EMPLOYMENT TRIBUNALS

Claimant: Mr P Allen

Respondents: 1. Paradigm Precision Burnley Limited
2. Carl Wheeler

Heard at: Manchester **On:** 9-13 March and 16,17 March 2020

Before: Employment Judge Leach
Mr I Frame
Mr C S Williams

Representation:

Claimant: Ms T Barsam (Counsel)
Respondents: Mr A Rozycki (Counsel)

JUDGMENT having been sent to the parties on 20 March 2020 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction and Background

1. In this first section we explain the relevant factual background to the claims. We consider these facts are not in dispute, but to the extent that any matter referred to has been disputed then the background as we describe below represents our findings of fact on those matters covered. References to page numbers are to the page numbers in the bundle of documents used at the hearing.

2. This claim concerns the termination of the claimant's employment with the first respondent and the treatment that the claimant says he received during the final 8 months or so of his employment.

3. The first respondent is an aerospace engineering business based in Burnley, Lancashire. It is part of a large corporate Group called the Paradigm Group ("Group") whose headquarters are in the United States. The Group has other

businesses in Europe and in North Africa as well as at various sites in the US. The first respondent employs 280 or so employees at its site in Burnley. Of these, 80%-85% are male.

4. The second respondent was until his retirement at the end of 2018 the General Manager of the first respondent based at Burnley.

5. The claimant was a senior employee of the first respondent. He is an experienced executive in the aerospace industry. Prior to April 2018 he was, for a number of years, the Quality Director of the first respondent and other businesses in the Group. It was a senior position that reported to a Vice President of the Group called Quentin Hughes. It was a role that required substantial travel including to Poland, Hungary, Tunisia and the US. He only spent about a week a month working in Burnley.

6. The claimant's professional career was and is very important to him. For almost all of his employment with the first respondent he was highly regarded. The first respondent wanted the claimant to progress in his career with the first respondent or the wider Group, and the claimant was keen to do so. From May 2017 latest the claimant was earmarked as a potential General Manager ("GM") and successor to the second respondent.

7. A GM is responsible for the operation of a site, so the GM in Burnley was the most senior executive based there, responsible for the site's operation and performance. Sometimes the term Managing Director was used to describe this role, although we do not know whether the post-holder also held the office of director of the first respondent. Our understanding is that the ownership and control of the corporate entity, including Board membership and control, was based in the US.

8. The claimant is a gay man, a fact for the most part he did not disclose in his working life with the first respondent until 2018. He did have a close circle of friends with whom he worked who knew about the claimant's sexual orientation. The claimant did not, however, inform the majority of his colleagues about his sexual orientation. In fact, he took steps to hide it. He told colleagues that he was married to a woman called Karen. He had a good female friend outside of work who was willing to play the role of Karen if required, and this pretence was convincing enough that some colleagues even addressed Christmas cards to the claimant and Karen.

9. For some time, the claimant had a friendship with the respondent's HR Director called Nicky Wright, who we refer to below as "NW". They had worked together since the claimant started in 2012 although it was not until late 2017 that the claimant informed NW that he was gay. The claimant also at that stage informed NW that he and his husband had plans to adopt, and for the claimant would take on the role of principal carer.

10. Other than the claimant there were no openly gay male employees amongst this workforce at any relevant time.

11. From 2017 onwards, the claimant knew that the second respondent was going to retire. The second respondent had been talking about it informally for some time. In the week commencing 12 March 2018 the claimant was called into a meeting with NW and the second respondent and was told that the second

respondent would be retiring approximately 12 months later. The events in and following the week of 12 March 2018, up to and including the claimant's resignation on 15 November 2018, give rise to the claims. There have been a number of factual disputes between the parties and we set out below under the heading "Findings of Fact" our findings of fact on the various relevant events within this time period.

The Hearing

12. This case was heard over 7 days from 9 to 17 March 2020. We had the benefit of Mr Rozycki's written skeleton argument provided at the beginning of the hearing. Ms Barsam provided a written skeleton argument, after witness evidence had been heard and prior to making oral submissions.

13. We spent the first day reading the bundles and statements provided and heard from the claimant on day 2.

14. We heard from the respondent's witnesses on days 3 and 4. On day 3 we heard from the second respondent and from NW. We accommodated difficulties in availability of the respondent's witnesses. Mr Hughes was overseas at the beginning of the hearing and it had been proposed to hear his evidence by videolink. As matters developed, Mr Hughes was able to return in time to attend the Tribunal on day 4. Mr Lowery was unavailable for a number of reasons until late afternoon on day 4 but we were able to hear and conclude his evidence by the end of day 4.

15. We heard submissions from the parties on 13 March 2020 (day 5). We were then able to meet for the remainder of day 5 and all of day 6. In this time we reached our decision which we provided to the parties on the morning of day 7 (17 March 2020).

16. Once judgment on liability had been provided, the parties asked for time to try to reach agreement on remedy. They were unable to reach agreement and therefore we heard from the parties on remedy on the afternoon of 17 March 2020 before reaching and providing our decision in relation to remedy at the end of that day.

The Issues

17. The issues in this case were identified at a case management hearing on 30 January 20919 and recorded in a List of Complaints and Issues (pages 74-79). We replicate this list below:-

*NB: Where allegations under the Equality Act 2010 are also pursued against R2 personally, that is indicated by "**R2**" against the allegation.*

Harassment related to sexual orientation – section 26 Equality Act 2010

1. Are the facts such that the Tribunal could conclude that in any of the following alleged respects the respondents subjected the claimant to unwanted treatment related to his sexual orientation which had the purpose or the effect (noting section 26(4)) of violating his dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him:

(a) The pressure applied by Ms Wright to encourage the claimant to "out" himself to management and colleagues;

(b) The "camp" comment on 12 March 2018 [**R2**];

(c) The various comments about being camp and limp-wristed hand gestures [**R2**];

(d) The "Benidorm" email of 6 April 2018 [**R2**];

(e) The "type" question on 20 April 2018 [**R2**];

(f) The photograph in the IT room of 23 April 2018;

(g) Ms Wright's consistently dismissive attitude to complaints raised;

(h) Ms Wright's comment that "everyone thinks you never take anything seriously" in the week commencing 7 May 2018;

(i) Ms Wright's comment that "it's not all about Pete" in the week commencing 7 May 2018;

(j) The rejection of the claimant as Operations Manager and then as a candidate for Managing Director at the general management meeting of 5 June 2018 [**R2**];

(k) The conduct of Mr Hughes during the various meetings in July and August 2018 culminating in pressuring the claimant to resign;

(l) In R2 pressuring the claimant to resign with the "I understand why you want to exit the business" comment on 19 June 2018 [**R2 only**]?

2. If so, can the respondents nevertheless show that there was no breach of section 26?

Direct sexual orientation discrimination – section 13 Equality Act 2010

3. Save for any matters which have already been found to amount to harassment, are the facts such that the Tribunal could conclude that in any of the following respects the claimant was treated less favourably by the respondents than his heterosexual colleague, Graham Leadbetter, was treated, or than a hypothetical comparator in the same material circumstances would have been treated (retaining the lettering from paragraph 1 above):

(a) The pressure applied by Ms Wright to encourage the claimant to "out" himself to management and colleagues;

(b) The "camp" comment on 12 March 2018 [**R2**];

(c) The various comments about being camp and limp-wristed hand gestures [**R2**];

(d) The "Benidorm" email of 6 April 2018 [**R2**];

(e) The "type" question on 20 April 2018 [**R2**];

(f) The photograph in the IT room of 23 April 2018;

(j) The rejection of the claimant as Operations Manager and then as a candidate for Managing Director at the General Management Meeting of 5 June 2018 [**R2**];

(k) In R2 pressuring the claimant to resign with the "I understand why you want to exit the business" comment on 19 June 2018 [**R2 only**];

(l) The conduct of Mr Hughes during the various meetings in July and August 2018 culminating in pressuring the claimant to resign;

(m) If it is established that the claimant was constructively dismissed, by dismissing the claimant?

4. If so, can the respondents nevertheless show there was no breach of section 13?

Victimisation – section 27 Equality Act 2010

5. It being accepted by the respondents that the claimant did a "protected act" on 8 August 2018, 20 August 2018 and 24 August 2018 as set out in paragraph 45(v)-(vii) of the particulars of claim, did the claimant also do a protected act on any of the following occasions:

(i) In raising complaints of discrimination and harassment to Ms Wright in the weeks commencing 9 April, 23 April and 7 May 2018;

(ii) In raising complaints of discrimination and harassment at the meeting with R2 and Ms Wright on 8 June 2018;

(iii) In raising complaints of discrimination and harassment with Mr Hughes on various occasions in June and July 2018, and/or

(iv) In raising complaints of discrimination and harassment at the meeting with Mr Hughes on 6 August 2018?

6. If so, are the facts such that the Tribunal could conclude that because of any such protected acts, or because the first respondent believed that the claimant may do a protected act, the first respondent subjected the claimant to a detriment in any of the following alleged respects (retaining the lettering from paragraph 1 above):

(j) The rejection of the claimant as Operations Manager and then as a candidate for Managing Director at the General Management Meeting of 5 June 2018;

(l) The conduct of Mr Hughes during the various meetings in July and August 2018 culminating in pressuring the claimant to resign;

(n) Rejecting the claimant's application for voluntary redundancy in July 2018;

(o) Completely isolating the claimant from the business during the grievance process and during the appointment of his replacement; and/or

(p) Rejecting two of the three grounds of the claimant's grievance, and/or

(m) If it is established that the claimant was constructively dismissed, by dismissing the claimant?

