Case No: 2200636/2018

EMPLOYMENT TRIBUNALS

Claimant: Ms S Nawab

Respondents: 1 T-Systems Ltd
2 Mr S Vandenhoudt

Heard at: London Central

On: 15 – 18, 21 October and 22 - 23 October 2019 (in chambers)

Before: Employment Judge H Grewal
Ms S Samek and Mr J Carroll

Representation

Claimant: Ms C Palmer. Counsel

Respondent: Mr S Wyeth, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:

1 The Tribunal does not have jurisdiction to consider complaints of sexual harassment, direct sex discrimination or victimisation about any acts or failures to act that occurred before 16 September 2017.

2 The complaints of sexual harassment, direct sex discrimination and victimisation about acts or failures to act that occurred after 16 September 2017 are not well-founded; and

3 The complaints of having been subjected to detriments for having made protected disclosures are not well-founded.

REASONS

1 In a claim form presented on 15 February 2018 the Claimant complained of sex discrimination and of having been subjected to detriments for having made protected disclosures. Early Conciliation ("EC") notification was given on 15 December 2017 and the EC certificate was granted on 15 January 2018.

The Issues

2 A tribunal had decided at a previous preliminary hearing that the Claimant was employed by the First Respondent and that the Second Respondent (R2) was an agent of the First Respondent. It was agreed that the issues that we had to determine were as follows.

Harassment

3 Whether the following acts occurred as alleged by the Claimant:

3.1 On 30 November 2015 in the evening in the presence of the Claimant and other colleagues R2 said "*My first wife had packed my bags when I got home on day as she told me she had found another gardener".* This was after the Claimant had told him earlier that day that she did not like dirty jokes and sexual innuendos.

3.2 During a team meeting in the Copenhagen office in December 2015, when the Claimant was in the office with R2 and someone entered the room too early, R2 said, "*My wife says I come too early too."*

3.3 After a telephone conversation between R2 and the Claimant on 29 April 2016 R2 sent the Claimant a text saying that he had been distracted by an attractive female who had walked past and could not continue the call. He also commented, "*I am a man who travels a lot alone."*

3.4 On 3 May 2016 during a meeting in Helsinki the Claimant told R2 that she was not comfortable with some of the sexual jokes and his touching her arms and shoulders, and asked him to stop.

3.5 At a team meeting in Copenhagen, at which the Claimant was not present, R2 put a slide on the screen with an 'X' marked above people's heads and said that those people would be losing their jobs. The Claimant was one of those people.

3.6 On 10 May 2016 at a work event in Copenhagen R2 subjected the Claimant to abuse by shouting and banging his fists on a table and saying that she should leave the account on which the team was working if she was going to be a victim.

3.7 On 10 May 2016 when the Claimant asked for the door entry code in an office in Copenhagen R2 said it was "*6969"* which was not the correct code.

3.8 On 11 May 2016 in the Copenhagen office R2 told the Claimant that her attitude towards him was bad and she needed to get closer to him to understand him better.

3.9 On 13 May 2016 R2 called the Claimant and explained that he felt frustrated by the fact that the Claimant refused to open up to him about herself and her personal life and that was why he acted the way he did on 10 May 2016.

3.10 On 27 July 2016 during a meeting in Barcelona R2 informed the Claimant that she "*didn't play politics and didn't give people what they wanted"* and that that would affect her position with the Respondent company.

3.11At the same meeting R2 said to the Claimant, "*If you got married would you cover your hair if your husband asked you to?"*

3.12 On 27 July 2016 R2 conducted a SWOT analysis with the Claimant, which he did not carry out with anyone else in the team. Some of the weaknesses that he recorded were "*emotional with regards to work"* and "*difficulties to understand political landscape"*. He threatened her by saying "*underestimate politics"* and "*customer and internal processes – reducing the fun @ work".*

3.13 On 28 July 2016 whilst the Claimant was in a taxi with R2 he said that a certain woman got promoted because she gave her boss "*a blow job".*

3.14 On 29 July 2016, having successfully closed the China Remote deal, R2 held a team event during the Claimant's sickness absence, which the Claimant felt was a deliberate snub.

3.15 On 5 December 2016 Jill Wiley bought a rubber penis as a present for R2 and Dominic Taylor and Petri Hassinen.

3.16 On 7 December 2016 in the Copenhagen office when the Claimant was talking to R2 he reached with his hand to brush off biscuit crumbs that had landed on the claimant's scarf and chest. She stepped back before his hand touched her. He told her that he was simply trying to remove the crumbs.

3.17 On 8 December 2016 in Copenhagen when the Claimant was leaving a work event to go to her room R2 blew a kiss at her.

3.18 On 14 December 2016 in Helsinki R2 got close to the Claimant and touched her arm and shoulder.

3.19 On 15 December 2016 in a taxi in Helsinki R2 said that he had a friend whose email address was "letshavefun_69" and demanded that the Claimant acknowledge that she had heard the joke.

3.20 On 19 December 2016 at a meal with R2 regarding a potential new role he claimed that her words were not worth listening to and made gestures with his hands pretending to throw her words into one ear and out of the other.

3.21 At the same meal when the Claimant received a call from a colleague, Peter Stoter, R2 asked whether "*Peter was calling his mistress".*

3.22 The Respondents caused a loss of promotion in January 2017.

3.23 The Respondents failed to complete the Claimant's personal development review for 2016 by 30 April 2017.

3.24 The Respondents failed to set the Claimant's targets for 2017 by 30 April 2017.

3.25 The Respondents failed to approve the correct bonus on 31 March 2017.

3.26 The Respondents put the Claimant at risk of redundancy on 26 July 2017 and again on 21 November 2018.

3.27 The Respondents caused the Claimant to be displaced from her post from 5 January 2017.

3.28 The Respondents failed to offer the Claimant a suitable alternative role from 1 April 2017.

3.29 The Respondents failed to investigate the Claimant's complaints of sexual harassment first made in October 2017 (including in her grievance).

4 If any of them occurred, whether:

4.1 the acts at 3.1 – 3.21 amounted to unwanted conduct of a sexual nature or unwanted conduct related to sex;

4.2 the acts at 3.22 – 3.29 amounted to unwanted conduct related to sex; and

4.3 the conduct had the purpose or effect of violating the Claimant's dignity or creating an intimidation, hostile, degrading, humiliating or offensive environment for her (hereafter referred to as "the proscribed effect").

Direct sex discrimination

5 if any of the acts listed at paragraph 2 did not amount to harassment, whether they amounted to direct sex discrimination. The Claimant relied upon Kevin Bean as a comparator for redundancy and a hypothetical comparator for all the other complaints.

Victimisation

6 The Respondent accepts that the Claimant had the following communications:

6.1 Verbal conversations with Daniela Theisinger, the first of which was on 10 October 2017, complaining about sexual harassment by R2.

6.2 Email to Georg Pepping on 13 October 2017.

6.3 Email to Ingo Danzer on 17 October 2017.

6.4 Email to Ingo Danzer on 24 October 2017.

6.5 Written complaint to Daniela Theisinger on 20 December 2017.

6.6 Grievance complaint to R1 on 30 January 2018.

6.7 The claim to the Tribunal on 15 February 2018.

7 Whether the Claimant had the following communications:

7.1 Complaints to R2 to stop the sexual harassment including rejecting his job offer in January 2017 because of sexual harassment.

7.2 Verbal complaint to Mina Owens on 19 September 2017.

8 In respect of the above, whether the Claimant gave false information or made false allegations in bad faith.

9 If not, whether the Claimant was subjected to the detriments at paragraph 3.22 – 3.29 because she had done a protected act.

Jurisdiction

10 Whether the Tribunal has jurisdiction to consider complaints about any acts or omissions that occurred before 16 September 2017.

Detriments for having made protected disclosures

11 Whether the communications at paragraphs 6.1 - 6.7 and 7.2 amount to protected disclosure under section 43B(1)(b) of the Employment Rights Act 1996.

12 Whether the Claimant was subjected to the following detriments:

12.1 The First Respondent failed to investigate her complaint of sexual harassment adequately, in a timely manner or at all.

12.2 The First Respondent put her at risk of redundancy again on 21 November 2018.

The Law

13 Section 13(1) of the Equality Act 2010 ("EA2010") provides,

> "*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".*

Sex is a protected characteristic. On a comparison of cases for the purposes of section 13 there must be no material difference between the circumstances relating to each case (section 23(1) EA 2010).

14 Section 26 EA 2010 provides,

> "*(1) A person (A) harasses another (B) if –*
>
> *(a) A engages in unwanted conduct related to a relevant protected characteristic, and*

(b) the conduct has the purpose or effect of –
(i) violating B's dignity, or
(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) A also harasses B if –
(a) A engages in unwanted conduct of a sexual nature, and
(b) the conduct has the purpose or effect referred to in subsection(1)(b).
…

(4) In deciding whether conduct has the effect referred to in subsection (!)(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.

15 Section 27 EA 2010 provides,

"*(1) A person (A) victimises another person (B) if A subjects B to a detriment because –*
(a) B does a protected act, or
(b) A believes that B has done, or may do, a protected act.

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

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation made, in bad faith."

In **Saad v Southampton University Hospitals NHS Trust [2019] ICR 311** the EAT held that when determining whether an employee has acted in bad faith for the purposes of section 27(3) the primary question is whether he/she acted honestly in giving the evidence or information or in making the allegation. Motivation can be part of the relevant context in which the tribunal assesses bad faith, but the primary focus remains on the question of the employee's honesty.

16 Section 123 EA 2010 provides,

"*(1) Subject to sections 140A and 140B proceedings on a complaint within section 120 may not be brought after the end of –*
(a) the period of 3 months starting with the date of the act to which the complaint relates, or
(b) such other period as the 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 that period;
(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something –
(a) when P does an act inconsistent with doing it, or
(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it."

Section 140B EA 2010 provides for extension of time limits to facilitate Early Conciliation before the start of proceedings.

