



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Miss S Vassar**

**v**

**Chancellors Group of Estate  
Agents Ltd**

**Heard at:** Watford

**On:** 29 October to 7 November 2018

**Before:** Employment Judge Manley  
Mrs I Sood  
Mrs AE Brown

## **Representation**

**For the Claimant:** In person

**For the Respondent:** Ms Y Montaz, Counsel

## **RESERVED JUDGMENT**

1. There was no fundamental breach of the claimant's contract of employment such as entitled her to resign. There was no dismissal and therefore no unfair dismissal.
2. There was no less favourable treatment because of the claimant's sex.
3. There was harassment by RC related to the claimant's sex from around October 2015 to May 2016. That complaint was made out of time and it is not just and equitable to extend time. There were no other acts of harassment.
4. The claimant carried out protected acts when she complained in April 2016 about the harassment referred to above. by RC up to May 2016. That complaint was made out of time and it is not just and equitable to extend time.
5. The claimant was not subjected to any other detriments because of having made any protected acts.

6. The claimant is not entitled to notice pay as she resigned.
7. The issue of whether the claimant is entitled to any further payments of holiday pay has been resolved between the parties and is dismissed.
8. The claimant did not suffer any lawful deduction of wages with respect to commission or any pay rise.
9. The claims brought by the claimant fail and are all hereby dismissed.

## REASONS

### Introduction and issues

1. The claimant brought several complaints by a claim form presented on 24 August 2017. These were summarised at a preliminary hearing on 12 December 2017 and an outline list of issues was agreed there but without the necessary details. This list of issues is reproduced below.

**“6. *Jurisdictional***

6.1 *Have the claimant’s claims under the Equality Act 2010 been brought within the relevant time frame? If not, is it just and equitable to allow such claims to advance?*

**7. *Constructive unfair dismissal***

9.1. *Was there a breach of the claimant’s contract of employment?*

9.2. *If so, was said breach fundamental?*

9.3. *If so, was the claimant entitled to resign?*

9.4. *If there was a breach, did the claimant affirm such breach by continuing to work?*

**10. *Sex discrimination***

10.1. *Was the claimant subjected to less favourable treatment as a result of her sex as alleged?*

10.2. *If so, did the respondent take such reasonable steps as was reasonably practical to prevent any employees committing any particular discriminatory acts or committing such an act in general?*

**11. *Harassment and sexual harassment***

- 11.1. *Was the claimant subjected to unwanted conduct?*
- 11.2. *If so, was such conduct related to the claimant's sex or of a sexual nature?*
- 11.3. *Did such unwanted conduct have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?*

12. **Victimisation**

- 12.1. *Did the claimant perform a protected act?*
- 12.2. *If so, was the claimant subjected to a detriment for performing said act?*

13. **Notice pay**

- 13.1. *Is the claimant entitled to notice pay?*
- 13.2. *If so, what is the correct notice pay owed to them?*

14. **Holiday pay (breach of the Working Time Regulations)**

- 14.1. *Is the claimant entitled to holiday pay?*
- 14.2. *If so, what is the correct holiday pay owed to her?*
- 14.3. *Did the respondent breach the Working Time Regulations in respect of the claimant's holiday pay?*

15. **Unlawful deduction of wages**

- 15.1. *Has the claimant suffered a deduction of wages?*
- 15.2. *If so, was said deduction unlawful?*
- 15.3. *If so, what is the amount of said deduction?"*

- 2. An application to amend the claimant's claim was made on that day and was allowed for a single new allegation of victimisation about letters being sent out in her name between May to September 2017 after she had left the respondent. At that preliminary hearing, the claimant also asked about her rights to privacy and the powers under Rule 50 of the Employment Rules of Procedure were explained to her by the judge at that point. The claimant was then ordered to send a timeline of events and further information and an order was made for a list of issues to be agreed if possible.

3. Unfortunately, although the claimant did provide a draft list of issues in August 2018, this was a lengthy document with many bullet points which did not necessarily make it clear what particular acts were complained under which heading of Equality Act 2010. The respondent responded making suggestions about how such a list of issues could be drawn up and the claimant was given further advice by the tribunal towards the end of September. Even more unfortunately, this led to a list of issues which contained 292 alleged issues. It was still not clear at that point how they were said to be claimed under which heading of Equality Act 2010.
4. It was therefore necessary, at the commencement of this hearing, to spend considerable time redrafting a list of issues which could be agreed and which made the hearing manageable. The employment judge therefore prepared a draft having read the claimant's witness statement and looked at the list of 292. After the claimant had had time to consider that list, make amendments and state which were said to be harassment, which were said to be direct sex discrimination, which were said to be victimisation and which went to her claim for constructive dismissal, the list below was agreed by all present. Although that list is not necessarily a perfect list of issues as it leaves out some of the dates of the acts complained of, these were clarified during the evidence and we hope will be made clear in our findings of fact and/or in our conclusions. We used the initials of the people complained about (RC and SR) and some of the other people referred to.
5. This is the agreed list after discussion and amendment by the claimant:-

Causes of action

*All are now claimed to be part of constructive dismissal*

*All except the first 2 below are claimed to be victimisation (the first protected act being 25 November 2015)*

*All under RC are claimed to be harassment and direct sex discrimination*

*Under SR 1,3 and 9 are claimed to be direct sex discrimination and 2,3,8 and 10 are claimed to be harassment*

*Under General allegations 1-5, 9,11 and 14-15 are claimed to be direct sex discrimination and 1-7, 11 and 14-15 are claimed to be harassment.*

*RC*

- 1 RC asking C out and asking C to have sex with him and saying if she didn't he would tell people at work she had anyway – Oct-Nov 15*
- 2 RC appearing to follow her in his car on way home – 12 Nov 15*
- 3 RC spreading rumours about having had sex with C*
- 4 RC making unpleasant remarks about C (KH statement)*

- 5 *RC poor communication with C on work matters*
- 6 *RC influencing C's commission on new homes to her disadvantage – Dec 15*
- 7 *RC making comments to third parties about C and other women – 15-early 16*
- 8 *RC making comments implying he was safe (KH statement)*

SR

- 1 *SR failing to record and/or take appropriate action on C's complaints re RC -Nov 15*
- 2 *SR discussing C's concerns re RC in open meeting at Ascot (KV statement) – Nov 15*
- 3 *SR summarising C's disagreements in email 1 April 16 with no mention of RC issue*
- 4 *Discouraging C from going to HR (text message Jan 16)*
- 5 *Lack of support/feedback re RC*
- 6 *Using different process re concern about WGN drunk and RC issue*
- 7 *SR sending too many emails, micro-managing C from April – June 16*
- 8 *SR changing her behaviour towards C, raising concerns re C work etc April-June 16*
- 9 *SR saying she was too busy to help C when C on sick leave - June 16*
- 10 *SR continuing to contact C on when SR came back from maternity leave despite instructions not to– Feb 17*

General allegations – R, several individuals

- 1 *R S-L discouraging C from formal route re RC and making inappropriate comments 8 April 2016*
- 2 *R S-L providing assurances to RC about his continued employment during C's grievance process April- May 2016*
- 3 *R S-L unsatisfactory grievance outcome, making light of RC issues, not mention harassment – 27 May 2016*

- 4 *R S-L persuading C to wait for SR return from maternity leave in a deliberate attempt to allow time to pass so C would be out of time for ET claim*
  - 5 *Not investigating fully and unsatisfactory grievance appeal outcome – 10 June 16*
  - 6 *RC allowed to visit Sunbury office whilst grievance going on until after appeal hearing*
  - 7 *Different treatment of JH issue compared to C and RC issue – Sept 16*
  - 8 *C being required to work long hours and be short staffed*
  - 9 *R not investigating allegation re RC following home after C had shown his explanation not valid*
  - 10 *C being asked to sign new contract – Dec 16*
  - 11 *C having to be line managed by SR when she returned from maternity leave having been given assurances in May 16 she would not have to – Feb 17*
  - 12 *Pay rise suggested in Dec 16 and then not given in April 17*
  - 13 *Breach of confidentiality re diary entry for Dr appointment*
  - 14 *Not investigating fully and unsatisfactory grievance outcome – 3 April 17*
  - 15 *Not investigating fully and unsatisfactory grievance appeal outcome – 2 May 17*
  - 16 *Not paid commission/incorrect holiday pay*
  - 17 *Letters in C's name going out after employment ended.*
6. The tribunal had several witness statements to read. There was a witness statement from the claimant which was a document running to 32 pages with 67 paragraphs. Much shorter statements were produced on her behalf. One was from her sister, Katie Vassar who was also a work colleague, one from a former colleague, Ms Sheridan and another from a former colleague, Mr Cowie. The tribunal also had a witness statement which it read from Ms Hill, who was also a former colleague, but was not able to attend the tribunal. We therefore have taken into account that there was no opportunity for the respondent to cross-examine that witness where her statement touches on any areas of dispute.

