regarding the outcome of the grievance review was sent on the 8th December 2016 was incorrectly dated as 25th November. This was apparently clarified to in an email from Caroline Spain on 12th December 2016. This was a typographical error.

I understand your resignation letter was sent on 7th December at 21.09 but by no evidence that your resignation changed or bias the outcome of the grievance process.

Timing of when Jason Burrell was informed of the official grievance process against him.

My understanding is that Jason Burrell was informed verbally by Caroline Spain a few days after you lodged your formal grievance on 22nd September 2016. I have not been able to verify the exact date.

PIP timing. Determined when Jason Burrell was advised of the grievance against him and in fact timing impacted the proposed PIP.

To be clear there was no formal PIP process initiated.

My investigations found that a PIP had been discussed between Jeff Taylor and Jason Burrell due to your sales performance being significantly behind plan.

I agree there was an informal discussion informing you that it was being considered and was to have been formally initiated. Jason Burrell started talking to HR about placing you on PIP on the 16th August and confirmed to HR on the 30th August that this should proceed.

We understand from Jason that you refused to meet with him on a number of occasions and he was concerned to have HR present at those meetings. The inability to arrange the meeting with you and HR resulted in some delay and by 22 September you submitted your grievance.

That grievance contained allegations relating to Jason Burrell's management of you and it was felt inappropriate to commence the PIP process until such time as the grievance process had been concluded. The formal PIP meeting was cancelled and this was communicated to you on 6th October 2016 via e mail.

Allegations of sexual harassment

As you are aware Jeff Taylor has passed away. Allegations against him are therefore unable to be investigated and furthermore you have refused

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(despite several requests) to provide details about the alleged sexual harassment. Honeywell does not tolerate any form of harassment and if the allegations had been made at the time we would have had the full opportunity to investigate them.

You have refused to provide what you say were inappropriate text messages from Jeff Taylor.

Why certain accounts had been taken from you.

In my investigations I have seen several versions of the account list all of which were issued by Jeff Taylor in the early months of 2016, none consistent. However, Jason Burrell confirmed to us that he used the list to provided to him by yourself to him on 17th June 2016 to baseline the account management activities.

In my opinion the void created by Jeff Taylor's illness and eventual death did create a lot of confusion and misunderstanding but I am satisfied that no accounts were removed from you at this time. This was confirmed by all the witnesses I spoke to and I could find no evidence to substantiate your claim.

My understanding was that you were to manage the end user's expectations/demand for tier 2 accounts and a number of larger accounts such as Next and the Co-Op. As you had highlighted issues on the Next account I took the opportunity to review this specifically.

With regard to the Next SEA document, I reviewed your Next document against the sample and I did observe areas that were lacking in detail by comparison. The document did not provide a project plan or key contact information amongst other things. Jason could not have used your SEA to submit to the SPS leadership with key information missing. I understand the SEA is a standard process document on account $500K or over and had been used by a team for defining and sharing account information and opportunity reviews. Given the fact you work 5 - 6 months in 2015 to prepare your account plans the lack of detail in this specific example I believe is a significant concern. Everyone I interviewed expressed the same feedback the SEA documents is part of the standard process, with senior leadership visibility, and simply has to be followed.

I understand that Honeywell lost an opportunity with Next on price. When Jason Burrell requested further information on this loss he was unaware at that time of the morning that you had gone on sick leave. I can therefore find nothing inappropriate in Jason contacting you in circumstances where he was not aware of your sickness absence and the Manager to whom you have reported your absence had not, at that point, passed the information to Jason.

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Jason Burrell's attitude towards you regarding bullying and harassment

In reviewing the e mails provided to you by Nicola Lloyd during the original investigation and through discussion with other colleagues of yours I have found no evidence of bullying or harassment. In my opinion the tone and content of the emails from Jason Burrell was within the parameters of normal business correspondence. Again, I specifically sought feedback from the people you cited as witnesses and the feedback was that exchanges you had with Jason Burrell were in their view within normal business parameters. I do not find that Jason bullied or harassed you.

Request for a change of manager when your original grievance was raised.

I understand that you requested a change of manager on the 4th October 2016. This request was considered and it was determined that whilst the grievance process was ongoing, Jason would be asked to limit his contact with you. As the Manager responsible for the Retail Team it was not possible to move you completely out of his reporting line. The change of contact for you was implemented after you had resigned and for the purposes of handover only given the majority of your notice was to be spent on garden leave.

I confirm that the decision of this review is that I uphold the findings of the previous Grievance.

My decision is final. There is no further right of appeal."

497. The Claimant subsequently emailed Mr. Maidment and Alison Campbell of HR on 30th January 2017 to complain about the outcome of the grievance appeal. That correspondence was in fairly lengthy terms which is not necessary to replicate here. The Claimant was informed in response that she had already exhausted her right of appeal and there was no further appeal outstanding.

498. That was not an unreasonable position for the First Respondent to have taken as it conformed with both their own grievance procedure and also the relevant provisions of the ACAS Code of Conduct on disciplinary and grievance procedures.

499. Following the appeal outcome, the Claimant issued the proceedings which now come before us for determination.

CONCLUSIONS

500. Insofar as we have not already done so in our findings of fact above, we deal here with our conclusions in respect of each of the allegations that the Claimant makes in these proceedings.

501. However, we say a word beforehand specifically about the matter of direct discrimination in respect of issues which are germane to each of the 40 separate complaints of direct discrimination before us.

502. In this regard, firstly we remind ourselves that this is not a case of unfair dismissal whereby we would be judging the actions of the Respondent by reference to a test of reasonableness. In a case such as this it is not a question of unreasonable, or even unfavourable, treatment but of less favourable treatment.

503. Therefore, even in areas where there may be criticisms of the Respondents for aspects of their decision making, in terms of the direct discrimination aspects of the Claimant's claim we must be satisfied that any such issues amounted to less favourable treatment. We must apply those considerations to each complaint of direct discrimination which is before us.

504. We should perhaps begin our conclusions therefore by reference to the Claimant's overarching case that the UK Sales Team within the First Respondent and that the Second Respondent were inherently sexist and prejudiced against women and that the Second Respondent, particularly, did not like working with women and sought to remove them from positions of responsibility. That underpins much, if indeed not all, of the Claimant's complaints of discrimination.

505. For the reasons that we have already set out in our findings of fact above, we are entirely satisfied that there was no "sexist culture" within the UK Sales Team and that the Second Respondent had no prejudices against women nor did he have a problem working alongside them. There were clashes with the Claimant but that is no more on account of her sex than were the clashes which she also had with Mr. Pike of ScanSource, Luke Webster, Georgina Lamb or Erin Townsend.

506. Therefore, we are satisfied that there was no sexist or inherently discriminatory culture at play either within the UK Sales Team of the First Respondent or in respect of the Second Respondent.

Jurisdiction – the discrimination complaints relating to Mr. Taylor

507. We deal firstly with the complaints of harassment and direct discrimination which are levelled against Mr. Taylor. Those complaints relate to incidents in December 2015 and January 2016. It is clear to us that those complaints relate to isolated issues and cannot be seen as a continuing course of conduct. Having regard to the fact that early conciliation was not entered into by the Claimant until 15th December 2016, some 12 months after the December incidents and 11 months after the January issues, it is clear that the claim was presented significantly outside the time limits provided for by Section 123 EqA 2010. As such, it is for the Claimant to persuade us that it is just and equitable to consider those complaints "out of time".

508. Having considered matters and the representations of both parties in respect of this issue, we are entirely satisfied that we do not have jurisdiction to

entertain these complaints and therefore that we should not go on to consider them further.

509. In reaching that conclusion we have considered each of the factors within Section 33 Limitation Act 1994 insofar as they are relevant. Where we have not mentioned a particular factor, it can be assumed not to be relevant to our considerations.