17 Section 136(2) and (3) EA 2010 provide that if there are facts from which tribunal could decide, in the absence of any other explanation, that a person (A) contravened a provision of Equality Act 2010, it must hold that the contravention occurred unless A shows that A did not contravene the Act. We had regard to the guidance given by the Court of Appeal in **Igen Ltd v Wong [2005] IRLR 258** and **Madarassy v Nomura International plc [2007] ICR 867** and the Supreme Court in **Hewage v Grampian Health Board [2012] UKSC 37** on the application of section 136.

18 In **The Chief Constable of Kent Constabulary v Bowler EAT/0214/16** the EAT held that the tribunal had erred in law in concluding that the claimant had established a prima facie case of less favourable treatment on race grounds on the basis of its finding that a senior police officer had handled a grievance process incompetently and had had a lackadaisical attitude. It had leapt from that finding to a conclusion that that by itself (without any other apparent basis for it) indicated a stereotypical assumption of race complaints, and had done so on unproven and unsupported assumption.

19 Section 43B(1) of the Employment Rights Act 1998 ("ERA 1998")provides,

"*in this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following –*
…
(b)that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject."

Section 47B(1) ERA 1996 provides that a worker has the tight not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer on the ground that the worker made a protected disclosure. On a complaint to the employment tribunal, it is for the employer to show the ground on which any act, or deliberate failure to act, was done (section 48(2) ERA 1996).

The Evidence

20 The Claimant gave evidence in support of her claim. The following witnesses gave evidence on behalf of the Respondents – Serge Vandenhoudt, Wendy McCann (Head of HR), Anne-Kathrin Foerster (former employee of the First Respondent) and Jaroslav Kranjak (employee of T-Systems Ltd International GmBH). We read the

witness statement of Casper Malig (Senior Vice President of T-Systems Ltd International GmBH) because there was no challenge to his evidence. Having considered all the oral and documentary evidence the Tribunal made the following findings of fact.

Findings of Fact

(The First Respondent is hereafter referred to as "the Respondent" and the Second Respondent by his name. When we use the phrase "the proscribed effect" its meaning is as set out in paragraph 4.3 above).

21 The Respondent is a registered UK business and is a subsidiary of T-Systems International GmBH ("TSI"), a German global IT services and consulting company. TSI is part of the Deutsch Telekom Group ("DTAG").

22 On 15 November 2010 the Claimant commenced employment with the Respondent as a Senior Commercial Manager. She was part of a business team focused on bringing in new business sales.

23 In 2012 the entire sales team was made redundant. The Claimant was kept on to provide support to accounts, which had ongoing issues, on a project basis. This related to ongoing work and was not focused on new business. The Claimant continued working on a project to project basis and found new opportunities for herself.

24 In June 2015 Mr Vandenhoudt, who was employed by T-Systems Ltd Belgium NV ("T-S Belgium"), offered the Claimant a role as Senior Contracts and Claims Manager to work with him on the KONE customer account. KONE was a customer based in Helsinki and it had signed an agreement for IT service with T-Systems Nordic TC A/S ("T-S Nordic"), which was based in Copenhagen. The Claimant accepted the offer.

25 TSI has a system whereby its subsidiaries enter into "International Internal Services" ("IIS") agreements to provide services to each other at an agreed rate. IIS agreements are made pursuant to an umbrella agreement across the Group companies. There was an IIS agreement between T-S Belgium and T-S Nordic for the former to provide Mr Vandenhoudt's services to the latter. He was the Vice President for the KONE account and was responsible for managing it.

26 The Respondent entered into an IIS with T-S Nordic to provide the Claimant's Contract and Claim Management services to it with effect from 7 September 2015 to work on the KONE customer contract The changes in her contract of employment were confirmed to her in a letter dated 10 September 2015. She was given a salary increase at that stage and was informed that there would be a further increase on 1 April 2016 subject to the completion of agreed targets. She was told that she would report to Mr Vandenhoudt on a day to day basis in respect of her work but that for all other matters (including expenses and holiday approvals) she would report to Vanessa Boehm, HR Assistant with the Respondent.

27 There were about twenty-four people working on the KONE account, eight of whom were women. The Claimant was predominantly based in the UK, Mr Vandenhoudt in Belgium. Their work on the account entailed them having to spend some time in Copenhagen and in Helsinki.

28 In or around October 2015 Kenneth Self called the Claimant "sweetheart" or "honey" during an evening meal in the office in Copenhagen. She objected to it and he apologised. Mr Self was employed by TSI and was the Global Quality Assurance Manager for the KONE account.

29 At a one-to-one meeting with Mr Vandenhoudt on 30 November 2015 the Claimant complained about Mr Self's inappropriate language. Mr Vandenhoudt offered to speak to him but the Claimant said that it was not necessary. Mr Vandenhoudt nevertheless had a quiet word with Mr Self about it. The Claimant did not raise any issue about him again. The Claimant's evidence to us was that she also complained about dirty jokes or sexual innuendo at that meeting. Mr Vandenhoudt denied that. We did not accept her evidence. There was no evidence before us of any dirty jokes or sexual innuendos before that meeting.

30 The Claimant's evidence was that later that evening in the presence of some colleagues, including the Claimant, Mr Vandenhoudt made a comment about his wife having packed his bags when he got home one day because she had found another gardener. The Claimant did not understand the comment and when she queried it, she was told by Jaroslav Kranjak, one of their colleagues, that gardening in that context meant "*gardening his wife".* The Claimant's evidence was that she had felt embarrassed. Mr Vandenhoudt accepted that his wife had left him and had taken their children with her, and that he had been open about it. It had, however, been a difficult time for him and he said that he did not make any sexual jokes about it. The Claimant made no reference to this comment in her internal complaints of sexual harassment against Mr Vandenhoudt. She mentioned it for the first time in her claim form. Mr Kranjak denied that the conversation had taken place as alleged by the Claimant. We concluded that that conversation did not take place as alleged by the Claimant.

31 The Claimant also gave evidence that in December 2015 during a team meeting in Copenhagen she was in a room with Mr Vandenhoudt and someone else arrived earlier than he should have and Mr Vandenhoudt said, *"my wife says I come too early too."* She gave no evidence about the effect that it had on her. The Claimant first referred to this incident nearly two years later in a statement that she gave to Ingo Danzer on 24 October 2017. In that statement she said that it happened in early 2016. We concluded that Mr Vandenhoudt probably did make that comment on one occasion. However, there was no evidence that it had the proscribed effect on her. If it had had the proscribed effect the Claimant would have objected to it at the time. The Claimant was not slow to complain about things that she did not like. Furthermore, the Claimant's WhatsApp exchanges with Mr Vandenhoudt in May that year (see paragraph 42 below) are not consistent with her having been subjected to sexual harassment by him.

32 The Claimant gave evidence that on 29 April 2016 she was speaking to Mr Vandenhoudt on the telephone and he became distracted and ended the conversation. She said that he then sent her a text message to say that he had become distracted by an attractive female who had just walked past him. He had also said "*I am a man who travels a lot alone."* The Claimant said that she did not have these messages because she had changed her telephone and had lost her earlier messages. The Claimant first referred to this phone call in her statement to Mr Danzer on 24 October 2017. At that time the Claimant said that it had happened in

April 2016 but did not give a date. We accept that during a telephone conversation with the Claimant Mr Vandenhoudt might well have said that he had been distracted by an attractive woman who had walked past. The rest of the account, however, is embellishment. We did not find it credible that the Claimant's memory would have improved over time so that she could now remember the precise date. We also did not find it credible that eighteen months after the event the Claimant would be able to remember the exact words that had been used in the text message. There was no evidence that it had the proscribed effect on the Claimant. What we said about the previous allegation applies equally to this one.

33 In April 2016 T-Systems Nordic and KONE were trying to conclude an agreement with Huawei for certain supplies but progress was slow. Senior managers in TSI expressed their unhappiness about the pace of progress and asked Mr Vandenhoudt to put someone in place to progress it. Mr Vandenhoudt forwarded their emails to the Claimant and she said that she agreed with them but she could not collate the relevant information because she did not have the relationship or interaction with the two parties and was reliant on someone called Bart Broekhoven who was primarily responsible for it.

34 The Claimant normally had one-to-one meetings with Mr Vandenhoudt every two weeks. These were normally conducted over the telephone. On 3 May 2016 it took place in Helsinki. At 6.30 that morning the Claimant sent Mr Vadenhoudt an email in which she said, "*I am really nervous about our meeting today Serge…"* He responded, *"No need to be nervous. I am a straight talking guy, so I can manage if people do a straight talk in my direction:-)"* Following the meeting, on 4 May Mr Vandenhoudt sent her an email in which he asked her whether their next one-to-one on 6 June should be face-to-face. He said at the end, "*PS: thanks for the open talks – I learned a lot from it."* The Claimant responded that it could be a face-to-face meeting in London or another location that was convenient for him. She concluded by saying, "*And … thank you for listening … and understanding".*

35 At the one-to-one meeting the Claimant raised issues about Mr Vandenhoudt management style and his putting pressure on the team to work extremely long hours and about some members of the team not pulling their weight which added the pressure on her. She also expressed reservations about Bart's ability to manage the Huawei deal. The Claimant accepted that those matters had been raised. The Claimant expressed her frustration at her hard work and commitment not getting the recognition that it deserved. She said that she had had the same title for six years. The Claimant's evidence was that in addition to those matters she told Mr Vandehoudt that she was not comfortable with his sexual jokes and his touching her arms and shoulders and asked him to stop. He denied that she had raised that. The Claimant did not give any evidence to us about his having touched her shoulders and arms before that meeting. As we did not hear any evidence about any inappropriate physical contact before this date, we considered it very unlikely that the Claimant raised it at this meeting. We found that the Claimant did not raise any issues about inappropriate sexual conduct at that meeting; she raised issues about his management of the contract.

36 On 10 May 2016 the KONE team met in the office in Copenhagen. At that time the account was making losses of about £40 million and Mr Vandenhoudt was under immense pressure to rectify the situation. At one of the meetings, at which the Claimant was nor present, Mr Vandenhoudt presented a powerpoint presentation of

his proposal to reduce costs on the contract. The presentation included slides of members of the team with a 'X' over their heads. The people who had 'X' over their heads were Mr Vandenhoudt, the Claimant, Dominic Taylor. Peter Stoter and Elina Zonveld. Mr Vandenhoudt's proposal was that those people should be removed to reduce the costs. They were all individuals who came from high cost countries. In the Claimant's case, he said that her work could be taken over by Kryzsztof Ciemchomski, who already worked on the account, but cost a quarter of what the Claimant cost.

