Case Numbers: 2206556/2016
2200992/2017
2207649/2017

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EMPLOYMENT TRIBUNALS

Claimant ***Respondents***

Mrs M Ward **AND** AXA Investment Managers Ltd

Heard at: London Central **On**: 29-31 October 2018
1, 5-9 November 2018
26-28 November 2018
3-4 December 2018
6-7, 10-12 December (Chambers)

Before: Employment Judge Wade
Members: Mr M Simon
Mr I McLaughlin

Representation
For the Claimant: Mr J Crozier, of Counsel
For the Respondent: Mr J Laddie QC, of Counsel

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The Respondent did not:

   a. Directly or indirectly discriminate against the claimant because of the protected characteristics of maternity, sex and/ or disability;

   b. Discriminate against her because of something arising in consequence of her disability.

   These claims are dismissed.

2. The Respondent did, in respect of allegation 49 only, racially and sexually harass the claimant; all her other harassment claims are dismissed.

3. The tribunal awards the claimant compensation for injury to feelings of £8,000.

REASONS

1. This is a claim brought by Mrs Monika Ward who remains employed by the Respondent although she has been on sick leave since 2015 and is in receipt of permanent health insurance benefit. Her three claims are:

1.1 2206556/2016: Disability discrimination and unpaid wages, filed 8 August 2016;

1.2 220992/2017: Disability discrimination, sex discrimination and maternity discrimination, filed 18 May 2017;

1.3 2207649/2017: Sex and race discrimination, filed 8 November 2017.

The issues and the relevant law

2. The issues have been agreed between the parties and the list, in the form of a table, is attached to this judgment. There are 49 allegations which can be divided into seven groups:

2.1 The first relates to the Claimant's pregnancy and maternity leave in 2011/2012 during which she says she suffered pregnancy and maternity discrimination by her Manager Alan Patterson.

2.2 The second relates to discrimination by members of the team she managed. She says that she was directly discriminated against because of her sex and harassed.

2.3 The third is that she says she suffered direct sex discrimination and harassment from her manager, Mr Patterson during this time as well.

2.4 The fourth is that when from February 2014 the Claimant became disabled by reason of anxiety and depression, she suffered discrimination arising from the disability, direct disability discrimination and harassment relating to disability at the hands of HR and her manager.

2.5 In early 2015 HR started a disciplinary process against the Claimant which she says was disability discrimination and the Claimant went on sick leave in March 2015 never to return. She also alleges disability discrimination during the period of her sick leave.

2.6 She further alleges disability discrimination in relation to non-payment of her bonuses.

2.7 Finally, the Claimant alleges that she was racially and sexually harassed when in September 2017she found out about comments made by her team in 2015.

Direct discrimination

3. Direct discrimination occurs when an individual suffers less favourable treatment because of a protected characteristic. The Claimant was not dismissed but she says she suffered detriments.

Harassment

4. Harassment occurs when a person engages in unwanted conduct related to a protected characteristic and the conduct has the purpose or effect of violating the Claimant's dignity or creating an unintimidating, hostile, degrading, humiliating or offensive environment. In deciding whether there was harassment a Tribunal must take in to account the perception of the Claimant, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Discrimination arising from disability

5. Discrimination arising from disability occurs when a person treats a claimant unfavourably because of something arising in consequence of their disability and the employer cannot show that the treatment is a proportionate means of achieving a legitimate aim. Discrimination arising from disability will not have taken place if the employer shows that it did not know and could not reasonably be expected to know that the Claimant had the disability. The claimant's sick leave from March 2015 arose in consequence of her disability.

Time limits

6.1 In this case the question of time limits was a critical issue. A claim must normally be brought within three months (subject to any ACAS stop the clock provisions). Under Equality Act s.123 a claim may be brought within such other period as the Tribunal thinks just and equitable.

6.2 Time may also be extended if there is what has become known as a "continuing act". If there is an act of discrimination which was brought in time this may trigger the right to pursue claims which were not in time, but which are part of a continuing act.

6.3 We have decided that the vast majority of the claims, and all those arising before the claimant went off on sick leave in March 2105, are out of time, our reasons are explained in the Conclusions below. This means that whilst we have

discussed to merits of each claim we have not done so in laborious detail because at the end of the day we did not have jurisdiction to decide them.

The employer's defence

7. Under Equality Act s.109 an employer will be liable for the discriminatory acts of their employees, but it is a defence to show that the employer took all reasonable steps to prevent the perpetrator from discriminating.

The evidence

8. The Tribunal heard from the Claimant and on her behalf from her former manager, Alan Patterson who appeared under a witness summons. We also heard from Mr Timothy Ward, the Claimant's husband.

9. For the Respondent we heard from:

a. Aleks Malpass-Arthurs, Data Manager within the Claimant's team and her direct report;
b. Jackie Nopper, Head of Regional Employee Relations;
c. Jessica Orchard, the Claimant's former PA;
d. Justin Curlow formerly a Senior Research Analyst reporting directly to the Claimant, now Global Head of Research in Strategy for Real Assets;
e. Louse McMahon, formerly Head of Employee Relations;
f. We read a statement from Nana Gyasa who did not attend to give evidence because she was on maternity leave and no longer works for the Respondent.

10. We read the pages in the 13 bundles to which we were referred.

The facts

11. The Claimant started working for AXA on 16 February 2009. She joined as a Senior Research Analyst in the Real Estate Research Team. She has a law degree and a master's in law. Her direct Line Manager was Alan Patterson, Head of the team.

12. Mr Patterson and the Claimant got on very well and formed a strong bond at work whereby they would invariably support one another. Their personal friendship survived the traumas which we describe below.

The Claimant's pregnancy and maternity leave: 2011 – January 2012

13. The claims arising from the Claimant's pregnancy and maternity leave in late 2011/early 2012 are notable in two ways:

(1) They were brought considerably out of time in 2017 and we do not have jurisdiction; and
(2) The Claimant and Mr Patterson's evidence at this hearing differed dramatically from the contemporaneous evidence.

14. It is necessary to make these points now in order to explain why our findings of fact in this section are fairly short. They provide probably the starkest example of the contradiction between the Claimant's witness statement evidence and the documents, a theme which persisted throughout. We are sorry to have to say this because we know how upsetting it will be for the Claimant, who clearly feels strongly that her maternity leave experience was very bad for her and her family. However, that is very different from saying that this is a justiciable claim.

15. So, more briefly than if the claim had been in time, we record the key points about the Claimant's pregnancy and maternity leave. She informed Mr Patterson that she was pregnant on 31 March 2011. Her argument is that he was very tough and forced her to return to work considerably sooner than she wished, making her work whilst she was on maternity leave.

The claimant's chosen date for returning to work

16. The contemporaneous documentary evidence, however, is that the Claimant chose when she was going to return to work. This was agreed with HR on 9 June and coincided with the date when full maternity pay ran out, the Claimant explaining that she needed full pay because finances were tight as she and her husband had just brought a house. This was consistent with a therapist's notes of a session with the Claimant in 2013 when she explained that she had had to go back to work early as she was the breadwinner.

17. By contrast, the Claimant's evidence to the Tribunal was incorrect when she said that she realised on 15 June 2011 after a trip to Paris that Mr Patterson required her to go back to work earlier than she wished; her decision had already been communicated to HR.

18. When questioned the Claimant told us "I had always hoped to take more time". This may well have been her hope, and she may well now regret that she did not take more time, but this is not the same as being forced to return early. The evidence shows that she had no concrete plan to take anything other than the time which she actually took.

19. During this time both she and Mr Patterson were provided with an external maternity mentor. The Claimant was considered to be the perfect candidate by the business as she was "key female talent" and she needed to be supported to continue her career in a line of work where women were fairly rare. With expert support on hand, it was highly unlikely that she would feel pushed into doing something which she did not want to do, and which was against the law. Of course, the idea of returning so soon after a baby's birth is distressing, and it may be that the Claimant had to go for "the best of a bad job", but that is different from being forced by Mr Patterson. She made an informed decision.

20. The Claimant began her maternity leave on 22 August 2011 and her son was born on 11 September. The Claimant suffered a difficult birth and then developed post-natal depression, so she had a bad time.

During maternity leave

21. She says that Mr Patterson made her work during maternity leave against her wishes, although she does not say that he should not have contacted her at all because that would also have been distressing.

22. The contemporaneous evidence shows Mr Patterson behaving in a way which was appropriately supportive and not inappropriately pushy. For example, there is an email to her saying "I think you need a rest for a few days and then to be very selective on what you get involved in". However, the Claimant now says that this is evidence of his high expectations of her because "it was never selective with Alan". She told us that she kept emphasising to him that she was struggling with her health and he kept bombarding her, but there is no evidence that this was how it was at the time.

23. In another example Mr Patterson told her that she had been given a seat on an important committee, but he did not expect her to necessarily participate and he told her that he did not want her to feel pressurised. At the time she thanked him for putting her on the committee and said that she missed the hustle and bustle of work which indicated that she wanted to be there and was keen to participate. If Mr Patterson accepted this at face value, why should he not expect her to join in, but there is no evidence that he made demands.

24. Overall, Mr Patterson seems to have been very supportive and this was reflected at the appraisal when the Claimant thanked him for his support. Moreover, she emailed him that she was worried about returning to work and that she was not fully fit and needed to set some new boundaries, for example not working after 5:30pm and sometimes working from home. Although it does not seem that these arrangements lasted very long at all, she felt safe enough to be able to make her position clear without expecting Mr Patterson to take offence. His reply was very understanding, and he reassured her that he knew she was committed and told her that she needed to make sure that she regulated her time.

Flexible working

25. In terms of flexible working, the Claimant knew from the maternity policy that flexible working would be considered. She told us that she did not ask for details, let alone make an application, as she understood that she would have to agree flexible working first with Mr Patterson and had no right if he said no, which he would. She had the maternity policy, she had a mentor, she had the ability to make demands on Mr Patterson and yet she did not discuss flexible working. We conclude that this was because she decided that it was best to continue working full time as progressing her career was the most important thing for her,

she could afford childcare and her husband was the main child carer and so this was feasible.

26. The Claimant said to us that she feared that she could lose her job if she did not comply with Mr Patterson's wishes. This does not fit with the fact that she was his great hope, soon to be his Deputy, and whilst her career progression may have been threatened by the fact that she was taking time out, there is no chance at all that she could have lost her job. She overstated her fears.

27. The Claimant blames Mr Patterson for all of the things that went wrong with her maternity leave. Looking at what happened at the time, this appears both unfair and wrong. In his evidence to the Tribunal Mr Patterson was phlegmatic about taking responsibility for discrimination, he made no effort to defend himself from the allegations, employing a strategy that offered maximum assistance to the claimant. Mr Laddie put it more graphically, describing how he helpfully threw himself in front of bullets which were not even shot in his direction; we do not disagree with that description.

28. There are four maternity related allegations, numbers 1-4, which are of (1) premature return from maternity leave, (2) pressure to work during maternity leave, (3) Mr Patterson expressing concern that she should not return part time and (4) that the Claimant was speaking at conferences within four weeks of her son's birth and speaking at external events within eight weeks. Not only is there no evidence that any of the above happened for any reason other than the Claimant's own choice (a choice informed by her strong desire to progress her career which was a key objective), these events are substantially out of time.