510. We begin firstly with the length and reasons for the delay. The length of delay in respect of this matter is significant as we have already set out above. We have also had reference to an explanation for that delay. There was nothing which prevented the Claimant from raising these matters at an earlier stage and from presenting the claim in time. She instead appears to have made a conscious decision to say nothing at all about them for a considerable number of months. The first time that any reference was made about the matter was at the stage of the grievance being presented and still then the Claimant refused to provide any detail to allow an investigation to take place. The situation appears to have simply been a conscious decision on the part of the Claimant not to advance those matters at the time.

511. We turn then to the question of whether the cogency of the evidence is likely to be affected by the delay. This question can only be answered in the affirmative. If the Claimant had presented these complaints within the time limit provided for by Section 123 EqA 2010 Mr. Taylor would still at that time have been alive and the First Respondent could have obtained his version of events and any evidence that might have been in his possession so as to allow them to properly deal with the allegations. The small selection of text messages relied on by the Claimant clearly do not paint a complete picture and text messages are frequently capable of being taken out of context. As a result of the delay in initiating these proceedings regarding this aspect of the claim, the cogency of the evidence is significantly compromised.

512. The Claimant clearly had the ability to seek legal advice – as she later did – and by November 2016 at the latest she had already secured representation (see pages 602 to 604 of the hearing bundle). Moreover, her sister is a solicitor (albeit not practicing employment law) but doubtless would have been able to assist the Claimant in obtaining appropriate representation or assistance swiftly and with relative ease. There is little or nothing that explains why the Claimant did not initiate proceedings in respect of these matters in time by seeking earlier advice and representation or otherwise at a very much earlier juncture.

513. Our emphasis must, however, be on the question of whether the delay has affected our ability to conduct a fair hearing. We cannot do anything other than conclude that it has. By not presenting the claim in time (or otherwise at a much earlier juncture) the ability of First Respondent to gather evidence in order to properly defend this aspect of the claim has been stymied. The only person who is able to give relevant evidence on this issue on their behalf is Mr. Taylor and it goes without saying that it is now absolutely impossible for the First Respondent to call evidence in that regard. Had the complaints been presented in time, that would still have been possible or, at the very least, Mr. Taylor could have been

asked for his version of events and preparation of an early witness statement given his ill health. Mr. Taylor did not, of course, pass away until late August 2016 and until that time continued to play a relatively active part in the First Respondent's business activities. There is no reason to suppose that he would not, therefore, have similarly been in a position to provide comment or evidence in respect of the incidents complained of in December 2015 and January 2016.

514. Given that the Claimant made no reference at all to the substance of these complaints until well after Mr. Taylor had passed away, there is and never has been any proper opportunity for the First Respondent to deal with these allegations. As we have observed, the Claimant has adduced some text messages upon which she relies as evidence of her claims in this regard but they appear to be far from the full picture of messages exchanged and it is impossible without hearing from Mr. Taylor as the sender of some of those messages what the context and background to sending them was.

515. The prejudice to the First Respondent given the passing of Mr. Taylor and the fact that these matters were never raised at any time when he was alive and able to at the very least be interviewed results in the fact that to allow the complaints to proceed now would leave the First Respondent so prejudiced that a fair trial on those matters would simply not be possible.

516. The circumstances of this case are such that it follows that for all of those reasons it is not just and equitable to extend time for these complaints relating to events in December 2015 and January 2016 to proceed and thus we have no jurisdiction to determine them further.

517. We observe that those are also not matters which the Claimant relies upon in the context of the constructive dismissal claim as she accepted in cross examination and thus it is not necessary for us to make any findings of fact in respect of them for the purposes of that complaint or, indeed, therefore at all.

518. We then turn to each of the separate complaints made by the Claimant which correspond to each of the matters set out in the attached schedule of allegations.

<u>Allegation 1</u>

519. We remind ourselves that this allegation relates to not providing the Claimant with induction and training upon commencement of employment with the First Respondent in June 2015. It is pursued as a complaint of direct discrimination only.

520. Firstly, we would observe that the Claimant was in fact provided with induction and training upon commencement of employment and thus the factual premise of the allegation is not entirely accurate. However, insofar as it may be said that that induction and/or training was insufficient, then there is nothing at all before us to begin to suggest that that was on account of the fact that the Claimant is female. Simon Jones, who began employment at the precise same point as the Claimant, had the exact same induction programme - a matter that

the Claimant accepted in evidence. We have not been taken to details of any other male member of staff who had a more comprehensive induction process than the Claimant and it was abundantly clear to us from the email messages from Mr. Taylor to HR to which we have referred above that his intention was for the new starters – the Claimant and Mr. Jones – to have the same induction process. That was precisely what happened and there is no evidence that the Claimant was treated differently, let alone less favourably, than a man was or would have been treated.

521. Equally, whilst as we have observed in our findings of fact above, the Claimant may have benefitted from some additional training, there is nothing at all to suggest that any male member of staff was or would have been treated any differently to the Claimant in this regard.

522. Accordingly, this complaint fails and is dismissed.

Allegation 2

523. This allegation relates to the fact that the Claimant was not given a target on commencement of employment. We firstly observe, as we have above, that we cannot see that this matter was of any detriment whatsoever to the Claimant. She was not financially disadvantaged by the failure to allocate her a target given that she was given guaranteed commission during the first months of employment when she had not been allocated a target. Given that the Claimant did not hit her target when one was later allocated to her is indicative of the fact that it was not to her detriment to have one from the outset and in fact it was to her distinct advantage.

524. Moreover, the reason for not allocating the Claimant a target was to allow her time to develop her accounts and her pipeline business. Again, given the Claimant's lack of significant and recent sales experience that could only be to her benefit.

525. Whilst the Claimant compares herself to Mark Vatcher who was allocated a target on commencement of employment, we remind ourselves that the circumstances of Mr. Vatcher must not be materially different from that of the Claimant. We are satisfied that there were material differences in that Mr. Vatcher had considerably more sales experience than the Claimant and, as such, it would not be unusual for a more experienced member of staff to be allocated a target from the outset. That was not the case for the Claimant.

526. However, in all events the Claimant has adduced nothing at all to show that, even if Mark Vatcher had been an appropriate comparator, that difference in treatment had anything to do with her sex. Mr. Taylor was responsible for allocating targets as the Claimant's then line manager. It had nothing to do with the Second Respondent. We have dismissed the Claimant's overarching contention that the culture of the First Respondent was inherently discriminatory and it simply does not make sense to suggest that Mr. Taylor would have championed her recruitment and then sought to disadvantage and discriminate against her by not allocating her a target.

527. We are therefore satisfied that the "reason why" the Claimant was not allocated a target was because as a new starter she was being afforded time to bed in and develop her accounts. It was nothing at all to do with sex and the Claimant has taken us to nothing at all to suggest to the contrary other than her own belief that that was the case. The complaint of direct discrimination in this regard therefore fails and is dismissed.

528. The complaint similarly fails as one of harassment as, leaving aside the other requirements of Section 26 EqA 2010, not allocating the Claimant a target was in no way related to sex.

Allegation 3

529. This allegation relates to the alleged failure or refusal of the Second Respondent to assist the Claimant in respect of the RFP for Morrisons. As we have found above, there is no evidence to suggest that this allegation is factually accurate and we have nothing to support it. Given that we have found the Claimant to be prone to exaggeration in these proceedings, we cannot accept her unsubstantiated and generalised account in respect of this allegation. It therefore fails on its facts.

530. However, even had we found that there had been a failure to assist the Claimant there has been no evidence adduced whatsoever that this had anything to do with her sex given that we have dismissed her general overarching contention that the Second Respondent was inherently prejudiced against and did not like working with women.

531. The complaints of direct discrimination and harassment in respect of this allegation therefore fail on the facts.

Allegation 4

532. This allegation relates to the alleged removal of the Morrisons account and the Marks & Spencer and Tesco's accounts from the Claimant.

533. As we have found above, there was confusion around the allocation of Morrisons but we are satisfied that there was only even an intention to allocation that account to the Claimant as a temporary measure to assist her in gaining experience. To that end, the account was never "removed" from her. However, we are entirely satisfied that that account allocation had nothing to do with the Claimant's sex nor, indeed, anything to do with the Second Respondent.

