



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss A Napier

**Respondents:** (R1) Churchills International Consulting Limited  
(R2) Peter Meagher

**Heard at:** Nottingham

**On:** 19 February 2018, 20 February 2018, 21 February 2018  
22 February 2018, 23 February 2018

Reserved Judgment on 22 March 2018

**Before:** Employment Judge Hutchinson  
Members: Mrs C Hatcliff  
Mr Z Sher

**Representatives**

**Claimant:** Mr Jonathan Meichen, of Counsel

**Respondent:** Ms Rehana Azib, of Counsel

## RESERVED JUDGMENT

The unanimous judgment of the Tribunal is:

1. The claims against the First Respondent of:

- Unfair dismissal
- Direct sex discrimination
- Harassment
- Victimisation
- Breach of Contract in respect of notice pay
- Unpaid wages

Fail and are dismissed.

2. The claims against the Second Respondent of:

- Harassment
- Direct sex discrimination
- Victimisation

Fail and are dismissed.

3. All the counter claims made by the First Respondent against the Claimant are dismissed on withdrawal.

4. The remedy hearing on 3 July 2018 is cancelled.

# REASONS

## BACKGROUND AND ISSUES

1. The Claimant presented her claim to the Tribunal on 13 March 2017. She brought the following claims against the First Respondent:
  - 1.1 That she was constructively unfairly dismissed;
  - 1.2 That she suffered less favourable treatment by reason of a protected characteristic contrary to the Equality Act 2010. In this case the characteristic is sex, and the claims relating thereto are ones of direct discrimination and harassment;
  - 1.3 That she was subjected to victimisation by reason of carrying out a protected act or acts;
  - 1.4 That she was wrongfully dismissed in breach of contract;
  - 1.5 That she suffered unauthorised deduction of wages.
2. Against the Second Respondent she claimed:
  - 2.1 Harassment;
  - 2.2 Direct sex discrimination;
  - 2.3 Victimisation.
3. The Respondents when they filed their response made a counter claim. The details of the counter claim are set out in the amended response and counter claim file on 18 September 2017. It claims:
  - 3.1 Repayment of overpaid bonuses;
  - 3.2 Overclaimed travel expenses;
  - 3.3 Damages for removal of data from laptops;
  - 3.4 Offering client's unauthorised discounts.
4. After the evidence was concluded the Respondents withdrew the counter claim in its entirety. That left the Tribunal to deal with the issues agreed between the parties in respect of the Claimant's claims. These are set out below.
5. **Constructive Unfair Dismissal**
  - 5.1 Was there a repudiatory breach of contract by the First Respondent? The Claimant relied on the acts set out at paragraphs 7 — 33 of her ET1 to establish a repudiatory breach of contract.
  - 5.2 If there was a repudiatory breach, did the Claimant resign in response to the breach?
  - 5.3 In respect of issues 5.4, 5.5 and 5.6 below, had the Respondents properly pleaded a case for waiver/affirmation/dismissal in any event/contributory conduct that they can now rely upon and is it necessary for them to do so?
  - 5.4 Did the Claimant waive her right to rely on those breaches/affirm her contract of employment by delaying between the breaches and her resignation?

- 5.5 Would the Claimant have been fairly dismissed in any event, even if the alleged breaches had not occurred because of her intention to resign and set up a rival business and/or her potential gross misconduct at paragraphs 35, 36 and 43 of the response?
- 5.6 Did the Claimant conduct herself as referred to in paragraphs 6, 10, 11, 12, 14 and 19 of the response? If so, was such conduct culpable or blameworthy? If so, did the conduct cause or contribute to the Claimant's dismissal to any extent?

**6. Breach of Contract / Wrongful Dismissal**

- 6.1 Was there a repudiatory breach of contract by the First Respondents?
- 6.2 The Claimant relies on the acts set out at paragraphs 7-23 of her ET1 to establish a repudiatory breach of contract.
- 6.3 If there was, did the Claimant resign in response to the breach?

**7. Direct Sex Discrimination**

- 7.1 Who is the relevant comparator for the purposes of the Equality Act 2010 ("EA")?
- 7.2 Was the Claimant treated less favourably than her comparator? The Claimant relies on the Act set out at paragraphs 7-33 of her ET1 to show less favourable treatment.
- 7.3 Was the Claimant's sex the reason for any less favourable treatment or was there a non-discriminatory explanation for such treatment?
- 7.4 Had the Claimant's claims been brought within time and if not, is it just and equitable to extend the time limit?

**8. Sexual Harassment**

- 8.1 Did the Second Respondent engage in unwanted conduct that was related to the Claimant's sex and/or was it of a sexual nature? The Claimant relies on the conduct set out at paragraphs 8, 13, 14 and 30 of the ET1.
- 8.2 If he did, did that conduct have the purpose or effect of either:
- Violating the Claimant's dignity; or
  - Creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
- 8.3 Did the Claimant reject the Second Respondent's unwanted conduct as set out above?
- 8.4 If the Claimant did reject the Second Respondent's conduct, was the Claimant treated less favourably by the Respondent for that reason? The Claimant relies on the conduct set out at paragraphs 7-33 of the ET1.
- 8.5 Have the Claimant's claims been brought within time and if not, is it just and equitable to extend the time?

**9. Victimisation**

- 9.1 Did the Respondent subject the Claimant to a detriment? The Claimant relies on the detriments identified at paragraph 44 of the claim form.
- 9.2 If the Respondents did submit the Claimant to a detriment, was it because she had alleged that the Respondents had breached the EA and/or because the Claimant had informed the Respondents that she intended to pursue a sex discrimination claim against them on one or more of the following dates:

- 7 December 2016
- 3 January 2017
- 15 January 2017
- 16 January 2017
- 17 January 2017
- 21 February 2017
- 01 March 2017

**10. Breach of Contract I Unlawful Deduction from Wages**

- 10.1 Was it an implied or express term of the employment contract that the Claimant would be paid a bonus of £4,000 in December 2016?
- 10.2 If it was, was the bonus paid?
- 10.3 If the Claimant was entitled to a bonus which was not paid, why wasn't it paid and was it lawful for the First Respondent to withhold payment?
- 10.4 If the Claimant was entitled to a bonus on a discretionary basis, what was the basis upon which that discretion could be exercised and did the First Respondent exercise its discretion in accordance with such basis, rationally and in good faith?