The withdrawn claims: January 2012 - Summer 2103

29. Allegations 5, 6, 7 and 8 which relate to the circumstances of the Claimant's return from maternity leave and to concerns raised by HR about the Claimant and Mr Patterson's management style in January 2013 are withdrawn. We should nonetheless say something about this period which ran from January 2012 when the Claimant returned from maternity leave through to the Summer of 2013 which is the date of the Claimant's next live allegation.

30. Whilst she was on maternity leave a Data Manager, Aleks Malpass-Arthurs had joined the team. He came to the Tribunal to give evidence. Whilst he felt that there had been an uncomfortable environment from the start of his employment, with the team being very dysfunctional, he observed that as soon as the Claimant returned from maternity leave, she aligned with Alan Patterson and the "them" and "us" situation got considerably worse. The Claimant was put on a pedestal by Mr Patterson, they had regular lunch meetings and he once observed once him giving her birthday gifts which he found surprisingly personal such as clothing and a spa day which the other Senior Analysts did not benefit from in any shape or form.

31. Not long after the Claimant's return to work, a team member called Joanna Turner raised a grievance against Mr Patterson. She was on sick leave,

ultimately to leave the business altogether; Mr Malpass-Arthurs told us that Ms Turner felt that she was also being bullied by Mrs Ward as although Mrs Ward was on the same grade as she, she was treated as the deputy manager.

32. At this time, although HR did not make the connection at the time, an employee in Germany called Sandra, who was also on sick leave, raised concerns about the Claimant's bullying behaviour.

HR's concerns about the claimant's and Mr Patterson's management style

33. The Claimant was officially appointed Deputy Head of Research in April 2012. This was a new post and the idea was that Mr Patterson, who was known to be a difficult manager, would step back from the front line and that the Claimant would manage as a buffer between him and the staff team. This did not improve the atmosphere and functionality of the team and Mr Malpass-Arthurs told us that this was because of the way they both behaved.

34. In the autumn of 2012, following some career interview meetings with the analysts, HR became concerned that Mr Patterson's management style, and to a lesser extent the Claimant's, was causing difficulty in the team and leading to an unacceptably high turnover of staff. Mr Malpass-Arthurs was questioned but was clear with HR that he did not wish to complain. He felt very uncomfortable when HR did take the matter further and equally uncomfortable that Mr Patterson and Mrs Ward "hauled" him into a meeting to ask him about his conversation with HR. We comment on this mainly because it shows that Mr Malpass-Arthurs was not someone to rush to judgment nor did he want any trouble. Therefore, when he did decide to speak out this was because of his genuinely held and evidence-based view that their behaviour had become unacceptable.

35. During this time the team corresponded with each other about the Claimant and Mr Patterson. He was regularly referred to as "OAP" and she as "PS". Her epithet stood for "Polski sklep" which means "Polish shop". The origin of "PS" is obscure; she is British of Polish national origin but some of the witnesses thought that the name arose from the fact that she took a particular interest in polish retail projects. These phrases were not known by the Claimant and Mr Patterson and they are not included in a specific claim, the Claimant does however ask us to note their use when deciding whether to draw inferences. The Respondent says that this language was born out of frustration with the oppressive atmosphere.

36. In January 2013 HR had a meeting with the claimant and Mr Patterson in which they raised the concerns that they had picked up from the team about their management style which they feared was leading to the high turnover of staff. The Claimant claimed that she was subjected to an aggressive meeting with HR which was sex discrimination. This allegation has been withdrawn and it is hard to see how it could have been sustained given that Mr Patterson was treated the same as she. Also, we think it likely that the Claimant wished to distance herself from this allegation because, when the same "problem" occurred a year later she said that the reason was disability and not sex discrimination. It is regrettable that the Claimant chose to pursue the allegation right up to the hearing because

it indicates to us that she was somewhat "trigger happy" in pursuing claims which both had little prospect of success and undermined others.

The claimant's complaints about her maternity leave

37. What followed from the HR approach was a furious and well-coordinated joint "fight back" from the two which resulted in HR stepping away at the end of March 2013 and leaving the team to be managed by Mr Patterson and Mrs Ward as they had requested. Also, the Claimant retaliated by raising concerns about her experience during maternity leave. She did not complain at all about Mr Patterson's conduct, and indeed said that he had been the most understanding of all during that time. Now she says that he ruined her maternity leave experience, but this was the perfect opportunity for her to raise this concern and she did not do so, choosing instead to focus entirely on her experience at the hands of HR. She did not pursue the grievance to its formal stage and HR understood that it had been resolved informally.

38. As part of its commitment to the Claimant's career, and recognising her desire to work with the team to improve morale, Ann Bates was appointed as the Claimant's external coach. There was a considerable cost attached to this and it indicates the desire of HR to work constructively with the Claimant to iron out any difficulties.

Complaints of discrimination/ harassment from Summer 2013

39. The Claimant says that from the Summer of 2013 onwards she suffered number of incidents of sex discrimination and harassment, some expressed more appropriately as harassment others as direct discrimination. Many of the allegations relate to the Claimant's team members and direct reports. Others to Mr Patterson.

40. We deal very briefly with the allegations against Mr Patterson because the contemporary evidence shows that the Claimant unfailingly regarded him as her major supporter, that he may have had firm views about how her career was to progress but there is nothing to link them to gender beyond the fact that he is a man and her boss she a woman. Also, these allegations are substantially out of time.

The allegations against the team

41. Turning to the allegations against the team members, there are a couple which are "introductory" to specific complaints, in general the Claimant asserted that the team members who she managed began to alienate and humiliate her, but there is very little evidence of this because she was their boss and was unfailingly supported by the Head of Department and they were frightened to act. The problem was that she and Mr Patterson ruled with a rod of iron, comments about micro management and control over their time coming up again and again.

42. There are a few allegations of specific behaviour which the Claimant says was harassment or discrimination. The evidence however leads us to conclude that when they did complain about her behind her back and, on a very few occasions, push back against her authority this was not because of her gender but because of her oppressive management style.

43. On 24 July 2013 an intern told the Claimant during that the team had been saying bad things about her and she made a note of what was reported to her at the time which forms the basis of the next few allegations. The claimant took copious notes and they were all in the Bundles but apart from this one note there is little or no material which corroborates her current version of events. Allegation 9 talks in general about her being alienated and humiliated and the only specific allegation is that she was too afraid to put up a photo of her baby. However, we have seen an email from the Claimant on 23 May 2013 telling her team that her son was unwell and she needed to be with him so we conclude that she was not scared of bringing her motherhood in to the work place. Also she does not explain who if anyone caused her fear of putting up a photo of her baby so the complaint is not made out.

44. Allegation 10 is that Justin Curlow, an Analyst said, "it's her fault she is sick as it was her choice to have a baby" when she had to go hospital because of her heart symptoms. We do not accept that this was an act of discrimination/harassment by Mr Curlow. First, the allegation does not fit either with the Claimant's contemporaneous note or with the fact that she did not go to hospital until 2014. The note does not attribute the comment specifically to Mr Curlow nor does it point in the direction of a gender-based jibe, as opposed to mean comment about ill health and parenthood.

45. We find that the Claimant has translated a "chinese whisper" from her intern into a concrete discrimination allegation against Mr Curlow but there is no indication that at the time that her dignity was undermined, or a hostile environment created. She says she told Mr Patterson about it who advised her to raise the comment directly with Mr Curlow which was good advice, but she did not do so. She did raise the next comment, allegation 11, with Mr Curlow and that she chose not to raise this one suggests that even at the time she did not consider herself to have been harassed.

46. Given that the Claimant knew about this allegation and raised it with her manager, it was her choice not to pursue it further, which is significant when it comes to our decision that the claim is out of time.

47. Allegation 11 is that Mr Curlow referred to her as "glorified PA". The note the Claimant took said "I am a glorified PA for Alan". The "for Alan" comment is significant because it does not paint the Claimant as a woman who was in general identified with the traditionally female role of PA, rather it indicates that the team understood the mutually reliant nature of her relationship with Mr Patterson and the fact that she invariably supported him. The point they were making was that although she was a manager she was behaving like a PA because she showed him total loyalty and did not act as the independent

managerial buffer she was meant to be. Further, the team all agreed that whilst Mr Patterson was a very difficult manager, he had strong technical skills whereas the Claimant had neither management nor technical abilities and they could only understand her meteoric rise as being a reward for her loyalty. The term "glorified PA" could be sexist, but in this context, it was not as is was an evidence-based observation.

48. The Claimant raised it with Mr Curlow in his mid-year appraisal and that was the end of it. It is important in addition that this comment was only made once by Mr Curlow and that he did not initiate the description, he explained that he had picked it up from a Fund Manager who he had met on a train who had a poor view of Mrs Ward.

49. It should also be noted that Mr Curlow acknowledges that he said this and has not tried to deny it which adds to his credibility as a witness since there is no direct evidence of his doing so. The Claimant chose not to take this matter any further and has no evidence that the other team members who she accuses were involved.

50. The next two allegations, allegations 12 and 13, relate to Mr Patterson and, as we have already explained, are out of time and not corroborated by the contemporaneous evidence which shows the Claimant knew him as her unswerving ally and support. We deal with them briefly also because there is no possibility of linking behaviour by the much-admired manager who was part of the "us" team of two with allegedly sexist actions by the "them" team of the Claimant's direct reports.

51. The next allegation to be reviewed in more detail is allegation 14 which really repeats allegation 9 which is that "the Claimant alleges that she believes that the team resented her position with some of the younger men believing that they could do her job better as she was apparently more interested in her family than her job". The resentment was there but the reason was not as alleged. Of course, most of the Claimant's team were men because this was a male-dominated area of the industry, but the Claimant does not demonstrate how the alleged resentment manifested as sex discrimination or indeed how it manifested at all.

52. We know from the evidence that the team, men and women alike, had a poor view of both the Claimant's management skills and her technical abilities. The insulting emails that went to and fro between the team were all about work, there is no sense in which they were written specifically in an attempt to belittle the Claimant because of the gender. Some of them described her as "PS" which was insulting to her Polish nationality but not specific to her gender at all and not so insulting that we would infer that the team had a discriminatory view of every protected characteristic on the list, including gender. Indeed, the Claimant's allegations of discrimination at this time focus on her role as a mother and not her gender more broadly than that. We found nothing in the contemporaneous documents to support her concerns.

Alleged disability discrimination

53. We now turn to a series of claims that the Claimant was discriminated against because of her disability and/or harassed and/or treated unfavorably because of something arising from her disability. We deal with the facts here and then the legal analysis in the Conclusions which led to our finding that the Respondent did not know that the Claimant was disabled in 2014. These claims are also out of time.

54. In allegations 15, 16 and 17 the Claimant talks of the period in February 2014 when she went in to hospital to have a heart ablation procedure. She says that no adjustments were made to her workload, that in fact the workload increased and that Mr Patterson told her to get back to work as quickly as possible.

55. We have to give these allegations short shrift for the simple reason that even if the Respondent had known that the Claimant was disabled, the ablation procedure related to a heart condition are not to the relevant disability which is depression. Clearly such a procedure causes anxiety, but it was a self-contained issue. Further, the procedure went very well, and all the evidence is that the Claimant was much better afterwards and very keen to return to work, so yet again, it is a rewriting of history to say that Mr Patterson forced her to return too soon and take on too much work.