7. If so, can the first respondent nevertheless show that there was no contravention of section 27?

Time Limits – section 123 Equality Act 2010

8. Insofar as any of the matters for which the claimant seeks a remedy occurred more than three months prior to the presentation of the complaint against that respondent, allowing for the effect of early conciliation:

(i) Can the claimant show that it formed part of conduct extending over a period ending within three months of presentation; or

(ii) Can the claimant show that it would be just and equitable to allow a longer period for presenting his claim?

Adoption Leave Detriment – section 47C Employment Rights Act 1996 and regulation 28 Paternity and Adoption Leave Regulations 2002

9. Was the claimant subjected to a detriment by any act, or any deliberate failure to act, by the first respondent because he sought to take additional adoption leave and/or because the first respondent believed that the claimant was likely to take additional adoption leave (retaining the lettering from above):

(j) The rejection of the claimant as Operations Manager and then as a candidate for Managing Director at the General Management Meeting of 5 June 2018;

(k) In R2 pressuring the claimant to resign with the "I understand why you want to exit the business" comment on 19 June 2018;

(l) The conduct of Mr Hughes during the various meetings in July and August 2018 culminating in pressuring the claimant to resign.

10. Insofar as any of the acts or failures to act to which the complaint relates occurred more than three months prior to the presentation of the claim against the first respondent, allowing for the effect of early conciliation, can the claimant show:

(i) That it was part of a series of similar acts or failures of which the last occurred within three months of presentation; or

(ii) That it was not reasonably practicable for the complaint to be presented before the end of the period of three months and it was presented within such further period as the Tribunal considers reasonable?

Unfair Dismissal – Part X Employment Rights Act 1996

Dismissal

11. Can the claimant establish that his resignation should be construed as a dismissal in that:

11.1 the first respondent committed a fundamental breach of the implied term of trust and confidence through one or more of the following allegations, (retaining the lettering from above) taken individually or cumulatively:

(a) The pressure applied by Ms Wright to encourage the claimant to "out" himself to management and colleagues;

(b) The "camp" comment on 12 March 2018;

(c) The various comments about being camp and limp-wristed hand gestures;

(d) The "Benidorm" email of 6 April 2018;

(e) The "type" question on 20 April 2018;

(f) The photograph in the IT room of 23 April 2018;

(g) Ms Wright's consistently dismissive attitude to complaints raised;

(h) Ms Wright's comment that "everyone thinks you never take anything seriously" in the week commencing 7 May 2018;

(i) Ms Wright's comment that "it's not all about Pete" in the week commencing 7 May 2018;

(j) The rejection of the claimant as Operations Manager and then as a candidate for Managing Director at the General Management Meeting of 5 June 2018;

(k) In R2 pressuring the claimant to resign with the "I understand why you want to exit the business" comment on 19 June 2018;

(l) The conduct of Mr Hughes during the various meetings in July and August 2018 culminating in pressuring the claimant to resign;

(m) [*omitted as it is the alleged dismissal]*

(n) Rejecting the claimant's application for voluntary redundancy in July 2018;

(o) Completely isolating the claimant from the business during the grievance process and during the appointment of his replacement; and/or

(p) Rejecting two of the three grounds of the claimant's grievance?

11.2 That breach was a reason for the claimant's resignation; and

11.3 The claimant had not lost the right to resign by affirming the contract through delay or otherwise?

Reason/Fairness

12. If the claimant was dismissed, what was the reason or principal reason for that dismissal? Was it:

12.1 A reason connected with the fact that the claimant sought to take adoption leave, rendering dismissal automatically unfair under section 99 ERA 1996 and regulation 29 PAL Regulations 2002;

12.2 A potentially fair reason in the form of "some other substantial reason" being the claimant's behaviour, in which case the question of fairness arises under section 98(4); or

12.3 Some other reason falling into neither of the above categories, in which case the dismissal is unfair under section 98?

13. If the respondent shows a potentially fair reason for dismissing the claimant, was the dismissal fair or unfair under section 98(4)?

Remedy

14. If any of the above complaints succeed, what is the appropriate remedy? Issues likely to arise:

14.1 An award for injury to feelings;

14.2 An award for financial losses following dismissal;

14.3 Interest under the Equality Act 2010;

14.4 Whether the claimant has mitigated his losses;

14.5 Reductions to compensation on account of the likelihood that dismissal would have occurred lawfully in any event and/or contributory fault;

14.6 An adjustment to compensation because of an unreasonable failure to follow the ACAS Code of Practice.

18. At the beginning of this final hearing. both counsel confirmed that this remained the appropriate List of Issues. A point of clarification was provided

by Ms Barsam at the beginning of this hearing which was uncontentious. This related to the constructive dismissal claim where it was clarified that paragraphs (o) and (p) under 11.1 of the List of Issues, (completely isolating the claimant from the business during the grievance process and the appointment of his replacement, and/or rejecting two of the three grounds of the claimant's grievance) together amounted to the "last straw." in relation to the alleged constructive dismissal claim.

Findings of Fact

19. In this section we set out findings of relevant facts from 12 March 2018 onwards.

20. On a day in the week commencing 12 March 2018, there were three significant discussions that took place in one day.

Discussion one

21. The first was a meeting ("discussion one") between the second respondent (Mr Wheeler, referred to below as "CW"), NW and the claimant. In relation to this discussion one, we find as follows:

a. that it was CW and NW who asked the claimant if they could meet with him.

b. The purpose of the meeting was for CW to inform the claimant that CW would be retiring in about 12 months' time, to tell the claimant that he had been identified as the potential successor to CW and to go through a succession plan with the claimant.

c. CW told the claimant that he needed more operational experience at the Burnley site and a Burnley based role was discussed with him called a Value Stream Leader "VSL". Three VSL roles had already been identified. (We saw this in an organogram from January 2018). The position that was being proposed to the claimant was a fourth VSL role which had not been considered or identified until shortly before this meeting. This fourth VSL role was a temporary role, created to provide the claimant with operational experience at Burnley (we say more about this VSL role below).

d. The VSL role was less senior than the role then carried out by the claimant (the Quality Director role) but the claimant was told that his existing salary and benefits would be maintained during the time that he covered held the VSL role.

e. CW and NW also discussed an Operational Director's role ("OD") with the claimant. This was a role that had not at that stage been formally approved at Group level. However the expectation at that meeting was that it would be approved, at which stage the claimant would move from the temporary VSL role into the OD role for a period of time (6 to 9

months) to gain further operational experience at Burnley, in preparation for a move to the GM position on CW's retirement.

22. It was clear from the cross examination of CW that as far as discussion one was concerned, there was little difference between the claimant's version of events and CW's. This was in contrast with the response as pleaded and also as set out in the respondent's witness statements (including CW's prepared statement). We note paragraphs 12 and 13 of the respondent's grounds of resistance which state as follows:

> *"12. Nicky was aware that a restructure was about to take place within the business that would result in a Value Stream Leader role being created which would have facilitated the claimant's desire to travel less and also his plans for career progression. She discussed this with the claimant and he confirmed he was interested in this role. Nicky therefore facilitated a discussion for the claimant with Carl Wheeler, Managing Director for the first respondent, to move the opportunity forward."*
>
> *13. During this meeting in the week commencing 12 March 2018 the claimant disclosed that his intention was to make it to General Manager level. The second respondent advised that in order to do this the claimant would need to build upon his current operational experience and that he would therefore be part of the first respondent's succession plan to be the GM. At this point the business was unaware that the second respondent had plans to retire in early 2019."*

23. There are a number of significant factual inaccuracies as far as this case was put in the respondents' response form and in the witness statements.

a. Paragraph 13 of the respondents' grounds of resistance (page 49) state that as at the date of this meeting the business was unaware of the first respondent's plans to retire in early 2019. We find this is not accurate. The purpose of this meeting was to discuss the claimant succeeding the first respondent because he was going to retire 12 months later. The witness statements of NW and CW do not make any reference to CW's retirement being mentioned in this meeting and, by this omission, they are inaccurate. We also find that CW had mentioned to the claimant his intention to retire on a number of occasions prior to this meeting.

b. Paragraph 12 of the grounds of resistance and paragraph 34 of NW's witness statement state that the reason she facilitated the meeting was to discuss with the claimant, a VSL role being created in a restructure which she identified as suitable for the claimant.

c. Paragraph 13 of the grounds of resistance, paragraph 6 of CW's statement and paragraph 35 of NW's statement indicate that it was at this meeting that the claimant disclosed his "*intention to make it to General Manager level*" We find that both CW and NW were already aware (prior to this) that the claimant had this career ambition.

d. Paragraph 6 of CW's statement notes that it was agreed at the meeting that the claimant would be placed on a leadership development programme. In fact this had already been agreed.

e. Neither witness statement refers to the intention that the claimant would move from the VSL role to the Operational Director role as part

of the succession plan discussed in discussion one. We find as a fact that was discussed and that was the intention.