**11. THE EVIDENCE**

- 11.1 For the Claimant we heard evidence from the following, namely:
- The Claimant
  - Michelle Lane, Business Partner of the Claimant and former colleague and ex-employee of the First Respondents
- 11.2 For the Respondents we heard from the following:
- Peter Meagher, Second Respondent and Managing Director of the First Respondent
  - Tony Allan, Business Associate of the Second Respondent
  - Haley Pate, Account Manager of the First Respondent
  - Louise Salmons, Financial Assistant of the First Respondent
  - Hannah Shearwood, former HR Manager of the First Respondent
  - Greg Cheshire, Natwest Mentor who dealt with the Claimant's grievance
  - Cath Cooper, Consultant engaged by the First Respondent
- 11.3 There was an agreed hearing bundle, where I refer to page numbers it is from that bundle.
- 11.4 Where there was a conflict in evidence the Tribunal preferred the evidence of the Respondents and their witnesses. The Claimant and the Respondents both agree that this is a case where the context of the parties' relationship is vital to our considerations when dealing with the evidence. In this case Mr Meagher, the Managing Director of the First Respondents, had been in the business of financial consultancy for 44 years. Miss Napier had been employed firstly as a graduate in October 2005 and apart from a short break of 3 months she worked for the First Respondent until her resignation in 2017. They had a very close working relationship which Miss Napier described as "good". We are satisfied that the evidence shows that she held Mr Meagher until her resignation in the highest regard. Even purchasing a paperweight for 'the world's best boss'.
- 11.5 There was a high degree of trust prior to the events that led to the Claimant's resignation. Mr Meagher thought extremely highly of the Claimant and when he thought he was losing her offered her a substantial increase in her salary.
- 11.6 Not only did they have a close working relationship, they had a great personal

relationship and we are satisfied that Miss Napier totally respected Mr Meagher and he thought extremely highly of her regarding her as his "star". She had joined him as a graduate/PA and ended up as his highest paid member of staff with a substantial salary, bonus and Rover Evoque car fully financed,

- 11.7 Until her resignation she had not complained about the behaviour of Mr Meagher in any way and we are satisfied that her allegations particularly of sex discrimination, harassment and victimisation are not credible and were made only after she had decided to resign from her employment. They were simply raised as part of the litigation between herself and Mr Meagher. The allegations she made are inconsistent with the relationship we are satisfied they enjoyed. They were only made after she decided to leave the employ of the First Respondent and to further her case to this Tribunal. Therefore we prefer the evidence of the Respondents witnesses.

## **12. THE FACTS**

- 12.1 Peter Meagher is the Chief Executive Officer, Director and sole shareholder of the First Respondent. He started in business in 1974 and the business is a consultancy which advises on and provides and administers employee benefits programs for employers. At one stage the business employed 65 people but its current number of employees is 20. Most of the employees are women.

- 12.2 Anna Napier commenced her employment with Churchills on 1 October 2005. She was a graduate and was originally employed as a Research Assistant/Personal Assistant. She left Churchills on 13 October 2010 to work for Vodafone as a National Account Manager but re-joined the business on 17 January 2011 to be employed as Global Development Manager. She qualified as an Adviser in February 2011. Miss Napier was an International Business Account Manager. Her contract of employment is at pages 34B-34J. In 2011 her salary was 230,000 per annum. By the time she resigned her basic salary was 244,000 per annum. She also received a discretionary bonus of 24,000 per quarter and had a fully financed motor vehicle, namely a Land Rover Evoque.

- 12.3 The contract of employment contains a restrictive covenant at pages 34G – 34I. It says in particular:

*"You will not for a period of twelve months after the termination of your employment either personally or by an agent, whether on your own account or for or in association with any other person, engage in business or be in any way interested in any company, firm or organisation within a 25-mile radius of Chartwell, Edgingley, Nottinghamshire which engages in or carries on the business of Independent financial Brokers that specialises in Employee Benefits."*

- 12.4 The notice period was 6 months and a provision in the contract reserved to the Respondents the right to make a payment in lieu of notice and to place the Claimant on "garden leave" (page 34F).
- 12.5 The contract refers to a grievance procedure at page 34F which is set out in the staff handbook which is at pages 26A-26ZZ. The grievance procedure is at page 26ZB-C and there are also procedures in respect of harassment and bullying and a procedure for complaints of discrimination.
- 12.6 Mr Meagher and Miss Napier worked together closely and they had a very good relationship. There was mutual respect. Mr Meagher thought highly of Miss Napier and regarded her as his "star". The Claimant was his highest paid member of staff and had substantial pay and benefits described above.
- 12.7 Miss Napier worked closely with a colleague Michelle Lane who was a self-employed Consultant who also worked in, what was described as, the Sales and

Implementation team. She had worked as a Consultant for the First Respondents between 2006 and 2010 and then returned to work for the First Respondents from 20 February 2012 as a Consultant.

- 12.8 Mrs Lane was also the beneficiary of a substantial package. Her earnings were in the region of 260,000 per annum.
- 12.9 Mrs Lane and Miss Napier met with clients obtaining business and inducted employees into the benefits programme that they arranged with the clients.
- 12.10 Miss Napier and Mrs Lane visited the United States of America twice a year. Their last trip to the USA was in September 2016 and until then there had been no problems with any of their visits. They had access to the First Respondent's clients and were implicitly trusted by Mr Meagher who regarded them as his 'key personnel'.
- 12.11 Miss Napier also thought highly of Mr Meagher referring to him as 'best boss', purchasing him the paperweight a picture of which is at page 28, putting up a sign on his door (page 29), and referring to him as such on her contacts on her telephone (page 30).
- 12.12 In these Tribunal proceedings the Claimant made several allegations of sexist behaviour committed by Mr Meagher during her employment. She says that she was expected to wear skirts and dresses with high heeled shoes and that he made unsavoury comments about women with "fat bottoms" and derogatory comments about the way 'Women who come from the north of England speak'. Mr Meagher countered with allegations that the Claimant was responsible for certain "laddish" behaviour herself, and gave examples of matters that are historic at pages 37, 38, 39, 41-44 of the bundle.
- 12.13 The Tribunal is satisfied that the behaviour needed to be seen in the context of their close working relationship and neither party found the other's behaviour offensive even if it may have been 'inappropriate'. Neither complained at the time about their behaviour.
- 12.14 Michelle Lane and Anna Napier visited the USA in September 2016. They said that, whilst there, they had received a complaint from one of their clients, Snapchat, about a group employee benefit induction that had been conducted by one of their colleagues Cathy Cooper.
- 12.15 On their return from the USA Miss Napier said that she had also received another complaint from another client Medixci about a webinar delivered by Cathy Cooper. This was raised by Miss Napier in her email of 28 September 2016 to Mr Meagher (page 74). The email ends;  
"Rant over  
Love and kisses  
Anna"
- 12.16 On 30 September 2016 the Claimant received her bonus and the text exchange between her and Mr Meagher is at page 75. It indicates the mutual admiration that they had for each other with the Claimant referring to Mr Meagher as her 'favourite boss' and he replies with "I never have a problem recognising excellence".
- 12.17 On 6 October 2016 Mr Meagher wrote to all the staff about the achievement of targets (page 76). He was concerned that they had only "scraped home" on achieving target for the previous quarter and wanted a "massive push" on renewals to ensure they achieved target for the next quarter. This was to ensure "that your Christmas present is secured"
- 12.18 Because of the email of 28 September 2016 Mr Meagher agreed to meet Miss