534. Accounts were simply allocated on the basis of who was considered to be the best fit and most effective account manager on that particular account. The fact that that happened to be a male account manager with regard to Morrisons does not equate to the Claimant having been discriminated against and, as we have observed already, the Claimant's own evidence made reference to accounts being removed and reallocated from male members of staff – Mr. Webster being an example when he was required to handover an account with

Dunelm to the Claimant herself (see paragraph 25 of the Claimant's witness statement).

535. As such, we are satisfied that the allocation of the Morrisons account on a permanent basis had nothing at all to do with the Claimant's sex and she had not taken us to anything to demonstrate to the contrary. The account was allocated to Mr. Lawson and thereafter to Mr. Vatcher based on their experience and, in the case of the latter, his links with Fujitsu.

536. Similarly, it is factually inaccurate that the Marks & Spencer and Tesco accounts were ever removed from the Claimant. Insofar as her position is that they should have been allocated to her because she requested them, it is a matter for the Second Respondent as to who to allocate those accounts to. Simply because the Claimant wanted the accounts does not mean that she had any more entitlement to them than any other Enterprise Account Manager did. She had a number of other large accounts, including tier one accounts, and there is simply no basis on the evidence before us to suggest that, firstly, she should have been allocated those accounts or, secondly, that she was not allocated them for any reason related to or because of her sex.

537. The complaints of harassment and direct discrimination in relation to this allegation therefore fail and are dismissed.

Allegation 5

538. This allegation relates to the Claimant's contention that the Second Respondent had "shouted and screamed" at her in August 2015.

539. We have found that that did not happen and therefore this aspect of the claim is simply dismissed on the facts. However, again, even had we found that the Second Respondent had acted in the manner of which the Claimant complains she has taken us to nothing at all to suggest that this had anything to do with her sex.

Allegation 6

540. This allegation relates to a refusal to assist the Claimant with the Wilko's account and then shouting at her to "leave Wilko's alone" or words to that effect.

541. Again, for the reasons that we have given in our findings of fact above, we have found that the Second Respondent did not refuse to assist the Claimant and he did not shout at her, he simply offered guidance. Given that these matters did not happen as the Claimant claims, this allegation is therefore dismissed on the facts.

Allegation 7

542. This allegation relates to the call which the Second Respondent conducted with Wilko's without the Claimant being present on 17th August 2015.

543. As we have found above, there was nothing unusual in the Second Respondent having taken this step given the importance of Wilko's as a client to the First Respondent and the ongoing relationship that the Second Respondent had with them. Contact with certain clients occurred and was maintained at a high level within the First Respondent so as to demonstrate the importance of the relationship. There was therefore nothing unusual about the call nor was it something that was done behind the Claimant's back.

544. Moreover, even if we had found that there was anything unusual about the call taking place without the Claimant, there is nothing at all to suggest that that was to her detriment given that the Second Respondent identified her as the contact moving forward.

545. Furthermore, the Claimant has not shown anything, other than her general contention to that effect, to suggest that holding the call with Wilko's had anything to do with her sex and that the Second Respondent would not have held a call with an important client where the account manager was male.

546. For all of those reasons, this complaint fails as both a complaint of harassment and of direct discrimination as the events in question had nothing whatsoever to do with the Claimant's sex on the basis of the evidence before us.

Allegation 8

547. This allegation relates to the attempts of Mr. Taylor to extend the Claimant's probationary period. Whilst the allegations set out by the Claimant refer to that occurring in September 2015, as we have set out above it seems that the discussions about that matter as between Mr. Taylor and HR were taking place in October and November 2015.

548. We are entirely satisfied on the basis of the evidence before us that both Mr. Taylor and the Second Respondent had legitimate concerns about the Claimant's performance in the Enterprise Account Manager role and that was the reason that Mr. Taylor looked to extend her probationary period. We accept that the Claimant cannot countenance that her performance was wanting but it is clear to us from the evidence before us that there were considerable failings on her part and that she was not living up to the expectations that Mr. Taylor or the First Respondent had of her (the Second Respondent always having been dubious about her appointment).

549. The reason why the probationary extension was discussed was, we are satisfied, on performance grounds and the Claimant has taken us to nothing at all to suggest (again other than her general contention to that effect) that her sex had anything to do with the matter.

550. Again, therefore the treatment complained of, insofar as it may have been a detriment given that it never came to fruition, was not because of the Claimant's sex nor related to it and the complaint of direct discrimination and harassment in respect of this issue therefore fail and are dismissed.

RESERVED

Allegation 9

551. This allegation relates to the Claimant's contention that she was not invited to meetings in November and December 2015 and in February 2016.

552. As we have already observed above, we have seen and heard no evidence regarding any meetings that the Claimant was not invited to or excluded from in November or December 2015 and thus we can say no more about those matters.

553. Insofar as the February 2016 meeting was concerned, the only incident to which we have been taken is the 8th February 2016 meeting with the Second Respondent and The Barcode Warehouse. As we have already set out in our findings of fact above, we accept that was a high level meeting and that there was no need for the Claimant's presence. Other than a generic assertion that the Second Respondent would have invited male colleagues, there is no evidence to that effect and there is nothing whatsoever to suggest that the Claimant was excluded from the meeting and/or that she was not invited on account of her sex.

554. The reason why she was not invited was because it was not necessary.

555. For those reasons, this complaint therefore fails both as a complaint of direct discrimination and harassment as the matters complained of were neither because of nor related to the Claimant's sex and she has taken us to nothing to evidence to the contrary.

Allegation 10

556. We remind ourselves that this allegation relates to the Claimant having been "mocked and belittled" by the Second Respondent in August 2015. As we have set out in our findings of fact above, this allegation is quite simply not made out and it fails on that basis.

Allegation 11

557. This allegation relates to the Morrisons meeting in Bradford and what is said by the Claimant to be the arranging of a Sunday afternoon meeting in Bradford. The background behind this complaint is that this was done so as to inconvenience the Claimant or to, in her words, ensure that she could not attend because of her childcare commitments. It is not, however, pursued as a complaint of indirect discrimination but as a complaint of direct discrimination and harassment.

558. There is nothing at all to suggest that the meeting was set up to ensure that the Claimant could not attend. As we have observed above, the Second Respondent invited all of the relevant team to the proposed meeting. He equally made it clear that it would be good experience for the Claimant and she should be therefore but his email made it absolutely apparent that family came first. There can be no reasonable suggestion that the Claimant was singled out to attend the meeting – which did not take place anyway – or that the Second

Respondent made these arrangements because he did not like the Claimant, whether because she was female or otherwise.

559. He considered that the meeting would be good experience for the Claimant. Again, no doubt if she had not been invited she would have brought this complaint based on an allegation that she had been unreasonably excluded.

560. The proposed meeting had nothing at all to do with the Claimant's sex but simply as a result of the distance from Bracknell to Bradford; the fact that it would be useful to meet before the presentation to Morrisons and the fact that it would be good experience for the Claimant.

561. The complaints of direct discrimination and harassment in respect of this allegation are therefore dismissed because the meeting had nothing whatsoever to do with the Claimant's sex nor was it a matter related to sex and the Claimant has taken us to nothing to suggest to the contrary.

Allegation 12

562. This allegation relates to the interactions between the Claimant and Second Respondent in relation to the Morrisons hardware issue. As we have set out in our findings of fact above, the reason why there was a change in stance in respect of this matter was because Morrisons altered their position with regard to when they required samples of kit. The Second Respondent accordingly had to alter the guidance that he had previously given to the Claimant.

563. The tone of his communications was perfectly proper and measured and we do not accept that there was any shouting or screaming at the Claimant as alleged.

564. There is nothing at all to even begin to suggest that this issue arose because of anything to do with the Claimant's sex. The reason was the change in stance by Morrisons. The complaints of direct discrimination and harassment are therefore dismissed in respect of this allegation as the matters complained of were not because of or related to sex and we have been taken to nothing to suggest to the contrary.

