EMPLOYMENT TRIBUNALS

Claimants: Miss S Veitch
Miss N Sobihy

Respondent: Stessa Leisure Holdings Limited

HELD AT: North Shields **ON:** 9-11 December 2019
10 January 2020 (in chambers)

BEFORE: Employment Judge Aspden
Mrs J Maughan
Mr JA Weatherston

REPRESENTATION:

Claimant: In person
Respondent: Mr Morgan, counsel

JUDGMENT

Claim number 2500025/2019

The unanimous judgment of the Tribunal is:

1. The Respondent harassed Miss Veitch, in contravention of the Equality Act 2010, by making comments about women in management in October 2018 and by sending the claimant a Facebook message on or around 10 November 201, as alleged.

2. The Respondent discriminated against Miss Veitch, in contravention of the Equality Act 2010, by selecting her to be made redundant from the general manager role in November 2018.

3. The Respondent unfairly dismissed Miss Veitch.

4. Miss Veitch's claims that the Respondent directly discriminated her by dismissing her and victimised her, contrary to the Equality Act 2010, are not made out and are dismissed.

Claim number 2500192/2019

The unanimous judgment of the Tribunal is:

5. The Respondent harassed Miss Sobihy, in contravention of the Equality Act 2010, by making comments about women in management in October 2018.

6. Miss Sobihy's other complaints of discrimination and victimisation, contrary to the Equality Act 2010, and of breach of contract, are not made out and are dismissed.

REASONS

Claims and issues

1. The two claimants in these proceedings brought claims on separate claim forms arising out of similar facts. As a case management hearing it was decided that the claims should be heard together.

2. At the outset of the hearing we discussed the claims being made by the parties.

3. The parties agreed that the claims being made by the claimants are as follows.

4. Claims by Miss Veitch

4.1. The Respondent harassed Miss Veitch (or in the alternative directly discriminated against her because of her sex), in contravention of the Equality Act 2010 by doing the following:
   a) Mr Whitelaw made comments about women in management in October or November 2018;
   b) Mr Whitelaw sent the claimant a Facebook message in November 2018 commenting on her appearance.

4.2. The Respondent directly discriminated against Miss Veitch because of her sex, in contravention of the Equality Act 2010, by dismissing her.

4.3. The Respondent unfairly dismissed Miss Veitch.

4.4. The Respondent subjected her to detriments because she alleged that she had been harassed, and thereby victimised her contrary to the Equality Act 2010. The alleged detriments were:

a) telling her to work from Stockton on or around 15 November 2018;
b) telling her that her redundancy pay would be reduced on or around 15 November 2018.

5. During the course of the hearing Miss Veitch applied for permission to amend her claim to add a claim that the respondent directly discriminated against her because of sex by selecting the general managers to be made redundant from the general manager role because they are women. We gave permission, for reasons given at the hearing. Details of the amendments made are set out in an order that has been sent to the parties.

6. Claims by Miss Sobihy

6.1. The Respondent harassed Miss Sobihy (or in the alternative directly discriminated against her because of her sex), in contravention of the Equality Act 2010 by doing the following: Mr Whitelaw made comments about women in management in October or November 2018.

6.2. The Respondent directly discriminated against Miss Sobihy because of her sex, in contravention of the Equality Act 2010, by dismissing her.

6.3. The Respondent victimised her contrary to the Equality Act 2010 by dismissing her. Miss Sobihy says she did a protected act by complaining of harassment and that she was dismissed because of that. This complaint concerns not only the fact of dismissal but also the fact that the claimant was dismissed with immediate effect.

6.4. The respondent breached her contract of employment by failing to follow its grievance procedure after she complained about Mr Whitelaw's comments about women in management, which grievance procedure, the claimant contends, was contractual.

Relevant legal framework

Equality Act 2010

7. It is unlawful for an employer to harass an employee: Equality Act 2010 section 40.

8. It is unlawful for an employer to discriminate against or to victimise an employee as to their terms of employment; in the way it affords them access, or by not affording them access, to opportunities for transfer or training or for receiving any other benefit, facility or service; by dismissing them; or by subjecting them to any other detriment: section 39(2) and (4) Equality Act 2010.

Harassment

9. Under section 26 of the Equality Act 2010, unlawful harassment occurs where the following conditions are satisfied:
   (a) an employer engages in unwanted conduct related to a protected characteristic, which includes sex, or unwanted conduct of a sexual nature; and
   (b) the conduct has the purpose or effect of violating the employee's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the employee.

10. In deciding whether conduct has the effect of violating the employee's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the employee, each of the following must be taken into account—
    (a) the perception of the employee;
    (b) the other circumstances of the case; and
    (c) whether it is reasonable for the conduct to have that effect.

11. Where a Claimant contends that the employer's conduct has had the effect of creating the proscribed environment, they must actually have felt or perceived that their dignity was violated or an intimidating, hostile, degrading, humiliating or offensive environment was created for them: Richmond Pharmacology v Dhaliwal [2009] ICR 724, EAT. A claim of harassment will not be made out if it is not reasonable for the conduct to have the effect of violating the employee's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the employee: Ahmed v Cardinal Hume Academies (29 March 2019, unreported).

12. Whilst a one-off incident may amount to harassment, a Tribunal must bear in mind when applying the test that an 'environment' is a state of affairs. It may be created by an incident, but the effects are of longer duration: Weeks v Newham College of Further Education UKEAT/0630/11, [2012] EqLR 788, EAT. The fact that a Claimant is slightly upset or mildly offended by the conduct may not be enough to bring about a violation of dignity or an offensive environment and the Court of Appeal has warned tribunals against cheapening the significance of the words of the Act as they are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment: Land Registry v Grant [2011] ICR 1390, CA. And as noted by the EAT in Richmond Pharmacology v Dhaliwal, 'while it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the… legislation…) it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.'