56. Allegation 18 of direct sex discrimination, direct disability discrimination, discrimination arising from disability and harassment relating to disability is a strange allegation which is also relevant to the question of knowledge of the Claimant's disability. She blames Mr Patterson for encouraging her to challenge an Occupational Health diagnosis that she was not fit for work due to depression, but the evidence is that she pushed back herself, supported by her husband. This was because they both regarded the involvement of Occupational Health and a possible blot of "depression" on her health record as highly threatening to the progression of her career. Mr Patterson may also have advised her that depression looked bad on a personnel file, this is a very common perception which probably has some foundation, it does not mean he discriminated against her. Anyway, all the allegations against him are out of time.

Further allegations of sex discrimination against the team

57. As previously, the Claimant introduces this section with a general allegation, number 19, about the team refusing to comply with her work requests, but the examples that she gives are more easily characterised as harassment.

58. There was no evidence of the team refusing to comply with work requests. The team's problem was that they did what they told but were deeply upset by having to. There was one incident of Justin Curlow pushing back when the Claimant asked him to do something in 2012 but that is not within the remit of this allegation and another of him not coming to an out of hours team film night because he had another engagement, which was not really a "work request".

Anyway, he watched the film by himself another time, so he did what he could. An example of the team complying with demands they considered to be unreasonable was when they were all told to stay behind at work after hours until a report was finished. Mr Malpass-Arthurs was told to stay on even though he was not directly responsible for any of the content. He told us that everybody stayed until 9pm when those who had finished their section left and he then stayed on even longer to help proof read. It cannot be said that the team were being insubordinate despite the provocation given the unnecessary infringement on their time.

59. Mr Malpass-Arthurs could have been particularly aggrieved by this discrimination allegation which was made against him because it was then rather casually withdrawn by the Claimant during cross examination, she commenting that "he's a nice guy". When questioned Mr Malpass-Arthurs said that he got on well with the Claimant and there was no one at work who he did not "get on with" regardless of how they behaved. He however reported a stressful and unpleasant environment, describing the Claimant as someone who was very ambitious, forthright and in control although highly strung at times. He said that she did not acknowledge team efforts and took credit for reports and presentations as if they were her own which was very demotivating. Her management style was authoritarian, unreasonable and prescriptive and whilst her role was to be a buffer between the staff and Mr Patterson, she replicated his bad habits.

60. He gave a particularly disturbing example of the Claimant's behaviour from 2012. She told Mr Malpass-Arthurs that he would have to cancel some leave which he had already booked for the purpose of staying at his parents' house to look after his elderly grandmother while they were away. It turned out that his leave was double booked with the leave of the Claimant's intern which was not correctly entered on the system. Although he was not at fault, he had to give way, cancel the leave and work remotely from his parents' house while looking after his grandmother. Then when he returned to work, she chastised him and said that remote working was not appropriate.

61. He was happy to characterise this as a storm in a tea cup and did not complain at the time, but we found the incident quite shocking. This was particularly because he reported that Mr Patterson allowed the Claimant to work from home by for health reasons whereas although he has IBS, which makes travel to work quite difficult at times, he was never allowed to work from home. This meant that sometimes he had to take a sick day although working from home would have been perfectly feasible. The Claimant says that this behaviour was all initiated by Mr Patterson, but Mr Malpass-Arthurs was very clear that he regarded her as responsible for her own actions. Given the frequency of such behavior and the fact that not once did she tell staff that she was sorry to have to treat them that way due to pressure from above, we do not think that she was Mr Patterson's puppet. She may now wish that she had worked harder to develop an independent style of management which was less affected by her admiration for him, but that is a long way from being under his control.

62. The Claimant was a forthright manager, not embarrassed to tell staff that their skirts were too short or that they should not be wearing a beard but yet she did not once protest in writing formally or informally that they were not complying with her work requests. We therefore reject this general allegation, noting with regret that it was made against a team member who even the Claimant now considers to be innocent and who has no doubt carried some worry that he might be found to have discriminated.

63. The specific allegations which allegation 19 in fact does nothing more than introduce, are first number 20 that Mr Goorah remarked "MW can't even hold down a nanny let alone her team".

64. The Respondent accepts that something like this was said by Mr Goorah who was not averse to making jokes at the Claimant's expense. We do, however, agree with the Respondent that this is not a discriminatory joke. The Claimant's nanny had recently left the family and Mr Goorah was pointing out that staff retention in the team, something that everybody knew about, was as bad as ever, and he regarded this as partly the Claimant's responsibility. It was a cheap joke perhaps, but just because women are traditionally more responsible children than their husbands, this does not make a joke about staff retention sexist, not least because it was known that Mr Ward was the main carer. Mr Goorah had an equally poor view of Mr Patterson and that was what he was expressing, not some sexist jibe.

65. The Claimant found out about this comment at the time from her PA and responded that both she and Mr Patterson had experienced similar comments, presumably about staff retention not childcare, and that it was something that she had to put up with. She spoke to Mr Goorah and she reported to her PA that he had apologised. She told her PA "when Anish first joined we had a similar incident where he was very negative about Alan and high turnover, so much so that several people from the floor commented that this was unacceptable behaviour. Anish thought that this was a joke. As the manager I have to deal with these situations as is it part of managing people". No more was said or done. Our conclusion is that this comment was about staff retention not because of or related to the Claimant's gender, and she knew that at the time. Also, it did not create an unfavourable or hostile environment for her as illustrated by the fact that she had no thought of taking her concerns further although she could have.

66. In May 2015 the Claimant organised some workshops with her mentor Ann Bates. The idea was for team members to raise any concerns and for a more harmonious way forward to be identified. The team were concerned about the format because they knew that Ms Bates was the Claimant's coach and so likely to be partisan, but they nonetheless participated conscientiously. Concerns about management style, turnover, micromanagement and lack of autonomy were raised by almost all the participants. This time Mr Malpass-Arthurs joined in although he had declined to get involved in October 2012.

67. The team were pleased with the first two days of the workshop and hoped that it might bring about change. They were therefore despondent when they

discovered that the Powerpoint slides recording the sessions did not reflect any of their points. For example, they were not allowed to put in a line about feeling undermined when this was precisely what they had described. Mr Malpass-Arthurs described graphically how he had been used to doing six to twelve-month work plans throughout his career until the Claimant instructed him to complete timesheets, in five-minute slots, for himself and his two assistants recording precisely what they had been doing minute by minute. This took an enormous amount of time and was serving no purpose, indeed the level of control exercised by the Claimant prevented the team from performing their jobs, and sadly the workshops did nothing to solve these problems.

68. The Claimant saw the team's reaction to her summary slides as poor behaviour and undermining and did not for a moment understand their disappointment. In a personal email to Mr Patterson, written off the AXA network, she told him "we need to reassert control". She named two members of the team who she felt undermined by, one Mr Curlow and the other a woman called Xav so it is not easy to see that she felt that she was being discriminated against in a sexist way (we appreciate that women can sometimes discriminate against other women but this is less likely to be a motivation).

69. The Claimant says that another act of sex discrimination/harassment occurred in the follow up to the workshops in October 2014 when the younger male members of the team laughed at her when she volunteered for a public one to one session with Miss Bates to demonstrate how coaching worked.

70. We think that the Claimant exaggerated when she said in allegation 21 that they laughed at and belittled her. Indeed, when she was cross examined the Claimant reduced her allegation to saying that they were smiling "and it was not a nice smile". There are any number of reasons why these staff members might have been smiling at a personal and embarrassing revelations of things they probably did not want to know about their unpopular manager. It sounds like a very bad idea from the start. In his statement Mr Patterson says that one of the only female team members, Ms Molette was also present at the session and that she joined in the sniggering. This was the team feeling alienated from and very possibly hostile towards the Claimant but there is no sign that it was based upon her gender. We regret to conclude that the Claimant had a tendency to label all of the bad things that she experienced as acts of discrimination of one kind or the other.

Further concerns about management of the team arise and HR takes action.

71. Towards the end of 2014 things were bad in the team. Mr Curlow had already managed to negotiate with Senior Management above Mr Patterson a move away from the team to a similar function within AXA and so he left in November 2014. He says that if he had not managed to move, he would have left AXA altogether.

72. Meanwhile, the Claimant's former PA, Jessica Orchard, spoke out. She was upset because another analyst leaving the team called Markus had suffered what she and the team considered to be both illegal and unprofessional behaviour by Mr Patterson who had, unsolicited, rung his new employer and given a negative telephone reference.

73. Miss Orchard had already left the team and this event was of no direct significance to her but she felt strongly that he had been bullied and therefore wrote an email to Mr Patterson's boss, Mr Lopez, describing how both Mr Patterson and Mrs Ward were difficult to work for. She described how the team had a dreadful reputation, that she was scared of Mr Patterson and Mrs Ward who were "petty and vindictive" and that when she worked for Mrs Ward she had had "the worst year of my working life". She too would have left AXA completely had she not managed to move away from the team.

74. Miss Orchard's evidence was very useful because she had no motive for making her complaint other than to see justice done. She described how she had started as the Claimant's PA with an open mind, determined to try and help her run the team well and minded, as the PA, to support her against the team as necessary, but soon came to the view that the Claimant was not a good manager. She denied that Mr Patterson was the more dominant partner and said that Mr Patterson and Mrs Ward were always on the same side and Mrs Ward was never deserted by Mr Patterson.

75. We asked why Mr Patterson and his manager Mr Lopez had a high view of the Claimant whereas those who she managed had the opposite; perhaps there was some sought of conspiracy against her. Ms Orchard explained that Mr Patterson had her on a pedestal and that he was in a position to influence Mr Lopez's views, so the Senior Managers did not see that the Claimant's style was bad and her output and productivity poor. Her evidence was that Mrs Ward frequently missed work deadlines and treated her staff like factory workers rather than professionals.

76. At this time AXA's CEO came to realise that Mr Patterson was a lost cause and HR realised that they need to take action. During the Summer an employee called Kieran, the author of a number of abusive and at times sexist and racist emails about the Claimant and Mr Patterson (ageist against Mr Patterson), had left the respondent complaining about micro-management etc.

77. Mr Goorah also went to HR in December 2014 to highlight his concerns and reported that another two team members were unhappy and thinking about leaving. One of them, Mr Lowery, spoke to HR and said after he had left that he would still be there had it not been for Mr Patterson and Mrs Ward.

78. When the united voice of the team was that they were deeply unhappy HR would have been negligent had they not investigated further. Louise McMahon, Head of Employee Relations, thought about how to run the investigation and recommended to Global HR that it should be carried out by an external investigator given the Claimant and Mr Patterson's hostile views towards her

team following the "stand-off" in January 2013. She wanted to see if there was a case to answer and, if there was, she wanted to initiate a formal disciplinary process because her experience in early 2013 had taught her that the pair would not be responsive to informal discussions. Global HR agreed and HR therefore commissioned an independent investigation from a company called Byrne Dean.

79. At the same time as this was happening Mr Lopez, Mr Patterson and the Claimant were discussing a team restructure. The aim was to make the Claimant Head of the team with Mr Patterson stepping back yet further and becoming a Consultant. Two of the Senior Analysts would become the Claimant's Deputies. It is unfortunate that this process was going on at the same as HR was beginning to investigate but this was a coincidence.

