Case Number: 2201655/2018

THE EMPLOYMENT TRIBUNAL

SITTING AT:	**LONDON CENTRAL**
BEFORE:	**EMPLOYMENT JUDGE ELLIOTT**
MEMBERS:	**MS J CAMERON**
	MS S PLUMMER

BETWEEN:

Ms A

Claimant

AND

B, C and D

Respondents

ON: **18, 19, 20, 21, 22, 25, 26, 27 and 28 February and 1, 4, 5, 6, 7 and 11 March 2019**

(Days 12-15 of this hearing were In Chambers)

Appearances:

For the Claimant: **Mr P Smith, counsel**

For the Respondents: **Ms D Romney, one of Her Majesty's counsel**

RESERVED JUDGMENT

1. The unanimous Judgment of the Tribunal is that the claims fail and are dismissed.
2. The holiday pay claim is dismissed on withdrawal.

REASONS

1. By a claim form presented on 9 March 2018 the claimant Ms A claims wrongful dismissal, direct sex discrimination, sexual harassment, post-termination victimisation and holiday pay.

2. The claimant is a solicitor and worked for the first and second respondent from 20 February 2017 to 21 December 2017. She joined as a newly qualified solicitor. R3 is the sole equity partner and managing partner of the first respondent as well as the principal of the second respondent.

3. A case management hearing took place on 14 June 2018 before Employment Judge Russell. An Anonymity Order was made at that hearing under Rule 50. Judge Russell said that the Order would only be sustained after judgment if the claimant was unsuccessful in her claim against R3.

4. The respondents appealed to the EAT against the decision of Judge Russell not to list the matter for a preliminary hearing for strikeout and/or deposit. Lewis J considered the appeal and found that it disclosed no reasonable grounds of appeal (letter 2 January 2019).

5. On 1 February 2019 Regional Employment Judge Potter made an Unless Order for the exchange of witness statements. The case has been heavily contested from a procedural point of view as well as substantively.

6. There was a case management hearing a week before the commencement of this full merits hearing, namely on 11 February 2019 before Employment Judge Segal QC.

Witnesses and documents

7. A set of documents ran to 8 lever arch files.

8. We had a separate index to the bundles and an agreed Chronology and agreed List of Issues.

9. At the beginning of day 6 of the hearing, we were shown video recordings and we heard audio recordings made by the claimant and R3 in Amsterdam in May 2017 and Dubai in November 2017. The authenticity of those recordings was not in dispute.

10. There was an application on day 8 from the claimant to introduce new documents. The application was opposed by the respondents. The documentation had been in the claimant's possession since well before the date for disclosure in November 2018, on some documents since June 2018 and a message she was party to in October 2017. It included photographs of which we had an enormous quantity in the 8 lever arch files. The respondents opposed the application as it would involve revisiting evidential matters and recalling the claimant as she had not been cross-examined on the new documents. The claimant is a solicitor represented by solicitors and counsel. We agreed with the respondents' submissions and in addition considered that if this documentary evidence was important, it should have been introduced so that the claimant could deal with it in evidence. We refused the application.

11. For the claimant there were three witnesses, (i) the claimant, (ii) her fiancé Mr TG and (iii) her best friend Ms ZS. Neither TG nor ZS had ever met R3 prior to this hearing.

12. For the respondents there were 4 witnesses:

a. R3

b. JB, a paralegal who no longer works for the respondents.

c. AK, a salaried partner in the firm.

d. IA, a self-employed consultant with the first and second respondents.

13. We had detailed written submissions to which the parties spoke. They are not replicated here. All submissions and authorities referred to were fully considered, even if not expressly referred to below. We had a small bundle of authorities from each side.

The issues

14. Judge Segal ordered that the parties were to ensure that a brief agreed List of Issues was provided for the tribunal's use on the first morning of the full merits hearing. As the list of issues was so brief, we asked the parties overnight between days 1 and 2 to set out a list of all the factual issues the tribunal was required to decide. The List of Issues was as follows:

15. Did the R3 engage in the following conduct:

a. On 30 March 2017, did he place paper on the claimant's knee/lap in order to instruct her in roulette, at the Playboy club? (ET1 para 17)
b. On 7 April 2017, did he lean over the claimant's thighs and recline her chair, in the cinema room at his home? (ET1 para 23)
c. On 7 April 2017, did he invite the claimant to swim in his pool, remarking "*I don't mind if you swim in the nude*"? (ET1 para 23)
d. On 7 April 2017, did he sniff the claimant's hair and breathe down her neck? (ET1 para 24)
e. After 7 April 2017, did he repeatedly invite the claimant to take swimming lessons at his home? (ET1 para 31)
f. After 7 April 2017, did he repeatedly invite the claimant to his home for movie nights? (ET1 para 31)
g. On 16 April 2017, upon giving the claimant a bottle of Good Girl perfume, did he remark "*Yes but sometimes it feels good to be a bad girl*"? (ET1 para 30)
h. On 27 April 2017, at a meal at Park Chinois did he repeatedly put his hand on the claimant's knee? (ET1 para 32)
i. On the Amsterdam trip (12 May 2017) did he instruct the claimant to come to his hotel room, remarking that he would "*come and drag [her] by the hair*", and pressure her to sleep in his room? (ET1 para 34.2)
j. On the Amsterdam trip (12 May 2017) did he pressure the claimant to carry his cannabis for him? (ET1 para 34.2)
k. On the Amsterdam trip (12 May 2017) did he pressure the claimant into attending a sex show and engineered matters so she would have to sit next to him? (ET1 para 34.4)
l. On the Amsterdam trip (12 May 2017) did he pressure the claimant to take cannabis, resulting in her illness?

m. On the Amsterdam trip (13 May 2017) during the claimant's illness, did he place his hand on her left breast and attempt to take her clothes off? (ET1 para 34.7)
n. On 19 May 2017 did he refer to his relationship with the claimant and EB as a "*cross-fire love triangle*" and stated that Ms EB wanted the claimant dismissed? (ET1 para 36)
o. On 19 May 2019 did he issue the claimant with a written warning and extend her probationary period in order to demonstrate his power over her? (ET1 para 37)
p. Shortly after 19 May 2017 did he show the claimant his cocaine stash? (ET1 para 39)
q. Shortly after 19 May 2017 did he tell the claimant that cocaine *"gets you super horny. There's no better feeling than having sex whilst on coke"*? (ET1 para 39)
r. On or around 26 May 2017, following a complaint by the claimant about the gossip in the office about her and R3 and following her refusal to attend a Rita Ora event at Annabel's, did he made veiled threats about damaging her career? (ET1 para 40)
s. On 6 June 2017 did he say to the claimant *"how can you have sex with one person for the rest of your life? I can't believe you've only had sex with the same person for 10 years. You're so boring and vanilla"*? (ET1 para 89)
t. On 6 June 2017 did he instruct the claimant to wear a low-cut top when shopping for jewellery for his wife? (ET1 para 42)
u. On 6 June 2017 did he tell the shop assistants that the claimant was his fiancée? (ET1 para 43)
v. On 6 June 2017, at dinner, did he suggest the claimant that he had had a sexual relationship with a former member of staff (GB), saying *"when you spend enough time with that person it just naturally happens"*, the implication being that the same would happen between them? (ET1 para 45)
w. On 6 June 2017, after dinner, did he say to the claimant "*cocaine gets me very horny; there is nothing sexier than snorting a line of coke off a girl's chest"*? (ET1 para 47)
x. On 8 June 2017 whilst shopping for his wife did he tell the claimant *"this bracelet looks so sexy on you"*? (ET1 para 50)
y. On 8 June 2017 whilst shopping, did he lean over the claimant and touch the bracelet on her wrist? (ET1 para 50)
z. In advance of the Rita Ora event on 27 June 2017, did he instruct the claimant to bring a few dresses into work so he could help her choose which one to wear? (ET1 para 53)
aa. On 27 June 2017 did he tell the claimant *that "if you're a loyal member of the firm I will buy you some stunning designer dresses that will make you look like a model"*? (ET1 para 54)
bb. On 27 June 2017, at his hotel suite, did he come into the bathroom and take a shower whilst the claimant was applying makeup? (ET1 para 55.1)
cc. On 27 June 2017, at his hotel suite, did he walk around only wearing a shirt, in the claimant's presence? (ET1 para 55.2)

dd. On 27 June 2017, at his hotel suite did he make the claimant take selfies of them both and press his penis against her whilst doing so? (ET1 para 55.3)

ee. On 27 June 2017, at the Rita Ora concert did he repeatedly press his penis against the claimant? (ET1 para 55.4)

ff. On 27 June 2017, after the concert, did he repeatedly pressure the claimant to spend the night at his hotel suite? (ET1 para 55.5)

gg. On 20 July 2017 did he instruct the claimant to accompany him to a hotel suite, say *"as soon as I bring a woman back to this suite I can almost hear them getting wet"* and suggested that the claimant should lie down on the bed so that he could take photographs of her? (ET1 para 57)

hh. On 3 August 2017, in a conversation about gambling winnings at Leicester Crown Court did he tell the claimant in explicit detail what B's partners did with girls at the Sophisticats strip club? (ET1 para 61)

ii. On 3 August 2017, did he tell the claimant that his uncle liked *"hairy pussy"* and showed the claimant a photo of a woman fully exposed? (ET1 para 62)

jj. On or around 16 August 2017, did he send the claimant his Dropbox details so she could retrieve some documents for him and, inadvertently, the claimant discovered sexually explicit photos of him engaging in orgies? (ET1 para 59)

kk. During a trip to Athens did he repeatedly ask the claimant about her sex life, how many sexual partners she had had, and whether she was interested in threesomes? (ET1 para 61.1)

ll. During a trip to Athens (7-10 September 2017) did he tell the claimant in detail about his own experiences of orgies and threesomes? (ET1 para 61.2)

mm. During a trip to Athens (7-10 September 2017) did he keep grabbing the claimant's hand when looking at tourist attractions? (ET1 para 66.3)

nn. During a trip to Athens (7-10 September 2017) did he take the claimant sunbathing and offer to rub lotion on her body? (ET1 para 66.4)

oo. During a trip to Athens (7-10 September 2017) did he instruct the claimant to rub lotion on his body? (ET1 para 66.5)

pp. During a trip to Athens (7-10 September 2017) did he tuck the claimant's shirt into her trousers, placing his hands quite low dow her trousers? (ET1 paragraph 66.6)

qq. During a trip to Athens (7-10 September 2017) did he tell the claimant to wear something "*sexy*"? (ET1 paragraph 66.7)

rr. During a trip to Athens (7-10 September 2017) did he hug the claimant and tell her she looked *"beautiful"*? (ET1 paragraph 66.8)

ss. During a trip to Athens (7-10 September 2017), at a club, did he tell the claimant that she had asked another woman for a threesome and that she had said she was *"up for it"*? (ET1 paragraph 66.9)

tt. During a trip to Athens (7-10 September 2017), in a taxi, did he rest his head on the claimant's neck/chest area, place his hands upon her knee and move his hand up her thigh? (ET1 paragraph 66.10)

uu. During a trip to Athens (7-10 September 2017), in a taxi, did he ask the claimant to take money out of his trouser pocket to pay for the taxi?

vv. During a trip to Athens (7-10 September 2017), did he ask the claimant to look after him in his hotel room? (ET1 paragraph 66.11)

ww. Ahead of a networking event at the Dorchester Hotel ballroom on 10 October 2017, did he tell the claimant to try on, in the toilets after work, a dress he had bought for her,?

xx. On 10 October 2017, did he tell the claimant about a "sexy club" called The Box and that he had asked a girl who worked there whether he could have sex in the club, to which she responded *"only if we don't catch you"*, and did he also tell the claimant that he had asked whether his girlfriend could *"suck him off in the toilets"*? (ET1 paragraph 70)

yy. On 30 October 2017, whilst out looking at Range Rovers did he intimate to the showroom staff that the claimant was his girlfriend? (ET1 paragraph 74)

zz. Shortly after 30 October 2017, did one of R1's partners challenge him as to the alleged relationship between R3 and the claimant, during which R3 did not deny that they were having an affair (when they were not)? (ET1 paragraph 75)

aaa. Prior to the Dubai trip (late November 2017) did he tell the claimant that she needed to go on a diet so that she could fit into *"sexy outfits"* in Dubai, later offering to buy her a sexy clubbing outfit? (ET1 paragraph 77)

bbb. Prior to the Dubai trip (late November 2017) did he tell the claimant to send him pictures of outfits she was proposing to buy, for his approval? (ET1 paragraph 78)

ccc. Prior to the Dubai trip (late November 2017) did he book a 2-bedroom suite for him and the claimant when she had already said she wanted her own room? (ET1 paragraph 86.1)

ddd. On 25 November 2017, upon arrival in Dubai, did the hotel staff refer to his and the claimant's stay as being *"a special occasion…* [their] *anniversary"*, having placed roses on the bed in their suite, and bringing them an anniversary cake, as a consequence of R3 having informed the hotel as such? (ET1 paragraph 86.2)

eee. On 26 November 2017, at a concert, did he stroke the claimant's hair and touch the back of her neck, about 3 times?

fff. On 26 November 2017, at Amber Lounge, did he run his hands through the claimant's hair? (ET1 paragraph 86.4)

ggg. On 26 November 2017, in a taxi, did he massage the claimant's neck/shoulders, despite her protests? (ET1 paragraph 88.6)

hhh. On 27 November 2017, in Dubai, did he say to the claimant *"could your boyfriend ever afford to take you to places like this?"*

and *“if you stay close to me and roll with me, you can have this whenever you wanted, you do know that don’t you?”* (ET1 paragraph 88.7)

iii. On 27 November 2017, in Dubai, did he tell the claimant about a new sex toy he was going to buy his wife, and show her a photo of it? (ET1 paragraph 87.1)

jjj. On 27 November 2017, in Dubai, did he ask the claimant about what sex toys she used, whether she had used a butt plug before, and whether she had had anal sex? (ET1 paragraph 87.2 – paragraph8 7.3)

kkk. On 27 November 2017, in Dubai, did he tell the claimant that his wife had not wanted to have anal sex with him but now *"she begs me to put it in her arse rather than her pussy"*? (ET1 paragraph 87.4)

lll. On 27 November 2017, in Dubai, did he tell the claimant that he uses a special lubricant from Sainsbury's when having anal sex with his wife and that sometimes he makes her bleed? (ET1 paragraph87.5)

mmm. On 27 November 2017, in Dubai, did he tell the claimant that on one occasion his wife punished him for coming home drunk and made him “*lick her out”* 3 times, making her orgasm? (ET1 paragraph 87.6)

nnn. On 27 November 2017, in Dubai, did he tell the claimant he could not help cheating on his wife *because "if a girl is giving me a hard on, I just can't help it"*? (ET1 paragraph 87.7)

ooo. On 29 November 2017 did he massage the claimant’s feet, despite her protests, and put his hands up her legs? (ET1 paragraph 88.1 – 88.2)

ppp. On 29 November 2017 did he massage the claimant’s lower back for 10-15 minutes? (ET1 paragraph 88.1)

qqq. On 29 November 2017 did he untie the claimant’s bikini top and slap her hand away when she attempted to stop him? (ET1 paragraph 88.3)

rrr. On 29 November 2017 did he touch her back and move his hands down to her bottom, on 2 occasions, prompting her to tell him to *“watch your hands”*? (ET1 paragraph 88.5)

sss. On 29 November 2017 did he take unauthorised photographs of the claimant in her bikini as well as of her feet? (ET1 paragraph 88.4)

ttt. On 29 November 2017 did he stroke the claimant’s hair, remarking that his wife’s hair was thin by contrast? (ET1 paragraph 88.6)

uuu. On 29 November 2017 did he ask the claimant direct questions about whether she would cheat on her boyfriend, call her *"stupid and naïve"*, tell her *"I guarantee you that your boyfriend thinks about other girls while having sex with you"*, and ask her whether she had ever thought of anyone else whilst having sex? (ET1 paragraph88.7 - 88.8)

vvv. On 1 December 2017, upon their return from Dubai, did he send the claimant a picture of another woman (J….) holding her breasts and with her vagina exposed, and remark to the claimant *"You tell me to stop my kinky fuckery. I texted J…. letting her know I am back in town. She sent this pic to me that she just took saying welcome back"*? (ET1 paragraph 94)

www. Throughout the employment did he make (concerning the claimant's appearance) comments of the type set out in paragraph 79 of the Particulars of Claim?

xxx. Throughout the employment did he pressure the claimant to go out with him when she was out with her friends, in the manner set out in paragraphs 81-83 of the Particulars of Claim?

yyy. Throughout the claimant's employment did he require the claimant to work from his home when it was not necessary for her to do so, as set out in paragraphs 84-85 of the Particulars of Claim?

zzz. Between their return from Dubai and the claimant's summary dismissal on 21 December 2017, did he deliberately avoid her at work? (ET1 paragraph 96)

aaaa. On 15 December 2017 did he tell the claimant that judging by her behaviour in Dubai she was *"not interested in working for the firm long-term"*? (ET1 paragraph 99)

bbbb. On 21 December 2017 did he tell the claimant that she *"…knew too much about him… "*, that he could not trust her, that he believed she was "… *calculating and manipulative* …" and as a result, he could no longer work with her? (ET1 paragraph 106)

cccc. And by summarily dismissing the claimant on 21 December 2017. (ET1 paragraph 106)

16. If R3 did engage in any of the aforementioned conduct, was that conduct unwanted by the claimant?

17. If so, did that conduct relate to sex, or alternatively, was it conduct of a sexual nature?

18. If so, did the conduct have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?

19. In relation to any of the allegations set out above (but specifically in relation to sub-paragraphs (vvv), (zzz), (aaaa), (bbbb) and (cccc)) did the respondents treat the claimant less favourably than they would have done had she rejected or submitted to the conduct because she rejected or submitted to the conduct? This is the section 26(3) issue. The claimant's case is that at the very latest by Dubai it was clear that the claimant had rejected R3's advances.

<u>Direct discrimination</u>

20. In (a) making the comments allegedly made on 21 December 2017; and (b) summarily dismissing the claimant, did the respondents treat the claimant less favourably than they would have treated a hypothetical man in materially identical circumstances, because of the claimant's sex? The respondents said it was not pleaded. It had been identified as an issue in Judge Russell's Order of 14 June 2018 and had not been queried or challenged so we considered that the issue was before us.

Victimisation

21. At any material time did the respondents believe that the claimant may do a protected act (by making an Equality Act 2010 (EqA) related complaint regarding R3's conduct as set out above)?

22. If so, did the respondents subject the claimant to any of the following detriments under the material influence of that belief:

    a. Making false allegations about her use of a PLC account in written correspondence;
    b. Making false allegations in January 2018 about the claimant's conduct towards R3 in written correspondence; the false allegation was that she was obsessed with him and his lifestyle.
    c. Being selective about the documents the respondents would wish to rely upon in support of the aforementioned false allegations;
    d. Threatening the claimant with a Protection from Harassment Act 1997 injunction;
    e. Threatening the claimant with a civil injunction;
    f. Making a false and misleading report about the claimant's conduct to the Solicitors Regulation Authority (SRA)?
    g. Making a false and misleading report about the claimant's conduct to her former employer; and,
    h. Engaging in threatening correspondence on 7 June 2018?

23. In presenting her claims to the Employment Tribunal, the claimant did a protected act. Did the respondents engage in threatening correspondence on 7 June 2018 because she had done so?

24. Was the bringing of a claim (which would otherwise have been a protected act) not a protected act because the claimant knew that her allegations were false and made in bad faith?

Wrongful dismissal

25. Have the respondents proven that the claimant engaged in conduct amounting to a repudiatory breach of contract entitling them to accept the breach and terminate her contract of employment summarily?

Holiday pay

26. At the date of the termination of her employment, what annual leave entitlement had the claimant accrued but which remained untaken?

27. If any accrued but untaken entitlement existed at the date of termination, what sum is properly payable to her in respect of this entitlement?

28. This claim was dropped in submissions, paragraph 2 and is dismissed upon withdrawal.

ACAS Code

29. If the claimant succeeds in any of the above claims, should any award of compensation be increased by up to 25% on account of the respondents' unreasonable failure to:

    a. Adopt and apply clear disciplinary rules;
    b. Afford to the claimant the right to be accompanied at any disciplinary meeting by a work colleague or Trade Union representative;
    c. Afford to the claimant a proper opportunity to put her case in relation to the disciplinary charges.
    d. Afford the claimant a right of appeal against the decision to dismiss her. (ET1 paragraph 11).

30. Time point: Were any of the acts complained of by the claimant out of time or do they form part of a continuing act extending over a period, under section 123(3) EqA?

31. It was confirmed by Judge Segal that this hearing would not be asked to consider the issue of whether R3 hacked the claimant's WhatsApp or other social media accounts. We were told in any event that this was the subject of a concurrent claim in the High Court. On day 8 we were told that there were no High Court proceedings on foot, but there had been a letter before action.

32. There was a huge quantity of personal and private WhatsApp messages in the bundle between the claimant and her partner and the claimant and her best friend. We took account of this evidence, because it was before us. It is a matter for the other proceedings to determine the legality of the way in which that evidence was obtained.

Findings of fact

The claimant's recruitment

33. The claimant qualified as a solicitor on 3 January 2017. She had previously been interviewed by the third respondent ("R3") on 29 September 2014 for paralegal/trainee position. She was offered the role but by that time she had accepted a paralegal position with another firm.

34. The claimant initially contacted R3 in 2014 on LinkedIn (page 894 of

bundle 5).

35. Soon after she had been admitted as a solicitor in 2017, R3 contacted her on LinkedIn to enquire as to whether she wished to work for him now that she was qualified. She attended an interview on 17 January 2017 and R3 offered her the post during the interview and she accepted. Her employment with the first and second respondents commenced on 20 February 2017. She was required to work closely with R3 who supervised her work. He was her line manager.

