



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs R Piper

**1<sup>st</sup> Respondent:** Nairobi Coffee and Tea Company Limited  
**2<sup>nd</sup> Respondent:** Mr A Merali  
**3<sup>rd</sup> Respondent:** Mr L Goddard  
**4<sup>th</sup> Respondent:** Mr R Rawal

**Heard at:** Birmingham

**On:** 10-13 June & 2-3 July 2019

**Before:** Employment Judge Flood  
Mr N Forward  
Mrs M Howard

## Representation

**Claimant:** In person  
**Respondent:** Mr Isherwood (Consultant)

**JUDGMENT** having been sent to the parties on 5 July 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

# REASONS

## The Complaints and preliminary matters

1. The claimant was employed by the respondent, a company that makes and supplies tea and coffee products to trade and retail customers, as a Business Development Executive, from 5 June 2017 until she resigned on 1 June 2018. By a claim form also presented on 1 June 2018, following a period of early conciliation from 26 April 2018 to 31 May 2018, the claimant brought complaints of sex discrimination, harassment, bullying, unfair treatment, unlawful monitoring, fraud, withholding expenses and breaching statutory rights. Complaints of bullying, unlawful monitoring and fraud which could not be pursued as free-standing claims because the Tribunal has no jurisdiction to consider them. The claimant also appeared to have made allegations of

indirect discrimination but on examination, it does not appear that any of these are in fact allegations under section 19 of the Equality Act 2010 (EQA) at all, so these were not considered.

2. The discrimination complaint is pursued on the protected characteristic of sex. The prohibited conduct that the claimant relies upon is direct discrimination, harassment and victimisation. There are 30 numbered allegations set out in a Schedule of Allegations which was contained at pages 38-48 of the Bundle of Documents and each one has been identified as to whether it is pursued as an act of discrimination (and if so which type) or which just amounted to background) and also to which respondent(s) the allegations related to (R1 – Nairobi Tea and Coffee Company Ltd; R2 – Alnur Merali; R3 – Lesley Goddard and/or R4 – Raj Rawal).

### **The Issues**

3. The issues between the parties which fell to be determined by the Tribunal were:

4. Time limits / limitation issues

- 4.1. Were all the claimant's complaints presented within the time limits set out in sections 123(1)(a) & (b) of the EQA? Dealing with this issue may involve consideration of subsidiary issues including: whether there was an act and/or conduct extending over a period, and/or a series of similar acts or failures;; whether time should be extended on a "just and equitable" basis; when the treatment complained about occurred; etc.

- 4.2. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 27 January 2018 is potentially out of time, so that the tribunal may not have jurisdiction to deal with it.

5. EQA, section 13: direct discrimination because of sex

- 5.1. Has the respondent subjected the claimant to the following treatment:

- a. [Please see relevant allegations in the Schedule of Allegations]?

- 5.2. Was that treatment "less favourable treatment", i.e. did the respondent treat the claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances? The claimant relies on the comparators and/or hypothetical comparators for each alleged treatment as set out in the Schedule of Allegations

- 5.3. If so, was this because of the claimant's sex and/or because of the protected characteristic of sex more generally?

6. EQA, section 26: harassment related to sex

- 6.1. Did the respondent engage in conduct as follows:

- a. [Please see relevant allegations in the Schedule of Allegations]?
- 6.2. If so was that conduct unwanted?
- 6.3. If so, did it relate to the protected characteristic of sex and/or was it of a sexual nature?
- 6.4. Did the conduct have the purpose or (taking into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?
7. EQA, section 27: victimisation
  - 7.1. Did the claimant do a protected act?. The claimant relies upon the following:
    - a. Raising a grievance on 19 March 2018.
  - 7.2. Did the respondent subject the claimant to any detriments as follows:
    - a. [Please see relevant allegations in the Schedule of Allegations]?
  - 7.3. If so, was this because the claimant did a protected act and/or because the respondent believed the claimant had done, or might do, a protected act?
8. Remedy
  - 8.1. If the claimant succeeds, in whole or part, the Tribunal will be concerned with issues of remedy and, if the claimant is awarded compensation and/or damages, will decide how much should be awarded. Specific remedy issues that may arise and that have not already been mentioned include:
    - a. if it is possible that the claimant would still have been dismissed at some relevant stage even if there had been no discrimination, what reduction, if any, should be made to any award as a result?
    - b. did the respondent unreasonably fail to comply with a relevant ACAS Code of Practice, if so, would it be just and equitable in all the circumstances to increase any compensatory award, and if so, by what percentage, up to a maximum of 25%, pursuant to section 207A of the Trade Union & Labour Relations (Consolidation) Act 1992 ("section 207A")?
    - c. did the claimant unreasonably fail to comply with a relevant ACAS Code of Practice, if so, would it be just and equitable in all the circumstances to decrease any award and if so, by what percentage (again up to a maximum of 25%), pursuant to section 207A?

**Findings of Fact**

9. The claimant attended to give evidence and called Ms Narelle Price and Mr Bradley Journet-Robins, two former employees of R1, as witnesses. Mr Alnur Merali (R2) and the Managing Director of R1, Mr Leslie Goddard (R3) and the National Accounts Manager of R1; and Mr Raj Rawal (R4) and the Operations Manager of R1 all gave evidence themselves and on behalf of R1. We considered the evidence given both in written statements and oral evidence given in cross examination, re-examination and in answer to questioning from the Tribunal. We considered the ET1 and the ET3 together with relevant numbered documents referred to below that were pointed out to us in the Bundle produced by the respondent and a supplementary Bundle produced by the claimant. There was considerable dispute of fact so we have made detailed findings not only on allegations made as specific discrimination complaints but on other relevant matters raised as background. These findings may be relevant to drawing inferences and conclusions. We made the following findings of fact:

9.1. R1 is in business in the manufacture and supply of coffee and tea products and other sundry items (such as hot chocolate, milk toppings and fruit juices). It manufactures ground coffee and supplies this, and the other products it sources elsewhere, to the hospitality industry. Mr Merali gave evidence about the history of the company and his involvement with it. His family bought the company in 1994 and it was already an established business at this time. He is now the sole working director. The business is split into three sectors: Food Services (the sector within which the claimant worked); Independent Retail and Exports.

9.2. The sales function of the business was managed by Mr Merali. Mr Rawal oversees day to day operations at the company and runs a team of sales call people; accounts and finance and other operational employees. The company operates out of its premises in Watford. There it has a factory area where coffee is blended, roasted and packed, a warehouse and dispatch area and an office with a training and quality assurance room below it.

9.3. Mr Merali described the sales process as being largely based on the sale of hot and cold drinks products. Customers were also provided with machinery to dispense the drinks either free of charge or on a rental basis, depending on the commercial viability of the deal. He said that there was a minimum spend per customer of £3,000 per year and that every sale made was based on a price list of products plus a method of recovering equipment cost sited a customer premises. If equipment cost is not covered by rental, then product prices are higher to recover this cost. If a deal is not commercially viable then, it will not be signed off by Mr Merali. He explained that free trials were offered to customers on a commercial and non-commercial basis, but that if on a non-commercial basis, the maximum length of trial was generally 1 month. Mr Merali kept a large degree of oversight on all the deals negotiated by R1 and had the final "say so". The process described above could be departed from, if authorised by Mr Merali, if and when he felt that there were good business reasons for doing so. Mr Merali was very focused on the sales

performance of the business of R1 and how each account could generate sales and profit,

- 9.4. R1 had employed numerous sales executives over the years. There was much discussion about the breakdown of sales employees over the years between male and female employees. We were shown a document (pages 283-293) which showed a breakdown of sales staff into males and females between 2013 and 2018. In 2013 of 6 sales staff employed all were male; in 2014 there was one female sales employee out of 6/7 employed that year; in 2015 this increased to two female employees out of 6 in November; in 2016 there was one female employee in a team that fluctuated between 6 and 3 people and this increased to 2 females in November 2016 (presumably when Leanne Aylward joined). In 2017 there were two female employees up to June 2017 when it increased to 3 (when the claimant joined) and then back down to 2 (when Ms Aylward left). It went up again to 3 (when Ms Price joined) and down to 2 again when she left in January 2018. There was then between 2 and 3 females out of 5-6 employees in total during 2018. R1 uses this as evidence to suggest that it does not fail to employ female employees in sales roles. Mr Merali could not remember the names of all the females he had employed.
- 9.5. Mr Merali explained that every new sales executive had a target of new business of £100,000 per year which translated as £8,333 per month. This target had to be achieved in the first year if the employee was to have a long-term future within R1. In order to “*evaluate the true capability of a new person*” they were required to focus on new business generated by themselves and were not given any existing accounts or leads until the company felt that they were beginning to achieve their targets by themselves. Mr Merali drove the sales employees very hard and it was a demanding and challenging task to meet the targets set and expectations that Mr Merali had. There was a high turnover of sales staff. Mr Merali described the situation that if during the year it is apparent that an employee was not going to meet their target that an employee “*could be let go sooner*” and said that many employees had “*fallen by the wayside*” during the first 12 months of their employment. Mr Merali acknowledged that there were very few women who had made it past the first 12 months of their employment, if any. He also said that there were many men who did not make it through. He referred to 3 or 4 employees who had joined in recent years who had been successful but dozens who had not.
- 9.6. There were two levels of sales personnel. Business Development Managers were those who had recently started and are tasked with winning smaller accounts and restricted to a range within 50 miles of their home. There are also National Accounts Managers who are tasked with larger accounts and allowed more latitude in the type of business written and areas covered.
- 9.7. By 2016, the respondent’s sales force was largely made up of Mr Goddard (R3) and Mr Juan Batten, both of whom were National Accounts Managers. The claimant challenged Mr Goddard as to whether he was a National Accounts Manager, and pointed to emails and documents

produced by Mr Goddard where he used the title of Business Development Manager (pages 151 and 172). We accepted his evidence that he had been carrying out the National Accounts role for a number of years, but had not bothered to change his job title externally. Mr Merali said that the company had become increasingly reliant on these two sales employees (as a third sales employee, Mr Paul Ryan, had passed away). He decided that he needed to grow the sales force in order to increase business. He decided to recruit a new Head of Sales who would take over the sales force, recruit new staff and grow the team and the business.

9.8. Mr Merali knew Mr Robins at this time and he started to have discussions with him about joining as Head of Sales. Mr Robins and Mr Merali discussed his appointment over several months. There was no formal interview. It seems that Mr Merali discussed general family matters with Mr Robins during this process although Mr Robins was not asked specifically about his childcare responsibilities. Mr Merali said he already knew that Mr Robins was married and had children. Prior to Mr Robins joining and during conversations with Mr Merali, he mentioned to him the possibility of a former colleague of his, Ms Aylward potentially joining R1 in a sales role. Ms Aylward joined the respondent on November 2016. Mr Robins joined R1 shortly after in January 2017.

9.9. The claimant and Mr Robins say that Ms Aylward was asked about her personal life, and whether she planned to get married and have children during the interview process with R1. The claimant says Ms Aylward told her this when she first met her in July 2017. Mr Merali denies that he asked Ms Aylward these questions. He contends that he only asked her the same question he asked all candidates which is what motivated them. He said that depending on the answer to that family issues might come up, but he did not ask direct questions. We have not heard any direct evidence from Ms Aylward on this. Our conclusion is that it is likely that Mr Merali did ask Ms Aylward these type of questions. We conclude this based in part on our later findings about the questions asked of female employees at interview.