37 The Claimant heard from others about Mr Vandenhoudt's presentation. She was upset and her reaction was that she would stop working on the contract and leave immediately. That was conveyed to Mr Vandenhoudt. He was angry by her threat to stop working on the contract at that time. Later that evening the Claimant was working in a courtyard outside the hotel. Mr Vandenhoudt and other members of the team joined her at the table. After a few drinks Mr Vandehoudt became angry and shouted at the Claimant and banged his fists on the table. He said that if she was going to play "the victim" she could leave the account and that Kryzstof could take over.

38 The Claimant also gave evidence that on 10 May 2016 she asked for a door entry code in an office in Copenhagen and that Mr Vandenhoudt responded that it was "6969". That was not the correct code. She understood him to have used that as referring to a sexual position. In her complaint on 24 October 2017 the Claimant claimed that that had happened at some unknown date after 10 May 2016. The fact that the Claimant could not remember the date in October 2017 but could after that date causes us to doubt whether this in fact occurred. Even if it did occur, there was no evidence that it had the proscribed effect. The Claimant did not give any evidence that it did, her failure to object to it at the time or shortly thereafter plus her WhatsApp exchanges with Mr Vandenhoudt shortly after this all indicate that it did not have the proscribed effect.

39 On 11 May 2016 the Claimant sent Mr Vandenhoudt an email asking him to terminate her service agreement. In his response he said that the purpose of his presentation had been to "*wake people up and show them what the potential impact could be if they continue driving the account as they currently do"* and although he would take some action it would not be as drastic as what was shown in the picture. He continued,

> "*However – you should have told me in my face instead of letting other people bring me the message. That is not fair + an extremely dangerous approach within a team.*
>
> *…*
>
> *"I try to give you insight, I support your HR topics, I give you full liberty on your travel- and holiday planning and I appreciate your work. What I don't appreciate is your attitude into my direction – which I expect you to change asap.*
>
> *I will not agree on the termination – you are part of a team, working extremely hard on a new/important deal for T-Systems. Leaving now would bring the total deal in danger + would give the completely wrong message to your colleagues."*

40 The Claimant, however, was adamant that she wanted to leave immediately. There was then a further exchange of message via WhatsApp. Mr Vandenhoudt asked the Claimant to reconsider her decision. He said that she was good for the team and they would find a way to improve their co-operation while "*sharing each other's challenges".* He also said,

> "*I'm under a real lot of pressure and am struggling to keep me away from burn out … Not to use it as an excuse but an apology for yesterday."*

The Claimant responded,

> *"You completely humiliated me in the meeting and then speaking to me in that way whilst you were drunk last night in front of peers that I work with. I'm not under any illusions about your concern for the Huawei deal. It's just me that you showed no concern for. My words were wasted in Helsinki last week."*

As the Claimant still wanted to leave Mr Vandenhoudt agreed to it. He said that it was a pity but that he respected her decision.

41 On 13 May 2016 Mr Vandenhoudt called the Claimant. He admitted that he should have made the proposal to remove her role in a different way and that it would not have been nice for her to hear about it from others. He said that his wife was a therapist and had suggested that he should have therapy for the burn out. He offered to assist the Claimant to explore alternative opportunities once her time on the contract had come to an end. The Claimant had previously expressed the desire to progress to Vice President and her frustration at not having progressed further in the organisation. He asked the Claimant to take over closing the Huawei deal and agreed to invest time in developing a training programme with her. The Claimant was happy with that and reversed her decision to leave the contract immediately. Mr Vandenhoudt sent a message to HR that she no longer wanted to leave. He said that they had had a good discussion about the way forward and he accepted part of the blame for the difficulties that had arisen between them.

42 Over the next few days the Claimant sent warm and effusive messages via What'sApp to Mr Vandenhoudt. We set them out below.

> *"Every cloud has a silver lining Serge …*
> *I want to say Thank you."*

> *"I am looking forward to seeing your choice of magnet … and to seeing you :-)"*

> *"How are you this morning?*
> *Re the magnet…*
> *I* [heart] *it! It will be placed on my fridge with pride :-)"*

> *"Over the next 4 days … eat well, sleep more, worry less and spend wonderful moments creating happy memories with your family … make this holiday the first baby step to fixing Serge.*
> *This is what I was going to ask of you as a caring colleague … but the moment kind of went…"*

It is difficult to reconcile those messages with the picture of a woman who has been sexually harassed by her manager for a period of about nine months. This is not a case of someone just being polite. She was being more personal and familiar than is necessary in a work relationship. Over the next few months while the Claimant worked on closing the Huawei deal she communicated regularly and warmly with Mr Vandenhoudt both by What'sApp and email.

43 On 27 July 2016 Mr Vandenhoudt had a one-to-one with the Claimant in Barcelona. At that meeting as part of the effort to help her progress in the organisation, Mr Vandenhoudt conducted a SWOT analysis with the Claimant. A SWOT analysis identifies the strengths and weaknesses of individuals and the steps needed to consolidate strengths and improve weaknesses. Both the manager and the employee have an input into it. The Claimant was recorded as having many strengths – speed of thinking, strong influencer, drive, determined, team player, very experienced in CCM and communication. Her weaknesses were identified as being emotional with regards to work, P&L knowledge, underestimating politics, not delegating, lack of patience, not making time for direct reports. It was agreed that Mr Vandenhoudt would look into finding external coaching and people management training for her. It was also agreed that Mr Vandenhoudt would check if certain SBU projects in Malaysia or India that might be attractive to the Claimant were available and if Leadership Quality Gate could be conducted within the next six months.

44 During the meeting the Claimant and Mr Vandenhoudt also talked about non-work related matters. He told her that he had participated in Ramadan and had fasted for 19 days. In the context of that discussion, he asked her whether she would need to cover her hair if she got married and her husband wanted her to do so. The Claimant did not give any indication that she was not happy to engage in that discussion.

45 The Claimant also gave evidence that in a taxi the following day Mr Vandenhoudt told her that some woman within the Respondent had been promoted because she had given her boss a blow job. In light of the fact that the Claimant did not raise that matter until some 15 months later and the Claimant's exchanges with Mr Vandenhoudt in December that year (see paragraphs 50, 52 – 57 below) we concluded that it was unlikely that it was said or, if it was said, that it had the proscribed effect.

46 On 29 July 2016 the Claimant was involved in a road accident. Mr Vandenhoudt was supportive and encouraged her to go hospital. The Claimant was absent sick from 30 July 2016 until the end of November 2016.

47 At the end of August 2016 Mr Vandenhoudt recommended that the Claimant and two other members of the KONE team who had worked hard to close the Huawei deal should be given a one-off bonus of 1,000 Euros.

48 In October 2016 Mr Vandenhoudt organised a team meeting/celebration event to celebrate the closing of the Huawei deal. The Claimant was still absent sick at the time. She said in messages to him that she would not be able to attend it because of UK T-Systems travel ban. Mr Vandenhoudt responded that the reason that she was not allowed to attend was because of the doctor's advice and not a travel ban.

49 During her sickness absence the Claimant frequently contacted Mr Vandenhoudt, often about routine matters that she could and should have raised with HR. On one

occasion he told her "*Please talk to HR directly – I can't be a messenger all the time"* The tone of her communication was not that of a woman who has been sexually harassed by her manager and would prefer to have minimal contact with him.

50 At the end of November Mr Vandenhoudt was informed that he had been promoted to Vice President EMEA Sales and Service (Existing Business). It was officially announced later in December. In the new role he had overall responsibility for all the accounts across EMEA, including the KONE account. His role as Vice President of the KONE account was to be taken over by Christian Laursen. Mr Vandenhoudt was aware that the Claimant's role on the KONE would not continue much longer. He wanted to take some people on the KONE contract with him and he offered the Claimant the opportunity to move with him to EMEA Sales and Service She sent him a message on 1 December 2016 in which she said, "*thank you for calling yesterday – I'm super excited about our new roles!"*

51 The Claimant returned to work at the beginning of December 2016. Her doctor's note said that she was fit to return to work but with certain restrictions. As a result, HR in T-Systems UK were unhappy about her travelling to Copenhagen, but Mr Vandenhoudt helped her to get approval to travel. The Claimant attended the office in Copenhagen on 5 December.

52 At a team meeting on 5 December Jill Wiley, a service manager, brought in a pencil topper shaped as a penis. She showed it to Mr Vandenhoudt and the rest of the team and people laughed. The Claimant's evidence was that she had brought in three of those and one was a gift for Mr Vandenhoudt. She also said that throughout the meeting dirty jokes were made about the rubber penises. She did not give any evidence about the effect of that on her. The Claimant did not raise it in her complaint to Mr Danzer on 24 October 2017 or her complaint to Daniela Theisinger on 20 December 2017. She mentioned it for the first time in her grievance interview with Martin Turk on 1 February 2018. In that interview she complained about Mr Vandenhoudt and Dominic Taylor taking photos of the rubber penises at the other end of the room while she was trying to do an audit. The following morning the Claimant sent Mr Vandenhoudt a message in which she said, "*I liked your scarf this morning :-)".* All of the above indicates to us that the Claimant's account of the incident is exaggerated and that, in any event, it did not have the proscribed effect upon her.

53 The Claimant also said in evidence that on 7 December 2016 at a customer workshop she was talking to Mr Vandenhoudt and eating a biscuit. Some biscuit crumbs fell on her scarf which was around her neck and on her chest. She said that Mr Vandenhoudt reached out to touch her chest with his hand and she stepped back in shock before his hand touched her. He said that he was simply trying to remove the crumbs. She first raised this matter in her complaint to Mr Danzer on 24 October 2017. At that time she said Mr Vandenhoudt had reached out and touched her chest. On 8 December 2016 she sent Mr Vandenhoudt the following message, "*I'm really happy I'm going to be working with you in the new year Serge."* The delay in complaining about the incident, the inconsistent accounts that the Claimant gave and her message to Mr Vandenhoudt the day after the alleged incident cause us to have grave doubts about whether this incident occurred as alleged by the Claimant. We found that it did not.