24. It was clear from his evidence on being questioned by Ms Barsam, that CW accepted that the position as pleaded by the respondent and as recorded in his statement was wrong. He accepted (and we find) that the meeting was facilitated specifically to discuss the claimant's position as the first respondent's preferred successor to the GM at Burnley and the second respondent's intention to retire 12 months or so from that meeting. When using the term "preferred successor" we mean the position as described in 25 below.

25. At the end of this discussion, we find that the claimant's position as far as the GM position at Burnley is concerned was as follows:-

a. Of all employees in the first respondent and the wider Paradigm group, the claimant had been identified as the one that the business wanted to see take on the role of GM Burnley.

b. The first respondent had not made any binding contractual commitment appointing the claimant to the GM role. There would be no vacancy for a year or so and the claimant still needed to gain some relevant experience.

c. A plan was put in place for the claimant to gain that relevant experience. The plan included the claimant carrying out a demoted position on a temporary basis. The claimant agreed to do this because he was told his salary and benefits would not be affected and he knew that it was part of the agreed plan to ensure that he gained the relevant experience over the next 12 months including a move from the more junior position to operations director (OD) of the first respondent.

d. In his evidence, the claimant accepted that, whilst he understood that he was in a strong position as far as succeeding CW, it was less than certain. He accepted that if an outstanding external candidate was identified, then he may not be chosen as the GM.

<u>Discussion 2</u>

26. Following discussion one, there was then a discussion between the claimant and NW. We find in this discussion that NW encouraged the claimant to inform CW of his sexual orientation and his adoption plans. We say more about the issue of encouragement below.

27. The grounds of resistance (paragraph 15) state that the claimant was considering disclosing to CW his intention to take adoption leave in order to explain why he wanted the VSL role.

> *" The claimant had also discussed the adoption process with Nicky and had stated that he had wanted to tell the second respondent but was scared that he may change in his behaviour towards him. Nicky informed the claimant that the second respondent would not be surprised by this news and that if he wanted to be open and honest about his*

> *reasons for moving in to the Value Stream Leader role then he should be. The claimant asked for Nicky's advice and she told him that if it was her, she would tell the second respondent as she had previously had discussions about personal issues with him and found him to be reliable, trustworthy and supportive. The claimant said he would tell the second respondent. Nicky offered to attend the meeting with the claimant but the claimant declined this offer and said he felt comfortable to do it himself."*

28. NW's evidence in her witness statement is consistent with this where she notes that she said to the claimant that -

> *"…if he wanted to be open and honest about his reasons for moving in to the Value Stream Leader role then he should consider informing the second respondent."*

29. "The claimants evidence on the discussion is as follows:-

> *"Immediately after the meeting on w/c 12 March, Nicky urged me to tell Carl that I was in a same sex marriage and that we had plans for adopting a child."*

> "*The discussion did not happen as described at para 15 GOR. Firstly we were not talking about disclosing to Carl my reasons for moving in to the VSL role … because the VSL role was effectively a demotion from my Director role and my adoption plans were only in the very early stages. It was not my preference. It was only something I considered because it had been specifically proposed to me by Carl as part of the plan to succeed him. Secondly we did not discuss Nicky's experience of sharing private information with Carl and I did not know she had. Finally Nicky did not offer to accompany me back in to the meeting with Carl, she offered to tell him on my behalf. Given the opportunity I had just discussed (ie GM Burnley) I felt that the information had to come from me and I didn't want anyone else discussing my personal life anyway. Immediately following the discussion with Nicky I went back to speak to Carl alone."*

30. We prefer the evidence of the claimant. We find that NW encouraged the claimant to disclose his sexual orientation and adoption plans, not to explain his reasons for wanting to move in to a VSL role but because the claimant had been identified as the preferred successor to take on the GM role the following year.

Discussion 3

31. A third discussion then took place between the claimant and CW. In this discussion we find as follows.

a. The claimant informed CW that he was gay.

b. The claimant also informed CW about adoption plans and his plans to take adoption leave because he was to be the principal carer.

32. CW told us he does not recall the claimant telling him about the plans to adopt and take adoption leave. The claimant clearly recalls it. This finding of fact is of some importance, and we considered carefully this finding and base our finding that adoption and adoption leave was mentioned on the following:

a. On the claimant's own evidence, including the clarity and consistency of his evidence;

b. CW's evidence that he provided at the Tribunal hearing but not before, that he had made notes of these meetings but no longer retained them. This did not provide us with confidence in relation to the disclosure and the transparency of the respondents' position; and

c. The fact that the grounds of resistance and the evidence of NW referred to the adoption leave as one of the facts the claimant was going to disclose to CW (see for example NW's statement at paragraphs 12 and 13.)

33. CW responded to the claimant's disclosure about his sexual orientation by stating that the claimant was quite camp and so everyone knows, or that it is obvious that the claimant is gay. The focus of CW's response to the claimant's disclosure was to the disclosure about sexual orientation and he did not respond, supportively or otherwise, about the claimant's family circumstances, particularly the plans to adopt.

Interim/acting GM.

34. Shortly after the 3 discussions noted above, CW was absent on annual leave for 2 weeks. The claimant was asked to take on the responsibility as acting GM for this time. We find that this is consistent with him being the preferred successor to CW. The claimant has provided evidence that his short time as acting GM was successful and the first respondent delivered month end figures in excess of budget. The respondents did not dispute this.

35. We next record our findings in relation to an alleged change in attitude by colleagues of the claimant towards him. The claimant claims that following disclosure about his sexual orientation a number of events occurred which indicate that there was a change in attitude. There is Documentary evidence supporting some, but not all, of the claimant's allegations.

The Benidorm Email

36. A copy of the relevant email is in the bundle of documents (at page 196). We find that it was sent by CW and was sent to the claimant and the comments in there were directed at him. We note that NW in the later grievance investigation, stated that the email was directed at her. It was plainly not. NW was cc'd into it but it was directed at the claimant to whom it was sent.

37. The email had a picture attached of has been described as 2 stereotypical gay men. One of the men in the picture is wearing tight shorts and CW added a comment *"I hope your shorts are not as tight as this."* The claimant provided evidence as follows:-

a. He and NW had been discussing what to pack for a module of a Leadership course they were both attending in the US. The instructions both had received was that they should pack outdoor clothing "appropriate for outward bound."

b. That discussion had been between the claimant and NW only.

c. The following day CW had sent the claimant the email at page 196. CW had not engaged in a discussion with the claimant about packing

for the Leadership module. The claimant's evidence in relation to the email is that "*it was unsolicited, unwanted and was sent with the intention of embarrassing me because of my sexual orientation.*"

38. The claimant responded with a short light-hearted comment to CW some 11 minutes after he received the email from CW. His response was *"where did you find my holiday snaps?"*

39. CW's response in relation to this email (his statement at para 10) was that it was "*a continuation of the banter that we had previously had about the subject and was intended as a joke."* The evidence of NW was consistent with this.

40. We find:-

a. Discussions had taken place between the claimant and NW the previous day in relation to what to pack;

b. CW was not a party to those discussions;

c. The email was sent the following day;

d. CW had intended the email to be a joke. It was an ill-judged attempt at humour;

e. The claimant received this unsolicited email from his manager. He responded as he did, so that he did not draw attention to himself by complaining. He took in to account that CW was his manager at the time and he was hopeful that he was going to be promoted as his successor.

Comments/behaviour by CW regarding the claimant's sexual orientation.

41. The "Benidorm" email is some evidence that the claimant's sexual orientation was a topic for humour. CW's evidence is that this email was a "one-off."

42. The claimant's evidence on the other hand, is that it was one example of conduct directed at the claimant's sexual orientation. We prefer the claimant's evidence. We find that the Benidorm email was an occasion when a comment was made about the claimant's sexual orientation but that it was not a one-off.

43. We accept the claimant's evidence that there were occasions when CW made comments or gestures within this timeframe. Although the claimant does not provide any specific dates in relation to these, we find that comments and gestures were made by as described by the claimant in his witness statement at paragraph 13.

Work event on 20 April.

44. The claimant attended a work social event. This was a day or so after the claimant had attended a "Preparation for Adoption" training course. CW was aware

that the claimant had taken leave to attend the course and was aware of the course. CW had also by then just provided a reference for the claimant as part of the adoption process.

45. The claimant set out his case in relation to this social work event in the claim form at paragraphs 13 and 14. This version is consistent with the information provided by the claimant in a "timeline" document sent to Paradigm in the US on or shortly before 24 August 2018 in which he set out his grievance. The relevant part of this document is at page 291 and 292. The claimant also provided evidence about the work event in his witness statement at paragraphs 22 and 23.

46. The claimant alleges the following occurred at this event:-

a. CW asked him how the adoption training had gone. The claimant accepts this, in itself, was not an issue. However, CW asked this question loudly and in earshot of a number of colleagues.

b. During the evening he was the target of several jokes including CW, in front of others, asking the claimant what his "type" of male partner was.

c. Following this comment, during the evening, he was asked a number of questions about his personal life and sexual orientation by colleagues to whom the claimant had not wanted to disclose his sexual orientation and who, as far as the claimant knew, were previously unaware of the claimant's sexual orientation. The claimant says *"I felt forced in to outing myself to colleagues because of Carl's inappropriate remarks."*

47. The respondent's evidence is very limited in relation to these allegations. The second respondent refers to it at paragraph 12 of his statement: *"I understand that the claimant alleges that on 20 April 2018 during a social event in Manchester that I had asked the Claimant what his "type" was. This is not true. I did not make such a comment."* No reference is made in his statement to other allegations from 20 April 2018. On being questioned about the allegations on 20 April 2018, CW denied them, stating that he could not remember speaking with the claimant on that evening.