9.10. Mr Robins joined in January 2017 as Head of Sales and his specific brief was to grow the sales team. Mr Robins tried to recruit people from his contact list and he also engaged a recruitment consultant, Stacey Yates of Colburg Banks Recruitment Company, who he had used in his previous role, to find potential candidates. Ms Yates sent the claimant's CV to Mr Robins along with 5 other candidates. Mr Robins set up some interviews and asked Mr Goddard to assist him with the interview process. He recalls interviewing the claimant by telephone and then having a further interview with her at the Severn Valley Railway headquarters. He was impressed with her and one other candidate, a male, and he reported back to Mr Merali that he would like to offer a position to two of the candidates.

9.11. Mr Robins gave unchallenged evidence that Mr Merali was reluctant to use the agency (because of the fees involved) and he also disliked the fact that Mr Robins was *"looking at another female for the role in the*

*Midlands knowing his attitude towards them*". Mr Robins explained that he had reached this conclusion based on his perception of his time at the company and he had the impression that Mr Merali preferred to have men in sales roles as women who were married and had children and childcare responsibilities were harder to manage. Mr Merali disputed this but we accept that this was the genuinely held perception of Mr Robins.

- 9.12. Mr Robins followed up with the other candidate selected by Ms Yates first and he was interviewed by Mr Merali. There were some reservations about this candidate as it was felt that he had moved jobs too often. Mr Robins then arranged for an interview to take place with the claimant by Mr Merali which was to take place after a sales meeting held at the Castle Bromwich Hotel on 23 April 2017. Mr Robins was not present at the interview which was conducted by Mr Merali alone and it lasted about an hour.

Allegation 1 – of direct sex discrimination (s 13 EQA) on 23 April 2017 against R1 and R2

- 9.13. The claimant says during this interview she was first asked about her working life and her CV. She says that she was then asked about her family, whether she was married, whether she had children, how old they were and how would she be able to juggle a role that required her to travel. She says she was also asked what her husband did for a living. The claimant said she explained that she had support from her in-laws and her husband who ran his own business. She also said that her children were older now and did not need as much support. The claimant also says Mr Merali asked her whether she was having any more children. During a discussion about the existing sales team, the claimant says that Mr Merali stated that he did not think that Ms Aylward, the female member of the sales team would be going off to have babies as she was in her late thirties and liked handbags and accessories too much. She also said that Mr Merali told her that he did not usually employ women.

- 9.14. Mr Merali has a different recollection of how the interview went. He says he asked the claimant what motivated her (which he asked all employees) and it was in her response to this question that the claimant said she had a settled life with a husband running his own successful business and grown up children. Mr Merali says that the claimant told him that she was motivated by money and that she liked buying expensive handbags and going on holiday. Mr Merali says it is at this point that he said that there was another salesperson, Ms Aylward, who was also into expensive handbags. He said they then discussed further if she was motivated enough as her husband's business was successful. He says that the claimant told him that she wanted to have an independent source of income for her treats. Mr Merali denies that he asked the claimant specifically about her plans to have more children, or her childcare responsibilities. He admitted that the subject of children did come up and says they discussed the claimant's children as one of them was the same age as his grandchildren. Mr Merali denies saying that he did not usually employ women and points to the fact that he has

employed women many times - 5 women in the sales role in the last 5 years, including after the claimant left.

9.15. We make a finding of fact that Mr Merali did ask the claimant about her children, possible plans for more children and childcare responsibilities during this interview. Mr Merali brought up the subject of children and the claimant's motivation given her husband's successful business. As to the comment allegedly made by Mr Merali that "*he didn't usually employ women for the role*" we conclude that he did make a comment of this nature, not least because this was factually correct as not many women had been employed in this sales role. It also appears that Ms Aylward was one of the first women employed in the role. Very few women had been successful in lasting beyond the one-year period and Mr Merali could not remember the names of any successful women in the sales role. The evidence of Mr Robins and Ms Price also supports that he had made comments of this nature to them.

9.16. Following the interviews with the two candidates, it appears that the company contacted the other (male) candidate first. This candidate took some time to respond (as he appeared to be playing off two offers against each other). He eventually turned down the position. During this time, Mr Merali said that Mr Robins had to stall the claimant pending the response from the other candidate. Mr Merali had no dealings with Ms Yates at the recruitment consultant and he does not know what was discussed with her.

Allegation 2 - of direct sex discrimination (s 13 EQA) on 30 April 2017 against R1 and R2

9.17. The claimant says that following the interview she relayed what had taken place to Ms Yates and the claimant says Ms Yates was "gobsmacked" and told her she should never have been asked those questions. The claimant also alleges that Mr Yates told her that the other (male) candidate had not been asked such questions. The claimant also says that Ms Yates told her that Mr Merali wasn't sure about the claimant as he thought her children would be a problem "*and as I was married to a successful businessman, he thought I wouldn't be hungry enough for the role*". Mr Robins gave evidence that he gave this feedback to Ms Yates based on his discussions with Mr Merali. We accept that this feedback was given to Ms Yates by Mr Robins and relayed to the claimant. Mr Merali himself did not pass on this feedback to Ms Yates.

9.18. The claimant e mailed Mr Merali on 4 May 2017 and a copy of this email was at page 49 of the Bundle. This e mail stated that the claimant was disappointed with feedback that she had received and that she had not had an offer. She referred to the "*...only reservation was whether I was hungry enough for the long term*". She went on to set out why she should be considered for the role and set out her achievements in her current role. She also stated "*I have had my family and it is now time to focus on Rachel and what I love to do. This shouldn't be mistaken into thinking I just want to drive round and chat to people. I want the finer things in life, for example – I've just committed to a new driveway paid for*



*with my commission.*” Mr Merali was impressed with this email. The other candidate rejected the offer and the claimant was then offered the position verbally and was sent an email offering her the position from Ms Yates on 11 May 2017 which she accepted on the same day (pages 13 and 14 Claimant’s Supplemental Bundle). She was sent an offer letter and contract dated 12 May 2017 (pages 15 -16 of Claimant’s Supplemental Bundle.)

9.19. Mr Robins left the employment of R1 towards the end of May 2017 due to disagreements over his role and responsibilities (including the fact that Ms Aylward was told she should report to Mr Merali rather than Mr Robins and that Mr Batten refused to report to him). Mr Merali telephoned the claimant on or around 28 May 2017 to tell her that Mr Robins had left and that she would be reporting directly to him. The claimant says she was concerned about this as she had got on very well with Mr Robins and had left her role primarily to work with him.

9.20. The claimant started work on 5 June 2017. She was collected by Mr Goddard from Milton Keynes station and taken to the premises of R1 in Watford. The claimant gave evidence about her first impressions of the office and her feelings that it was not clean and that there were no female toilets. We do not make any findings of fact on this as it is not directly relevant to the issues in dispute.

Allegation 3 - of direct sex discrimination (s 13 EQA) on 5 June 2017 against R1 and R2

9.21. The claimant says that during a meeting with Mr Merali on her first day that he told her that she had been the choice of Mr Robins and not him and that *“he was against employing women, especially women with children”*.

9.22. She says that Mr Merali relayed to her a story about a friend of his who had employed two women who were the heart of the business but then, one of the women told him she was pregnant. He said that she had gone on maternity leave and it had cost his friend a fortune. He then said the other woman had gone on maternity leave shortly after and that all of this nearly ruined his friend’s business. She says he used this story to illustrate why he never usually employed women.

9.23. Mr Merali denies saying this and said he does not recognise this story or that he would have said this. Mr Goddard who was present at the time also says he does not recall the conversation. Mr Robins recalls that Mr Merali told him a similar story about his friend as does Ms Price who was told the same story when she started.

9.24. On balance we have concluded that Mr Merali did tell the claimant the story about his friend. We do not accept that he told the claimant expressly he was against employing women especially women with children. However, this may have been intimated and his comments and the story he told would have led the claimant or anyone listening to have reached that conclusion. We were persuaded by the fact that not just the

claimant but also Ms Price (who we found particularly convincing) and Mr Robins both have a clear recollection of Mr Merali telling this story after joining. Mr Goddard states he does not recollect the conversation taking place but does not categorically deny that it took place. We find that the story had the ring of truth about it.

9.25. Mr Merali went on to discuss aspects of the claimant's role and said that she would be restricted to selling within a 50-mile radius, would not be given any existing accounts (as her role was 100% new business) and that she should not approach cafes, restaurants and bars. She was told that there was a £3,000 a year minimum spend limit to clients she brought on board. He also told the claimant that there was "*nowhere to hide*". She was told she had a new business target of £100,000 over the year translating as £8,333 per month at the end of the 12-month period. The claimant and Mr Merali also had a general discussion about coffee and the various types and how they were made. The claimant describes Mr Merali telling her about the method of production of one coffee which she said was offensive, which we accept took place but was of no relevance to her complaints.

9.26. The claimant described Mr Rawal entering the meeting and handing her some new contractual documents and she says she was told that there had been some change to wording to do with the car she was being given. This version of the contract was shown at page 51 and 52 and pages 54-57. There were some differences in the contract specifically regarding company car and bonus terms. Mr Rawal and Mr Merali confirmed that there had been an error in the version that had been sent out previously by Mr Robins and this was just to correct the error. The date on the letter was not changed and the differences were not pointed out to the claimant. This was not handled particularly well, and it would have been better if R1 had been more transparent about the issue with the contract. It does not have any direct bearing on the issues we need to decide.

Allegation 4 - of direct sex discrimination (s 13 EQA) against R1 and R2

9.27. The claimant alleged that she started work and from the start she was receiving telephone calls from Mr Merali every day and that these conversations would last about an hour. The claimant described the nature of the conversation as aggressive, controlling, intimidating and rude. Mr Merali accepted that he called the claimant every day when she started and states that "*every sales person that has a manager will expect to be spoken to at least once a day until they have proven their ability. It is in the company's interests to ensure that they are performing and that is what a sales managers' role is – to ensure that they are*". He denies that the calls were excessive and says he was never aggressive but polite. He also says that he made similar phone calls to all new employees including Brian Smith who joined later. He says he had made similar calls to Mr Goddard and Mr Batten when they started but called them less as they had become trusted and established employees. We accept that the claimant found these phone calls intimidating even if this was not the intention of Mr Merali. We also find that Mr Merali made

similar calls to all new employees.

9.28. The claimant contends that she complained to Mr Goddard during this first week about the calls as she was under the impression that he was her line manager. She says that the Mr Goddard told her "*ignore it, its Ramadamadindong, he will be OK when he can eat*". Mr Goddard says he "*can't remember whether he said that*". We find that the claimant did complain to Mr Goddard and he did respond in this manner. This was Mr Goddard's attempt to make light of the complaint made by the claimant.

9.29. The claimant was asked to attend a buddy day on 15 June 2017 to meet Ms Aylward and to get some training. Mr Goddard met the claimant and greeted her with a kiss. The claimant said that this was unwelcome and an invasion of her personal space. Mr Goddard's view was that he did not see the kiss on the cheek in this way, describing himself as an "*affable*" person who greets most people in that way. His view was that the claimant did not object and if she had told him at any time that it was not an appropriate greeting, he would not have done this again. We accept that this made the claimant feel uncomfortable. She did not raise any objection to Mr Goddard at the time. The claimant confirms that this was not raised as a separate allegation of discrimination but rather as background.