Allegation 13

565. This allegation concerns the failure to invite the Claimant to a conference call regarding retail shows in December 2015. As we have found above, this situation had nothing at all to do with the Second Respondent and the responsibility for who to invite to the retail shows lay with the First Respondent's Marketing Department in the United States.

566. The Claimant has adduced nothing at all to begin to suggest that the initial failure to invite her to these events had anything whatsoever to do with her sex. It follows that this incident was not because of or related to sex and the complaints of direct discrimination and harassment are dismissed as a result.

RESERVED

Allegation 14

567. This allegation relates to the calls that the Second Respondent is said to have had without the Claimant's knowledge in December 2015; 24th February 2016; 1st March 2016 and 26th July 2016.

568. The first of those calls relates to the RBTE retail show and therefore our conclusions in respect of that matter are the same as in regard to our determination of allegation 13 above.

569. The second relates to the call in regards to the Specsavers account. We are entirely satisfied that the reason why that took place was because of the Second Respondent's own involvement on that account and the fact that he did not understand the Claimant to have been the allocated account manager. The call was to seek to exploit an opportunity sent directly to the Second Respondent by Herr. Schindler and there is nothing at all to suggest that he excluded the Claimant because of her sex nor was that decision related to it. Indeed, male account managers who the Second Respondent had been working on the account with were not invited onto the call either. The Claimant's gender had nothing at all to do with the matter.

570. With regard to the 1st March 2016 call, for the reasons that we have given above there is no evidence of any calls on that date having taken place behind the Claimant's back.

571. Finally, turning to the call with a Channel Partner in relation to Next on 26th July 2016, the reason why that call took place was because the Claimant was on annual leave and the Second Respondent wanted to keep the momentum in respect of the business and the account. That was, we are satisfied, done to assist the Claimant and certainly was not such as to deliberately exclude or undermine her. There is nothing whatsoever to suggest that any male account managers were or would have been included on such calls.

572. For those reasons, this complaint fails as both one of direct discrimination and of harassment.

Allegation 15

573. This allegation relates to the conducting of conference calls with the Channel Partner team regarding the Claimant's accounts without her knowledge.

574. Again, it is difficult to discern from the Claimant's evidence what this incident in fact relates to. As best as we can understand matters, it appears to us that the allegation is either in respect of the Barcode Warehouse on 8th February 2016 or with regard to the Next account on 26th July 2016. In respect of the former, we have determined that complaint within allegation 9 and in respect of the latter we have determined that in relation to allegation 14.

575. We therefore dismiss the complaints of direct discrimination and harassment in respect of this allegation on the same basis as we have dismissed allegations 9 and 14.

Allegation 16

576. This allegation relates to the Claimant's contention that the Second Respondent had failed and/or refused to assist her when she had asked him to do so on 4th and 6th March 2016.

577. As set out in our findings of fact above, the Second Respondent did not refuse or fail to assist the Claimant on either of these occasions. He simply disagreed with the strategy that she intended to adopt. He was entitled to do so and he provided the Claimant with guidance on both occasions. It may not have been the approach that the Claimant wanted but we remind ourselves that the Second Respondent has a considerable amount of experience and he was entitled to disagree with the Claimant's proposals. It was that difference in approach which caused the Second Respondent to attempt to steer the Claimant on a different path to that which she had intended to tread on the accounts.

578. There is nothing whatsoever to suggest that this related in any way to her sex and again the complaints of direct discrimination and harassment are therefore dismissed.

Allegation 17

579. For the reasons that we have already given above, we do not have jurisdiction to entertain this aspect of the claim and so we say no more about it.

Allegation 18

580. This complaint relates to what the Claimant refers to as "constant questioning" of what accounts she was working on. We accept that the Second Respondent did question the Claimant about the accounts that she was working on but the reason for that, having taken over the mantle from Mr. Taylor, was because it was his job to understand what accounts his team were working on and to see what support and guidance they might need to assist them. We are also satisfied that he was more engaged and with a more hands on approach than had previously been the case with Mr. Taylor.

581. The Claimant worked remotely and, as we have already observed, she was reluctant at best to attend meetings that the Second Respondent had arranged and he had no clear overview of her accounts or strategy.

582. Against that background, it was not unusual or unexpected that the Second Respondent, as the Claimant's Line Manager and with responsibility overall for the team and the accounts within that team, would question the Claimant about what she was working on. There is absolutely nothing whatsoever to suggest that that was done for any other reason other than the

Second Respondent genuinely needed to understand the position and the Claimant was not providing the required information.

583. There is, further, nothing at all to suggest that a male member of staff in such a situation would not have been dealt with in the exact same way or that that questioning had anything whatsoever to do with sex.

584. For those reasons, the complaints of harassment and direct discrimination fail and are dismissed on the basis that the conduct complained of was not related to or because of sex.

Allegation 19

585. This complaint relates to the fact that the Second Respondent said words to the effect that he did not know what the Claimant actually did in May and June 2016. Insofar as the events of May 2016 are concerned, those took place at a time when the Second Respondent was distracted and about to give a presentation to an important partner of the First Respondent. It was not the appropriate time for the Claimant to have approached and followed him seeking to engage in discussion about accounts. As to the incident referred to simply as June 2016, we understand this to have been an occurrence that happened on 17th June 2016 given the Claimant's email of that date referencing the call in which the comment was made having taken place earlier that day and the fact that 17th June is the date ascribed to this incident at paragraph 59 of the Claimant's witness statement.

586. As we have set out in our findings of fact above, we are satisfied that the comment that was made was said in the context of the Second Respondent seeking to understand how the Claimant was performing the Enterprise Account Manager role given his considerable concerns about her performance. There is nothing at all to suggest that the Claimant's sex played any part in that and, as we have observed, the Second Respondent had also spoken with Andrew Jackson to address performance concerns for that individual.

587. The Claimant has not taken us to anything to show that sex played a part in this comment being made and in all events we accept that the reason why was because the Second Respondent was, quite legitimately, concerned about the Claimant's performance and wanted to understand the processes that she was adopting.

588. For those reasons, the complaint of harassment and direct discrimination in respect of this allegation also fail and are dismissed as these comments were not made because of nor for a reason related to sex.

Allegation 20

589. This complaint relates to an assertion by the Claimant that the Second Respondent had alleged in a meeting in June 2016 that Morrisons had asked for the Claimant to be removed from dealing with the account.

590. As we have found above, this is an issue which, if it occurred, occurred on 19th July 2016. For the reasons that we have already given, it is difficult to determine this particular complaint given the lack of corroborative evidence one way or another.

591. However, even assuming that any such comment was made (either as the Claimant contends or in words to that effect) there is nothing at all to suggest that that was designed to denigrate or belittle the Claimant and it was simply part of a discussion about account concerns. There is nothing whatsoever to support the contention that this was done because of or for a reason relating to sex.

592. It follows that even assuming that such a comment was made, it had nothing at all to do with sex on the basis of the information before us and as such the complaints of direct discrimination and harassment in respect of this allegation accordingly fail and are dismissed.

Allegation 21

593. This is the same allegation as allegation 4 above and we therefore dismiss it on the same basis.

594. Accounts were allocated to whatever account manager was felt to be the best fit for the client. Dunelm was removed from Luke Webster and given to the Claimant and that was no more an act of sex discrimination than the allocation of Marks & Spencer was.

Allegation 22

595. This first part of this complaint is the same allegation as part of allegation 14 above and we therefore dismiss it on the same basis.

596. The second part of the complaint regarding the allocation of the Specsavers account to Mark Vatcher is the same allegation as part of allegation 29 below and we do not repeat our conclusions in respect of that matter again here.

Allegation 23

597. This allegation concerns the failure to invite the Claimant to a Group Retail Meeting in February 2016.

598. We have not been taken to details of any other meeting to which the Claimant was not invited in February 2016 other than the meeting with the Barcode Warehouse with which we have already dealt above at allegation 9. We do not therefore rehearse those conclusions here again but for the same reasons, given that it is the same allegation, we dismiss the complaints of direct discrimination and of harassment.