48. The response form says this in relation to the work event on 20 April 2018:

> *"it is denied that the Claimant was forced in to disclosing his sexuality to colleagues as a result of any comments made by the Second Respondent. If such comments were made, which is not admitted, these comments were only intended as banter with the claimant, the type of which he had freely been willing to take part in previously and which the claimant did not find offensive. The claimant did not raise a complaint about this which he would have been expected to do if he was offended by it."*

49. We prefer the claimant's evidence and find that events of 20 April 2018 were as described by the claimant. We find that the claimant's sexual orientation was to an extent a novelty amongst some employees there and unwelcome comments/questions were made/asked.

<u>Post-it Note – 23 April 2018</u>

50. A photocopy of a passport sized photo of the claimant was stuck to or left on a desk in the first respondent's IT department. Underneath the photo was "I" and then a drawing or logo of a heart. It is a strange message but it appears to be saying "I love" with a picture of the claimant and directed at him. The claimant does not know who left this message or what its intention was: no-one has stepped forward to say that they left the message.

51. The claimant was upset by the message. He spoke with NW about it. The claimant says he was in tears when he did so. NW did not say this in her statement, but on being questioned at the hearing she accepted that he was "close to tears."

52. We also find that the evidence that the claimant was in tears or close to tears by 23 April supports the claimant's evidence and further supports our finding that a number of other comments had by that stage been made and that when the claimant raised with this with NW he also raised with her that since he had disclosed his sexual orientation to CW that attitudes had changed towards him. We find that the claimant is not someone who would react in this way (in tears or close to tears) if this episode concerning a post it note had been a one-off. The post-it note was discovered on 23 April, only three days after the works event on 20 April 2018. Our findings in relation to 20 April are noted above and the extent to which the claimant was upset on 23 April 2018 supports our findings about the events of 20 April 2018.

Pressure to Disclose

53. We next make findings about the extent of pressure put on the claimant by NW to disclose his sexual orientation and adoption plans.

54. The claimant's and NW's evidence differs a little about the date on which the claimant first informed NW about his sexual orientation and adoption plans. We find that nothing turns on this. On both versions of events, the discussion took place in late 2017.

55. Following this discussion, there was some encouragement by NW for the claimant to be more open at work about his sexual orientation. NW has not explained why this was necessary. In her evidence NW accepted that the claimant was nervous about informing CW, and even so she encouraged it. This is in the week of 12 March 2018. She encouraged the claimant to disclose his sexual orientation prior to 12 March 2018 as well as on that day itself. At paragraph 12 of her statement she says:

> "If he wanted to be open and honest about his reasons for moving into the Value Stream Leader role then he should consider informing the second respondent."

56. We have already noted our findings that the meeting (discussion one) was not about the claimant wanting to move into the VSL role: it was all about the GM role. However, as noted above, a discussion did take place between NW and the claimant after the succession discussion and before the claimant spoke with CW on a one-to-one basis .The phrase "if he wanted to be open and honest" in NW's witness statement is telling, in our view. What would be the contrary of being open and honest, if he was to choose not to make the disclosure? It would be to not be open and to be dishonest..

57. The claimant's evidence is that NW pressurised him into making the disclosure. This is what we find:-

a. The claimant is an intelligent individual (and was a senior employee) who knows his own mind. NW, however, is the first respondent's HR Director and so informed or trained on such issues as diversity. She chose words to persuade the claimant to disclose his sexual orientation. The claimant was influenced by this.

b. it is significant that at this point the first respondent had communicated its considerable confidence in the claimant. He had been told he had been identified as the preferred successor to CW. On NW's evidence the claimant was still nervous about making this disclosure but at that particular time, the claimant's trust and confidence in his employer was high, and we find that formed part of his decision to make the disclosure.

58. There is a further example when the claimant says that pressure was placed on him by NW. This was in mid-April and there is some evidence from an exchange of texts. NW's view was that the claimant should also inform Quentin Hughes ("QH") about the claimant's sexual orientation and adoption plans. On 16 April the claimant texted NW:

> "*Hey, Nick, just been thinking. Can you hold off on that discussion with* [QH] *until after I've been on the course this week? I've no issue with you telling him I'm a jockey but not to adoption yet as it may sway decision on Burnley MD role and I need more info myself."*

59. Jockey in this context is a crude term and is the claimant's way in that text of referring to his sexual orientation.

60. An exchange of texts between the two then followed which did descend into crudeness, particularly by the claimant. In this exchange the claimant repeated his reluctance for QH to know about the adoption. In the exchange NW returned to the issue of disclosure and asked the claimant on three occasions about whether she should tell QH. Our view is that the email exchange shows NW continued to be in favour of disclosure and that there was some persistence in her persuasion.

<u>New Value Stream Leader Role</u>

61. We next set out our findings in relation to the fourth or new Value Stream Leader role. We have already referred to this in the context of the discussion one in the week of 12 March 2018.

62. Initially there were three VSL roles in a new structure, which is shown in a structure diagram at page 158, and dated January 2018, as well as at pages 164-167. The three VSLs identified in these diagrams are:

(1) VSL Machine Fabrications;

(2) VSL Fabricated Assemblies; and

(3) VSL Repairs and Injectors.

63. The VSL position that was proposed to the claimant and which the claimant took on had the title: VSL Paradigm Precision Burnley. There is no documentary evidence of this role existing before it was discussed with the claimant in discussion one. CW accepted on being questioned, that the plan was for the claimant to have this role for a few months only as part of his route to take over the General Manager ("GM") role that would be vacant on CW's retirement. NW's evidence was that the fourth role was actually a permanent VSL role as the company had decided to split one of the other three VSL positions into two. This is not supported by any documents (or by CW). We find that the position proposed to the claimant was a temporary position made available to the claimant as part of the succession plan.

Week commencing 7 May 2018.

64. The claimant and NW were in Florida during this week, participating the the Leadership Development Programme. During a dinner with colleagues, NW made comments concerning the claimant. The claimant's evidence is that NW said that the claimant did not take anything seriously. NW's evidence is that she said, he could sometimes struggle to take things seriously. There is little or no dispute on this point.

65. The claimant also alleges that in this week, he raised concerns again with NW about the way that colleagues were behaving towards him and NW responded *"it's not all about Pete*." On being questioned about this, NW accepted she used this term but that she did so as a friend.

Handling of the GM Vacancy

66. On 5 June 2018 at a management meeting there was a formal announcement at the first respondent, that CW was going to retire and that the business was recruiting a replacement. It was also announced that two external candidates had been identified and were to attend the site at Burnley to meet with key individuals there. It was also announced that the business was not going ahead with the operations director post. No discussions took place with the claimant prior to this announcement being made to explain the position and update him. No-one spoke to him on the day of the announcement either.

67. A discussion took place between NW and the claimant a few days after the announcement, but this was instigated by the claimant, and we refer to that below.

68. In her witness statement (para 38) NW notes, in relation to CW's intended retirement "*this had not previously been discussed or disclosed by the second respondent."* We do not accept that. Whilst NW's evidence was that the meeting (discussion one) in the week of 12 March 2018, did not refer to CW's retirement, the evidence of the claimant and CW was that this was discussed and disclosed in that meeting. It was a key topic of that meeting.

69. On 14 June 2018, an email was sent to all Burnley employees (page 20). This was headed "Vacancy-General Manager" and said "*Good afternoon. Please see post for general manager vacancy following the announcement in the All Hands Meeting*

this week." A document setting out the responsibilities of and specification for the role was attached and invited CVs to be sent to NW. It is clear that the vast majority of employees at the Burnley site (probably 279 out of 280) would not have been suitable candidates for this role.

70. It is documented that the first respondent began the exercise of identifying, interviewing and shortlisting external candidates on 27 April 2018 when an external recruitment agency had been provided with details of the vacancy (page 206.1). When asked why this could not have taken place after the official announcement of CW's retirement, NW in responding to cross examination stated that there was an issue with a retainer that had been entered into with a recruitment company and that if the business did not engage the recruitment company at that stage to identify candidates then they would lose money. There was no indication that this explanation had been provided prior to this hearing. There were no documents supporting the explanation, no mention was made of it in NW's witness statement. the explanation was provided by NW for the first time when she was being questioned by Ms Barsam in this hearing. On the evidence, we do not accept that explanation. We find that by 5 June, the first respondent had engaged in a selection exercise with an external agency, interviews had taken place and there were 2 external candidates shortlisted. The 2 shortlisted candidates were coming in to meet a number of employees of the first respondent

71. The claimant instigated a discussion in relation to the announcement and this discussion took place on 8 June. The claimant, NW and CW all agree that it was the claimant who arranged this meeting. The claimant wanted to understand why everything had changed for him as far as the GM position was concerned, to note his disappointment that he was not spoken to even as a courtesy in advance of the announcement and also to note the change in attitude towards him following his disclosure about his personal circumstances. The evidence provided by both CW and NW is that the claimant was informed at this meeting that the role was also being advertised internally and that (as NW states in her witness statement at para 39) "*he would be free to apply for the position should he wish to do so"*. There is a marked contrast (and, we find, inconsistency) between discussion one (week of 12 March 2018) when the claimant was identified as the preferred successor and the position by 8 June when at worst the claimant had been locked out of the process but at best there was no encouragement at all: simply that he could apply for the role if he wanted to. The respondents' treatment of the claimant on 5 and then 8 June 2018 was as if discussion one had never taken place and the claimant had never been identified as the preferred successor

72. The announcement made at the management meeting on 5 June also informed the meeting that the first respondent would not proceed with the planned OD role. No one had spoken with the claimant about this either. In line with the succession plan discussed in discussion one, the claimant expected that he would shortly move in to the role of operation director, as part of that succession plan.