80. A uniting thread is that whilst she had serious concerns, Miss McMahon still believed, perhaps contrary to the evidence, that if the Claimant could only recognise that she should not always align herself with Mr Patterson, they might yet make a good manager of her. They had invested in her heavily both during maternity leave and with her coach Miss Bates and they wanted to see this rare woman in a male dominated sector thrive. This meant that the investigation could have resulted in the claimant becoming the Head of the team after all.

Disability discrimination allegations arising from the independent report

81. The Claimant alleges at allegation 22 that HR commissioned a report into the team dynamic without her knowledge. This is said to be all three types of disability discrimination. We deal with this allegation very briefly because, as the Respondent says, there was an overwhelming need to investigate further and commissioning an independent investigation was the fairest thing the Respondent could do. They knew that the Claimant and Mr Patterson both felt that internal HR was hostile, and they wanted to give them the most objective assessment possible so there was no unfavourable treatment.

82. It is hard to understand why the Claimant would say that this was disability discrimination. It seems that her case is that HR turned against her when they recognised that she was/might be disabled. Leaving knowledge of disability to the Conclusions, we cannot agree, first because she and Mr Patterson were being treated exactly the same and he is not disabled and secondly because there was an exceedingly good reason why the report should be commissioned. Thirdly, this activity was part of a continuum which had started at the very latest in January 2013, a year before the claimant became disabled, when HR first raised similar management concerns with the Claimant and Mr Patterson.

83. In January 2015 the Claimant had a meeting with Olivia Mimouni who was Head of Real Estate HR. She says at allegation 23 that this was disability discrimination because it was an aggressive meeting. However, Miss Mimouni was shocked and concerned to see the Claimant stressed out and close to panic and she reported this to the business partner and asked if they could get her to Occupational Health. These are not the actions of somebody who was

conspiring to get rid of the Claimant because she was disabled, and they indicate that there was no knowledge that there was already a disability.

84. Miss Mimouni quite correctly told the Claimant that there were some concerns about her management style and it is important to remember this because when the Claimant was summoned to a disciplinary two months later, she was not as completely in the dark about the problem as she says she was. An example of how the Claimant was not really aware of what her claims were and why, was that when she was asked why this meeting was disability discrimination she said that Miss Mimouni was aware of an Occupational Health diagnosis and would "not have treated her that way if she was a woman" (the latter point clearly irrelevant). Essentially Miss Mimouni was just doing her job, highlighting frankly to the Claimant the concerns that existed and carrying away from the meeting concerns of her own. There is no room to infer that this was any type of disability discrimination.

Allegations against Mr Patterson and about the 2014 bonus

85. Interspersed in the narrative leading to the invitation to a disciplinary meeting in March 2015 are two allegations which we can deal with briefly. The first, 24, is another sex discrimination allegation against Mr Patterson who is said to have told the Claimant that he doubted whether she could perform the proposed new role because she was a working mother. It is highly improbable that he said this in a way that amounted to discrimination given that he was involved in the discussions and entirely supportive of the Claimant who he had consistently groomed to take over management of the team from him. If he really had this dismissive view of her, and if the Claimant really thought this, it is highly unlikely that she would be friends with him to this day because career progression was paramount for her. The Claimant now blames Mr Patterson for making an observation which was that if you take on a big management role you have to be aware that it does impact upon your personal life, that is not a sexist thing to say and is true.

86. The 25th allegation is that the Claimant was not paid a "full bonus" for the 2014 calendar year because of her disability. We regret to say that this is one of a number of rather sloppy allegations. Nobody, not least the Claimant could say that the bonus system was anything other than discretionary. Therefore, there was no such thing as a "full bonus" in respect of variable pay. The Claimant received a lower bonus than she had the previous year but the committee responsible for allocating bonuses had been made aware that her "outstanding" rating from Mr Patterson (he who thought she could not perform the proposed role because she was a working mother) had been reduced to "successful" because of the bubbling concern about the Claimant's performance. There is no evidence to show that the decision was anything other than performance-related and, as we conclude below, no evidence that the Respondent was even aware of the Claimant's disability at that time.

The invitation to a disciplinary meeting

87. The Byrne Dean report was clear that there was a case to answer. Four employees were interviewed about Mr Patterson and Mrs Ward, the focus being on Mr Patterson but all of them commenting on Mrs Ward as well. To summarise a very few typical extracts:

(a) Mr Goorah: "MW is different [from Mr Patterson]. In AG's view she is incompetent. This was evident by her being copied in on various emails and yet never responding in any way. This only means one of two things: either she was lazy or she had no idea what was going on. There was no other explanation. At the end of the day, she is AG's Line Manager. A Line Manager gets involved when things do not go to plan, not to ask what side of the bed you woke up in the morning. To make matters worse, the way MW treats the team is disrespectful. The tone of communications, manner of doing things, constant watching over people's shoulders does not create an atmosphere where people are encouraged to work".

(b) Caroline Mollett: "In five years thirty-five people have left the team – half the team leaving every year – which is huge turnover. AP and MW were saying it was not their fault because they did not recruit them but now the whole team is being recruited by them, so they have no excuse. [Regarding the workshops] people were very open. The team mentioned the problems they perceived around micromanagement. It was dismissed a bit. The person running the workshop was MW's external personal coach and CM did not think she was fair and open. She did not like the team using micromanagement and said it was not a real term…. For the team it was the major issue raised by them at the workshop and they had to fight to have it included …. In her view MW does not have the knowledge or expertise to stand in AP's shoes – she is just very good at playing the politics in the company. When CM travels to other parts of the company e.g. in Paris they have a very bad view of the research team because of their experiences of MW and AP….. CM said the micromanaging is oppressing. "You go home, and you feel awful and need something to cope with it"".

(c) David Lowery: "Aside from MW and AP they get on very well as a team, perhaps because of the need to support each other… In the six months that he has been there he has not seen MW doing any new work of her own. He has seen her rework old work and get others to do stuff for her, but he has not seen her doing anything new herself. People dread her having to do a presentation because they have to explain everything to her, they have to spend lots of time helping her prepare, she gets very nervous and her whole mood changes …… Both internally and externally the team is seen as a bit of a joke…… MW's response was that as Senior Analysts they are paid more money which means they have to take the "crap" from her and AP.

(d) Alessandro Vinciguerra: "It is the first time in AV's life that he has seen people loving their jobs and what they do but coming to work having in mind that it is not going to be a pleasant environment and will, in fact be a very hostile environment and that is what they all tell him every day….. The way AP and MW talk to the team members is always very hostile and aggressive….. He personally has not suffered too much himself – he is new and has not had a lot of dealings with MW and AP. It is more about what he has seen or heard happening to other people ….. He does not accept what he was told once by MW that they were being paid more "to be able to accept a stronger punch". He is not scared because ultimately he is not obliged to work or be there but he wants to make things more pleasant and sees it as his obligation to speak up when others are afraid to do so. He said that there are other people in the team with personal commitments and situations that mean they are very scared and afraid to say anything because of potential risks to themselves…. He said that MW has told him that each time he stands up he should explain what he is up to".

88. With strong feedback like this, reinforced by other earlier feedback, it is no surprise that the Respondent decided it needed to take action. The Claimant was asked to meet with Mr Lopez and Ms McMahon who handed her an invitation to a disciplinary meeting. Mr Patterson received a similar invitation to his own meeting. Both invitations, together with a copy of the report, were issued on 3 March for a disciplinary meeting on 6th.

89. The Claimant alleges at allegation 26 that she was not advised of the purpose of the meeting and only given two days' notice of the disciplinary meeting despite her health issues. She alleges that no Occupational Health advice was obtained before commencing the process. The allegation does not actually say that the Respondent should not have acted under the disciplinary procedure, but this is implied.

90. Again, we are sorry to say that an allegation that this disciplinary process was motivated by the Claimant's disability cannot get off the starting blocks because the action was taken against Mr Patterson as well. There is no discernable difference between the type of allegations against them and it is quite wrong to characterise the report as being damming only of him with the Claimant being a collateral victim because of her disability.

91. What actually characterises Miss McMahon's actions is that she was scrupulous in trying to keep the Claimant and Mr Patterson separate in the procedure. This was because she still believed, wrongly in our view, that there was some hope that if the Claimant would separate herself from Mr Patterson she would be able to see the error of her ways an become an effective manager.

92. The allegation that the Claimant was not told about the meeting on 3rd which was a meeting about a future disciplinary meeting does not have any foundation as an unfavourable act; a process has to start somewhere and it was

better that the Claimant was told face to face rather than simply receiving a letter or an email. Also, she had been made aware of problems by Ms Mimouni.

93. It is true that the Claimant was given only two days' notice of the Disciplinary Hearing, but it was rescheduled, indeed Ms McMahon offered to reschedule it before the Claimant asked.

94. The disciplinary letter is not clear about what would happen next, but we are satisfied that the intention of the Respondent was not to bounce the Claimant and Mr Patterson into a kangaroo court where the allegations in the report would result in a disciplinary sanction, but rather to start the next stage of the investigation within the format of the disciplinary process. This was a formal process and so there was the standard warning that it could result in dismissal, but the correspondence that followed made it clear that Ms McMahon envisaged that the Chair of the disciplinary hearing would carry out further investigation. In particular s/he would listen to the response of the Claimant and Mr Patterson to the Byrne Dean report. The ACAS Code requires that an investigation identifies whether there is a case to answer and Byrne Dean had most certainly done that, so the process was not outwith the Code (which of course is only relevant to disciplinary proceedings and that is not one of the allegations here).

95. Given that the Respondent did not know that the Claimant was disabled and was immediately responsive to her health needs it cannot be said to be unfavourable treatment that no Occupational Health support was provided at this initial meeting. We note that the Claimant was not generally keen to see Occupational Health and was suspicious of their involvement because of what a report on her personnel file might end up saying so she might not have welcomed their help anyway.

96. Overall, although we can understand that the Claimant was distressed to have a disciplinary meeting suddenly put in her diary, we cannot say that this action was unreasonable and, more importantly, we can find no link to the Claimant's disability. The reasonableness is none of our business because this is not an unfair dismissal case, except to the extent that it could lead to some inference of discrimination. In any case the decision to discipline is explained both by the extreme distress expressed by so many team members and by the fact that the informal procedure in January 2013 had resulted in HR being beaten off so they knew that they could not take that approach again.

97. It should be noted that neither Mr Patterson nor the Claimant were suspended which is perhaps odd although of course had they been suspended this would have led to another allegation. Another reason why the Respondent decided to move urgently into the disciplinary process was to avoid a suspension.

Anonymous email sent to the Claimant

98. Allegations 27 and 28, are about the same matter which is that the Claimant was sent an anonymous email headed "I hear you have been sacked" and the

Respondent failed to investigate or take any action in response. This is an ill-considered allegation. Nobody knows who sent the email and it is speculation that it came from a member of the Respondent's staff although this is of course possible. The point is that the source of the email was not detectable and there were thirty-five ex-employees out there, many of them disaffected, who might have sent it. The Claimant and Mr Patterson never acknowledged that those staff had left because of their management and so it would probably not have occurred to her that an ex-employee could have sent the email.