36. The respondents have a practice of asking for a passport sized photograph when recruiting fee earners. R3 said that when they recruit fee earners, they normally interview around 40 candidates at a time. He said that the photograph helps them post-interview to remember the person they interviewed. He does not do the same when interviewing secretaries as he normally conducts about 6 to 8 interviews at a time.

37. R3 did not ask the claimant for a passport photograph for her interview in January 2017 because he already had her photograph from her application in 2014. R3 was asked why he approached the claimant direct in 2017. He said that one of the firms' largest expenses is recruitment fees which is often around 25% to 30% of salary. He therefore approached the claimant and about three other people via LinkedIn, one of whom was male. He conducted two interviews, with the claimant and another female. The claimant was successful.

38. There was a dispute as to the buoyancy of the job market for newly qualified solicitors. It was put to R3 that it was a very difficult market for candidates. R3 disagreed and said that it was a very difficult market for trainee solicitors but that law firms found it more difficult recruiting newly qualified solicitors. He said the reason for this was because of the input required for trainees which is not required for newly qualifieds. We had no documentary evidence to assist us with this point.

39. It was put to R3 that his objective was to recruit attractive young females. A photograph was put to him of himself and members of staff at the Christmas party in 2017 which showed him with about five young women. Some of these women were secretaries. The claimant was not in the photograph although she was at the party.

40. It was also put to R3 that the reason he wanted to recruit the claimant was because she was an attractive female. He denied this and said that if it was the case, he would have recruited her in 2014. He does not deny that he tried to recruit her in 2014; she had already secured another role by the time he made the job offer.

41. We find based on the composition of the firm, the recruitment practices and the make up of the firm (which is a majority of young women) that it is R3's preference to recruit attractive young women.

42. The publication Legal Cheek also picked up what was said to be a spoof advertisement for R1's firm saying that they wanted to recruit attractive young women to be of interest to their Asian clients. There was a rather posed and unnatural looking photograph with the Legal Cheek article of

four young women either sitting or standing on what appeared to be an outdoor roof terrace.

43. When the claimant joined the respondents' employment she was 25 years old. R3 was about 50 years old, married with three young children. The claimant was in a long-term relationship with her boyfriend of about 10 years.

44. The claimant was very keen to join the respondents' employment. In messages with her best friend we saw that she was dissatisfied with her previous employer and was keen to join the respondents earlier rather than later, ideally on 1 February 2017. She started on 20 February 2017. The claimant's relationship with her former employer had turned sour and although she did not do so, she talked about suing him.

45. The claimant's offer letter was at page 10 bundle 1 section 2. Point 11 on page 10 said:

> *[R1] take pride in the appearance of the firm's image and all of their employees are expected at all times to promote a professional image. The Firm's dress code must be of formal business attire such as a suit, for example skirt/trousers and a suit jacket and white or black blouse, or a business dress. The colour must be dark, either black, navy blue or charcoal grey. It is important that the Firm's professional image is maintained at all times.*

46. The claimant said that the firm was all about image. R3 said it was all about a professional image and business attire. We find that the image presented by staff was very important to the respondents.

47. R3 is the controlling mind of the two law firms. He has two salaried partners. It is a small firm.

48. The claimant and R3 became close very quickly. As we find below, by 9 March 2017 the claimant was sending photos of herself to R3 from shops such as TM Lewin when she was trying on clothes for her photograph for the firm's website. She had only been in their employment for is less than three weeks. The claimant is very clothes and image conscious.

49. We saw messages in the bundle from that date in bundle 2, for example pages 299 and 311. The claimant said that she "*didn't think she and a crisp white shirt were ever meant to be*", R3 commented that she may look better if she put her hair up, she said she was upset that she looked like a chubby boy in her photos. It showed a much more personal than professional relationship from a very early stage. The claimant did not complain about it at this stage.

50. There was a lack of boundaries on both their parts, from an early stage that went beyond the professional to the personal. They began talking in messages about work outfits and soon moved on to more personal comments. Their messaging went into the late night, for example on page 302 of bundle 2 we saw them messaging each other with pictures until about 1am on 23 March 2017, only about four weeks in to the employment.

Findings on the claimant's evidence

51. Before going into our detailed fact-finding on the issues below, we make

the following findings on the claimant's evidence.

52. It was put to the claimant that her intention was to destroy R3. This was taken from her messages with GB (who had also worked for the respondents, but not contemporaneously with the claimant) and in messages with her partner. The claimant said that if this was really her intention she would already have told R3's wife. She denied that this was her intention and said that she was just venting and angry. She admitted saying things such as she "*wanted to beat the shit out of him"* and that "*his time was up*" (e.g. page 412).

53. Unfortunately her description of her intentions towards R3 became even worse. In bundle 5, page 930AA30, in messages with her best friend, she described fantasising about "*slitting his throat", "throwing acid in his face*", wanting him to go to prison and about unpleasant experiences he might have in prison.

54. The claimant agreed in evidence that she pretended to be friendly with R3 and sent him jokey emails. She also agreed that people in the office thought that they were having an affair. She said that this was because of the amount of time "he required her to spend with him". In relation to the incident on 30 March 2017 concerning going to the Playboy Club, the claimant said that this was early days and she and R3 got on well and used to have a laugh and a joke together.

55. We saw consistently, messages where after the two of them had been out together such as to the nightclub Annabel's or to the Park Chinois restaurant, the claimant would send R3 late-night messages thanking him for a wonderful evening. The claimant said it was not straightforward. She said sometimes she would find him creepy and other times she thought that they were getting along really well, that he was being really nice and she regarded him as a friend.

56. There was an evening in June 2017, to which we refer in some detail below when they went to a Rita Ora concert and the claimant's case is that R3 pressed his penis up against her. After that evening she sent him a message at about 3am saying what a great night she had. She agreed in cross-examination that she was lying in this message. She said that she did not want to "*spook"* R3. She said: "*I was playing along to what he wanted*".

57. Although in cross-examination the respondents deny that the alleged actions happened, the claimant was asked how R3 was meant to know that this was unwanted action. The claimant said that as a senior partner with a junior lawyer he ought to know and when it happened she tried to move away.

58. The claimant and R3 went on a trip to Dubai in late November 2017. This was ostensibly a business trip but there was plenty of social time involved and the claimant knew this would be the case. The claimant said that 70% of her did not want to go on the trip and 30% of her thought that it would be very good for her career and it would look good on her CV. The claimant kept telling R3 how excited she was about the trip.

59. They messaged each other a great deal and at all hours of the day and night. It was not unusual for the claimant to be seen messaging R3 late night and initiating those messages herself. She said in evidence that these messages were not coming from her "*real self*".

60. The claimant asked whether she was playing a game with R3 and she replied: "*I guess, yeah, you could call it a game, I was putting on an act with him, yes for sure."* She admitted that she was consciously playing a game and that she began doing so in about April 2017. She said that she did this because she feared for her job and it is a tough market. She was newly qualified and had found it tough to find a training contract. She said she had to act positively towards what R3 wanted her to do. She said she thought she could manage the harassment and keep it under control.

61. The claimant was asked why she continually went out to dinner with R3 and out elsewhere with him after dinner and did not make up excuses. She said she was desperate to keep her job. She accepted that she "*might have told a bit of a white lie to her partner*" to the effect that E, another female member of staff, was present at least one of those dinners, because she was worried about how her partner might react if he knew she was going out for these dinners with R3 alone. Her consistent reason for this was that she feared that her job was on the line.

62. In evidence on day 4 of the hearing the claimant admitted that at work she had become a bit of an "*office snitch*". She said she thought everyone was attacking her and she said she thought she would take the same approach. On day 5 at 11:30am the claimant admitted that whilst working at the first and second respondents she "*did start lying to people*".

63. The claimant has been with her partner for 10 years. She said that R3 continually asked her whether she would cheat on her partner and she said she continually replied that she would not.

64. The claimant's witness statement included a great deal of hearsay evidence relating to a former employee of the respondent named GB, a secretary. The claimant relied upon what she said happened to GB, in support of her own case. There was no application for a Witness Order to require GB's attendance to give evidence.

Findings on R3's evidence

65. R3 runs a business in which prestige and glamour play a part. The firm has an Instagram account accessible from its website. Paralegal JB ran this account at the material time, posting photographs that were thought to appeal to clients. JB did not require R3 approval on the postings. Her evidence was that she had a free hand and she had the log-in details. We accepted her evidence on this point.

66. One of the postings was a sexualised image of a chair in the shape of a woman in stilettos. It was exhibited at Tate Modern. It was put to R3 that this was sleazy; he denied this and said it was edgy. R3 put hashtags next to a photograph of the chair such as "*#sexchair", "#slave outfit", "#myslave".* He said that the hashtags were in jest and agreed that they were not attractive.

67. Ms JB took ownership of some of the hashtags: *Babes of Instagram*, *legallyblonde* and *sexylawyers*. Her workload was split between marketing and paralegal work. Ms JB said that after the Legal Cheek article, they had a meeting, at which she was present, where they decided to tone down their hashtags and Instagram posts and focus on more charitable objectives.

68. R3 accepted that in employment and career terms, it was he who held the power as he was the claimant's supervisor and the principal of the firm. As was put in submissions, he "*held the career cards*".

69. R3's evidence was that he discussed the dismissal of the claimant with his partners. His partner Mr AK did not confirm this evidence. Mr AK, who gave evidence to this tribunal, said that R3 did not discuss the dismissal with him. R3's two business partners are salaried partners, not equity partners. R3 has the controlling hand of the business. We find that R3 did not discuss the dismissal of the claimant with his partners in the sense of seeking their views; he told them what he had decided.

Sending pictures of clothes

70. It was common for the claimant to send photos via WhatApp of clothes she was thinking of wearing to upcoming work events including the trip to Dubai. The claimant said that in her view R3 was "obsessed" with women's clothing. He said he was interested in fashion, both male and female.

71. The claimant said that R3 wanted to approve what she would be wearing to events. His case is that she volunteered the pictures of her outfits and it was she who was actively seeking his approval. We make findings below that this is what she was doing.

72. On 9 March 2017 in connection with updating the firm's website, the claimant sent photographs of herself to R3 from changing rooms of what she might wear in the photos on the firm's website. R3 had never received such photographs before from any employee. He thought she was being overly friendly.

73. We saw in the bundle around page 590 bundle 4, a long message exchange relating to clothing. The claimant was trying on different outfits in her bedroom late in the evening and was photographing herself in the different outfits and then sending them to R3 for his views. The outfits were generally tightfitting with low plunging necklines and in one case the skirt part of the dress was entirely see-through but for some embroidery.

74. After sending through three outfits and gaining a positive reaction on one which was called the blue dress, the claimant did not stop sending pictures of outfits. She sent another which she knew would not be appropriate because she said so. It was a playsuit. The claimant agreed that in terms of sending the photographs of herself in dresses, it should not have happened. She said in evidence on day 2 of the hearing: "*cos looking back on it, maybe it was enticing him more*". She denied that this is what she was trying to do.

75. In bundle 5 page 830, in December 2017, after a great deal of harassment was alleged to have taken place, the claimant sent a photograph of herself in a strapless, low neckline, tightfitting dress and R3 commented that if she was asking his opinion and if it was the "*chavvy hooker look*" she was going for it was "*spot on*". She replied that it was the look she was going for, with a laughing emoji (page 832). It was the dress she was proposing to wear for New Year's Eve 2017.

76. The claimant's case is that she was sexually assaulted by R3 on the trip to Dubai. She admits that on or about 5 December 2017 shortly after the return from Dubai she continued with "*banterous*" (her word) messages with R3. She said she did this because she thought he was avoiding her after the trip and that she was fearful for her job.

77. She sent R3 the photograph of what she proposed to wear the New Year's Eve within about two hours of sending the same picture to her boyfriend. The claimant did not deny that her relationship with R3 was "*strange*". When it was put to her that she was being flirtatious with R3 her reply on more than one occasion was that she was "*entertaining him*" or "*entertaining him back*". This expression "*entertaining him*", was said in contemporaneous messages, for example at page 1808 on 14 April 2017. She thought that it was not flirtation if you did not intend to have a sexual relationship with that person.

78. On 27 July 2017 on a Saturday morning, she sent a family photograph of herself as a child to both her boyfriend and to R3. She agreed that R3 had not asked her to send this. She accepted that it was she who initiated this string of messages and said it was in relation to a joke about a type of chocolate that she liked (there being a chocolate company logo in the background of the photograph).

79. It was not unusual to see chatty messaging going on between the claimant and R3 lasting for long periods and both very late at night and early in the morning. They had a close relationship.

80. The claimant's evidence was that she felt pressured to agree to R3's invitations to go out and to do what he wanted her to do. Yet we saw examples in the documentary evidence of the claimant telling R3 that she did not want to go out with him. Once was after a work go-karting event when her leg had been slightly bruised when two of the go-karts collided. She said that R3 asked her what they were going to do afterwards and she said her leg was hurting and she wanted to go home. She admitted in evidence that she was exaggerating how much it hurt because she did not want to go out with him.

81. We saw another example of the claimant making an excuse not to go out late with R3 after an office event on 9 May 2017 (bundle 2 page 337). The claimant admitted that she "*told a lie*", that she was too far away on heading to the station, to come back. She was actually close by, but wanted to go home, which is what she did. On 7 September 2018 whilst in Athens she made an excuse about a headache to go back to her room (her statement paragraph 119). We find that the claimant is someone who can stand up for herself and decide not to go if she does not want to.

82. It was a theme of the claimant's evidence that she did not want to "*spook"* R3 by telling him that what he was doing was wrong, because she wanted to keep her job. In relation to the Dubai trip, upon which we make findings below, she said that if she had acted the way that she had wanted to, she would have taken the first flight home. For reasons which we set out below we did not accept this evidence.

83. Whilst they were in Dubai they continually exchanged photographs of each other, she sent photographs to him and posed for photographs including one of her seated showing a great deal of her thigh. They photo-shopped the photographs to make themselves look better. She also sent a photograph to R3, of herself lying on a bed, head on a pillow and smiling broadly. It is right to say that she was fully clothed in the photograph. It was nevertheless an intimate photograph.

84. When they returned from Dubai the claimant took the view that the others in the office were gossiping about them. She said she did not like this. She asked to work in R3's office. He asked why, was it cold where she was working? She gave the same reply by email on both 23 and 24 November 2017 that it was because she was "*clingy"*. When this was put to her in cross-examination that she did not want to be gossiped about yet wanted to work in R3's office she agreed that it sounded "*crazy*". We find that it was very inconsistent behaviour.

85. In relation to the character of the claimant we were taken to a piece of evidence whereby she sent a message to her best friend Z saying that she had just "*thrown her secretary under the bus*" and it was the most mean and selfish thing she had ever done in her professional career. This was in bundle 6, page 1451, with messages on 11 April 2017. She was asked what this was about.

86. The claimant said that she had been working on a planning matter for R3 and she had made some important notes on the plans. She could not find these important notes and she accused her secretary of losing them. She believes her secretary may have got into trouble for it. She subsequently found the notes but did not own up and take responsibility for it. She did not admit that she had found the notes, that it was her mistake and her secretary was not to blame. She admitted that the right thing to do was to own up and apologise to her secretary. She said she did not do so because she felt foolish and embarrassed. It showed us that the claimant is someone who is prepared to look after her own interests at the expense of someone else, even if the truth is not upheld.

<u>Visit to the Playboy Club Casino on 30 March 2017</u>

87. On 30 March 2017 there was a firm event going out to see the show Mamma Mia. After the show, the claimant and R3 went back to the office, ostensibly to upload a document for a client. R3 suggested that they go on to the Playboy Club Casino. The claimant was interested in going there. Back on 24 January 2017 before she had started in employment with the respondents, she complained to one of her friends that her boyfriend was boring and was not interested in going to the Playboy Club (message bundle 6, page 1393). From this we find that it was somewhere

she wanted to go.

88. They went on to the Playboy Casino. The claimant had never played roulette before. Her case is that R3, in the pretence of teaching her to play roulette, put a piece of paper on her lap and began to draw on the piece of paper. R3 denied this. He said the best way to learn roulette is to watch other people play and it is difficult to explain it on paper. He said they walked around the tables together and he showed her how people were playing.

89. The claimant left the Playboy club at about 3:30am and got home around 4am (message page 1792, bundle 7). The claimant was asked in cross examination if she thought the teaching roulette incident was in any way malign? She said she did not think there was anything sinister about it at the time. She thought he was being friendly and they had a good conversation.

90. We make findings below that at a firm evening out, before the claimant's employment, R3 took another employee, GB, around the roulette tables to show her how it was played.

91. We agree with R3's evidence that it would be difficult to demonstrate the game of roulette on a piece of paper. We agree that it would be more practical and instructive to watch others play and have the game explained in that way. We also consider that it would be difficult to draw on a piece of paper on someone's lap. The piece of paper normally needs to be supported to be written upon. We find on a balance of probabilities that R3 took the claimant around the tables and he did not draw on a piece of paper on her lap. The claimant thought nothing of his conduct at the time and thanked R3 for a good evening in a message at around 4am.

<u>Warning about mobile phone use</u>

92. Induction at the firm is normally carried out by the practice manager, but as she was away when the claimant joined, the claimant's PA did the induction. R3 said that the PA forgot to give the claimant the mobile and internet policy. The policy was at page 30 of bundle 3. R3 accepted in evidence that the mobile phone use section at page 31 did not apply to fee earners. It applied to support staff.

93. About four weeks in to her employment R3 took the claimant for lunch at the Chiltern Firehouse to review how she was getting on. He raised with her, the mobile phone use. R3 and the claimant were at cross-purposes as to whether she had received the policy. The claimant's signature was on the policy but not until 4 May 2017.

94. On 5 April 2017 the claimant was given a written warning about mobile phone use at work, page 13, bundle 1, section 2. The warning said that if she claimed she had not used her phone as suggested, the firm would seek her messages for the working hours of the last five days.

95. The warning was withdrawn on 16 April 2017. In a message sequence between the claimant and R3 he said: "*that is now forgotten*" (bundle 1 section 2, page 33A). R3 had discovered that the claimant had not been

given the policy and he considered that it was not fair for the warning to stand. It was put to R3 that the reason the warning was withdrawn was to allow him a "*straight path*" towards the claimant. He denied this.

96. As early as 17 April 2017 the claimant, in messages with her boyfriend, made allegations that R3 was a cocaine addict. She said: "*I'll sue him. I'll put in the coke allegations, all his dirty laundry for everyone to see. He won't want him to come to Court, he'll have to settle".* (bundle 7, page 1834). It was submitted that this showed that the claimant's case was constructed from the early part of her employment. It showed us that less than two months into her employment, before the dates of most of the allegations upon which she now relies, she was considering bringing a claim against him with a view to pushing him into settlement.

97. She accepted in relation to her mobile phone usage, that it is up to individual law firms to adopt a particular policy in relation to personal internet and phone use at work.

6 April 2017 – planning outing for secretary's birthday

98. On 6 April 2017 the claimant was planning an office outing for a secretary's birthday. She messaged R3 about this and sent him a weblink for a new bar near the firm. R3 commented that it was opposite a shisha bar. The claimant asked if they could "*go to a nice shisha place soon*". The birthday event was not until about 27 April. R3 said he did not think a shisha place was suitable for a firm's outing. She said: "*let's go, I need it*". She accepted that it looked like she was suggesting that just she and R3 go together but that this was "*not what was in her head*". We find that it was what she suggested and R3 was entitled to take it at face value.

Attending R3's house on 7 April 2017

99. It is not in dispute that on 7 April 2017 the claimant went R3's house as he wanted her to work on a dispute he was having with his neighbour in relation to a right to light. The claimant and R3 initially drove to Enfield Council to look at some plans.

100. On the way back to his house by way of a site visit, the claimant accepts that she made conversation with R3 and asked him about his children. She also admits that she asked him whether he planned on having any more children (her statement paragraph 22).

101. The claimant's case is that he replied: *"put it this way, would I have any more kids with my wife? No, but I would have a baby with another woman, I am allowed two wives after all*". The claimant said she found this answer strange and disturbing because she wondered if he was implying that she could be the other woman. R3 denied saying this. He said in any event the comment was inaccurate, as under Sharia law he is allowed four wives.

102. The claimant was very impressed by R3's house. We were taken to her messages with her best friend where she told the friend all about the house, including its pool, cinema and its multi-million pound value.

103. The claimant started wandering around the house by herself. R3 went onto give her a tour as she was clearly interested. There was no one else present. When viewing the spare bedrooms he told her that she might find herself staying in one of them after working late one night. This did not happen as the claimant never stayed at R3s house.

104. He showed her the in-house cinema. The claimant's case is that he reached across her to show her how the cinema seat reclined and that in doing so he "*lent over my thighs in order to recline my chair"* (statement paragraph 23). She does not contend that he physically touched her thighs, just that he lent over. She said that it made her feel very uncomfortable. R3 said that the device for reclining the seat was on the side of the chair closest to him and there was no need for him to lean across the claimant to recline the seat.

105. He showed her the swimming pool. Her case is that he asked her if she wanted to swim and she said she did not have any swimwear. Her case is that he replied, "*don't worry I don't mind if you swim in the nude*". She says she told him to stop being gross.

106. R3 took the claimant to the loft room to show her the property opposite, in relation to the right to light claim, on which she was working. The claimant accepted in evidence that the window was very narrow and small. It was a Velux window in a sloping roof. Her case is that he stood very close to her and it seemed to her as though he was sniffing her hair; she said she could feel him breathing on her neck. She said this made her feel very uncomfortable. R3 denied this and said that he was standing about two feet away from her.