Allegation 5 – of harassment against R1 and R3 on 15 June 2017 (s 26 EQA)

9.30. The claimant recounts a conversation that took place this day with Mr Goddard when he described Ms Aylward as "*a Princess who was artificial with fake tits and that she was crap at her job*". She also alleges that he told her that Ms Aylward "*used her looks to win customers over*". The claimant also admits that she made a comment about Ms Aylward saying "*she's no Princess, have you seen her nails.*" We find that Mr Goddard did make the comments to the claimant about Ms Aylward.

9.31. The claimant also described a conversation taking place that day between herself and Ms Aylward when Ms Aylward told her that she was planning to leave the company and that this was because of the phone calls she was receiving from Mr Merali every day that she found intimidating. She also informed the claimant that she had been asked the same types of questions at interview about marital status and children that the claimant had. We accept that this conversation took place as the claimant alleges.

9.32. She also alleges that Mr Goddard made some lewd comments about Mr Batten and Mr Merali at a lunch attended by her Ms Aylward, Mr Batten and Mr Goddard at Morrisons supermarket. We find that the tenor of the conversation that day was inappropriate and there were lewd jokes and sexual innuendo. The claimant found this conversation uncomfortable and humiliating.

Allegation 6 of direct discrimination (s 13 EQA) against R1 and R2 and harassment (s 26 EQA) against R1 and R3 on 21 June 2017

- 9.33. The claimant says she was asked to attend a training meeting at the offices of R1 on 21 June 2017. She says that she asked Mr Merali whether she could wear casual clothes that day but was told by Mr Merali that she should turn up exactly as she would to attend a customer with “*nice outfit, heels and make up*”. Mr Merali accepts that he told the claimant that she needed to wear the clothes she attended customers with. He explained to the Tribunal that it was important that the sales team were capable of training customers on the equipment in the smart attire they would wear for work and not get their clothes damaged. His view is that heels are not necessary to be smart. We conclude that the claimant was asked to wear work clothes but not specifically instructed to wear heels and make up. We also accept the explanation given by Mr Merali that he expected all sales staff to attend in their work clothes and that Mr Goddard also attended in work clothes.
- 9.34. The claimant also described an incident that first took place in the office that day involving Mr Goddard commenting on an employee in the office, Annaick who was a French national and stating that he found her attractive and commenting on her appearance and how he would like to have a relationship with her if he were younger. The claimant described Mr Goddard making a “*melting*” gesture when she was in his presence and also making hip gyrating gestures on this occasion and on all other when he spoke to her on the phone in the presence of the claimant. Mr Goddard said that he found Annaick attractive and that he did make a visual expression which he described as a “*swoon*” in front of the claimant about her. The claimant was upset by this conduct and recalls saying to Mr Goddard; “*She’s just a kid*”. We also heard evidence from Ms Price that Mr Goddard behaved in a similar manner around Annaick in front of her as well. We accept that the conduct described by the claimant did take place on this day and on other occasions moving forward.
- 9.35. The claimant was having difficulties with her role and said that she found the conversations each day with Mr Merali very difficult. She alleges that Mr Merali made anti women comments during these conversations describing women as “*fickle*” and “*fragile*”. She also says that he told the claimant he had enjoyed reducing Ms Aylward to tears. Mr Merali denied making these comments. We can accept that Mr Merali did make many phone calls to Ms Aylward and that these calls did put pressure on her in the same way as the claimant. We accept that Ms Aylward told the claimant that she found the phone calls upsetting. However we do not accept that Mr Merali told the claimant that he enjoyed making Ms Aylward cry. This did not have the ring of truth and was not consistent with the way he presented when giving evidence. He may have made comments about women but there is no specific allegation made about the use of the words fickle or fragile, so we do not make a finding of fact that such were made at any particular time.
- 9.36. The claimant gave evidence about the work she did on a potential customer being the Park Inn, Walsall, which she first visited on 14 July

2017. We heard a large amount of evidence on the circumstances surrounding this account and the claimant's involvement. Much of this evidence was not relevant to the issues we need to decide. The central allegation appears to be that she visited this client on a cold call and found out that although an existing client, they only bought filter coffee from R1 and had not had any major dealings with anyone at R1 for some time. The Park Inn was a group of hotels that had previously been allocated to Mr Batten. R1 had previously lost the group business on a tender, but Mr Batten had managed to retain certain hotels on an individual basis, including the one in Walsall. When the claimant told Mr Merali that she had visited the hotel, Mr Merali agreed that if she was able to increase the business, then this account would be transferred to her. He said any sales generated would count towards the generation of commission for the claimant but would not count towards her sales target as this remained an account allocated to Mr Batten.

9.37. The claimant agreed with the manager at the hotel that they could have a free trial for use of a coffee machine for a 3-month period and sold them coffee at a price of £45 per kg and other products (page 148 of the Bundle). This did increase sales to this hotel. This trial was subsequently refused by R1 and the claimant had to go back to the customer and ask them to pay a monthly fee for the use of the machine. The customer was then lost and went elsewhere. The claimant felt that R1 had unfairly refused to allow this trial to go ahead when other employees were allowed such trials. There is clearly a significant difference in opinion between the claimant and the respondents about the viability of this deal. We find that the reason that the trial was not permitted to go ahead was that Mr Merali decided that it was not commercially viable.

#### Allegation 7

9.38. In around July 2017, Ms Aylward left the employment of R1. The claimant said she was asked to visit some of Ms Aylward's old accounts by Mr Merali. All these accounts were outside the claimant's 50-mile radius. Mr Merali contends that the claimant asked to be allocated these accounts and she knew they were outside her area as Ms Aylward had been based in Wakefield. Our finding is that it was a mutual decision that the claimant would visit these accounts to see if she was able to generate any business.

#### Allegation 8 - of direct discrimination (s 13 EQA) against R1 and R2 and harassment (s 26 EQA) against R1 and R3 on 20 July 2017

9.39. On 20 July 2017 the claimant attended her first sales meeting at R1's offices also attended by Mr Merali, Mr Goddard and Mr Batten. The format was that there was a formal meeting and then sandwiches were brought in and a more informal discussion then took place. The claimant had asked in advance whether she could leave this meeting earlier by emailing Mr Merali and he had responded that she could (page 112). Mr Merali told the claimant that the meeting would start at 9.00 a.m. and finish at 3.00 p.m. The claimant says that when she reminded Mr Merali about this arrangement at the meeting, he became angry and made

derogatory comments. We do not accept that this took place as the claimant recounts it. Mr Merali had already given his consent to the claimant leaving early so it is unlikely that any further comment would have been made discouraging her from doing so. We find that the meeting's start and end date was not entirely clear though. Mr Merali states that the meeting finished at 2pm and the claimant did not leave until 3.13pm. We find that it may be that the meeting formally finished at 2pm but that the attendees stayed around and continued to discuss business matters amongst general chit chat after the official business of the meeting had concluded. We understand that the claimant felt uncomfortable about leaving before this time, as this was an important part of the interaction, but accept the evidence of Mr Merali that she could have left earlier if she wanted to.

9.40. The claimant alleges that during this meeting that Mr Merali made a comment about not wanting to employ women and said that she would not have got her job if it had not been for the e-mail that she had sent. Mr Merali admits that he made a comment during this meeting about the e-mail that the claimant had sent to him. He said it was a compliment and he was referring to the email as something that people could learn from as a lesson in how to close a deal when it was going to fail. We find that Mr Merali did make a comment here that he did not usually employ women and this was said in the context of him having praised the claimant for her e mail and that it was this e mail that led to R1 employing the claimant, a woman, when this did not normally happen. She was the exception to the norm because of the quality of this e mail.

9.41. The claimant also alleged that there was a conversation during this meeting about Ms Aylward where comments were made about her being a princess and having fake breasts and that she only sold anything due to her looks. The claimant stated that Mr Goddard physically pushed up his chest area and said to the claimant: "*It's OK we know yours are real.*" The claimant said she was mortified at these comments and that these comments were undignified and humiliating. Mr Merali does not accept that the conversation about Ms Aylward took place. Mr Goddard denies that he said anything about Ms Aylward or about the claimant's breasts.

9.42. On balance we prefer the claimant's evidence about this conversation about Ms Aylward and the comments about the claimant's breasts as the other witnesses were light on detail as to what was discussed. The claimant was very clear in her recollection of the comments made this day. Mr Goddard was less credible on this point. We conclude that the comments were made as alleged.

Allegation 9 - harassment (s 26 EQA) against R1 and R3 on 10 August 2017

9.43. The claimant's next complaint relates to a conversation she says took place with Mr Goddard at an installation at Coombe Abbey. They were talking about their families and sharing similar experiences each had with their daughters. The claimant then says Mr Goddard went on to talk about the nature of his intimate relationship with his wife and to discuss a

female friend he had who was going on holiday with him and his wife. The claimant gave evidence that she found this conversation uncomfortable and offensive in parts. Mr Goddard agreed that he told the claimant that he no longer shared a bed with his wife, but says he told the claimant this was because he snored and she ground her teeth. We accept that the conversation took place as recounted by the claimant. Ms Price gave evidence of a similar conversation Mr Goddard had with her on another occasions. We also accept that this conversation about Mr Goddards relationship and his sex life made the claimant feel uncomfortable and was offended by this.

Allegation 10 – direct discrimination (s13 EQA) on 20 August 2017

9.44. The claimant next alleges that she was asked by Mr Merali on 10 August 2017 whether she knew anyone that was interested in a job. The claimant suggested a friend of hers who might be, Ms Price, and she was then asked by Mr Merali whether this person was married, how old she was and whether she had children. We conclude that the claimant was asked those questions by Mr Merali as this is consistent with the way he approached other recruitment decisions as we have found above. The claimant said she was reluctant to recommend Ms Price for the role and Ms Price confirms that this was the case and that the claimant told her she was having difficulties. The claimant did also say she was happy in her role but explained that she enjoyed selling, travelling around and being in the coffee industry.

9.45. Ms Price was interviewed by Mr Merali in August 2017. Ms Price says she was asked at the interview whether she had any children and she said no as she had dogs. We accepted her evidence on this.

Allegation 11 – direct discrimination (s 13 EQA) and/or harassment (s 26 EQA) against R1 and R3 on 13 September 2017

9.46. On 13 September 2017, Mr Merali accompanied the claimant on a customer visit to Coombe Abbey and the claimant drove him from the hotel near Coventry back to Birmingham. There was an incident when the claimant was driving back where she had to swerve to avoid a car whilst driving along a country lane. The claimant then says that Mr Merali shouted out "*Bloody Women Drivers*". Mr Merali denies saying this but says that he reprimanded the claimant for driving too fast and told her it was not acceptable to drive in that fashion and would have to record it formally if it happened again.