7. For the respondent, we heard from Mr Robert Scott-Lee. Again, his witness statement was relatively long. It was 22 pages and 114 paragraphs. Mr Scott-Lee is the managing director of the respondent. A much shorter statement was handed in by Mr Simpson who is an operations director. The tribunal had a bundle of documents which ran to two lever arch files. Most of the documents appear in the first bundle and, as is usual, we did not need to read every document, but it is probably true to say that we looked at a few hundred pages over the course of the hearing. The tribunal spent the first day reading all the witness statements and looking at the relevant documents, the second day was when we agreed the first draft of the list of issues and we started hearing evidence on the third day. We also heard evidence on the fourth, fifth and sixth days with submissions on the morning of the seventh day. Given the extensive material we had to consider, we reserved judgment.
8. As the parties were about to leave at the end of the hearing, the claimant made an application under Rule 50 for anonymity for herself and her witnesses. She understood that the judgment would appear on-line and had sent an email to the tribunal before the hearing making this request although she had not drawn our attention to it until the end of the hearing. It is clear from that email that the claimant understood the principle of open justice but drew the tribunal's attention to the stress and anxiety caused by the proceedings and the fact that she had worked in the respondent's industry for 15 years and was concerned about her future. The respondent objected to the application. The tribunal was not able to make the claimant or her witnesses' anonymous. This was not the sort of case where the tribunal could make an anonymity order under Rule 50. The claimant had herself brought this claim and understood that the principle of open justice is paramount. The only time anonymity might be granted is where it is to protect children or vulnerable individuals or for other specific reasons not put forward by the claimant. The application for an anonymity order was refused.

## **Facts**

9. The tribunal finds that the following facts are those which are relevant to the determination of the issues as agreed by the parties. Over the course of a fairly lengthy hearing and with many documents before us, it is, as is usual, a case where we touched on a number of other matters. We have concentrated our efforts on those facts which go directly to the issues or assist us in the findings of fact for those issues.
10. The claimant started employment as a lettings manager for the respondent at its Sunbury office on 6 May 2014. Her salary was £25,000 and she could also earn some commission over that. The respondent is a medium sized business. It has just over 50 branches and 5 core regions. It is in the business both of selling and letting properties. Mr Robert Scott-Lee is the managing director and the claimant was line managed by an area manager, SR, who was in turn line managed by Mr Scott-Lee. As we understand it, SR was responsible for about 10 offices. SR was the area lettings

manager, and, in that capacity, she oversaw recruitment, training and general management of the separate business units. The respondent has an HR department and, as Mr Scott-Lee said in his evidence, the directors are fairly closely involved in the business and employee relations side of the business. There was a contract of employment and an employee handbook. The employee handbook sets out a list of suggestions for “personal harassment”. This includes “spreading malicious rumours or insulting someone by word or behaviour”; “uninvited and unwelcome physical contact;” “abusive threatening or insulting words and behaviours including jokes, offensive language, gossip and slander.” The handbook also states the circumstances in which harassment is unlawful where it relates to the protected characteristics under the Equality Act 2010.

11. As far as termination of employment was concerned, notice to be given by either party for employment between two years’ and four years’ service was six weeks. The contract also included the following clause:

***“Terminating employment without giving notice***

*If you terminate your employment without giving or working the required period of notice without express agreement of a director of the company, confirmed by HR in writing, as indicated in your individual statement of main terms of employment, you will have an amount equal to any additional cost of covering your duties during the notice period not worked, or attributable cost deducted from any termination pay due to you. You will also forfeit any commission, bonuses and incentives that are at that time unpaid and contractual accrued holiday pay due to you over and above your statutory holiday pay, if you fail to give or work the required period of notice.”*

12. There was a detailed commission document which set out the circumstances in which commission would be paid. It is not necessary to go into the detail of that now save to say that, as the claimant was the lettings manager, commission would be based on lettings she arranged.
13. SR, as the area lettings manager, was not always present at the Sunbury office. Indeed, it appears that she might only visit the office as infrequently as once per quarter but that would depend upon what issues were arising in any of the other offices and pressures of work on SR as well as the need for her to visit there. A great deal of the communication between SR and the claimant and presumably other branch managers was by email and/or telephone. There appeared to be no particular difficulties between the claimant and SR until the matters which we turn to in late 2015.
14. Sometime during October or early November 2015 the claimant had to work on occasions with another agent, RC, who was head of land and new homes and who was based at the head office of the respondent in Bracknell. The new homes team used the Sunbury branch facilities because there were several new-build sites in that area. It appears that RC invited the claimant to go out for drinks and later suggested a sexual



relationship with him. There is no contemporaneous note about this but when the claimant first raised it in writing in April of 2016 it was recorded that she said this:

*“He asked me to go for drinks, I said no you are married go home, then when we were at head office he asked me to go for drinks with others but no-one else was there – he said to me if you don’t sleep with me I will tell everyone in the company you have anyway, he also followed me home, it got too much.”*

15. The claimant gave more information on this when she was asked about it at later meetings. It appears that she went to the pub with him on one or two occasions and it was on one of these occasions that his comment reported above was made. The tribunal was given no particularly clear evidence about how many times the suggestion for a personal and/or sexual relationship was made.
16. The claimant’s evidence was that one day in early November, probably 12 November, she left work late. Whilst driving home she noticed that RC’s car was following her car. She was worried that he was going to be following her home; he pulled in front of her but then turned off and went in another direction. The claimant was very concerned about this as she lived alone, and she believes that she raised it with SR shortly thereafter. There was no clear record of that although it seems that she definitely raised it on or around 25 November.
17. The claimant’s sister, KV, gave evidence that the claimant rang her while this incident was going on and that she was very upset. KV told the claimant that she should report the matter to SR.
18. KV also told us that a couple of days after she knew that the claimant had reported RC following her in his car, SR was in the Ascot office where KV worked and she said something to KV about the claimant having reported this matter. Other people were probably present, but it is not known if they heard. We have no details of what she said. KV said she couldn’t remember the exact wording but she recalled that SR commented on how upset the claimant was and about her belief that RC might have followed her home. When KV was asked in the hearing whether RC’s unwanted attention towards the claimant had been cut off “*before it went too far*”, KV replied: “*I believe so*”. She also said that it appeared that SR was supportive.
19. The claimant understood that SR was going to speak to the RC’s line manager, Mr Simpson, about the matter. Indeed, Mr Simpson recollects that he was spoken to by SR about this matter. He made no notes at the time, but his recollection was that SR contacted him by phone. She told him that the working relationship between the claimant and RC had deteriorated because RC had shown an interest in the claimant and the claimant was not interested. RC had not got the message. Mr Simpson recalled that he asked what he should do, and he got the impression that it should be dealt with informally. He said he would have a quiet word with RC and he did so.

He said RC accepted immediately what he was told, namely that the claimant was not interested and there should be no further incidents. As far as he was concerned, that was the end of the matter. The tribunal have not heard from SR. She is no longer employed by the respondent. It appears that SR made no note of this incident, nor did she report it to HR. The claimant's evidence is that SR did not suggest she should report it to HR either.

20. In December 2015 discussions took place about the claimant's involvement with new homes sales. The respondent took the view that her current commission arrangement did not include work that she did on new homes sales. On 17 December a letter was sent to her which confirmed discussions about the commission she could earn in relation to the new homes sales. The claimant says now that this was to her disadvantage, but she has not explained fully to the tribunal why she says that is the case. She has not been able to show any reduction in the percentage she would earn as between sales and the lettings commission outlined in her own commission arrangements. In fact, the claimant has indicated that no-one earned commission in any event because so few homes were sold. The tribunal heard from Mr Scott-Lee and Mr Simpson that they thought it was fair that the claimant and others involved in sales, who were not usually, should earn some commission. RC had no influence and was not involved in this decision at all. There does not appear to have been an issue raised by the claimant about that letter at the time.
21. In early January 2016 a text message exchange between the claimant and SR, which the tribunal has seen, indicates other difficulties with RC. This reads as follows: *"I have emailed you he finally spoke to me one hour later said he had seen my email that I sent you yesterday and because of these issues I will be being told that next week sales will do sales and lettings will do lettings. I told him I would wait for instructions from my directors not the new homes manager. I can't stand him".* SR replied: *"Don't worry I will speak to Robert about it."* The claimant replied: *"He is actually poisonous if my job is changed because of him one more time I will have to raise formally with HR"*. SR replied: *"It won't be. He shouldn't say anything like that to you hence I will go to Robert. Fine for you to cover the office rather than be at the launch"*. This is a reference to a new homes launch which was happening on that day. It does appear that nothing was taken further with respect to that matter and the claimant makes no further complaint about it. The claimant does complain that SR discouraged her from going to HR because she suggested she would speak to Robert (Mr Scott-Lee). The tribunal does not interpret what SR said as discouragement and the claimant was free to approach HR if she needed or wanted to.
22. There was a telephone conversation towards the end of March between SR and the claimant. This appeared to have been somewhat difficult. It led to SR sending to the claimant an email outlining what she said had been discussed. The email appears in the bundle and is relatively long. In summary, point a is about the an outcome of a complaint which had been passed to SR. She said *"On Wednesday I informed you I was looking into*

*the case in more detail and would respond to the client again the following day*". She went on to say the outcome was that the issue was resolved, and she would follow it up in writing. Under point b, SR referred to a discussion about commercial commission and discussions she had had with Mr Scott-Lee about that. Under point c, SR she reported the claimant having asked "*what are Chancellors proposing to make me want to stay here*" and says that the claimant raised that many times. It is clear that SR and the claimant discussed the claimant's remuneration package and commissions and she commented as follows:

*"Unfortunately with both conversations you have been very angry and upset and this is reflected in how you have spoken to me and certain comments made. This I am aware was out of the earshot of the office but is unacceptable and should not be the case. I cannot have a conversation with you in this way and would not expect this from you either"*.