Direct discrimination

13. Section 13 of the Equality Act 2010 provides that it is direct discrimination to treat an employee less favourably because of sex than it treats or would treat others.

14. In determining whether there is direct discrimination it is necessary to compare like with like. This is provided for by section 23 of the Act, which says that in a comparison for the purposes of section 13 there must be no material difference between the circumstances relating to each case.

Victimisation

15. Section 27 of the Equality Act 2010 provides as follows:

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

(a) B does a protected act, or

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

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

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

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

Detriment

16. For the purposes of sections 27 and 39, a detriment exists if a reasonable worker (in the position of the Claimant) would or might take the view that the treatment accorded to them had, in all the circumstances, been to their detriment: Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337. As May LJ put it in De Souza v Automobile Association [1986] ICR 514, 522G, the tribunal must find that, by reason of the act or acts complained of, a reasonable worker would or might take the view that they had thereby been disadvantaged in the circumstances in which they had thereafter to work. An alleged victim cannot establish 'detriment' merely by showing that they had suffered mental distress: before they could succeed it would have to be objectively reasonable in all the circumstances: St Helen's Metropolitan Borough Council v Derbyshire [2007] IRLR 540, [2007] UKHL 16.

17. Conduct which amounts to harassment, as defined in section 26 of the Equality Act, does not constitute a detriment for the purposes of section 39: Equality Act 2010 s 212(1).

Burden of proof

18. The burden of proof in relation to allegations of discrimination, harassment and victimisation is dealt with in section 136 of the 2010 Act, which sets out a two-stage process.

    18.1. Firstly, the Tribunal must consider whether there are facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed the alleged unlawful act against the claimant. If the Tribunal could not reach such a conclusion on the facts as found, the claim must fail.

    18.2. Where the Tribunal could conclude that the respondent has committed the alleged unlawful act against the claimant, it is then for the respondent to prove that it did not commit or, as the case may be, is not to be treated as having committed, that act.

19. The Court of Appeal in Igen Ltd v Wong [2005] EWCA Civ 142, [2005] IRLR 258 made the following points in relation to the application of the burden of proof:
    19.1. 'It is important to bear in mind in deciding whether the claimant has proved facts from which the Tribunal could conclude that there has been discrimination that it is unusual to find direct evidence of … discrimination: few employers would be prepared to admit such discrimination, even to themselves and in some cases the discrimination will not be an intention but merely based on the assumption that 'he or she would not have fitted in.'
    19.2. In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.
    19.3. It is important to note the word 'could' in the legislation. At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.
    19.4. In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.
    19.5. Where the claimant has proved facts from which the Tribunal could conclude that the respondent has treated the claimant less favourably because of disability, it is then for the respondent to prove that it did not commit that act or, as the case may be, is not to be treated as having committed that act. To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of the protected characteristic.

Unfair dismissal

20. An employee has the right under section 94 of the Employment Rights Act 1996 not to be unfairly dismissed, provided, usually, they have at least two years' continuous service.

21. Where a complaint is made, it is for the employer to show that the reason for dismissal, or the principal reason if there is more than one reason, is one within section 98(2) of the 1996 Act, or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position the claimant held.

22. Dismissal for redundancy, as defined in section 139, is a reason for dismissal falling within section 98(2), so is a potentially fair reason. The definition in section 139 provides that, "an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to the fact that the requirements of the business for employees to carry out work of a particular kind, either generally or in the place where the employee was based, have ceased or diminished or are expected to cease or diminish".

23. If the respondent shows that it dismissed for a potentially fair reason or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position the claimant held, then it is for the Tribunal to consider the fairness of the dismissal applying the test in section 98(4). Section 98(4) provides that: "… the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –

    (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
    (b) shall be determined in accordance with equity and the substantial merits of the case.

24. Applying the test of reasonableness under section 98(4), it is immaterial whether or not the Tribunal would have taken the same course had it been in the employer's place: the Tribunal must not substitute its own view of whether the dismissal was reasonable. Rather, section 98(4) requires the Tribunal to decide whether the employer's decision to dismiss the employee and the process it followed fell within the range of reasonable approaches that a reasonable employer in those circumstances and in that business might have adopted.

Breach of contract

25. If an employee alleges that their employer breached their contract of employment, it is for the employee to prove that the term alleged to have been contravened was a term of their contract.

<u>Evidence and facts</u>

26. We heard evidence from both claimants and, for the respondent, from Mr Evans. We were also taken to a number of documents in a bundle prepared for this hearing.

27. The respondent is a company which, at the time of the matters with which we are concerned, operated three gyms under a franchise arrangement, one based in Jarrow (which was also the respondent's head office), one in Blaydon and one in Tynemouth. It had also acquired a new gym in Stockton although that was not yet open.

28. Each of the three existing clubs had a general manager who was based at the gym. The general manager's responsibilities included, but were not limited to, sales functions. In addition, a number of club hosts/receptionists was employed at each of the three gyms, as well as a number of personal trainers. A large part of the club host/receptionist role entailed sales, including signing-up new members.

29. Miss Veitch started work for the respondent in April 2012. She was initially employed in a role dealing with customer retentions. Later, at the request of the respondent, she moved into a role acting as general manager of the gym at Blaydon. She perceived the general manager role to be less senior than the retentions role she had been working in.