107. The day after the home visit, on 8 April 2017, the claimant sent a message to her partner making it clear that she was very impressed with R3's beautiful house and saying: "*he hasn't done anything or said anything which makes me think he's taken an unhealthy interest in me lol"* (bundle 3 page 1449). The claimant said in evidence, that she made this comment because of "*confused emotions*" and because she was "*in denial*".

108. R3 cannot swim. The claimant's case is that after the visit to the house he pestered her for swimming lessons and that he acted negatively towards her because she would not agree to give him swimming lessons. In bundle 2 section 2 page 29 we saw a message from R3 to the claimant dated 9 April 2017 saying: "*you can use the pool anytime but it comes at a price = lessons…. When are we doing film night fright night*". The message contained an emoji of someone swimming.

109. The claimant replied saying that she enjoyed the cigars with R3 on Friday and in relation to seeing a horror film, she said: "*We need to wait for a nice dark night, preferably with a thunderstorm brewing".* The claimant's case was that R3 "*repeatedly*" invited her to movie nights at his house. In making the comment about waiting for a nice dark night with a thunderstorm brewing, she was hardly showing resistance to the idea. We saw no other such invitation other than her comment *"When are we doing film night fright night".*

110. In bundle 4 at page 576 we saw the claimant saying in a message to R3: "*I'm sad we won't even have time to eat popcorn and watch a movie in your cinema tomorrow"*. This is not the response of someone who was being repeatedly invited to movie nights and who did not want to go. We find that it was the claimant who was interested in going to R3's house for a movie night and not vice versa.

111. As the claimant said to her boyfriend the day after the house visit that R3 had not done anything or said anything which made her think he had taken an unhealthy interest in her, it leads us to find that he did not lean over her thighs at the house, he did not suggest she swim nude and that he did not sniff her hair or breathe down her neck as she alleges.

Going out on the evening of 7 April 2017

112. Initially the claimant's evidence was that after the visit to the house on 7 April, R3 dropped her to the station at about 4pm and she went home. When she was asked if she was sure about this, she agreed that after the visit to the house, she and R3 went out to the club Annabel's for dinner and then onward to smoke cigars until about 5am. She was keen to go out with him that evening because she emailed him at 6:35pm asking "*can we go now".* R3 asked if she could wait and she said she "*needed to feel that cigar on her lips*". She said it was a joke.

113. At 7pm she messaged her boyfriend saying that tonight would be a late one and at 9:30pm she messaged to say she was smoking such a good cigar and that they would be going out to Annabels and on to a casino. She did not get home until 5:30am. Her boyfriend was a bit concerned about her late night, as they were due to go flat hunting early the next morning (a Saturday).

114. The claimant sent R3 a message (page 321 bundle 2) thanking him for a lovely day and evening. She confirmed that when she sent that message, at the time it was genuine, but she did have some concerns about what she thought were R3's creepy comments at the house. These are comments we find he did not make.

115. On Sunday 9 April 2017 R3 messaged the claimant to say he was going into work. She messaged back saying that she was in the garden in the sun in her bikini. She asked: "*where is your pool when we need it".* The claimant agreed in cross examination that it was she who initiated the topic of the swimming pool and she who volunteered the information that she was wearing a bikini. She said it was a joke.

116. We find that it was the claimant who initiated the topic of the swimming pool because she wanted to swim in it. There were no repeated invitations from R3.

R3's trip to Mauritius

117. In early April 2017 R3 told the claimant that he was going to Mauritius for a break. They disagree as to whether he told the claimant that he was going with two female models and that he was not telling his wife. R3 denied this, he originates from Mauritius and said he went with his wife

and family. The tickets were in bundle 5 and at page 897F, for four passengers, one of whom was shown as "Mrs" which R3 said was his wife. Who he went with was not in issue before us, so we make no finding on it.

118. Before his departure for Mauritius, R3 gave the claimant a list of work to do. This included writing a report on his planning matter plus a number of other matters. While R3 was away, they had email correspondence about how she was getting on with the work. She told him how she was getting on with the planning matter and he asked how she was getting on with all the other work.

119. He asked her why she had held up the other work and she said she was sorry and she would get on and dictate the letters. She had spent the majority of her time on his planning matter. The claimant took the view that R3 was suggesting that she had not been working hard enough and she thought this was unreasonable. She said she had worked really hard on the planning matter and she thought he was nit-picking.

120. In a message at page 312 she said: "*sorry for letting you down, I got massively sidetracked".* It was put to the claimant that she said this because she realised she had not been working hard enough and that R3 was entitled to be unhappy about it. The claimant denied this and said she was simply telling R3 what she thought he wanted to hear. In evidence the claimant said that there may have been a miscommunication because she had not understood what R3 wanted her to prioritise.

121. The claimant did not accept that R3 was picking her up on work-related matters in a way which was reasonable for a supervisor to do. The claimant found it difficult to accept work related correction. In messages with her best friend she described R3 as "*bipolar*" when he said things that were negative and not in keeping with their social time out. It was the claimant's case that what R3 was doing, was penalising her for refusing to give him swimming lessons. The claimant's case was that he pestered her for swimming lessons for the week after she had visited his house. He was in Mauritius that week so we find he did not pester her for swimming lessons that week.

122. We find that the only time he mentioned swimming lessons was in the message referred to above and which we find was part of their close friendly relationship. We find he did not pester her for swimming lessons. This was not a case of retribution. He had reasonable concerns about the lack work she had done during his time away.

<u>The Land Registry fee</u>

123. There was also an issue about a £3 Land Registry fee which the claimant had incurred on a personal basis. The claimant does not deny that she incurred this fee and that it was personal but she considered any reprimand to be a penalty for her refusal to give swimming lessons.

124. The first and second respondent were investigating an issue concerning about £2,000 to £3,000 of unallocated Land Registry fees and they were particularly looking into the actions of their property consultant, Mr IA who gave evidence to this tribunal.

125. R3 asked the claimant to prepare a statement explaining how she incurred her personal Land Registry expense. He sent her a template for the witness statement and she took huge exception to the fact that it was in the format of a statement used in criminal proceedings. The claimant submits that she was placed on a "*disciplinary tight rope*".

126. The claimant thought that the property consultant had not been asked to write a witness statement. She agreed that she did not know and that she was speculating. No form of disciplinary action was taken against the claimant concerning her personal Land Registry fee. The relevant email was at page 39a of bundle 1 section 2 dated 17 April 2017. R3's evidence was that the claimant was not considered the culprit within the wider investigation. He considered the wrongdoing on her part was obtaining the search without finding out how she should pay for her personal expense.

127. R3 was also not happy that the claimant had not done the work he had left for her when he departed for Mauritius. We saw his messages to her at bundle 2 page 326 on 14 April 2017 in which he said:

> *On the employment contract, I think you should thank…your lucky stars that you have not been given until now… Because you would have been on a final written warning… This is leaving aside that I am extremely pissed off with you about the work that should have been done by yesterday evening…"*

Gifts of perfume

128. On his return from Mauritius R3 bought gifts of perfume for about eight members of his staff including the claimant. The name of the perfume given to the claimant was "Good Girl" from the luxury brand Carolina Herrera. All the gifts were distinctive. The fragrance given to the practice manager was in a bottle in the shape of the handbag because she likes handbags. There was a fragrance given to a man, TB, which was in the shape of a Lacoste polo shirt because he likes the brand Lacoste.

129. In a message exchange with her boyfriend on 16 April 2017, in relation to the Land Registry fee (page 1813 of bundle 7) he told her to "*play the dirty game*" with R3 and she replied; "*yeh I am good at that*". This was on the day of the perfume gift giving. Her boyfriend gave her good advice about keeping her distance from R3 telling her not to be "*pally, pally*" with him (page 1814 bundle 7). She did not take his advice.

130. On 22 April 2017 the claimant sent R3 a WhatsApp message saying *"OMG I just opened up and used the perfume today and it is sooo nice!!"* (bundle 2 page 333). She described it as "*a spot-on choice*". The claimant's evidence was that she did not object to the gift, she thought it was nice and agreed she was not singled out by R3 in the gift giving. What she objected to was his alleged comment that "*sometimes it feels good to be a bad girl*". She said this made her cringe. R3 denied making this comment. He agreed that if the comment was made, it was sexually suggestive, but he said he did not make the comment.

131. If R3 had made the comment then we find that her over the top enthusiasm for the perfume, some days later, would be out of place and inconsistent

with being harassed and "*creeped out*" (her statement paragraph 43). We find on a balance of probabilities that he did not make the comment.

132. Her comment about suing him was on 17 April 2017 and came about as a result of being picked up on her Land Registry fee. She said: "*I'll sue him. I'll put in the coke allegations, all his dirty laundry for everyone to see. He won't want him to come to Court, he'll have to settle",* the day after the perfume giving. She was already contemplating bringing proceedings against him.

Going out socially to discuss the Amsterdam team weekend away

133. On 27 April 2017 R3 sent the claimant an email asking if she wanted to go for cigar with him on Friday, namely 28 April 2017. It is not in dispute that the claimant likes cigars. She agreed to go.

134. The claimant and R3 went for cigar after work and he had previously asked her if she would like to go out for dinner to discuss plans for the Amsterdam team building session in May. The claimant said that he wanted to make sure that they were in the same team for an Apprentice style challenge during the trip. R3 denied this saying that there was no reason to do so. They were already spending a lot of time together socially and the challenge would only take up two to three hours.

135. The claimant admits (statement paragraph 48) that she agreed to go for dinner with R3 and they went to the Park Chinos restaurant in Mayfair. She was pleased that he was being nice to her and pleased that he wanted to discuss these "*important plans*" with her. She was keen for him to bring his Ferrari that day, as opposed to his Mini as they were going out to play roulette afterwards (email page 99 of bundle 3). We find that Amsterdam was not the only matter on her mind and it was not the main purpose of their social night out together. The email subject relating to that night out was "*Re Gambling"*.

136. The claimant says that R3 kept putting his hand on her knee when they were out for dinner. He denied this and said that he sat opposite her so this was not possible (statement paragraph 50). We find that if going out to a restaurant for dinner, it is much more likely and we find on a balance of probabilities, that they sat opposite each other. Most tables for two are designed for people sitting opposite one another. We accept his evidence and find on a balance of probabilities that he did not touch her knee at all.

137. The plans to go out for a cigar followed by dinner afterwards were made in advance. The claimant accepted in evidence that the impression given in her witness statement was that the suggestion of going for dinner came whilst they were having cigars, was incorrect.

138. The claimant accepted in evidence that prior to May 2017 she had not made it crystal clear that she was not interested in R3 or in going out and doing the things he invited her to do. She said: "*I don't think I had made it crystal clear to him that I wasn't interested in going out and doing all the other stuff, so he wouldn't have known*". She did make it clear that she would never cheat on her boyfriend.

139. In the first week of May 2017 the claimant went on holiday to Marbella. She sent R3 a rather posed photo of herself on her holiday (bundle 5 page 932) with a cocktail in hand. By contacting him from her holiday with a photograph of herself, she was not making it clear that she was not interested in him.

The firm's trip to Amsterdam

140. On Friday 12 May 2017 the firm went to Amsterdam for a teambuilding weekend away. Twenty members of the firm went on this trip. They took two flights, ten people on each flight. It had been planned five or six months in advance, before the claimant joined the firm.

141. The claimant said that R3 asked her to meet him at the airport beforehand to have something to eat in the private lounge. Her evidence was that although she felt nervous about being alone with him she *"knew [she] had no choice but to go along with what he told [her] to do*" – (statement paragraph 51). R3 denied this. His evidence was that he was running late for the flight and he was the last person to arrive at the airport. He said that the claimant suggested the day before that they meet up at the airport because she wanted to go to the MAC make-up counter and R3 said they could go together.

142. When he arrived he checked in and went to the Louis Vuitton shop. The claimant texted him to find out where he was. We saw the messages in bundle 2 at page 339. She left the 8 other members of staff she was with, in order to meet him. We find she chose to do this. They went to get something to eat in the airport lounge. R3 has access to the airline lounge but the claimant did not. We find she was not pressurised into meeting him or spending time alone with him. It was consistent with their relationship and something she wanted to do.

143. Once they got to Amsterdam and after they checked in to the hotel, the claimant said R3 suggested that they buy cannabis. She said she felt compelled to go with him and buy it because "*she had the money*". She said she felt that she could not simply hand some money over to R3 to make the purchase himself. She said she felt compelled to go.

144. R3 said that he had money on him and that it was the claimant who was keen to go out and buy cannabis. Ms JB's (a former paralegal with the firm) was present and she said the claimant was keen to go out to buy cannabis.

145. The claimant does not disagree that she was excited about smoking cannabis for the first time. In contemporaneous messages with her boyfriend she expressed excitement about buying "*blunts*", which we were told were cigars with cannabis. Ms JB said the claimant wanted to try drugs and experience getting high and it was she who suggested it. R3 and the claimant were both keen to take cannabis that weekend and we saw this from their contemporaneous messages (pages 338 and 339 bundle 2 dated 12 May 2017 - the date of travel).

146. We find that the claimant was equally enthusiastic about taking cannabis. We find that she was not pressured into carrying R3's cannabis for him.

The joints were in her handbag, because she was carrying a bag and he was not. She was not pressurised into buying it or carrying it.

147. The claimant's case is that R3 "*instructed*" her to come to his hotel room, remarking that he would "*come and drag [her] by the hair*" (page 340 of bundle 2) and that he pressured her to sleep in his room. R3 admits the comment about '*dragging her by her hair'*. He said that the comment was made in jest. He said that the claimant had asked him to be ready to go out by a certain time and when he was ready, she was not, so he said this as a joke.

148. His message was in the context of getting ready to go out on the evening of 12 May 2017, their first evening in Amsterdam. At 7pm he asked her "*Are you nearly ready"* and there were messages about her make-up not going right, them both saying they wanted a "*spliff*", he made the comment about dragging her by her hair and her reply was "*stop getting your knickers in a twist im coming"* followed by "*my shoe broke".* We find that the comment about dragging her by the hair was all in the context of their friendly dialogue as they got ready to go out.

149. The remark was made not in the context of instructing the claimant to come to his room. It was in the context of them getting ready to go out of their hotel rooms. Neither did R3 pressure her to sleep in his room. He suggested, bundle 2 page 339, that she have a nap so she could stay out late. He did not suggest that she have the nap in his room.

150. The claimant and R3 made plans to smoke cannabis during the day before the firm went out together in the evening. When R3 invited her by WhatsApp message to come and smoke it on his balcony, she replied *"Yesssss"* (page 339 of bundle 2). The claimant admitted that she was "*a little bit excited*" to smoke it for the first time and she said she had to show R3 that she was happy and excited. She said that she was not happy to be smoking it alone with him, but she did not tell him this. The claimant's oral evidence was that she was not reluctant to smoke cannabis, she was just reluctant to smoke it alone with R3. We find based on the above, that R3 did not pressure the claimant to take cannabis, she was keen to do this.

151. After dinner 6 members of the firm went to a live sex show in Amsterdam. The claimant said she did not know who initiated the attendance at that show. A ticket had been purchased for her and she went. R3 said that three of the junior members of the firm were keen to "*experience Amsterdam*" and go to a sex show and they made the suggestion. Ms JB confirmed this in her evidence. To avoid going to a dubious location and for the benefit of everyone who wanted to go, R3 asked the hotel if they could organise six tickets, which they did.

152. The attendees in addition to the claimant and R3, were one male Partner of the firm Mr AK who gave evidence to the tribunal, one female solicitor and two female legal secretaries. R3 sat next to his male partner at the end of a row. He did not sit next to the claimant who sat at the opposite end of the row. In late night messages with her boyfriend she said she had smoked 2 more joints. We find that R3 did not 'engineer matters' so

that the claimant would have to sit next to him at the show, because she did not sit next to him at the show. We find that R3 did not pressure the claimant into attending the sex show. We find that the arrangements for attending the sex show were as set out above.

153. The claimant also did not deny that whilst in Amsterdam and together with two others, she ate the larger part of a cannabis hash brownie which made her feel very unwell. She described it as a "*near death experience*", it was that bad. She felt as if the room was going round and round, her heart was racing and she had never felt this bad in her life before.

154. The claimant's case is that R3 pressurised her to eat it. In their message exchanges which we saw at bundle 4 page 535, he said: "*you ate it like it was cheese*" and she replied: "*I was hungry".* She asked if she was a laughing stock in front of the others. She did not reply by saying anything to the effect that he had pressurised her into eating it. We find on a balance of probabilities that R3 did not pressurise her to eat the cannabis. She was excited to try it and was keen to experience it. She ate it of her own free will.

155. Her evidence was that when she described to R3 how bad she was feeling he put his hand upon her breast pretending that he was checking her heart rate. She said this lasted a few seconds and she did not tell him to get off. She described her reaction as shocked and stunned. She said that she feared that he was going to rape her.

156. We saw a message at page 1553 in bundle 6, where the claimant told her best friend on 31 October 2017, long after this event, "*I don't think he's rapey – he's just a head f**k".*

157. R3's evidence was that the claimant complained that her heart was racing, she said she felt like she was dying and she took hold of his hand and placed his fingers on her heart area. He said he told her she should go back to her room and rest. We find on a balance of probabilities that R3's version of events is correct. We find that the claimant's memory of events was clouded by her consumption of cannabis and alcohol.

158. We saw video footage of the claimant in R3's hotel suite with the two other members of the firm. The footage was taken by the claimant's secretary. She was wandering in and out of the room to the balcony.

159. The claimant's position was that neither the cannabis nor the alcohol she had consumed had any effect upon her memory of events. Yet she said it caused her to believe that her deceased grandmother was speaking to her.

160. There is a dispute as to whether R3 tried to unzip her dress or that he suggested it. As we have found above, he told her she should go back to her room and rest. She says he tried to do unzip her dress and she said she would sleep in her dress. He said that was in such a poor state she had no alternative but to sleep in her dress and he did not try to unzip it. We find that he did not attempt to take off her clothes. Again we find that the claimant's memory of events was clouded by her consumption of cannabis and alcohol.

161. In a message conversation with R3 the following day she said that the hash cake had a really "*f***ed up her life"* - bundle 4 page 535. In her message to R3 the following morning (page 540) she asked if she could come to his room to straighten her hair. It was put to the claimant that it was very strange behaviour if she thought he was going to rape her, that the following morning she asked to come back to his room.

162. The claimant went to R3's room with her hair straighteners - there was no absence of electrical sockets in her own room - and said that she did so because she wanted to have a conversation with him. The claimant was asked why she did not seek to have the conversation with him in a more public place in the hotel or elsewhere.

163. She said she wanted reassurance that R3 was not angry with her because she had missed the work awards ceremony due to feeling unwell after consuming the cannabis cake. We find it implausible that the claimant would go back to the room of the man she said she feared was going to rape her the previous night. We find that she did not fear this and had no good reason to, otherwise she would not have returned to his room in the morning.

164. She proceeded to straighten her hair in the bathroom of R3's room whilst he fixed his own hair in the mirror alongside her.

165. The claimant's colleagues were not impressed with her behaviour in Amsterdam. Although many of them had engaged in "high living" in Amsterdam all 20 of them (excepting the claimant) were able to continue with the work-related activities on the trip. The claimant's behaviour on the Amsterdam trip led to a particular breakdown in the relationship between herself and the practice manager E.

<u>Extending the claimant's probationary period – 19 May 2017</u>

166. On return from Amsterdam R3 and his business partners had a discussion about the claimant. R3 also had a separate discussion with his practice manager. He said the business partners and the practice manager all wanted the claimant dismissed. They thought that she showed poor judgment in allowing herself to become so intoxicated in Amsterdam that she was incapable of taking part in the work-related activities the following day.

167. R3 did not share this view, he thought that the claimant was irresponsible and careless but she had not deliberately put herself in a position of being incapable of taking part in the rest of the teambuilding trip. His view was that as a solicitor and someone who was capable of taking care of herself, she should have handled herself better.

168. R3 made a decision, that the Amsterdam incident taken together with other incidents such as her mobile phone usage and the Land Registry fee and her failure to complete work tasks while he was away meant that he wished to extend her probationary period. The letter dealing this was at page 101 of bundle 1, section 2. R3 wanted the claimant to re-serve a three-month probationary period and then extend it until 31 December 2017. He said that if there were no more incidents this period could be

curtailed.

169. On page 103 the letter told the claimant that she should demonstrate loyalty both to R3 personally and to the firm. It was put to R3 that demonstrating personal loyalty meant accepting his sexual advances. He denied this. R3 said that references to himself personally and to the firm amounted to the same thing. He also took the view that she should demonstrate loyalty to him because he had demonstrated loyalty to her when his business partners and practice manager wanted her dismissed.

170. The letter said that due to intoxication she had missed work events on the Amsterdam teambuilding weekend, that she had failed to set an example and her actions were unbefitting of a solicitor and that she had brought the firm's reputation and procedures into disrepute causing embarrassment to her colleagues.

171. The letter reminded the claimant about previous poor lack of judgment in relation to mobile phone use, the Land Registry fee and her inability to carry out tasks whilst R3 was away, concentrating on one matter rather than dealing with other pressing matters. The letter said:

> *"It must be very clear to you that this is your last opportunity to see through your probation period without further conduct issues where poor lack of judgement arises on your part and your performance must meet the standard required. Whilst I fully appreciate that the step I have taken is one which will last until the end of the year, I am also providing you the opportunity that at my discretion I will cut short the probation period if you are able to demonstrate between 22 May 2017 and 31 December 2017 as to why your probation period should be cut short in that you have redeemed yourself, you have regained my trust, and you have demonstrated a great sense of loyalty to myself and the firm. In other words, you must demonstrate good reasons for cutting short your probation period prior to 31 December 2017."*

172. The claimant's case is that R3 extended her probationary period to demonstrate his power over her. Clearly R3 did have power over her because he was her supervisor and effectively her employer as he owned and controlled the two law firms. He said in the letter that other members of staff were affected by her conduct in Amsterdam. He was not happy that other members of staff had told him that she had alleged he had "*peer pressured*" her into consuming the cannabis. This was not the case as we have found above.