SR went on to suggest the claimant has a think about things and asked that they move towards a constructive way forward.

23. The claimant also had what appears to be a note of that meeting where she comments on a, b and c. Nowhere in either SR's email nor in the claimant's note is there any direct reference to any difficulties with RC with respect to things that had been raised in October or November. The claimant says that SR missed this out deliberately even though the RC issue was the most important issue discussed. The tribunal cannot see why either the claimant or SR would miss out something if it had been discussed. We find as a fact that those issues were either not discussed or were discussed in such a minor way as not to be worth recording.
24. The claimant was clearly unhappy about what had been discussed with SR in that telephone conversation and she felt she needed to raise matters with HR. On 6 April she wrote to HR saying that there were four matters she wished to raise; one matter concerned the Sunbury office; one was about support from the respondent; one was the RC issues which she considered to be "serious" and the fourth was her future with Chancellors. There was then a telephone conversation when the claimant explained in brief what she was concerned about. Another thing she said at that point was as follows: "*There was a big Rob C issue – all I've been told is that he is not allowed to speak to me, I was never asked if I wanted anything to be formal.*" When asked about this in the hearing, the claimant said that she could not remember exactly but she assumed that SR told her that RC had been told that he was not allowed to speak to her.
25. The claimant was asked by HR if she was interested in an informal meeting with a director. She said that she was, and she therefore met with Mr Scott-Lee and an HR note taker on 8 April 2016 to discuss these matters. Mr Scott-Lee acknowledged at the outset that the matter "*might go formal*". The claimant repeated the allegation with respect to RC asking her out for a drink. She said she went for one more drink with him and others and that

he *"kept asking me out"*. She went on to say that: *"Then he said going to spread rumours that we had sex if you don't"*. She then talked about the drive home although it is not recorded that she said she was leaving work at that time. When asked whether she reported it to SR in writing or verbal she replied: *"Sitting in my car talking"*. The claimant said: *"I thought it was being dealt with and sorted"*.

26. There was then discussion about commission on the new homes sites, further discussion about concerns about RC including matters such as him coming into the office in jeans. When Mr Scott-Lee asked the claimant whether RC had *"stopped"*, the claimant said: *"yes"*. He then said: *"Okay so it has stopped. Has he tried to follow home?"* The claimant replied: *"No"*. When Mr Scott-Lee asked, *"so you're not being personally being bothered by him in that way?"*, the claimant replied: *"No"*. There were further discussions where the claimant set out that she had been told by other people that RC had said she had had sex with him as well as rumours about other female staff.
27. A little later in the discussion Mr Scott-Lee said: *"There are things I am very concerned about but some things that you are over thinking this. If you make it everything then it is more than it is, if I show that email to RC then it is a non-convo. It is not unreasonable, he dealt with it"*. He then went on to comment about *"people who don't work for the positive"* and about *"trying to make a big deal out of a small deal"*. He went on to say that he thought there was a change in behaviour (by RC) but said that the claimant could consider a formal route. He said:

*"Now if you raise a formal grievance re conduct in handbook, issue I would flag with that it is formal which could impinge on his employment so you have to ensure that what you bring is very clear and well considered in terms of what you raise as issues, you want to talk only about things that matter, evidence is you talk about your sex life that email I don't know might be at that level."*

28. He suggested the claimant should have a think about it and there were positives and negatives to both approaches (formal and informal). He also went on to suggest that RC, although he was *"not "pre-deciding here but it didn't warrant his termination, we have a duty to continue his employment being realistic, his patch he will remain there..."*
29. The claimant complains that some of those comments were inappropriate and unacceptable. The tribunal accepts that it suggests that Mr Scott-Lee had decided what sanction would be applied to RC if disciplinary proceedings were taken. It does not show that any assurances were given to RC and it was Mr Phythian-Adams who made decisions later about that.
30. Some two weeks later, on 25 April 2016, the claimant raised a formal grievance. She did so by an email which reads as follows:

*"I have decided to take the formal route. I feel that over the last six months I have had to deal with sexual harassment, bullying and I also*

*feel that I have not had the support of my direct manager in relation to these matters when raised and clearly whatever action was taken previously (none of which was discussed with me) has not been effective as lies are still being told about me to other members of staff of which is and I feel that formal action is the only way to put an end to this completely."*

31. The email was acknowledged on 29 April and a meeting arranged on 5 May with Mr Scott-Lee for a formal grievance hearing. The claimant summarised at the beginning of that hearing that there were two main things "*RC issue and the handling of this*". That grievance hearing then repeated some of the previous conversations that were had about the RC incident. The claimant also stated that: "*SR has mentioned it in Ascot to my sister*". She also recorded a matter which she had raised with SR that another member of staff "WGN" had come into work drunk and she had reported that to SR who said that she should put her concerns in writing. WGN was reportedly suspended. The claimant raised a concern that this was treated more seriously than her complaint against RC. The claimant used the term victimisation with respect to actions taken by RC including the fact that she believed he was not communicating with her by email about the new homes matter although KH forwarded on the emails where the claimant had not been included. Some matters had been dealt with, it appears, because a new person, Mr RP, had taken over the new homes leadership from RC. The claimant accepted that there was much less communication with RC as a consequence of RP being appointed as did her witnesses.
32. Mr Scott-Lee asked who the claimant would like him to speak to about this matter and some names were suggested. Mr Scott-Lee did subsequently speak to all those save for a Samantha who was no longer with the business, Ben who was junior to the claimant and Lisa. Later in the meeting the claimant said: "*The RP position means I don't have to deal with him, would want things to go via RP, this man is continually spreading rumours about me, who else has he told. I shouldn't have to think why should I have to feel like I have to justify myself to people*".
33. The claimant and Mr Scott-Lee then went on to discuss the claimant's grievance about SR which was that SR had not dealt with the matter she had raised about RC in a way which the claimant believed was appropriate. She says she was not reminded that she could raise matters formally and that she had not been advised of the outcome. The claimant accepted that she should have asked for an outcome but said that one should have been given in any event.
34. The claimant also raised an issue about what she considered to be SR "*constantly emailing*" her. She considered she was being bombarded by emails when that had not happened before. Mr Scott-Lee replied: "*that increase in email comm is possibly partly my fault. In our meeting I said you have to write everything down so I have my full pack on my handover*". This was a reference to the fact that SR was about to go on maternity leave and Mr Scott-Lee would be covering her role while she was away. Towards the

end of the meeting the claimant was asked about how she felt about SR, she replied as follows:

*"I think we would need to find a method going forward as will impact on her being my manager, your call but I think that obviously I don't know whether that puts it as serious for termination but something needs to change if she continues to be my direct manager."*

35. Mr Scott-Lee said he agreed with that and he wanted confidence moving forward. He suggested that they did nothing "radical" until SR went on maternity leave and then worked with him. The claimant replied:

*"I don't know I think this is going to impact how she is with me. I really don't know, don't want to be at a point where she comes back and I have to leave".*

36. Slightly later there was a comment made by RSL which has been the subject of much discussion, interpretation and reinterpretation over the course of this hearing. It reads as follows:

*"Sensible, let's leave as nothing changes until I meet with her and the element of that operational convo, if all able to muddle through that is better and if not we'll just flip early. Re her coming back, that is over 9 months away, acres of time, I would like to, with everyone, agree in advance of her return we agree it and present it on her arrival and if appropriate for her to return as line manager then fine if not we will change and all will be within agreed parameters, we can do that months to plan that and will cross that bridge when we come to it, things have moved on by that point and I will agree with you and we can work that through. Would that be okay we can make a change okay."*

37. To which the claimant replied: "Yes" and Mr Scott-Lee said: "So no change today I will meet with everyone and cover both points with SR is that okay?" the claimant again replied: "Yes".