9.47. The claimant says she told Mr Goddard when she arrived in Birmingham what had happened, but he has no recollection of that conversation. Ms Price, who was in Birmingham meeting Mr Merali for her second interview after the incident, recalls him complaining about the claimant's driving and "*ranted*" on about it. Ms Price does not mention anything about him saying anything about women drivers. We accept that Mr Merali was irritated by the claimant's driving and said it was erratic and reckless. We accept that there was some reaction from him at the time it happened. On balance we find that he did not make this exact

comment but rather exclaimed about the claimant's driving. There is no other evidence that he spoke in this general way about women drivers but rather the specific issues he had with the claimant's driving. In light of other evidence we have heard from Mr Merali we do not accept that it is plausible that he made this particular comment.

9.48. Ms Price joined the company on 25 September 2017. We heard from Ms Price that on her first day she was late because of traffic and when she arrived, she said that Mr Merali was in terrible mood and was "*off with her*". She went on to give evidence about Mr Merali telling her a story about his friend who employed women and then went off to have children and they nearly ruined his business. He also said that he never usually employed women as they had time off to have kids and could not give full commitment. We found Ms Price to be a very convincing witness and accept her version of events entirely. This witness had only been with the company a short time but gave a very measured account of her time there.

9.49. Ms Price confirmed that she was also called daily by Mr Merali and that she was reduced to tears by his calls. She says she felt intimidated and that he threatened her by referring to her salary and how much she was costing him. When she was challenged by Mr Isherwood on the tone of these conversations being that of a helpful and supportive manager, she was very clear that this was not how it felt to her. We accept her evidence.

Allegation 12 - of direct discrimination (s 13 EQA) against R1 and R2 and harassment (s 26 EQA) against R1 and R2 on 24 September 2017

9.50. The claimant was asked to accompany Ms Price on some customer visits. The claimant and Ms Price had just been to visit a hotel and were in the car in the car park when Mr Merali called. The claimant alleges that during the conversation with Mr Merali, he was very unhappy that she and Ms Price had been to this hotel and said he had just looked it up on TripAdvisor and he did not want to work with this hotel as he did not want his brand associated with a "*knocking shop*". Although Mr Merali denies using this term, we think he did say this. It is supported by Ms Price's evidence and is consistent with the message he was trying to get across which was that this was not the sort of hotel he wanted his brand to be associated with. We also accept that Mr Merali told the claimant and Ms Price that they needed to check Trip Advisor before visiting hotels.

Allegation 13

9.51. The claimant made an allegation regarding a decision of R1 that she would not be able to claim the cost of an overnight stay in a hotel the night before the sales meeting that took place on 4 October 2017. This is dealt with below.



Allegation 14 - of direct discrimination (s 13 EQA) against R1 and R2 and harassment (s 26 EQA) against R1 on 4 October 2017

9.52. The claimant attended a sales meeting of R1 on 4 October 2017. This was the second meeting attended by the claimant and the first attended by Ms Price. Mr Merali, Mr Goddard and Mr Batten attended this meeting. There was a conversation during this meeting about Ms Aylward and the fact that she had breast implants. It is accepted by all that at this meeting a comment was made by one of the three male employees that women's sales skills were "*tits and teeth*". The claimant and Ms Price say that the phrase used was "*tits and arse*". We don't need to find which specific comment was used as we conclude that each was equally as derogatory and it is conceded by the respondent that a comment of this nature was made. We find that this was the only meeting that this comment was said and not as Mr Merali said in his evidence that it was also said at the first sales meeting. Mr Merali and Mr Goddard contend that the context in which this was said was about a conversation regarding Mr Robins and they were repeating a phrase he had used. This is probably true, and Mr Robins supported that in his evidence, stating that this was a generic comment used in the industry some time ago about the methods women used in sales. However, the comment was made on this day by one of the men present, not Mr Robins who was not there.

9.53. The claimant said she felt extremely uncomfortable and embarrassed. Ms Price also said that she was uncomfortable with the comment and found it incredible "*in this day and age*". There was a conversation taking place with many sexual overtones. It is contended by the respondent that the claimant and Ms Price were joining in this conversation and laughing. Ms Price says she does not recall laughing and she was feeling very nervous as this was her first sales meeting. She says she recalls thinking, "*what have I done?*" and at was at this point she decided that she would look for another role as she knew it was not the job for her. The claimant's evidence was that she found this comment offensive and degrading.

Allegation 15

9.54. The claimant says she was told on 15 October 2017 that she would not be reimbursed for overnight expenses for a stay she had made the night before the sales meeting. The claimant contended that this had been agreed previously by Mr Goddard and then was subsequently declined by Mr Rawal and Mr Merali when the form was submitted. We conclude that the claimant was informed by Mr Goddard that this would probably be OK but that he did mention that it would have to approved by Mr Merali. The claimant did not seek approval in advance from Mr Merali. We also found that overnight stays were authorised from time to time, largely for engineers or when particularly long distances were involved. Ms Aylward had been permitted to stay overnight when sales meetings took place.

Allegation 16 of direct discrimination (s 13 EQA) and harassment (s 26 EQA) against R1 & R4 on 25 October 2017 and against R1 and R2 on 14 November 2017

9.55. On 25 October 2017 the claimant made a request to take 6 days annual leave (page 135) and was told by Mr Rawal the next day that she only had accrued 2 days leave at this time and also that there was a sales meeting due to take place on 19<sup>th</sup> December and the last working day for the sales team will be Thursday 21 December. This caused the claimant some difficulty as her usual childcare was not available as her father in law was seriously unwell. She e-mailed Mr Rawal on 26 October asking that if she cannot take holiday for this period, could she take unpaid leave instead – she mentions that she has no childcare cover for her children in the last week before Christmas. He replied the same day (page 137) and told the claimant that the company did not allow unpaid leave.

9.56. The claimant then followed this up with Mr Merali and they discussed this by telephone on 14 November 2017. It was obviously a very difficult conversation. The claimant said she had to beg for the time off. Mr Merali said that he told her that she had already had favours from him and could not make any more allowances (he was referring to the fact that he had allowed her to have a pay rise). She did not say to the respondent that the reason she needed the time off was due to a breakdown in childcare. Mr Merali questioned the claimant as to why she did not know the dates of school holidays earlier and whether her husband was available to look after the children. He did ultimately allow the claimant to take this time off by allowing her to use some of her annual leave from the next holiday year. The relationship between the claimant and Mr Merali was not good at this time and Mr Merali was unhappy that the claimant was able to take this leave to go on holiday and was very reluctant to grant it.

#### Allegation 17

9.57. The claimant says she received a particularly aggressive telephone call from Mr Merali on 26 October 2017 just after the initial exchange with Mr Rawal about her holiday request. We find that this conversation did take place as alleged by the claimant.

#### Allegation 18

9.58. The claimant received a letter on 24 November asking her to attend an employment review on 12 December (page 153). Mr Merali describes this as a standard letter issued by HR Support. We found that this was a heavy-handed letter to send for what was described as an employment review meeting. This was more in the nature of an invitation to a disciplinary meeting, and we conclude it was sent at least part in response to the request for holiday and the way it was handled.

#### Allegation 19

9.59. On 27 November 2017 the claimant was sent a request by Mr Goddard to complete a weekly report (page 155). Mr Merali stated that this was to better understand how her activity was failing to hit the targets that she had been set. He said it was used to help under performers get back up again. The claimant said she was surprised to receive it as she had not

been asked to do this before and she felt that November had been one of her better months. Ms Price was also asked to complete the report as the respondent said she was underperforming. The claimant challenged the contention that she was underperforming in November but Mr Merali gave evidence that by this time many of the clients she had brought in were loss makers and non-payers. This is supported by the fact that the issues with the Park Inn Walsall were discovered at this time and issues had arisen about non-payment for the Irish Centre account.

Allegation 20 – direct discrimination (s13 EQA) against R1 and R4 on 5 December 2017

9.60. On 5 December 2017 the claimant asked for a trial at Pendrell Hall which was a sister hotel of an existing client Mill Barns (page 165 and 166) The claimant was given permission to run a trial at Pendrell Hall but described the process of making this request as very difficult and she felt that she was being made to “jump through hoops” regarding getting this approved. She alleged that Mr Rawal shouted at her regarding this. It appears that Mr Rawal challenge the claimant on the basis for this arrangement, primarily by e mail correspondence, but do not find any evidence to suggest that she was shouted at. We also find that all such decisions in relation to trials were made for commercial reasons.

9.61. The claimant was due to attend her employment review meeting on 12 December 2017 in Watford. She emailed Mr Merali on 11 December to say she would not be able to make it as she was snowed in and more snow forecast and the motorways were impassable. She asked for it to be rescheduled until January 2018 (page 159). Mr Merali asked her to attend either that following Wednesday 12 or Friday 15 December at 3.00 p.m. The claimant then informed him that she was on holiday from the 13 to the 20 December, as she said had been agreed with Mr Merali verbally on 14 November 2017. Mr Rawal e mailed to say he was not aware that this had been agreed. The holiday request was then sorted out between Mr Rawal and Mr Merali on that day.

9.62. There was a further sales meeting on the 19 December 2017 (notes of this meeting at page 170). The claimant did not attend (as she was on holiday) but Ms Price attended along with the other three sales employees. Ms Price said that Mr Merali told her at this meeting that he deliberately asked Rachel to go to meetings at the office either early or late in order to inconvenience her. She also says he made comments about the claimant having booked time off to look after her children and that this was a reason he did not employ women. We accept her evidence in this regard.

Allegation 21 direct discrimination against R1 and R2 on 5 January 2018

9.63. The claimant attended a review meeting at R1’s offices in Watford on 5 January 2018 at 3.30p.m with Mr Merali. The claimant says that the first thing that was raised was that she was not a team player because she had not called her manager Mr Goddard to wish him a happy new year. When the claimant said that she had emailed Mr Goddard and spoken to

Ms Price, she contends that Mr Merali told her that Ms Price did not count. The claimant was challenged on her sales figures and pipeline business and overcommitting on free machines and crockery. The claimant responded that Mr Goddard and Mr Batten were able to offer free trials and were given much more freedom than she was. Mr Merali told her that these two employees were national Accounts Managers. She was reminded of her targets and that she was expected to hit a target of £8,333 sales per month. The claimant alleges that Mr Merali made comments at the end of the meeting about her whereabouts when she was on holiday and asking her where her children were. She says he said that she was using them as an excuse to get time off and that this was why he didn't like to employ women as they always had to take time off to look after their children. He also made comments about how much the claimant was costing him. We accept that these comments were made by Mr Merali as alleged. The conversation between the claimant and Mr Merali had become very heated on both sides. Mr Merali had concerns about the claimant's performance and he was also irritated about the claimant having taken holiday and felt that her family responsibilities were interfering with her ability to perform her role. The claimant was very distressed after this meeting.

Allegation 22 harassment (s 26 EQA) against R1 & R4 on 10 January 2018

9.64. The claimant met with Mr Goddard in a Novotel in Manchester on 10 January 2018 for a training session. She alleges that a woman walked past her and Mr Goddard in the bar and he made inappropriate gestures. He says that this was totally untrue. We find that this did take place and was consistent with his earlier behaviour. We accept that the claimant found this embarrassing and was offended by his behavior.

Allegation 23

9.65. Ms Price left the company at the end of January 2018 and told the claimant on 29 January 2018 that Mr Merali had purposely asked the claimant to attend early or late meetings just to inconvenience her. We accept that this conversation took place as she described.