54 The Claimant said that on 8 December, when she was leaving a work event to go to her room, Mr Vandenhoudt blew her a kiss. He accepts that he might have done so. There was no evidence before us about what, if any, effect it had on the Claimant. The following day there was an exchange of messages between them in which Mr Vandehoudt said to her "*you did an awesome job lady!"* and she responded, "*thank you Serge – as did you. I really like working with you."* If he did blow her a kiss, it did not have the proscribed effect on her.

55 On 11 December Mr Vandenhoudt sent a message to the three members of the KONE team who were from the UK and suggested doing one-to-ones with them in London to close down topics before he handed over to Christian Laursen. The Claimant responded, "*Thank you for all the thoughtful things that you do."*

56 The Claimant gave evidence that on 14 December 2016, in Helsinki outside a hotel, Mr Vandenhoudt got close to her and touched her arm and shoulder. Mr Vandenhoudt denied that that happened. She also said that the following day whilst in a taxi in Helsinki Mr Vandenhoudt said that he had a friend whose email address was "letshavefun_69". She said that she ignored him and that he had demanded that she acknowledged the joke. Mr Vandenhoudt accepted that he had mentioned that the friend had that email address. There was no evidence before us that it had the proscribed effect upon the Claimant.

57 There was an exchange of messages between them later that day in which Mr Vandenhoudt thanked the Claimant for her help and she responded. "*You are most welcome… It's always a pleasure."* And a little later said to him, "*…remember that you have many gifts"* and a little later "*It's too cold to be outside with without a scarf Serge".* Mr Vandenhoudt's promotion was announced on 15 December. The following day he forwarded to his team an email that he had written to KONE about working on the contract. The Claimant's reaction was, "*On the plane and finally had a chance to read you wonderfully drafted message. I almost think you shouldn't leave :-)".* The tone of those messages leads us to the conclusion that there was no inappropriate physical contact by Mr Vandenhoudt and that he did not do anything which had the proscribed effect on the Claimant.

58 On 16 December Mr Vandenhoudt contacted the HR personnel responsible for the Claimant and Peter Stoter to inform them that he wanted to take them to work with him in his new role. He had, however, to get the new team approved by Steffen Schlaberg (Senior VP International Sales).

59 On 19 December Mr Vandehoudt came to London to have the one-to-one meetings with the UK staff on the KONE contract. He discussed the new role for the Claimant in more detail with her. This was the first time that he did so. He told her that it would involve her taking responsibility on a larger programme and that he would try and negotiate a higher salary for her on the basis that the role was similar to that of an experienced programme manager working internationally. There was, however, no guarantee that he would be able to obtain a much higher salary for her. The Claimant was also concerned that her title would not change and that the role would not provide her guaranteed progression to Vice President (which was what she wanted) and that it might not be long term. The Claimant did not raise any issues with Mr Vandenhoudt about his conduct at that meeting. As is clear from all the communications between the Claimant and Mr Vandenhoudt she had no issues with him. She had a warm and friendly relationship with him and was looking forward to

the new role. Her enthusiasm waned when she learnt the details of the new role and realised that it was not going to be the promotion that she had expected it to be and that it did not have long-term stability.

60 In the evening Mr Vandenhoudt and the three UK employees went out for dinner. Mr Vandehoudt and another employee drank a few bottles of wine. At one stage when the Claimant said something Mr Vandenhoudt made gestures with his hands to indicate that he was throwing her words back at her. In the course of the evening Peter Stoter called the Claimant and Mr Vandenhoudt made a comment about Peter calling his "mistress".

61 On 20 December Mr Vandenhoudt informed the Claimant and Mr Stoter that he had been given the approval to bring them on board as part of his team. In her reply the following day, the Claimant thanked him for having shared more detail about the role with her on the Monday and said that she wanted to take some time to reflect on it before deciding whether to accept it or not. Mr Vandenhoudt asked her to let him know by the end of the year. The Claimant said that she did not think that she could commit within that timeframe and said she would understand if he wanted to consider someone else for the role. Mr Vandenhoudt asked her to share her concerns with him so they could find a way to overcome them. The Claimant responded that he was aware of her concerns because they had discussed them over the past 12 months. That was a reference to the Claimant's lack of progression.

62 On 22 December 2016 Mr Vandenhoudt forwarded to the Claimant emails that he had sent to HR to try and get her a higher salary in her new role. He explained what the new role was and said that the Claimant had been on the same level for the past six years but had been doing more than was expected at that level. He said that he wanted local HR to calibrate her role and to adjust the salary bandwidth.

63 On 5 January 2017 the Claimant rejected the EMEA role. In her email to Mr Vandenhoudt she said,

> "*Whilst it is true that I worked hard for this achievement and was excited about the role, I don't believe this role would provide me long-term stability."*

Mr Vandenhoudt responded that he respected her decision and offered to help her "*in finding a new role (that fits to your ambition) elsewhere in the company."* He forwarded her email to Christian Laursen and Vanessa Exley, who was the HR person to whom the Claimant reported in T-Systems UK. Ms Exley queried whether that meant that the Claimant would remain on the KONE contract reporting to Mr Laursen. Mr Vandenhoudt responded that she was no longer required on the KONE contract which was why he had offered her the EMEA role. Ms Exley advised that under the service agreement T-Systems Nordic would need to give three months' notice to terminate the agreement. She said that that would result in the Claimant being put at risk of redundancy and starting the process of redeployment. On the same day Mr Laursen gave Ms Exley three months' notice to terminate the service agreement. He provided a business case/justification for it later that day. He said that they had two employees handling claims and contractual steering for KONE. They only needed one. They had decided to keep the other employee rather than the Claimant because of cost.

64 On 13 January 2017 the Claimant sent Mr Vandenhoudt an email about her Performance and Potential Review ("PPR") which she said had to be completed by her and her line manager by 31 January 2017. She asked him whether he would have time to do it. He said that if she sent it to him, he would complete it and send it back to her and they could then discuss it on a call. The Claimant had been informed by the HR Director at the Respondent she had to fill in her pre-assessment by in HR Suite by 31 January 2017 and that would then be used by her manager to complete his assessment.

65 On 24 January Mr Vandenhoudt filled in parts of the form but pointed out to the Claimant that she needed to do her pre-assessment first. He did that on the Respondent's online portal. She responded that she was aware of that but wanted to have a discussion with him first because she did not feel "*aligned*" with some of his opinions.

66 Towards the end of March a potential new role was identified for the Claimant. Dirk Lukaschik in Global Accounts in Germany was keen to employ the Claimant but did not have the headcount at that time. As the Claimant's role at TS Nordic was about to end, it was agreed that the Claimant would be seconded to TSI to work in Global Accounts for three months. If at the end of that period, headcount had been approved, a new IIS agreement would be drawn up between the Respondent and TSI. There were discussions between HR personnel in the various entities as to which entity would be liable for the Claimant's redundancy payment if her employment ended at the end of the three months. The Claimant believed that the role would give her the opportunity to take over a VP role from which the incumbent was due to retire the following year.

67 On 1 April 2017 the Respondent and TSI signed an IIS agreement for the former to provide the Claimant's services to the latter from 1 April to 30 June 2017.

68 On 6 April 2017 the Claimant and Mr Vandenhoudt discussed her PPR and Mr Vandehoudt completed it online on HR Suite. The following day the Claimant told Mr Vandenhoudt that something that appeared on the form was not the same as what they had agreed. She said that her recollection was that they had agreed that she should be looking at growing into a VP role in the "*near future"* but in the PPR it said that her role could lead to progression to VP in the "*medium future".* Mr Vandenhoudt responded that he had not changed anything. Towards the end of April the Claimant raised issues with HR about not being able to change things on the PPR. She was informed that she only had permission to read it and could not edit it and that it was with Mr Vandenhoudt to do the rating.

69 On 25 April Mr Vandenhoudt asked HR at the Respondent whether the Claimant could be put on a Leadership Excellence Programme or on Talent Space as he believed that she might be a future candidate for a leadership position. The Claimant's response to that was "*Thank you Serge … 'might be'?? :-)".* A little later she sent him another email in which she set out the matters that she wanted to discuss with him on a telephone call later that day. She said that she wanted to discuss her PPR and her target achievement. She said that they had agreed the previous day that she had achieved 150% for 2016 and that that should be reflected as stretch. She also complained about the fact that he had been nominated for the Top Performers Club award, rather than her, for the work that had been done by the team that she led on closing the KONE-Huawei deal. She said that he had told her

that his success in getting the EMEA role was down to her closing the two deals that meant TS Systems Nordics hit its order entry target.

70 Mr Vandenhoudt took offence at the Claimant's suggestion that he had taken credit for her hard work and that his promotion was attributable to her achievements. He responded to her by saying,

> "*Please cancel the call.*
>
> *I completely disagree with certain statements below. Please don't turn my words around into your favour - this will not help you in whatever idea or plans you have for the future.*
> *…*
> *The nomination for Top Performer is not for the deal, but for the complete turnaround of the account over the last 2 years …*
>
> *By the way - my personal career planning is none of your concern – but I definitely don't do it based on other people's achievements.*
>
> *For further discussions, please refer to your local HR."*

71 The Claimant apologised if her email had offended him. She said that she had been sharing her personal thoughts with him about lack of recognition and development generally within T-Systems. She said that she was sharing with him frustrations that she had felt close enough to do many times in the past. That reinforces our finding that when she raised issues or concerns with him the past they related to her lack of recognition and progression in the organisation and her unhappiness about that rather than about him sexually harassing her.

72 On 5 May 2019 HR sent Mr Vandenhoudt the target achievement figures for the Claimant. The target achievement figures are used as a basis for calculating the amount of bonus. An employee who achieves 100% of her targets receives 15% of her salary as a bonus. If an employee exceeds her target, she can get up to 50% more (i.e. 22.5% of her salary). According to the figures provided by HR the Claimant's target achievement was 88%. Mr Vandenhoudt asked HR whether it was possible to increase it. He said that the reason for that was that she had been one of the key persons supporting getting EMEA's first Internet of Things deal (the KONE-Huawei deal) which had been worth approximately 40 million euros. He said that he would appreciate a one-off payment as some kind of deal award as that would be a correct reflection of her achievement for 2016.