Napier and Mrs Lane on 14 October 2016 at Bicester to have lunch and to discuss the situation of Cathy Cooper against who the complaint was made. She was also a long serving employee for the First Respondents.

12.19 At the meeting Miss Napier and Mrs Lane indicated that they were considering resigning and that they had been approached by Recruitment Consultants with a view to joining a rival business. Mr Meagher was "shocked and completely unprepared for this bombshell". He believed the meeting was to discuss the issues about their fellow consultant. Michelle Lane opened an A4 notebook where there was a white envelope. She indicated that she might resign depending on how the meeting panned out.

12.20 Miss Napier and Mrs Lane said that they could earn a lot more than they were being paid by Churchills, and as described by Ms Shearwood, Mr Meagher appeared to be "visibly shocked. He told them that he would try to resolve the situation and they discussed the issues regarding Cathy Cooper. Mr Meagher had been taken off guard and had been ambushed. He decided though to try to rescue the position by asking them to list all the issues they felt needed to be addressed. At the end of the meeting he thought that they were "back on board"

12.21 A few days later Mr Meagher met with Miss Napier to discuss the next business trip to the USA He was shocked when she refused to go and said to him:

*"If you send me to the USA in January 2017, I will take all your clients with me when I leave Churchills".*

Mr Meagher asked her to explain that comment but she was dismissive and simply left the room.

12.22 On 21 October 2016 Miss Napier was in a meeting with Mr Meagher where they discussed an American Introducer Marcelo Medel. Miss Napier said that he was being difficult in negotiating some contract wording for his client. They were also discussing Miss Napier's continuing concerns about Cathy Cooper's performance. Miss Napier was unreceptive to the efforts of Mr Meagher to find out what the problems were. Ms Shearwood was also in attendance at this meeting.

12.23 When Miss Napier referred to Mr Medel being difficult regarding the signing of a contract, Mr Meagher jokingly suggested that Miss Napier should sleep with him if that would sort out the problem. Miss Napier stared at Ms Shearwood with her arms and legs crossed. Ms Shearwood said:

*"Peter, that's not appropriate".*

Mr Meagher then said;

*"I know he likes you".*

It was meant as a joke and we are satisfied the Claimant knew this. It was said to try to lift the atmosphere of tension between them. We agree with Ms Shearwood that it was not appropriate. Miss Napier said nothing at the time about the comment. The Claimant said nothing about this again, until she issued her grievance.

12.24 On 31 October 2016 Mr Meagher wrote to hi\$ team. He was just about to travel to the USA on a business trip and he wanted them to unite and ensure that matters went forward with the business.

12.25 He wanted to briefly meet with Anna Napier and Louise Salmons so that they could discuss important client issues that had to be dealt with whilst he was away on a lengthy business trip to the USA. He was due to leave very shortly as he needed to catch a train. He started the meeting in his usual friendly way, but it was clear that Miss Napier was agitated and he asked her what was wrong. She said that she was not sure whether she wanted to carry on working for Churchills. He was concerned about this and tried to engage her in discussion but she said that she had to dash out for a conference call and refused to discuss the matter further.

12.26 On 4 November 2016 he wrote to all the staff (page 82) saying that they had achieved 96% of target for the first month of the year's final quarter and that he was concerned that December was a quiet month and that they all needed to be proactive. He reminded the staff that bonuses were discretionary.

12.27 In response to this Miss Napier wrote (also page 82) saying:

*"Hi Boss Just letting you know that following my breakdown / cry for help on Monday, we have had a great week in new business and almost have sorted out a new office layout in our newly titled "princesses parlour"*

*Natasha and I came in jeans yesterday and today to finish the office transformation but unfortunately / fortunately we became too busy due to the level of enquiries / work!"*

*One enquiry today would make you laugh from a client using SJP. They don't administer AE as the funds are too high Advised the client to set up nest on minimum levels and then add extra contributions into the SJP plan. All this with a 1<sup>st</sup> November staging date too. Kind regards*

*Anna"*

12.28 Mr Meagher replied to this on 7 November 2016 in his email titled "Next Stage of Personal Development" (pages 84-85). It is clear from the email that he was still hurt by what had been said in their meeting on 31 October 2016. He said:

*"I am your sponsor and when you throw your toys out of the pram just before my departure I question why we are supporting you ahead of every other member of staff..."*

*I appreciate and encourage you being passionate about the business but you need to learn feuding is corrosive ...*

*We understand it has got to a stage where your personal relationship with Cathy has deteriorated but you cannot allow this to impact on your professional relationships. Adopt a strategy where we can all work together in harmony. .*

*The trick is to get the best out of people and "glowering" clearly does not work. We want to see you visibly happier at work as this will inevitably influence your fellow colleagues to mirror your positive behaviours....*

*Business is tough enough without you adding more stress with adverse behaviour patterns. Next time you are in meltdown take a few days off to reflect and look up Tom Hanks latest movie "A Hologram for the King" to get perspective. Watch the first hour to*