173. Whilst the comment about personal loyalty is unusual, we find in this context it can be explained. If, as he understood it, the claimant had alleged that he pressurised her into taking cannabis in Amsterdam, when it was not true, this was an act of disloyalty. We also find that in the emerging bad relationship between the claimant and the practice manager, he had supported the claimant. He also said she was a valued member of staff and that she had potential to develop into a very good litigation lawyer.

174. We find that the extension of the probationary period was because R3 had his reservations about her conduct and performance and her probationary period would otherwise have expired the following day on 20 May 2017.

175. On 19 May 2017 R3 said in relation to the office gossip situation that there

was a "*cross fire love triangle*". He admitted making this comment and said that it was in jest. There is no doubt and we find that the claimant and the practice manager E did not get on. We make findings below as to the claimant's comments, regarding working at R3's home, that E was considered second best and the claimant wanted to be in first place in R3's attentions. It caused dissention between the claimant and E. Likening it to a "*cross fire love triangle*" was not the wisest of analogies but we find nevertheless that it was a joke and it was an acceptable joke in the context of their close personal friendship. We find that R3 did tell the claimant that E wanted her dismissed. This was not harassment related to the claimant's gender but an accurate reporting of what E had said.

Trip to Northampton County Court 26 May 2017

176. Not long after the Amsterdam trip, on 26 May 2017, the claimant accompanied R3 to Northampton County Court on a bankruptcy case they were working on together.

177. After attending court they went back to the hotel where their client was staying, to update her on the case. They then travelled back to London together in R3's car.

178. The claimant said that they stopped at a complex on the way back. They went to Nando's to get something to eat. In evidence, the claimant initially gave the impression that they had stopped at a motorway service station and she was unable to leave because she was otherwise stranded and needed R3's transport to get home. She said in oral evidence: "*He wanted me to go to Nando's and he was driving and I had no other way of getting home".* It was a Friday night and she said she would much rather have gone out with her boyfriend. The claimant also admitted that she told her boyfriend a lie (bundle 7, page 1866) that they had to go back to the office to draw up an Order for the court.

179. The place where they stopped was the Finchley Road shopping and cinema complex next to Finchley Road tube station. Had the claimant wished to go home to go out with her boyfriend, it was open to her to go to the tube station and take a train home. Instead she told her boyfriend a lie about having to go back to the office. We find that on that occasion she preferred to go out with R3.

180. The claimant's case is that on 26 May 2017, following a complaint she made about the gossip in the office about her and R3 and following her refusal to attend a Rita Ora event at Annabel's, he made veiled threats about damaging her career. It was clarified that this was a Dua Lipa event and not Rita Ora which was on 27 June 2017, as set out below.

181. The claimant's case was that after they had been to Northampton County Court R3 invited her to the event, she said she did not like the artist as much as other staff and he said if she did not come she would get "*left behind*", he would "*forget about her"* and she would "*no longer be in his circle*". In her witness evidence and in the List of Issues, this was referred to as a Rita Ora event. The claimant's evidence was muddled about this, especially as her evidence was that she did not like Rita Ora as much as

other staff. We find she does like Rita Ora and she attended the event at Annabels to see Rita Ora on 27 June 2017.

182. R3's evidence was that he had been told by several members of staff that they would not go to see Dua Lipa if the claimant attended. They were unhappy about her conduct in Amsterdam. R3's evidence was that the claimant was upset that she had not been invited and told staff that she could not make it, which was untrue.

183. We find that the claimant was upset at not being invited. On the evidence we heard, we find that this is the sort of event that she would like to go to. We did not see any evidence of her turning down glamorous evenings out. We find on a balance of probabilities that R3's evidence was the more credible and we prefer his evidence that he did not make any veiled threats about damaging her career.

Cocaine allegations

184. The claimant's evidence about this was detailed and she relied on the amount of detail as being persuasive of the truth of her evidence. She said that on 19 May 2017 R3 produced a glass or mirrored tray from under a table and that it contained packages of cocaine covered in red and white wrappers together with other drug paraphernalia. She also said that he bragged to her that he had been to a police station with a client and all the time he had a wrapper of cocaine in his pocket.

185. As we have found above, back on 17 April 2017 the claimant had messaged with her boyfriend making allegations that R3 was a cocaine addict and saying she would sue him and use this to force him to settle. On her own case, she had not in April 2017, been shown any cocaine by him. In a message with a friend on 30 May 2017 she said: "*He showed me his coke collection the other day"* (bundle 1 section 2 page 105).

186. On 16 April 2017 the claimant had a long exchange of messages with her boyfriend about R3. She was clearly very angry with him. She was furious that the Land Registry fee issue had been raised (page 1812). She said: "*I think I'm going to get fired".* Her boyfriend advised her to "*build up her own bank of evidence against him*". He told her it was time to "*play the dirty game*" (page 1813) which she said she was good at. He told her to create a distance with R3 (page 1814), he told her to "*become a good liar*" (page 1817), she said she was looking at an in-house lawyer job (page 1831), she mentioned sexual harassment but she did not know "*if it borders into that enough for me to claim it*" (page 1834) and said she would meet her friend who was an employment law paralegal as "*she must know something*" (page 1835). Two days earlier (page 1808 on 14 April 2017) she told her boyfriend that she was going to "*stop messaging him back / entertaining him*" and "*see how he likes it when I tip him off to the sra for a random drug test".*

187. This exchange showed us a great deal about the claimant's character and intentions and her reactions when picked up on matters at work which were negative towards her.

188. R3 denied the cocaine allegations. He said he has never taken cocaine

and that the allegation is serious, scandalous and without foundation (statement paragraph 68). The respondent submitted that the claimant's intention was to destroy R3 and we have set out her messages on this above. The messages showed she has very malign intentions towards him. We had to make a finding on a balance of probabilities and we find that the cocaine allegations form part of these malign intentions and are untrue. In support of this finding, we make further findings below in relation to the claimant's suggestions that R3 may have tried to drug her.

189. For the same reasons we find that R3 did not make the comments about sex and cocaine set out in issue (q) above.

Jewellery shopping on 6 June 2017

190. In early June 2017 the claimant told R3 that she was looking at engagement rings with her partner. He said he was looking for a birthday present of jewellery for his wife. He suggested that she accompany him jewellery shopping.

191. In an email on 5 June 2017 in bundle 3 page 100 she said: "*Half a day to go shopping….your [sic] making my dreams come true".* This was a weekday when she would otherwise have been working. We find that she was very keen to go on this shopping trip.

192. The claimant suggested to R3 a lie that they could give to the rest of the staff to explain their whereabouts (page 323 bundle 4). It was put to the claimant that she could have said she did not want to go. She said she did not want to put him in a mood and it was better to go along with it. Our finding is that she was perfectly happy and even keen to go. She said in an email on 6 June "*Just tell her we are going shopping for engagement rings – no biggie".* She was enjoying the controversy that the jewellery shopping might create with other members of staff, in this case practice manager E and joking that it would look like they were getting engaged.

193. The claimant's case is that R3 told the shop assistants that she was his fiancée. R3's evidence was that the claimant tried on some jewellery of her own volition, asked him to take photographs of her doing so; he did so and sent them to her. They went to some very prestigious jewellery shops.

194. We find based on the substantial amount of evidence which showed us that the claimant was keen on having her photograph taken wearing nice things, that she voluntarily tried on expensive jewellery, that she asked R3 to photograph her wearing it and asked him to send her the photos. In bundle 2 page 349 she said "*can you send me the nice ring pics please"* with a smile.

195. We find that if any assumption was made by the shop assistants that they were an engaged couple, the claimant was a willing participant in this. We find this based on her email earlier in the day suggesting they tell R3's staff they were shopping for engagement rings. We find that even if R3 told the shop assistant the claimant was his fiancée, it was part of a shared joke initiated by the claimant in the earlier email.

196. We find that he did not ask the claimant to wear a low cut top when they

went shopping. Firstly they were not shopping for necklaces and secondly they were going out straight from the office when we find the claimant would not have been wearing a low cut top, but an appropriate office shirt or top.

197. The claimant and R3 stayed out all afternoon jewellery shopping and afterwards went shopping in Harrods which stays open until 9pm. As it was late R3 suggested dinner as he had been fasting all day for Ramadan. The claimant suggested a restaurant, he thought it was too far away, so they went to dinner at a restaurant called Sexy Fish and went out after that to smoke shisha. The claimant admitted that she had told R3 that she would eat lightly that day to keep him company.

198. During dinner they had a conversation about a former employee named GB. The claimant said that R3 told her they were close and the rest of the office thought they were "*shagging*". The claimant's case was that she asked him whether it was true and he said: "*a gentleman never tells, but when you spend enough time together it happens*". She said these were his exact words.

199. R3 denied this version of the conversation. He agreed that he and GB had been close. He said GB coined the expression that they were like "*two peas in a pod*". He denies any comments regarding "*shagging*" or "*a gentleman never tells*". He thought the claimant seemed jealous and put-out when hearing about his closeness to GB.

200. R3 agreed that GB once came to his house and he gave her a tour. He said she was polite about it and did not go wandering off by herself in his house as the claimant had done. He also agreed that GB was part of a group of 10 members of staff who went to the casino at the Playboy club and he taught her to play roulette by showing her around the tables watching other people play.

201. The termination of GB's employment was a complex matter. She resigned during the course of an investigation. GB had been the practice manager at the firm. She and the claimant did not overlap in their periods of employment. GB's personal life was complicated and it over-spilled into the work environment and became disruptive. The claimant gave evidence in her statement about all the things that GB had said to her. The claimant as a solicitor is fully aware that this is hearsay. There was no application for a witness order for GB so we did not hear from her. We have no proper basis for any findings about what happened to GB and we do not make such findings.

202. The claimant said that she was disgusted by R3's comments about GB. Nevertheless she went out with him after dinner to smoke shisha. She did not make any excuse to leave and said that this was because she "*did not want to offend him*".

203. We find that the claimant was not disgusted and shocked by R3's comments about GB (as stated in her witness statement paragraph 80). He was concerned that he had told her too much about himself that evening and she replied at 2:11am "*oh shut up…."* , she described himself

as his counsellor. He said he thought too many "*trade secrets"* came out which were "*too juicy"* and she replied at 2:26am "*nah it's never too juicy for me".* We find she was not offended, disgusted or shocked by anything he said that night.

204. It is also the claimant's case that during this evening and whilst they were smoking shisha, R3 told her she was "*boring and vanilla"* for only having sex with one person. R3 said that the claimant initiated a conversation about sexual partners, asked him about his sexual partners and his view of cheating. We find that in the context of their close personal friendship, they had mutual conversations which involved sexual matters. This was not unwanted conduct because the claimant was an initiator and willing participant in the conversation.

205. Had R3 made the comments at dinner that the claimant relies upon and which she says were sexually harassing of her, we find that she would not have gone out with him after dinner to smoke shisha and then continue with friendly messaging to about 2:30am. We find on a balance of probabilities that he did not make those comments. He gave her some background to the GB matter which concerned her personal life and he felt he had given her too much information including information about his own childhood. She had no objection to hearing about it, she described herself as his counsellor.

206. The claimant's case is that during that evening R3 told her that he cheats on his wife and that "*cocaine gets me very horny; there is nothing sexier than snorting a line of coke off a girl's chest"*. R3 denied this. He said that the "*trade secrets*" he had told the claimant that night were about his childhood. This was consistent with her describing herself as his counsellor. We find on a balance of probabilities that he did not make this comment. Even if he did, her reaction to the evening in subsequent emails leads us to find that there was nothing unwanted about the comments and she took them in her stride.

207. At 2:02am the claimant sent R3 a message thanking him, as she always did after their late nights out, for a nice evening. The claimant denied that this was flirtatious and said she was just seeking to reassure him because he was worried that he had told her to much the previous night.

<u>More jewellery shopping on 8 June 2017</u>

208. The claimant and R3 went jewellery shopping again on Thursday 8 June 2017. They went to Tiffany's, the jewellery retailer, to buy his wife a bracelet as R3 said his wife had decided she wanted a bracelet for her birthday rather than a ring.

209. Just after the second shopping trip on 8 June at 15:27pm the claimant emailed R3 saying (page 102 of bundle 3): "*That bracelet really is soo beautiful I can't stop thinking about it*". The claimant's case is that whilst shopping on 8 June 2017, R3 said: *"this bracelet looks so sexy on you"* and she said this made her feel embarrassed and uncomfortable. She also says that that he leant over and touched the bracelet on her wrist which also made her feel uncomfortable and upset and that she "*froze*".

210. The claimant said she thought that R3 was insinuating that he would buy her a £25,000 ring if she slept with him. On 14 June 2017 she sent an email to R3 in relation to the jewellery that she had tried (*page 329 of bundle 4) "I will enjoy remembering what they looked like on".* Her evidence was that she had no choice but to play along.

211. The only gifts that R3 ever bought the claimant was the gift of perfume from his Mauritius trip and a pen from a Ferrari store.

212. The claimant and R3 were in a close friendly relationship. Her evidence that she was uncomfortable, embarrassed and that she froze are inconsistent with the evidence as to her enthusiasm to go on these shopping trips during the working day, enjoying trying on the expensive jewellery and having her photograph taken wearing the jewellery and her positive comments made to R3 at the time.

213. We find on a balance of probabilities that the claimant very much enjoyed both shopping dates and that R3 did not tell her the bracelet looked "sexy" on her and that even if he did touch the bracelet while she was wearing it, this was with her consent and it was not inappropriate. It was in the context of their close personal friendship.

<u>The Rita Ora concert on 27 June 2017</u>

214. R3 obtained tickets for a Rita Ora concert at the nightclub Annabels on 27 June 2017. Tickets for this are not sold generally to members of the public. R3 is a member of Annabels and members can apply for a ticket allocation per table. Tables are sold in twos, fours or tens. There is less ticket availability the more popular the artist and Rita Ora is a popular artist. R3 opted for a table for two. He did not seek a table for four. He told the claimant that he thought they would have more of a laugh if they went together.

215. R3 booked a suite at the Mayfair Hotel for two nights, 26 and 27 June. The claimant accepts that it was his normal practice to book a suite at this hotel if he knew he was going to be out late. The claimant had suggested booking a table for four and going with other members of the firm. R3 booked a table for two, told the claimant about this and she replied "*sounds good*" with a smiling emoji (page 318 bundle 4). She said this was another lie.

216. R3 told the claimant to bring with her to the office a change of clothes so that she could get changed in his suite before they went out to the concert. The claimant agreed that she did not want to "*tart herself up*" at work and we accept this is a mainstream expression for getting ready to go out.

217. We find that the claimant was excited about going to the Rita Ora event. She emailed R3 during the afternoon of 27 June 2017 asking what time they were leaving and saying she was so excited for cigar and red wine and saying he had to drink it too (bundle 3 page 107). On page 108 her message said she said she was "*drained*" and asked what time they were leaving. It was put to the claimant that if she did not want to go, this was not shown by these messages. She said in oral evidence: *"I had to make*

out that I was very excited to go with [R3], he would sometimes say 'you don't sound very excited', so I had to keep reassuring him I was so excited to spend this time with him".

218. When the claimant arrived in the hotel suite she saw that R3 had hung up her dress. She said she felt "*violated*" that he had gone through her bag. He said in an email at page 106 on 27 June: *"Last night I hung your dress up so it does not crease……I panicked as there was only one dress and you had said you would bring 2 or 3 to choose from".* She replied: *"Lol yes I only brought one dress because knew I would get indecisive and end up giving you a fashion show for half an hour".* The claimant brought one plastic carrier bag containing one dress and one pair of shoes. It was not a suitcase or a hold-all with all sorts of personal possessions in it. In her email reply to R3 she did not object in any way to him going to the plastic bag and taking out the dress to hang it up for her. We consider it was a thoughtful gesture on his part. There was nothing wrong with this.

219. The claimant's case is that R3 "instructed" her to bring a few dresses into work so he could help her choose which one to wear. Both the claimant and R3 share an interest in fashion. We had a great deal of evidence before us of the claimant sending R3 pictures of herself in different outfits asking for his views, sometimes late at night. The email exchange to which we have referred in the paragraph above, does not bear out the claimant's case that he instructed her to bring dresses for him to choose. She said "*I would get indecisive"* not that he would be indecisive. We find it was clearly her own decision about what she would wear. R3 did not instruct her to bring a few dresses so he could help her choose which one to wear.

220. The claimant said that R3 commented that if she showed him she was a loyal member of the firm, he would buy her stunning designer dresses that would make her look like a model and she would not have to buy cheap dresses from Boohoo or ASOS. We find that R3 was not criticising her choice of clothing. He had treated her dress respectfully by hanging it up so it did not crease. We find on a balance of probabilities that he did not offer to buy her designer clothes if she showed she was a loyal member of the firm, so that she did not have to shop in cheaper outlets.

221. The claimant took a shower in the hotel bathroom before the evening event. She put on a bathrobe and began applying her makeup. The bathroom door was open and she was talking to R3.

222. The claimant's case is that in the hotel suite, R3 came into the bathroom and took a shower whilst she was applying makeup and that he walked around in her presence wearing only a shirt. Both these allegations were denied by R3. We find that R3 did not take a shower in her presence while she was applying her make-up. Her primary complaint was that he walked around in a shirt. If he had taken a shower in her presence, he would have been naked. We find he did not do this. We also find that he did not walk around in a shirt in her presence while she was applying her make up.

223. She said in her witness statement (paragraph 92) that he "kept" walking past her in just his white shirt, she did not know if he had his boxers on,

she was trying not to look and felt sick to her stomach as she "*knew it was not normal*". The claimant had chosen to be in his bathroom with the door open, she accepts that she could have applied her makeup in the living room of the suite (middle of paragraph 92 of her statement) yet she chose the bathroom. We find on a balance of probabilities that this is an exaggeration, she was not made sick to her stomach and we prefer R3's account of events.

224. Before going out they took some selfies. The claimant's case is that in hotel he made her take selfies of them both and he pressed his penis against her whilst doing so. The photos were at pages 938-939 of bundle 5. They were taken by the claimant. We saw the photograph, he was standing slightly behind her, but more side by side, we could see the gap between his legs in the photograph which showed us he was not pressing up against her. We had to make a finding on a balance of probabilities. We had the evidence of R3 and the claimant, plus the photographic evidence. Based on this, we prefer R3's account and we find that he did not press his penis against her whilst they took the selfies via the mirror. They both looked relaxed.

225. After dinner at Annabels, they stood up to watch the concert. The claimant's case is that R3 stood very close to her and pressed his penis into her back. The claimant did not tell him not to do this. She said she moved away and tried to stand side-by-side. R3 vehemently denied this allegation. He said that during the 45-minute performance they were mostly standing side by side and that much of the time he was moving around filming the performance on his mobile phone. He denied standing behind the claimant and denied the sexual allegation.

226. R3 said that if he done that, he believes she would have slapped him. In other messages with her best friend she referred to herself as being "*from Hayes and [would] slap him up"* if he made a move on her.

227. Notwithstanding the alleged sexual assault, the claimant went back to the hotel suite with R3 after the concert. Based on her phone messages she agreed that she did not get home until 4:30am so we find that at the very least she spent about an hour and a half with R3 back at the hotel after the concert. R3 suggested that as it was so late, she sleep at the hotel and he offered to book a separate room for her. The claimant did not dispute in evidence that he offered to book her a separate room. This was confirmed in a message at page 558 of bundle 4 which said: "*I did offer to get you your own room*". She preferred to go home and did so. She booked an Uber and went home.

228. The message she sent to R3 when she got home was at page 349 of bundle 2: *"thanks for such a nice evening, good food wine music sleep well xx".* The message included two kisses. The claimant said it was normal for her to add kisses in messages to her friends. It was put to her that she was sending this message to her boss whom she alleges had just sexually assaulted her. She said she did not want to "*spook*" him.

229. The following morning, 28 June 2017, the claimant was at work and R3 told her that he had booked a massage at the hotel. She emailed him

asking "*how's the massage"* and suggested that he bring the hotel fruit basket into the office. It was put to her that she was encouraging him. She denied this and said that that she was "*keeping the relationship positive*".

230. We find that if R3 had sexually assaulted the claimant at Annabels on 27 June 2017 she would not have gone back to his hotel room for at least an hour and a half after the concert. We find he did not sexually assault her. R3 did not repeatedly pressure her to spend the night in his hotel suite. We find that he offered her the option of staying at the hotel in her own room.

19 July 2017

231. The claimant's case is that on 20 July 2017 R3 instructed her to accompany him to a hotel suite and when they got there, he said: *"as soon as I bring a woman back to this suite I can almost hear them getting wet"* and suggested that the claimant should lie down on the bed so that he could take photographs of her. He strongly denied this. We find that the date in question was 19 July 2017 (bundle 1 section 2 page 133).

232. R3 had again taken a suite at the Mayfair Hotel on 18/19 July 2017. On the morning of 19 July 2017 the claimant asked R3 to go out for lunch and he said he was checking out of the hotel. He suggested that she come to the hotel for lunch.

233. The claimant came to the hotel and took some photographs of the suite, the balcony and the view for the firm's Instagram account. The respondents like to market to the fashion, hotels, food and holiday sectors and they seek also to impress overseas clients. The claimant asked R3 how much he had paid for the suite; he told her; it was in the thousands of pounds. He frequently stays in such suites. He had done so about three weeks earlier for the Rita Ora event.