30. Miss Veitch signed a contract of employment which described her place of work as 'at any one of our gymnasiums: Blaydon, Hartlepool, Tynemouth or Jarrow or future gymnasium locations that we may purchase.'

31. In October 2017 Miss Sobihy started work for the respondent in a sales role as a club host/reception staff in the Jarrow gym. Before then she had been managing a gym in Hartlepool. She had been persuaded to join the respondent by a Mr Woodhouse, then a director of the respondent, at a time when the respondent was planning to buy the Hartlepool gym. Miss Sobihy joined the respondent on the understanding that she would become the manager of the Hartlepool gym when it was purchased. However, the purchase did not go through and Mr Woodhouse told Miss Sobihy she would, instead, be put in as manager of the Stockton gym which the respondent was in the process of purchasing at the time.

32. When she joined, Miss Sobihy signed a contract of employment which contained a provision stating: 'only the terms listed below are contractual terms and conditions of employment and items listed in the company staff handbook or other reference documents are not deemed to be contractual unless specifically stated as being so.' The company staff handbook contained a grievance procedure which was to be contractual. Her contract contained a clause entitling the company to elect to pay Miss Sobihy in lieu of notice or to require her not to attend the office during her notice period.

33. After Mr Woodhouse left the business, the senior management team within the respondent's business comprised Mr Adam Thomson, the managing director, and Mr Andy Evans, the operations director. On 1 October 2018 Mr Evans appointed

a Mr Whitelaw as a new business development manager. Within the first few weeks after appointment, his role had expanded to include working with the general managers as head of sales and business development. Both Mr Evans and Mr Thompson had worked with Mr Whitelaw previously. Mr Whitelaw had past experience of restructuring and forming new teams, particularly in a telesales context.

34. The claimants allege that, within the first few weeks of Mr Whitelaw joining the company, he made comments to the effect that that he did not believe women should be in management roles. The respondent denies Mr Whitelaw made any such comments. Miss Veitch said in her claim form that 'within the first two weeks of [Mr Whitelaw] working for the company there was several comments made from himself to several members of staff, myself included, around 'women in management' and how he did not believe women should be in management positions within the clubs.' In her witness statement she elaborated, saying that, following a management meeting attended by herself and the two other General Managers, both female, Mr Whitelaw said to her that he was surprised Mr Thompson had women as management in the company and that 'the Adam I know' would never have women in management roles, saying that Miss Veitch and the two other female managers 'just rabble on and are too emotional' in meetings and 'go off on a tangent'. Miss Veitch said Mr Whitelaw added that if he were in charge, things would be run differently. Miss Veitch also said in her witness statement that Mr Whitelaw made comments to another male manager within the company that he did not want women in management roles and he wanted to change that. Miss Veitch said that male manager had later told one of the other General Managers what Mr Whitelaw had said and that the General manager had told Mr Evans about this but Mr Evans ignored her and 'dismissed the conversation.'

35. For his part, Mr Adams said in his witness statement 'once aware of this allegation, I discussed the matter with Kris and he explained that all he had said was that Adam [Mr Thompson] (who he had previously worked with at Utilitywise) seemed more relaxed at Stessa leisure and that meetings were less structured. Kris categorically denied to me that he said women shouldn't be in management positions or anything which could be interpreted as meaning that. I have no reason not to believe Kris and, indeed, during his time with the company he hired a female manager to run the Stockton gym. From knowing Kris (who I worked with at Utilitywise the nine years) I am entirely confident that he wouldn't have made such remarks.' On being asked when he spoke to Mr Whitelaw, Mr Evans was not entirely sure but thought it was after either Miss Sobihy or Miss Veitch had drawn the matter to his attention. We did not hear evidence from Mr Whitelaw, who has now left the respondent company. We note, however, that the female manager he is said by Mr Evans to have recruited was not taken on until many months after the claimants had presented their claims to the Tribunal alleging that Mr Whitelaw had made these comments.

36. We asked Miss Veitch how she knew of the comments allegedly made to the male manager. She told us that, following a meeting on 5 November which we refer to below, the other General Manager had told her and others that the male

manager, with whom we understand Mr Whitelaw had worked previously, had said Mr Whitelaw did not want women in management. At best, therefore, Miss Veitch appears to have assumed that Mr Whitelaw said something to the male manager along the lines of the comment she alleges Mr Whitelaw made directly to her.

37. There is an element of internal inconsistency in Miss Veitch's evidence in that she told us, when we asked, that although she had referred in her claim form to Mr Whitelaw having made 'several comments' to 'several members of staff', she was in fact only aware of the two comments we refer to here ie what she said Mr Whitelaw said to her and what she assumes he had said to a male colleague. At best, she appears to have engaged in a degree of exaggeration. This is not the only element of Miss Veitch's evidence that cast doubt on her reliability as a witness: as referred to below, she also said Miss Sobihy was the only member of staff who was not permitted to work her notice when dismissed as part of the restructure described below, whilst simultaneously asserting that she, herself, was the only member of staff who had been required to work her notice.

38. Having said that, there is evidence in support of the claimants' allegations that Mr Whitelaw made these comments. Although Miss Veitch does not contend that she informed anyone of Mr Whitelaw's alleged comments at the time they were made, we accept her evidence that she did tell other staff he had made such comments following the meeting on 5 November which we refer to below. Support for that finding can be found in the email from Mr Sobihy to Mr Evans of 6 November (referred to below), in which she referred to Mr Whitelaw having made such comments. In addition, Mr Evans accepted that both Miss Veitch and Miss Sobihy drew his attention to these alleged comments in face to face meetings with them. Furthermore, Mr Evans acknowledged in his evidence that Mr Whitelaw confirmed to him that he had had a discussion with Miss Veitch after a meeting and, during that discussion, he had referred to Mr Thompson being 'more relaxed' and that meetings were now 'less structured'. The Respondent's grounds of resistance go further, saying that Mr Whitelaw remarked, in that conversation, that Mr Thompson appeared to let staff ramble on too much and that the meeting had been very unstructured.