38. Mr Scott-Lee then arranged to speak with several people who had been suggested by the claimant. These were KV, RP, SR, KH and RC. In large part, there was confirmation by those people that RC had asked the claimant out for drinks and it had been believed that he was spreading rumours about sexual activity. There was no direct evidence that he was the source of those rumours although KH believed that he was. SR told Mr Scott-Lee that she thought it was a "historic" issue and she had spoken about it with Mr Simpson. She did mention email communication, but no-one has ever been able to find such email to Mr Simpson. KV confirmed that the claimant had rung her when she was upset and believed that RC was following her. She said that she had spoken "in passing" with SR. RP confirmed that he had been told by Mr Simpson that there had been some difficulties and that RC had made advances and was "horrible to her going forward". Again, he confirmed he believed this was historic. KH believed that there was "a good flirty working relationship on both sides" but said that she had heard rumours from "primarily WGN" and that nothing was said

directly by RC. She also confirmed that “RC had considerably backed off you know he wasn’t hounding her any more”. RC confirmed that he had “work flirted” with the claimant”. He couldn’t remember saying anything about sleeping with the claimant and that he did not follow her.

39. Around 26 May 2016 the claimant sent an email to HR asking about the grievance and said: “Yesterday was a little uncomfortable with RC in the Sunbury office”. As we understand it this is a reference to what KH said in her witness statement to the tribunal which was that RC had attended the Sunbury office, spoken loudly and said “he was back and that there was no stopping him”. That is not what the claimant reported at the time, but it is her evidence now that that is what was said. That visit by RC to the Sunbury office would have been on 25 May. What the tribunal and the claimant now know is that it was not until 26 May when RC had a disciplinary meeting about this matter.
40. On 27 May 2016 the claimant was sent an outcome from her grievance. This appears at pages 578-581 of the bundle and is a relatively detailed document. Mr Scott-Lee says:

*“I can confirm that, from my subsequent investigations, there is general consensus among other employees that RC’s communication is not of the standard expected and this does appear to be a common issue for his colleagues. However, there is evidence from my investigations to suggest that his communications with you may have been unacceptable to a greater extent. I can confirm that appropriate and corrective action will be taken to ensure this is not the case moving forward”.*

41. He went on to say that he had investigated the question of RC spreading rumours and concluded there was no evidence to suggest that he was, and he was unable to substantiate that point. He went on:

*“I can, however, confirm that the company’s expectations in terms of appropriate behaviour at work and what would be deemed as acceptable has been expressly confirmed to Robert.”*

42. He said that SR had confirmed that she had not advised the claimant in writing to go to HR and says this:

*“This was an oversight and on behalf of the company I apologise for this. I can confirm that appropriate and corrective action will be taken to ensure that moving forward any concerns of this nature which are brought to a manager’s attention followed up by an email confirming the company’s procedures as documented in the handbook for dealing with concerns of this nature.”*

43. He also went on to discuss the claimant’s concerns about a breakdown in the relationship between the claimant and SR. He expressed his view about the reasons that SR might be emailing the claimant more than she had before and says this:

*“You will then be working with me for the period SR is away and that period will enable us to reset the framework in advance of her return to ensure that you are both comfortable when she returns. You confirmed in the meeting you were happy with this approach.”*

44. He confirmed that the company would look to improve its communication and management methods and that appropriate and corrective action has been taken. The claimant was advised of her right to appeal.
45. One of the claimant’s concerns is the alleged micro-managing by SR. We accept Mr Scott-Lee’s explanation for the possible increase in emails to the claimant. In fact, we had very little evidence about the extent of these emails and the ones that the claimant took us to seemed to be unsurprising management emails and not at a particularly extensive level given that some of the communication from a manager not based in the same workplace would be likely to be by email. There did not seem to be more than one or two per day at the most. The tribunal saw no evidence of what the claimant described as micro-managing at all. Nor did we see any evidence that SR’s behaviour towards the claimant changed during this period. Shortly before SR went on maternity leave she did respond to HR when the claimant complained about having to work long hours. The claimant was told by HR that the respondent did not expect her to work additional hours, particularly as she returned from a period of absence. SR commented to HR (but not to the claimant) that the claimant was behind, not due to sickness, because it had been ongoing since last year. She said that some new builds had caused her to fall behind. She made some other light criticisms which the claimant, as far as we can tell, was not aware of.
46. The claimant was indeed on sick leave from 31 May and she asked SR to follow something up on her behalf. SR replied on 1 June: *“I won’t have time to upload so I’ll pass to another office. There may be a fact of delaying move date I’m afraid”*. On any account this is an unremarkable email. It does not say that SR was “too busy”. It said that she did not have time, but she did not refuse to help but simply passed the matter over.
47. The claimant did decide to appeal the outcome of the grievance and she was invited to an appeal hearing on 5 June. Before that hearing which was to be with a director, Mr Phythian-Adams, she sent a detailed letter raising points of concern. She particularly raised concerns she had about continuing to work with SR on return from her maternity leave and produced considerable documents which, on her case, showed that RC might well have been following her towards her home.
48. On 10 June there was an appeal hearing with Mr Phythian-Adams and again we have the notes of that hearing. It is not necessary for us to go through that as many of the matters raised repeated that which had been discussed before with Mr Scott-Lee. The claimant raised concerns about how SR dealt with the issues that she raised about RC.
49. On 17 June the outcome of the disciplinary hearing on 26 May for RC which had been heard by Mr Phythian-Adams, was sent to him. The allegation that



RC had behaved unprofessionally towards the claimant was not upheld but the allegation that he had allowed the deterioration of a personal relationship to impact negatively at work was upheld. RC was given a first written warning. The claimant was not told the detail of this outcome.

50. Around that time there was an exchange of emails between SR and the claimant. SR sent an email to the claimant seeking to confirm matters raised in a telephone conversation which concerned what was to happen when SR was on her upcoming maternity leave. What SR wrote appears to be relatively uncontentious and is simply a way of making sure everything is in place. The claimant responded to the points in the email in a slightly argumentative tone and SR replied in an even more argumentative tone which she sent through to Mr Scott-Lee. This was not sent to the claimant, but SR commented:

*"I have not sent my views on her response as currently she will not agree and listen to anything I suggest although majority is the same for all offices. I am sending as a file note due to my maternity leave. If this were not the case I would ask to take this further as I cannot work with (the claimant) when she is so negative about Chancellors, myself and the company procedures and I don't believe this is going to change. This is coming across in the office and to clients regularly now."*

51. In the appeal hearing, the claimant raised concerns that Ben had not been spoken to, so Mr Phythian-Adams did speak to him about matters. There was nothing particularly unusual in what Ben said. On 17 June Mr Phythian-Adams wrote two documents; one was an outcome for the disciplinary hearing for RC (as set out above) and the other was the outcome for the claimant's grievance appeal. The claimant's grievance appeal outcome confirms that action had been taken with respect to RC. This is said:

*"I can therefore confirm that the company have taken the decision to ensure that moving forward RC does not attend the Sunbury branch under any circumstances. Whilst we have put this into place I would point out that we are unable to offer guarantees you will not cross paths with RC at any other company events."*

Otherwise he said that all senior managers had been spoken to ensure they are aware of employee concerns that they should be escalated. The appeal was not upheld.

52. SR went on maternity leave on 1 July and Mr Scott-Lee took over the line management of the claimant as had been confirmed by HR in an email of 21 June which reads: *"With regards to your comments on SR, I have spoken to Mr Scott-Lee who has confirmed that upon SR's return to work if it is not deemed appropriate for you to report to her then it will be arranged for you to report to someone else"*. The claimant had already raised this in an earlier email of 20 June which said: *"I requested written confirmation that I would not be put back under the management of SR on her return to work if*

*it was not appropriate (as per the notes from my formal grievance meeting) but I have not received this yet*’.