73 He heard nothing from HR and chased them again on 23 May 2017. HR raised further questions. On 16 June 2017 Mr Vandenhoudt sent another email to explain why he wanted an additional payment. He said that the target achievement did not reflect accurately the Claimant's achievements over the year. He said that he wanted to give her an extra one-off bonus for negotiating the Huawei deal. The payment of £5,000 would bring target achievement to 125% which would be an accurate reflection of her efforts the previous year.

74 In June 2017 the Claimant was paid a bonus of £10,245 and a one-off payment of £5,000. That was a larger bonus than she had received in any previous year.

75 On 31 May HR reminded the Claimant that she needed to acknowledge her PPR rating online by logging on to HR Suite as the 2016 PPR process needed to be closed. The Claimant replied that she needed to review some of the comments with Mr Vandenhoudt because what was written did not accord with what had been agreed. She asked him whether she could speak to him about it. He responded that he did not think that she needed to negotiate further as he had rated her as a top performer.

76 In a subsequent email the Claimant raised with Mr Vandenhoudt the comments in the PPR with which she did not agree. One of them was the comments about her progressing to VP in the medium future. Mr Vandenhoudt responded to the points that she had raised. In respect of progression to VP he said,

> "*My idea on your career development hasn't changed. I don't see you as a VP just yet – there's still a serious learning curve to go through which you should realize as well.*
> *I see a lot of potential, but until today, you've been a senior expert in a certain role, which is completely different to a VP role."*

The Claimant sought advice from HR about how the PPR could be closed off while there was a disagreement between her and Mr Vandenhoudt about some of the remarks.

77 On 20 June 2017 Jake Attfield, the Respondent's HR Director, asked Messrs Vandenhoudt and Lukaschik, whether either of them would require the Claimant's services after the end of June. He said that if there was no service agreement forthcoming, the Respondent would need to start a redundancy process. Mr Vandenhoudt responded that there was no opportunity in EMEA and that they were looking to reduce headcount. On 21 June Mr Lukaschik responded that Global Account did not have a role to offer the Claimant at the end of the three months' service agreement.

78 TSI agreed to continue the Claimant's employment until 31 July to enable the consultation process to take place. On 5 July Jake Attfield sent Mr Vandenhoudt an email that HR would co-ordinate the redundancy process but that the business would need to take the lead in the consulting sessions. He assumed that Mr Vandenhoudt would represent the business. It was not clear to us why he was asked to represent the business as it appeared that he had ceased to be the Claimant's line manager on 5 April 2017 when the IIS with T-S Nordic was terminated.

79 On 19 July 2017 Dominic Taylor wrote to the Claimant about needing her skills on DeLaval to prepare for a meeting that was scheduled for 23-24 August and possibly beyond that. On 24 July Rolf Hellemons informed the Claimant that they had resolved the staff and that there was no longer a need for her support.

80 On 20 July 2017 Mina Owen in HR sent Mr Vandenhoudt the slides that he would need to use during the consultation process and asked him to set up a meeting with the Claimant. On 24 July Mr Vandenhoudt invited the Claimant to participate in a conference call on 26 July. The Claimant asked what the meeting was about and Mr Vandenhoudt responded that to discuss the next steps as her role at KONE had come to an end.

81 On 25 July the Claimant contacted Jake Attfield to seek his support in finding a new role.

82 On 26 July 2017 Mina Owen informed the Claimant that she was at risk of redundancy as there was no further work on the KONE account for her role. The Respondent would start a consultation process which would last until 31 August 2017. If they were unable to successfully redeploy the Claimant during that period she would be dismissed for redundancy. She was encouraged to review the internal vacancy listing on the HR Suite. There was also a Jobs Platform where jobs were advertised. At that stage the Claimant said that there were some things that she had been sitting on for the last year and half and she wanted a couple of days before meeting someone in HR.

83 On 28 July the Claimant informed Mina Owen that she had found a role. She said that she had spoken to Nigel Nisbett and had accepted an offer to work with him as Contract/Claim manager on the Coca Cola contract. She said that it was a permanent role and she had been asked to start immediately. Ms Owen spoke to Mr Nisbett and it appeared that the Claimant was only required until November to assist. Ms Owen pointed out that there needed to be an approved position for the Claimant to apply for and that she could not just be moved into their headcount. Mr Nisbett agreed that in those circumstances they could not offer her the role.

84 At the beginning of August the Claimant applied for two roles within TSI. Upon confirmation that, if she was successful, the Respondent would receive headcount adaptation and the role would be covered by an IIS agreement and upon EMEA agreeing to extend the IIS then in place, the Respondent extended the consultation period to the end of September 2017. Mr Vandenhoudt was consulted about extending the IIS and he agreed to it. It was not clear to us whether EMEA in this context was the same as T-S Nordic or a different legal entity. If it was T-S Nordic it was not clear why the notice given in January 2017 had not terminated that agreement on 5 April 2017. If it was a different legal entity, there had never been an IIS agreement with EMEA. It was agreed that during that time she would support Casper Malig on the Zero deal.

85 The first consultation meeting took place on 4 August 2017. Mr Vandenhoudt could not attend and Dominic Taylor attended in his absence. The Claimant was informed that EMEA would continue to fund her position until the end of September 2017 while a decision was made on the two roles for which she had applied. She was also informed that Mr Vandenhoudt was her line manager during the consultation process. The Claimant asked why she was being made redundant and Ms Owen replied that her role in EMEA had been cut and that there was no funding for it in UK. At the end of the meeting the Claimant said,

> "*I have some concerns about the events that led up to this. This is a good company that I have been committed to and I wanted to stay here so I haven't brought this up before. I have taken some advice and I am still committed but I would like to reserve the right to bring these items up. I don't want to jeopardise my position in the company but I may still raise these items in the future."*

86 On 8 September Dirk Lukaschik (in TSI) and Steffen Schlaberg (in EMEA) agreed that Kevin Bean would take over the Contacts Manager role in EMEA which the

Claimant had rejected on 5 January 2017. Headcount had been granted for that role again at that time. Mr Bean worked for TSI at the time and was at risk of redundancy. It was agreed that his employment would move to EMEA as of 1 October 2017.

87 The Claimant's second consultation with Mr Vandenhoudt and Ms Owen was scheduled for 19 September 2017. On 13 September she asked Mr Vandenhoudt to meet with him before the consultation. She said that she wanted to "*air concerns with"* him. Mr Vandenhoudt agreed to that. She also asked Ms Owen to meet with her after the consultation, and Ms Owen agreed to that.

88 On 18 September Markus Franke asked Casper Malig what the situation was with the Claimant. He said that even if he could not put her on one of the positions that he had open, it would be a disaster to make her redundant because she was seen and rated as a high performer and talent. Mr Malig responded that he needed her on the Zero/Coke contract at that time, but pointed out that he did not have the headcount (a role to offer her). Jake Attfied's view was that the Claimant needed to be appointed to a new, funded role as soon as possible. Unless she received and accepted the offer of a new role, she would leave the business on 30 September.

89 On 19 September Mr Vandenhoudt met the Claimant before the consultation meeting. She was very upset about being placed at risk of redundancy and blamed him for it for it because he had made the initial decision to remove her role from the KONE account to save costs. Mr Vandenhoudt responded that it was the UK company that was making her redundant and not him. She said that she was a high achiever and deserved recognition and not redundancy. The Claimant vented her anger and frustration and Mr Vandenhoudt maintained that the situation was not of his making. They then shared a cab to the office for the consultation meeting.

90 At the second consultation meeting Mr Vandenhoudt queried whether he was in fact the Claimant's line manager and whether she was on the headcount for EMEA. The situation as to what happens when service agreements are terminated was far from clear.

91 After the consultation meeting the Claimant had a separate meeting with Mina Owen. The Claimant's evidence was that at that meeting she told her about Mr Vandenhoudt's sexual harassment of her and that that was the reason why she had turned down the role with EMEA. The Claimant made no reference to telling Ms Owen that in any of her internal complaints or in her original claim to the Tribunal or in the first amended particulars of claim. It was first mentioned in her second amended particulars of claim on 1 March 2019 In that document she said that she was distressed and crying at the meeting and that Ms Owen started to write down things. She told the Claimant that she could make a formal complaint and the Claimant told her that she was petrified to do that because of the power that Mr Vandenhoudt had in the company. She claims that Ms Owen told her that if she was not willing to make a formal complaint, Ms Owen could not refer to the conversation.

92 We did not find the Claimant's account to be credible for a number of reasons. First, there was no explanation of why, if it had happened, it was not mentioned in the internal complaints or the earlier iterations of the claim form. Secondly, Ms Owen made no reference to it in any internal communication with her colleagues. We do not find it credible that if the Claimant had been distressed and raised it with her, she would have ignored it and not recorded it anywhere. Thirdly, the Claimant's evidence

about telling Ms Owen that she did not want to pursue it because she was terrified of Mr Vandenhoudt did not sit comfortably with her evidence that she complained to him about his sexual harassment before that meeting. We found that the Claimant did not make any complaint of sexual harassment to Ms Owen. We consider it more likely that she had discussions with Ms Owen about how she could support her in finding a new role.

93 On 20 September Ms Owen contacted Sarah Sandbrook, Head of Talent at DTAG and asked whether she could help to find a role for the Claimant. At the same time Jake Attfield contacted Messrs Vandenhoudt, Malig and Franke. He said that the effect of the IIS agreement being terminated was that it triggered the redundancy process and the employee could not just return to the local role. He said that the Respondent's HR was managing the redundancy process but that it could not make the decision to stop the redundancy process, create headcount or assign the Claimant a new role. We find that difficult to understand as the Claimant remained at all times an employee of the Respondent. Ms Sandbrook suggested that the consultation period be extended by a further month to give the Claimant the opportunity to find another role. Georg Pepping, HR Director at TSI, also asked for the consultation period to be extended.