RESERVED

Allegation 24

599. This complaint relates to the assertion that the Second Respondent requested to meet with the Claimant alone. As we have found above, at no point prior to 12th September 2016 had the Claimant expressed that she did not want to meet the Second Respondent alone nor could he have reasonably had any idea about that position prior to that date. Once she did so, he immediately arranged HR accompaniment for all future meetings.

600. Prior to 12th September 2016, it cannot reasonably be said to be inappropriate as her line manager for the Second Respondent to have arranged one to one meetings with the Claimant. That was the same for all members of the team and there is nothing at all to begin to suggest that the Claimant's sex had anything at all to do with the matter.

601. Again, for those reasons the complaint of harassment and direct discrimination fails and is dismissed in respect of this complaint.

Allegation 25

602. This allegation relates to the Claimant being questioned and shouted at during a conference call in April 2016. As we have found above, we accept that the Claimant was questioned about a reliance on Channel Partners given that that was a concern that the Second Respondent had about her management of the accounts. No male colleague was questioned simply on account of the fact that none of them shared the Claimant's fundamental misunderstanding about the way in which Enterprise Accounts were to be managed directly and with relationships built and maintained with the client and not via heavy reliance on a partner.

603. We do not accept that the Claimant was shouted at and it is clear that the reason why she was questioned was because of the concern that the Second Respondent had about the reliance on partners. The Claimant's sex had nothing whatsoever to do with the matter and the Claimant has taken us to nothing at all to begin to demonstrate to the contrary.

604. Again, for those reasons the complaints of direct discrimination and harassment fail and are dismissed as the questions asked of the Claimant were not because of nor were they related to sex.

Allegation 26

605. This aspect of the claim relates to the fact that it is said that the Second Respondent asked the Claimant, in front of some of her colleagues in the team, why she was buying a house and was it "because [she] was just renting".

606. We have found on the facts that the Second Respondent did not make that comment and therefore this aspect of the claim fails on its facts.

607. However, even had we found the Second Respondent to have made the comment, there is nothing whatsoever to begin to suggest that it was made because the Claimant is female nor can it be reasonably said to be anyway related to sex. There are, quite simply, no facts whatsoever to support that.

Allegation 27

608. This allegation arises from the incident with the AS Watson account.

609. We are satisfied that the Second Respondent dealt with this in a proper manner. The Claimant had acted inappropriately in seeking to have the account allocated to her when it was a channel account already allocated to Mr. Webster. Mr. Webster was understandably annoyed about that. Having heard both sides the Second Respondent determined that the account should stay with Mr. Webster. There was absolutely nothing wrong with that, particularly in view of the fact that it was a channel account. The Claimant clearly disagrees with that decision but it was one that was clearly open to the Second Respondent given the circumstances.

610. The Claimant has adduced absolutely nothing to suggest that this decision, or the fact that the Second Respondent was concerned about her actions, had anything whatsoever to do with her sex. Again, therefore, the complaints of direct discrimination and harassment fail and are dismissed on the basis that his concerns as raised with the Claimant were not because of nor were they related to sex.

Allegation 28

611. This allegation is phrased by the Claimant as informing her on 8th September 2016 that the Second Respondent had a preference for Mark Vatcher to attend a retail event rather than her. This, of course, related to the Descartes event and if one looks reasonably and sensibly at the email communications in respect of this particular incident, it is abundantly clear that the Second Respondent said no such thing.

612. The situation was simply that the Claimant had been put forward by the Second Respondent to attend the event but that if she was unable to do so, the Second Respondent considered that it would be good experience for Mr. Vatcher. The email communications in respect of this matter were perfectly innocuous and the Claimant simply overreacted and saw conspiracy where none in fact lay. She attended the event as planned. There was no detriment to her nor could it reasonably be suggested that the fact that Mr. Vatcher was effectively a contingency plan if the Claimant could not attend be said to relate to sex. The Claimant was preferred, in fact, over Mr. Vatcher for attendance and this complaint therefore fails on its facts.

Allegation 29

613. The first part of this allegation relates to the call with a Channel Partner in respect of Next on 26th July 2016. We have already determined that complaint in

respect of allegation 14 above and therefore we simply repeat the same findings and conclusions in respect of this first part of allegation 28.

614. The second part of this allegation relates to the allocation of the Claimant's accounts with Morrisons, Specsavers, Marks & Spencer and Sainsbury's to Mark Vatcher without explanation.

615. We have already dealt with the allocation of Morrisons and Marks & Spencer in regards to allegation 4 above and so we do not therefore repeat our findings or conclusions in respect of those matters here as the same findings and conclusions apply to this part of this allegation.

616. With regard to Specsavers and Sainsbury's, as we have found above we are far from certain that those accounts were in fact ever allocated to the Claimant. However, assuming that to be the case there is nothing whatsoever to suggest that those accounts were deliberately removed from her so as to allocate them to a male member of staff in preference. The reason that the accounts were given to Mark Vatcher was because of his previous relationship with Fujitsu with whom both Sainsburys and Specsavers also had connections.

617. Again, the Claimant's own evidence demonstrated the removal of an account from Luke Webster to be allocated to her and there is nothing at all to suggest that the re-allocation of accounts in any instance related to or was because of sex.

618. For those reasons, the complaint of harassment and direct discrimination with regard to this allegation also fails and is dismissed as the conduct complained of was not in any way because of or related to sex and we have not been taken to anything to suggest to the contrary.

Allegation 30

619. This allegation relates to the fact that the Claimant was required to produce an SEA plan for Next, the description of her efforts as "crap" and the manner of the Second Respondent's dealings with a review relating to the SEA documentation.

620. As we have already found above, the Second Respondent had implemented use of the SEA deck to produce account plans throughout the sales team. The Claimant was not singled out and, in all events, the purpose of producing the account plans using the SEA deck was to assist the Claimant and the team in properly planning out and managing the accounts on which they were working. The requirement to produce it was therefore designed to support the Claimant and had she done so, as instructed on a number of occasions, it may well have served to be of assistance to her in respect of Next and other accounts.

621. The Second Respondent did refer to the Claimant's efforts as "crap" at the meeting on 19th July 2016 but, as we have found above, that was borne of frustration given that the Claimant had continued to fail to produce plans as required under the SEA deck.

622. The fact that the Second Respondent continued to chase the Claimant for the SEA documentation is also understandable given his view as to the importance of those documents and the Claimant's continued failure to produce them. There was nothing unusual in that.

623. There is nothing at all to suggest that any of the issues in respect of which the Claimant complains in the context of this allegation had anything at all to do with sex. The reason why the Second Respondent took the action that he did was that he considered use of the SEA deck to be important and the Claimant consistently failed to comply with what she had been asked to do. There is nothing at all to suggest that a male member of staff who had acted in the same way would not have been subject to the same direction and, albeit rather direct, criticism.

624. For those reasons, the complaint of harassment and direct discrimination with regard to this allegation also fails and is dismissed as we have not been taken to anything to suggest that the matters complained of were because of, or in any way related to, sex.

Allegation 31

625. This allegation related to questioning and screaming at the Claimant as to where information on the Next account had come from. As indicated in our findings of fact above, this also came as a result of the Claimant's failure to use the SEA deck for account planning and her insistence on using a Word document instead.

626. We are satisfied that the Second Respondent did not scream at the Claimant but merely enquired where she had obtained certain information from as it appeared that she had simply cut and pasted information from the internet into a Word document. There is nothing inappropriate about that nor anything at all that suggests that a male member of staff would not have had the same enquiries made if he had presented a document in that form and to an unacceptable standard.

627. For those reasons, the complaint of harassment and direct discrimination with regard to this allegation also fails and is dismissed as, again, we have not been taken to anything to suggest that the matters complained of were because of, or in any way related to, sex.