53. On 10 September 2016 the claimant sent an email to Mr Scott-Lee and HR about something that a negotiator, JH, had raised with her. This was with respect to some members of staff going out for a drink and various rumours being spread, including one which was that RC had apparently mentioned to another member of staff that rumours about various men and women in the office were having sex. This had included an allegation or rumour that RC had told someone else that he had had sex with JH who was very upset about it. As indicated, the claimant’s email was to HR who were to deal with it. It seems there was also an allegation about improper behaviour by another member of staff which JH was asked about. She was called to a meeting but made it clear that she wished to take no further action with respect to either matter.
54. In November 2016 the claimant sent a further email asking Mr Scott-Lee to consider a pay review. She set out the successes she had had and said that she had been doing long hours during SR’s leave. She said that she worked long days and took pride in her office. She concluded by saying that she was anxious about what would be happening on the return of SR and that seemed to be connected to her belief that her figures were better with SR away.
55. There was then a meeting with Mr Scott-Lee and the claimant about the pay review request. Mr Scott-Lee confirmed in an email to HR what he had discussed with her as there were no meeting notes. He said: *“I talked about how the draft budget already had a draft pay rise in for her. I stated her efforts and successes were acknowledged and she did not need to feel they were going without notice”*. He then recorded other discussions about other members of staff and then turned to discuss the question of SR’s return after maternity leave. He noted that the claimant said that he had told the claimant that: *“nothing was decided on her return and that before she did I would meet with SV to discuss”*. The claimant had said it was stressful. He went on: *“I must be business focused so would only re-state facts or say I can’t talk about that. I urged her to realise that she didn’t ask more of me than I could offer”* He reiterated that he wanted her to have a huge long-term success with the business and wanted the business to help with her career. Mr Scott-Lee acknowledged in cross-examination that he may well have told the claimant in the meeting to stop asking about SR’s return.
56. The draft budget did indeed show a potential increase to £29,000 for the claimant and later that month the targets for the first quarter of 2017 were sent out. The claimant obviously had some concerns about her targets because she discussed them with people from other offices who had different targets. The evidence of Mr Scott-Lee was that offices were all very different, some had high value low turnover business, where others had low value, high turnover business. They were individually tailored targets.

57. Mr Scott-Lee gave evidence that the claimant suggested an income of £280,000 for the branch as a whole but that he had said that an increase could be agreed to £300,000. He gave evidence that the increase for the first quarter was considerably less than that. This is alluded to in an email sent to the claimant on 1 May 2017 which reads:

*“You will recall from our budget meeting that we budgeted for your pay rise in April on the basis you would achieve income and profit figures at budget levels for the first quarter period. Sadly this is not something that Sunbury lettings achieved and therefore the increase has not been implemented.”*

58. Although the claimant took issue with this, the tribunal find that it was clear that she had to meet that target income for the office; that had not been achieved and therefore the pay rise did not materialise. She was not promised a pay rise without that pre-requisite of meeting the target set. The tribunal has been shown a document, which the claimant disputes, but the tribunal has no reason to disbelieve, which indicates that in 2017 one manager did get an increase of £1,000, whereas three others did not. This is a limited snapshot but indicates that the claimant was not the only person who did not get an increase.
59. We now return to a period towards the end of 2016 when there was a decision to send new contracts of employment. Some employees had newer contracts, but the claimant was still on an old contract, so she was asked to sign the new contract. The claimant expressed concerns because some people had an addendum with respect to the car allowance that she did not have. When she asked for that addendum she was given it and the contract was signed. Her central complaint appears to be that she had to ask for the addendum.
60. Around 15 January 2017 there was a short telephone discussion between Mr Scott-Lee and the claimant where he suggested a trial for the claimant to be line managed by SR on her return. He gave evidence that the claimant objected to the idea and the claimant agreed that she did. There was therefore a meeting between Mr Scott-Lee and the claimant on 19 January of which there is very short a note in the bundle which reads as follows:

*“SR Return.*

*Concerns ongoing.  
Method of working  
Email culture  
Drop in figures potentially??*

*Current support low  
RL, RS, RSL, AJ  
colleagues to sound things out*

*RSL to review options.”*

61. Mr Scott-Lee's evidence was that he did indeed then review the options with respect to the claimant's line management. His evidence was that the claimant was already in a totally unique position being line managed by him and being offered further line management by him. He said he had to look after everyone's interests. He looked at moving regions. He accepted it was clear that the claimant was not comfortable with SR's return, but he could see no business reason why she should not be line managed by her.
62. Having considered matters, there was a further meeting on 3 February with Mr Scott-Lee and someone from HR. Again, there are minutes of this meeting although the claimant said she was not aware that there were to be notes of such a meeting. Mr Scott-Lee offered to keep very involved, offering to carry out the quarterly meetings and, if necessary, the monthly meetings. There was detailed discussion about the claimant's unhappiness with SR. She said that it "*wasn't just as a result of the (RC) stuff*". She raised other concerns about SR and said that her figures had jumped since she was away, and that SR had tried to pass off "*stuff I worked hard on as her own work*". The claimant continued to say that she thought it was inappropriate that she would be line managed by SR. Mr Scott-Lee said that they disagreed, and they did not think it was inappropriate. He pointed out that the claimant was free to raise a grievance but that was management's decision.
63. The claimant complained about the meeting saying that she was uncomfortable about the arrangement for the minutes and took issue with some of the matters raised there, none of which we need to set out now. HR replied and there was much communication about the phrase "*if appropriate*" in relation to whether SR was to continue as the claimant's line manager. The claimant made it clear that she was unhappy about the decision and that she was considering putting in a further grievance.
64. SR was due to return after maternity leave on 1 March and there was to be a planned meeting with SR, the claimant and Mr Scott-Lee on 9 March to facilitate that return. The claimant decided to put in a formal grievance and informed HR of this. By email of 7 March, HR in light of the claimant's request that she had no involvement with SR, wrote as follows:

*"What I can offer you is assurances that we will speak to SR to advise that a formal grievance has been raised by you and that she is to ensure that she can communicate in an appropriate manner on purely current work related items to ensure that Sunbury lettings is run in line with business objectives and to ensure that where needed, she can make management decisions that you need making in order to prevent any delay in your day to day running of the business."*
65. The claimant was on sick leave and therefore not able to attend a meeting on 9 March. She was due back on 14 March and found that SR was inducting a new recruit at the Sunbury office which caused her concern. The tribunal can find nothing wrong with this as the claimant was not able to carry out that induction. It was entirely appropriate for SR to do that and the claimant could have taken steps to avoid her if she felt she really had to.

66. The claimant had a GP appointment on 16 March and was therefore unable to join in a conference call with other people, including another member of staff, AJ. It appears that SR told AJ that the claimant had a GP appointment and that was why she was not in attendance. The claimant believes this was said in an open office. The claimant says that this was a breach of confidence. The tribunal finds that SR mentioning a GP appointment is entirely unremarkable. There is little to criticise and it demonstrates a level of sensitivity on the part of the claimant which is out of proportion to the comment.
67. On 16 March 2017 issues were raised with respect to the claimant's behaviour during the incident of the new starter and there were various communications with HR which we do not need to go into. The claimant did put in a very long and detailed grievance on 20 March 2017. It is difficult to summarise this as it is a document that runs to six pages. The claimant referred to the grievance in 2016 about harassment from RC and SR's conduct with regard to the lack of reporting of the matter. She stated: "*This destroyed my trust in SR*". She also said that she was "*provided with assurances that I would not have to return under her management and that it could be arranged for me to report to someone else instead*". This was the bulk of her grievance. However, she went on to raise a number of other matters having said that there was a fundamental breach:-
- "as you have forced me to return to the management of SR despite having provided previous assurances confirming otherwise and despite acknowledging the distress that it is causing me showing complete disregard for my feeling stress and anxiety which is affecting my health and wellbeing."*
68. The claimant quoted from the ACAS Guidance to Grievances and referred to other concerns from the matter of the doctor's appointment being known by AJ to having difficulties getting through to HR by phone one day; the issue about a new starter arriving the day she came back from sick leave and SR being present, what she considered to be an inadequate response from someone in HR, all of which she said were "*deliberate attempts by Chancellors of constructive dismissal*". She then went on to what she considered to be further attempts of constructive dismissal, talking about a third negotiator, etc., etc. **(822)**
69. The claimant's summary of that grievance is set out under 19 bullet points at paragraph 42 of her witness statement before this tribunal. She referred to the assurance that she believed she had been given about not being line managed by SR on her return from maternity leave as well as events that had subsequently occurred.
70. Upon receipt of that document, on the same day, a letter was sent to the claimant in Mr Simpson's name although it seems likely that someone else drafted it. This provided a summary of the claimant's concerns as set out in her email of 20 March and invited her to a meeting the following day, 21 March. That letter has 20 bullet points but covers more or less the same

ground. The claimant complains that she did not have sufficient time to take legal advice and respond to that document but she did send some comments on it before the hearing the next day.