99. This is said to be sex discrimination but only on the basis that Mr Patterson did not get a similar communication. Surely the Claimant recognises that that is not a basis for saying that she was less favourably treated or harassed because of her sex? As the Respondent says, it was a vindictive email and they tried to find the source. They could have been assisted by the Claimant's husband who works in cyber security. The Claimant persists that the Respondent failed to investigate or take any action in response to the anonymous email, but the evidence shows that they did all they could think of to do and it is odd that the Claimant persists with this allegation.

The Claimant starts her period of sick leave and she and Mr Patterson instruct Kingsley Napley

100. The Claimant remained at work for a few days and meanwhile she and Mr Patterson went to this well-known firm of employment law experts. Apparently, they even instructed a QC at one point.

101. The Claimant and Mr Patterson continued to be inseparable and to plan their defence together despite Miss McMahon's efforts to keep them apart and Mr Patterson agreed to attend the Claimant's disciplinary meeting as her supporter. A flurry of emails followed, many challenging emails from Mr Patterson to HR.

102. Louise McMahon wrote to the Claimant on 6 March saying that she had heard from Mr Patterson that there were concerns about her health and that she was proposing a discussion with Occupational Health who could make sure that she was in a fit state to be in work and fit enough to attend the disciplinary meeting.

103. The Claimant replied saying that she was getting chest pains and had alerted her cardiologist and booked an appointment. True to form, her focus was on physical rather than the disability which was mental ill health.

104. The Claimant left work on 9 March to go to her GP and she did not ever return. On the same day the Respondent received a challenging letter from Kingsley Napley emphasising her cardiac symptoms and saying that she would not be attending the disciplinary hearing.

105. From then on, the Claimant and Mr Patterson worked extensively through Kingsley Napley. The mere involvement of a firm of solicitors, let alone a firm

that took a challenging stance, is in itself enough to throw a normal employment relationship out of kilter such that neither side is confident to communicate fluently. We say this now because there followed a period during which the Claimant accuses the Respondent both of doing too much and too little during her period of sick leave and if this was true the involvement of lawyers was a likely reason.

Accusations of discrimination during sick leave – too little contact

106. Allegation 29 is that the Respondent failed to maintain an appropriate level of contact, and in the early stages of sick leave any contact, with the Claimant. This is said to be disability discrimination.

107. As we have just said, given the fact that the Claimant and Mr Patterson were actively engaged in pushing back against HR, both themselves and through their solicitors, this is not surprising. On 21 April 2015 the Claimant's solicitors requested that all communications should be directed through them which the Respondent declined, but it certainly showed that the Claimant was not keen to receive communications and indeed declined to be contacted by Mr Lopez, see below, and to engage with Occupational Health. Not surprisingly therefore the Claimant did not complain about lack of contact at the time and we find that there was no detriment.

Complaints about contact from the Respondent

108. Allegation 30 is the opposite of allegation 29 in that the Claimant says that Mr Patterson pushed her into having a call with Mr Lopez on or around 13 March. The Claimant, her husband and her medical advisors could have told her not to take this call but in fact in was in her interest to take it as Mr Patterson, who the Claimant trusted, knew. Mr Lopez wanted to make a generally reassuring call to her which cannot be said to be discriminatory or unwanted conduct in that there was no detriment.

109. Having just complained that there was not enough contact the Claimant makes a number of complaints about too much contact, these are allegations 31, 33 and 35. Again we find no detriment. She says that she received letters/emails from HR when in acute crisis, that she received inappropriately stressful communications late on a Friday or before a Bank Holiday and that the subject access documents provided by the Respondent in response to her request were dumped on her doorstep.

110. The obvious points to make are that the Respondent did not know when the Claimant was in acute crisis and often did not know that letters were going to arrive with the Claimant on a Friday, particularly if they had been sent through her solicitors. The Claimant herself said that she had good days and bad days and she certainly would have complained if she had not received responses to her communications. The majority of the correspondence was in response to queries and demands from the Claimant which the Respondent had to reply to in a timely manner. In particular, communications sent by the Claimant on a Friday

were best responded to that day, also a Friday. The subject access response was urgent and had to be provided as soon as possible. It was delivered by a courier in a manner that was outside the Respondent's control, the courier company producing evidence that that the claimant had signed for it which she denies.

Being cut off from the IT system

111. Allegation 32 is an allegation of too little contact in that the Claimant wanted to remain on the IT system. She was regularly reinstated when she asked but the lock-out was a global process in response to her being on long term sick absence and it cannot be said that the Claimant was singled out for less favourable treatment, discrimination arising from disability or harassment. The Claimant alleges that she was singled out because HR knew that she was not ever going to be coming back, but in March 2015 it was by no means clear that this was the case and far too early to take any steps towards ill-health dismissal. This was not least because the Respondent had permanent health insurance in place which meant that those who remained in employment would benefit from that.

Complaints that changes in line management etc happened during the time the Claimant was off sick and she was not informed

112. Before we deal with these there is an allegation, allegation 34, that the Respondent discriminated against the Claimant by failing to provide updates on her "carried interest remuneration". The witnesses explained that this process was carried out by a separate company in Luxembourg which, whilst working for the Respondent, had absolutely no ability to or motive for singling the Claimant out and discriminating against her. The Claimant should have received these updates along with all other staff, but she did not do so for a reason which was not personal to her at all. When complaints were made on her behalf by her husband the problem was sorted out.

113. Things moved on at the company whilst the Claimant was on sick leave, as of course they would, and Mr Patterson was suspended on 17 April 2015, presumably once it became clear that the disciplinary process was not going to be quick. It was also important to preserve the position and protect the team given that in 2013 Mr Patterson had cross examined them on what action HR had taken in its investigation.

114. The Claimant continued to be unwell and the Respondent accepts that by late Summer it knew that she was more seriously unwell, in other words disabled.

The claimant's grievance, June 2015

115. However, before that date the Claimant was not only able to instruct solicitors to act for her, make visits to the solicitors and take advice from leading counsel, she was able to put together a forty-five-page grievance which went

through a large number of complaints against the company including some allegations of sex discrimination.

116. At this time, Kingsley Napley wrote to the Respondent on 30 June 2015 saying that the Claimant had had advice from leading counsel that she had a sex discrimination claim. This is very significant because she did not follow this up and litigate until May 2017, nearly two years later. At that stage, contrary to the Claimant's current case, the allegation was that the team's *sex discriminatory* attitude towards the Claimant had led them to complain resulting in the disciplinary action. There is no allegation of disability discrimination which indicates either that the claimant did not believe at the time that her health was a relevant factor in the action being taken against or that she did not herself know that she was suffering from a serious long term mental health condition. If she did not know how much less would the respondent know? The grievance did not progress because the claimant was too unwell and it has not been resolved.

Allegations 36, 37 and 40 – information about changes in line management

117. The Claimant made complaints that in June 2016 through to May 2017 the were changes in line management on two occasions and she was not informed which was disability discrimination. Firstly, Mr Patterson was suspended in April 2017 and then he left (under a settlement agreement). The Claimant complains that she was not told that she then reported directly to Mr Lopez. This is a strange allegation and cannot be successful because of course the Claimant knew exactly what was happening with Mr Patterson, both that he had been suspended and that he had left because she remained his friend. In his absence she was of course theoretically reporting directly to Mr Lopez who had been Mr Patterson's manager. However, by June 2016 the Claimant was seriously unwell and there was no prospect of her coming back to work, so it is artificial to say that she really had any manager at all as she was on sick leave and not being managed.

118. Once Mr Lopez had left there were no managers left in the section who had been the Claimant's managers, this meant that analysts who had been the Claimant's reports were being promoted. Given that the Claimant was not likely to be returning to the team in the foreseeable future there was really no detriment in her not being told who those individuals were and of course she would have been very upset to hear their names because they were part of the cohort who she believed was treating her badly because of her sex.

119. A similar situation arises in relation to allegation 37 which is that the Claimant alleges that despite being told she would be invited to an appraisal for the 2015 year this was not organised. The Claimant had worked until 9 March 2015 and then had been on sick leave for the rest of the year.

120. This is again an allegation in which she seeks to suggest there was a detriment when in practice there was none. By 2016 the Claimant was too unwell even to travel to London let alone to engage in any processes with the Respondent. All the disciplinary process and the grievance process were on

hold, and they are still to this day, because the Claimant was unable to engage, and so whilst there may have been a procedural confusion it cannot be said that there was a detriment.

121. Allegation 40 is that the Claimant was not told of the decision to promote Greg Mansell who was one of her former direct reports to the post of Global Head of Research. As already stated, this would not have been good news for the Claimant, would not have helped her recovery but was thoroughly justifiable because the Claimant was absolutely not in a position to apply for the role herself. As Mr Laddie says "it is an Alice in Wonderland case to suggest that C ought to have been promoted to Head of Research. What would be the point of promoting her to a role which she could not do then or in the future? It would be futile for her; it would also perpetuate the team's rudderlessness – indeed, it would make R a laughing stock ….." We have to agree.

The Claimant's bonuses, alleged disability discrimination

122. We discussed allegations about non-payment with the representatives at some length. Such allegations which attract a good amount of compensation. Also "but for" the claimant's sick leave she would have received a bonus.

123. The first allegation, allegation 38, is quite minor in that it is a complaint that the Claimant did not receive the correct compensation statement about her bonus. However, she knew from the pay slip that she had received £15,600 by way of a bonus so there was no detriment.

124. Allegation 39 is that the Claimant should have been paid a "full" bonus for 2015 whereas in fact she was paid much less. Allegation 43 is that she received no bonus for 2016 and allegation 44 that she received no compensation statement for 2016. She does not make bonus claim in respect of 2017.

125. The allegations of failure to pay a bonus in 2015 are out of time but the allegation of failure to pay for 2016 is in time given that the ET1 was filed on 18 May 2017.

126. The Claimant alleges that Mr Patterson told her that people who are on sick leave still received what she called a full bonus despite the fact that we have already established that bonuses are discretionary and there is no such thing as a full bonus. What she means is that she should have received the same amount as she would have received had she been at work for the full year. We inspected the evidence from the Respondent of bonus payments to staff who have taken sick leave and saw that that those who had taken sick leave were treated differently from those who were at work without a break but that there was no uniform way of treating staff who were on sick leave for part of a bonus year. This demonstrates that the employer exercised discretion and that there was no blanket rule. Three staff members who were off sick for part of a bonus year, some for considerably less time than the Claimant, received no bonus at all in that bonus year and so the Claimant was by no means treated the worst.

127. It was however invariably the case that if somebody was off sick for a whole year, they would not receive a bonus. The figures are explained by the fact that the respondent's documented bonus policy is to pay according to productivity and so the Respondent did not pay staff who were away and not productive.

128. There is therefore no sign of direct disability discrimination and we do not understand how it could be said to be disability harassment. The Claimant has not provided evidence which could lead us to conclude that she was indirectly discriminated against. This leaves discrimination arising from a disability which we address in the Conclusions.

Occupational health

129. Allegation 41 is that the Respondent insisted on a new assessment by a new occupational health provider contrary to the advice of the Claimant's psychiatrist. There was no detriment here. The Claimant was not keen at all to see Occupational Health, the Respondent did not insist on a new assessment although they informed her that they had a new Occupational Health provider and the Claimant's psychiatrist did not advise that the Claimant needed to see the same Occupational Health provider. In the end, when she did agree to go to see Occupational Health, a decision which was much delayed, she saw the old Occupational Health provider so there was no detriment. We also note that the Claimant was unable to visit London so she could not in practice have gone to see an Occupational Health advisor any sooner than she did in any event.