73. We find that this was not just an oversight about updating the claimant, not simply a lack of courtesy; there had been a significant change in how the respondent regarded the claimant as far as the GM position was concerned and in relation to the succession plan which had anticipated his move in to the OD role.

Application for Voluntary Redundancy

74. We next make findings in relation to the application for voluntary redundancy ("VR").

75. The claimant decided that an application for the GM position was pointless. We find it was a reasonable position for him to take at that stage. We have noted the difference in the attitude towards him between 12 March and 8 June.

76. The claimant gave evidence that he applied for VR in order to leave with his head held high and with a bit of a financial cushion. The respondent had just issued a notice inviting applications for voluntary redundancy (page 225.1) and the claimant applied for VR in response to this invitation.

77. We find that VR was seen by the claimant as an exit route given his disappointment. It would not provide a significant payment to him. Page 228 shows the redundancy payment calculated at £3,750 enhanced from a statutory entitlement of £2,450. The respondent took a significant amount of time before deciding to reject the application, which it communicated to the claimant at a meeting on 30 July and letter of 31 July 2018. In that letter the first respondent said that both the Quality Director role and the VSL role would need to be filled and so there was not a redundancy situation (page 237).

Claimant's meetings with Quentin Hughes ("QH")

78. During the period that he was awaiting the outcome to his VR application and shortly after he received the outcome, the claimant had a number of discussions with QH. QH provided notes of his discussions with the claimant (pages 333 and 334). In response to questions from Ms Barsam, QH informed the Tribunal that the notes were made towards the end of the timeline of these discussions and after NW had asked him to make some notes of his discussions. The timeline of the notes runs from 20 June to 8 August. There are some inconsistencies between the versions of events put down by these notes and the notes in the later grievance investigation. A key difference is that his own notes record that that the claimant had told QH that there were some issues at work that the claimant had, including with people that he could no longer work with, and that he had issues both at home and at work.(page 333). The account provided to the grievance investigator noted the claimant had said that the VR application was nothing to do with work or management: it was due to issues at home. (grievance investigation notes at 331)

79. We find that there was a telephone discussion between QH and the claimant on 20 June 2018. During this the claimant raised with QH that he mentioned in the context of his VR application, that he was not happy at work.

80. On 9 July a further discussion took place between the claimant and QH. QH's recollection is that the 2 of them met in QH's office. The claimant's recollection is that they talked very briefly whilst passing in the corridor. We have found the claimant's version of events to be consistent and credible. We found Mr Hughes to be an honest witness but not always sure about his recollection and on balance we prefer the claimant's evidence. As it is though, nothing really turns on the discussion of 9 July

81. A further discussion took place on 11 July between the claimant and QH. Both accept that this was on a works night out and we find that this was a discussion which focussed on QH trying to persuade the claimant to return to the Quality Director position.

82. On 30 July there was a further discussion. By this stage QH had fed into the VR decision and proffered his view that it was not appropriate. It was QH who told the claimant that the VR application was not successful.

83. On 6 August a further discussion took place. Both agree that the claimant told QH that there was something wrong with the relationship between him (the claimant and NW and between the claimant and CW. QH's notes record that the claimant said once they were good friends, but now it just seemed professional. The claimant's version is that he told QH that the relationship had broken down.

84. We find that the claimant told QH that relations with NW had broken down. We also find that the claimant told QH that he (the claimant) had been discriminated against.

85. On 8 August it was clear that QH wanted a solution and the focus was on the claimant returning to the QD role. Whilst the claimant remined in the VSL role it was always known to be temporary and was a demotion for him, as part of the agreed succession plan.

86. We find that on 8 August 2018, QH referred to the claimant returning to the role of Quality Director. We find that QH saw an impasse in the event that the claimant did not return to the QD role. Resignation was the only other option. We find that QH was distant from the decisions around the General Manager succession. His impression to us as a witness was that he was likely to deal with these matters in a "matter of fact" business-like manner. We find that he did refer to resignation in this discussion because, logically, he regarded that as an inevitable outcome of the claimant's refusal to return to the QD role. We do not find that it was stated in a threatening way.

Grievance

87. As at 8 August the claimant had been refused VR and he had not agreed to return to the QD role. He was in a VSL role which was a demotion and with loss of status and was always intended to be temporary as part of the agreed succession plan. We have also noted our findings in relation to the potential of the claimant succeeding CW as the GM and in relation to the OD role.

88. After the claimant had met with QH he spoke with NW to propose a resolution with a settlement agreement. We find that he told NW that he had been subject to discrimination and harassment. NW provides evidence of this discussion at paragraphs 45 to 50 of her statement. Part of this evidence relates to the OD position. She notes that the claimant raised that he had been promised the VSL role and then the OD role. NW gives evidence at paragraph 47 of her statement

> " I stated that I had discussed the Operations Director role subject to the claimant performing in his current role …"

89. We note that there is no evidence at all of the claimant not performing well in any role held by him (including the VSL role held by the claimant at the time of this discussion.

90. NW informed the claimant that she would speak with Brenda Thulen ("BT"), the group's head of HR and based in the US. On 13 August 2018, BT wrote to the claimant on the following terms:-

> "Nicky Wright (HR Director) has flagged with me concerns you have raised about her (and Carl) in a conversation she had with you last Wednesday. I have asked Nicky to provide me with a full note of her discussion and upon receipt I will be I contact. In the meantime given the apparent concerns you have against Nicky directly. I suggest that I be the HR Director responsible for you in the interim."

91. The note of that discussion between BT and NW was not provided during the t disclosure stage in these proceedings. The first respondent has provided a timeline document in which they say includes notes of that discussion (pages 288-319).

92. The claimant and BT spoke on 22 August 2018. At that stage it was agreed to treat the claimant's complaints as a grievance. On 22 August 2018, BT wrote to the claimant to acknowledge receipt of his grievance and to confirm that a grievance investigation would be conducted by her.

93. We find that the claimant agreed to having his complaints investigated as a grievance process and that he provided all reasonable cooperation. The claimant provided a timeline of events. We have not seen a copy of the version of the timeline document in the original form provided by the claimant, but we have seen a document which is the claimant's timeline with comments inserted from the respondent (the document at 288 to 319 which is headed "Peter Allen- Timeline") We have reviewed this timeline document and identified the claimant's original comments in the document. These comments provide a version of events which are consistent with his pleaded claim, the version of events that he has provided to us in his witness statement and that he had maintained throughout the thorough cross examination of Mr Rozycki.

94. A telephone discussion between the claimant and BT took place on 24 August A notetaker was present with BT but the claimant has not been provided with any notes of this discussion. No notes have been disclosed at the disclosure stage in these proceedings. Comments added to the timeline document (288 to 319) are likely to have been made by BT after this discussion.

95. Nothing was then heard by the claimant for some time in relation to his grievance. The claimant's health was affected and on 7 September 2018 he was signed off as unfit for work. Further medical tests led to the claimant requiring an operation and there was then a long period of sickness absence. The claimant had heard nothing in relation to his grievance between 24 August 2018 (the date of his discussion with BT) and the commencement of his sickness absence.

96. In fact, the claimant had no contact until 26 September when an occupational nurse contacted him. She had been asked by the respondent to contact the claimant to inform him that a colleague called Phil Green had taken up the claimant's VSL responsibilities. The nurse (Karen Huyton) also asked the claimant to complete a questionnaire, which he did (pages 246-247). We note that the claimant's responses

to this questionnaire are consistent with the outstanding grievance. We find the questionnaire responses are a further cry for help or at least confirmation that matters are most certainly unresolved and need addressing.

97. There was still no news from the respondent, so that on 22 October 2018, solicitors then instructed by the claimant, wrote to the respondent to ask for the claimant's grievance to be completed without further delay. We have not seen that letter: we understand that there is a "without prejudice" section and so it was not included in the Tribunal bundle. However there is no dispute that the letter was sent and that it included this request.

98. Arrangements were then made for the claimant to be interviewed by an external investigator appointed by the first respondent, Stuart Lowry. Mr Lowry was a consultant with Napthens Solicitors, the solicitors appointed by the respondent in relation to these proceedings. The claimant had not been informed prior to then that an investigator had been appointed. In fact the investigator had been appointed some time before. He had even by this stage provided the first respondent with a report without even having spoken with the claimant. The report is dated 12 October 2018 (pages 343-347). The report contains a number of inaccuracies. By way of example, it states that the claimant had not raised a formal grievance: it was clear that there was agreement that he had and a formal grievance was ongoing. The report limited the harassment allegations to the documented ones of the Benidorm email and the post-it note and yet the claimant had by that stage provided written information about other harassment concerns.

99. The report noted a complaint that the claimant had been treated differently because of his sexual orientation but then noted that no specific examples had been given: plainly they had – plainest of all was the change in the succession plan. The report also draws a number of conclusions based on discussions with relevant witnesses but not with the claimant.