234. R3 denies making the lewd comment attributed to him by the claimant. The claimant relied upon the hashtags with the Tate Modern chair exhibit. We have found above that Ms JB took ownership of three such hashtags and as a firm they realised that these hashtags were not appropriate and they toned it down. R3 denied asking the claimant to lie down on the bed for a photograph. We find that the claimant was keen to go to the hotel and take the photos. Photographing glamourous locations was something that she liked to do. There was no photo of her lying on any bed and we find that R3 did not ask her to do this.

235. We have considered whether he made the lewd comment set out in issue (gg) above. The claimant's evidence was that it made her very uncomfortable.

236. After taking the photos they went to the hotel restaurant for lunch. They returned to the office after lunch. R3's evidence (statement paragraph 100) is that after lunch the claimant asked to spend time in his office and she spent the evening sitting on his sofa while he worked and she did not leave until 12:50am on the morning of 20 July. We saw a message from R3 to the claimant timed at 1:28am telling her she had done well with the

photographs. This is consistent with his evidence that she left at 00:50 hours as they were in the habit of messaging each other after time spent together in the evening.

237. We find that had the lewd comment been made and the claimant had reacted as she said, she would not have wished to have lunch with R3 at the hotel and then spend the entire evening until past midnight with him in his office. We find that the comment was not made.

3 August 2017 travel back from Leicester Crown Court

238. On 3 August 2017 the claimant and R3 went to Leicester Crown Court, they had a conversation on the train on the return journey. The claimant's case is that R3 engaged in lewd conversation during that train journey. Her case is that he told her in explicit detail what the firm's partners did with girls at the Sophisticats strip club and said that his uncle liked *"hairy p***y"* and showed her a photo of a woman fully exposed.

239. R3 accepted that on the train journey there was a discussion about the fact that he and his two male business partners went to Sophisticats. He said the claimant pressed him for information about what they did and what happened there. He said she pestered him about six of seven times for this information. R3 said that the relationship between them had developed into a best friends style relationship. He said that the claimant was not afraid to tell him to "shut up" for example. We have made a finding above of her telling him this in a message. It was not like an employer/employee relationship, although of course it was such a relationship as well.

240. R3 denies the allegations about the train journey on 3 August 2017. He denies the comments and denies showing the claimant a photograph of a woman fully exposed.

241. We that there was a conversation about the club Sophisticats and what happened there because the claimant pressed R3 for the information. Later that evening the claimant modelled a number of her outfits and sent them in photographs to R3 (bundle 4 page 587 gave us the date followed by the photographs). This went on from about 9pm to 11pm. We find that had the claimant been so disgusted by being shown an explicit photograph and hearing about the goings-on at strip club, she would not have spent two hours of the late evening modelling her outfits for R3 including a playsuit. We find that that the explicit photograph was not shown and the discussion about the strip club was upon the claimant pressing R3 for the information.

4 August 2017

242. The claimant went to R3's house on 4 August 2017. He had invited her for dinner with the Chairman of Adam Global and he asked her if she would like to work at his house during the day before they went out. She agreed.

243. Despite alleging that R3 may have drugged her by slipping something into a Diet Coke she drank at his house on 28 July 2017 (see further findings below in relation to the Christmas party), she went to his house and out

for dinner with him a few days later on 4 August 2017. She suggested that they go out for red wine and cigars before going to the Caledonian club. He sent her pictures of cigars and she expressed her excitement about it. She said this was because although she like to smoke cigars, she did not want to smoke them with R3. The claimant accepted in evidence that R3 could not have known that she did not want to go out and smoke cigars with him.

244. Her boyfriend messaged her that day suggesting that she did not go out after dinner. She did not take his advice, she returned home at 3:30am as she went to Annabel's to smoke with R3. Her boyfriend did not know who she was with at the time.

245. After working at R3's house on Friday 4 August, she sent a message to him on Monday 7 August (bundle 4 page 349) saying "*Wait until E…hears we cooked and ate lunch together then fed each other baklava".* In an email later that day, R3 told the claimant that E thought she was now "*second best"* meaning second best to the claimant - (page 350). The claimant described E as "*a child"* saying "*why don't you just let her work with you at home for one day if she's soo worked up about it. You need to explain to her that she is second best. Lol."* We find that the claimant liked working at R3's house. This happened three times during her employment. We find that any invitation or suggestion that she work at his home was not unwanted conduct.

246. Following the trip to Athens, referred to below, the claimant said in relation to the practice manager: "*E looks like she has been crying all weekend. Wait until we post all the photos and videos in the Instagram group…."* (page 363 bundle 4). We find that the claimant was enjoying the rumours and was pleased that E was in second place to herself.

R3's Dropbox account

247. On 16 August 2017 the claimant, with R3's consent, accessed his Dropbox account because of some information sent by a client. The claimant opened another file and saw some sexually explicit content which she realised was private.

248. In messages with her boyfriend on 6 July 2017, (bundle 7 page 1913) the claimant made clear that she had accessed this accidentally and asked him whether she should lie or tell the truth about it. She was concerned that if she lied, Dropbox might be able to confirm she had viewed the file. Her decision as to whether to lie was based on how likely it was that she would be found out. Her boyfriend sensibly told her to tell the truth.

249. The claimant's allegation is that R3 sent her his Dropbox details so she could retrieve some documents for him and, inadvertently, the claimant discovered sexually explicit photos of him engaging in orgies. Her case is that he intended her to find these photographs. R3's case is that he did not intend her to find them and he did not know in any event that his Blackberry backed up to his Dropbox account.

250. The fact that the claimant asked her boyfriend if she should lie about accessing the file, shows us and we find that she realised she should not

have done so and R3 had not set her up to open it and find whatever was there.

Conversation about the end of the probationary period

251. The claimant accepts that there was a prior discussion, which we find was on or about 22 August 2017, about bringing her probationary period to an end. She wanted it to finish at the end of August and R3 agreed it could finish at the end of September provided there were no further incidents.

The trip to Athens 7 to 10 September 2017

252. From 7 to 10 September 2017 the claimant went with R3 to Athens for an Adam Global event. This is an international network of lawyers and accountants. The claimant accepts (statement paragraph 114) that she agreed to go with R3 on this trip. She thought he would take offence if she refused to go. She also said that the experience would look good on her CV.

253. R3's evidence was that he did not require the claimant to go to Athens. He gave her a choice. The claimant accepted in evidence that R3 had asked her a few months earlier whether she wanted to go and she agreed that she wanted to go.

254. The day before departure, the claimant sent R3 a timetable for the Athens trip. She said that all Thursday was free, so was Friday morning, Saturday was busy, but Sunday "*we are free all day"* (bundle 4 page 362). She said: *"what shall we do in our free time??"* R3 suggested a helicopter tour on the Sunday and the claimant asked*, "what about all of Thursday and all of Friday"* and told him not to forget to bring cigars (page 361).

255. She did not say anything along the lines of "*when we are not working I will be off doing the tourist trail by myself*". He mentioned time to "*take it easy and sun ourselves*" and she said she was "*Excited now*" (page 360).

256. Before they went to Athens the claimant knew that they would be spending free time together and that this would include time spent sunbathing. The claimant initially denied that she knew they would be sunbathing together. Although she accepted that they had discussed packing swimwear, she initially said she thought that this was just for a swim in the pool or going to a sauna. She later accepted in evidence that she knew that they would sunbathe together.

257. The claimant told R3 that she had packed as if she was "*going to marbs*" (Marbella). Her boyfriend had told her not to treat it like a holiday. We find that she did not take his advice and she treated it like a holiday.

258. They used the VIP service for Heathrow airport. The claimant was very impressed and told R3 that it was "*amazing*" and it would be difficult for her to go back to EasyJet after this. She said she did this to "*stroke his ego*". We find that she was stroking his ego.

259. The claimant's case is that during the Athens trip, R3 repeatedly asked her about her sex life, how many sexual partners she had had and whether she was interested in threesomes and he told her in detail about his own

experiences of orgies and threesomes. R3 denied this. He said that she volunteered information about her own sex life and complained that her boyfriend was pressurising her to have a threesome which she did not want. He said that she confided in him. He said that she volunteered the information that her boyfriend had been her only sexual partner.

260. The claimant and R3 spent huge amounts of social time together. They had long nights out together at nightclubs, restaurants and shisha bars. They drank alcohol while they were out together. They had formed a close relationship. We find on a balance of probabilities that their conversation was very wide ranging and at times quite personal. At times the conversation was about sex. R3 admits that at times they talked about intimate sexual matters. He said it was the claimant who raised these personal topics. There was no evidence that either of them voiced any objection to such conversations. The claimant did not tell R3 to stop telling her about such matters. We find that they both discussed sexual matters in the context of their close relationship and that it was a consensual conversation.

261. During their free time in Athens they visited the Acropolis together. There were photographs in the bundle of the claimant at the Acropolis. The claimant complains that R3 kept grabbing her hand. The terrain around the Acropolis is a little rocky and it is on a hill. The claimant was wearing block-heel sandals (photograph of the claimant in the sandals was at bundle 5 page 965). She accepts that she does not always wear the most practical clothing. She admitted that she stumbled, twice and he grabbed her hand to prevent her from falling. She said he did not need to continue holding her hand. She also said that he helped her down the slope.

262. The claimant's case is that R3 "*kept grabbing her hand"* when looking at tourist attractions. The only evidence we had was in relation to the visit to the Acropolis. We find that the claimant was not, on her own admission, wearing the most practical shoes and our finding is that R3 grabbed her hand to prevent her from falling and to help her down the slope and for no other reason.

263. They later went to the hotel rooftop bar to sunbathe. The claimant had applied suntan lotion to herself. R3 asked her if she would put suntan lotion on his back. She agreed and did so, but said it repulsed her. She said she had never touched another man in this way other than her partner. She said she felt seriously grossed out by doing it. She did not tell R3 that she did not want to do it.

264. Her case is that he should not have asked in the first place because he was her boss and they were on a business trip. Nevertheless we have found above that she packed as if going to "*Marbs*" and treated it like a holiday. Her evidence was inconsistent with her evidence about putting kisses at the end of messages to him, which she did for all her friends. The lines were blurred on both their parts as to the employer/employee relationship and their social relationship.

265. When R3 asked her second time to reapply suntan lotion, she said she did not want to because it made her hands sticky. He produced wet wipes as

a solution which the claimant said she found "*manipulating and conniving".*

266. The allegation is that R3 took her sunbathing and that he offered to rub suntan lotion on her and that he "instructed" her to rub suntan lotion on him. We find that R3 did not "*take*" the claimant sunbathing, they were out sunbathing together by mutual consent. She admits applying suntan lotion to R3 and although she said she did not want to, she agrees she did not tell him this. R3 said they mutually applied sun tan lotion to one another.

267. We saw in connection with their Dubai trip (referred to below) a video of R3 applying suntan lotion to and massaging the claimant on a double sunbed. This was an intimate picture where they both appeared relaxed. There does not appear to be any dispute that they both applied sun tan lotion to one another and we find that they did. The claimant on her own admission did not indicate that she did not want to do this or that she did not want R3 to do so. She went along with it. We therefore find it to be consensual in the context of the close friendship that they had developed.

268. In contemporaneous messages to her boyfriend, the claimant gave no indication that she was having a bad time or that she was struggling with R3's conduct towards her.

269. The claimant's case is that whilst in Athens, R3 tucked her shirt into her trousers, placing his hands quite low down her trousers. We have seen a photograph at bundle 5, page 969 showing us that the claimant at the relevant time wearing a jacket over her shirt. It was a photograph taken at a business event with a large number of people. The claimant did not tell her best friend or boyfriend about this incident at the time. The claimant said that at the time she tried to convince herself that he was "*just doing [her] a favour*", but that she felt disgusted and violated that he had put his hands on her. R3 denied tucking in her shirt. His evidence was that the claimant came to his room before the work event and asked if he could see the wrinkles in her shirt which he could, so he suggested that she button up the jacket.

270. The claimant and R3 had mutually rubbed suntan lotion into each other so some degree of physical contact was not out of place in the context of their close relationship. Even if he did tuck her shirt in, we find that this was with a view to being helpful and doing her a favour, as she initially thought and it was part of their mutual concern and interest in their external appearance. We find that he did not place his hand "*quite low*" down her trousers.

<u>Islands Nightclub</u>

271. They went out to an exclusive club that night called Islands which is about 45 minutes drive out of Athens. They stayed out until 5:30am. The claimant said she had tried to put him off going by saying that the club was a long way off, but she agreed that she did not say that she did not want to go. She said she was worried he would think she was boring and not going along with what he wanted.

272. The claimant's case is that at the club R3 told her he had asked another woman for a threesome and that she had said she was *"up for it"*. R3

denied this. He agreed that he was "*tipsy*" at the nightclub but not drunk. He agrees having a conversation with a woman who was standing nearby.

273. He said that the extent of the conversation with this woman was asking her if she was from Athens to which she replied she was and that she was at the club with her mother. He said when he recounted the conversation to the claimant she said: "*The girls from Athens are so pretty".* We find that it would be quite a high-risk strategy to go up to an unknown woman who was there with her mother and ask if she wanted a threesome. However, the issue for us is whether he reported back to the claimant, a conversation about a threesome.

274. R3's evidence is that it was the claimant who repeatedly made reference to "threesomes". The claimant said that he said these things, she was offended and told him to "*shut up*". She said she tried to convince herself that he was joking, but did not think he was. The claimant's first thought was that he must be joking. We find that if the comment was made then it was only in jest and in the context of their close personal friendship and in the context of them both discussing intimate sexual matters within the that friendship.

275. The claimant's case is that in the taxi on the way back from Islands, R3 rested his head on her neck/chest area as if to go to sleep and placed his hands on her knee and moved his hand up her thigh. He denied this. He said that they sat in the back of the taxi on opposite sides. In relation to being tired and putting his head on her, R3 agreed that at that hour of the night, around 4am, it is not unusual to be tired but that he is very used to going out and having very late nights. From the evidence we heard we have no difficulty in finding that he is accustomed to late nights out.

276. R3's evidence was that he booked the same taxi that took them out to the nightclub, to bring them back. This was to avoid the need to find a taxi late at night. It was a spacious Mercedes Viano. He told the tribunal that it has three seats at the back, he sat in the right-hand seat and he said that rather than sitting in the left-hand seat the claimant sat in the middle. He said she rested her head on him as if to sleep. He said that if the claimant had not been comfortable, it was open to her to sit in the left-hand seat.

277. The claimant said she "*kept moving away from him"* and he "*kept moving up*" to remain near her (paragraph 129 witness statement). This was a large taxi with enough room for three people in the back. Moving away from R3 entailed moving from the middle to the left-hand side.

278. The claimant's case is that at the end of the taxi journey, he asked her to take money out of his trouser pocket to pay for the taxi. It was put to R3 in cross-examination that he took the money out to pay for the taxi and he replied that this showed that he was not too drunk to do it himself. The claimant in her witness statement paragraph 130, agreed that R3 took the money out and paid for it himself. We find that he did. The issue is whether he asked her to take the money out of his trousers for him.

279. The claimant's case is that on their return to the hotel, he asked her to look

after him in his hotel room. He denied this. He said she volunteered this by sending him a message, which was at page 644 of bundle 4, saying "*just call me if you feel sick*". He said he gave her credit for this. We find it was the claimant checking up on him and offering help if he felt unwell. We find that it was not R3 asking her to look after him in his hotel room.

280. After Athens the claimant sent R3 a message (bundle 4 page 647) saying "*Thank you again for an amazing time in Athens!! Loved every minute*". If she had not loved every minute, this was very misleading for R3. We find that she loved the trip to Athens.

281. The claimant's offer for R3 to call her if he felt unwell on the return from the nightclub and her thank you messages for Athens, saying she loved every minute are not consistent with her case that she was sexually assaulted in the taxi or harassed by being asked to take money out of his pocket. We prefer R3's account of what happened and we find that these allegations are not proven.

282. The claimant took R3 out for lunch on 14 September 2017 as a thank you for the Athens trip.

283. The claimant and R3 had pet names for each other "*Ying and Yang*". They both used these names for each other. She referred to these pet names for one another in a message at page 674 of bundle 4.

284. They had a close personal friendship. If R3 did tell the claimant that she looked beautiful, then this was in the context of that close personal friendship that was close enough for them to have pet names for one another and to spend long hours out together at night. In submissions the respondent said that R3 admitted to occasionally giving the claimant a hug and we find that this was in the context of that close personal friendship. The only complaint about this was in relation to Athens, that he told her she looked beautiful and gave her hug.

285. The claimant's evidence was that this happened once (statement paragraph 125) and that it left her feeling uncomfortable and disgusted. She admits that she "*could not let him realise*" that she felt that way. He had no way of knowing, if it she really did not want him to do this, that this was unwanted conduct. After this they went to a nightclub, had sushi and discussed R3's forthcoming trip to Dubai. She gave no indication that she was not interested in the trip to Dubai.

286. We find that the hug and comment about looking beautiful was in the context of the close personal friendship.

287. The claimant sent R3 a message at 22:45 hours saying "*do you like my new pic. Changed it just for you*". (page 659 bundle 4).

288. On 11 September 2017 on their return, the claimant sent R3 an email at work at 11:47 saying "*Wish we were sipping Mojitos at the rooftop pool right now…"* (page 364 of bundle 4).

<u>The end of the probationary period</u>

289. On 11 September 2017 R3 sent the claimant an email ending her

probationary period (bundle 1 section 2 page 146). It was put to R3 that the claimant had demonstrated a willingness to go along with his sexual advances and that is why he ended the probationary period with effect from 30 September 2017. We find that if it was R3's aim to succeed in sexual advances with the claimant, he had not achieved this objective and if the claimant's position was correct, he would have needed to keep the probationary period hanging over her head. We find against the claimant on this.

290. Three days later, on 14 September 2017 (page 147 bundle 1 section 2), they had a dialogue about Dubai. They were chatting about it. R3 said he had not yet made the decision whether to take the claimant. It was a suggestion at that time.

291. On 12 September 2017 the claimant told R3 in an email that she would make "*any flight work for [her]"* (email bundle 4 page 373). She suggested that they have one day "*dedicated to just chilling/getting our tan on by the beach*". We find that she was keen to go, sunbathing together was definitely envisaged and that she actively sought time for this by requesting an extra day for the trip.

292. It was put to him that he was arranging the Dubai trip 'hot on the heels' of Athens to further his sexual desires towards her. He denied this. We find that he was not.

Firm drinks on 28 September 2017

293. On 28 September 2017 there were firm drinks to welcome a new member of staff. The claimant went along. She wanted to leave to go out with R3 for a cigar. She messaged R3 (bundle 2 page 377) saying that they should have "*planned this better*" so that they could go out together for a cigar without it looking suspicious to their colleagues. She said that in saying this she was "*entertaining him*". Her evidence was that she did not really want to go and she really wanted to go home. They went out together until 2am.

294. On her return home, they had a message conversation about their Dubai trip until about 3am.

295. On 1 October 2017 the claimant was given a £3,000 pay rise (page 152 bundle 1 section 2) from £42,000 to £45,000. She was notified on 18 September 2017. This was to bring her into line with the two other junior solicitors in the firm who were on £45,000. It was put to R3 that he told her that if she kept working hard she would receive a payrise to £60,000 in February 2018. He denied this. He said he would not increase to £60,000 the salary of a 1 year PQE solicitor when her drafting skills needed an amount of improvement. We accepted his evidence on this.

CEO networking event at the Dorchester Hotel

296. R3 invited the claimant to a CEO networking event at the Dorchester Hotel. It was organised by the CEO Group and was a CEO Awards event. Adam Global was involved. The invitation of 9 October 2017 came only the day before the event. It was in bundle 4 at page 409.

297. They had an email exchange about what she should wear. The claimant said that she did not really want to go to this event. R3 told her if she did not want to go, not to worry he could take someone else. She said she was worried that he would think she was not interested so she confirmed she was excited about going.

298. The Dorchester event had very prestigious speakers and attendees, including overseas royalty (bundle 4 page 409).

299. The claimant was concerned about what she should wear (bundle 3 page 126) and as usual took this matter up with R3. He asked the claimant on 10 October if she still wanted to go. She said "*yes*" (email page 413 bundle 4). The claimant replied that she wanted to go and if she did not she would have said so (page 414). She told R3 that it was "*standard*" for her to "*moan about her outfits*". He gave her the opportunity to back out of attending the event. Her evidence was that she "*felt like she had to go"* and if she was honest with him she would "*get the sack*". We did not accept her evidence and find that she was given a genuine opportunity not to go; she chose to go.

300. They had an exchange about what she should wear. He emailed her saying she should bring an outfit and a pair of shoes (page 406 bundle 4). He was not specific about the type of outfit or shoes but meant appropriate to the venue and the event. At page 404 he said: "*do you have anything black that is not leather?*". R3 said he said this because wearing leather was not appropriate. She said: "*Unfortunately I do not*". He told her that she needed to do some work on her clothes shopping and he had offered to help her. She suggested a dress, black with lace detail, 3 inches above her knee. She asked if it was OK and said it was not a mini dress. It was put to R3 that he was demanding about what she wore.

301. The act of sexual harassment relied upon is that R3 told the claimant to try on a dress he had bought for her. R3 thought that the dress that she had chosen was not quite appropriate for the event which would have in attendance dignitaries from Middle Eastern countries. He thought her choice of dress a little too revealing.