Allegation 45

130. Allegation 45 is that it was inferred via the bonus process for 2016 that she will never return to work. This was really not an allegation that could be understood as an allegation of discrimination and it was not true.

Recruitment consultants make contact

131. Allegation 46 is that irreversible damage was done to her career when recruitments consultants contacted her on various dates to say first "I have heard that you might be leaving AXA so thought I should get in touch to see if that is the case" and then "I understand you no longer work there". The short point is that these were contacts from external recruitment agents, there were only two contacts over the space of two years, neither was entirely factually incorrect and there is no evidence that this information was provided or triggered by the Respondent. In many ways we would have thought that the Claimant would be pleased that there were recruitment consultants out there who were interested in trying to find her a job but clearly she is not fit to work at present and by the time the emails were sent in April and May 2017 she had been assessed by the insurers as not being fit to work for the foreseeable future.

Events during 2016 and 2017

132. After he was suspended Mr Patterson did not return to work and his employment terminated under a settlement agreement on 31 May 2016.

133. The Claimant and Mr Patterson had continued to instruct Kingsley Napley although her first claim, lodged on 8 August 2016 was issued by her husband on her behalf with no legal representative on the record. The claim was in respect of unpaid bonus, promotion and arrears of pay and claimed disability discrimination in relation to the bonuses

134. Kingsley Napley continued their correspondence but their last letter to the Respondent was on 15 September 2016 and related to the fact that at that stage the Claimant's appeal against the refusal of permanent health insurance had been rejected. She went on to instruct a new firm, Didlaw, who wrote to the Respondent on 22 February 2017.

135. The Claimant says that after she instructed Didlaw she realised she could bring some discrimination claims that were not just about disability discrimination in pay. A second ET1 was filed on 18 May 2017 with Didlaw on the record as acting. This time there was a sex discrimination and also a pregnancy and maternity discrimination claim alongside a disability discrimination claim. The Claimant also claimed sexual harassment, disability harassment, discrimination arising from disability and indirect disability discrimination.

The claimant finds out that she was called "Polski" and "big lass"

136. A subject access request of July 2017 was responded to by delivery of many documents to the Claimant on 11 September 2017. The Claimant says that she was in too bad a state by that time to read them, but her husband told her that he had found in the disclosure comments "Polski" and "big lass" along with "silly cow" (this latter is not pursued because it was said by somebody who was no longer employed by the Respondent).

137. Mr Ward told his wife and she was very upset to hear that these comments had been used. Claim three was lodged on 8 November 2017 by the Claimant's representative Didlaw and the claims were of race and sex harassment. This is allegation 49.

138. There is no doubt that these comments were made by Mr Goorah, an Analyst in the Claimant's team, in emails which the Claimant did not see at the time. Mr Goorah made a number of comments about the Claimant, mainly in conversations with a colleague called Kieran who left the business in 2014. Kieran's emails were the more graphic and insulting but what he said is not the subject of this claim because he was not employed by the Respondent.

139. Mr Goorah, along with the rest of the team, regularly referred to the Claimant as "PS", "Polski sklep", which is also not the subject of this claim.

140. We have already found that, fueled by his dislike and disrespect for the Claimant, Mr Goorah made comments, which were not discriminatory or harassing but in these comments his words spill over in to being both racist and sexist.

141. There are several examples of Mr Goorah using the term "Polski", the first is in an email to Kieran of 13 January 2013. This is interesting in that Mr Goorah felt that the Claimant had just said something racist to him. He says "did Polski ever make a racialist comment re your beard? She said something that could be interpreted this way yesterday…..". The reply is "can't remember but OAP, when he asked me to get rid, said it looked "shady". Rico spoke to a lawyer mate of his at the time re discrimination, but answer was you can tell people not to have beards providing you do it to everyone, which he had". Mr Goorah replied "hmm, yesterday Polski told me, some guys can pull it off, you can't. If you grow a beard, no client meeting for you. That follows from personal appearance comment in my appraisal. Thinking of taking this to a lawyer". Kieran replied "Yeh she can't say that. Massively inappropriate. Not racist necessarily though. But certainly, cause for legal escalation".

142. The second reference is again in an email from Mr Goorah to Kieran. He says "since Polski and Patto disappeared, I have really enjoyed working here. It's so different when you feel integrated with the rest of the company, as opposed to a little prison on your own. I obv still have dull tasks (reporting, etc) but I get enough flexibility to explore areas I am keen on".

143. Both uses of the term Polski are casually racist. Mr Curlow, an American, thought that in Britain we roputinely describe someone's nationality in their own language, for example "Francais", so that "Polski" is not racist but in our experience, this is not right. "Polski" is not just a description and the use of the polish language emphasizes the foreignness of the subject. The word is the equivalent of saying "the Pole" of "the Frog" and is a gratuitous description not relevant to the discussion going on. It is derogative as it categorises the claimant not as a person but as an anonyomous foreigner and alien. It is not as derogatory as "Kraut" or "Paki" because there are less negative associations with Poland than there are with those countries.

144. The term "big lass" was used by Mr Goorah in correspondence with Mr Lowery who had left and was working elsewhere. Mr Lowery, being from the North, used this term and Mr Goorah was reflecting it back in a conversation with someone who had said "I know what you mean about AP and the big lass. I really can't stand them either and if it wasn't for them, I would still be there at AXA now…..". This was in response to another Polski reference from Mr Goorah on 29 September 2015 when he said "I can't wait for Polski and El Patto to be formally out. Its strange but even with so much time gone, I still despise them. I don't think I've ever hated anybody before. It may sound cruel but I hope neither of them ever find a job elsewhere. In some ways, its karma I suppose. At some point, you have to pay the piper". A month later, when discussing a presentation with Mr Lowery, Mr Goorah calls her "the big lass". We appreciate that in the North "lass" is a fairly commonly used term not necessarily intended to refer to

women in the diminutive and that Mr Goorah was probably echoing Mr Lowery's language. However, "big" in relation to a woman's size is sexist and has a different meaning from the meaning "big lad" which is much more benign.
145.

146. Somehow or other, it is not clear how, Mr Goorah's inappropriate exchanges had been picked up by the company and he was issued with a first written warning on 15 January 2016 because of the inappropriate email exchange with Mr Lowery on 4 December 2015. This was an ugly email in which Mr Goorah referred to the Claimant as Polski and to her former PA "B1tch". He was warned due to the inappropriate email exchange which was a breach of the company's information security charter and respect in the work place policy. The first written warning would stay on his file for six months.

Conclusions

147. Allegations 5, 6, 7, 8, 42, 47 and 48 were withdrawn or struck out. All the live allegations have been addressed in the findings of fact above.

Overall conclusions

148. We feel very sorry for the Claimant who has suffered a great deal of ill health from depression and anxiety over the last few years. She had very high hopes for her career both in terms of personal fulfilment and for what it could do for her family and these are all on hold although fortunately she is receiving permanent health insurance which must help a great deal. We also know that she will be disappointed and distressed by the Judgment; we would have been pleased if the parties had managed to resolve this case between themselves without our involvement, but that was not to be so of course we had to do our job.

149. Our overall conclusion is that, with the exception of Claim 3, the harassment discovered by the Claimant in late 2017, all the claims fail. They fail not least because most are out of time, but the merits are also weak because the evidence is overwhelmingly that the Claimant was both a poor manager and a poor technician who the team resented and scorned because of the way she treated them. She was strongly supported by her boss Mr Patterson who put her on a pedestal, but the team's view was genuine and evidence-based.

150. The tragedy is that the Claimant was not able to see the effects of her poor management and has to this day not conceded that she may have been the cause of some of the problems, hence this enormously long and expensive hearing.

Jurisdiction

151. Claim 1 (August 2016), allegation 39, as it relates to the bonus for 2015 was brought in time. However, the vast majority of the sex and disability discrimination claims in Claim 2 (May 2017) relate back to the period when the

Claimant was at work and the period immediately after she went off sick in March 2015. Only allegations 43, 44 and 45 in Claim 2 appear to be in time but on the face of it the other claims are between nearly two and five and a half years out of time. Claim 3 was brought in time, see below.

Just and equitable to extend time?

152. The Claimant says that it is just and equitable to extend time, but we do not agree. The Claimant made an informed choice not to litigate within the time limit and she herself says that she only litigated once Didlaw as opposed to Kingsley Napely, had woken her up to the possibility. This really is not a good enough reason for the considerable delay, not least because many of the claims were without foundation. The main factors which we took into consideration when deciding that it was not just and equitable to extend time are:

(1) The Claimant is an intelligent and educated person with a master's degree in law, so she is capable of understanding legal issues and must be familiar to some extent at least with litigation and the existence of time limits. During the time that she was unwell she had her husband to help her and also Mr Patterson. Mr Patterson was very keen on law and legal rights.

(2) Whilst the Claimant was very distressed in March 2015 and became increasingly unwell she was able to instruct and take advice from a law firm and attend meetings along with her supporter Mr Patterson. The lawyers' letters to the Respondent made it clear that they had advised her in late June 2015 that she had a potential sex discrimination claim based upon the treatment of her team. This is exactly what she claimed two years later but she was aware she could bring this claim much earlier but chose not to.

(3) The letter shows every sign of the lawyers' approach being to raise all possible claims in order to kick start negotiations. Although the lawyers referred to her ill health in terms of a possible personal injury claim, they did not threaten a disability discrimination claim. The reason can only be that from what the claimant was saying at that time they did not conclude that one might be brought. They also did not refer to maternity discrimination at all, presumably for the same reasons.

(4) We note that the Claimant was a high earner and had financial support from Mr Patterson, so she was in a financial position to take action had she chosen to do so.

(5) Also, in June 2015, the Claimant compiled and filed a 46-page grievance which Employment Judge Spencer at the preliminary hearing described as "comprehensive and coherent" so she was able to articulate her concerns and not afraid to confront the Respondent with them. We conclude that she made a decision not to litigate at that time; we do not say that this is a

bad decision, particularly given her health, but it means that when she did litigate two years later it was a choice to litigate out of time.

(6) There is also medical evidence that the Claimant was capable of functioning during the middle part of 2015, so she could have filed a claim. On 12 April 2015 her consultant psychiatrist Dr Brener said that whilst the Claimant was "struggling to undertake all the activities of daily living" he was not planning to see her again and hoped that therapy would bring matters to a conclusion. Then in his note of 11 June 2015 he recorded that she was writing a 45-page grievance, that she was not on medication, that she was socialising and playing netball and that her therapy was helping. The Claimant herself said she had good days and bad days and it cannot be said that poor health made it very hard or impossible for her to litigate.

(7) Once the Claimant was off sick and no longer in the work place she had every opportunity to separate herself from Mr Patterson if she had wanted and say how he had discriminated against her. HR supported her and tried to keep her case and Mr Patterson's separate, but she chose to stay in close alliance with him and they have remained friends so, again, the Claimant made a choice at the time not to raise allegations.

(8) The Claimant says that Didlaw woke her up to the fact that Mr Patterson had frequently discriminated against her but Claim 2 is a rewriting of what happened at the time rather than a "light bulb moment" in the sense that the Claimant suddenly saw the facts clearly. With regret we have to save that in early 2017 the Claimant started to look through a mangled lense which saw discrimination everywhere when it had never existed.