9.66. Mr Merali wrote to the claimant on 5 February by e mail (page 173). This e mail informed the claimant of her year end figures and that various items would be excluded from her target as they were not new business. This e mail also informed the claimant that to achieve her target of £100k by May she required £65,565.28 of new business. This was at odds with Mr Merali's contention that the target was set on a monthly basis with the claimant having to achieve the figure of 8,333 a month by the end of her first year. The claimant and Mr Merali had a further discussion about this e mail but from the point of this meeting on, there does not seem to have been very much communication between the claimant and Mr Merali or the claimant and Mr Goddard.

Allegation 24 direct sex discrimination (s 19 EQA) against R1 & R4 on 10 January 2018

9.67. During the half term holidays on 22 February 2018 the claimant was on her way to work having decided to leave her children at home as she felt she would not be allowed time off for childcare. She was on her way to a client appointment when she received a call about an accident that one of the children had and had to return home. She telephoned the client to let him know she would not be there. She then says that she received a call from Mr Merali asking where she was. The claimant complains that Mr Merali went on to make comments during this call asking her how she was going to manage with her children and cover the work she needed to do. She says he also made a comment to her along the lines of "*this is what happens when you have children to take care of*". We accept that this conversation took place as alleged by the claimant. Mr Merali contended that this was just a welfare call to see how the claimant was. We do not accept that this was the case. Mr Merali made the comments as alleged and the claimant became extremely distressed after this telephone call.

Allegation 25

9.68. The claimant made a request for flexible working on 28 February 2018 (shown at pages 177-178).

Allegation 26 – allegation of sexual harassment R1 and R2 on 28 February 2018

9.69. A call took place between Mr Merali and the claimant in the afternoon. Mr Merali says he had arranged a call at 3pm on that day and that this is when he said that the claimant would have been "let go". He said he received her flexible working request just 51 minutes before that call was to take place. A summary of the matters discussed during that call was set out at at page 179 in an email the claimant was sent by Mr Merali on 1 March 2018. The claimant complained that she felt she was being treated differently than her male colleagues in terms of the requirements placed on her. She also says that Mr Merali again made the comment about using trip advisor reviews to find appropriate hotels and that that he did not want his brand associated with a "*knocking shop*". Mr Merali denies saying this but we find that this comment was made on this day by him.

Allegation 27 – allegation of direct discrimination – R1

9.70. The claimant received a letter on 5 March 2018 acknowledging her flexible working request (page 181). This letter asked the claimant to attend a 4pm meeting at R1 offices in Watford that Wednesday 7<sup>th</sup> March at 4pm. The claimant contends that the meeting was arranged at this time in order to inconvenience her and that this was done because she was a woman with children and had made a flexible working request. Mr Merali states that meetings were held at this time as it suited his working arrangements. We find that this meeting was arranged at this time

deliberately to inconvenience the claimant. We have already made a finding of fact that Mr Merali said he had done this in the past and we find that this was again a deliberate act again to inconvenience and distress the claimant.

9.71. The meeting was then rearranged to take place on Friday 23 March at 2pm (page 57 claimant supplemental bundle). The claimant e mailed on 22 March 2018 to say she would not be attending this meeting as she was suffering with anxiety.

9.72. Around this time, it emerged that the claimant had sent an e mail to a client of R1 providing a quote for coffee products on behalf of another provider, Straight Up Drinks Limited, which is a company operated and run by the claimant's husband. We were shown a copy of an e mail sent by the claimant on 5 March 2018 to Mr Crompton of the Ibis Style Hotel in Birmingham attaching a quotation (page 250-251). It is apparent that R1 had suspicions that the claimant was selling on behalf of another company but did not have hard evidence.

Allegation 28 – alleged protected act (s 27(2) EQA)

9.73. The claimant lodged a grievance with R1 on 19 March 2018 (pages 186-193).

Allegation 29

9.74. There was a further sales meeting at the respondent on 4 April 2018 which the claimant did not attend. She was challenged as to why and replied that she did not feel comfortable attending because she had raised a grievance about the people there (page 204).

9.75. The claimant attended a grievance meeting held on 5 April 2018 together with her husband. This was conducted by Irfaan Merali who is Mr Merali's son and a solicitor. The claimant challenged the impartiality of Mr Irfaan Merali earlier but had been told that he was the only available person to conduct the hearing and was a director of a sister company of R1. The notes of this grievance meeting are shown at pages 205 and beyond. There was various correspondence at the time about the validity and accuracy of the notes made.

9.76. R1 contends that Mr Irfaan Merali conducted investigations into the allegations made by the claimant after this meeting. There are no contemporaneous notes of any investigations, no e mails no evidence of any phone calls being made. The claimant asked for discovery of any such information as part of the litigation process, and R1 could find no such documents. We find that the investigations into this grievance were accordingly insufficient, not least as there is no record of what was done.

Allegation 30 – harassment (s 26 EQA) and victimisation (s 27 EQA)

9.77. The claimant received the grievance outcome on 19 April 2018 which was at page 230-232 of the Bundle. The claimant contended that this

was flawed and did not deal with any of her concerns and suggests this is because she raised a grievance.

9.78. The claimant found out on 19 April 2018 that an employee of R1, Brian Smith, had been to see one of the hotels that was in her territory and was trying to sell them coffee. This was in fact the same hotel that the claimant had sent a quote on behalf of Straight Up Drinks Limited on 5 March 2018. We find that this is an interesting coincidence of timing and conclude that it may have been due to the visit of Bryan on this date that R1 discovered that the claimant had been working on quotations for other companies.

9.79. The claimant e mailed to complain about this taking place on 19 April 2018 to Norbert and it was confirmed that he had visited this hotel in error and that he would in fact be covering the territory previously covered by Ms Price.

9.80. The claimant was instructed by Mr Merali on 20 April 2018 that she was now to report her activity to him on a daily basis (page 236). This supports the finding above that this is when R1 first became aware of the allegation of the claimant carrying out work for other companies. She sent some e mails updating her work activities on 24 April and was instructed again on 25 April that she should report to R1 daily (page 238).

9.81. The claimant was on sick leave from 26 April 2018 until 14 May 2018.

9.82. During this period the communications between the claimant and the employees of R1 became sporadic and were conducted by e mail only.

9.83. The claimant was sent a further invitation to an employment review meeting by Mr Rawal on 89 May 2018 (page 78 Clamant bundle). Mr Rawal gave evidence that she had been sent this letter as R1 had found out by this stage that she had been working for a competitor. We accept that this is the case.

9.84. Th claimant remained on sick leave and was due to return to work on 29 May. The claimant was sent a letter on 1 June 2018 asking for her explanation as to why she was working for another company (page 249). She subsequently resigned her employment on 1 June 2018 (page 254) and remained off sick until her employment terminated on 28 June 2018.

## **The Law**

10. The relevant sections of the EQA applicable to this claim are as follows:

### ***“4 The protected characteristics***

*The following characteristics are protected characteristics: ...  
...sex;”*

### ***“13 Direct discrimination***

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

**“23 Comparison by reference to circumstances**

(1) On a comparison of cases for the purposes of section 13....there must be no material difference between the circumstances relating to each case.”

**“26 Harassment**

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

**“27 Victimisation**

- (1) A person (A) victimises another person (B) if A subjects B to a detriment because—
- (a) B does a protected act, or
  - (b) A believes that B has done, or may do, a protected act.
- (2) Each of the following is a protected act—
- (a) bringing proceedings under this Act;
  - (b) giving evidence or information in connection with proceedings under this Act
  - (c) doing any other thing for the purposes of or in connection with this Act;
  - (d) making an allegation (whether or not express) that A or another person has contravened this Act.”

**“123 Time limits**

- (1) [Subject to [sections 140A and 140B],] proceedings on a complaint within section 120 may not be brought after the end of—
- (a) the period of 3 months starting with the date of the act to which the complaint relates, or
  - (b) such other period as the employment tribunal thinks just and equitable.
- (3) For the purposes of this section—
- (a) conduct extending over a period is to be treated as done at the end of the period;
  - (b) failure to do something is to be treated as occurring when the person in question decided on it.

**“136 Burden of proof**

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



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

11. The relevant case law which has been applied is as follows:

Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337, HL ‘the comparator required for the purpose of the statutory definition of discrimination must be a comparator in the same position in all material respects as the victim save only that he, or she, is not a member of the protected class’.

Anya v University of Oxford & Another [2001] IRLR 377 - it is necessary for the employment tribunal to look beyond any act in question to the general background evidence in order to consider whether prohibited factors have played a part in the employer’s judgment. This is particularly so when establishing unconscious factors.

Igen v Wong and Others [2005] IRLR 258 and Madarassy v Nomura International PLC [2007] IRLR 246.

The employment tribunal should go through a two-stage process, the first stage of which requires the claimant to prove facts which could establish that the respondent has committed an act of discrimination, after which, and only if the claimant has proved such facts, the respondent is required to establish on the balance of probabilities that it did not commit the unlawful act of discrimination. In concluding as to whether the claimant had established a prima facie case, the tribunal is to examine all the evidence provided by the respondent and the claimant.

Richmond Pharmacology V Miss A Dhaliwell [2009] ICR 724

There are two alternative bases of liability in the harassment provisions, that of purpose and effect, which means that the respondent may be held liable on the basis that the effect of his conduct has been to produce the prescribed consequences even if that was not a purpose, and conversely that he may be liable if he acted for the purposes of producing the prescribed consequences but did not, in fact, do so. A respondent should not be held liable merely because his conduct has had the effect of producing the prescribed consequence. It should be reasonable that the consequence has occurred and that the alleged victim of the conduct must feel that their dignity has been violated or that an adverse environment has been created. Therefore, it must be objectively decided whether or not a reasonable person would have felt, as the claimant felt, about the treatment in question, and the claimant must, additionally, subjectively feel that their dignity has been violated, etc.

Pemberton v Inwood [2018] EWCA Civ 564

Underhill J "In order to decide whether any conduct falling within sub-paragraph (1)(a) of section 26 EqA has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section 4(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section 4(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also take into account all the other circumstances (subsection 4(b)).

Hendricks v Metropolitan Police Commissioner [2002] EWCA Civ 1686

The appropriate test for a continuing act is highlighted by the case of that is whether an employer is responsible for an “ongoing situation or a continuing state of affairs” in which the acts of discrimination occurred, as opposed to a series of unconnected or isolated incidents

Robinson v Royal Surrey County Hospital NHS Foundation Trust UKEAT/0311/14/MC - EAT (obiter) - when considering whether acts amount to conduct extending over a period, it might be appropriate depending on the facts for complaints of different types of discrimination to be taken together as constituting conduct extending over a period.

12. Mr Ishwerwood also referred us to the following authority in respect to the issue of “banter”:

Loosley v Mr R Moulton and Norfolk Probation Board [2005] UKEAT 0468/04

**Conclusion**

13. We referred to the issues identified at paragraphs 3 to 7 above that the Tribunal need to consider with respect to each allegation made by the claimant

Allegations of harassment contrary to section 26 EQA.

14. The first issue we had to decide upon for each allegation of harassment was “Did the respondent engage in the conduct alleged?”. Referring to the findings of fact we made above we concluded that the following conduct did take place as alleged by the claimant:

14.1. Allegation 5 - On 15 June 2017 Mr Goddard made comments about Leanne Aylward, namely that she was a princess who was artificial with fake tits and was crap at her job and that she used her looks to win customers over. Mr Goddard made further lewd comments during a lunch that took place in Morrisons supermarket.