Allegation 32

628. This allegation relates to the email of 3rd October 2015 sent by the Second Respondent after he became aware that the Claimant and Rob Page would not be attending the 5th October team meeting. The Claimant phrases this allegation that she was "made an example of". Again, we are satisfied that on a sensible and objective reading of the email that is quite clearly not the case. The Claimant was not mentioned specifically or singled out. There can be no reasonable suggestion that she was "made an example of".

629. The Second Respondent was entitled to express dissatisfaction that members of the team would not be attending a meeting that he viewed as important and which had been arranged some weeks previously. He was entitled to make that clear in a team email that he had expected everyone to attend. To any degree that that was directed at the Claimant then it was similarly directed at Rob Page who was also not going to be attending. To any extent that they might not have been aware of that before, the team would certainly know when Mr. Page did not attend the meeting either.

630. On that basis, there can be no reasonable suggestion either that the Claimant was "made an example of" or that this had anything to do with her sex given that, to any degree there was any criticism by the Second Respondent, that was directed equally at Mr. Page. Sex, therefore, played no part in the matter and again for those reasons the complaints of direct discrimination and harassment in this regard fail and are dismissed.

Allegation 33

631. This complaint relates to the fact that the Claimant contends that she was placed on a PIP on 4th October 2016. As we have set out above, the Claimant was not placed on a PIP on that date or, indeed, at any other time.

632. The meeting made reference to placing the Claimant on a PIP although it is clear that had the process not been halted as a result of the investigation into her grievance, we accept that that that would inevitably have progressed and the Claimant would have been placed on the PIP process.

633. However, we are equally satisfied that the intention to place the Claimant on a PIP (and thus the indication to her to that effect in the 4th October meeting) was because of the Claimant's underperformance against target and the other difficulties that the Second Respondent had observed with regard to her conduct and performance and which we have already referenced above.

634. There is nothing whatsoever to suggest that the Claimant's sex had anything at all to do with that decision and we are entirely satisfied that any male member of staff demonstrating the same performance issues as the Claimant would have been treated in the same way. Indeed, had Andrew Jackson not made significant improvement in his performance then we accept that he too would have been placed on a PIP.

635. It follows, therefore, that the complaints of harassment and direct discrimination in respect of this allegation fail and are dismissed on account of the fact that the indication that the Claimant was to be placed on a PIP was not because of nor related to her sex. The issue arose simply and solely on account of conduct and performance issues.

636. This complaint is also pursued as an act of victimisation. As we have already found above, at the date of this meeting and at the time that the Second Respondent put in train the process to place the Claimant on a PIP, he was

aware that the Claimant had raised a grievance but we have accepted that he had no idea as to the substance of that grievance and, in particular, that it contained allegations of discrimination. The first time that the Second Respondent knew that the Claimant had made allegations of discrimination (and thus done a protected act) was on 9th November 2016 when he attended the grievance investigation meeting with Mr. Abbott. Given that his actions in advising the Claimant that he intended to place her on a PIP pre-dated that knowledge of the content of the grievance by over a month, it follows that the Claimant's doing of a protected act cannot have materially influenced the Second Respondent's decision in this regard (see the authorities to which we have referred at paragraph 51 above). The complaint of victimisation also therefore fails and is dismissed in respect of this allegation.

Allegation 34

637. This aspect of the complaint relates to the refusal to permit the Claimant to change line managers from the Second Respondent to Tim Alden.

638. There is, quite simply, no evidence whatsoever that this refusal had anything whatsoever to do with the Claimant's sex and she has not taken us to anything at all to suggest that that was the case. We accept that it was simply not logical for the Claimant to be line managed by Mr. Alden, who himself was line managed by the Second Respondent anyway, and that the matter was dealt with instead by the Second Respondent being instructed to limit, and accordingly limiting, his contact with the Claimant during the course of the grievance process.

639. The decision had nothing at all to do with the Claimant's sex and again the complaints of harassment and direct discrimination in this regard are therefore dismissed given that, again, we have not been taken to anything to suggest that the matters complained of were because of, or in any way related to, sex.

Allegation 35

640. This complaint relates to the assertion by the Claimant that the Second Respondent arranged a call on 14th October 2016 without her relating to the Bargain Booze account.

641. There is a passing reference to that matter which features in the Claimant's witness statement at paragraph 85. We have no further detail of evidence provided in respect of that complaint which, again, we find surprising given the otherwise lengthy statement of the Claimant prepared at a time when she was legally represented.

642. However, even assuming that such an event did take place, as we have already observed above, it was not uncommon for calls to be scheduled at a high level without an account manager being present. The Claimant has nothing at all to suggest, other than her assertion to that effect, that that position was not the same for all account managers irrespective of their gender.

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643. As such, the complaint of direct discrimination and harassment in respect of this complaint fails on the basis that there is nothing at all to show that, even if a call was arranged on 14th October 2016 without the Claimant, there was anything untoward about that but less so that it was because of or for a reason related to sex.

Allegation 36

644. This aspect of the complaint relates to the fact that the Claimant contends that on 14th October 2016 the Second Respondent sent an email to her which questioned her work in relation to the Coop account.

645. As we have set out above, we have not been taken to an email of that date relating to this account and can only presume that the email that the Claimant refers to in this regard is the one at page 1002 of the hearing bundle dated 31st October 2016. As we have said, we see nothing wrong with that email and there is nothing at all to suggest that the Second Respondent would not have asked for the same information from a male member of staff on an account where the customer had raised concerns with him. The actions complained of, on the basis of the information before us, had nothing whatsoever to do with the Claimant's sex but were simply because the Coop had raised concerns and the Second Respondent needed information to enable him to deal with that.

646. For those reasons, the complaints of direct discrimination and harassment in respect of this allegation fail and are dismissed as there is nothing at all to suggest that the information was requested because of or for a reason relating to sex.

Allegation 37

647. This allegation relates to the ScanSource email exchange with Mr. Pike. The Claimant contends that the Second Respondent alleged that she had jeopardised relationships between the First Respondent and that supplier and screamed at her during a call to discuss the matter on 4th November 2016.

648. We are satisfied, having viewed the communications that the Claimant sent to Mr. Pike at ScanSource for ourselves, that concerns that were voiced as to the potential for her to have jeopardised that relationship were entirely well founded. The Claimant had, not just once but twice, made a veiled threat regarding the placing of the First Respondent's business elsewhere. The Second Respondent and Ms. Lamb were entirely justified in their concerns regarding the actions of the Claimant in this respect. There is absolutely nothing whatsoever to suggest that had a male member of staff sent such potentially inflammatory communications to a valued partner and been the subject of a complaint as a result that they would have been treated any differently to the Claimant. Again, this is simply a further example of the Claimant not being able to accept criticism, even when it is quite evidently justified.

649. We do not accept, however, that the Claimant was screamed at by the Second Respondent as she alleges and this is again a further example of her exaggeration of matters after the event.

650. For those reasons, the complaints of direct discrimination and harassment in respect of this allegation fail and are dismissed as there is nothing at all to suggest that the criticisms made of the Claimant's actions by the Second Respondent and/or Georgina Lamb were because of or for a reason relating to sex.

Allegation 38

651. This complaint relates to an assertion that, after the Claimant had raised her grievance, the Second Respondent had contacted customers and partners of the First Respondent in the week of 4th November 2016 an attempt to gain evidence that could be used at the grievance meeting. This is referenced at paragraph 87 of the Claimant's witness statement but, again, does little to set out the facts of this particular allegation.

652. We have not been taken to anything at all to demonstrate that the Second Respondent contacted any customers or partners in order to seek to gain evidence to use at the later grievance meeting on 9th November that he attended with John Abbott and Nicola Lloyd. There is no email to which we have been taken or portion of the grievance minutes or his subsequent briefing note which would demonstrate that such action had taken place.

653. Given that the Claimant has not evidenced anything in this regard other than a bald assertion that the Second Respondent had contacted clients and partners to discredit her, with no supporting detail, we cannot make a finding that such an incident occurred and this complaint therefore fails on the basis that it is not made out.

654. However, what we understand this complaint might relate to from the information that does appear at paragraph 87 of the Claimant's witness statement is the issue with the ScanSource emails.