94 In further emails Mr Attfield made it clear that there was no vacant role within the Respondent (the UK company) that fitted the Claimant's profile, and that she had not applied for anything that they had.

95 On 26 September the Claimant was informed that the consultation period would be extended to 31 October 2017 to give her the chance to connect with colleagues in the Group and to find a new role in the Group. DTAG wanted to retain the Claimant but could not create headcount just to retain her, especially when the organisation was making cuts. The Claimant had to find a vacant role and to apply for it.

96 The Respondent asked Mr Vandenhoudt to sign a service agreement to cover the Claimant's costs until 31 October 2017. Mr Vandenhoudt queried why he needed to sign the agreement as the IIS agreement had been terminated at the beginning of the year. His view was that the Claimant should be back under UK control. Mr Attfield responded that it had been agreed earlier in the year that EMEA needed to cover the costs until the redundancy process concluded. He said that it was "*a hosting relationship"* and for all intents and purposed the Claimant was employed by EMEA. He also said that he understood that the Claimant's role on COKE had been taken over by Kevin Bean, and asked questions about what role he had been given. Mr Vandenhoudt responded that he could not understand why the Claimant was seen as being under EMEA. Nor could we. He also said that Mr Bean was supporting the Delaval claim in TS-Nordic and was due to take over the role the role that the Claimant had been offered and turned down at the beginning of the year. He said that if Mr Bean was needed to support the COKE deal, he could make him partially available to do that.

97 On 4 October Mr Attfield wrote to Philipp Huber, VP HR in EMEA, that he thought that the Claimant might have a possible claim for unfair dismissal and/or discrimination because the role that she had previously turned down had been given to Kevin Bean without it being offered to her again and because she had not succeeded in getting roles in DCCM.

98 On 6 October 2017 the Claimant asked Mr Vandenhoudt when she could meet with him as she needed to set her targets for 2017 with her line manager. Mr Vandenhoudt queried with Ms Owen how he could be the Claimant's line manager when the IIS had been terminated in March 2017.

99 On 10 October 2017 the Claimant contacted Daniela Theisinger, who was Mr Vandenhoudt's line manager in Belgium. She complained to her about his conduct. She complained about him making dirty jokes and said that on one occasion someone had walked into a room and apologised for being early and Mr Vandenhoudt had said, "*my wife always says I come too early."* She said that he had referred to her as someone's "*mistress"*. She said that she had turned down promotion due to sexual harassment and was now being made redundant. Ms Theisinger advised her to raise her complaints in writing with Georg Pepping.

100 On 13 October the Claimant wrote to Georg Pepping. She said that she had worked for T-Systems for seven years and was a high achiever. As a result of her achievements she had been offered a promotion and pay rise in December 2016. Unfortunately, she had felt obliged to turn down that opportunity because of serious issues with her manager's "*repeated unacceptable conduct"* towards her and no assurances that it would not be repeated. In July 2017, within weeks of finishing a project in Germany and enrolling on the Talent Programme, she had been told that she was being made redundant. There had been no clarity as to who had initiated the redundancy process and whose headcount she fell under. She said that as a consistent high achiever she should be afforded the opportunity to find an alternative role. She sought Mr Pepping's support to secure a six-month contract assignment internationally under the X-Change programme.

101 On 17 October 2017 the Claimant forwarded a copy of that email to Ingo Danzer, Group Compliance Officer TSI. She said that she had raised the matter with HR in TSI, but as she had not received a response and the redundancy process continued, she believed that it was a compliance issue and wanted to register it as such.

102 On 19 October Jake Attfield sent an email to a number of people, including Philipp Huber and Mr Vandenhoudt, who had taken part in a conference call earlier that week. He said that *"as a result of the complex and protracted nature of"* the IIS redundancy process they were now exposed to a claim of unfair dismissal and (worst case) one of discrimination. Although that was not the fault of any individual or process, they needed to act in the interests of the company and the Claimant. The decision that they had reached was to stop the redundancy process, move the Claimant into the local T-Systems team and support her find a new role within the DTAG group. That meant that they needed to secure headcount and budget to cover an interim period while they pursued all available avenues.

103 On 23 Oct 2017 Mr Danzer and Christian Borner (Group Compliance Officer, TSI) had a telephone conversation with the Claimant to discuss her complaint. They asked her to provide a written statement about Mr Vandenhoudt's repeated unacceptable conduct towards her. She made it clear that se did not want anyone within the Respondent (the UK company) to be informed about her complaint.

104 On 23 October 2017 Mattias Siebert offered the Claimant a six-month X-change in Germany.

105 On 24 October the Claimant sent a statement to Messrs Danzer and Borner. She asked them to keep the contents of her statement confidential and not to share them with anyone other than the the Chief Compliance Officer. The statement comprised eight typewritten pages and about 57 pages of annexes. In that statement the Claimant made the following allegations of sexual harassment against Mr Vandenhoudt. They were alleged to have occurred in 2016. She said that if someone came into a room early, he would say "*My wife says I come early too.";* he asked her questions about her personal life; he hung up on a call and said later that he had become distracted by an attractive female who had walked past and had said, "*I'm a man who travels a lot alone.;* he told her that he was frustrated because she refused to open up to him about herself and her personal life; he told her the door entry code was 6969; he told her that a woman had got promoted because she gave her boss oral sex; on one occasion he touched her arm and shoulder; he told her about a friend whose email address was "Letshavefun_69"; and when Peter Stoter called her he asked whether Peter was calling "*his mistress."*

106 On 30 October both Mr Danzer and the Respondent's HR told the Claimant that the redundancy process had been stopped and that she was no longer at risk of redundancy. It was confirmed in writing on 31 October. She as told that she would continue working on the COKE deal until an X-Change position was identified. The Claimant also moved back to the headcount and budget of T-Systems UK.

107 On 9 November (Thursday) the Claimant spoke to Mr Danzer about her complaint. He told her that he would be speaking with Mr Vandenhoudt the following Tuesday and that he would be asked to respond to her complaint.

108 On 14 November Mr Danzer and Philipp Huber met with Mr Vandenhoudt to discuss the Claimant's allegations against him. He denied them. Mr Danzer spoke with the Claimant after the meeting. Mr Danzer said that in accordance with the Compliance processes he was not able to give her the details of the discussions or the outcome. The Claimant asked which data protection regulations and compliance processes did not allow the outcome of her complaint of sexual harassment to be shared with her. In an email on 27 November to Mr Danzer the Claimant said that she hade made a formal complaint as a victim of sexual harassment to the DTAG Compliance team with the expectation that a full and frank investigation would be undertaken. Somehow erroneously the matter had been dealt with under the Whistleblowers' procedure. She wanted the matter to be handled in accordance with the bullying and harassment policy and wanted a face to face meeting with Ms Theisinger and others.

109 Mr Danzer responded that in several conversations that Claimant had explicitly requested them not to conduct a broad and formal investigation as that would have meant making the content of her complaint known to a large number of people. They had agreed with her to confront Mr Vandenhoudt with the allegations and to seek his response. That meting took place as agreed. In addition, they had agreed that the focus would be on finding her a new role outside EMEA. If she had any additional information, they would consider it and decide how to proceed under the existing Compliance processes. There were further email exchanges between Mr Danzer and the Claimant on the issue.

110 There also continued to be ongoing disputes about which entity would pay for the Claimant's continued employment.

111 On 10 December the Claimant raised the issue of the investigation of her complaint with Manuela Mackert. Ms Mackert responded on 14 December that she had looked into the matter and the Compliance process had been followed correctly. The process did not distinguish between a whistleblower and a victim with regards to providing details of the investigation or the outcome. She said that, in order to avoid any misunderstanding, the result of the investigation had not been that her allegations of sexual misconduct were not true but that it had not been possible to prove the allegations to the standard required.

112 On 15 December 2017 the Claimant gave Early Conciliation notification to ACAS.

113 On 20 December 2017 the Claimant sent an email to Daniela Theisinger in which she made a complaint of sexual harassment against Mr Vandenhoudt under the Anti-Harassment and Bullying Policy. She said that she was dissatisfied with the way in which her complaint had been handled until then. She also informed her that she had contacted ACAS which was the first step towards starting proceedings in an employment tribunal. Ms Theisinger sent the complaint to Mr Borner who sent it on to Jake Attfield. Mr Borner pointed out that the Claimant had previously asked for the UK company not to be made aware of the complaint. It should be made clear to her that it had now been forwarded to her employer because she had mentioned taking legal proceedings in England.

114 Mr Attfield responded that they would need to investigate it under their grievance procedure. On the same day Martin Turk, lead HR Business Partner in the Respondent, wrote to the Claimant that her complaint would be investigated under its grievance procedure and sent her a copy of it. Mr Turk and the Claimant spoke on the next steps. The Claimant was on annual leave until 18 January 2018.

115 On 2 January 2018 Mr Turk invited the Claimant to a grievance meeting on 25 January 2018. It was subsequently rescheduled to 1 February. On 30 January the Claimant sent Mr Turk a statement. The statement comprised 16 typed pages.

116 The grievance hearing was conducted by Mr Turk on 1 February. The Claimant was accompanied by an employee representative. It was a long hearing.

117 On 15 February 2018 the Claimant presented her claim form to the Employment Tribunal. It was sent to the Respondent on 29 March 2018.

118 On 16 March 2018 Mr Turk apologised to the Claimant for the length of time that his investigation had taken. He said that he was on annual leave the following week and would get in touch with her on his return to give her an update on his progress.

119 On 31 March 2018 Mr Vandenhoudt left the Group and took on a new role elsewhere.

120 On 4 May 2018 the Claimant was offered a six-month X-Change role as a Senior Project Manager working for DTAG. It was due to start on 1 June 2018 and to end on 30 November 2018. The Claimant accepted the role on the same day. The Respondent continued to pay her salary and DTAG paid her accommodation and expenses. A service agreement to that effect was signed at the beginning of July.