14.2. Allegation 6 - On 21 June 2017 Mr Goddard made comments about a female employee in the office making a melting and hip gyrating gesture and intimating that he would like to have a sexual relationship with her.

14.3. Allegation 8 - On 20 July 2017 during a sales meeting Mr Goddard made comments about Ms Aylward having fake breasts and that she only sold anything due to her looks. Mr Goddard also made a comment to the claimant that “Its OK we know yours are real”.

14.4. Allegation 9 - On 10 August 2017 Mr Goddard engaged in a discussion with the claimant about his sexual relationship with his wife and going on holiday with another woman.

14.5. Allegation 12 - On 25 September Mr Merali told the claimant and Ms Price that they should not deal with a certain hotel describing it as a

knocking shop.

- 14.6. Allegation 14 - On 4 October 2017, during a conversation at a sales meeting there was a discussion about a former employee having breast implants. A comment was made by a male employee of R3 about the sales technique of female employees being “tits and arse” or “tits and teeth”.
- 14.7. Allegation 16 - On 14 November 2017 during a telephone conversation about the claimant’s holiday request Mr Merali made comments about it always being the woman that had to look after the children, and this is why he did not employ women.
- 14.8. Allegation 22 - On 10 January 2018 Mr Goddard made inappropriate comments and gestures regarding a woman who walked past him and the claimant in the bar of the Novotel hotel in Manchester
- 14.9. Allegation 26 - On 1 March 2018 Mr Merali made a comment regarding not wanting his brand associated with a knocking shop.
15. We found that the following conduct alleged to be acts of harassment did not take place as alleged:
- 15.1. Allegation 11 - On 13 September 2017 Mr Merali did not make the comment “Bloody Women drivers”
- 15.2. Allegation 30 - Employees of R1 were not instructed not to contact the claimant from approximately March 2018
16. For all such conduct we have found did take place, the next question we need to ask was whether the that conduct was unwanted? We conclude that all the conduct was unwanted in the sense that it was unwelcome or uninvited. This must be largely considered from the perspective of the employee. The claimant did not instigate any of the conversations in question. It does not matter whether the comments in question were directed at the claimant or not – i.e. that some of the discussions related to a former employee Ms Aylward.
17. We have also considered whether the claimant’s failure to complain about all the incidents involving either Mr Goddard or Mr Merali mean that the conduct was not unwanted by her. We do not accept that this is not the case. The claimant’s line manager was Mr Goddard (who she complains about) so it was difficult to see to whom any complaints could be addressed, particularly as the claimant also alleged she was being treated badly, harassed and discriminated against by Mr Merali himself. She did complain about Mr Merali to Mr Goddard.
18. I have considered the case raised by Mr Isherwood in this case which is the case of Loosley v Moulton & Anor, Court of Appeal in support of his argument that what was going on her was just office banter to which the claimant raised no objection and indeed participated in. We do not conclude that this is a situation where there was a general culture of banter around such matters that the claimant willingly participated in. The claimant was the only woman

present on some of these occasions. The only suggestion of her ever participating in any discussions was one comment which she admits making about Ms Alyward's nails. She did not participate in jokes and sexual innuendo that was going on generally and we accept her evidence that she found it unwelcome.

19. The only occasion upon which the claimant does seem to have been a willing participant in a conversation with Mr Goddard was in relation to Allegation 9 which is the conversation that took place at Coombe Abbey on 10 August 2017. This conversation started as a discussion about family with the claimant and Mr Goddard discussing common issues their daughters had been experiencing. However, Mr Goddard then changed the conversation to one of a more sexual nature regarding his relations with his wife and jokes about other women. This was a discussion of an entirely different nature and we accept the claimant's contention that she did not willingly participate in this discussion - to that extent it was unwanted.
20. The next issue to determine is whether the allegations/conversations that took place related to the protected characteristic of sex and/or were of a sexual nature? We find that the allegations made by the claimant set out below were related to sex and/or were of a sexual nature. Specifically:
  - 20.1. Allegation 5 - the comments made on 15 June 2017 about Leanne Aylward were clearly comments related to the sex of Ms Aylward. The lewd comments during a lunch that took place in Morrisons supermarket were comments of a sexual nature.
  - 20.2. Allegation 6 - the comments and gestures made by Mr Goddard on 21 June 2017 about Annaick were related to sex and also were comments of a sexual nature.
  - 20.3. Allegation 8 – the comments made on 20 July 2017 about Ms Aylward were related to sex and the comment directed at the claimant. were comments related to sex and were also of a sexual nature.
  - 20.4. Allegation 9 - the comments made on 10 August 2017 about his sexual relationship with his wife and other women were clearly comments of a sexual nature.
  - 20.5. Allegation 14 - the comments made on 4 October 2017 were very clearly comments that were related to sex.
  - 20.6. Allegation 16 – the comments made on 14 November 2017 during a telephone conversation about the claimant's holiday request were related to sex.
  - 20.7. Allegation 22- the comments and gesture made on 10 January 2018 were of a sexual nature.
21. However, we have concluded that comments of Mr Merali in Allegation 12 – describing a hotel as a “*knocking shop*” on 25 September and in Allegation 26 making a comment on 1 March 2018 about not wanting his brand associated

with a knocking shop, were not related to sex or of a sexual nature. The reference to a knocking shop was simply a colloquial or descriptive term to describe a brothel. There was no sexual inuendo involved. It was also not a derogatory comment related to either the sex of the claimant or Ms Price or in relation to women generally. It was a description used by Mr Merali to try and categorise the quality or standing of a certain type of hotel. We do not find that these comments meet this test and these allegations of harassment are therefore not made out.

22. Which takes us to the next issue to determine which is whether the conduct “had the purpose or (taking into account the claimant’s perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant”.
23. Applying the relevant law as set out above, we firstly considered whether any of the conduct had the purpose of violating the claimant’s dignity or creating an intimidating hostile degrading humiliating or offensive environment. We have considered the motivation of Mr Goddard and Mr Merali in each of the incidents described and conclude that none of the behaviour had the explicit purposes of creating such an environment for the claimant. Mr Goddard described himself as an affable guy and we consider that whilst the conversations were inappropriate that there was no deliberate attempt to intimidate etc. Mr Goddard was trying to be funny in many cases and create a lighthearted tone. We also do not conclude that the comments made by Mr Merali in this case were designed or made with the purpose of violating dignity or creating an hostile, degrading, humiliating or offensive environment.
24. We must then go on to consider whether the comments had the effect of violating dignity or creating a hostile, degrading, humiliating or offensive environment. We have considered each of the allegations that remain in turn when looking at this question. We have applied the case law referred to above in particular the cases of Richmond Pharmacology v Dhaliwell and Pemberton v Inwood and we note that we must consider both whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (whether it was reasonable for the conduct to be regarded as having that effect (the objective question). We must also take into account all the other circumstances (subsection 4(b)). Therefore dealing with each allegation that remains in turn:
- 24.1. Allegation 5 - as to the comments on 15 June 2017 about Leanne Aylward and lewd comments during lunch, we have made a finding of fact above that the claimant found the conversations uncomfortable and humiliating. We therefore conclude that the comments had the effect proscribed by the legislation. Although not pursued as an allegation of harassment the fact that Mr Goddard had started this day out by kissing the claimant which made her feel very uneasy set the tone for the day. We must then consider whether it was reasonable for the comments to have such an effect and we conclude that it was. These comments were wholly inappropriate to make about a fellow employee to someone who had recently joined the company. They were personal and derogatory to

women generally and to Ms Aylward in particular. The second conversation that took place in Morrisons was also inappropriate in a work setting and making jokes and sexual innuendo of this nature in front and about colleagues and management would reasonably have created an intimidating and hostile environment especially for someone who had recently joined the company.

- 24.2. As to Allegation 6, Mr Goddard's comments and gestures about Annaick on 21 June 2017, we also accepted the evidence of the claimant that she found his behaviour offensive degrading and perverse. We were persuaded by her reaction at the time. We also conclude that it was reasonable for these comments to have had this effect on the claimant. This was objectifying a female employee in the company and inappropriate in a professional environment. This was offensive and it was understandable objectively that this created a hostile or degrading environment.
- 24.3. Regarding Allegation 8 the comments made on 20 July 2017 during the sales meeting, we also accepted evidence that the claimant was mortified by these comments and she found being spoken to in such an undignified and humiliating way highly offensive. We have no hesitation in concluding that it was reasonable for the claimant to have had this reaction to these particularly offensive comments. This is especially so given all the surrounding circumstances including previous comments of a similar nature.
- 24.4. As to Allegation 9 the comments made on 10 August 2017, we have accepted the claimant's evidence that she found the discussions with Mr Goddard about his sex life extremely offensive and made her uncomfortable. We conclude that it was reasonable for such comments to have had this effect. We consider comments made in the past, the way that the claimant had experienced Mr Goddard speak about other employees and the short period of time that the claimant had known Mr Goddard. Mr Goddard had become overfamiliar with the claimant within a short period of time and this made the claimant feel very uncomfortable in the workplace.
- 24.5. As to Allegation 14 the "*tits and arse*" or "*tits and teeth*" comment, then we again have no hesitation in finding that this conduct did have the effect on the claimant of creating an intimidating hostile and degrading environment. We also find it was reasonable for it to have this effect. These were sexist and misogynistic comments to make and it makes no difference whether the comments were repeats of statements that may have been made by Mr Robins in the past. There is no dispute that such comments were relayed again on this occasion at a meeting involving two new female employees. This was completely inappropriate and understandably created a hostile environment for these employees. Ms Price had a similar reaction and we also accepted her evidence that it was this incident that made her realise that she did not want to work at the company any longer.
- 24.6. As to Allegation 16 the comments made on 14 November 2017 by Mr Merali during a telephone conversation about the claimant's holiday, we

find that although these were unacceptable, these were made in a conversation where the claimant was permitted to take the holiday she was looking for, even though she had to take it from the next year. We do not think it was these comments of themselves that upset the claimant or caused her distress. It was rather the way she felt that she had been treated in not being allowed to take unpaid leave. We therefore conclude that the comments here did not have the effect proscribed on the claimant and this allegation of harassment is not made out.

- 24.7. Regarding Allegation 22 the comments made on 10 January 2018 by Mr Goddard in the bar of the Novotel hotel in Manchester, we find that this conduct did have the effect on the claimant of creating an intimidating hostile and degrading environment. The claimant was embarrassed and offended by this behaviour. We conclude that in the context of previous similar actions by Mr Goddard and the nature and tone of her interactions with him which were uncomfortable and degrading that it was also reasonable for this conduct to have had this effect on the claimant.
25. We accordingly conclude that the 7 incidents on 15 June 2017, 21 June 2017, 20 July 2017, 10 August 2017, 4 October 2017, and 10 January amount to harassment contrary to s 26 EQA. R3 is liable for 6 of those incidents (except for the conduct on 4 October 2017 as we have not concluded that he specifically made these comments, although present at the time). We also conclude that as all 7 incidents took place during working hours and in a work context that all such matters were carried out by Mr Goddard and other employees (in the context of the comments made on 4 October 2017) in the course of employment and were also acts carried out by R1. Accordingly, R1 carried out acts of harassment contrary to s 26 EQA on those 7 dates.