71. The grievance hearing was heard by Mr Simpson and the claimant was accompanied by Mr Cowie, who gave evidence to us. Again, there was considerable discussion about the claimant's difficulties of being line managed by SR and other matters. The claimant was sent the minutes to comment on which she did. Those comments were added. There is no need to go through all those, save to say that for the final recorded note, she made no changes. This reads as follows:

*"In the meantime, I'm meeting SR in the next two hours. I don't have a problem telling her not to loan manage you between now and the outcome.*

*Robert (Mr Scott-Lee) is away at the moment, so if there are business reasons to come into branch I will tell her to do that.*

*However, other small things*

*But huge issues there is no choice other than to pull in her services.*

*I will do what I can to keep separation for that period.*

*Please refrain from discussing this with anyone else."*

72. The claimant and Mr Cowie believe that Mr Simpson said something to the effect that SR should only contact the claimant for "*business critical reasons*". Mr Simpson believed that it is possible that he might have used that phrase but what is recorded is as set out above.
73. The claimant was sent a request for a quarterly meeting with SR on 10 March to which she objects. The respondent's case is that that is an automatically generated quarterly meeting request. The claimant was also still included on any group emails that SR sent to her branch managers. The claimant's own notes record that she was present on weekly lettings conference calls with others around this time.
74. A grievance outcome was sent to the claimant on 3 April. Again, it is fairly detailed and the conclusion reads as follows:

*"In conclusion, I cannot find sufficient grounds to substantiate your grievance and in view of the lack of evidence to it being inappropriate for you to report to SR, I feel that it is appropriate for SR to manage you, with the additional input from Robert which is already proposed, and confirm that it is business as usual with SR expected to fulfil her duties as Area Lettings Manager as normal. I will be advising SR of this following this letter being sent and Kathryn will make arrangements for a meeting between you, SR and Robert."*

75. The claimant was told of her right to appeal. The claimant indicated that she would appeal. She did so by way of a very detailed document and we do not need to set it all out here as it repeats matters which had been raised by the claimant before.

76. On 4 April there was another new starter for the Sunbury office and it was agreed, in view of the difficulties, that the induction for them could happen at a different location. Mr Scott-Lee's evidence was that that was not ideal
77. On 13 April the claimant had a grievance appeal hearing with Mr James Scott-Lee who we understand was the Chairman of the respondent and Robert Scott-Lee's father. He is now deceased. The notes of the meeting are extensive as the meeting took over four hours, were in tribunal bundle. There is little or no dispute about those minutes. They discussed every point raised by the claimant in considerable detail.
78. Mr James Scott-Lee did speak to SR who was clearly a little unhappy about the claimant's complaints about her. In particular, the claimant raised some issues about inappropriate behaviour or comments by SR which she had mentioned fairly late in the proceedings and this may well have caused SR to be rather unhappy. SR expressed concerns about working with the claimant.
79. Mr James Scott-Lee then produced his grievance outcome on 2 May 2017. This is an 18 page document. It goes into detail about the concerns the claimant raised and gave carefully considered responses. It is a very thoughtful and thorough document. Mr James Scott-Lee appreciated that the claimant was likely to resign if the decision was that she should be line managed by SR and that was the outcome. He made this comment towards the end:

*"I am of course aware of your comments that you would leave if told that you had to report to SR and I can only hope that on reflection, you consider all I have said and decide that you are able to put your issues with SR behind you and work on rebuilding a positive and constructive working relationship. Should there be anything that I or the company can do to assist that goal then please let me know as I will be pleased to help where I can as I feel that would be the best scenario for all concerned. I can confirm that Robert will also meet with you and SR as originally planned with this same aim."*

80. The claimant resigned on 6 May 2017 by email to Robert Scott-Lee. She stated that she was resigning within immediate effect. She went on:

*"I feel that Chancellors have left me with no choice other than to resign as a result of fundamental breaches of contract and breaches of implied trust and confidence as a result of the actions and omissions of Chancellors as documented in the Grievance and Grievance Appeal raised by myself previously and I feel this decision has been forced on me as a result of fundamental breaches on the part of Chancellors."*

81. The claimant was told by Mr Scott-Lee that he was disappointed to receive the resignation and then HR wrote to her. They confirmed that various payments would not be paid to her if she did not work her notice period because of the clause in the contract as set out at paragraph 11 above.

The claimant started new employment on 12 June and on 24 August she presented an ET1 as set out above.

82. In September 2017 the claimant discovered that her name had been used on some of the respondent's standard marketing materials. Upon further investigation, it appeared that over 140 such letters had been sent with her name on them as the Lettings Manager. The respondent's explanation for this was given to her during September and October 2017. The respondent's case is that a junior member of staff used an old mail merge document, and this had caused this error to occur. The respondent's evidence was that other people had also had their name on such documents by mistake. They made an apology to the claimant and suggested that they could send a letter to the recipients which would read that the claimant "*is no longer employed by Chancellors and we do apologise for any confusion our correspondence caused*". The claimant objected and asked for some changes to any letter. Another letter was drafted which included the phrase requested by the claimant that she had been provided with an apology, but the claimant does not appear to have replied to say whether she wanted that to be sent. The tribunal accepts that an error was made. We are not satisfied that there was any detriment to the claimant.

### **Law and submissions**

83. The claimant brings claims under the Equality Act 2010 (EQA) and Employment Rights Act 1996 (ERA). There was also a breach of contract point on commission and pay which was not pursued with any vigour.
84. As far as EQA is concerned, the claimant brings claims for direct sex discrimination under s.13, harassment under s.26 and victimisation under s.27. The relevant sections are as follows:

#### **13 Direct discrimination**

- (1) *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.*
- (2) *If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.*

#### **26 Harassment**

- (1) *A person (A) harasses another (B) if—*
- (a) *A engages in unwanted conduct related to a relevant protected characteristic, and*
  - (b) *the conduct has the purpose or effect of—*
    - (i) *violating B's dignity, or*



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

## **27** *Victimisation*

- (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.*

### **123 Time limits**

- (1) *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.*

### **136 Burden of proof**

- (1) *This section applies to any proceedings relating to a contravention of this Act.*

- (2) *If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
  - (3) *But subsection (2) does not apply if A shows that A did not contravene the provision.*
  - (4) *The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.*
  - (5) *This section does not apply to proceedings for an offence under this Act.*
  - (6) *A reference to the court includes a reference to—*
    - (a) *an employment tribunal*
85. Where there are complaints of harassment and direct sex discrimination for the same incidents as in this case, the tribunal will consider harassment first as s.212 EQA states “*detriment*” *does not, subject to subsection (5), include conduct which amounts to harassment*”. That is, to some extent, advantageous to the claimant as no comparator is needed.
- 86.
87. complains of a person That person can be an actual or hypothetical comparator, which it is assumed in this case is what the claimant relies upon, except for one or two where she names occasions where other people have been treated differently. The claimant does have to show that any less favourable treatment related to her sex.
88. The claimant also complains of harassment. The tests are as set out in section 26 with the burden of proof resting on the claimant to show unwanted conduct related to sex. She also must show that the unwanted conduct had the purpose or effect of violating her dignity or creating an intimidating etc environment. The question of whether any unwanted conduct related to sex had that effect must be considered objectively, taking into account the claimant’s subjective perception. In Grant v HM Land Registry and another [2011] IRLR 748, the Court of Appeal reminded tribunals that they should not “*cheapen the significance*” of the words of the harassment section as “*They are an important control to prevent minor upsets being caught by the concept of harassment*”.
89. There are also allegations of discrimination by way of victimisation, contrary to section 27 EQA. Here the burden rests upon the claimant to prove that she has performed one or more of the “protected acts” defined at section 27 (1) b). This is the first stage and requires the appropriate findings of fact and conclusions. In this case, the respondent accepts that the grievance of 4 April 2016 amounted to a protected act.
90. Thereafter, for the victimisation complaint, we move on to the second stage and determine whether there have been any detriments because the claimant had carried out that protected act. Guidance is given in Nagarajan v London Regional Transport [1999] ICR 877; Chief Constable West

Yorkshire Police v Khan [2001] UK HL48 and Rhys-Harper v Relaxion Group plc [2003] ICR 867. These cases remind us that we should concentrate on asking why the respondent took the action they took when assessing whether it was because the claimant had carried out a protected act. This is a question of subjective intention. Everything set out above in respect of the shifting of the burden of proof and the drawing of inferences applies here too.

91. If there is a question about whether the claims have been presented within the prescribed time limit, the tribunal will need to consider whether there was conduct extending over a period. This covers a continuing course of discriminatory conduct (see Barclays Bank v Kapur [1991] IRLR 136). It is also the case that sometimes a number of acts may be themselves conduct extending over a period (see Owusu v London Fire and Civil Defence Authority [1995] IRLR 574). This will require the tribunal to consider whether matters are part of a policy or whether they are discrete acts. An operation of a discriminatory policy would constitute an act extending over a period.
92. Most of the matters about which the claimant complains are pleaded as alternative claims. We will consider harassment first as that does not require a comparator, but we will also need to consider claims for sex discrimination and victimisation where the claimant needs to show a protected act.
93. The complaint of unfair dismissal is brought under the provisions of s95c) ERA as what has become known as “constructive” dismissal. The tribunal is concerned to decide whether there has been a dismissal in accordance with Section 95(1) Employment Rights Act 1996 which states:-

*“For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2)....only if)-*

*a)-*

*b)-*

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

94. One of the leading cases on constructive dismissal is still *Western Excavating (ECC) Ltd v Sharp* 1978 ICR 221 which makes it clear that the employer’s conduct has to amount to a repudiatory breach. The claimant must show a fundamental breach of contract that caused her to resign and that she did so without delay.
95. The notice pay claim stands or falls depending on the outcome of the constructive dismissal complaint. For all money claims, the tribunal must consider what the contractual provisions are and whether they have been broken by the respondent.