655. Insofar as the complaint relates to the ScanSource emails that was clearly, on the facts as we have set them out above, not an instance of the Second Respondent seeking out information from that partner. The emails were sent to him by Georgina Lamb and, given the Claimant's actions and the complaint from Mr. Pike, that was done with good cause. There can be no reasonable suggestion whatsoever that the Second Respondent had contacted customers or partners as alleged to gain evidence to discredit the Claimant; the complaint came from Mr. Pike at ScanSource in direct reply to the Claimant's actions.

656. This situation had nothing at all to do with the Claimant's sex for the reasons that we have already set out in relation to allegation 37 above and it therefore fails on the same basis. Equally, the Claimant contends this to have been an act of victimisation but aside from the fact that the incident on 4th November was of the Claimant's making, as we have already found above at that

stage the Second Respondent was not aware of the fact that the Claimant had done a protected act and the complaint of victimisation therefore fails on that basis.

Allegation 39

657. This allegation relates to the sending by the Second Respondent of an email of 25th November 2016 making further enquiries regarding the loss of the Next account following the Claimant having submitted a Fit Note on that date.

658. As we have already set out in our findings of fact above, we are entirely satisfied that the Second Respondent was not aware at the time of sending this email that the Claimant was off sick. He was on leave on that date and for that very reason the Claimant had reported her absence to Mr. Alden. There is nothing at all to suggest that the Second Respondent knew that the Claimant had reported in sick when he sent the email to her. As soon as the Claimant informed him in her reply that she was off sick, he did not reply further.

659. There was nothing at all untoward about the Second Respondent's actions in this regard less still can there be any reasonable suggestion that the email was sent when it was because of the Claimant's sex or for a reason related to it. The email was sent because it was the Claimant's account that had been lost; the Second Respondent was understandably concerned about that and wanted to be provided with information about the loss and he was not aware that the Claimant was, at the time, off sick.

660. Again, this complaint therefore fails as both a complaint of direct discrimination and of harassment as there is nothing at all to suggest that the information was requested, or that it was requested at the time that it was, because of or for a reason relating to sex.

661. This allegation is also brought as a complaint of victimisation. We are entirely satisfied that it should also fail on that front given that, as we have observed already, we are satisfied that there was a reasonable and innocent explanation for sending the email and for sending it at the time that he did. There is absolutely nothing whatsoever before us to suggest that the email or the timing of it was influenced in any way by the fact that the Claimant had done a protected act. The complaint of victimisation also therefore fails and is dismissed.

Allegation 40 - Constructive unfair dismissal

662. We turn finally to the complaint of constructive unfair dismissal. The Claimant relies upon the above acts of which she complains as being acts of discrimination (save as for allegation 17) as, either singularly or cumulatively, being such to fundamentally breach her contract of employment and that her resignation in response rendered her constructively dismissed.

663. When viewed in the context of how the incidents actually occurred (in accordance with the facts as we have found them to be) it cannot possibly be said that those matters amounted to anything approaching a breach of the

implied term of mutual trust and confidence or any other implied or express term of the Claimant's contract of employment. Whilst it is clear, and the Second Respondent and also Mr. Maidment have accepted, that things could have been done better and the Claimant could, for example, have been offered more training and support when it became clear that she was struggling and before matters reached the PIP stage,

664. Moreover, the catalyst for the Claimant's resignation, it is clear to us from the evidence before us in cross examination and irrespective of the Claimant's suggestion in her resignation letter, was the fact that of receipt of the email from the Second Respondent of 24th November 2016 which had been received while she was off sick. This is the "last straw" on which the Claimant therefore relies in the context of her constructive dismissal claim.

665. There was nothing whatsoever inappropriate or unreasonable about that email given the loss of the large account; the fact that the Claimant was responsible for it and, like the loss of any account, an explanation as to what had happened was required. There is no reason for the Claimant to have supposed that the Second Respondent knew that she was absent on the grounds of stress when he sent the email to her given that she was fully aware that he was on leave that day and hence her having reported sick to Mr. Aldren. In all events, the Claimant could simply have ignored the email and it is of course notable that as soon as she informed the Second Respondent that she was off sick he did not email her again.

666. Whilst we remind ourselves that in cases where a Claimant relies on a "final straw", that act itself does not have to be a fundamental breach or even a breach of contract, it must nevertheless be a more than minor or trivial occurrence. It is clear that when viewed properly and reasonably, that email cannot be said to be anything other than a trivial matter at best.

667. It therefore follows that the acts relied upon by the Claimant as being causative of her resignation came nowhere near being destructive of mutual trust and confidence. In many instances they were were nothing other than innocuous matters; differences of opinion as to strategy or robust styles of management. They were, either singularly or cumulatively, nowhere near significant enough to have breached the Claimant's contract of employment, let alone fundamentally breached it, whether in respect of the implied term of mutual trust and confidence or otherwise.

RESERVED

668. It follows that the claim of direct discrimination in respect of a constructive dismissal contrary to Section 39 EqA 2010 also fails and is dismissed and for all of the reasons that we have given above, the claim is therefore dismissed in its entirety.

Employment Judge Heap

31st July 2018
Date

JUDGMENT & REASONS SENT TO THE PARTIES ON

31 July 2018

.....

.....
FOR THE TRIBUNAL OFFICE

RESERVED

MS. N MERCER

Claimant

v

HANDHELD PRODUCTS (UK) LTD (R1)
JASON BURRELL (R2)

Respondents

LIST OF ISSUES

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1. Direct discrimination relying on the protected characteristic of sex

1.1 Did the First or Second Respondent subject the Claimant to the following treatment falling within section 39 Equality Act, namely*:*

1.1.1. Constructively dismissing the Claimant?

4.1.2 Subjecting the Claimant to the treatment complained of at complaints 1 to 39 as set out in the attached table?

1.2. Has the First or Second Respondent treated the Claimant in relation to any proven treatment at paragraph 1.1 above less favourably than it treated or would have treated an appropriate comparator or comparators (either actual or hypothetical)?

1.3. If so, has the Claimant proved facts from which the Tribunal could properly and fairly infer that the difference in treatment was because of the protected characteristic of sex?

1.4. If the Claimant has proved facts from which the Tribunal is able to draw an inference of discrimination on the grounds of sex, what is the Respondents explanation? Do they prove a non-discriminatory reason for any established treatment?

2. Section 26 Equality Act 2010: Harassment

2.1. Did the First or Second Respondent engage in unwanted conduct in respect of any of the allegations set out at complaints 2 to 39 of the attached table?

2.2. If so, was the conduct related to the Claimant's protected characteristic of sex?

2.3. Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

2.4. If not, did the conduct have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

In considering whether the conduct had that effect, the Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

3. Section 27 Equality Act 2010: Victimisation

3.1. Did the Claimant do a protected act by virtue of having raised a grievance on 22nd September 2016[13]?

3.2. Has the First or Second Respondent subjected the Claimant to the following treatment falling within Section 39 Equality Act 2010, namely*:*

3.2.1. Making the Claimant the subject of a Performance Improvement Plan ("PIP")?

3.2.2. Contacting customers and partners in an attempt to gain evidence to use in the grievance meeting?; or

3.2.3. Sending to her an email on 25th November 2016 relating to the loss of the Next Account at a time when the Claimant had commenced a period of sickness absence with stress.

3.3. Has the First or Second Respondent subjected the Claimant to detriment in treating her as complained of at 3.2.1 to 3.2.3 above?

3.4. If so, did the First or Second Respondent subject the Claimant to any proven detriment because she had done a protected act?

4. Jurisdiction

4.1. Has any part of the Claimant's claim been presented outside of the relevant time limit? Particularly, are any acts which pre-date the date of

[13] It is accepted by the Respondent that the Claimant's grievance of 22nd September 2017 was a protected act – see paragraph 20 of the Respondent's Skeleton Argument.

RESERVED

entering early conciliation by a period of more than 3 months[14] part of a continuing course of conduct?