*see a demonstration of all the things I went through to build the American Network that you now thrive on. "*

- 12.29 His words were clearly meant with the best possible intentions. Mr Meagher saw them as "words of wisdom". Miss Napier was important to the business. He was coaching her to be his successor. He was 69 years old. He was concerned about her. He wanted her to reflect on her behaviour and attitude if she was going to take over the business. He wanted her to get "back on board and at the top of her game".
- 12.30 He returned to the office on or around 20 November 2016. Miss Napier was out of the office for a few days and her first day back was on 25 November 2016 when they met. This was their first opportunity to meet since his return. He wanted to know whether she was staying or leaving and he asked her that question. It was a perfectly reasonable question to ask because he wanted her to stay and she had repeatedly said she might leave. We are satisfied that she did not offer to resign. She said she was resigning. She did not say that this was because of his treatment of her or that she felt humiliated or degraded, Mr Meagher was trying to persuade her to stay because he did not want to lose such a valued employee who he wanted to take over the business when he retired.
- 12.31 He asked Miss Napier what he could do to improve things. She replied:
- "You need to understand with me, it's just all about money"*
- 12.32 The meeting lasted for approximately 6 hours. All they talked about was her financial package. The Claimant in her cross examination expressly referred us to 'Maslow's Hierarchy of Needs'. We are satisfied that the Claimant was simply concerned to get the best possible package she could from Mr Meagher. Having said that we do not criticise the Claimant for this.
- 12.33 At the meeting the Claimant said that she had received an offer of employment via a Recruitment Consultant and during the meeting Miss Napier went out of the room to talk to the Consultant.
- 12.34 They agreed eventually that her basic salary would increase from £44,000 to £75,000 per annum. She would also receive a target-related bonus of 10% of new business revenue. This was forecast to be £25,000. Her on-target earnings could be potentially £100,000. She already had a Range Rover Evoque plus other employee benefits including pension, BUPA, life insurance, disability insurance, travel expenses etc. The total value of the package that she was offered was in the region of £120,000 per annum. This was a significant increase on her current earnings.
- 12.35 Mr Meagher was extremely anxious to retain Miss Napier's services and he made this clear to her repeatedly throughout the meeting. He agreed to all her demands.
- 12.36 During the meeting he had told the Claimant that he did not want her to "*start yelling and screaming like a mad woman*". This was because of her previous behaviour at their recent meetings. It was not directed to her gender, but it was about her manner. He wanted negotiations to be conducted in a calm and professional manner. He was not trying to insult or demean Miss Napier at all, and we are satisfied that she was not so insulted or demeaned.

12.37 Having offered the Claimant the package set out above, Mr Meagher asked for an answer by Monday 28 November 2016, so that the Claimant had over the weekend to consider matters.

12.38 By Sunday 27 November 2016 the Claimant had made her mind up. She sent a text to Mr Meagher which is at page 88. She said that there was no point in waiting until Monday:

*"as quite frankly I would like to draw a line under it all and move on. I've always loved working for Churchills and would therefore very much like to continue in my role."*

12.39 This was an acceptance of the offer and later Mr Meagher replied saying:

*"Thanks for the update. Please remember all negotiations are absolutely confidential. A little concerned about your statement 'it's all about the money' as that could put Churchills goodwill philosophy in jeopardy..."*

*It's therefore not about the money but moreover honest transparent integrity driven relationships which then produce profit in the long term. That's our DNA and I want you to continue to develop the reputation we have built over the last 40 years. "*

12.40 There was a text exchange between the Claimant and Louise Salmons on the Monday morning which is at pages 90-91. In that text the Claimant said as follows:

*"Friday was horrendous. Can't help thinking I'm on borrowed time now. I sent really positive text to Peter yesterday and he came back with another lecture. Sigh xxx."*

12.41 Lawyers were instructed to prepare the contractual documentation and this was sent to the Claimant on 1 December 2016. The email from Hannah Shearwood (at pages 92-94) refers to this. The new contract of employment that accompanied the email is at pages 95-104. There was also a Deed of Covenant which is at pages 105-110.

12.42 The contract was in very similar terms to her previous contract except that the notice period was increased to 6 months, the right to pay in lieu of notice and garden leave were like those already in place, and the main change related to the increase in the restricted covenant area to:

*"150-mile radius of Chartwell, Edingley, Nottinghamshire"*

This was reinforced in the Deed of Covenant which also contained post termination restrictions on her dealing with clients.

12.43 Ms Shearwood met with Miss Napier and asked if she had any questions or required further clarification. The Claimant was only concerned about keeping her company car. She decided that she needed to obtain legal advice and there was an exchange of emails with Hannah Shearwood (pages 111-112). There was no suggestion by the Claimant that there was any problem with the contract. She said;

*"Need to get advice on the contract stuff as there are terms I am not familiar with.  
Please tell Peter I am not trying to be difficult. I just need to understand what I am being asked to agree to".*

The Claimant was given an extension of time to accept the offer to 5:30 pm on Monday 5 December. It was made clear that if she had not committed at that point Mr Meagher would have to withdraw the offer.

- 12.44 On Monday 5 December Miss Napier was at work. She was spoken to by Hannah Shearwood who reminded her about the deadline for signature of the revised contract. The Claimant responded saying that the contract was at home. Ms Shearwood was surprised at this and asked whether there were any other concerns and Miss Napier mentioned the post termination covenants. She said that she was seeking advice from an Employment Lawyer and that it could take some time up to 72 hours. She did not though request any extension. Ms Shearwood printed another copy of the contract and gave it to her and asked her to highlight anything that she was concerned about. She did not raise any concerns at any time thereafter. Miss Napier said that she was busy.
- 12.45 Miss Napier did not speak further to Ms Shearwood or Mr Meagher during the day and towards the end of the day Ms Shearwood again approached Miss Napier and asked if she had heard from her lawyer and if she required a further extension. The response was to shrug her shoulders and say "no".
- 12.46 At 5:30 pm Miss Napier went into Ms Shearwood's office and said that she had not heard from her Employment Lawyer and that Peter could take the offer off the table. She then immediately left the office without further explanation and got into her car. We are satisfied that she had made it clear that she was not accepting the offer.
- 12.47 Ms Shearwood reported this to Mr Meagher who responded by saying: "well that's it then. As a result, he wrote to Miss Napier at 18:11 on that day (page 113). That referred to the agreement they had reached following their text message exchange the previous Sunday and went on to say:

*"We endeavoured to formalise this agreement in a new contract of employment which required signature by the deadline of Friday 2<sup>nd</sup> December 2016. It was essential we imposed a deadline so that we could start implementing the new strategy built around your team. You requested an extension to the deadline, to which we agreed and offered to extend until close of business on Monday 5<sup>th</sup> December 2016.*

*To date, we have still not received the signed documentation formalising your acceptance and you have verbally acknowledged that you understood the offer would be withdrawn by 5.30pm today.*

*In light of the above, we are now compelled to accept your resignation dated Friday 25<sup>th</sup> November 2016, and request you formalise your decision in writing forthwith to bring this matter to a close for the stability of the other members of the team."*

- 12.48 The following day Miss Napier called Ms Shearwood to say that she was upset. That she had not slept much and would not be coming in. She said that she did not know when she would be returning to work and Ms Shearwood asked her to keep her informed. Ms Shearwood informed Mr Meagher of this call and he said that he wanted to know where he and her team stood, and suggested she should call her to find out.

- 12.49 Ms Shearwood called Miss Napier later that day and she was not prepared to discuss the matter at all, saying that she was feeling unwell and under huge stress.
- 12.50 Despite Miss Napier's behaviour on 5 December 2016, and the subsequent email from Mr Meagher, neither party regarded the employment as 'ended'. Miss Napier sent in a sick note for the period between 7 December 2016 to 19 December 2016 suffering from work related stress. She also lodged a grievance on 7 December 2016 (which is at pages 115-118). That letter set out several concerns and made complaints about Mr Meagher's behaviour since 31 October 2016. The complaints related to his "completely\* unreasonable behaviour "and that he is trying to bully me into resigning'. The only mention of "inappropriate behaviour" is right at the end of the letter where she raises, for the first time, the conversation on 21 October 2016. It confirmed that she had not resigned on 25 November 2016 and said that she was too ill to attend work and had been signed off with work related stress.
- 12.51 The Claimant continued to be paid. Ms Shearwood acknowledged the letter on 9 December 2016 and arranged for Miss Napier to attend a grievance meeting on 21 December 2016. That would be conducted by a representative from Mentor. This had to be re-arranged and was finally conducted on 3 January 2017 by Gregory Cheshire. The notes of the meeting are at pages 122-127.
- 12.52 At the meeting she referred to Mr Meagher making "countless inappropriate comments". She listed these at the top of page 123. Mr Cheshire chose not to investigate those matters. The alleged comments had not been made towards the Claimant and were not part of the complaint he was investigating. During that meeting Miss Napier made clear that she felt that she could not continue to work at Churchills. After the meeting he spoke with Ms Shearwood and Mr Meagher. He then considered the evidence before him.
- 12.53 Mr Cheshire wrote to the Claimant on 9 January 2017 with the outcome of the grievance (pages 128-32). He dealt with:
- 1) The inappropriate comments
- He held that the comments that Mr Meagher had made when he suggested that Miss Napier should sleep with the male client to retain the business had been made and that they were offensive and inappropriate. He confirmed that Mr Meagher apologised for:
- 'the misunderstanding and harm caused'
- 2) Her current and future role
- He did not find that it was unreasonable to put a deadline as to when Miss Napier should sign the contract. There was no evidence that Miss Napier had tried to negotiate more time and did not raise any concerns about the terms of the contract. He felt that it was reasonable for the company to withdraw the offer and that it was reasonable for Mr Meagher to believe that having not accepted the offer her resignation was to be brought into effect.
- Despite all this he said that the company wanted to give her an opportunity to consider a return to work. It was suggested that she should take 8 days annual leave at this point and return on Monday 23 January 2017. She was told of her right of appeal against that decision.

- 12.54 In view of what Miss Napier had said at the grievance meeting on 3 January 2017 about not wishing to return to work for Churchills, Mr Meagher was concerned about the confidential nature of information held on their systems. There had been talk of her joining a competitor. She had turned down a substantial increase in her salary and bonuses. In view of those concerns to protect the company's compliance procedures Mr Meagher suspended Miss Napier's remote access to their system until they knew what her intentions were. They were justifiably concerned that she was planning to leave and take clients with her as previously indicated.
- 12.55 On 15 January 2017 the Claimant resigned by way of letter. The letter of resignation is at pages 133-136. She said that her employers had breached the implied duty of mutual trust and confidence. She referred to several matters which had caused her to resign. These were:
- 1) Discriminatory remarks made by Mr Meagher which had been referred to in her grievance;
  - 2) The sudden withdrawal of her job offer and the statement that he wanted to "*accept my resignation*" when she had not resigned;
  - 3) The non-payment of her December bonus;
  - 4) The company had not taken her grievance seriously;
  - 5) The termination of her remote desk top access.
- 12.56 Meanwhile Mrs Lane resigned from Churchills on 3 January 2017. She had initially agreed to carry on working until the end of February 2017. Mr Meagher decided though to terminate the relationship with immediate effect by email on 23 January 2017.
- 12.57 Miss Napier and Mrs Lane then set up Napier Lane Associates. They had worked together for several years by the time they left Churchills. They had become good friends and had enjoyed working together and regarded themselves as "a good team". They both have young children and wanted flexibility. We are satisfied that was the reason they decided to leave Churchills. The company was incorporated on 8 February 2017 (page 201-203).
- 12.58 Ms Shearwood responded to the resignation letter on 19 January 2017 (page 138). It confirmed acceptance of her resignation with effect from 15 January 2017. The letter reminded her of her responsibilities under the terms of her contract of employment.
- 12.59 Mr Meagher discovered that Napier Lane Associates Limited had been incorporated on 8 February 2017. As a result, he instructed his Solicitors Warner's to write to the Claimants Solicitors on 14 February 2017. The letter is at pages 139-143. The letter was not written in response to the Claimant threatening to issue proceedings for constructive dismissal and sex discrimination. Whilst they were aware that the Claimant had instructed Cleggs to issue those Tribunal proceedings, the letter clearly shows that the Respondent's concerns were about breaches of Mrs Lane and Miss Napier's restrictions in their contracts.
- 12.60 There then followed further letters. Cleggs responded on 21 February 2017 (page 144-146) complaining that the allegations about breaches of covenants were made without foundation and in bad faith, and to dissuade Miss Napier from pursuing any claims against the Respondents. The Respondent's Solicitors responded to that letter by letter of 24 February 2017 (page 147-149) denying the allegations made by the Claimants Solicitor, and again requiring a statement and undertaking from Miss

Napier that she has not and would not breach her covenants and that she had returned all property that belonged to the Respondents..