100. We regard it as unusual to see a report in to an employee's grievance to be provided without a meeting having taken place between the aggrieved employee and the investigator. In his response to questions from Ms Barsam, Mr Lowery accepted that he had not been provided with a note of an investigation meeting with the claimant and responded that it was expected that he would have his own conversation with the claimant under the grievance procedure.

101. Mr Lowry made no reference to the report of 12 October 2018 in his witness statement. He was questioned about it though by Ms Barsam and he said that he produced it as he had been asked by BT to send an initial report over to her. The report does not state that it is an initial report: it is headed "Investigation Report". It ends with a conclusion section. There is nothing in the report to indicate that it was a holding or draft position only. The report also stated that it was not to be shared with the claimant.

102. Mr Lowery contacted the claimant after the claimant's solicitors had written requiring action without further delay, and at that stage Mr Lowry arranged to see the claimant and interview him before producing a second report dated 12 November. Broadly, those findings confirmed the findings that had been set out in the initial report although it deals with an additional issue – being the lack of communication with the claimant during his absence. Mr Lowery partly upheld the claimant's

complaint in relation to harassment (specifically in relation to the "Benidorm" email). His reports only refer to the 2 documented allegations of harassment (being the "Benidorm" email and the message containing the claimant's photograph) even though other issues were raised by the claimant.

103. The grievance/complaint about being overlooked for the GM role is not upheld. When explaining why this complaint is not upheld Mr Lowery notes that *"it has not been possible to identify any specific actions of individuals which would be deemed discriminatory treatment of you."* No consideration was given to the fact that direct evidence of discrimination is often not available and there is no evidence that the grievance investigation questioned the change between 12 March 2018 and 5 June 2018 as far as the GM and OD positions were concerned. In relation to the grievance investigation of this key issue we note (1) the claimant had set out his grievance clearly in the timeline document including the details of discussion one (page 288) (2) the investigation notes show that NW was not asked anything of discussion one (notes at 335/6) even though the claimant had noted she was a party to discussion one (3) CW was asked a question; "were you aware PA interested in GM role" but not specifically about discussion one and the outcome of that discussion.

104. The second (12 November) grievance outcome report does not uphold the third (additional) area of complaint about the lack of communication with the claimant. It notes the only contact was with the occupational health nurse on one occasion. It notes that was a decision for the first respondent (as employer) to make as to whether to contact the claimant. No comment was made about the adequacy of the contact over this 2 month period or provide any reason (or any investigation in to) why no contact had been made other than by an occupational health nurse.

105. In relation to the grievance our findings are:-

a. It took too long

b. There was inadequate consideration of and investigation in to the claimant's complaints.

c. The process was poor. An investigation was carried out and concluded by Mr Lowery without him having met with the claimant. Mr Lowery then wrote his report and findings without meeting the claimant and, further, with the stated intention of not providing it to the claimant.

d. We do not accept that the first report was an interim. It was not stated to be an interim report. It was not referred to at all in Mr Lowery's witness statement.

e. The "chaser" message from the claimant's solicitors prompted a re think, a quick interview with the claimant and a second report (this time in the form of a letter headed "grievance outcome") reaching the same conclusions.

<u>Resignation</u>

106. We note the day after the second report was received the claimant resigned. He referred to the grievance outcome as the last straw. We refer to the whole of the resignation letter which is at page 269:

> "I write to terminate my employment with Paradigm Precison Burnley Limited (the Company) with immediate effect. The Company's course of conduct over the past 9 months or so has demonstrated to me that it no longer intends to be bound by the contract of employment and sees no place for me within the business. The grievance outcome letter dated 12 November 2018 which upholds only one of my 3 grounds of complaint is the last straw in a series of events which represent a fundamental breach of the implied term of trust and confidence between myself and Paradigm Precision Burnley Limited. As such I consider myself to have been constructively unfairly dismissed from the company as of today.
>
> In August 2018 I raised a formal grievance relating to discrimination and harassment because of sexual orientation and unfavourable treatment because I sought to take adoption leave. As part of that grievance process I sent you a timeline of events which evidenced my complaints and on 24 August discussed this timeline with you. It was made clear as part of that process that I felt the events between March and August 2018 had diminished my trust and confidence in the company as an employer.
>
> I was however hopeful that the company could address this breakdown of relationship by investigating and upholding my grievance in a way that demonstrated it had taken my complaints seriously and showed a genuine commitment to support same sex marriage and adoption and a genuine commitment to prevent similar events being repeated. I am extremely disappointed therefore that 2 fundamental parts of my grievance have not been upheld and that in fact the outcome goes no further than making a recommendation to reinforce a policy. There is no suggestion of diversity or inclusivity training nor any recommendation of how the damage to my relationship with my employer could be addressed going forward. There are various inaccuracies within the outcome letter and there are elements of the investigation which have not been shared with me but after everything that has happened I have no confidence that the appeal process will provide a satisfactory result. I cannot believe it has taken this long to go through the grievance process and the only part that went in my favour was confirmation that I felt offended by being sent a photograph mocking my sexuality.
>
> The impact that the company's conduct and treatment towards me has had significant detriment to my health (both physically and mentally) my relationship with my husband and my family and my what were my future prospects of becoming an adoptive parent. I am devastated and it feels as though my heart has been ripped out of my chest. Never did I think that in 2018 a company whom I gave over 6 years dedicated service of exceptional performance, could and would condone the despicable treatment of me purely due to my sexual orientation and my want to be a father and build a family.
>
> In light of the way I have been treated before and with this wholly inadequate grievance outcome I have lost all trust and confidence in the company as my employer and have no option other than to resign."

107. As noted, the resignation was with immediate effect. The terms of the letter are consistent with the reasons alleged in these proceedings.

<u>The Claimant's Communications</u>

108. The respondent put in evidence a number of items of communication from the claimant. The respondent submitted these items of communication as evidence that the claimant is a robust individual when making reference to sexual matters and we make the following comments and findings.

a. The respondent has produced a number of images and comments from the claimant's Facebook account, dating from 2011 to 2018. There is no reference in these comments to the respondent or to the claimant's

employment. They are personal. They comprise a number of images with puerile, childish or smutty comments. They may not be to everyone's taste, but the Tribunal did not consider the Facebook entries as being of any assistance.

b. As far as copy work emails are concerned, then these are potentially more relevant. Ms Barsam noted that the respondents appear to have had a thorough search of the claimant's emails and so the ones provided must represent the entire history. She also noted that there were no emails from the claimant to Mr Wheeler. We agree, this disclosure indicates there has been a thorough search of emails sent by the claimant and held on the respondent's system.

c. The claimant's comments in these emails are course at times. We note that no recipient had raised any concern. Emails on these terms would not be well advised unless the sender was confident that the recipients would not be offended. We accept the claimant's evidence that they were sent to a circle of close friends even those who are less senior than the claimant. The claimant's evidence, which we accept, is that they are not just work friends but people with whom he socialises outside of work. The claimant is the godfather to the daughter of one of the recipients. We note that the claimant was generally secret about his sexual orientation at work but from some of the comments made, the recipients of these emails were obviously aware that the claimant was gay, which we find to be an indication of the closeness of those friendships.

109. We find that the claimant's willingness to engage in course humour at times may have meant that NW did not always understand the impact of certain actions on the claimant. However:-

a. there was insufficient consideration by NW of the enormity of the disclosure by the claimant to the first and second respondent particularly, of the potential risk that the claimant took by way of this disclosure and the trust that the claimant showed in the first and second respondent in disclosing the deeply personal matters of his sexual orientation and his and his husband's wishes to adopt a child.

b. On 23 April 2018, the claimant presented himself to NW in tears or close to tears. It was clear that he was very upset by that stage. It is very surprising indeed that this was not seen by NW as a clear warning sign that something was wrong. If the first respondent's position is that these documented examples of the claimant using coarse terms meant that NW could not have realised that the claimant was on the receiving end of unwanted conduct when he was standing before her in tears (or close to tears) then we do not accept that.

c. The respondents have not provided any examples of exchange of "humorous" emails between the claimant and CW. We find that the "Benidorm" email was a one off documented attempt at humour by CW rather than a pattern of what has been described by the respondents as "*banter*" between the claimant and CW.

The Law

Time Limits

110. Section 123 of the Equality Act 2010 (EQA) require claims to be brought within three months of the act complained of, with amendments to the EqA (s140B) allowing for additional time to deal with the required ACAS early conciliation process.

111. Section 123 states:

> *" (1) Proceedings on a complaint within section 120 may not be brought after the end of –*
>
> *(a) the period of 3 months starting with the date of the act to which the complaint relates, or*
>
> *(b) such other period as the employment tribunal thinks just and equitable."*
>
> *(2)…….*
>
> *(3) For the purposes of this section-*
>
> *(a) conduct extending over a period is treated as done at the end of the period.*
>
> *(b) failure to do something is to be treated as occurring when the person in question decided on it.*

112. Mr Rozycki noted that the claims against the second respondent are all out of time. He submitted that when considering whether (under s123(1)(b) EqA) it is just and equitable to extend time so as to allow the claims against the second respondent, we should consider the terms of section 33 of the Limitation Act 1980 and, properly applying these requirements, should dismiss all claims against the second respondent.