#### Allegations of direct discrimination contrary to section 13 EQA

26. Looking at the questions we need to consider at paragraph 5 above, the first is whether the respondent subjected the claimant to the treatment as alleged. We have also considered whether this is less favourable treatment because of her sex. We applied the statutory burden of proof. If the claimant discharged this burden, we then went on to consider whether the respondents have discharged the burden of showing that the treatment was in no sense whatsoever on the grounds of the claimant's sex and accordingly whether direct discrimination is made out. We refer to our findings of fact and conclude the following on each specific allegation:

- 26.1. Allegation 1 – We found that the comments were made at interview by Mr Merali on 23 April 2017 as alleged by the claimant and conclude that this was less favourable treatment on the ground of sex. Mr Merali did not ask similar questions of male candidates during the recruitment process e.g. Mr Smith and Mr Robins and would not have asked a hypothetical male in the same position as the claimant such questions. We were persuaded by the evidence of the claimant, Mr Robins and Ms Price in this regard as well as the answers given by Mr Merali to questioning about what questions he generally asked in interviews. A male was not, and would not have been, asked questions about childcare responsibilities, whether they planned to have more children, what their

spouse's financial situation was and how this impacted on motivation.

26.2. The burden of proof shifted to the respondents to explain why such questions were asked. It was contended that such questions were nothing to do with the claimant's sex and were about finding out what motivated the claimant to see whether she had enough drive to take on the sales role. We do not accept this explanation. The questions went further than just asking about motivation and were an attempt to find out how likely it was that the claimant and other women candidates might have further children, what their childcare responsibilities were, whether they were financially independent and how this might impact on their ability to perform their role and whether they hungry enough to go out and sell. We conclude that Mr Merali had preconceived ideas about the role of women and particularly women who had children and childcare responsibilities in sales. This may have been informed by the experience of his friends and that R1 had not had any female sales employees that had been particularly successful. We do not find that Mr Merali was against women being employed per se, but he did have outdated and stereotypical views about the ability of women to perform sales roles. We find that this allegation is made out as direct discrimination contrary to section 19 EQA.

26.3. Allegation 2 – Feedback received by the claimant from her interview on 30 April 2017 – we found that this did take place as alleged. However, we do not find that this is conduct carried out by any of the respondents as it relates to comments made by a third party so cannot pursue this further. This allegation is not made out

26.4. Allegation 3 – We have found that Mr Merali made comments about employing women and told the story about his friend employing women as was alleged by the claimant. We conclude that Mr Merali would not have subjected a male employee to the same treatment, so it was less favourable treatment. We are persuaded by the fact that the female sales employees we heard from both gave clear and convincing evidence about this story being relayed to them. We accept that Mr Robins also heard this story, but this was in an entirely different context namely that Mr Robins was tasked with recruiting new sales staff and had recommended two women for the role. It is in this context that Mr Robins was told this story, not in the same context as the claimant and indeed Ms Price. This supports our conclusions above.

26.5. The burden of proof shifts to the respondent to explain this conduct. R1 and Mr Merali simply denied that this took place. Therefore, we find that they have not discharged the burden of proof, we find that the treatment in question was related to sex so accordingly the allegation contrary to section 19 is made out.

26.6. We also considered generally the allegation made throughout the claim by the claimant that she was under different and less favourable restrictions in terms of area, types of client; not being given leads; not being allowed to run trials; not having samples to offer potential clients and being set higher targets by Mr Merali, than the two male sales



employees (for example as set out in Allegation 7). We do not conclude that this was less favourable treatment on the grounds of sex. We accept the respondents' contention on the reason why i.e that all new sales employees were subject to the same/similar restrictions. Any treatment was not related to sex. The claimant relies on Mr Goddard and Mr Batten as comparators and alleges that they were male and not subject to the same restrictions as she was and points to Ms Price and says that she was. However, we conclude that the reason for this was that Mr Goddard and Mr Batten were in a different role. They were National Sales Managers and the claimant was a Business Development Manager. They were experienced employees who had been with the company for some years. They had gained the trust of Mr Merali and were given much more freedom to operate outside the restrictions that new employees were placed under. Therefore, we do not find that this conduct amounts to direct discrimination contrary to section 19.

26.7. Allegation 4 - Although it was not clear that this was being pursued as an allegation of direct discrimination, we did look at the complaint made by the claimant about the daily phone calls she received from Mr Merali and considered whether they amounted to direct discrimination. We refer to our findings of fact above that these phone calls did take place and that the claimant found them intimidating and that she complained about these to Mr Goddard. However, Mr Merali made such phone calls to all new employees. Therefore, we do not accept that this was less favourable treatment on the grounds of sex. Mr Merali was a tough boss and expected and demanded his sales employees to perform from day one. These phone calls were his attempt to exercise his authority and put employees under pressure to perform. All new employees were subject to these phone calls, male and female. We refer to the findings above about the first year of a new sales employee's career and how they were expected to prove themselves and that many employees fell by the wayside. We find that all new employees were treatment similarly and accordingly this was not related to sex and therefore not direct sex discrimination under section 19.

26.8. Allegation 6 – The claimant makes a complaint about being required to wear certain clothes to barista training on 21 June 2017. Although she labelled this as indirect discrimination, we found that this is in fact made as an allegation of direct discrimination as she says that other male employees were not required to wear work clothes. We refer to our findings of fact above that the claimant was told to wear smart clothes, but we also conclude that this applied to all sales employees, both male and female. We accepted the evidence of Mr Merali that he wanted his staff to be able to train and prepare coffee in the clothes they would wear when selling to clients. Other sales employees such as Mr Goddard were required to wear and did wear office attire. This was not related to sex and therefore not direct sex discrimination under section 19.

26.9. Allegation 8 - This relates to Mr Merali's comments at the sales meeting on 20 July 2017 about not usually employing women and that she would not have got the job had it not been for her e mail. We firstly conclude that such comments would not have been made to a male employee

attending a sales meeting. Mr Merali was drawing attention to the fact that the claimant was the exception to the rule of not employing women and pointing to the fact that she sent the e mail in a positive light. He may not have meant this in a negative fashion however we conclude that such comments would not have been made to a male sales employee in a similar situation. We also find that the respondent has not discharged the burden of proof in showing that this treatment was in no sense whatsoever on the grounds of the claimant's sex.

- 26.10. Allegation 10 relates to the claimant being asked by Mr Merali on 10 August 2017 whether she knew anyone interested in a role and when she mentioned Ms Price, being questioned about Ms Price's marital status, age and children etc. We found that this did take place however conclude that this was not less favourable treatment of the claimant on the grounds of sex. We find that a comparable male sales employee in the same situation as the claimant who had recommended a female, would have been asked the same questions. Mr Merali wanted to know about the family situation of any potential female candidate and would have asked a male employee who was referring someone the same question. Therefore, this allegation is not made out.
- 26.11. Allegation 11 - We found that the comment made by Mr Merali re the claimant's driving was a general reprimand and not made in the terms the claimant alleged. We conclude he would have reprimanded anyone he felt was driving badly and therefore no complaint of direct discrimination is made out.
- 26.12. Allegation 12 - This relates to a conversation on 24 September 2017 where that the claimant was instructed by Mr Merali to only go to hotels at 2 star and over and to check all hotels on trip advisor to see if they were suitable. The claimant alleges that comparable male employees were not subject to these restrictions. Although such comments were made, we do not conclude that this is less favourable treatment, as all new sales employees were spoken to in this way and subject to these restrictions. As per above, the reason that Mr Batten and Mr Goddard were not is that they were in a different role, were more experienced and were in a position of trust with Mr Merali. Therefore, we find this allegation is not made out.
- 26.13. Allegation 14 - This relates to a statement made at the sales meeting on 4 October 2017 that the claimant was not allowed to sell to hostels but Mr Batten was. We do not find that this is less favourable treatment related to sex. The claimant as a new employee was subject to the same restrictions as any such employee would be irrespective of her sex. Mr Batten was not as he was experienced, in a different role and trusted by Mr Merali. We find that some of the restrictions were not helpful or supportive to new employees, but we do not find in any way that this was tainted by sex, so this allegation is not made out.
- 26.14. Allegation 15 - Although not expressly put as an allegation of direct discrimination, we have considered whether the decision not to allow the claimant to claim overnight expenses was related to her sex. We have

concluded that it was not. It may seem a harsh decision, but we accept it was to do with money saving and applying the company's policies. Other females e.g. Ms Aylward had been allowed to stay overnight as well as other males. Therefore, we do not find it is less favourable treatment and that it is also not tainted by any sex discrimination. This allegation is not made out.

26.15. Allegation 16 - Although not put in this way by the claimant, it is worth stating here that we do not accept that the request that the claimant made for leave on 25 October 2017 and pursued with Mr Rawal and Mr Merali amounted to a request for emergency leave under section 57A Employment Rights Act 1996 (right to a reasonable amount of time off during working hours in respect of dependants). This right is specific and provides that an employee is entitled to take reasonable time off where it is necessary:

- to provide assistance if a dependant falls ill, gives birth, is injured or assaulted;
- to make care arrangements for the provision of care for a dependant who is ill or injured;
- in consequence of the death of a dependant;
- to deal with unexpected disruptions, termination or breakdown in arrangements for the care of dependant; and
- to deal with an unexpected incident which involves the employee's child during school hours

Only in the situations listed above does an employee have the statutory right to reasonable time off.

26.16. We accept that the reason for the request may well have been linked to the fact that the claimant's usual holiday childcare arrangements were not available due to her father in law being ill. However, this request was made in October, some 6 weeks before the date of the leave being requested. We do not find that this in any way can amount to an unexpected disruption, termination or breakdown in arrangements for the care of a dependant. We also conclude that the claimant did not at this stage give the respondent the reason for the problem she had with childcare. We do not accept that Mr Rawal informing the claimant that there was no policy for unpaid leave was less favourable treatment at all (he was simply informing the claimant of the policy) and also nothing to do with sex, so this allegation is not made out.

26.17. Allegations 18 and 19 - Although not put as allegations of direct discrimination, we have considered whether the claimant receiving a letter on 12 December 2017 inviting her to an employment review and further being requested to complete a weekly report on 27 November 2017 were less favourable treatment on the grounds of sex. We have made a finding of fact that the letter that was sent to the claimant was heavy handed and did not seem an appropriate type of letter to send in advance of an employment review. It did cause us concerns as to the reason for it being sent to the claimant. However, on balance, we accept that this was a

standard letter, albeit perhaps not the right type of standard letter to be sent in this situation. We also accept that this letter would have been sent to other sales employees in similar situation, males and females (although we did find it surprising that no other examples of such letters were put in the bundle to show how they were used more generally). The claimant's request for holiday had irritated Mr Merali and Mr Rawal and that this may have contributed to the fact of her being sent this letter. Their view was that the claimant was trying to claim more holiday that she was entitled to. However we do not conclude that ultimately the decision to send this letter was related to sex. Therefore find that this does not amount to an act of direct discrimination. Similarly with the instruction to complete a weekly report, we have accepted that this was sent to the claimant because of concerns with her performance and sales figures rather than because she was a woman.