39. Looking at all of the evidence in the round, we found Miss Veitch, in most matters, to be a reliable witness, notwithstanding the reservations we had about some aspects of her evidence. We believe it is more likely than not that, in or around mid-October 2018, Mr Whitelaw did say to Miss Veitch that he was surprised Mr Thompson had women as management in the company; that 'the Adam I know' would never have women in management roles; that Miss Veitch and the two other female managers 'just ramble on and are too emotional' in meetings and 'go off on a tangent'; and that if he were in charge, things would be run differently.

40. We are not, however, persuaded that it is more likely than not that Mr Whitelaw made similar comments to one of Miss Veitch's male colleagues given that the evidence that he did so is based entirely on supposition founded on hearsay.

41. By October 2018, it was clear to the senior managers that all three existing gyms were making significant losses on a monthly basis due to low membership levels. Mr Evans and Mr Thompson had spoken to the franchisor, Energie Fitness, about what they could do to get back on a sound financial footing and learned that the respondent's membership levels were almost 50% down on the national average for franchisees.

42. The respondent's senior managers believed that the staff employed at the three gyms were not bringing in sufficient levels of membership on a monthly basis to allow the company to be profitable. They decided to introduce a telesales department based at the head office in Jarrow in the hope that this would help the company to gain more new members. The senior managers decided that the new telesales team would take over the responsibilities for sales that had, until then, be carried out in each of the clubs by the club hosts/receptionists and the General Manager. They decided they would have a 'Club Manager' at each of the three existing clubs, to be based at the club, and that the Club Managers would take over the other responsibilities and functions that were currently carried out by General Managers. The respondent's senior managers decided they would also use this as an opportunity to harmonise salaries for the positions previously occupied by General Managers as the general manager at Jarrow was paid more than Miss Veitch and the general manager at Tynemouth. The proposed salary for the club managers at all three sites was £24,000 per annum, compared with Miss Veitch's salary of £23,000 per annum. They also decided that they would no longer have hosts/receptionists in the clubs as their non-sales responsibilities could be shared between the personal trainers and the Club Manager at each club.

43. The respondent's senior management team drew up two documents, one of which set out the existing staffing structure in the gyms and the second which set out the new proposed structure. Those two documents were created with input from Mr Thompson, Mr Evans and Mr Whitelaw. The three existing general managers at this time were all female. Of the club host/receptionists, four were female and three were male. The proposed new structure indicated that there would be, initially, four staff in the telesales team, later rising to six, who would report to Mr Whitelaw.

44. The respondent's senior managers contacted an HR consultant, a Mr Duncan, for advice about how to carry out the 'restructure'. On 16 October 2018 Mr Duncan sent an email to Mr Evans which began 'good to chat today about your plans for a new design of organisation. I would do the process into separate phases:
    - the GMs moving to club manager and
    - the balance of the staff

    this is because they are different salary levels/job grades
    the process is the same for both groups of people-and for your purposes grouped into six steps…-See attached documents for a fuller explanation which documents to use'

45. The email then went on to itemise six steps entitled as follows: information meeting; first consultation meetings; second consultation meeting; decision;

selection; admin. In the 'information meeting' section Mr Duncan suggested that the respondent's managers should 'have a prepared script that you can hand out at the end so they can take it away.' In relation to the 'second consultation meeting' Mr Duncan said 'you can end this meeting by saying that the consultation period is now over and that you will decide on the final design'. Against the fourth point, 'decision', Mr Duncan said 'this is where you decide how many club managers and sales staff you need and how you will select them (by interview) and inform the two groups separately of the outcome of this decision and how the selection process will work.' Mr Duncan emailed a number of documents to Mr Evans, including a template for a draft script for the information meeting referred to in his email.

46. On 5 November 2018 a meeting was arranged at which the three general managers and all of the club hosts/receptionists except one were present. One of the female club hosts/receptionists was on holiday at the time and so was not present at the meeting.

47. The evidence of Mr Veitch was that, at this meeting, Mr Evans and Mr Thompson told the staff present that there was going to be restructure, that all the existing general manager and club host/reception roles had become redundant and that, if anyone wanted to remain with the company, they would have to reapply for new positions, for which Mr Whitelaw would carry out interviews. Miss Sobihy's evidence was consistent with this. She said the staff were told that they were all at risk of redundancy and were given less than 24 hours to decide if they wanted to go ahead with an interview with Mr Whitelaw for a new job. The evidence of Mr Evans was that the decision had been taken that all the general managers and club hosts/reception staff would be placed at risk of redundancy and be offered the opportunity to apply for the telesales and club manager positions under the new structure and that Mr Whitelaw would conduct interviews of individuals who wished to apply for the available positions.