121 Mr Turk drafted a grievance outcome letter and sent it on 13 June 2018 to their solicitor. The letter was dated 13 June 2018. The solicitor sent his comments on 15 June 2018. It was unclear whether a copy of it was ever sent to the Claimant. The Claimant never received it. It was disclosed to the Claimant very late in the proceedings. In the letter Mr Turk apologised for the delay in investigating the matter which he said had been made difficult by the fact that Mr Vandenhoudt had left the Group. He said that in the response to her claim to the Tribunal Mr Vandenhoudt had denied any improper behaviour and that his investigations had also been unable to find any evidence that would enable him to uphold her complaints against him. There was no evidence before us of any investigations carried out by Mr Turk.

122 Between 2017 and 2019 the T-Systems Group made significant losses and reduced its headcount by around 10,000 worldwide. During that period the Respondent was forced to make 200 employees redundant. Mr Turk was made redundant and dismissed around August or September 2018.

123 On 21 November 2018 the Claimant was placed at risk of redundancy as the service agreement was due to end at the end of November 2018. The reason for that was that nothing had changed since April 2017 and there was still no role available for the Claimant within the Respondent. In the event, the service agreement for the Claimant to work for DTAG was continued until the end of February 2019. At the beginning of March 2019 the Respondent entered into another service agreement with DTAG to provide the Claimant's services to DTAG. That agreement is for an indefinite period, subject to the right to terminate with three months' notice.

Conclusions

Jurisdiction

124 Almost all of the Claimant's complaints under the Equality Act 2010 are about acts or failures to act which occurred before 16 September 2017. The complaints of unwanted conduct of a sexual nature by Mr Vandenhoudt relate to acts that are alleged to have occurred between November 2015 and December 2016 (paragraphs 3.1 – 3.21 above). There are then a number of acts that are alleged to have occurred on or by certain dates between January and July 2017 (paragraphs 3.22 – 3.26). The only acts that are alleged to have occurred after 16 September 2017 are putting the Claimant at risk of redundancy on 21 November 2018, failing to offer her a suitable alternative role from 1 April 2017, and failing to investigate her complaints of sexual harassment first made in October 2017 (paragraph 3.26, 3.28 and 3.29). These are alleged to be acts of harassment (unwanted conduct related to sex) or, in the alternative, direct sex discrimination and victimisation.

125 The Tribunal does not have jurisdiction to consider complaints about acts or failures to act that occurred before 16 September 2017 unless it finds that they were were part of conduct extending over a period of time which continued beyond 16 September 2017 and, if they were not, that it would be just and equitable to consider them.

126 We considered first whether it would be just and equitable to consider them if they were found not to be part of an act that continued after 16 September 2017. The delay in this case is considerable. The complaints about Mr Vandenhoudt's conduct

of a sexual nature were presented between 11 months and 2 years after the three-month time limit for presenting them. The complaints at paragraphs 3.22 – 3.26 were presented between 4 and 11 months after the expiry of the three-month time limit. The extension of time for early conciliation does not apply to complaints where the primary time limit for presenting them has expired before early conciliation begins. The delay in this case is significant.

127 There has been no explanation for the delay. The Claimant's evidence is that she believed at the time that the conduct amounted to sexual harassment. She gave no evidence about why she did not bring proceedings at the time. Her explanation for not raising it with her employer earlier, namely that she was frightened that Mr Vandenhoudt would make her position difficult because he was a powerful man in the company, was not easy to reconcile with her evidence that she complained to him regularly about it. The fact that she felt able to raise internal complaints in October 2017, when she and Mr Vandenhoudt were both still employed by the Group, negated her assertion that she was unable to do so earlier because she was worried about the repercussions.

128 We were satisfied that the cogency of the evidence was affected by the delay. The allegations about Mr Vandenhoudt's conduct related primarily to comments that were made between one and two years before the Claimant presented her claim. There was no written evidence of these matters and the parties and witnesses had to rely on their recollections. It is very difficult after that passage of time to remember the context in which remarks were made and precisely what was said. It is also difficult with the passage of time for parties and witnesses to produce evidence (for example, of telephone messages) that would explain the context of remarks, or would contradict the evidence that was given. We have done the best that we can, on the basis of what is before us, to work out what happened, but we have no doubt that the cogency of the evidence has been affected and that the Respondent has been prejudiced. Having considered all the above matters, we concluded that it would not be just and equitable to consider complaints about any acts or failure s that occurred before 16 September 2017 if they were not part of a continuing act of discrimination that continued beyond that date.

<u>Mr Vandenhoudt's conduct from November 2015 to December 2016 (paragraphs 3.1-3.21)</u>

129 We do not have jurisdiction to consider these complaints unless we find that there was an act of discrimination (that covers harassment, direct discrimination and victimisation) after 16 September 2017 and that any of these acts formed part of a continuing act with that act.

130 We have found that the following acts occurred and that they amounted to conduct of a sexual nature – on one occasion when someone apologised for arriving early Mr Vandenhoudt said "*My wife says I come too early too",* Mr Vandenhoudt said to the Claimant that while on the phone to her he had been distracted by an attractive woman who had walked past, Ms Wiley brought into a meeting a pencil topper shaped like a penis and Mr Vandenhoudt and others laughed, Mr Vandenhoudt told that Claimant that he had a friend whose email address was "letshavefun_69" and made a joke about the Claimant being Peter Stoter's mistress. We have also found that when the Claimant was leaving a work event to go to her room Mr Vandenhoudt blew her a kiss but we do not consider that that amounts to conduct of a sexual

nature. It could be related to sex if Mr Vandenhoudt only blew kisses at women. We are prepared to accept that the conduct above was "unwanted" by the Claimant. However, we could not conclude, on the evidence before us, that it had the purpose or effect of violating the Claimant's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for her. She did not give evidence that they had that effect on her. The messages that the Claimant exchanged with Mr Vandenhoudt, especially in May and December 2016, indicated that it had not had that effect. Nor had the Claimant established less favourable treatment or that she was subjected to a detriment in respect of those matters. Not every inappropriate remark or joke in the office falls within the definition of harassment in section 26. If there is jurisdiction to consider those claims, we would conclude that they were not made out.

131 We have also found that Mr Vandenhoudt placed an "X" over the Claimant's photo and that he became angry and shouted at her and banged his fists on the table. That was not conduct of a sexual nature and we do not find that it was related to sex. The Claimant was not the only person who had an "X" placed over her photo. It was also placed over the heads of men. The unacceptable conduct of Mr Vandenhoudt was a reaction to the Claimant threatening to leave the contract immediately. It had nothing to do with her gender. We have found that Mr Vandenhoudt carried out a SWOT analysis with the Claimant and identified certain weaknesses. We have found that the analysis was carried out to support the Claimant to help her progress in the organisation. Mr Vanenhoudt identified many strengths as well some weaknesses. We did not find that the Claimant's gender played any part in that process. We have also found that the team event to celebrate the closing of the Huawei deal took place when the Claimant was absent sick. The Claimant was absent sick for a very long time – from the end of July to the end of October. We did not find that it had taken place in her absence to snub her. We did not find that it was in any way related to her gender. Finally, we found that at dinner on 19 December Mr Vandenhoudt made gestures to indicate that he was not taking seriously what the Claimant was saying. We did not find that that was in any way related to her gender. If there is jurisdiction to consider those claims, we would conclude that they were not made out.

<u>Acts between January and July 2017 (paragraphs 3.22 – 3.27)</u>

132 What we said at paragraph 129 applies to these complaints as well.

133 We have not found that there was a loss of promotion in January 2017. We have found that in December 2016 Mr Vandenhoudt offered the Claimant a new role working with him when he was promoted to Vice President EMEA Sales and Service. The Claimant was initially very excited about the role and about working with Mr Vandenhoudt (see paragraphs 50, 53 and 54 above). That reinforces our conclusion that he had not sexually harassed over the preceding one year. When she was initially told about the role she believed that it would be a promotion with a change in title and increase in salary and her being appointed to a particular role which would give her security. She realised, however, that was not the case when Mr Vandenhoudt discussed the details with her. There was no change in title, he would negotiate for a higher salary for her and it did not provide her with long-term stability or a career path to a Vice President role. She felt that it would be continuation of the previous year where she would do all the hard work and he would get the kudos and recognition. We do not accept that what made her change her mind was Mr

Vandenhoudt's conduct after a few glasses of wine that evening which, although not appropriate, did and could not reasonably have had the proscribed effect. If the role that had been offered to her had been attractive enough, we have no doubt that she would have accepted it regardless of his conduct that evening. She turned down the role because it was not the promotion that she had thought that it would be or the recognition that she felt that she deserved.

134 The Claimant also argued that the loss of promotion was a continuing act. If the Claimant's inability to accept the offer was an act of harassment or discrimination, it happened on 5 January when she turned down the role. That act might have had ongoing consequences, such as her being placed at risk of redundancy, but the act occurred on 5 January 2017.

135 The Respondent did not cause the Claimant to be displaced from her post on 5 January 2020. That is understood to be a reference to the placement on the KONE contract. There had been talk about reducing the costs of the KONE account from as early as May 2016. By the end of July 2016 the Huawei deal had been closed. the Claimant was absent sick from 29 July until the end of November. By the time she returned to work it was clear to her and to Mr Vandenhoudt that the KONE account would not need her much longer, and hence Mr Vandenhoudt offered her the opportunity to move with him. The decision not to continue the Claimant's engagement was made by Mr Laursen, but Mr Vandenhoudt was involved in the discussions about it. The Claimant's work on that contract ended because she was no longer required on it, they needed to cut costs and she was expensive. It had nothing to do with gender.

136 The Claimant's 2016 PDR was not completed by 30 April 2017. Mr Vandenhoudt initially completed his part of it on 24 January 2017. He and the Claimant discussed it on 6 April 2017 and on the basis of that discussion he completed it online. The Claimant took issue with what he had entered and said that it was not what they had agreed. HR informed the Claimant that she could not edit the PPR online. It was sent to Mr Vandehoudt to give the Claimant an overall rating towards the end of April 2017. He rated her as a top performer. It was not closed off by the end of May because the Claimant had not acknowledged the rating and she said that she could not do so because his comments did not accord with what they had agreed. The delays in completing the PPR were due to the Claimant not accepting and challenging some of Mr Vandehoudt's comments. They did not agree about how soon she could progress to a VP role. The delay in closing the PPR had nothing to do with the Claimant's gender.