26.18. Allegation 20 - The claimant makes a specific complaint regarding restrictions she was put under for offering trials to customers and mentions Pendrall Hall, the Park In Walsall and so on. We have considered whether any of these types of matters were less favourable treatment on the grounds of sex and ultimately, we conclude that they were not. Some of the decisions were not always consistent and they may not always have been correct but they were made on a commercial basis as decided by Mr Merali. These were not related to sex.

26.19. Allegation 21 – The general comments made at her sales review meeting on 5 January 2018 by Mr Merali do not amount to not less favourable treatment on the grounds of sex. Mr Merali would have conducted a similar meeting bringing up similar issues to a male sales employee in the same situation as the claimant. However, we then focus specifically on the comments made by Mr Merali at the end of the meeting about the claimant using her children as an excuse to get time off and that is why he did not like to employ women. We found above that these comments were made, and we conclude that such comments would not have been made to a male in a similar situation. These comments went beyond criticism of sales performance and strayed into areas where the claimant's sex and her role as a mother and primary carer was being blamed for her performance. The respondent tries to justify what went on at this meeting as being normal matters that an employer was entitled to raise with an underperforming employee. We do not accept that this was the case and find that the making of these comments amounted to direct discrimination on the grounds of sex.

26.20. Allegation 24 - Although not specifically put in this way, we have considered the allegation that the comments made by Mr Merali in a call to the claimant on 22 February 2018 amounted to less favourable treatment on the grounds of sex. We found in our facts above that in a phone call made on this day by Mr Merali he made comments about the claimant having to return home to deal with her children along the lines of "*this is what happens when you have children to take care of*". We have gone on to consider whether this was less favourable treatment and have concluded that it was. We accept that Mr Merali may have called to initially find out the claimant's whereabouts and what she was doing and

that he would have done this if any employee had not been able to attend a meeting. However, going on to make such comments about the claimant's children and responsibilities etc would not have been done had the claimant been male. This is supported by our findings and conclusions on other similar comments made by Mr Merali. The respondent tries to justify this in terms of a welfare call that any employer might make but we do not accept this satisfies the burden of proof of showing that the treatment was in no sense related to sex. Accordingly find that this amounts to direct discrimination under section 19.

26.21. Allegation 27 - Although not specifically listed in the schedule of allegations, we heard at the hearing and the claimant had referred in her claim form to an allegation that the respondent deliberately arranged meetings at times that would to inconvenience her. We made a finding of fact above that Mr Merali told Ms Price that this is what he was doing. The claimant received a letter on 5 March 2018 invited her to attend a meeting to discuss her flexible working request in Watford at 4pm and we have already made a finding that this had been done deliberately in order to cause the claimant inconvenience and distress. We considered whether sending this letter on 5 March 2018 was less favourable treatment on the grounds of the claimant's sex and concluded firstly that a male employee would not have been treated in this way. The claimant's childcare responsibilities were considered in the decision to schedule a meeting and were used against her by making the meeting inconvenient for her. We do not believe that a male would have been treated in this way if in a similar situation.

26.22. This shifts the burden of proof. The respondent explains this decision by the fact that meetings were scheduled to fit around the availability of Mr Merali who preferred to meet at the end of the day. However, given the nature of the request here i.e. being for flexible working, to have arranged this at a time which would mean the claimant would be unable to meet her childcare commitments, seems deliberate and vindictive, particularly in light of the other findings we have made about the scheduling of meetings in the claimant's case. The respondents have not discharged the burden of proof in showing the reason for this decision. We conclude that this decision was tainted by sex and accordingly amounts to direct sex discrimination.

27. We therefore conclude that the respondents subjected the claimant to direct sex discrimination on 23 April 2017, 5 June 2017, 20 July 2017, 5 January 2018, 22 February 2018 and 5 March 2018. R2 is liable for 5 of those incidents (except for the conduct on 5 March 2018 as no finding has been made about which of the employees of R1 made the decision in question). We also conclude that as all 6 incidents took place during working hours and in a work context that all such matters were carried out Mr Merali and other employees (in the context of conduct on 5 March 2018) in the course of employment and were also acts carried out by R1. Accordingly, R1 is liable for all 6 acts of direct discrimination.

Allegation of victimisation contrary to section 27 EQA

28. In relation to the claimant's section 27 EQA victimisation complaint, the issues that we needed to consider were firstly whether the claimant did a protected act. The claimant relies upon the grievance she raised on 19 March 2018. We conclude that this was clearly a protected act as the claimant makes a specific allegation of discrimination. Just for completeness we have considered whether the claimant did any other protected acts, when she made a request for holiday to cover childcare in October 2017 and when she made a flexible working request on 28 February 2018. Neither of these amounted to protected acts as neither was or amounted to doing any thing for the purposes of or connected with the EQA itself. We have already concluded that the request for holiday was not request a for emergency leave under section 57A ERA and neither was it made under any provision of the EQA. The flexible working request was made under section 80F of the ERA and is not in connection with the EQA.
29. Having found that the claimant did do a protected act, the next question was whether the respondent subject the claimant to any detriments. The acts relied on as detrimental treatment on the grounds of having made a protected act are set out below together with our conclusions as to whether such detriments took place:
- 29.1. Firstly, the claimant suggests that R1 failed to carry out an impartial investigation into her grievance and points to various flaws in the process including the lack of any evidence of investigations and the impartiality of the grievance being chaired by Mr Merali's son. We agree with her that the investigations into the grievance were insufficient and indeed may have been impartial.
- 29.2. Secondly, she claims that she was not informed about a new sales manager starting namely Brian which again we accept.
- 29.3. The claimant also contends that R1 deliberately gave her territory to this new sales manager and instructed its staff not to get in touch with the claimant and ignore all calls and e mails from her. We do not accept that this took place as alleged. We accepted the explanation that this was a mix up and we also do not find that there was any instruction from anyone at the respondent to not get in touch with the claimant or ignore her e mails. There was very little contact at all between the claimant and the respondent at that time and this lack of contact was on both sides.
30. Having found that the detriments raised at 30.1 and 30.2 took place, the key question was whether this was because the claimant did a protected act. Ultimately, we do not accept that the problems identified with the grievance or the failure to inform her of a new starter were done because of her having raised a grievance. There is no causal link with the raising of the grievance and the subsequent treatment. Therefore, we do not find that the claim of victimisation contrary to section 27 EQA is made out.

Are the claims in time?

31. Having determined the various complaints, one crucial issue is whether all of the were complaints presented within the time limits set out in sections 123(1)(a) & (b) of the EQA? Dealing with this issue involved considering whether there was an act and/or conduct extending over a period, and/or whether time should be extended on a “just and equitable” basis. It had already been identified that given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 27 January 2018 is potentially out of time, so that the tribunal may not have jurisdiction to deal with it.
32. The 7 incidents on 15 June 2017, 21 June 2017, 20 July 2017, 10 August 2017, 4 October 2017, 14 November 2017 and 10 January involving amount to harassment contrary to s 26 EQA. The 6 incidents on 23 April 2017, 5 June 2017, 20 July 2017, 5 January 2018, 22 February 2018, 5 March 2018 amounted to direct sex discrimination. The first act took place on 23 April 2017 and the last such act took place on 5 March 2018.
33. Mr Isherwood submitted that the claimant’s complaints were out of time as a number of these acts took place before 23 January 2018 which was the date identified as the cut-off point considering the dates when the claimant had commenced early conciliation and submitted her complaint. It is correct that just two incidents found to amount to discriminatory acts took place after 23 January 2018.
34. We have though considered whether there was an act and/or conduct extending over a period. Section 123(3) provides that conduct extending over a period is to be treated as done at the end of the period. In particular we take note of the case of the case of Hendricks v Metropolitan Police Commissioner and that is whether an employer is responsible for an “*ongoing situation or a continuing state of affairs*” in which the acts of discrimination occurred. We also considered and were persuaded by the comments of HHJ Eady in Robinson v Royal Surrey County Hospital NHS Foundation Trust.
35. We conclude that the discrimination in the claimant’s case started at her interview and was broadly continuing throughout her employment at least up until March 2018. The claimant was working in a sales role and remotely in a different region than the company’s main office. She did not come into physical contact with the employees of R1 daily, but this was sporadic. Therefore, although some of the incidents do look spread out in time, this reflects the fact that the claimant was not interacting with these employees daily but was left to her own devices much of the time. It is significant that on almost all occasions where the claimant was attending sales meetings/training and the like she was either subject to some form or harassment or direct discrimination by the employees of R1. There is a common theme to the incidents and the identity of the two employees involved is the same, Mr Merali and Mr Goddard. It is accepted that the two types of prohibited conduct involved are different in that Mr Goddard was largely involved in the harassment that took place and Mr Merali in the acts of direct discrimination. Mr Merali was present at some of the incidents described where harassment took place and did not challenge or rebuke the

perpetrators.

36. The culture at the respondent seems to have been one where sexist and derogatory remarks against women were tolerated and this is a common theme throughout the claimant's employment. Therefore, we conclude that Mr Merali and R1 were responsible for an ongoing situation or state of affairs that started on 23 April 2017 and ended with the last act of discrimination on 5 March 2018. Interestingly the claimant was not subject to any further discrimination after she lodged her grievance complaining about this. It is also the case that for various reasons by this time the relationship between the parties had broken down. It was around this time that the respondent became aware of the activities being undertaken by the claimant outside working hours. The claimant was having less and less contact with the respondent and it got to the stage where it was clear that lawyers and advisers were involved on both sides.
37. The last act having taken place on 5 March 2018, being the last act in a course of conduct extending over a period is to be treated as done at the end of the period. We find that all the complaints of discrimination in respect of R1 were brought in time and are made out to the extent above.
38. In terms of the other respondents, then the position is a little different. Firstly we conclude that Mr Merali (R2) is personally liable for discrimination that took place on 23 April 2017, 5 June 2017, 20 July 2017, 14 November 2017, 5 January 2018 and 22 February 2018. For the same reasons as the above, we find that the claims as they are made against Mr Merali personally were made in time. This is clearly conduct by Mr Merali extending over a period, and so section 123(3) provides that conduct extending over a period is to be treated as done at the end of the period. The last act of Mr Merali was 22 February 2018, so the claims made out as found above against R2 are all in time.
39. However, it is also clear that the complaints made against Mr Goddard (R3) relate to a very specific period. The first incident found to be discrimination was in June 2017 and the last incident was on 10 January 2018. Mr Goddard had no further interaction of any substance with the claimant towards the end of her employment with the claimant and had no involvement at all in later acts that we have found to be discriminatory. Therefore, all the acts complained of in so far as they are made against Mr Goddard are on their face made out of time - the conduct he is responsible for ends on 10 January 2019. We have considered whether there are any circumstances within which it is possible to exercise our jurisdiction to extend time based on the just and equitable discretion. We note that as the claims themselves would be successful as against this respondent but for them having been presented in time there is prejudice for the claimant. However, we also bear in mind that the claimant has succeeded in respect of all these complaints as against R1, the company her former employer, which provides her with an adequate remedy. Therefore, any prejudice suffered is considerably reduced. We do not consider it is appropriate to exercise our discretion to extend time on a just and equitable basis. The complaints as they are brought against R3 only are therefore dismissed.



40. There are no successful complaints of discrimination as against Mr Rawal (R4) so the claim against him is also dismissed.

**Employment Judge Flood**

Date: 16 September 2019