113. The Court of Appeal in **London Borough of Southwark v Afolabi [2003] IRLR 220** confirmed that the checklist in section 33 was a useful guide for Tribunals, although Tribunals are not required to follow the checklist slavishly.

114. We agree with Mr Rozycki and we have applied that guide.

115. Mr Rozycki did not put forward any time limit issue in relation to the allegations against the first respondent. He stated that it was accepted that the allegations made fall within section 123(3)(a) – conduct extending over a period of time – and as such the first respondent did not raise any time limit point in relation to the claimant's claims against the first respondent.

Harassment in relation to sexual orientation – section 26 Equality Act 2010 ("EqA")

116. Section 26 (1) states:

> " *A person (A) harasses another (B) if –*
>
> *(a) A engages in unwanted conduct relating 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*

117. Mr Rozycki referred us to of number of cases relating to allegations of harassment including **Pemberton v Inwood** and **Heafield v Times Newpapers,** noting that we must consider whether the claimant perceived himself to have suffered the effect in question and also whether it was reasonable for the conduict to have had that effect.

118. Both parties referred us to the EAT decision in **Richmond Pharmacology Limited v. Dhaliwal [2009] IRLR 336** which emphasised the need for Employment Tribunals to look at the three steps relevant in relation to harassment, namely:-

a. Whether the respondent had engaged in unwanted conduct

b. Whether the conduct had the purpose or effect of violating the claimant's dignity or creating an adverse environment

c. Whether the conduct was on the grounds of the applicable protected characteristic?

119. We have applied the 3 steps noted in **Richmond Pharmacology**.

Direct Discrimination – section 13 Equality Act 2010

120. Section 13 states:

> *"A person (A) discriminates against another if, because of a protected characteristic, A treats B less favourably7 than A treats or would treat others."*

121. Mr Rozycki noted that the question for us is whether the effective cause of the treatment which we find was the claimant's sexual orientation or was for another reason. He cited the case of **O'Neill v. St Thomas More Roman Catholic School [1996] IRLR 372** in support of this**.**

Detriment because of adoption leave – Paternity and Adoption Leave Regulations 2002 ("Regulations") – regulation 28

122. Regulation 28 of the Regulations provides protection from detriment, and states:

> *"An employee is entitled under s47C of the [Employment Rights Act 1996] not to be subjected to any detriment by any act or any deliberate failure to act, by his employer because-*
>
> *..*
>
> *(a) The employee took or sought to take paternity or ordinary or additional adoption leave;*
>
> *(b) The employer believed that the employee was likely to take ordinary or additional adoption leave."*

123. Section 47C of the Employment Rights Act 1996, provides:

> *"An employee has the right not to be subjected to any detriment by any act or any deliberate failure to act by his employer done for a prescribed reason"*

For the purposes of this section, prescribed reasons include a reason which relates to ordinary or additional adoption leave.

124. Mr Rozycki also referred to the O'Neill case noted above in relation to the claim of detrimental treatment.

Victimisation – section 27 Equality Act 2010

125. Section 27 EqA states:

"(*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 trhat B has done, or may be, 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.

Burden of Proof

126. We are required to apply the burden of proof provisions under section 136 Equality Act 2010 when considering complaints raised under the Equality Act 2010.

127. Section 136 states:

" (*1) This section applies to any proceedings relating to a contravention of this Act.*

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

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

128. Ms Barsam made reference to s136 EqA. Mr Rozycki also referred us to the Court of Appeal decision in **Wong v. Igen Limited [2005] EWCA 142** and the guidance contained in that judgment. This case concerned the test as set out in discrimination legislation that pre-dated the EqA but the guidance provided in there remains relevant. The annex to the Court of Appeal's judgment sets out the guidance.

129. We are also clear that the wording of the statute itself – s136 EqA is the key reference in relation to burden of proof when reaching decisions about whether there has been a contravention of the EqA.

130. Finally, on the issue of burden of proof, we are mindful of guidance from case law indicating that something more than less favourable treatment may be required in order to establish a prima facie case of discrimination; see for example **Madarassey v. Nomura International [2007 ICR 867]** where the following was noted in the judgment:

> "*The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination."*

Constructive Unfair Dismissal

131. Both parties referred to a number of cases relevant to constructive dismissal including the recent Court of Appeal decision in **Kaur v Leeds Teaching Hospitals NHS Trust [2018] IRLR 833**, a case relevant to the last straw doctrine where it was confirmed that where there has been a series of incidents and the claimant has not resigned as a result of those incidents even though they may in totality have amounted to repudiatory breaches, where there is then some time later a subsequent act, even if that subsequent act does not in itself amount to a repudiatory breach, that brings alive the previous acts that have arisen.

132. The judgment is this case provides guidance to Employment Tribunals deciding on constructive dismissal claims. At paragraph 55 of the judgment, Underhill LJ states:-

> In the normal case where an employee claims to have been constructively dismissed it is sufficient for a tribunal to ask itself the following questions:
>
> (1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation ?
>
> (2) Has he or she affirmed the contract since that act?

(3) If not, was that act (or omission) by itself a repudiatory breach of contract ?

(4) If not, was it nevertheless a part (applying the approach explained in *[LB Waltham Forest v. Omilaju [2005] ICR 481]* of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the *[implied term of trust and confidence]*? ……

(5) Did the employee resign in response (or partly in response) to that breach ?

None of those questions is conceptually problematic, though of course answering them in the circumstances of a particular case may not be easy.

133. As issues o and p (both relevant to the constructive dismissal claim) relate to the handling of the grievance, it was relevant to note the implied term that an employers must reasonably and promptly afford a reasonable opportunity to an employee to obtain redress of any grievances the employee may have (see for example **WA Goold (Pearmak)Limited v. McConnell [1995] IRLR 516**). This was raised by ourselves in the course of submissions, both counsel accepting the presence of this implied term.

134. We note that the claim was not just brought on the basis that issues o and p were the last straw, the claimant also alleging that issues o and p do, by themselves amount to a repudiatory breach entitling the claimant to resign.

Analysis and Conclusions

Time Limits

135. Mr Rozycki made submissions that the claims against CW, the second respondent, should be all be dismissed as out of time.

136. Mr Rozycki referred us to the issue of prejudice (s33(1) of the Limitation Act 1980) and the extent to which the claimant would be prejudiced in the event that the out of time claims against the second respondent did not proceed. His submission was that the claimant would suffer no prejudice. No time point was made as regards the claims against the first respondent and therefore all of the claimant's claims would continue. The prejudice in relation to the second respondent however in allowing claims issued out of time, would, submitted Mr Rozycki, be significant.

137. Ms Barsam for the claimant accepted that the claimant would in reality not be prejudiced in the event that the claims against the second respondent did not proceed and all claims against the first respondent remained. Those claims brought against the second respondent were also against the first respondent.

138. We considered this and other submissions made by Mr Rozycki, including the fact that the claimant had obtained legal advice prior to the termination of employment and with the benefit of that advice, should have issued a claim earlier in relation to the second respondent if the intention was to bring proceedings against the second respondent.

139. We decided, having regard to these issues (particularly the balance of prejudice issue noted above) that it would not be just and equitable to extend time in order to enable the claimant to bring proceedings against the second respondent. In the circumstances all claims against the second respondent are dismissed.

Harassment – issues a to l in the list of issues.

140. We were asked by Ms Barsam to look at a number of these issues individually as well as considering their collective impact. What we have done is consider the course of conduct over the period from 12 March to 5 June, and we do find that there has been harassment related to sexual orientation over this period.

141. With reference to the paragraphs in the List of Issues (page 74):

"(a) The pressure applied by Ms Wright to encourage the claimant to out himself to management and colleagues."

We find that this is relevant background. It is not in itself an act of harassment. What we find is that it is the reaction to the disclosure which is the harassment. We do find that Ms Wright was very encouraging, but the act of disclosure itself was the claimant's and was undertaken by the claimant, and so we do not find that allegation (a) amounts to or is part of the conduct. It is the start of the conduct. Had the respondents treated the claimant with appropriate dignity after that disclosure had been made then we would not be here.

(b), (c), (d), (e) and (f). We have found that the behaviour complained of did occur. We find that it is a combination of these behaviours between 12 March and 5 June that amounts to harassment contrary to s26 EqA,

142. Applying s26 EqA

a. Each individual issue, was unwanted by the claimant;

b. Each issue was related to the claimant's sexual orientation,

c. Each individual issue would not in itself, have violated the claimant's dignity or created an intimidating, hostile, degrading, humiliating or offensive environment. However, when considering the conduct towards the claimant throughout the relevant period as a whole, we do find that the claimant's dignity was violated. We do find that an intimidating, hostile, degrading, humiliating and offensive environment had been created.

143. As far as issue (g) is concerned, again this is a reaction to concerns raised about harassment and not in itself harassment, so we dismiss that complaint under s26.

144. As regards issues (h) and (i) we dismiss those complaints. It is likely that, by 7 May, the relationship between the claimant and NW was becoming less friendly but neither of these comments was related to sexual orientation.

145. Issue (j) is the rejection of the claimant as Operations Director and as candidate as GM (managing director). We have not identified that as an act of harassment under s26, but we have made findings in relation to (j) which we refer to below.