302. R3 had in his possession a dress that he was able to put forward as an alternative. He explained to the tribunal in oral evidence that the reason he had this dress was because he had recently spilt a drink over a female friend who had been wearing a white dress and he purchased this dress (the replacement being black) as an apology for spilling the drink over her. The friend had not liked the dress and he had not yet got around to returning it to the store. He offered it to the claimant for the Dorchester event. She agreed it was not a revealing dress. It was more sober than the one she chose to wear. She turned it down saying it was too small but in reality, she said it was because she did not want to wear it.

303. The claimant wore her own choice of dress which was short, well above the knee and had a sheer panel across the middle. We saw a photograph in the bundle of her wearing it.

304. On a later exchange in November 2017 about her outfits, R3 reminded her

about the dress she had tried on for the Dorchester event. She said: "*No, I want something sexier than that"* (bundle 3 page 152). When asked about this in evidence she said it was a "*silly comment*". We find it was what she really thought of the dress.

305. We find that R3 had not purchased the dress for the claimant as she alleged. He gave her the option wearing it when she was indecisive about what she should wear. She tried it on, she did not like it, she did not wear it. He did not buy the dress for her and he did not "*tell her*" to try it on.

306. They went out after the Dorchester event to smoke shisha and then took drinks back to the office. Her evidence was that she was just trying to please him.

307. The claimant's case is that on 10 October R3 told her about a "sexy club" called the Box Club, that he had asked a woman who worked there if they could have sex at the club to which she had responded "*only if we don't catch you"* and that he made another lewd comment to the claimant set out in the list of issues number (xx). R3 denied the allegation about asking about sex in the club. He said it is unlawful to have sex in any of these places. He knows this. We find on a balance of probabilities he did not say this. We find for the same reason that the second lewd comment was not made.

<u>30 October 2017</u>

308. By late October 2017 the claimant's view of R3 had improved and she told her friend that they were getting along better "*he is so much less of a dick*" (message 26 October 2017 bundle 1 page 162).

309. The claimant's case is that on 30 October 2017, whilst out looking at Range Rovers, R3 intimated to the showroom staff that she was his girlfriend. He denied this. It is not in dispute that on that date they had both attended a CPD conference. After the conference, R3 told the claimant that she could go home, she need not go back to the office. He was going on to a Range Rover dealership in connection with a car purchase.

310. R3 had already purchased a new Range Rover. It was being manufactured. He went to the showroom to choose colours for the upholstery. The claimant suggested that she accompany him to the showroom which she did.

311. R3 admits that he asked the claimant's view on some of the upholstery colours. He denies making out to the showroom staff that she was his girlfriend and denied telling the showroom staff that she would be driving the car 40% of the time. He said that whilst looking at the upholstery choices, he looked across and saw the claimant sitting in one of the Range Rovers in the driver's seat. He said she was the one making out to the staff that she was his girlfriend.

312. We find that the claimant likes Range Rovers. In a message with her friend Z on 20 January 2017, just before she joined the respondents' employment, she said she wanted to "*marry a millionaire*", she was bored

and had had enough of the "*lowlife*" and wanted her boyfriend to "*turn up outside my house in a Range Rover and buy me a puppy*" (bundle 6 page 1388).

313. Against these facts and on a balance of probabilities we prefer R3's version of events and find that R3 did not intimate to the showroom staff that the claimant was his girlfriend.

Rumours of an affair

314. Issue (zz) was that shortly after 30 October 2017, one of the firm's partners challenged R3 as to the alleged relationship between R3 and the claimant, during which R3 did not deny that they were having an affair. The claimant was not party to this alleged conversation. The issue as drafted suggests that R3 did not deny an affair to his business partner. The claimant was not present for the conversation, so she does not know.

315. R3's evidence was that one of his partners asked if they were having an affair and he replied that nothing was going on and asked him not to spread rumours if he was doing so. As the claimant has no first-hand knowledge of the conversation, we accept R3's account and find that this is what he said to his business partner. We find that the claimant did not ask R3 to scotch the rumours.

316. It is not in dispute that rumours of an affair between the claimant and R3 began to abound in the office.

317. We refer in some detail below to an email in which R3 gave her the opportunity to opt out of the Dubai trip. He told her that he could handle the people who were gossiping and he had told colleagues that it was none of their business. He warned her that once they went on the Dubai trip together it would cause "*waves of gossip*" and if she was not happy with this she was more than welcome to back out of the trip.

318. It was put to R3 that if he did not scotch the rumours, the claimant was bound to feel violated. He took us to her email in the same chain in bundle 3 page 144 in which she said she did not "*give a flying fuck what the other girls, or anyone else says about me to be honest*". He was entitled to take this email at face value, that she meant what she said.

319. We were taken to messages between the claimant and her best friend a few days earlier on 31 October 2017 (pages 174-176 bundle 1). The claimant told her friend that R3 had said: "*even if we were shagging it is none of your business*". R3 said this was not correct and that any rumours that went on were enjoyed by the claimant. She made suggestions of sending to another woman in the office one of the photographs he had taken of her, to get their "*juices going*" - bundle 5 page 891. The claimant was not averse to any rumours. R3 said that if he had been content with the rumour situation, he would not have sent the email of 6 November giving her the opportunity to back out of the trip.

320. The claimant's case is that throughout her employment R3 pressured her to go out with him when she was out with her friends. The only example we were told about was on 9 November 2017. R3 was out in Mayfair and

the claimant was out separately with one of her friends. The claimant and R3 had messaged each other in a friendly manner about what they were each doing that evening.

321. The claimant said that she and her friend would probably end up at a casual bar in the Embankment area as neither of them were wearing anything that dressy, just jeans and a casual top. R3 said he was having dinner with clients and would be finished around 10pm. He said "*Why don't you and your friend head to Mayfair…, we can try and meet up….It's up to you".* He commented that what they were wearing sounded fine, "*just put on nice sexy heels and you will look the part".* (messages bundle 2 pages 182-1830.

322. The claimant and her friend did not take up the offer to meet with R3 in Mayfair. The claimant initiated further contact with R3 at around 11pm to share the personal news that her friend had just asked her to be a bridesmaid.

323. We find that R3 did not pressurise the claimant to go out with him when she was going out with her friends. He invited her friend as well, he did not say leave your friend behind and come out with me. His invitation was light and she declined it, yet contacted him later on to share some personal news. We find that R3 did not pressure the claimant to go out with him when she was with her friends.

324. The comments alleged to have been made set out in paragraph 79 of the Particulars of Claim issue (www) were not put to R3 in cross-examination and we find they are not proven.

Preparation for the Dubai trip

325. On 6 November 2017 R3 sent to the claimant in email giving her the opportunity to opt out of the Dubai trip (bundle 3 page 144). He said:

> *Hey, listen, I have to announce Dubai this week asap……*
>
> *Once everyone knows about you coming with me, you know it is going to cause waves of gossip. But before I announce it to E…. that you're coming with me, you need to be certain that it is you who wants to go to Dubai with me as we are both going to have to deal with a lot of grief and there is no turning back once announced. You must seriously think of the grief that we (in particular you) will both get and not just think of the fun things that we will be doing in Dubai other than the presentations like drinking, dining, sunbathing and partying until late, shisha, first-class travel, Burj and the Grand Prix.*
>
> *To be honest, I can go to Dubai and get the job done without you. Yes, it will be harder and less fun and of course you can add value, but I can do what needs to be done without you with no grief or gossip for us to deal with. That said, you need to be certain in your own mind that you want to do this because I am neutral and don't want to put you through the office gossips, and also cause any discontent between you, your family or boyfriend if they are not 100% happy about you going to Dubai with me. All that said, if any of the four points below at this stage are still live issues in your mind, you should not come with me:*
>
> - *if your family and boyfriend are not a hundred percent happy about you going.*
> - *If you are apprehensive, into minds, wary or concerned about any aspect of the trip.*

- *If your [sic] not 100% certain that you want to go.*
- *If your are concerned about the office gossip that will go round by the usual hatters and it bothers you.*

Having read the above, if you feel you on reflection you cannot go to Dubai because there are too many issues to deal with before and after we return home and in the office, then I do not mind at all if you bail out now. I don't want to put a damper on things, it is a seven-day trip with me and you need to be certain that your looking forward to it and excited about what the trip brings without any reservations. Otherwise, it is really not worth the bother for the both of us.

Please be honest with me and let me know your views and honestly I am not trying to dissuade you from going because I want to take somebody else.

326. The claimant replied within less than half an hour saying that she had been looking forward to Dubai for ages and she did not give a "*flying f**k what the other girls, or anyone else"* said about her. She had also talked when they were going to "*drop the D-bomb"* indicating that she was not unhappy about other members of staff finding out about their Dubai trip, but knew it would make waves.

327. We find that R3 gave the claimant the perfect opportunity to opt out of the trip if she had any concerns whatsoever. He did not pressurise her to go. He bent over backwards to make sure that she was certain she wanted to go and assure her that there would be no recriminations if she decided not to go. She was given the opportunity on a plate to opt out by saying she was getting grief from her family and/or boyfriend and it really would be better for him to take someone else. It was also clear to her that the trip, should she choose to go, included partying, sunbathing and drinking. She said that her boyfriend was jealous, but she had dealt with him. In evidence the claimant said that her boyfriend had "*quite strongly*" tried to persuade her not to go. She did not take his advice. We find that she most willingly went on the trip.

328. On 13 November 2017 the claimant said in an email to R3 "*I cannot wait to feel that Dubai sun on my body"* (bundle 3 page 158).

329. On 14 November 2017 the claimant emailed R3 with outfits she proposed to wear in Dubai (bundle 3, page 170).

330. She said it was too good an opportunity not to "steal" it from someone else – this was because originally paralegal JB was due to go on the Dubai trip with R3, so in some respects she felt like she had "stolen" the trip from JB. This gave R3 the impression that she was very keen to go, her family were good with it and her boyfriend was under control. She said her family and boyfriend knew how much she had "*loved and enjoyed Athens*". It did not give R3 any indication that she had not enjoyed Athens or that she had any concerns about going with him to Dubai, in the full knowledge that it would involve spending social time with him.

331. The claimant said R3 was so determined for her to go to Dubai she had to play along. We do not accept this evidence.

332. The claimant was very excited about the trip to Dubai. She knew that they would be flying first-class and in one of her personal messages we saw

her saying that she was flying first-class, that she was going to a Formula One event in Abu Dhabi and referred to it in one of her messages to her friend as "*bling bling baby*" but she had to do some "*stupid meetings*". She was keen to get a tan. The work side of the trip was not her priority.

333. The claimant was asked in evidence whether anyone in the office would have known that there was a percentage of her (70% on her evidence) that did not want to go. She agreed that it would have been hard for them to know that she did not want to go.

334. As early as 13 October 2017 she told R3 in an email that she had bought a "*black choker bikini*" for Dubai (page 128 bundle 3), but she thought she might tan "*weird*" through it. She knew they would be sun-tanning together in Dubai. She said the email showed that she was excited about Dubai and this is what he wanted.

335. We have referred above to the claimant's message with her best friend on 31 October 2017 (page 1553 bundle 6) saying that if R3 made a move on her, she would *"slap him up*". She gave the impression to her friend that he had not so far made a move. Her friend, who gave evidence to this tribunal, was not aware of any problems that had happened in Athens. The claimant's case was that she had been sexually assaulted in Athens. We found that she was not.

336. The claimant's case was that prior to the Dubai trip, R3 told her to send him pictures of outfits she was proposing to buy, for his approval. From the large quantity of messages we saw, we find that it was the claimant seeking the respondent's approval on her outfits and not the other way round. He offered his opinions when asked.

337. Our finding is that R3 did not tell her what to wear or require her to seek his approval on what she wore. She enjoyed showing him her outfits and seeking his views. She liked to give a fashion show via What'sApp. At the Dorchester event on 10 October 2017, she wore a dress that R3 did not think was appropriate. He thought that something more sober was appropriate to the event. Our finding is that at no time did he tell her or instruct her on what to wear.

338. The claimant also contended that R3 told her she needed to go on a diet so she could fit in to sexy outfits in Dubai. We find from the messages we saw, that it was the claimant who raised the issue of weight and dieting. It was not R3 requiring her to lose weight. For example in a message on 15 September 2017 (page 667 of bundle 4) it was the claimant who said she needed to lose half a stone before going to Dubai.

<u>The Dubai trip on 25 November 2017</u>

339. The claimant and R3 flew first-class to Dubai and stayed in a 7-star hotel, the Burj Al Arab. When they arrived at the hotel the staff congratulated them on their anniversary. The claimant was excited about going on the Dubai trip, flying first class and going to a Grand Prix.

340. She told her best friend about the trip and showed how excited she was about the trip (bundle 6 page 1528). The claimant said in evidence on day

5 that she lied to her boyfriend saying that they had done presentations in Dubai when they had not.

341. The claimant messaged R3 about the Government's travel advice for Dubai and the fact that they were not married and staying in the same suite. There is no message in which she asked for a separate room. Her case is that she asked this verbally. In the messages, bundle 5, page 756, R3 explained the separate accommodation they would stay in, in a two bedroomed apartment suite, which is the wording taken from the hotel's website. She then moved on to messaging about wearing a turquoise playsuit. The claimant knew she had a separate room, she did not need to ask. She also looked up the accommodation on line.

342. The claimant and R3 were booked into a suite at the Burj Al Arab Hotel. The suite had two bedrooms and two bathrooms. We saw video footage which the claimant took whilst walking around the large and lavish suite. It had a kitchen and a living room. It was equivalent to a large apartment. R3 described it as two apartments in one. The claimant had her own room and bathroom. The only reservation she raised was whether locals would find it acceptable for them to share the suite, not that she had personal concerns about it. From the video we saw, which had audio, we find she was thrilled and impressed by the accommodation.

343. R3 said that the hotel offers various packages for its guests, this can be an anniversary package with a cake and champagne, it can be complimentary tickets to the spa, a $300 voucher for a meal in the hotel and the like. He chose the cake and champagne package because his preference is for the food. R3 said that the roses in the suite are standard fare for the Burj Al Arab. Flowers are placed on the tables in all the rooms. We agree and find that it is standard fare for a hotel of that high standard to place flowers on all the tables.

344. R3 said the claimant drank the champagne, ate half the anniversary cake and brought a box of the roses home to London with her. He said that the claimant did not object to the hotel thinking it was their anniversary because she was "*bathing in the pampering*" she was receiving. We accept R3's evidence that he picked the free welcome package that best suited him and that the claimant thoroughly enjoyed the perks that it offered.

345. The claimant's case is that on 26 November 2017 in the Amber Lounge R3 touched her hair and the back of her neck and ran his fingers through her hair. He denied this. On that date they went to the Abu Dhabi Grand Prix and then on to a Pink concert. She said he stroked and touched the back of her neck and she told him to stop. They then returned to the hotel to get ready for the Grand Prix after-party and she curled her hair at the hotel and they went to the Amber Lounge which she said was packed. She said he kept running his hands through his hair and she told him to stop because she had curled her hair and he was ruining it. They then had a long drive back to the hotel in Dubai. R3 denied all the allegations.

346. The claimant said that the first time he touched her hair at the Pink concert it made her skin crawl and he did it about three times and she told him not

to (statement paragraph 164). We find on a balance of probabilities that it is unlikely that the claimant would go out with him again to the Amber Lounge if she was concerned about the hair touching. When it was said to have happened again at the Amber Lounge, her complaint to him was that she had just curled her hair and he was ruining it. She did not say "*I have already told you not to touch my hair*". Based on this we find that she did not tell R3 not to touch her hair.

347. R3 denied touching her hair at any time. He said she would have been cross if anyone touched her hair, particularly when she had spent one hour curling it before going to the Amber Lounge. We find R3 credible on this and on a balance of probabilities we find that he did not touch her hair.

348. When they went back to Dubai in the taxi at 4am he said she leaned on him to go to sleep; she said that he massaged her neck and shoulders and she protested. The List of Issues said this was done "*despite her protests*". In her witness statement (paragraph 166) she did not say that she protested, but that she moved away. We find that she did not protest verbally because her evidence in chief did not reflect this. The claimant accepts in her evidence that she closed her eyes in the taxi and was falling asleep. We find because of the slight inconsistency in her evidence, her admission that she was falling asleep that on a balance of probabilities R3's evidence is to be preferred and that she leaned on him to go to sleep and he did not massage her neck and shoulders against her wishes.

349. The claimant's case is that on Monday 27 November 2017 R3 made numerous highly sexualised and unwelcome or offensive comments to her. They are set out in issues (hhh) to (ooo) above and therefore are not repeated here.

350. R3 denied making any of these comments. He said that conversation of a sexual nature came from the claimant for example her alleged discussions about concerns about her boyfriend wanting a threesome and telling him that she and her boyfriend once had sex in a cinema.

351. R3's evidence was that if he had made those sexually explicit and offensive comments and the claimant was so offended by them, it "*beggared belief*" that the following day, Tuesday 28 November 2017, she wanted to spend the whole day with him at the Atlantis Waterpark knowing that she would have to look after him. R3 cannot swim and it was in no way his choice of venue for the day. He said if she was so disgusted by his comments, it is extraordinary that she would even contemplate spending the whole of the next day with him at a waterpark. They spent about 6 hours there in swimwear. We agree and find that if R3 had so offended the claimant with these sexually offensive comments on 27 November 2017 she would not have wanted to spend the whole of the next day with him in their swimwear. It would have been easy for her to opt out of this event as he does not swim and it was not his choice of venue. She wanted to go; she was not offended by any sexual comments from the previous day. We find that he did not make the comments she relied upon.

352. The claimant complained that R3 took photographs of her feet without her

consent and that he filmed her sunbathing whilst she was lying on her front. She took a video of R3 asleep on the plane coming back from Athens, clearly without his consent. It was the nature of the close relationship that they had.

353. The claimant and R3 took plenty of photographs in Dubai and they shared them with each other in the evenings. They both liked to filter and photoshop their images to make themselves look better. In relation to a photograph of them taken together (page 654 of bundle 4) the claimant commented in a message "*Awww super cute"*. She said in evidence that this was "*another lie".* R3 took a photograph of the claimant, for which she had clearly posed, holding a champagne glass and showing most of her left thigh. She is entitled to do this. She did not have a general objection to having her photograph taken by R3.

354. She complained that he took "*unauthorised photographs*" of her in her bikini as well as of her feet. We saw a posed photograph at page 892 of bundle 5 in which she was photographed from behind, in swimwear with a see-through wrap or sarong, showing part of her buttock. We find that in the relationship that they had, it was not necessary on each and every occasion for consent to be obtained for the taking of a photograph. It was part of their friendly relationship. There was a generalised consent to photograph-taking between friends.

355. We saw photographs of the claimant in the black choker bikini where she brought the top strap down to tan more evenly. We saw photographs of the claimant in another bikini which was skimpy, for example it had two lycra strings across the hip area. After we saw videos of this she described it as her "*string bikini*". Her boyfriend expressed some disquiet in messages that with all the clothes that she had bought for Dubai, she should be wearing a covered up one-piece costume when she and R3 went to the waterpark together. He did not know that she was packing small bikinis for the trip (page 1978).

356. From the videos we saw, we find that to any outsider they would have looked like a couple on holiday together. They were lying sunbathing on a two-person sunbed. From the video clips we saw, they were lying in their swimwear no more than six inches apart.

357. The claimant does not complain in these proceedings about sunbathing on a double sunbed together. As early as 12 September 2017 she had said they needed time in Dubai "*dedicated to just chilling/getting our tan on by the beach*" (page 373 bundle 4). She did not complain that she did not have her own sunbed. She consented to the double sunbed.

358. As we have found above, the claimant and R3 had pet names for each other. She said that R3 thought up the names in Athens and she used the names in response. The claimant did not object to the names and in Dubai when she thought that the Chairman of Adam Global was "*trying to separate them*" she told R3 to tell the Chairman he was "*bringing Yang*" (herself) and that he should know they were Ying and Yang (page 659). We saw an example of R3 referring to the claimant as Yang in an email in bundle 3 page 170. The claimant did not complain about this, she used

the names herself.

359. They also had a nickname of calling each other "*bitch*"; for example on 29 November 2017, R3 ironed a garment for her for an Adam Global meeting and she referred to him as her "*bitch*".

360. She told her friend in relation to her actions with R3, that she was concerned that her photos and messages with him "*may come back to bite her*". She said: "*I was certainly no angel"* (message on 28 January 2018 page 930AA21 bundle 5).

The video footage and voicemails

361. We saw a number of video recordings. We saw one taken by the claimant, in the hotel suite to which we have referred above. We saw a video of the claimant dancing in a nightclub after the Grand Prix event.

362. In voicemail messages on the morning of 27 November 2017 upon waking, the claimant said that she needed to come to R3's room to pick up her hairclip, some make-up and phone charger. R3 replied that he would put the items in a suitcase outside her door. It was she who made the suggestion of coming to his room and he who suggested the alternative.

363. He went on to say that he was "*so hungry [he] could eat furniture"* and she suggested that he come to her room because she had snacks available. R3 told the claimant that he was fed up about a work-related message he had received and she told him he could come to her room if he wanted to talk and repeated the information that she had some snacks available and she was just doing her makeup.

364. We heard a message from the morning of Tuesday, 28 November 2017 in which the claimant says to R3: "*open your door please I want to put some suntan lotion on".* This supports our findings above in relation to applying suntan lotion in Athens.

365. We heard a voicemail message from a morning on the Amsterdam trip in which the claimant told R3, in relation to getting ready for the day, that she felt clean, she was not going to have a shower "*unless that is really filthy*".