137 The Claimant's targets for 2017 were not set by 30 April 2017. That is hardly surprising given the uncertainty about the Claimant's position at that time. On 1 April 2017 an IIS agreement was entered into for the Claimant to provide her services to Global Accounts in TSI for three months. It was not known at that time whether headcount would be approved for her to be permanently appointed to a role there. If any targets could have been set in those circumstances, the responsibility for setting them would have lain with the managers to whom she worked, and not the Respondent or Mr Vandenhoudt.At the end of July 2019 the Claimant was placed at risk of redundancy and the consultation period continued until the end of October 2017.

138 We have not found that the Claimant received the incorrect bonus. On the basis of the Claimant's target achievement figures provided by HR the Claimant was not entitled to the full 15% bonus. Mr Vandenhoudt felt that that was unfair because of the work she had done on the Huawei account and pressed HR to give her an extra £5,000 which led to her getting a bonus for having achieved 125% of her targets. There was some resistance from HR but he pushed for it. It resulted in the Claimant getting a bonus of £15,245, the highest bonus that she had received.

139 The Claimant was put at risk of redundancy on 26 July 2017. The reason for that was that when the T-S Nordic terminated the IIS agreement, there was no role within the Respondent to which the Claimant could return. She would have been put at risk of redundancy at the beginning of April 2017 but was not because she was temporarily sent to a role in TSI (Global Account) with the hope that a permanent role might become available there within the three-month period. Unfortunately, it did not. As there was no role for the Claimant in the Respondent she was at risk of redundancy and would be dismissed unless she succeeded in getting a role in some other part of the Group. It had nothing to do with gender.

<u>The complaints that are in time (paragraph 3.26, 3.28 and 3.29)</u>

140 These are alleged to be complaints of sex-related harassment, direct sex discrimination and victimisation. We have found that the Claimant did not make complaints of sexual harassment to Mr Vandenhoudt in 2016-2017 or to Ms Owen on 19 September 2019. Therefore, the first protected act was her verbal complaint to Ms Theisinger on 10 October 2017. It follows from that that anything that occurred before that date cannot be an act of victimisation.

141 It was argued on behalf of the Respondents that the complaints made after 10 October 2017 were not protected acts because the Claimant had made false allegations in bad faith. We have found that some of the acts about which she complained in her internal complaints and to the Tribunal did occur, although they did not in law amount to harassment. Hence, the Claimant was not being dishonest when she said that those acts had occurred. We have also found that some of the acts about which she complained did not happen and that the Claimant has embellished or exaggerated her claim by adding them. We also concluded that the timing of the Claimant's complaints indicated that her motivation in raising those matters was not to bring to light sexual harassment in the workplace because it was in the interests of others in the workplace to do so, but to safeguard her position and to use it as leverage to prevent the termination of her employment. Each of the communications relied upon by the Claimant as being a protected act contains some honest allegations about conduct which she considered inappropriate. That, in our view, is sufficient to make those communications protected acts. The fact that some of them also contain allegations about acts that did not occur does not, in our view, remove the protected status that they enjoy by virtue of the honest allegations. We do not think that we can dissect each communication and say that part of it is protected and part of it is not. If it contains any allegations of discrimination which are true (in the sense that the acts alleged occurred) then it is protected. If the Claimant is subjected to detriments because she made complaints of sexual harassment, some of which were protected acts, then she has clearly been victimised.

142 We considered first the complaint that the Respondent failed to offer the Claimant a suitable alternative role after 1 April 2017. The Respondent's position is

that it had no suitable alternative role to offer the Claimant when the service agreement supplying her services to T-S Nordic was terminated. The Claimant has not identified any position within the UK company (the Respondent) which could or should have been offered to her. The reality is that the Claimant had no position with the Respondent after the sales team was made redundant in 2012 but had worked on a project to project basis. The Respondent did liaise with other companies in the Group to see whether any roles could be identified for the Claimant. The Claimant herself also sought other roles within the Group. The difficulty was that while there were projects on which she could assist on a temporary basis there was no permanent role for which she could apply. Between 2017 and 2019 the Group reduced its headcount significantly and there very few roles available. We do not accept that the Respondent failed to offer the Claimant a suitable alternative role. There was no suitable alterative role to offer her.

143 The Claimant relied on Kevin Bean as a comparator in respect of this complaint. On 8 September the Contracts Manager role in EMEA was offered to Kevin Bean. That was not a role within the Respondent and not one that could be offered by the Respondent. Mr Vandenhoudt did not offer the role to the Claimant in September 2017 because he had offered it to her at the end of the previous year and she had declined it on 5 January 2017. He had no reason to believe that she had changed her mind about that role. The decision to offer the role was made before any of the Claimant's protected acts. The decision not offer the role to the Claimant had nothing to do with her gender. She was not offered it because she had made clear earlier that she was not interested in it.

144 The Claimant was placed at risk of redundancy on 21 November 2018. That was because the service agreement whereby her services had been provided to DTAG was about to end and there was still no role for her at the Respondent. Nothing had changed since April 2017. It had nothing to do with the Claimant's gender or the fact that she had done protected acts.

145 The Claimant's last complaint in time is about the Respondents' failure to investigate her complaints of sexual harassment made between October 2017 and January 2018. None of those complaints was made to Mr Vandenhoudt. The only issue here is whether the Respondent (the UK company) failed to investigate the complaints and, if so, whether it was in any way because of the Claimant's gender and/or because she had complained of sexual harassment.

146 The Claimant first made those complaints to T-S Belgium and then the Respondent's parent company, TSI. At that stage the Claimant made it clear that she did not want the Respondent to be informed about her complaint, and TSI respected that. We do not have to determine whether TSI dealt appropriately with her complaint. On 20 December 2017 the Claimant complained to Mr Theisinger under the Respondent's Anti-Harassment and Bullying Policy which provided that a complaint against one's line manager should be made to his/her line manager. She also informed her that she had taken the first step to start legal proceedings in the UK. That complaint was forwarded to the Respondent. The first time that the Respondent received a complaint of sexual harassment was on 21 December 2017.

147 On the same day the Respondent appointed Martin Turk to investigate it and he immediately made contact with the Claimant and sent her a copy of the Respondent's grievance procedure and spoke to her about the next steps in the

process. On 2 January 2018 Mr Turk invited her to a grievance hearing which eventually took place on 1 February 2018. It was a long grievance hearing and prior to that the Claimant had provided a long statement is support of her grievance. There were many complaints in the grievance and they went back to early 2016. The potential witnesses worked for a number of different companies in the Group in different countries. On 31 March 2018 Mr Vandenhoudt left the Group. During that period the Respondent was also involved in a large redundancy exercise. In August or September 2018 Mr Turk's employment was terminated by reason of redundancy.

148 Mr Turk drafted the grievance outcome on or shortly before 13 June 2018. We do not know whether he sent a copy of that to the Claimant or not, but we accept that she never received it. There was no evidence before us to indicate that Mr Turk had undertaken any investigation of the complaint. The real issue for us was whether we could conclude from that evidence that the failure to investigate it was in any way attributable to the Claimant's gender or because she had complained of sexual harassment. In other words, whether the failure to investigate was, in itself, without any further evidence, sufficient to conclude that the Claimant's gender or complaints of sexual harassment were the reason, or one of the reasons, for it. We concluded that it was not. The Respondent's initial reaction showed that it took the matter very seriously. The complaint was not easy to investigate; it was stale and covered a long period and potentially involved witnesses in different countries. There were other pressing demands on Mr Turk. The departure of Mr Vandenhoudt would have made it difficult to investigate the complaints. We are not saying that any of those reasons were the reason for the failure to investigate or that they in any was justify it, but what we do say is that in that context and without any other evidence to indicate that gender or the protected act played any part in the failure to investigate, we cannot conclude that the Claimant has established a prima facie case of direct discrimination, harassment or victimisation. In those circumstances, the burden does not shift to the Respondent to provide an explanation.

Whistleblowing detriments

149 We considered first whether the Claimant made any protected disclosures between October 2017 and 15 February 2018. As far as the claim to the Tribunal is concerned, leaving aside the question of whether it was a qualifying disclosure, we concluded that it was not a protected act because the disclosure was not made under sections 43C to 43H of the Employment Rights Act 1996.

150 In respect of the complaints made between 10 October 2017 and January 2018 we considered first whether the Claimant believed, at the time that she was making those disclosures, that the disclosures were in the public interest and, if she did, whether that belief was reasonable. The Claimant did not say in her witness statement that at the time she raised those matters she believed that it was in the public interest to raise them. It was clear to us from both the timing of the complaints and the content of some of them that the Claimant raised those matters because she believed that it might be of assistance to her personally to do so. The Claimant first alluded to the complaints when she was told that she at risk of redundancy on 26 July 2017. At that stage she said that there were things that she had been sitting of for the last year and half which she might want to raise. The Claimant then kept quiet about them while attempts were made to find her an alternative role in the Group. On 26 September it was made clear to her that unless she found a role in the Group by 31 October her employment would be terminated. In October the Claimant made

complaints of sexual harassment to Ms Theisinger (10 October), Mr Pepping (13 October), Mr Danzer (17 and 24 October). The tenor of those complaints, especially the one to Mr Pepping, was that he had to help her find a role because she was a high achiever and only found herself in this position because she had to turn down a promotion because of sexual harassment. We have found that the Claimant did not turn down the role because of sexual harassment. The purpose of making the disclosures was not to being sexual harassment to light and have it dealt with but to secure a role for the Claimant and to avoid her being made redundant. The Claimant did not believe at the time that she made the disclosures that they were in the public interest. They were made in furtherance of her interests and she was well aware that that was what she was doing. The Claimant did not therefore make "qualifying disclosures".

151 We have also found that some of the matters about which she complained did not happen. She was not at risk of redundancy because she turned down a role because of sexual harassment. In respect of acts that did not occur, the Claimant could not have believed that those matters tended to show that someone was in breach of their legal obligations.

152 We concluded that the Claimant did not make any protected disclosures.

Employment Judge Grewal

Date 4th Feb 2020

JUDGMENT & REASONS SENT TO THE PARTIES ON

04/02/2020

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FOR THE TRIBUNAL OFFICE