48. Looking at the evidence in the round, we find as a fact that, at this meeting, Mr Evans and/or Mr Thompson told the staff present that a decision had been taken to restructure the business, that all of the existing general manager and club host/reception roles had become redundant, that, under the new structure, there would be some new roles available, specifically a Club Manager for each gym and four sales executive roles within a new telesales team, that if anyone wanted to be considered for any of those roles they would need to put themselves forward to be interviewed and that interviews for those roles would be conducted by Mr Whitelaw. We also find that Mr Evans and/or Mr Thompson told staff that they would hold one-to-one 'consultation' meetings with each member of staff that day and the next day (meetings with Jarrow staff being that day and meetings with Blaydon and Tynemouth staff being the following day, 6 November), that interviews for the new positions (for those who wanted to be considered) would take place on the following three days ie 7, 8 and 9 November and that staff needed to decide by 6 November whether they wanted to be interviewed for the new roles.

49. The respondent, in its response to the claim, asserted that Miss Veitch had been offered the club manager role. In evidence, it became clear that this statement was not in fact true. Mr Evans conceded that Miss Veitch had not been offered the role but, rather, had been given the opportunity to apply for the club manager role via a competitive interview process. When asked why they had opted not to simply offer the club manager roles to the incumbent general managers Mr Evans replied 'we took advice from Mr Duncan that we should open the roles for all staff.' That advice was not set out in any documentation and appeared to contradict Mr Duncan's email of 16 October 2018, in which he referred to conducting the process in two separate phases. Therefore we asked Mr Evans whether Mr Duncan had explained why they should 'open the roles for all staff'. Mr Evans said Mr Duncan had not said why they should adopt that approach and that they had not asked him why.

50. When Mr Evans was questioned at this hearing about the short timescale for the redundancy process, with interviews due to begin two days after the staff were made aware of the restructure and only one day after individual meetings had taken place, he said that this was due to 'the attitude of many staff not wishing to go for interviews.' We note, however, that the senior management team had decided on the timescale before staff were informed of the restructure and redundancies and, therefore, before they could have known who would ask to be interviewed.

51. At the end of the meeting, those present were given a copy of the document which appeared at page 178-179 of the bundle. It is clear that whoever prepared this document relied heavily upon the template document that Mr Duncan had sent to Mr Evans, with some parts having simply been copied, with little or no amendment, from the template document. The document at page 178-9 had a section entitled 'consultation process'. Under that heading the document said 'the consultation process is a process in which we seek your views, suggestions, feedback or comments on our proposals before we decide finally on the new structure and commence any possible redundancies.' It went on to refer to the timings of meetings with each member of staff before going on to say 'once we have heard your views we will consolidate them into a final structure.' This part of the document was copied virtually word for word from the template supplied by Mr Duncan. Notwithstanding the content of the document, we find that the senior managers had already reached a fixed decision as to the roles in the new structure i.e. that all of the existing general manager and club host/reception roles were to be made redundant and replaced with a telesales team consisting of (initially) four sales executives and one club manager in each club.

52. The document at page 178-9 referred to 'pools of selection' and a 'selection process' entailing the use of 'selection criteria', and a scoring process. It said 'we are proposing the criteria to be a combination of: length of service; qualification; skills based aptitude test; performance; disciplinary record; attendance record.' The document said there would be a 'selection process' to score all staff in each selection pool and that 'this will be carried out by Kris Whitelaw and a notetaker then approved by the directors Adam Thomson or Andy Evans. We will then be in a position to approach the staff that scored lowest and share with them their

scores and provide them an opportunity to understand them and gain any clarification needed.' The document then immediately went on to state 'Interviews. If you would like to be interviewed for any of our new roles, please email [Mr Whitelaw's email address]. Interviews will take place 7th, 8th and 9th November at our Jarrow office.' Mr Evans claimed in his statement, which formed his evidence in chief, that it was 'decided that [Mr Whitelaw] would carry out the interviews and complete a scoring index. The proposed scoring index can be found at pages 166 - 171 of the bundle.' The documents referred to in the bundle were actually a variety of different selection matrices. When Mr Evans was asked about this when giving evidence, he suggested he had been mistaken and that the actual matrix that would be used was that at page 180 of the bundle. He said that the documents referred to in his statement were actually examples of selection matrices they had found on the internet. We observe that the document that Mr Evans claimed, on questioning, represented the correct matrix which was to be applied is one of the documents he says they found on the Internet. The scoring matrix for qualifications/skills in that document refers to skills and qualifications that were entirely irrelevant to the respondent's business, including, for example, welding, HGV driving, 'flexi truck'. On being asked about this, Mr Evans said that the intention was to score qualifications and skills at the interview stage and that the interviewer would discuss these issues with the interviewee. When asked how performance would be assessed Mr Evans said there was a lot of information about sales performance on their internal systems. When asked how this would relate to the club manager role, given that the sales responsibilities in that role were to be removed, he suggested that performance would be assessed by interview. When asked specifically what was going to be assessed at interview Mr Evans replied that it was to make sure 'they have the correct attributes' to do the club manager role. The document at page 178 refers to a skills-based aptitude test. When asked what form this would take Mr Evans replied 'it did not have to be designed or carried out [because nobody applied] but there would have been two: one for the club manager and one for telesales.' Asked who would have designed these if needed he replied 'possibly Mr Thompson and Mr Whitelaw.'