366. We saw video footage from Dubai and in particular one taken by R3 where the two of them were on the double sunbed, less than 6 inches apart in their swimwear. The claimant was wearing her string bikini (photo at bundle 5 page 1142). R3 massaged her shoulders and his fingers went underneath the string tying the back of the bikini top. We did not see him attempting to untie it. His hand massaged her lower back and very briefly went underneath the top of her bikini bottom, by no more than a centimetre. The claimant did not flinch. We saw her getting up afterwards and carrying on a very relaxed mundane conversation. She accepted in evidence (statement paragraph 293) that she appeared to be having a 'normal' conversation with him. Her bikini bottom was hitched up so that an area of her backside was visible.

367. The claimant wished to change her evidence about the date of the Dubai

massaging incident once we had seen the video footage. Her case until this point had been that the acts of sexual harassment in terms of the massaging took place on 29 November 2017. On the morning the footage was shown she said she now realised that it had happened on 1 December 2017. This was the day they returned from Dubai. It was submitted for the respondents that the claimant had to change her evidence once she realised that the video footage did not match her version of events.

368. The claimant's evidence was that the massaging incident made her cry, that she was terrified, disgusted with herself and that she felt completely violated but powerless (statement paragraph 178). She said she spent the rest of her time staying away from R3 and she stayed close to the swimming pool because she knew he could not swim. Her evidence in her statement was that she knew she would have to leave as soon as possible. In the video footage, on the day of their departure from Dubai, we heard her complaining about having to leave and the fact that her "*princess status"* was coming to an end. When this was put to her, the claimant said that she did not want R3 to be "*spooked out*" and she "*did not want him to realise that she hated him touching her*". We did not accept her evidence which was inconsistent with what we saw and heard in the footage.

369. The video footage included images of the claimant lying on the double sunbed face down tanning her back. The claimant relied on this video as an act of sexual harassment as she said she did not authorise it. There were other occasions when the claimant did authorise R3 to take photographs of her from behind, including the posed photograph of her poolside in a sarong, which revealed half of her buttock cheek. This was an image that she liked so much she asked R3 to send it to other women in the office to "*get their juices going*" (page 891). The claimant has also filmed R3 without his authority. She filmed him on the plane when he was asleep on the way back from Athens. We found above that this filming was part of their close personal friendship for which there was general consent.

370. We find that the change of evidence about the date was because the claimant realised that the video footage did not support her version of events. We saw the claimant relaxed and chatting whilst R3 massaged her back including when his fingers went briefly under her bikini bottom. She did not want to get up and she was thoroughly relaxed when she finally got up. We find that there was no unwanted conduct as alleged whether on 29 November or 1 December 2017.

371. The claimant's case is that on 29 November 2017 R3 stroked her hair commenting that his wife's hair was thin by contrast. His evidence (statement paragraph 214) was that she asked for a head, neck and scalp massage which he gave her. This is consistent with the video footage of the back massaging and we find that he did so at her request and it was not unwanted conduct. He said that he did not make the comment about her hair; he said his wife has thick hair. On a balance of probabilities we find that he did not make the remark about the claimant's hair.

372. On their return from Dubai, on 8 December 2017, the claimant gave R3 three gifts, one of which was a head/scalp massager. This supports our finding that he gave her a head massage at her request. Had she objected to having her head touched by him it is inconsistent that she bought him a head massager as a thank you present (emails at page 199 of bundle 3 on 8 December 2017).

373. On 29 November 2017, the day of the alleged massaging assault, the claimant sent R3 a photograph of herself, head on a pillow, smiling broadly (bundle 5 page 813). Because of the time difference, we find that photograph was sent to R3 after sunset and therefore after the alleged sunbed massaging incident. This photograph is totally inconsistent with what the claimant said had just happened and how she said she had reacted. She sent R3 an intimate smiling photograph of herself, lying on a bed, immediately after this alleged sexual assault. We find that no such assault took place.

374. For the same reasons we find that he did not ask her about cheating on her boyfriend or make the comments set out in issue (uuu).

<u>On return from Dubai</u>

375. It is not in dispute that on 1 December 2017, on return from Dubai, R3 sent the claimant a sexually provocative photograph of a woman wearing revealing almost non-existent underwear and holding her breasts. The photograph was from a woman known to R3, to whom we refer as J. He said: *"You tell me to stop my kinky fuckery. I texted J… letting her know I am back in town. She sent this pic to me that she just took, saying welcome back".* The photograph and messages were at bundle 2 page 202 and a clearer version at bundle 5 page 825.

376. The messages between R3 and the claimant continued with the claimant saying: "*oh dear - Say, the outfit looks nice, where's it from, I want to buy it for my wife";* R3 replied: *"For her to back off or you like the look of it yourself?".* The claimant replied: *"Hahaha Both".* The claimant did not express any revulsion at being shown this provocative photograph (eg "that's gross"). In the context of their close friendly relationship this was not offensive to the claimant and she joined in the joke – even saying, we accept in jest, that she liked the look of it for herself. It was not unwanted conduct.

377. The claimant's case is that between their return from Dubai and her summary dismissal on 21 December 2017, R3 deliberately avoided her at work. R3 said that on return from Dubai he was very busy. He had been out of the office for a week and the problem from his point of view was that the claimant wanted his attention all the time. He has two law firms to run, he had been away for a week and their website had been taken down so he had a lot to attend to. He said that the claimant found it difficult to understand that he could not spend all his time with her and she called it "*the cold-shoulder*". We find that R3 had a lot to attend to on his return from Dubai and did not have much time available for the claimant. He was not giving her the cold-shoulder.

378. R3's business partner Mr AK said that he frequently saw the claimant in R3's office. The office has glass walls so anyone in there can be seen. The claimant did not have a desk in R3's office. She was often seen by AK in a relaxed mode in that office, for example sitting on R3's office sofa. We find that the claimant liked to spend time in R3s office, not necessarily working.

Time recording on 12/13 December 2017

379. On Tuesday 12 December 2017 R3 handed the claimant a file to work on. The claimant's evidence was that R3 gave the file to her at about 5:30pm or close to it. It involved reading some Particulars of Claim in a County Court Money Claim. The Particulars were 4 pages long. They were not complex. In the latter paragraphs on about page 3, they identified by name R1 and R3, although they were not parties to the proceedings.

380. The point at issue is that the claimant time recorded 7 units (42 minutes) on 12 December 2017 for considering the Particulars of Claim. The respondents' position is that she over-recorded her time and was not honest about it. The recording of 7 units took the claimant neatly to her target of 60 units for the day.

381. The claimant's evidence was that at the beginning of the day she would prepare a timesheet estimating the amount of time that she was going to spend on a matter and then she would correct it the next day. The difficulty with this evidence is twofold – firstly she accepts that she was not given the file until about 5:30pm so she had no chance to estimate this work at the beginning of the day and secondly, all lawyers know that it is virtually impossible to estimate at the beginning of the day how your time will be spent. Interruptions, new instructions, calls and emails from clients and other solicitors and/or unexpected developments during the day, have the certain propensity to disrupt plans made at the beginning of the day.

382. The claimant said it did not really matter what she put on her timesheet because this was not the basis upon which they billed the client. She said the client was billed based on time recording carried out on the physical file. We find it was not for the claimant to make the decision that her time sheet did not matter. She was a junior lawyer, who like almost every solicitor in contentious work, was expected to time record accurately.

383. We did not accept the claimant's evidence that she used the timesheet for planning her day or that it did not matter what she recorded, so long as she did not double count and that it was therefore alright to put on the time sheet an amount of time she planned to spend the following day. Our finding is that the timesheet is to record time actually spent that day. It is not for advance planning of the day's activities, or to record time you might plan to spend the next day. That belongs on the following day's time sheet once the fee earner has actually done the work. All solicitors doing time billable work know, or ought reasonably to know, that this is how the system works.

384. At 17:47 hours on 12 December 2017 the claimant sent R3 an email saying that she was bored and hungry (page 458, bundle 4) and asked if

she could come up to his office. The claimant's oral evidence was that it was R3 who asked her to come up to his office, but we find based on that email that it was at her initiation.

385. On her initial evidence, she would have only had the file in her possession by that time for 17 minutes. She then said that perhaps the file was given to her earlier in the afternoon.

386. The claimant went up to R3's office and he asked her about the Particulars of Claim and asked what were the headline points? He had read the Particulars which had taken him about 18 minutes which we find is an appropriate amount of time based on the document. The claimant could not answer the question about the Particulars of Claim and she had not identified that R1 and R3 were both named in the pleading. In oral evidence in this tribunal, she admitted that she had not read the document and that she was going to do it the next day.

387. She told R3 that she had "*skim read*" the document and asked him if she could go and fetch her notes. When asked in cross-examination about her notes and whether they had been disclosed, she said that they were only brief notes written on a post-it note. We find that the notes, if they were made, could only have been minimal on a post-it note and in relation to a document she had purportedly just read, they would not have assisted her in the conversation with R3.

388. The claimant did not know that R1 and R3 were named in the Particulars. We find that this is because, as she admitted in oral evidence, she simply had not read them. She was bored and hungry and wanted to end her working day. Recording 7 units helpfully brought her up to target for the day, but we find this was not work she had done. She lied to R3 by telling him that she had read the Particulars and she recorded time she had not spent.

389. At page 2003 of bundle 7 we saw the claimant's message to her boyfriend immediately after that meeting with R3. She said: "*He caught me lying to his face*". This supports our finding that she lied. At page 2015 we saw further messages with her boyfriend. At 8pm on 13 December she said she said she felt "*like a liar and a failure*" and she needed to get out before she got "*the f***ing sack*". We find that she knew very well that she had lied to R3 and the consequences were serious.

390. She made an admission to R3 in their meeting of 13 December – the transcript was in bundle 7 page 2016 and on page 2017 she said "*I looked at the front page but I didn't read it all."* R3 gave her the opportunity to be honest by putting to her that she had not read any of it and she did not deny this. He said it was a question of integrity. On page 2018 was saw that when R3 said he found that she had fabricated her time sheet, she said "*yeah, sorry"* by way of admission. Our finding is that the claimant lied about reading the Particulars and lied about her time sheet on 12 December 2017 and eventually admitted this to R3.

391. The claimant's justification for falsely recording 7 units to bring her up to target for the day was that R3 had been "*starving her of work*" because he

was not making himself available for her supervision. We did not accept this evidence.

392. R3's evidence was that he made the decision to dismiss on 13 December 2017 but he did not tell the claimant about this decision straightaway. He delayed telling her about this for two reasons. Firstly, she was working on a witness statement and they were up against it in terms of a deadline for an exchange of witness statements on 19 December 2017. He wanted her to finish the piece of work, to protect the client in the proceedings and to protect the firm from a professional negligence claim.

393. Secondly, he was concerned that she may take steps to download materials or interfere with the firm's database if she knew that she was about to be dismissed. It was for this reason he said that he did not tell her until 21 December 2017. This is also the reason why she attended the work Christmas party referred to below. We accepted his evidence on this and find that these were his reasons for delaying the dismissal.

394. The next morning after telling boyfriend she had been caught lying to R3's face, the claimant called ACAS who she says told her that she had a claim for sexual harassment "*if I was to get dismissed or anything*" (message at page 2003 bundle 7). We do not know what information the claimant gave to ACAS.

The work Christmas party on Friday 15 December 2017

395. The work Christmas party involved drinks at the Mayfair Hotel followed by dinner at the Park Chinois restaurant.

396. The claimant makes the allegation of "*strongly suspecting*" that R3 drugged her at the Christmas party. She says this because in her witness statement at paragraph 207, she said she took a few sips of wine and suddenly felt very dizzy and drowsy. She said she lay down on the sofa in his office and fell asleep or alternatively "*passed out*". She said this was very strange because it had never happened to her "*before or since".* She did not see a doctor to look in to this allegation of drugging and never told anyone about it at the time.

397. Although the claimant said that it had never happened to her "*before or since*", she made the allegation in oral evidence that something like this had happened before. She said that whilst working at R3's house on 28 July 2017 she felt sleepy after drinking a Diet Coke he had given her. She said she did not put it past him that he may have drugged her.

398. These drugging allegations are of the utmost seriousness. We find that the claimant is quite prepared to make such unsubstantiated allegations and they were made to strengthen her position in these proceedings. The claimant had been contemplating proceedings against R3 since the Land Registry fee was raised with her in mid-April 2017.

399. At midnight on the night of the Christmas party the claimant sent R3 a message asking: "*what's the plan"*. She said this was because R3 had previously suggested to her that she did not let the practice manager book her taxi home so that they could go out afterwards. The claimant

volunteered the question "*what's the plan*" and did not say for example: "*I am tired after the party and I have decided to go home*" or make no contact at all and simply go home.

400. She and R3 went back to the office and she fell asleep on his office sofa as set out above. In a message to R3 after she returned home she said: "*those cocktails did it for me*". We find on a balance of probabilities that it was as she said: the cocktails she drank that caused her to feel as she did and it was nothing to do with any drugging allegation.

401. After the party the claimant re-sent to R3 the photograph he had taken of her in Dubai standing with her back to him, with her right buttock half exposed. This was the picture she liked so much she suggested he send it to one of the women in the office to get her "*juices going*" (bundle 5 pages 890 and 891).

18 December 2017

402. On 18 December 2017 R3 emailed the claimant about an event in February 2018 where members of the firm were going to attend the Brit Awards. She was interested in attending and asked about the dress code. It was put to R3 that this was "cruel" if he knew he was going to dismiss her and suggested that he had not made the decision to dismiss by 18 December. He repeated the reasons set out above as to why he delayed telling her about her dismissal.

403. On 21 December 2017, at around 1pm, the claimant sent an email to R3 asking him if he had sorted out his passport (bundle 3 page 213). She knew that he was planning to go back to Dubai on business in January. She broached the subject of Dubai. He asked her whether she had tested the water with her family and partner about the prospect of returning to Dubai and she said she was not going to have that conversation with them until she was 100% certain that he wanted her to go with him. She said she did not want to cause "*agro and drama*" if she did not even end up going.

404. He replied that this was the whole point: "*If there is going to be agro and drama, I am not going to take you with me"* (page 211). She said at 14:24 hours: "*That's ok. I know you want to take J…. with you anyway so you would prefer to go by yourself and do the presentations. Its fine. I was only offering before because I didn't know for a fact whether that was the case or not."* (page 211).

405. It was submitted that we should read this as the claimant's refusal to go back to Dubai with R3 and that once he knew that she was not going back to Dubai and that she had rejected his sexual advances, he made the decision to dismiss. The claimant submits that this, namely 21 December 2017, is the date when the decision to dismiss was made and not in relation to the timesheet issue on 12 or 13 December 2017.

406. We find from the email correspondence referred to above, that the claimant did not refuse to go back to Dubai with R3. She was keeping her options open. She wanted to be sure that he wanted her to go before she tested the water with her family and friends. Our finding is that she did not

refuse to go back to Dubai. This supports our finding that R3 did not sexually assault her or try to drug her because she was still interested in going back to Dubai.

407. The claimant was aware of the seriousness of what she had done with the time sheet and Particulars of Claim issue. She told her boyfriend at 8pm on 13 December that she had "*got [her] arse on the firing line and there [were] going to be severe penalties for [her].*" She said she needed to have interviews lined up in January and she needed to get out before she "*got the sack*" (transcript page 2015 of bundle 7). She could see that dismissal was on the cards.

408. We find that R3 dismissed the claimant because he had lost all trust in her; he considered she had been deliberately dishonest. She had lied to him about two matters, about reading the Particulars of Claim and about the time she had spent on the matter by recording 7 units on her time sheet. She had not refused to go back to Dubai, it was still under consideration. This was not the reason he dismissed her.

<u>The dismissal – 21 December 2017</u>

409. At 5:30pm on 21 December 2017 R3 held a dismissal meeting with the claimant to discuss the exaggerated time recording. The claimant was not given prior notice of this meeting. R3 told her that he wanted to speak to her at 5:30pm. There was a transcript of that meeting at page 2020 of bundle 7. The claimant did not know the meeting was being recorded. In that meeting she admitted to lying about the time recording. She was asked in evidence why she did this, she said it was much easier to go along with him and let him give her a warning. We find she admitted it because she knew she had done it.

410. We saw in the transcript an admission on page 2027 of bundle 7 – "*I know I f**ked up. I am not sitting here denying it, I know I did*". She told R3 that what she did was completely wrong and she could understand why he had serious trust issues with her (page 2021). She said: "*I just thought, you know what, I've done my work I just want to go home now and I would just put down whatever was easiest to put down…*" (transcript page 2026). In the meeting she admitted lying. She admitted the misconduct. The fact that she was a solicitor lying to him also played a significant part in his decision making. He dismissed her at the end of the meeting on 21 December 2017.

411. The claimant's case is that R3 said in the meeting that he told the claimant she was "*calculating and manipulative*". We had the transcript in bundle 7 and at page 2023 we find that he said in relation to the time she had allegedly taken to read the Particulars "*it comes across as you being so calculated and conniving, it really does".* We find that this was in relation to the mis-recording and exaggeration of work she had not actually done. In the meeting he told the claimant he had spoken to the practice manager about the conduct in question and asked her whether as a solicitor he was expecting too much "*in terms of <u>his or her</u> conduct*" (our underlining and at page 2024 in the transcript of the meeting in bundle 7). He said the practice manager was horrified at what the claimant had done. He made

a direct connection between a man or a woman doing the same thing, what mattered to him was that the person was a solicitor, whether male or female.

412. Having seen the transcript, we find that R3 did not say to the claimant upon dismissal that she knew too much about him. This was a comment he made in June 2017, not in the dismissal meeting.

413. R3 regarded the claimant's dishonesty as gross misconduct and he did not pay notice pay. We agree and find that the dishonesty was sufficient to amount to gross misconduct.

414. The claimant went to collect her belongings. She took longer than R3 thought was necessary. He found her on her work lap top which he immediately closed. He later found that one of her search terms had been for Ms GB who had also been dismissed by R3. The claimant went on to contact Ms GB in connection with her proposed claim. She also took with her, the office diaries she had used whilst at work. These were the property of the firm.

The dismissal letter

415. The dismissal letter dated 19 January 2018 was at page 1 of bundle 3. It is 12 pages long. It set out the discussions and events of 12 and 13 December 2017 as referred to above. The claimant was dismissed for gross misconduct for dishonesty and time recording issues.

416. Pages 1 to 5 of the letter set out the reasons for dismissal. We find nothing untoward about this. It sets out a detailed explanation of the reason for dismissal.

417. Pages 5 – 7 dealt with "Further misconduct" dealing with R3's concerns as to what the claimant had been accessing on the firm's computer at about 2pm on 21 December 2017, prior to dismissal and then the computer searching she was doing upon finding out that she had been dismissed, including looking up the ex-employee she wanted to contact in connection with this claim. R3 asked detailed questions about what she had accessed. He was entitled to do this in order to protect his firms' data security and client confidential information.

418. Pages 7 to 10 of the letter set out criticisms of the claimant's general conduct and behaviour in and out of the office, suggesting that she was obsessed with him and wanted a sexual relationship with him and of boasting with two other members of staff about her time with him. Numerous comments were made in the letter about things that the claimant had allegedly said about her relationship with her boyfriend. The letter recounted matters which the claimant relied upon in these proceedings and upon which we have made findings above, in the respondents' favour.

419. We find that by the date of the dismissal letter, on 19 January 2017, R3 believed that the claimant may issue proceedings. He said in the letter (page 8 bundle 3) that if she was obtaining independent legal advice, he doubted that she would give an accurate account so he was setting out

examples of her conduct and behaviour with a large number of documentary attachments to remind her of events should she wish to "*concoct some form of claim".* He envisaged that she would bring a claim that would include sexual harassment. He decided to set out the facts from his point of view and we find that this was so that any letter she showed to legal advisers would make clear his position.

420. Pages 10 – 11 dealt with performance issues in terms of her drafting and legal analysis. It was at a lower standard than he expected of a newly qualified solicitor.

421. The final pages dealt with use of the PLC account from her former employer, allegations of harassment and her holiday pay, a claim which was withdrawn in submissions. We deal with this part of the letter in more detail in our findings on victimisation.

422. The letter gave the claimant a right of appeal to one of the other partners in the firm. She did not exercise this. We understand why she did not do so as the other partner was not senior to or equivalent in status to R3. It was reasonable for her to form the view that it would be difficult for him to overrule R3's decision.

Post-employment matters and the victimisation claim

423. In her Claim Form, Grounds of Complaint (page 37 paragraph 97), the claimant said that R3 "*falsely accused her of not reading the Particulars of Claim*" and dismissed her for rejecting his sexual advances. We find that R3 did not falsely accuse her of not reading the Particulars. She did not read them and the allegation was accurate. She admitted as much.

Issue (a) the plc account

424. The claimant's case is that R3 made false allegations in written correspondence about her use of her former employer's PLC account. The claimant admits that whilst working for the respondents she used the PLC account that she had used at her last firm. She used the password she had been given at her previous firm and continued to access the subscription material paid for by that firm and admitted doing so. It was a single-user account at the previous firm.

425. R3 wrote to the principal of her previous firm about this. The claimant complained that R3 made false allegations about her use of a PLC account in written correspondence and that this was an act of victimisation. We find that they were not false allegations. The claimant admitted that she used her previous firm's PLC account whilst working for the respondents. The allegation was not false and this issue fails on its facts.

Issue (b) false allegations about the claimant's conduct

426. The claimant complains that R3 made false allegations about her conduct towards R3 in written correspondence. Issue 22(a) put this as a false allegation that she was "*obsessed with him and his lifestyle*". The claimant loved the glamorous lifestyle that she spent with R3, she enjoyed the nightclubs, top restaurants, late nights, cigars, his house, his cars, the

shopping trips and overseas trips staying in upmarket hotels. At the end of the Dubai trip she was sad that her "*princess status*" was coming to an end.