- 12.61 Miss Napier's Solicitors again responded on 1 March 2017 asserting that they would not provide any such statement and saying that any action for breach of restricted covenant would be defended.
- 12.62 After setting up Napier Lane Associates Limited, Miss Napier and Mrs Lane arranged for their services to be supplied for compliance purposes by St James Place. A request for a reference was received by Mr Meagher who took advice on how to deal with the reference and sent a [holding email to St James Place ("SJP"). The reason for his reluctance in completing the reference was to protect the company's own position because Miss Napier and Mrs Lane had set up in competition with the Respondents and could potentially take away valuable clients and contacts. The Tribunal is satisfied that this was the reason for the non-provision of a lengthy document with 18 questions. That document is at page 206-208 of the bundle. No reply was ever given to those questions.
- 12.63 This did not delay Miss Napier's plans. They received an offer letter from SJP on 1 March 2017 (pages 152A-C and were appointed partners of SJP on 17 March 2017.
- 12.64 The Claimant had received bonus payments each month during 2016. These comprised the following:
- January £15,000
  - February £15,000
  - March £3,000
  - April £1,500
  - May £1,500
  - June £4,000
  - July £1,500
  - August £1,500
  - September £4,000
  - October £1,500
  - November £1,500
- 12.65 The Claimant expected to receive payment of a bonus of £4,000 at the end of December 2016.
- 12.66 The Claimant describes the bonuses as substantial which they were. As she describes in her witness statement:
- "Peter decided whether to authorise my bonuses based on the performance of the company as a whole, and the company's performance was assessed on the basis of income which had actually been received. Peter authorised every one of my bonuses up to and including November 2016. The only time I didn't receive a bonus was in December 2016, after I was signed off sick with work related stress and submitted a written grievance, "*
- 12.67 Miss Napier expected to receive her bonus payment at the end of December 2016. Mr Meagher had told her at the end of November 2016 that she would be paid her bonus. That was when he thought she was staying with the company, Mr Meagher accepts that there is no reference to bonus payments in the contract of employment or indeed in the staff

handbook. He says that payment of bonuses was discretionary. In any event it was payable on achievement of target. He says that the Claimant was set a target for new fee income of £240,000 for the year 2016 and the actual new fee income received was £140,152 which means that she did not achieve target. The breakdown of invoices behind those figures are at pages 196-197.

- 12.68 Two members of Anna's new business team also did not receive revenue generated bonuses in the final quarter of 2016. These were Pippa Allwood and Natasha Haigh because of the failure to meet the departments targets.

### **13. THE LAW**

#### **13.1 Unfair Dismissal**

- 13.2 The claim of constructive unfair dismissal is made under Section 94 Employment Rights Act 1996 (ERA). Section 95 provides:

*"Circumstances in which an employee is dismissed.*

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

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

- 13.3 The leading case is **Western Excavating (ECC) Ltd v Sharp [1978] ICR 221 CA**. That case established that it is for the employee to establish that:

- 1) There was a fundamental breach of contract on the part of the employer;
- 2) The employers breach caused the employee to resign; and
- 3) The employee did not delay too long before resigning thus affirming the contract and losing his right to claim constructive dismissal.

- 13.4 As Ms Azib described to us, the test for fundamental breach is a high one. In this case the Claimant is saying that there was a course of conduct which cumulatively amounted to a fundamental breach of contract entitling her to resign and claim constructive dismissal following a last straw incident. The relevant cases for us to consider are:

- **Lewis v Motorworld Garage Ltd [1986] ICR 157; and**
- **Omilaju v Waltham Forest London Borough Council [2005] ICR 481**

- 13.5 These cases found that the act constituting the last straw does not have to be of the same character as the earlier acts. It also does not have to constitute unreasonable or blameworthy conduct, although in most cases it will do. It must be established though that the last straw must contribute in some way to the breach of the implied term of trust and confidence.

#### **13.6 Wrongful Dismissal**

- 13.7 This is related to the Claimant's claim of notice pay. Again, the burden is on the Claimant to establish that there was a repudiatory breach of contract by the First Respondent. If there was, the Claimant then must establish that she resigned in response to that breach and not for some other reason. If she can establish this then she was entitled to her notice pay.

13.8 Direct Sex Discrimination

13.9 This claim is made under Section 13 of The Equality Act 2010 (EA). That provides:

*"(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others. "*

13.10 In this case the Claimant relies on the protected characteristic of her sex. What the Claimant must establish in this case is that the Respondents have:

- Treated her less favourably than it treats or would treat others; and
- The difference in treatment is because of her protected characteristic.

13.11 Burden of Proof

13.12 Section 136 of the EA deals with this. It states:

*"(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*

*(3) But subsection (2) does not apply if A shows that A did not contravene the provision."*

13.13 This applies not only in the Claimant's claims for direct sex discrimination, but also in respect of her claims of harassment and victimisation.

13.14 The Court of Appeal in **Igen Ltd & Others v Wong & Others [2005] ICR 931** sets out the well know guidelines as to how the burden of proof shifts. These are:

- It is for the Claimant to prove on the balance of probabilities, facts from which the Employment Tribunal could conclude, in the absence of an adequate explanation, that the Respondent has committed an act of discrimination. If the Claimant does not prove such facts the claim will fail.
- In deciding whether the Claimant has proved such facts it is important to bear in mind that it is unusual to find direct evidence of discrimination.
- The outcome at this stage will usually depend on what inferences it is proper to draw from the primary facts found by the Tribunal.
- The Tribunal does not have to reach its definitive determination that such facts would lead it to conclude that there was discrimination — it merely must decide what inferences could be drawn.
- In considering what inferences or conclusions can be drawn from the primary facts the Tribunal must assume there is no adequate explanation for those facts.
- These inferences could include any that is just and equitable to draw from an evasive or equivocal reply to a questionnaire.
- Inferences may also be drawn from a failure to comply with the relevant code of practice.