53. Looking at the evidence in the round, we find that, notwithstanding the reference to selection criteria in the document at page 178-9, the senior management team never had any intention of applying a selection process in the manner described in the document. The decision had already been taken that the existing roles of the general managers and the club host/reception roles were to be made redundant and staff would no longer continue in those roles. There was to be no process of 'selection' in the sense of selecting only some members of staff for redundancy from those roles. None of the staff were to be retained in those roles. There were alternative roles available and staff were offered the opportunity to apply for those roles. Staff were told that if they applied there would have to go through an interview process. Those interviews were to be conducted by Mr Whitelaw alone, who would then reach a decision based on his subjective view as to the respective merits of the candidates. We do not accept that there was any intention to apply a scoring matrix. Mr Evans' evidence on this point was entirely unconvincing. As well as changing his position when confronted with difficult questions as to the scoring indices, he had no explanation as to why the

matrix which he eventually claimed was the one that was to be used did not contain relevant scoring criteria for the assessment of skills and qualifications. Clearly no relevant criteria had been identified for the scoring of skills, qualifications and performance and, notwithstanding the reference to a 'skills-based aptitude test' no thought had been given to the content or scoring of such a test, notwithstanding that it was proposed that interviews would start two days after the announcement meeting. We find there was never any intention of devising a skills-based aptitude test nor any other matrix against which skills, qualifications and performance, or for that matter any of the other criteria set out in the document, would be assessed and weighted. It is evident that the question of who would be selected for the new roles, from those who applied, was simply to be left to Mr Whitelaw's subjective judgement as to the candidates' respective merits. The document at page 178-9 was supplied to staff to give the redundancy process an appearance of objectivity that belied the reality. The impression we got of the respondent's managers in this case was that they had little respect for their employee's workplace rights. This was in evidence in the fact that after Miss Sobihy had started these Tribunal proceedings, the respondent's managers realised they had underpaid Miss Sobihy and owed her £1,282.05; yet as at the date of the hearing, the respondent had not paid her what it accepts is owed. Mr Evans said this was because Mr Thompson had decided to await the outcome of these employment tribunal proceedings before paying her.

54. During cross-examination Mr Evans said, for the first time, that at the meeting staff were told that if they were uncomfortable with Mr Whitelaw conducting interviews then they could be interviewed by someone else. We reject that assertion. It was not mentioned in his witness statement or in the respondent's grounds of resistance. Indeed, in his statement he said he had no reason to believe Mr Whitelaw would be anything other than professional when interviewing staff. It is difficult to understand why, if that was the case, he would have felt the need to offer staff an alternative to being interviewed by Mr Whitelaw. Furthermore, as recorded in our findings of fact below, when Miss Sobihy and Miss Veitch later said they would not want to be interviewed by Mr Whitelaw, Mr Evans did not then suggest they could be interviewed by someone else. If he had already told staff that was an option it is surprising that neither Miss Sobihy nor Miss Veitch took him up on that offer and equally surprising that he did not reiterate the offer. This appeared to us to be a clear example of Mr Evans making up evidence on the hoof when confronted with challenging questions.

55. The document referred to the new roles and said 'attached is a copy of both positions we have available … which have been created from the restructure: club manager x4; sales executive x4.' Neither of the claimants had any recollection of seeing job descriptions for those roles. Mr Evans claimed under questioning that job descriptions had been prepared and had been provided to those at the meeting. However, those job descriptions were not disclosed as part of the disclosure process and did not appear in the bundle. We reminded Mr Evans of the duty of disclosure and said that continued until the end of the case. At no point during the course of the hearing were those documents produced nor any explanation given is to their whereabouts. We did not find Mr Evans to be a credible witness. That being so, and in light of the fact that the respondent has

been unable to produce copies of the documents and the claimants have no recollection of receiving them, we find it very unlikely that job descriptions were prepared by the respondent and provided to staff affected by the restructure.

56. Immediately after the meeting on 5 November the staff present had a discussion in the absence of Mr Thompson and Mr Evans. Miss Veitch told the other staff that Mr Whitelaw had said to her that women should not be in management and that Mr Evans 'allows women to ramble on in meetings'. One of the other general managers also alleged Mr Whitelaw had made similar comments.

57. Later on 5 November, Miss Sobihy had what was billed as a '121' meeting with Mr Evans about the restructure. Miss Sobihy asked why the two new business development managers who had been with the company for 3 to 4 weeks (one of whom was Mr Whitelaw) were not being made redundant. She also asked why staff who had been hired for the new gym in Stockton a week previously had not been made redundant. Mr Evans told Miss Sobihy they had sought legal advice and none of them had to be involved. Miss Sobihy also told Mr Evans that Mr Whitelaw had said he did not think women should be in management and she expressed misgivings about being interviewed by him for a management role.

58. Early the following morning, on 6 November, Miss Sobihy sent an email to Mr Evans asking how much notice she would receive and what redundancy package she would be entitled to if she were to choose redundancy and also asking whether she would still be entitled to a redundancy package if she were to apply for an internal role but be unsuccessful. Mr Evans responded to that email soon afterwards answering her questions. Approximately 15 minutes later, just after 9 am, Miss Sobihy sent an email to Mr Evans and Mr Thompson saying 'I have decided not to go ahead with an interview with Kris Whitelaw for the following reasons. If I was to apply for a role it would be management. After his comments that women should not be in charge and he finds it hard to believe how Adam allows women to 'ramble' on in meetings I feel that the interview will be discriminated. Also, I will not be applying for sales as we have had confirmation from a gentleman in Utilitywise that our jobs have already been provided promised to them as Kris Whitelaw has promised them he setting up a new sales team and they will be hired. Please also be aware that this was all discussed once you and Adam left the spin room yesterday so all staff are aware of the above.' Miss Sobihy told Miss Veitch about this email.