4.2. If not and any part of the claim has been presented out of time, does the Tribunal have jurisdiction to entertain that complaint and is it just and equitable to consider the complaint "out of time"? The burden is on the Claimant to persuade the Tribunal on that question.

[14] The Claimant commenced early conciliation on 9th December 2016 in respect of the First Respondent and 15th December 2016 in respect of the Second Respondent and thus anything occurring more than 3 months earlier may have been presented "out of time" unless it forms part of a "continuing act".

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Schedule of Allegations

Allegation	**Paragraph number of original ET1 Claim Form (or in respect of those allegations submitted by way of amendment the Amended ET1 Claim Form and for those of Victimisation under the Re-amended ET1)**	**Section of Equality Act 2010 relied upon**
1. Not providing the Claimant with an induction and training when she commenced employment with R1 in June 2015	5	Section 13 (Direct Discrimination)
2. Not giving the Claimant a target when she commenced work for R2 in June 2015	5 (Amended ET1)	Section 13 (Direct Discrimination) Section 26 (Harassment)
3. In or around August 2015, failing or refusing to provide the Claimant with assistance with a proposal for Morrisons	6 (Amended ET1)	Section 13 (Direct Discrimination) Section 26 (Harassment)
4. Removing the Morrisons, Marks & Spencer and Tesco accounts from the Claimant	6	Section 13 (Direct Discrimination) Section 26 (Harassment)
5. Screaming and shouting at the Claimant in August 2015	7	Section 13 (Direct Discrimination) Section 26 (Harassment)

RESERVED

6. Refusing the Claimant's requests for assistance with the Wilko's account and shouting at her about it.	8	Section 13 (Direct Discrimination) Section 26 (Harassment)
7. Calling Wilko's on 17th August 2015 without the Claimant being present.	9	Section 13 (Direct Discrimination) Section 26 (Harassment)
8. Seeking to extend the Claimant's probationary period in September 2015	10	Section 13 (Direct Discrimination) Section 26 (Harassment)
9. Failing to invite the Claimant to meetings in November and December 2015 and in February 2016	11	Section 13 (Direct Discrimination) Section 26 (Harassment)
10. Mocking and belittling the Claimant in August 2015	11 (Amended ET1)	Section 13 (Direct Discrimination) Section 26 (Harassment)
11. Arranging a Sunday afternoon meeting in Bradford	12	Section 13 (Direct Discrimination) Section 26 (Harassment)
12. Interactions between the Claimant and the Second Respondent in November 2015 relating to the demonstration of hardware for Morrisons	13 (Amended ET1)	Section 13 (Direct Discrimination) Section 26 (Harassment)

RESERVED

13. Not inviting the Claimant onto a conference call about retail shows in December 2015	14	Section 13 (Direct Discrimination) Section 26 (Harassment)
14. Conducting conference calls with the Claimant's accounts without her knowledge in December 2015; 24th February 2016; 1st March 2016 and 26th July 2016.	15	Section 13 (Direct Discrimination) Section 26 (Harassment)
15. Conducting conference calls with the Channel Partner team regarding the Claimant's accounts without her knowledge	16	Section 13 (Direct Discrimination) Section 26 (Harassment)
16. Failing and/or refusing to assist the Claimant when asked to do so on 4th and 6th March 2016	17	Section 13 (Direct Discrimination) Section 26 (Harassment)
17. Making a sexual comment and sending sexual text messages in December 2015 and January 2016	18	Section 13 (Direct Discrimination) Section 26 (Harassment)
18. Constantly questioning the Claimant about what accounts she was working on	19	Section 13 (Direct Discrimination) Section 26 (Harassment)
19. The Second Respondent commenting that he "did not know what the Claimant actually did" in May 2016 and June 2016	20	Section 13 (Direct Discrimination) Section 26 (Harassment)

RESERVED

20. Alleging at a meeting in June 2016 that Morrisons had asked for the Claimant to be removed from dealing with its account	21	Section 13 (Direct Discrimination) Section 26 (Harassment)
21. Refusing to allocate the Claimant the Marks & Spencer account	23	Section 13 (Direct Discrimination) Section 26 (Harassment)
22. Arranging conference calls on the Specsavers account in February 2016 without the Claimant's knowledge and allocating the account to Mark Vatcher.	23 (Amended ET1) and amendment application of 9th November 2017 regarding the allocation of the account.	Section 13 (Direct Discrimination) Section 26 (Harassment)
23. Not inviting the Claimant to a Group Retail meeting in February 2016	24 (Amended ET1)	Section 13 (Direct Discrimination) Section 26 (Harassment)
24. Requesting that the Claimant attend a meeting with the Second Respondent on her own	24	Section 13 (Direct Discrimination) Section 26 (Harassment)
25. Questioning the Claimant and shouting at her on a conference call in April 2016	25 (Amended ET1)	Section 13 (Direct Discrimination) Section 26 (Harassment)
26. A comment by the Second Respondent in June 2016 as to "why are you buying a house, are you 'just' renting at the moment"?	Amendment application of 9th November 2017.	Section 13 (Direct Discrimination) Section 26 (Harassment)

RESERVED

27. Criticising the Claimant in relation to work on an AS Watson account in September 2016 Refusing to allow the Claimant to attend a meeting with AS Watson	25	Section 13 (Direct Discrimination) Section 26 (Harassment)
28. Informing the Claimant on 8th September 2016 that the Second Respondent had a preference for Mark Vatcher to attend a retail event rather than the Claimant	26	Section 13 (Direct Discrimination) Section 26 (Harassment)
29. Calling a Partner to discuss the Next account behind the Claimant's back The allocation of the Claimant's accounts with Morrisons, Specsavers, Marks & Spencer and Sainsbury's to Mark Vatcher without explanation.	26	Section 13 (Direct Discrimination) Section 26 (Harassment)
30. Being required to produce an SEA plan; The description of the SEA plan as "crap"; The manner of the Second Respondent's dealings with a review relating to the SEA plan.	26 (Amended ET1)	Section 13 (Direct Discrimination) Section 26 (Harassment)
31. Questioning and screaming at the Claimant regarding where certain information came from relating to the Next account	28 (Amended ET1)	Section 13 (Direct Discrimination) Section 26 (Harassment)
32. Being made an example of in an email of 3rd October 2016 regarding being unable to attend an Enterprise Review meeting	30	Section 13 (Direct Discrimination) Section 26

RESERVED

		(Harassment)
33. Informing the Claimant on 4th October 2016 that she was being placed on a Performance Improvement Plan ("PIP")	31 57 (of the Re-amended ET1)	Section 13 (Direct Discrimination) Section 26 (Harassment) Section 27 (Victimisation)
34. Refusing the Claimant's request to move departments so that she continued to be line managed by the Second Respondent after raising her grievance	34	Section 13 (Direct Discrimination) Section 26 (Harassment)
35. Arranging a call on 14th October 2016 without the Claimant relating to the Bargain Booze account	35	Section 13 (Direct Discrimination) Section 26 (Harassment)
36. The sending by the Second Respondent of an email questioning the Claimant's work relating to the Coop account on 14th October 2016	36	Section 13 (Direct Discrimination) Section 26 (Harassment)
37. Alleging that the Claimant had jeopardised relationships between the Respondents and a supplier and screaming at her on 4th November 2016	48 (Amended ET1)	Section 13 (Direct Discrimination) Section 26 (Harassment)
38. The contacting of customers and partners by the Second Respondent in an attempt to gain evidence that could be used within the grievance meetings	Amendment application of 9th November 2017.	Section 13 (Direct Discrimination) Section 26 (Harassment) Section 27 (Victimisation)

RESERVED

39. The contacting of the Claimant by email on 25th November 2016 by the Second Respondent relating to the loss of the Next account after she had certified as being sick with stress.	38 57 (of the Re-amended ET1)	Section 13 (Direct Discrimination) Section 26 (Harassment) Section 27 (Victimisation)
40. Constructively dismissing the Claimant	40	Section 13 (Direct Discrimination)