(9) When Mr Patterson and the Claimant were instructing Kingsley Napley, there was apparently no conflict of interest which would have meant that the firm could only have acted for one of them. This would be expected if Kinglsey Napley had picked up even a hint that Mr Patterson might be implicated in the claimant's claims.

(10) Justice and equity, and what we will call credibility, strongly inter-relate in this case because not only do we find that the Claimant made a choice not to litigate within the correct time period, she had no reason for doing so because she did not experience the alleged discrimination at the time. We call it credibility, but we do not believe that the Claimant has been lying to us, rather that she has never been good at seeing things from another's perspective and this tendency has got worse so that she now sees behaviour which is against her as not only bad but also unlawful.

(11) There is a gulf between the evidence in the documents and of the Respondent's witnesses (who we all found to be non-vindictive and thoughtful) on the one hand and the assertions made by the Claimant and Mr Patterson in their witness evidence on the other. Their evidence

was unreliable, and it would be unjust and inequitable to allow an extension of time in these circumstances.

(12) The starkest example of this gulf is in relation to the Claimant's long-ago maternity leave. At the time Mr Patterson was supportive, he and the Claimant had a good relationship which involved her being able to make demands as she wished, her involvement during maternity leave was a matter of choice and her early return a matter of economics. There is absolutely nothing to suggest that there were problems at the time and the Claimant had a mentor to support her should she need it. Further, is the fact that the Claimant actually did compose a grievance about her maternity leave experience in 2013 but this was not directed in any way at Mr Patterson but rather at various members of HR, and it was resolved. There is no hint at all that the Claimant experienced discrimination from Mr Patterson until the second claim in May 2017 rewrote history. Whilst the Claimant had to have a screen protecting her from some of the witnesses who she said discriminated against her, she has maintained a friendly relationship with Mr Patterson who is accused of so many serious acts and she sees him socially on a regular basis. The only way all this makes sense is if history has been re-written. It is possible that the claimant came to regret the decisions she made at that time and blamed Mr Patterson for supporting them, but they were her choices.

(13) The strange situation was compounded by the fact that Mr Patterson came to the Tribunal ready to take responsibility for whatever was thrown at him. Contrary to the contemporaneous evidence which showed him to be sensitive and aware that he needed to warn the Claimant not to take on too much too soon, he was prepared to sit there and accept that he may have unintentionally discriminated against her. We can only conclude that his strong loyalty for the Claimant meant that he came to the Tribunal prepared to do whatever he could to help her. He stopped short of contradicting the contemporaneous evidence but did not have an answer as to why his current position was in conflict with it.

(14) Another argument by the Claimant is that the scales did not fall from her eyes until 2017 when she realised that she was the puppet of Mr Patterson. However, it is clear from the evidence that he was no Svengali and that she exercised free will. All the witnesses identified differences in behaviour between the Claimant and Mr Patterson and a crucial difference was that they knew that he had technical skills whereas they thought very little of hers. The Claimant's continuing relationship with Mr Patterson demonstrates that she does not really think that he is responsible for her downfall.

(15) We did experience the Claimant exaggerating at times. She talked of life at work on her return from maternity leave as "unrelenting hell" and yet thanked Mr Patterson for his support in her appraisal and there was no documented problem at all in 2012 following her return. She

occasionally talked of “collapse” when she meant collapse in tears and of laughter after the workshop follow up coaching session when she agreed when questioned that they were not laughing but smiling “and not a nice smile”.

(16) Whilst it is good to withdraw allegations in order to narrow the issues, some of them should really not have been pursued in the first place, which suggests that the Claimant was trigger happy and prepared to maintain allegations inappropriately. These accusations must have been worrying for the Respondent’s witnesses and Louise McMahon bore the brunt of, for example, the allegation that she discriminated by not providing support around the application for permanent health insurance. There is an enormous amount of evidence that she did, and the allegation was withdrawn during the hearing.

(17) There were many moments during the Claimant’s cross-examination when she was not able to explain why a particular event was discrimination as opposed to being bad or unfair. We can only conclude that the Claimant’s view is almost uniformly that anything that she feels that was bad or unfair was some sort of discrimination.

153. This part of our reasons is very long but the question of time is central in this case. Looking at some of the regular factors that a Tribunal would take in to account when deciding whether it was just and equitable to extend time:

(a) The delay was very long and the reason for the delay was that the Claimant chose not to litigate sooner, she had all the information and the determination to complain should she have chosen to.

(b) The cogency of the evidence was affected by the delay, a number of Respondent witnesses were unavailable, and memories had faded, particularly that of Ms McMahon who did attend despite having left AXA but there was quite a lot she could not recall.

(c) The Claimant did not act promptly once she knew (or should have known) of the facts which she now says gave rise to the causes of action except in relation to claim number three.

(d) The Claimant had appropriate professional advice at the time she should have been bringing the claim but either did not act on it or was advised that her claims were more limited than she subsequently came to believe.

(e) The merits of the claim are relevant because it would not be as just to knock out a strong claim just because it was out of time. Here there are no strong claims being knocked out, indeed the key ones are very weak. We say something more about the disability discrimination claims further on in these conclusions.

Continuing act

154. There is of course no chance that Mr Patterson's alleged discrimination was a continuing act since he dropped out of the picture in 2015 and left the company 2016, two years and one year before the relevant claim was filed.

155. The same applies to the other named perpetrators such as the team who had nothing to do with the claimant after March 2015. There were no acts of discrimination continuing into the "in time" period so no chance of there being a continuing act.

Claim Three was filed in time but did not create a continuing act

156. We have heard argument on both sides. Mr Laddie says that time runs from the act of harassment not the point when the Claimant experienced the harassment. Mr Crozier says the opposite. We think that the correct reading of s.26 is that the act does not occur until (1) the words have been said and (2) the Claimant has experienced the intimidating, hostile environment etc. Therefore, the claim is in time. However, nothing hangs upon this in that it would have been just and equitable to extend time given that the Claimant did act promptly once she discovered the insulting emails.

157. Further, the fact that the claims are in time does not create a continuing act because there were no acts of discrimination in the out of time period which could now be brought into time by the harassment. We do not think it would be appropriate for the "Polski" comment to be part of a continuing act because this is the first and only allegation of racial harassment. In terms of "big lass" we do not think it would be appropriate for that comment to be used to create a continuing act in respect of actions by anyone other than Mr Goorah and perhaps his colleagues, but we have found that they were not responsible for any other earlier acts of unlawful discrimination or harassment.

Maternity Discrimination, allegations 1-4

158. We have found that the Claimant's claims are out of time and that it is not just and equitable to extend time. Further, Mr Patterson did not discriminate.

Discrimination and harassment by the Claimant's team members, allegations 9, 10, 11, 14, 19, 20 and 21

159. These are all out of time and it is not just and equitable to extend time. These events were not acts of discrimination or harassment.

Other alleged acts of discrimination by Mr Patterson, allegations 12, 13 ,18 and 24

160. These are all out of time and it is not just and equitable to extend time. These acts of discrimination did not take place.

Disability discrimination

161. We have spent more time talking about sex discrimination and harassment than disability discrimination in our findings of fact. It was hard to believe that the Claimant could seriously have thought that she was picked on for disability-related reasons when HR became concerned about her and Mr Patterson's management of a team which had experienced thirty-five leavers in five years. She and Mr Patterson, who was not disabled, were treated the same, in fact she was treated slightly better because Louse McMahon was keen to give her the opportunity to come out from under the shadow of Mr Patterson if she wished to do so.

162 Try as she might the Claimant was not successful in demonstrating that the decision by HR to instruct Byrne Dean and to progress towards a disciplinary hearing was because she was now no longer wanted as an employee because she was now known to be disabled. To the contrary, the activity at the end of 2014 was directly related to the concerns which HR had had from 2012 onwards and which they tried to discuss in early 2013 only to be beaten off by a concerted counter-attack from Mr Patterson and the Claimant.

163 As we have said, even Kingsley Napley did not identify a potential disability discrimination claim around the performance issues. Claims 22, 23 and 26 therefore fail both because they are out of time and because there was no basis to argue disability discrimination.

164 A number of claims in relation to matters that arose whilst the Claimant was on sick leave have the potential of being in time although most of them clearly are not. Even more clear is the fact that the Claimant has inappropriately labelled these acts as disability discrimination. They were mainly trivial acts for which the alleged perpetrators of discrimination like Ms McMahon had no direct responsibility and we could not see how the disability could have been a motive. We have dealt with our findings of fact above and noted that in most cases there was no detriment. We appreciate that a detriment need not be physical or economic but there is a level below which an unreasonable upset cannot be said to be a detriment. Going through each of these:

(a) Allegations 27 and 28 are out of time and any detriment cannot be attributed to the members of HR who allegedly had a motive to discriminate.

(b) Allegation 29 may extend in to the in-time period but there was no detriment.

(c) Allegation 30 is out of time.

(d) Allegations 31 and 33 might be in time but there was no detriment.

(e) Allegation 32 is out of time and there was no detriment caused by the alleged perpetrators.

(f) Allegation 34 was potentially in time but there was no detriment caused by the alleged perpetrators.

(g) Allegation 35 this is out of time and there was no detriment.

(h) Allegations 36 and 40: part of these may be in time but there was no detriment.

(i) Allegation 37 is out of time and there was no detriment.

(j) Allegation 41 is out of time and there was no detriment.

(k) Allegation 46 is potentially in time but there was no detriment caused by the alleged perpetrators.

The bonus claims

2014

165 The claims relating to the Claimant's 2014 remuneration are in Claim 1. The allegation relating to bonus for the 2014 calendar year, allegation 25, is out of time. In addition there was no detriment.

2015

166 Allegations 38 and 39 relate to the 2015 bonus which was payable in March 2016 and Claim 1 was lodged on 8 August 2016 so these claims are probably in time. However, we have explained in our findings of fact why we find that the only possible claim is of discrimination arising from disability because the reason why the bonus was not paid was because the claimant was on sick leave for part of the year from March 2015 and we record below that it was justified.

2016

167 Allegations 44 and 45 relate to the lack of a bonus for the 2016 year, during which the claimant was not at work at all, and they are probably in time as they are covered by Claim 2. We again find the non-payment justified.

Justification

168. It is correct to say that were it not for her disability the Claimant would not have been on long term sick leave and so the cause of the reduced/ non-existent bonus was her disability. The question is therefore whether this conduct is justified.

169. We consider that it was justified. The discussion was whether there should have been a more explicit balancing process with the respondent looking for the least discriminatory outcome for the Claimant, but it has to be accepted that unproductive staff who were absent on sick leave will not be, nor do they expect to be, treated the same as staff who are at work. The Claimant was treated the same or indeed perhaps more fairly than some others on sick leave, whether disabled or not, as all had their bonuses affected by their absence. This fits with the purpose of the disability discrimination legislation which is to enable equality but not to put the Claimant in a more favourable position than she would be in were she sick but not disabled.

170. Mr Laddie's argument was that it was blindingly obvious that staff on sick leave did not do as well financially as staff at work since full pay soon ran out and other benefits were not payable so why should a balancing process be undertaken regarding just one part of the remuneration package, the bonus. The Claimant was not arguing that she should have received full pay during her sickness absence, although luckily she did receive permanent health insurance. The bonus argument must fail because there is no difference between the award of a bonus and the continued payment of ordinary pay. By its very nature, although sickness absence is not the fault of the individual employee they suffer economically as a result; employers are allowed to pay for productivity.