96. The parties provided detailed written submissions which were of great help to us. They were detailed and helpfully went through each of the matters in our agreed list of allegations. Much of it was repeating the evidence we had heard, and it is not necessary for us to set them out in any detail here.
97. In summary, the claimant asked that we consider what she had written in her witness statement and her list of issues document. He said that she had been subjected to harassment and sex discrimination as well as victimisation which led to her constructive dismissal. She reminded the tribunal of the concerns she raised and that she had received assurances about not working under SR.
98. The respondent's representative reminded the tribunal of the facts, most of which were not in dispute, and the applicable law. It was submitted that many of the allegations were out of time and there was no ongoing situation to bring them in time. The respondent made brief submissions on each allegation in the list above. It was submitted that the claimant delayed in resigning and had therefore affirmed any breach of contract.

## **Conclusions**

### Harassment/direct sex discrimination

99. We deal first with the allegations with respect to RC. We consider whether the claimant has shown facts from which we could conclude that there has been less favourable treatment because of sex or unwanted conduct related to sex which had the purpose or effect of violating her dignity or creating an intimidating etc environment for her. We deal with the harassment allegation first.
100. The tribunal has found all the matters under RC occurred, except for that with respect to him influencing commission on new homes which he did not (item 6). The claimant has shown facts for items 1, 2, 3, 4, 5, 7 and 8 which do show unwanted conduct related to her sex. We are satisfied that what RC said when he invited the claimant to enter into a personal sexual relationship with him and the suggestion that he would tell others that she had even if she hadn't; appearing to follow her home in the car; being at least partly responsible for rumours being spread; making unpleasant remarks; poorer communication with the claimant than with others; comments made to third parties about the claimant and the comment that he made when he came into the Sunbury office in late May 2016, are all matters which related to her sex and violated her dignity or created an intimidating etc environment. We accept that it was reasonable for her to believe that. In summary, the claimant has shown that harassment of her by RC occurred between October 2015 and May 2016. There is no harassment of her by RC after that date, as agreed by the claimant that RC was warned and told not to speak to her or attend the Sunbury Office. Having found harassment, we do not need to consider whether there was any direct sex discrimination.

101. As far as the allegations with respect to SR are concerned, the claimant argues that items 2, 3, 8 and 10 are acts of harassment. As far as item 2 is concerned, we accept that SR did discuss the incident with the claimant's sister, but we cannot find that that objectively amounts to anything which would violate the claimant's dignity or create an intimidating etc environment. We do not accept, under item 3, that there was discussion of concerns about RC in the meeting with SR which led to the email of 1 April. The claimant also has not shown the facts for item 8 as SR did not change her behaviour towards the claimant except she may have sent more emails because she was shortly to go on maternity leave. Nor does the claimant show facts for item 10 in that any contact with SR when she came back from maternity leave was minimal and necessary. An automatic invitation to a quarterly meeting and the induction of a new staff member or simply not serious enough to be noted. The claimant cannot satisfy us that that is harassment related to her sex even if those matters are matters about which she was a little concerned. She cannot show that these incidents have anything to do with her sex, either for a harassment complaint or for direct sex discrimination.
102. The claimant also says that items 1 and 9 are direct sex discrimination. SR did say she didn't have time to carry out a piece of work when the claimant was on sick leave (item 9) but that is entirely understandable. Item 1 relates to SR failing to record or take appropriate action about the claimant's complaint about RC in November 2015. Whilst we accept that the claimant was disappointed, and it might be good practice to record these matters, we also understand that action was taken which led to a cessation of the conduct about which the claimant complained at the time, namely RC asking her to engage in sexual relations and perhaps following her home. Even if the burden of proof does pass to the respondent on that matter, we are satisfied with the explanation that the respondent believed the matter was dealt with in an appropriate way and concerns were at an end.
103. As for Item 10, this cannot amount to harassment related to sex. The claimant was included in group emails and would almost certainly have complained if she had not been. It was not related to her sex and so cannot amount to direct sex discrimination either.
104. Turning then to deal with the general allegations, these are numbered 1 to 17. The claimant says that the following are harassment: 1, 2, 3, 4, 5, 6, 7, 11, 14 and 15. For many of these items, the claimant has not proved the facts from which we could conclude that any unwanted conduct related to sex has taken place. As our findings of fact make clear, this is particularly true of matters 1, 4, 5, 6, 7, 11, 14 and 15. These were allegations of Mr Scott-Lee discouraging the claimant for taking a formal route and making inappropriate comments and persuading the claimant to wait for SR's return in a deliberate attempt to allow time to pass so that the claimant would be out of time for an ET claim; not investigating fully and unsatisfactory grievance appeal outcome; RC being allowed to visit the Sunbury office whilst the grievance was ongoing and different treatment of JH incident; the

claimant being line managed by SR on return, not investigating fully and unsatisfactory grievance and appeal outcomes.

105. We did consider with respect to items 2 and 3 that it is perhaps arguable that this related to the claimant's sex. This is RSL providing assurances to RC about his continued employment and what the claimant considered was him making light of RC issues and not using the word "harassment" in his outcome letter. The tribunal consider these first under harassment and then under direct sex discrimination. We are satisfied that the burden of proof shifts in relation to the comments made by Mr Scott-Lee. However, we are satisfied, on the evidence before us, that these comments were made because Mr Scott-Lee believed all matters were historic and were not serious enough to amount to gross misconduct and as far as making light of the issues was concerned, he was trying to move matters forward, the incidents having happened some months previously. The tribunal finds that the claimant does not show objectively that she felt that these comments violated her dignity or created an intimidating etc environment.
106. We accept the respondent's explanation for those two matters as being without discrimination because of sex. With respect to all other matters the claimant has simply not made out the facts upon which she seeks to rely as being unwanted conduct related to her sex. It seems to be very little to do with the claimant's sex at all.
107. The claimant also claims a number of those to be direct sex discrimination. We have already dealt with numbers 1, 2, 3, 4 and 5 and we turn to look then at items 9 and 10 which the claimant says are direct sex discrimination. Item 9 is the respondent not investigating the allegations about RC following her home after the claimant had tried to demonstrate that his explanation for the journey was connected to his house move not valid. Item 10 relates to the claimant being asked to sign a new contract. Item 10 can be dealt with very quickly. There is no evidence whatsoever that this was anything to do with the claimant's sex, as everyone was asked to sign the new contract if they had not already done so.
108. A little more can be said about Item 9. The claimant did go to some lengths to attempt to show that RC could not have been driving home when he followed her some of the way when she was going home some months earlier. We accept that these might be facts from which we could conclude that there was some sex discrimination but that might depend on a hypothetical comparator. This would be a male employee making a similar allegation some months after the event. If we shift the burden of proof to the respondent, we accept the respondent's explanation as one without discrimination, namely that it believed that RC had followed the claimant from the pub rather than from work; that RC had not, in fact, followed the claimant to her home; that it was some months ago and therefore not worth further investigation. Nothing had happened except that the claimant had been concerned. There is no evidence that a hypothetical male comparator would have been treated differently and the tribunal is satisfied that the decision was taken without any sex discrimination.

Victimisation

109. We turn then to the victimisation. The tribunal is satisfied that the claimant did carry out a protected act on 4 April 2016 when she raised matters in writing with HR. There are later protected acts contained within the grievances, but we do not need to go into those as the claimant simply relies on matters after the April grievance. The claimant's case, as we understand it, is that all matters except the first two relating to RC and including the post-dismissal matters are said to be acts of victimisation. It is agreed that the grievance raised concerns under Equality Act 2010.
110. The question for the tribunal is therefore whether any of the facts as found which amount to detriments are causally connected with the fact that the claimant raised a grievance about RC and SR's conduct in relation to her complaint about RC.
111. Some of the matters about which the claimant complains did not occur as our findings of fact make clear. For those that did, we need to consider any causal connection to any detriments. As far as the RC matters are concerned, the claimant has succeeded in showing that most of those matters occurred save for influencing any decision about commission on new homes (which in any event was not to her disadvantage). So, we consider whether RC's treatment of the claimant was connected to the grievance. This is difficult because we have not heard from RC to discover why he took the actions he did. There is considerable evidence that RC spread rumours and gossiped about several people and the claimant did not seem to be singled out for his inappropriate comments. Having said that, in the absence of RC, the tribunal finds that at least some part of his behaviour may well have been causally connected to the fact that the claimant had brought a grievance and that that had led to disciplinary action against him. We find that there was victimisation by RC in relation to items 7 and 8 in the list under RC. However, that victimisation ceased as did the harassment in May 2016.
112. Turning then to SR complaints claimed as victimisation. The claimant has not succeeded in showing all the facts which she relies upon. We accept that SR did not record the initial complaint but have not accepted that SR failed to take appropriate action. She did mention the claimant's concerns about RC to the claimant's sister (item 2) as we have stated, but there is nothing untoward about that. The claimant has not made out the fact under item 3 in that we have found that RC was not discussed during the phone call that preceded the email of 1 April nor does the claimant satisfy the tribunal (item 4) that SR discouraged her from going to HR. The tribunal is not satisfied that there was anything untoward about the different process used for the report that WGN was drunk, nor that SR sent too many emails, nor that she changed her behaviour, nor that she continued to contact the claimant over and above the minimal expected of her. The claimant has not proved any facts from which we could conclude that any of the matters raised by the claimant, even if they did amount to detriments were connected to fact that the claimant had made a grievance.