- When a Claimant has proved facts from which inferences could be drawn the Respondent has treated the Claimant less favourably on a protected ground the burden of proof moves to the Respondent.
- It is then for the Respondent to prove that he did not commit or is not to be treated as having committed, that act.
- To discharge that burden it is necessary for the Respondent to prove on the balance of probabilities that his treatment of the Claimant was in no sense whatsoever on the protected ground.
- The Respondent must not only provide an explanation for the facts proved by the Claimant, from which the inference could be drawn, but that explanation must be adequate to prove on the balance of probability that the protected characteristic was in no part of the reason for the treatment.
- Since the Respondent would generally be in possession of the facts necessary to provide an explanation, the Tribunal would normally expect cogent evidence to discharge that burden.

### 13.15 Sexual Harassment

13.16 This claim is made under Section 26 EA which provides:

*"(1) A person (A) harasses another (B) if—*

*(a) A engages in unwanted conduct related to a relevant protected characteristic, and*

*(b) the conduct has the purpose or effect of—*

*(i) violating B's dignity, or*

*(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.*

*(2) A also harasses B if—*

*(a) A engages in unwanted conduct of a sexual nature, and*

*(b) the conduct has the purpose or effect referred to in subsection (1)(b).*

*(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—*

*(a) the perception of B;*

*(b) the other circumstances of the case;*

*(c) whether it is reasonable for the conduct to have that effect."*

### 13.17 Victimisation

13.18 This claim is made under Section 27 EA. This provides:

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

*(a) B does a protected act, or*

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

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

- (a) bringing proceedings under this Act;*
- (b) giving evidence or information in connection with proceedings under this Act;*
- (c) doing any other thing for the purposes of or in connection with this Act;*
- (d) making an allegation (whether or not express) that A or another person has contravened this Act."*

**13.19 Time Limits**

13.20 It is the Respondents case that certain acts that the Claimant complains of are out of time and that the Tribunal does not have jurisdiction to hear these claims.

13.21 Section 123 (1) (a) of the EA provides:

*"(1) Subject to sections 140A and 140B proceedings on a complaint within section 120 may not be brought after the end of—*

- (a) the period of 3 months starting with the date of the act to which the complaint relates, or*
- (b) such other period as the employment tribunal thinks just and equitable.*

*(3) For the purposes of this section—*

- (a) conduct extending over a period is to be treated as done at the end of the period;*
- (b) failure to do something is to be treated as occurring when the person in question decided on it."*

**13.22 Wages Claim**

13.23 In respect of this matter we must decide whether it was an implied or an expressed term of the employment contract that the Claimant will be paid a bonus of 24,000 in December 2016.

13.24 In respect of this element of the claim Mr Meichen referred us to several cases, namely:

- **Tradition Securities and Futures SA v Alexandre Mouradian [2009] EWCA 60**
- **Farrell Matthews & Weir v Hansen UKEAT/0078/04/MAA**
- **Cantor Fitzgerald International v Horkulak [2004] EWCA Civ 1287**

**14. OUR CONCLUSIONS**

14.1 As both counsel agree when dealing with this case it is important that we look at the context of what has happened and put things into proper perspective. Both parties have sought to rely on certain actions and incidents that have taken place and put their own interpretation on these events to support their own case.

14.2 We are satisfied in this case that Mr Meagher and Miss Napier had a close and open relationship. They had worked together for 12 years. Miss Napier had described Mr Meagher as 'the best boss' and described herself as a "princess". Mr Meagher thought of Miss Napier

as his "star. They clearly regarded each other, not only with a great deal of respect, but were very fond of each other and that makes this a most sad case for us to deal with.

14.3 At no point during her long employment history with the Respondents had the Claimant raised any concerns about Mr Meagher or indeed had Mr Meagher raised any concerns about the Claimant's conduct. We are satisfied that this employment relationship broke down during the period between October and December 2016 and none of the events that happened prior to that had anything to do with the Claimant's claims of discrimination or constructive unfair dismissal.

14.4 We are satisfied that the turning point in their relationship were the events on 14 October 2016, where at a meeting with Mr Meagher following her return from the USA the Claimant and her colleague Michelle Lane announced that they had been approached by Recruitment Consultants with a view to joining a rival business. The reason for them considering their position had nothing to do with the conduct of Mr Meagher. It was "all about money'.

14.5 This had come about without any warning. Mr Meagher had never considered that either the Claimant or Mrs Lane would leave the business. It came as an unpleasant shock to him and affected his trust of them both. Mr Meagher, who had complete trust in Miss Napier until that point, had understandable concerns about whether the Claimant intended to stay in the business, and even though he tried to negotiate a package that involved a considerable increase in the Claimant's salary and bonus.

14.6 He was ultimately not able to convince her to stay. She left the business and within a matter of weeks (three) she was running a business with Mrs Lane in competition to the Respondent's business.

14.7 Our findings therefore should be seen in the context of how we see the situation overall between Mr Meagher and Miss Napier that we have described above.

## **15. Unfair Dismissal Claim**

15.1 The parties agree that this is a claim of constructive unfair dismissal. The Claimant was not dismissed. The burden of proof is upon the Claimant to establish that there has been a repudiatory breach of contract by the Respondent.

15.2 In this case the Claimant relies on the matters set out in paragraph 7 to 33 of her ETI to establish the repudiatory breach. We are not satisfied that the alleged "offensive and sexually discriminatory remarks" about the Claimant and/or made in her presence amounted to a fundamental breach of her contract. We are satisfied that the Claimant was not offended by those comments at the time or afterwards. She did not complain about them at all until she submitted her grievance on 7 December 2016. That was after she had walked out of the office on 5 December 2016 without accepting the new package that Mr Meagher had offered her.

15.3 The most serious of the comments alleged are the comments made on 21 October 2016 when Mr Meagher had suggested that she should "offer to sleep with" the Vice President of one of their clients. We are satisfied that she knew at the time that Mr Meagher did not mean this. She knew Mr Meagher very well and knew that he would never expect her to undertake

such an action. We accept, as does Mr. Meagher, that it was a foolish thing to say.