59. Later that day, Miss Veitch spoke to Mr Evans and expressed her concerns about comments made by Mr Whitelaw about women in management and said she knew Miss Sobihy had emailed him. Mr Evans said to Miss Veitch that she should 'choose whose side [she is] on, if [she wants] to stay in the company'. Miss Veitch asked Mr Adams if Mr Whitelaw had been spoken to about the comments. Mr Evans said Mr Whitelaw had been spoken to about the comments and it had been 'handled.' We infer Mr Evans had spoken to Mr Whitelaw about his alleged comments before he had had any discussion about them with Miss Veitch. Miss Veitch went on to say that she would not apply for a management role at Blaydon if she had to be interviewed by Mr Whitelaw but instead would like a new role to be created for her as head of retentions. The role the claimant had in mind was,

in essence, the role she had been doing when she first joined the company but had moved away from when asked to act as General Manager. Mr Evans said he would discuss this with Mr Thompson. He did so, and he and Mr Thompson agreed to create this new post for the claimant.

60. Later that day, Miss Sobihy became aware that somebody had come to the gym for an interview for one of the new posts. She believed that the fact that external candidates were being interviewed for the new posts supported her perception that the redundancy process was unfair. She went to see Mr Evans in his office and insisted they have a meeting.

61. Later, Miss Sobihy was asked to go to Mr Evans' office for a meeting. There Mr Evans said they had received her email that she was to be made redundant with immediate effect. Miss Sobihy said Mr Evans said this was because of her email. Mr Evans denied having said that. He said he made her redundant because she had said she did not want to apply for any of the jobs on offer. There was no discussion in this meeting of the matters the claimant had raised about Mr Whitelaw. There was no suggestion by Mr Evans that Miss Sobihy could be interviewed by someone other than Mr Whitelaw.

62. Miss Veitch said in her evidence that Miss Sobihy was the only member of staff to be dismissed straightaway as part of the redundancy process, every other member of staff having worked their notice period. That contradicts what Miss Veitch said in her claim form, where she alleged that no other members of staff who left as a result of the restructure had been required to work their notice period and that they had been 'let go' on the day. Mr Evans' evidence was that some staff worked their notice and some did not. Notwithstanding our concerns about his general credibility, we prefer Mr Evans' evidence on this point given the inconsistencies in what Miss Veitch has said and find that some staff who left as part of the restructure worked at least some of their notice whilst some did not.

63. Before the end of the week, one of the male club host/reception staff had been appointed to the club manager post at Blaydon. He was not interviewed for the post. When asked at this hearing how they ensured that individual had the appropriate attributes for promotion Mr Evans replied 'he'd worked in the club more than three years and had often stepped up.' He also referred to nobody else wanting to apply the job.

64. By the end of the week, two other men had been offered, and had accepted, the Club Manager roles at Tynemouth and Jarrow respectively. These individuals were not existing employees of the respondent. They were interviewed and appointed by Mr Whitelaw. At the hearing, Mr Evans said he did not know when Mr Whitelaw had interviewed them. However, he said he believed Mr Whitelaw had carried out one or two interviews on 6 November. On Friday, 9 November 2018, Mr Whitelaw sent an email to a number of recipients including the three new Club Managers and Miss Veitch with the subject line 'start of a new exciting journey'. In that email Mr Whitelaw said 'I'm really excited to announce we have a new and existing team of individuals ready to take the stage from our prospect or,

sales executives to our club managers and I'm so pleased to have you all on board.…'

65. At the time of these appointments, one of the female club hosts/reception staff was still on holiday and had not been given the opportunity to put herself forward for the posts. Mr Evans said, in evidence, that they believed she would want a sales role.

66. Under questioning Mr Evans said that the senior managers had hoped that existing employees would apply for the new roles and that interviews with external candidates had only been arranged once it was known that existing staff were not interested in applying. He said the respondent has a bank of CVs from previous applicants and he believed that Mr Whitelaw had identified potentially suitable candidates from within those CVs and contacted them after it became clear that existing staff did not want to apply for the posts. We find that implausible. The existing staff were not made aware of the redundancies until 5 November. Individual meetings took place later that day and the following day. To take two examples, the claimants did not notify the respondent that they did not wish to be interviewed for the new roles until 6 November. We find it unlikely in the extreme that Mr Whitelaw did not contact the men who were, by the end of the week, appointed as club managers – or potential candidates for the new tele-sales team - before then. It is unlikely that Mr Whitelaw could have managed, between the Tuesday morning and the Friday afternoon, to identify sufficient potentially suitable candidates for appointment to the new roles from within a bank of existing CVs, make contact with those individuals to arrange an interview, find mutually convenient times to conduct interviews (at least two of which apparently took place on the very same day on which Mr Whitelaw contacted the individuals), make offers of employment and receive confirmation that the offers were accepted. Far more likely is that Mr Whitelaw had already identified suitable external candidates for appointment and arranged interviews before 5 November.

67. In the early hours of the morning on Saturday 10 November, Mr Whitelaw sent to the claimant a private message on her Facebook page in response to a picture the claimant had posted of herself with her partner. He said 'OMG Sophie-just seen the wedding pics! Didn't realise you could look so stunning-clearly must be a filter-plus Matty is well punching" (referring to "punching above his weight"). The claimant understood this to be a comment about her appearance and, by implication, that of her partner. The claimant's evidence was that she was distressed by the comment and that it also upset her partner. Based on Miss Sobihy's evidence, we find that Miss Veitch and her partner argued about the message over the weekend.

68. When the claimant was next at work on the following Monday morning, she spoke to Mr Evans first thing about the comment made by Mr Whitelaw. She then sent him an email with a screenshot of the message.

69. Mr Evans emailed a response to Miss Veitch that day. In the email he said 'Stessa have a zero tolerance on bullying/racism or sexism. I am in the process of carrying out a full investigation on this. The first step of this process is to

receive evidence (which has been provided by you). The second step is to talk with Kris around his comments (which I have completed today). The third step will be to arrange a meeting between yourself and Kris with myself as mediation. Following the meeting we can discuss how to progress this. I will call you to arrange a suitable time.'