171. We looked at the case of *Houghton v Land Registry* UK EAT/0149/14 but agree with the Respondent that it does not help. There the disabled person was singled out for unjustified, unfavourable treatment in comparison with people who were under a warning for misconduct and so that was disability discrimination for that reason. These were all employees who were at the time at work although they had received warnings.

172. Finally, we see why it would be disability discrimination, or discrimination arising from disability, not to pay the Claimant in 2016, and to pay her only a small sum based upon her two months and one week at work in 2015, but not discrimination to withhold it for the unlimited successive years which lie ahead. The claimant which she does not, wisely in our view, make a claim for 2017.

Knowledge of the Claimant's disability

171. The other reason why the claims of disability discrimination which arose before the Summer of 2015 fail is that the Respondent did not know that the Claimant was disabled. We summarise our reasons below in an abundance of caution although we have concluded that on the merits, they have no basis. Some of the points made below were not made in the findings of fact in order not to disrupt the continuity of the narrative. These points need to be viewed together in a group and are not helpful when interspersed in chronological order.

172. The Respondent of course accepts that the Employment Tribunal at the Preliminary Hearing found that the Claimant was disabled from February 2014 but says that the respondent did not have knowledge until the late summer of 2015. The legal relevance of knowledge is:

a. For the purposes of a direct disability discrimination/ harassment claim whilst lack of knowledge is not a defence it is evidence that the respondent is unlikely to be motivated by disability if it did not know about it.
b. For a section 15 "arising from" claim, lack of knowledge, whether the employer knew or ought reasonably to be expected to have known of the disability, is a full defence.

173. We find that the respondent did not known and ought not to have known that the claimant was disabled for the following reasons:

(1) Before February 2014 there were a few incidents of ill health but none which would signify a disability. One occurred when the Claimant collapsed at work in November 2012. She was referred to a psychotherapist when it was discovered that her problem was not neurological but the therapy sessions stopped in April 2013 so she had not been unwell for a year and had not received medical treatment as opposed to therapy.

(2) During the difficult times in January 2013 when the Claimant was facing criticism from HR which she an Mr Patterson were fighting off she felt particularly bad and reported this to her therapist but when HR retreated things got better and, as we have already said, the therapy sessions ended in April along with the HR intervention so there was only a short term problem.

(3) A number of staff members experienced the Claimant as "stressed" but stress is of course not of itself an illness, it can lead to an illness or a disability when it causes mental or physical ill heath, in the Claimant's case depression and anxiety. However, whilst some including Aleks and Jessica thought the Claimant was stressed and wondered about her wellbeing, they also knew her to be very robust and determined.

(4) In January/February 2014 the Claimant went through a cardiac ablation process which was stemmed from a physical and not a mental health issue so that was not an indication of the relevant disability and she had returned to work feeling marvellous and much invigorated.

(5) However, there was a related referral to Occupational Health in April 2014 in which HR mentioned her cardiac issue and also "some stress and anxiety". The Claimant thought that the contact with Occupational Health was about her physical problem, but the Occupational Health doctor saw her on 12 May 2014 and declared that she was unfit for work because she was experiencing symptoms relating to anxiety and depression. She was referred to a psychiatrist, Dr Neil Brenner. This might have set alarm bells ringing, but read on.

(6) Instead of being grateful that she was to get some help, the Claimant was outraged and alarmed by this diagnosis and she immediately challenged it. She and her husband both thought that having such a diagnosis on her work record would be bad for her career and they had some basis for thinking that in our experience. The Claimant wrote back to the Occupational Health doctor explaining that she knew what depression was and that she was not depressed. She told Employment Judge Spencer that she was having considerable difficulties at home with her day to day activities but that these were not showing at work and she did not share the home difficulties with the doctor.

(7) This put HR in a difficult position and they asked for confirmation from the Claimant's GP that she was indeed fit to work. The Claimant did not provide that clarification but instead provided her latest cardiologist report in which Mr Gall says that the heart problem was solved and "there have been no other medical issues". Therefore, the Claimant presented as having a completely clean bill of health.

(8) In June 2014 the Claimant went to see the psychiatrist Doctor Brenner and she described her condition to him making no mention of collapsing, being unable to work etc. She says she was scared to do this as she feared that signing her off sick was part of an HR plot. Anyway, Doctor Brenner recorded that the Claimant was not unfit for work and he gave no diagnosis of a mental health condition although he commented that she needed to make changes to her work pattern to avoid burn out and suggested some CBT sessions. In fact, the Claimant only attended one and did not go again until 2015.

(9) This was a very strange series of events, but the Claimant did provide the medical evidence to back up her assertion that she was not unwell and there was no reason at all why the Respondent should try to look behind this. Nonetheless they persisted and asked for a second opinion from Occupation Health which was resisted but a second report was produced on 14 July 2014. It said that the Claimant was now fit and Doctor Ernstzen the Occupation Health doctor said that her symptoms of anxiety had reduced, she had good working relationships in the team and she was discharged. Not only had the Respondent done its duty to check out the Claimant's condition but it had also been told that any problems which had originally been perceived were short lived and now cured so there was no long-term condition to be concerned about. It may be that the Claimant was lying to the doctors and saying that she was fit when she was not but as far as the Respondent was concerned it is not the case that it ought reasonably to have known that she was covering up.

(10) As ever, Mr Patterson supported the Claimant and she thanked him for his support. However, this fight back against Occupational Health was not superficial, a private email at the time which she sent to her coach Ann Bates also asserted that she did not believe that she was unfit for work.

(11) In January 2015 the Claimant had the encounter with Olivia Mimouni of HR which she recorded as being aggressive. If any more is needed, the concerns which Miss Mimouni expressed and her recommendation that the Claimant be sent off to Occupational Health further confirm that at this time the Respondent may again have been concerned about the Claimant's health but had no knowledge of a diagnosis and thought that further exploration was needed.

(12) It is instructive that on 9 March 2015 Kingsley Napley wrote to the Respondent recording that the Claimant had had physical cardiac symptoms since 2014 and was recently experiencing palpitations. They also said that she was experiencing recent symptoms of severe stress and anxiety. As we know, they did not say in these early letters that the Claimant might have a claim for disability discrimination and it appears that as far as they were aware the mental health symptoms were recent and not by that stage therefore long term.

More on gender

174. The Claimant says that she suffered gender discrimination. We do not find in her favour on this point. We acknowledge that gender is a context in this case but it is not a cause of any unfavourable treatment leading to detriment. The reason it is a context is that the Claimant was a rare woman in a largely male dominated sector. This could sometimes be uncomfortable, and we appreciate that she might have felt that her maternity leave was not going to be easy because it was such an exceptional event. However, it was very clear from the way she was treated by HR that she was a valuable resource and that they understood that they need to work hard to retain a talented woman in that sector. They invested in her twice over a short period, first instructing a maternity mentor to support her and then secondly appointing a coach. Indeed, another reason why gender is a context in this case is that HR seems to have held an unrealistic view of the Claimant's potential and the only reason we can think of for that is that they strongly wanted to encourage women in the sector.

175. The Claimant says that the younger men in her team were against her and we have struggled with that assertion for a number of reasons. The first is that their main sentiment was fear as she and Mr Patterson ruled with a rod of iron, so they hardly ever did anything which could be said to be a detriment. Second, it is wrong to suggest that the group was motivated by the Claimant's gender. Most of the time, moreover, the group had negative views of both the Claimant and Mr Patterson, so gender was not the reason for the negative view. Any worse view of the Claimant than of Mr Patterson was caused by the fact that there was no respect for the Claimant's technical ability. It is important also to remember that Jessica Orchard, a PA who started out with strong loyalty to the Claimant, and Caroline Molette too had the same feelings about her as the men. We accept that women can discriminate against other women, but it is less likely that they will hold stereotypical views.

Racial and sexual harassment

176. So, at the end of the day, the only claim which survives is allegation 49 which is that the Claimant was referred to as "Polski" and "big lass" by Mr Goorah.

The employer's section 109 defence

177. First, we reject the employer's defence in s.109. We know that Mr Goorah was disciplined in 2016 in respect of one email exchange in which he had used the work "Polski". This shows that the Respondent had a "respect at work policy" which they were prepared to enforce. However, the burden is on the Respondent to show us that steps were taken to train staff members and managers on the policy and to make sure that they understood it. The frequency of relatively low-level comments certainly suggests that staff members were unaware or blasé about the policy and we have not seen any evidence which would allow us to conclude that the employer took "all reasonable steps to prevent" Mr Goorah from harassment.

The impact on the claimant

178. We have thought about whether the fact that the comments were not said directly to the Claimant reduces the effect upon her in terms of the extent of injury to feelings. We do not think it makes much difference in that although such an offensive word would have been shocking if said to her face, discovering that it had been said all those months ago behind her back was a horrible shock.

179. It is difficult to assess the right level of injury to feelings because:

(1) The term "big lass" is only very marginally sexist based upon a woman's concern about being considered "big".

(2) "Polski" is a term which is on a par with "Frog" and is unpleasant but has no particular aggravating features.

(3) The Claimant was very unwell at the time and would have been very distressed; we saw examples of how distressed she could get at relatively small problems when she gave evidence at the Hearing.

(4) The Claimant only knew what her husband had told her, and she was only told that these two words had been used by Mr Goorah even though we know that "PS" was frequently used and other much ruder comments were made about her gender.

(5) The phrase which she says gave her particular terrors and suicidal thoughts was a "House of Cards" reference to urinating on her grave which, though horrible, was of course neither racist nor sexist.

(6) The Claimant did not read the emails containing the racist and sexist terms “Polski” and “big lass”. If she had she would have seen in one of them that Mr Goorah was himself concerned that he had been discriminated against by her which surely must be relevant although it does not justify him counter attacking with such language.

(7) We do not know whether the Claimant was told precisely how many times these phrases were used, in our understanding they were used infrequently and mainly in 2015 after she had gone on sick leave and the team felt freer to comment about her.

(8) These are free-standing insults which do not lead to an inference of other more widespread discrimination.

180. We think it is our responsibility to indicate a figure at this stage and the parties may apply for reconsideration if they wish to make oral or written submissions, this is the most proportionate way of dealing with this small award. We have agreed a figure of £8,000 which is pretty much the top of the lower Vento band.

Indirect discrimination

181. We note that although indirect discrimination was one of the claims in the list it has not been separately argued by the Claimant.

Final comments

182. We are, as we have already said, sorry to be delivering this bad news to the Claimant and we do hope that the one thing we have achieved is closure so that she can now move on with her life and hopefully her health will improve over time. We should also acknowledge, of course, that the Respondent’s witnesses have also been through a long and difficult time with a number of them standing accused of discriminating for over a year. Our findings exonerate them, and they should be congratulated for giving clear and helpful evidence to the Tribunal.

183. We should finally record that the hearing was conducted with all the agreed adjustments for the claimant in place and though she struggled she did well to get to the end of her evidence. We are grateful to both Counsel for their cooperation in bringing this long hearing to a close on time and for their very able help in navigating us through.

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Employment Judge Wade

Dated: 11 January 2019

Judgment and Reasons sent to the parties on:

14 January 2019

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For the Tribunal Office