15.4 It was inappropriate and made in jest. In our view it was a pathetic remark made in bad taste and in other circumstances could have amounted to harassment. We are satisfied it was not regarded by the Claimant as being offensive at the time. If she had, she would have complained and would not have entered the lengthy negotiations that she did to seek a considerably enhanced financial package, or agree on 27 November 2016 to accept the package in principle.

15.5 In respect of the email of 7 November 2016 we are satisfied that it again should be seen in the context of their relationship. Mr Meagher thought genuinely that the Claimant's behaviour on 31 October 2016 was childish and again had been upset by what she had done immediately before he was leaving the office on a trip to the USA for three weeks, and said to him that she might walk out.

15.6 In respect of the comments made on 25 November 2016 we are satisfied that they were quite understandable in the circumstances. The Claimant had not been behaving professionally and the comment "Yelling and screaming like a mad woman" related to her behaviour on 31 October 2016. By the 25 November 2016 the Claimant had on two occasions talked about walking out of the Respondent's business and this had caused a great deal of distress to Mr Meagher.

15.7 We are satisfied that it was not the behaviour of the Respondent that caused the Claimant to resign, It was the Claimant's own behaviour. She threatened to resign on two occasions. She then received a substantial offer of increase in her remuneration which she accepted. She then changed her mind after receiving her new contract that included a 6-month notice period, a right to place her on garden leave and a restricted area where she could set up in competition with Mr Meagher.

15.8 She decided to not accept that offer and merely walked out of the office. This was after sending a text to Mr Meagher on 27 November 2016 saying that she wanted to "draw a line" on matters that had gone on and wanted to accept her offer. We are satisfied that she left his employment and resigned because she had decided to set up business with Michelle Lane who also left at the same time.

15.9 The Claimant's claim therefore of constructive unfair dismissal fails and is dismissed because;

- The behaviour of the Respondents did not amount to a fundamental breach of her contract of her employment and,
- she did not resign in response to any behaviour by the Respondent.

## **16. Wrongful Dismissal**

16.1 For the same reasons as described above, we are satisfied that there was no repudiatory breach of contract by the First Respondent. The behaviour of the Respondent set out in paragraphs 7 to 33 of the Claimant's ET1 do not amount to a repudiatory breach, and in any event the Claimant did not resign because of those events. She chose to resign because she decided that she did not want to accept Mr Meagher's offer and that she would instead set up in business with Mrs Lane.

## **17. Direct Sex Discrimination**

- 17.1 For the same reasons as outlined above we are not satisfied that the Claimant has established a prima facie case that she has suffered unfavourable treatment. The matters set out in paragraphs 7 to 33 of her ET1 do not amount to unfavourable treatment let alone less favourable treatment. In any event the Claimant has failed to establish a prima facie case that the Respondents treated her less favourably than they would treat others or that the treatment was in any way related to her sex.

## **18. Sexual Harassment**

- 18.1 We are satisfied that Mr Meagher did engage in unwanted conduct that was related to the Claimant's sex and/or of a sexual nature.
- 18.2 The behaviour of Mr Meagher at the meeting on 21 October 2016 when he said that the Claimant should "offer to sleep with" the Vice President of a company associated with the Respondent's business was unwanted conduct and it did relate to the Claimant's sex.
- 18.3 However, as we have described above, context is everything and we are satisfied that the Claimant did not think Mr Meagher was being serious, and in the context of their relationship it did not have the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. She did not complain about it at the time, and whilst her reaction was one of surprise, we are satisfied that she was not upset by the comment at all.
- 18.4 In respect of the email on 7 November 2016 we are satisfied that this did not amount to unwanted conduct that was related to sex and/or of a sexual nature. It related to the Claimant's behaviour on 31 October 2016 when she had threatened on a second occasion to walk out of the Respondent's employment. Again, this also did not violate her dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant.
- 18.5 We are satisfied that the events of the 25 November 2016 did not amount to unwanted conduct that was related to the Claimant's sex and/or of a sexual nature. It had to be seen in the context of Mr Meagher wanting to know at the commencement of his negotiations that the Claimant wanted to stay. It did not in any way amount to sexual harassment.
- 18.6 Finally, the allegation that Mr Meagher had said about the Claimant "screwing my face up like an old woman" whilst they related to the Claimant's sex and may have amounted to unwanted conduct, it did not have the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant.

## **19. Victimisation**

- 19.1 Whilst the Claimant's grievance was a protected act, we are satisfied that the Respondent did not make "fictitious allegations of misconduct". Nor did they fail to provide a reference or send threatening or aggressive letters to her because she had raised concerns about discriminatory behaviour.
- 19.2 The allegations were not fictitious. Those concerns were raised, we are satisfied, because the Claimant had set up in a competing business and the Respondent reasonably thought that she might with her colleague

seek to poach clients from the Respondents.

**20. Breach of Contract Unlawful Deduction from Wages**

- 20.1 We are not satisfied that it was an implied or express term of the Claimant's employment of contract that she would be paid a bonus of £4,000 in December 2016. The bonus provision was unique to the Claimant and we are satisfied was conditional on her achieving targets and she knew that.
- 20.2 The contract of employment and the Employee Handbook are silent on the issue of bonus payments. There is no express right to them. The new contract that was sent to the Claimant in November 2016 after they had reached an agreement makes clear that bonus payments are in the "absolute discretion" of the company.
- 20.3 We are satisfied that the emails show that any bonus payment was discretionary. We particularly referred ourselves to the email of 4 November 2016 which says;
- "Bonuses are discretionary and are awarded for all areas of performance"
- The Claimant did not complain at the time that this was wrong. This was further evidenced by the fact that two members of the team also were not paid these bonuses.
- 20.4 We are satisfied that Mr Meagher said that he would pay the Claimant a bonus of £4,000 in December 2016. As the bonus was discretionary he could change his mind which he did when he discovered that the Claimant was leaving. We do not agree that the bonus was payable simply on achieving targets.
- 20.5 Bonus payments are paid to reward service and loyalty. They are normally paid to retain the services of the employees. Where an employee is leaving in these circumstances the employer is entitled to exercise their discretion to pay the bonus. It is rational to do so and does not amount to the employer acting in bad faith. In those circumstances the claim for a bonus payment as a claim of breach of contract/unlawful deduction of wages fails and is dismissed.

Employment Judge Hutchinson

Date: 12/06/2018

RESERVED JUDGMENT & REASONS SENT TO  
THE PARTIES ON