146. issue (k) – again we do not find that this amounts to harassment. It is a comment or response to news received about the claimant's decision to apply for voluntary redundancy. It is not a comment that satisfies the provisions of s26 and is not one of the comments/acts that contributed to the violation of the claimant's dignity or the creation of an intimidating, hostile, degrading, humiliating and offensive environment. We dismiss this complaint.

147. That then leaves Issue (l), we do not find that Mr Hughes harassed the claimant related to sexual orientation. We have set out our findings in relation to the discussions with Mr Hughes and we dismiss this complaint.

Direct Discrimination (protected characteristic of sexual orientation) and detriment (adoption leave) – issue (j).

148. In this section we explain our conclusions in relation to the allegations of direct sexual orientation discrimination, and adoption leave detriment as far as issue (j) is concerned.

149. We have explained in our findings of fact our view that the claimant's position in relation to the OD and GM positions changed significantly and to the claimant's detriment between week commencing 12 March 2018 and 5 June 2018.

150. The claimant alleges that this detriment either amounted to less favourable treatment because of his sexual orientation (EqA) or was related to his stated intention to take adoption leave (Regulations and s47C ERA).

151. In her submissions, Ms Barsam favoured the allegation under the Regulations and s47C ERA. In her written document she stated:

> *"The most plausible explanation for the change in the respondent's approach was its reticence to promote the claimant in to the position once it became aware that he would be seeking a prolonged period of adoption leave."*

152. Dealing with the complaints in relation to issue j under the Regulations/s47C ERA:

a. The claimant had been identified as the preferred successor to the GM position. By discussion one, it was known that Mr Wheeler was going to retire about 12 months later. A succession plan was decided on at that meeting which anticipated the claimant moving in to the role of OD after he had undertaken a temporary VSL role for a few months. Although there was no binding contract, no guarantee that the claimant

would definitely be appointed as GM, the claimant was the preferred successor.

b. Very shortly after this succession plan was decided on, the claimant disclosed his sexual orientation and his plans to take adoption leave.

c. On a date between 12 March 2018 and 5 June 2018, the first respondent stopped considering the claimant as the preferred successor to the GM role and it did not move the claimant in to an OD role as had been expected.

d. There was a deliberate failure to act in accordance with the succession plan set during discussion one. We look to the employer to explain this. Ms Barsam noted in her submissions, the first respondent's explanation is that there was no change in relation to the claimant's candidature for the GM position. We agree with Ms Barsam. No explanation was provided in relation to the OD position either.

e. There may have been a "hint" of an explanation in NW's statement- see paragraph 89 above – but no one has provided evidence in relation to this and it is not part of the respondents' case as pleaded or as argued at the hearing.

f. We find that the reason the first respondent changed its position in relation to the succession plan was the fact that the claimant intended to take adoption leave.

153. Further or alternatively issue j is made as a claim of direct discrimination (protected characteristic sexual orientation). Applying the terms of s136 EqA:-

a. We have made findings of fact from which we could decide in the absence of any other explanation, that the first respondent has directly discriminated against the claimant

b. We have considered whether the first respondent has shown that it has not directly discriminated against the claimant. It has not.

154. It is not just the change in the claimant's position as far as the GM and OD roles are concerned and/or the first respondent's failure to explain the reason for the detriment, that we have considered when reaching our decision on issue (j). We note the following :-

a. The fact of the claimant's disclosure about his sexual orientation and intention to take adoption leave.

b. The sexual orientation harassment suffered by the claimant.

c. The evidence provided by the respondents in relation to discussion one and the change in that evidence. Ms Barsam submitted as follows:

> *"it is clear the respondent has sought to obfuscate the extent of this change (*referring to the change in the claimant's position as preferred successor*) by putting forward an inaccurate account of the 12 March meeting and in*

particular, deny that the 12 March meeting was specifically to discuss the succession of the claimant to the general manager role on CW's retirement."

We agree with that submission.

d. That no one spoke with the claimant on or before the 5 June to update him. Other than being called in to a general meeting along with a number of other employees, the claimant was ignored. It was the claimant who had to take steps to arrange a discussion following the meeting.

e. The absence of any explanation in relation to the change in claimant's position as preferred successor.

f. The absence of any explanation in relation to the change of position as far as the expected OD role is concerned.

g. The respondents' evidence that the GM vacancy would be advertised internally and when they informed the claimant of this they told him that he could apply if he wanted to. That comment was as if discussion one had never taken place and the claimant had never been identified as the preferred successor.

155. Having set out our analysis and conclusions in relation to issue j – under s13 EqA and the Regulations/s47C ERA, we note it is possible that the first respondent contravened neither, either or both. We considered whether this was discrimination because of the claimant's sexual orientation or whether it amounted to detrimental treatment because of the claimant's disclosure that adoption leave would be taken. Had the claimant been known as a heterosexual male that had informed his employer that his family was planning to adopt a child it might have made no difference as assumptions about a wife/female partner taking on the bulk of childcare responsibilities may have applied. Here, the claimant informed the first respondent that he and his husband were adopting and that he intended to take adoption leave as the principal carer – so bringing this claim within s47C ERA and the Regulations.

156. We have considered a hypothetical comparator – an employee in the same position as the claimant but who had not disclosed that he was intending to take adoption leave as the principal carer. That hypothetical comparator would not have had the opportunity of being the preferred successor taken away from him.

157. We are satisfied on a balance of probabilities that the effective cause for the rejection of the claimant as Operations Director and then as a candidate for General Manager was the fact that he had informed the respondents of his intention to take adoption leave.

158. In the alternative, if it was not the adoption leave then we find that it was the claimant's disclosure about his sexual orientation which was the effective cause of the less favourable treatment.

159. This leaves direct discrimination allegations k and l. We did not find that CW's comment to the claimant was direct discrimination as alleged. We do not find that QH's comments amounted to direct discrimination. We dismiss both k and l.

Victimisation – section 27

160. We have considered these allegations which are (j)-(m). We accept that matters 5(1), (2), (3) and (4) in the List of Issues were protected acts as far as section 27 is concerned.

161. We do not find that the majority of these complaints did amount to victimisation under section 27, and we dismiss all with the exception of issue (o) (isolating the claimant from the business during the grievance process and during the appointment of his replacement). We find that the claimant had made complaints by that stage against the second respondent (CW), against NW and against the first respondent and it is a long timeframe that then applies to the grievance process, and it is remarkable that no-one is in contact with the claimant for such a long period of time other than an Occupational Health nurse.

162. Applying the burden of proof provisions under section 136, we look to the respondent for an explanation about the lack of contact. We accept that Nicky Wright would reasonably be regarded as not an appropriate point of contact. There were other potential contacts that could have been made with the claimant. Brenda Thulan, for example, had supposedly taking over responsibility for the claimant. There is no evidence of any contact for some months from Brenda Thulan. We note that an external investigator had been appointed. There was no contact from the external investigator until after the claimant's solicitors had chased for a response.

163. We find therefore that the isolation that the claimant was “kept in the dark” for some time (between 24 August 2018 and 22 October 2018) and this isolation was an act of victimisation. We find that, had he not raised complaints of discrimination then there would have been more contact during the claimant’s period of sickness including in relation to how the claimant’s work would be covered.

Unfair Dismissal Claim

164. We find a number of breaches by the first respondent of the claimant’s employment contract in the period up to and including 30 July 2018. These are the findings of harassment and detriment. We find that these amounted to a repudiatory breach and had the claimant chosen to resign at that stage he would have been entitled to do so and claim under circumstances of constructive dismissal.

165. The claimant sought to resolve matters through the opportunity to apply for VR, but he was not informed about the VR position for some time.

166. The first respondent decided not to accept the claimant’s application for VR and had the claimant chosen to resign under circumstances of constructive dismissal at that stage, he could have done so relying on these repudiatory breaches.

167. Instead the first respondent provided the claimant with the option of dealing with matters through a grievance process, and although we have little doubt that the claimant was by then fairly sceptical we find that he did agree to that alternative, he cooperated properly with that grievance process by speaking with BT and providing

his timeline document, and he waited to participate further in the grievance process. The grievance process fell far short of what the claimant could reasonably expect in investigating and resolving his grievances. The first respondent did not reasonably and promptly afford the claimant an opportunity to obtain redress of his grievances.

168. We have addressed the questions set out in the guidance of the Court of Appeal in the Kaur decision. The grievance decision was the most recent act on the part of the employer which triggered the claimant's resignation; the claimant had not affirmed the contract since that act.

169. The grievance process did not in any sufficient way address the claimant's grievances that he had raised. We have noted in our fact findings what we say are failings in relation to that process. We find that the handling of the grievance process by itself amounted to a repudiatory breach of the implied term of trust and confidence, but in any event applying the last straw doctrine, the grievance outcome was the last straw following a combination of earlier breaches- being the findings of harassment and detrimental treatment that we have noted above. Having regard to the evidence including the concluding paragraph of the claimant's letter of resignation (see para 106 above) we find the reason for the claimant's resignation was the combined events from April 2018 onwards, the last straw being the handling and outcome of the grievance.

170. We find that there was a constructive dismissal. The termination of employment was caused by repudiatory breach of the trust and confidence term by the first respondent. There was not a fair reason for dismissal and therefore the dismissal was unfair under section 98 of the Employment Rights Act 1996.

Employment Judge Leach

Date: 11 May 2020

REASONS SENT TO THE PARTIES ON

14 May 2020

FOR THE TRIBUNAL OFFICE