427. She enjoyed spending time in R3's office for social as well as work reasons as there was no second desk in the office for her to use. She described herself as "*clingy*" towards him. The claimant regularly asked other staff members where R3 was. She admits this but said that it was for work reasons. We find that it was not just for work reasons. We find that it was not a false allegation to say that she was preoccupied with him and his lifestyle.

Issue (c) being selective about documents to be relied upon in support of false allegations

428. It was put as an act of victimisation that R3 was selective about the documents the respondents would rely upon in support of the false allegations. We were not given details about what this selectivity involved other than in the claimant's submissions in relation to the PLC issue dealt with above. It was made clear at the preliminary hearing before EJ Segal on 11 February 2019 and at the outset of this hearing that we were not dealing with any issue concerning the obtaining of private messages between the claimant and her personal contacts.

429. The issue was as to being "*selective about the documents the respondents would rely upon*". The claimant's submissions at paragraph 31(1) identified the following documents in bundle 2: pages 274 to 277, 279 and 573 – which were about the plc account and her former employer and upon which we have made a finding that the allegations were not false. Page 573 was a message to her boyfriend in which, amongst other things, she acknowledged that the former employer "*had done a lot for her*". We cannot see how this message would have assisted matters at all. We find no victimisation on issue 22(c).

Issue (d) the threat of a Protection from Harassment injunction

430. The claimant relies as an act of victimisation, on R3's threat of a Protection from Harassment Act injunction. This was referred to in the dismissal letter bundle 3 page 11 under heading "Harassment".

431. R3's evidence was that he returned from annual leave in early January 2018 there were a number of issues that gave great cause for concern that he was being harassed and/or his family would be harassed. He opened his post on Sunday 7 January 2018 found a letter saying only: "*next time photos*". His practice is to arrive in the office at around 7am to 7:30am and the claimant knows this. He received repeated silent telephone calls at that time and whenever he answered the person would hold on for a short time, then hang up.

432. In the second week of January 2018 the firm's website was taken down and replaced by a joke advert. The respondents' website contractors informed them that the person who did this had a lot of website knowledge because they left no footprint as to how it was carried out. R3 received a death threat on 6 February 2018 which included some Hindi which he

found out translated to "*motherf**ker*". His concern was based upon the fact that the claimant knew about his routine and his whereabouts. She also knew his personal address because she had been to his house. So far as the communication in the post was concerned "*next time photos"* he knew that the claimant had copious amounts of photographs of him. He received a further such threat of 12 February 2018.

433. The police attended R3's office on 9 February 2018. They asked him whether he had any disgruntled employees. He told them about the claimant and they asked him whether he knew much about her. R3 told the police that the claimant's boyfriend had some sort of online business. The police said they would investigate and report back. After the second threat on 12 February the police said they would speak to the claimant and her boyfriend. After that, no further unusual incidents took place. This convinced him that the harassment was carried out by the claimant and/or individuals associated with her. We make no finding of fact as to whether it was the claimant and/or her boyfriend or not. That is not in issue for us.

434. It was put to R3 that he had failed to mention to the police another disgruntled employee, namely JB from whom we heard in this tribunal. R3 agreed that he had dismissed JB shortly before the claimant but he said that the difference was that she was not disgruntled in the same way as the claimant. We heard from Ms JB. She considered her dismissal was "*harsh*" but from her evidence (statement paragraph 2) we find that she accepted that she was not entirely blameless and there was some substance to the reasons for her dismissal.

435. We therefore find that JB was not a disgruntled employee in the same way as the claimant and we find on a balance of probabilities that this is the reason that R3 did not give her name to the police. He did not have the same suspicions of JB as he did with the claimant.

436. R3 knew from the claimant's actions on 21 December 2017 that she had been looking around on the work computer and trying to search for and download information that might prove detrimental to the respondents. He was concerned about her intentions.

437. R3 rightly involved the police when he received a death threat coupled with the other strange and suspicious behaviour in January 2018.

438. We find that in threatening a harassment injunction, he did so because of the very concerning incidents, including death threats. He knew that the person perpetrating these acts knew his home address, his phone number, his working pattern and had photographs of him. This tended to point towards the claimant, a disgruntled ex-employee. Again we make no finding as to whether it was her.

439. We find that the reason he threatened this injunction was to bring an end to the very concerning behaviour against him. It was not because he believed that the claimant was about to issue a claim in the employment tribunal. It was to seek to bring an end to the threats and harassment against him. It was not because he believed that the claimant may do a protected act.

Issue (e) the threat of a civil injuction

440. The claimant also relies as an act of victimisation, on R3's threat of a civil injunction. This issue was not helpfully described and we had some difficulty in identifying the threat of the civil injunction relied upon. We were not given a date or document relied upon.

441. We understood that it related to the return of the second and third respondents' property and because R3 believed that she had breached the Rule 50 Order in contacting GB. The claimant said that R3 did exactly the same thing in contacting JB who gave evidence in the proceedings.

442. We find that both the claimant and R3 were entitled to contact witnesses to protect their position in the proceedings. The claimant admitted that she had taken office diaries from the respondents and they were entitled to seek the return of these. We find that this was not subjecting the claimant to a detriment because she had done a protected act.

Issue (f) making a false report to the SRA

443. The claimant relied upon a "*false and misleading report"* about her conduct to the Solicitors Regulatory Authority" (SRA). We were not shown any complaint to the SRA about the claimant. It was not in the bundle. The claimant's evidence, statement paragraph 386, was that she has never been contacted by the SRA about it and she does not know the full details of the complaint to the SRA against her.

444. The claimant could have sought disclosure of the complaint from the respondents or made an application for third party disclosure from the SRA. We were not told why the complaint relied upon was not in front of us. We were told that the claimant also reported R3 to the SRA but we did not see this complaint either.

445. Without seeing the complaint to the SRA and in the light of the claimant's evidence that she does not know the details of it and has never been contacted about it, we can make no finding that the respondents made a "false and misleading report" about her to the SRA. This issue therefore fails.

Issue (g) a false and misleading report about her conduct to the former employer

446. The claimant also relies as an act of victimisation, R3 making a false and misleading report about the claimant's conduct to her former employer. The letter dated 29 January 2019 was at page 499 - 503 of bundle 2. This was long after the issue of proceedings on 9 March 2018 and was written in the context of these proceedings.

447. R3 admitted that he was the author of the letter. It included extracts from messages between the claimant and her friend Z in an attempt to discredit the claimant. The issue for our determination was not about the disclosure of these messages but as to whether R3 made a "*false and misleading report*" about the claimant's conduct.

448. The letter to the former employer is 5 pages long. The former employer did not want to become involved in the respondents' dispute with the

claimant and had not replied to earlier correspondence. The respondents were pressing for a response, primarily on the issue of the login information for the plc account. They asked the question as to whether the claimant asked them to provide a fabricated defence. This was a question that the respondents were asking in connection with their defence to these proceedings. They were seeking an answer. We were not told precisely by the claimant what "false allegations" were relied upon. We were not assisted by the claimant's submissions on this point.

449. In the absence of being told exactly what the false allegations were about, we find that the respondents were seeking a reply on the plc issue and they wrote a very robust letter after receiving no reply to earlier correspondence. They pointed out the messages written by the claimant which were disparaging of the former employer. We are unable to find that the respondents made a "*false and misleading report about the claimant's conduct*" in that letter and this issue fails.

Issue (h) threatening correspondence on 7 June 2018

450. The claimant relied as an act of victimisation upon the respondents engaging in threatening correspondence on 7 June 2018. This was after the presentation of the claim. The letter to the claimant's solicitors was at page 43 of bundle 8. It said:

> *"We are in the process of finalising our clients' Defence to be served shortly in which we shall demonstrate to you in the tribunal that your client is a compulsive liar and will say anything in order to manufacture her false claim without any regard for the truth. It is our intention to expose your client for the liar that she is. Once we have served our clients' Defence, it will leave your client's credibility in tatters and will demonstrate that by bringing a fraudulent claim, she is unbefitting to practice as a solicitor and it is also our intention to expose your clients' fraudulent claim for £133,000 to the SRA as it is in the public interest that solicitors who lie, deceive and make fraudulent claims should not be practising. If thereafter your client wishes to continue to proceed with her false claim and perjure herself, all of the Applications that we have threatened in the past will be pursued."*

451. At first preliminary hearing on 14 June 2018, Employment Judge Russell said he found the letter 'menacing and inappropriate' but he accepted that he saw it out of context and noted the respondents' contention that the claimant had fabricated the whole case. The claimant submitted that it was quite right for Judge Russell to note that he had seen the letter out of context but that on any fair reading, it was a "*bare faced threat*".

452. The respondents submit that R3 was entitled to protect his reputation and point out that the claimant was lying.

453. The respondents also submit that whilst the ET1 is undoubtedly on the face of it, a protected act, it was not protected because the claimant knew that her allegations were false and made in bad faith.

454. We agree and find that the letter was bullying and intimidating in nature. It went beyond what was reasonable and was intended to push the claimant into withdrawing the claim.

455. It was a theme of the claimant's evidence when presented for example with her own comments which were not helpful, that "*it was a lie*". She

made clear her bad intentions towards R3 in graphic terms in her messages, such as wanting him to go to prison, to slit his throat or to throw acid in his face. We have found against her on a balance of probabilities on factual allegations as set out above. We find that the claimant is someone who is prepared to lie to suit her purpose.

456. The claimant had been planning since at least mid-April 2017 to bring a claim for sexual harassment. In April 2017 she was not sure "*if it borders into that enough for me to claim it*" (Bundle 7, page 1834). She was looking to build such a claim. She said in a message on 17 April 2017: "*I'll sue him. I'll put in the coke allegations, all his dirty laundry for everyone to see. He won't want him to come to Court, he'll have to settle".* (bundle 7, page 1834). We therefore find that there was bad faith in the bringing of this claim and therefore the claimant cannot rely on this as a protected act.

457. This finding that there was bad faith in the bringing of this claim applies in relation to all the issues relied upon as victimisation, in the event that we are wrong on any of our other findings.

The law

458. Section 26 of the Equality Act 2010 defines harassment under the Act as follows:

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

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

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

(i) violating B's dignity, or

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

(2) A also harasses B if—

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

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

(3) A also harasses B if—

(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

(b) the conduct has the purpose or effect referred to in subsection (1)(b), and

(c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

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

(a) the perception of B;

(b) the other circumstances of the case;

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

459. Harassment and direct discrimination are mutually exclusive – section 212(5) Equality Act 2010.

460. The conduct must be unwanted. Some conduct can be so obvious that the employee does not have to have objected to it – for example a serious sexual assault as in ***Bracebridge Engineering v Derby 1990 IRLR 3***. A single incident can be sufficiently serious to amount to sexual harassment. Where conduct is inherently unwanted, such as sexual touching, the claimant does not have to make a complaint – see ***Reed v Stedman 1999 IRLR 299*** and ***Insitu Cleaning v Heads 1995 IRLR 4.***

461. The leading authorities on the Tribunal's task in determining what is unwanted conduct in a sexual harassment case remain ***Reed v Bull Information Systems Ltd 1999 IRLR 299*** and ***Driskel v Peninsula Business Services Ltd 2000 IRLR 151*** (both EAT). It is for the recipient of the conduct to determine what is acceptable to them and what is not. There may be a difference between what the Tribunal would regard as unacceptable and what the claimant was prepared to tolerate. The Tribunal should not dismiss a sexual harassment claim simply because its own threshold might have been crossed at a lesser level.

462. The Tribunal's approach must not be to *"carve up"* the complaints one by one and measure detriment in relation to each; it must look at the bigger picture and consider the complaints in their totality or as an accumulation. A carving-up exercise gives rise to the potential for ignoring the totality. Also, the act of harassment complained of may be so obviously detrimental that the lack of any contemporaneous complaint is of little or no significance.

463. There may be cases where the complaint arises from a succession of events which on their own would not signify much, contemporaneous indicia of sensitivity and the alleged perpetrator's perception become material. Conduct which is not expressly invited can come within the meaning of "unwanted". The claimant does not have to make it clear in advance that it is unwanted. It is not necessary for the claimant to have made a *"public fuss"* after the event. In ***Reed*** at paragraph 30 the EAT said:

> *"Tribunals will be sensitive to the problems that victims may face in dealing with a man, perhaps in a senior position to herself, who will be likely to deny that he was doing anything untoward… Provided that any reasonable person would understand her to be rejecting the conduct of which she was complaining, continuation of the conduct would, generally, be regarded as harassment"*

464. In ***Richmond Pharmacology v Dhaliwal 2009 IRLR 336*** the EAT set out a three step test for establishing whether harassment has occurred: (i) was there unwanted conduct; (ii) did it have the purpose or effect of violating a

person's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person and (iii) was it related to a protected characteristic? The EAT also said (Underhill P) that a respondent should not be held liable merely because his conduct has had the effect of producing a proscribed consequence: it should be reasonable that that consequence has occurred. The EAT also said that it is important to have regard to all the relevant circumstances, including the context of the conduct in question.

465. In ***Grant v HM Land Registry 2011 IRLR 748*** the Court of Appeal said that when assessing the effect of a remark, the context in which it is given is highly material. All relevant circumstances should be considered, including whether the claimant's own actions have caused her reaction and also the relationship between the claimant and the harasser – for example, a remark between friends is not the same as a remark made by someone who is not a friend (see Elias LJ). Everyday experience tells us that a humorous remark between friends may have a very different effect than exactly the same words spoken vindictively by a hostile speaker.

466. Section 27 provides that a person victimises another person if they subject that person to a detriment because the person has done a protected act or because they believe that the person may do a protected act. Section 27(3) provides that giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

467. In ***Chief Constable of the West Yorkshire Police v Khan*** **2001 IRLR 830** the House of Lords held that provided that an employer honestly and reasonably believed that he needed to protect his position in pending proceedings, he would not be guilty of victimisation by failing to provide a reference for the person who had brought the proceedings. Lord Nicholls said "*Employers, acting honestly and reasonably, ought to be able to take steps to preserve their position in pending discrimination proceedings without laying themselves open to a charge of victimisation*".

468. The protection given to respondents is not absolute. The employer's response must be honest and reasonable. In ***Derbyshire and others v St Helens Metropolitan Borough Council 2007 ICR 841*** the House of Lords considered ***Khan*** and took a different approach. Lord Bingham stressed that the contrast between the Chief Constable's purpose and acts in ***Khan*** was "*striking and obvious, for the object of sending the letters [in Derbyshire] was to put pressure on the applicants to drop their claims…. the letters were sent because the applicants had persisted in their claims and the Council wished to put pressure on them to settle*" (judgment paragraph 9).

469. Direct discrimination is defined in section 13 of the Equality Act 2010 which provides that a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

470. Section 23 of the Act provides that on a comparison of cases for the purposes of section 13, there must be no material difference between the circumstances relating to each case.

471. Section 136 provides that 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.

472. One of the leading authorities on the burden of proof in discrimination cases is ***Igen v Wong 2005 IRLR 258***. That case makes clear that at the first stage the Tribunal is to assume that there is no explanation for the facts proved by the claimant. Where such facts are proved, the burden passes to the respondent to prove that it did not discriminate.

473. Bad treatment per se is not discriminatory; what needs to be shown is worse treatment than that given to a comparator - ***Bahl v Law Society 2004 IRLR 799 (CA)***.

474. Lord Nicholls in ***Shamoon v Chief Constable of the RUC 2003 IRLR 285*** said that sometimes the less favourable treatment issues cannot be resolved without at the same time deciding the reason-why issue. He suggested that Tribunals might avoid arid and confusing disputes about identification of the appropriate comparator by concentrating on why the claimant was treated as he was, and postponing the less favourable treatment question until after they have decided why the treatment was afforded.

475. In ***Madarassy v Nomura International plc 2007 IRLR 246*** it was held that the burden does not shift to the respondent simply on the claimant establishing a different in status or a difference in treatment. Such acts only indicate the possibility of discrimination. The phrase "could conclude" means that "a reasonable tribunal could properly conclude from all the evidence before it that there may have been discrimination".

476. In ***Hewage v Grampian Health Board 2012 IRLR 870*** the Supreme Court endorsed the approach of the Court of Appeal in ***Igen Ltd v Wong*** and ***Madarassy v Nomura International plc***. *The judgment of Lord Hope in* ***Hewage*** *shows that* it is important not to make too much of the role of the burden of proof provisions. They require careful attention where there is room for doubt as to the facts necessary to establish discrimination but have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other.

477. The courts have given guidance on the drawing of inferences in discrimination cases. The Court of Appeal in ***Igen v Wong*** approved the principles set out by the EAT in ***Barton v Investec Securities Ltd 2003 IRLR 332*** and that approach was further endorsed by the Supreme Court in ***Hewage*****.** The guidance includes the principle that it is important to bear

in mind in deciding whether the claimant has proved facts necessary to establish a prima facie case of discrimination, that it is unusual to find direct evidence of discrimination.

478. The approach to the burden of proof was confirmed recently by the Court of Appeal in ***Efobi v Royal Mail Group Ltd 2019 EWCA Civ 18.***

Conclusions

Wrongful dismissal

479. We have found above that the claimant's admitted dishonesty was gross misconduct and it was the reason for her dismissal. As such we find that the respondents were entitled to dismiss her without notice and the wrongful dismissal claim for notice pay fails.

Direct discrimination

480. In submissions, paragraph 23, we were told that the claimant pursued a section 13 claim but only in relation to the comments made upon dismissal on 21 December 2017 and the dismissal itself. Therefore, if and to the extent that anything else was relied upon as direct sex discrimination, we treat this as withdrawn.

481. In submissions the claimant said that no man in materially identical circumstances would have been subjected to the same comments on 21 December 2017 or dismissal. The claimant submitted that R3 would not have made sexual advances towards a man and would not have been rebuffed. We have found that there was no unwanted conduct or sexual advances so that this was not treatment for being rebuffed.

482. Our finding as to the reason for dismissal and/or the comment about being "*calculating and conniving"* was because of the dishonesty on the part of the claimant and a man who behaved in the same way would have been treated the same. We have found above that what mattered to R3 was the claimant's conduct as a solicitor and not because she was female. He specifically looked at whether the conduct merited dismissal, regardless of gender. He did not tell her on 21 December 2017 that she knew too much about him. He made that comment in early June 2017, but not on 21 December 2017.

The harassment and victimisation claims

483. The claimant is someone who on her own admission tells lies. It was therefore difficult to know when she was telling the truth. She admitted that she lied to R3, that she put on an act with him, that she did not let him know that his conduct was unwanted because she did not want to "*spook him*". She admits in relation to her photographic fashion show that she put on for him that "*maybe it was enticing him more",* on her own evidence she was "*entertaining him"* or "*entertaining him back".*

484. The claimant is prepared to lie to others, such as her boyfriend, on occasions when we have found she preferred to go out with R3, saying for example that she had to go back to the office to draw up an Order for the Court – on a Friday night when the County Court would not be waiting for it. She told this tribunal that she had no way of getting home on a Friday night and preferred to go out with her boyfriend, yet she was at the Finchley Road shopping complex where there is a tube station. She was not dependent on R3 for transport, she made a choice as to what she preferred to do that evening.

485. The claimant is also reluctant to take responsibility for her own actions. We saw this notably in the example which she described as "*throwing her secretary under the bus*". The secretary was allowed to take the blame for losing documents which the claimant had misplaced and the claimant did nothing to correct the position.

486. There is nothing unlawful about people forming relationships, whether close friendships or more intimate relationships, at work. It goes on all the time. We have found that R3 liked to surround himself with attractive young women and whilst this creates a questionable recruitment strategy, that point was not in issue before us. We would nevertheless encourage the respondents to review their equal opportunities practices on recruitment. It is also not in any doubt that R3 was the more powerful person in the dynamic. We agree with the claimant's submission that he held the "*career cards*". What matters from the perspective of sexual harassment is whether the conduct is unwanted and if so, whether it had the purpose or effect set out in section 26 of the Equality Act.

487. The claimant began talking about suing R3 as early as April 2017 before she was even two months in to her employment and before the majority of the events relied upon in these proceedings had taken place. She had also talked about suing her former employer. She does not take well to any form of criticism or work-related correction or supervision that is not the most positive.

488. Both the claimant and R3 took a risk by having this close personal friendship at work. It was a risk they were entitled to take, but it was still a risk. It made it difficult for R3 to act in the position of a principal and supervisor and it created jealousy and bad feeling in the workforce because they could all see the extra attention the claimant was receiving. There is then the risk of what happens when it all goes wrong; which is plain to see by the three weeks of tribunal time involved in this case.

489. The claimant admitted throughout her evidence that she lied, that she entertained R3, stroked his ego, played along (statement paragraph 382) and said she was putting on an act. Where there was a direct conflict of evidence this had a bearing on our findings. We took the view that the claimant was prepared to lie if it suited her purposes. In this case we also had a great deal of contemporaneous messages, photographs and even

video footage and voicemails. This also played a large part in our findings where there was a direct conflict on the evidence. The messages and footage did not generally support the claimant's case. She knew this because she commented to her friend that her messages and photographs with R3 may turn round to bite her.

490. We have found against the claimant on the harassment and victimisation claims for the reasons set out above. The harassment allegations either fail on their facts or did not amount to unwanted conduct. It was not then necessary for us to go on to consider purpose or effect. The victimisation claims fail for the reasons set out and on the issue of bad faith.

491. Neither side made any submissions on a time point. As we have found against the claimant on the issues above, it was not necessary for us to deal separately with the time point.

492. As the claimant has failed in her claims, the issue about the ACAS Code did not apply.

493. The holiday pay claim was dismissed upon withdrawal.

494. For the reasons set out above the claims fail and are dismissed.

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Employment Judge Elliott

Date: 15 March 2019

Judgment sent to the parties and entered in the Register on: 18 March 2019.

for the Tribunals