113. However, if there are some aspects of SR's management during that time which could be criticised, for example, concerns as expressed not least because SR expressed concern about the claimant as at paragraph 50 above (item 8), we consider whether that was causally connected to the claimant having raised a grievance. We note that SR did not comment on the grievance but on other aspects of the claimant's behaviour. The tribunal finds that there is no causal connection and the victimisation complaint for those matters does not succeed.
114. With respect to victimisation complaint for the general allegations, the claimant again, faces difficulties as there are many allegations where she has not made out the primary facts from which the tribunal could conclude there was victimisation. The claimant complains about grievances which do not go in her favour and seeks to argue that this has happened because she put in a grievance. We find there is no connection between the mere fact of the claimant having brought a grievance and the adverse findings. We do not find, as the claimant asks us to, that Mr Scott-Lee was putting things off in a deliberate attempt to allow time to pass so the claimant would be out of time for an ET claim. That is an absurd suggestion for which there is no evidence whatsoever. All the evidence that we have read points to an employer trying hard to understand the claimant's concerns, saying on numerous occasions that it is keen for her to stay and attempting to resolve the difficulties. The claimant has shown no other detriments and has failed to show those that might amount to detriments as having any causal connection to her having made a grievance.

Time limitation point

115. In summary then the claimant has shown that there were acts of harassment and victimisation in connection with RC between October/November 2015 and May 2016. She has not managed to show any breaches of Equality Act 2010 thereafter. The question therefore arises whether we have jurisdiction to hear her claims. The claimant suggests that this is conduct extending over a period because it begins with her complaints about RC's behaviour to SR in November 2015 and continues throughout. However, we are not able to agree with that analysis. Her concerns about RC stop no later than May 2016. Even if we include the fact that she raised those matters as grievances, the outcome of the grievance appeal was 17 June 2016. There is then really nothing about the RC allegations and SR was on maternity leave with Mr Scott-Lee line managing the claimant until SR's imminent return in the new year. Although the claimant would almost certainly argue that Mr Scott-Lee was the common denominator throughout, as he was the one who gave her the assurances that she relies upon, we do not find that that is correct. The claimant has read something into what Mr Scott-Lee said back in May 2016 which was not the way in which it was intended. There is really nothing about SR that the claimant can complain about after June 2016 up to her return or indeed after her return in March 2017. The claimant misunderstood what was said to her and given no reason for why the respondent should interfere with SR's right to return to line manage the

same offices as when she left to go on maternity leave some months earlier. The claimant cannot show that this is conduct extending over a period and the claim is out of time.

116. As those complaints of harassment and victimisation that relate to RC have been made out of time, we consider whether it is just and equitable to extend time. We find that it is not. The claimant said to the respondent on several occasions that she was seeking legal advice. She is an intelligent woman who uses words and phrases common in employment law on several occasions when presenting grievances and discussing matters with the respondent. She is more than capable of researching, if she had not been told by her legal advisors, the time limit point. It is quite clear that she should have been aware that her claim, particularly with respect to RC but also with SR's alleged inappropriate response to it, was going to be out of time. There was no deliberate attempt by the respondent to force the claimant out of time. She should have taken this matter further earlier if she had wanted to. It is not just and equitable to consider these parts of claim and the tribunal has no jurisdiction to hear them.
117. The claimant does not therefore succeed on any parts of her claims under Equality Act 2010.

Constructive unfair dismissal

118. The claimant relies on all 35 items listed (8 for RC, 10 for SR and 17 for general) with respect to this claim. We spent some time considering what the evidence was with respect to why the claimant chose to resign. It is clear to us that, although she has referred to other matters which are less important, she was most concerned about being line managed by SR. The slightly confusing thing for the tribunal was that the claimant, when cross-examined, stated that even if the respondent had agreed that she did not have to be line managed by SR at the grievance hearing, she would not have stayed in its employment because she already felt that it had destroyed her trust and confidence. The problem with that answer is it means that her trust and confidence had been destroyed at a much earlier stage and, therefore, she is in the difficulty of convincing the tribunal that she did not affirm the contract and the delays were not too long before she resigned from the respondent.
119. The claimant's case appears to be that there were several matters which caused her concern. Most importantly, we understand it to be that she had been given assurances by Mr Scott-Lee that she would not be line managed by SR unless she was comfortable with it. She was not comfortable and therefore it should not have even been suggested to her. That is not a sensible argument. Any employer must be able to consider whether there is a reasonable objection to an employee being line managed by their designated line manager. The mere fact that SR might have made a minor error when she did not record an incident mentioned to her some months earlier, is not a sensible or significant enough reason for her not to line manage the claimant. The tribunal accepts that the claimant raised other

matters with respect to SR but that was not, on the face of it, her main objection. The root of this case has been her disappointment at how the RC complaint was handled.

120. The initial question therefore is whether there has been a breach of the claimant's contract of employment. Although there is a long list of matters about which the claimant complains and, to a limited extent she might well be able to show that one or two of them did occur, we are simply not able to agree with her that this amounted to a fundamental breach of contract. When we assess whether this respondent acted in a way which indicated it no longer intended to be bound by the employment contract, the tribunal has considered several possible breaches.
121. The claimant suggests that the failure to record the complaint about RC or remind her that she could go to HR in November 2015 was a breach of contract. She complains that the responses in May and June 2016 were insufficient responses in that her grievances were not upheld. The other matters which she refers to between those dates are of a minor nature. There is nothing wrong with the respondent treating the JH issue (paragraph 53) more seriously, if indeed it did so, by simply calling JH to a meeting and not taking it forward when she asked for it not to be. We do not accept that the claimant was required to work long hours, although we accept, at certain points, she might have been short staffed. Neither of those matters were particularly notable. There is nothing untoward about her being asked to sign a new contract and she has misunderstood the discussion about a pay rise. There is no breach of confidentiality simply by somebody knowing that she had a GP's appointment, and these are not matters which taken individually or taken together, are sufficient to amount to a breach of contract.
122. The serious matter about which she is most concerned appears to be the belief that she would not have to be line managed by SR if she was not comfortable with it. Although that is clearly a hope expressed by Mr Scott-Lee it is not one upon which the claimant could rely. There is no breach of her employment contract as the respondent has shown by clear evidence that it intended to be bound by the employment contract. It followed the grievance procedure, on several occasions asked for the claimant to remain in the business and reminded her how valuable her contribution was. That is not the action of an employer who intends no longer to be bound by the contract and the claimant simply cannot show a breach of the implied term of trust and confidence contained in her employment contract.
123. Even if the claimant had managed to show a breach, she is in significant difficulties, as indicated, by the delay in deciding to resign. She knew as early as February 2017 that she would be reporting to SR. That was confirmed in February and the claimant responded by putting in another grievance on 20 March 2017. It must have been clear to her at that point that the outcome would be no different as Mr Robert Scott-Lee had made his position clear and she had nothing to add to it. Although the tribunal accepts that the claimant had heard some months earlier, something in she

later calls assurances given by Mr Scott-Lee, we think that she has interpreted that over time to fit more into her narrative of not wishing to be line managed by SR. She did not resign until 6 May 2017. The claimant fails in the claim for unfair dismissal.

Money claims

124. The claimant has produced no evidence that she is owed any further payments by the respondent. She is not entitled to any notice as she resigned. She has suggested that some commission might be due but has not provided any evidence of how or how much. The offer of a pay rise was conditional upon a target being reached which was not. The claim in relation to holiday pay has been resolved. These claims, insofar as they are pursued, fail.

125. The claimant's claims all fail and are dismissed.

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Employment Judge Manley

Date: ...19.12.18.....

Sent to the parties on: ....20.12.18.....

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For the Tribunal Office