70. We find that, although Mr Evans did not mention it in his witness statement, he had, before he sent that email, spoken with Mr Whitelaw about the Facebook message. The content of that discussion is referred to in paragraph 16 of the respondent's grounds of resistance as follows '[Mr Evans] interviewed Kris Whitelaw and was made aware of their chatty relationship and also was shown the photographs that the claimant had taken of Kris Whitelaw's bare legs. Kris Whitelaw stated that he was now minded to lodge a counter-grievance against the claimant for taking such an inappropriate photograph of him.'

71. The claimant's evidence was that she felt uncomfortable at the idea of being in a room with Mr Whitelaw. However, she did go to the meeting, which took place on 13 November ie the following day. Miss Veitch was not told she could take anyone with her so went alone. Mr Whitelaw was not present when the meeting began. Both parties agree though that Mr Whitelaw joined Miss Veitch and Mr Evans in this meeting. The evidence differs though as to how that came about and whether there was a discussion before Mr Whitelaw joined them about the options open to Miss Veitch.

72. Mr Evans told us that, before Mr Whitelaw joined the meeting, he spoke to the claimant. He said 'I queried what she would like to do next about this and offered to hold an informal mediation with Kris or for her to raise a formal grievance which would be dealt with assistance from our independent HR consultant. Miss Veitch has suggested that I told her she could leave the company if that's what she wanted. In the week prior to this incident, Miss Veitch had already made clear to me and others in the company that she did not wish to take up the new role we'd created for her. Therefore, I did say that taking redundancy was still an option for my speech but only as a result of her comments at the time. This wasn't in any way presented as me trying to force Miss Veitch to leave. During my one-to-one meeting with Miss Veitch, she confirmed that she did wish to hold an informal mediation with Kris. I then invited him into the meeting and facilitated a discussion between them….Kris apologised for the message and I considered that both were happy to move on from it. I therefore considered the matter closed.'

73. In contrast Miss Veitch said Mr Evans did not – at any time- ask if she wanted to have a mediation meeting with Mr Whitelaw. Rather, she was told by him in his email of the previous day that was going to happen and when she arrived at the meeting Mr Evans simply said he was going to call Mr Whitelaw in. She told us that it was only after Mr Whitelaw had left the meeting, when she was visibly upset, that there was a discussion about the options available to her, including 'escalating' the matter to HR or leaving the company.

74. We find Miss Veitch's evidence on this matter far more compelling than that of Mr Evans. It is consistent with the email sent by Mr Evans in which he simply said a mediation meeting would be arranged, not that the claimant would be given a choice in the matter. It is also consistent with an email Miss Veitch sent Mr Evans the following day. Furthermore, Mr Evans' evidence contradicts the respondent's grounds of resistance, which say that Mr Evans identified three possible options after Mr Whitelaw had left the meeting, not before he joined the meeting. We also find the suggestion that the claimant had 'made it clear' the previous week that she did not wish to take up the new role as head of retentions to be highly unlikely, given that it was she who asked for the job to be created on the Tuesday of that week. We have already highlighted some other aspects of Mr Evans' testimony that we found unreliable. Overall we did not find him to be a reliable witness. We prefer Miss Veitch's account of the meeting.

75. Mr Evans called Mr Whitelaw into the meeting at the outset. Although Mr Whitelaw apologised for sending the message, we accept that the claimant felt his apology was not genuine. We find that Mr Whitelaw said the message was just banter and implied that the claimant had taken it the wrong way.

76. Mr Evans said in his witness statement that Miss Veitch said that she was 'less concerned about the content of the message and was more bothered about the timing, late at night and how that might look to her partner.' He also said 'I noted that the message from Kris had been sent almost a month before Miss Veitch had raised this but she did not have an explanation as to why she hadn't brought this to my attention before.' By saying this, Mr Adams implied he had asked Miss Veitch about this in their meeting. In cross examination, however, Mr Evans acknowledged that Mr Whitelaw's message had, in fact, been sent during the weekend before the meeting, as the claimant had said. He said he had only realised this on the morning of the hearing. It is clear to us that, even though Mr Evans implied that he believed, at the time of the meeting, that Mr Whitelaw had sent his message almost a month earlier, he did not ask Miss Veitch at the meeting why she had not mentioned it sooner: had he done so, she would no doubt have corrected him. We think it likely that, if Mr Evans had genuinely believed at the time of this meeting that the message had been sent a month earlier, he would have asked Miss Veitch about this. The fact that he didn't strongly suggests that Mr Evans did not believe, at that time, that the message had been sent by Mr Whitelaw a month earlier. His subsequent, incorrect, allegation that the message was sent a month earlier than Miss Veitch claimed and that he 'noted' this at the time of the meeting suggests to us that Mr Evans was seeking to justify the way he handled Miss Veitch's complaint.

77. We note also that, although in the grounds of resistance it is alleged that when Mr Evans spoke to Mr Whitelaw about the message the previous day he complained to Mr Evans that Miss Veitch had taken an inappropriate photo of him some time earlier. This is referred to in the grounds of resistance as evidence of the 'chatty' relationship between Mr Whitelaw and Miss Veitch. The grounds of resistance also assert that Mr Whitelaw was very embarrassed by the claimant taking the photo but decided not to progress it to a formal grievance 'given his short tenure with the company.' We find, however, that Miss Veitch was not asked about this

photo in the meeting and, in particular, it was not suggested in that meeting that this photograph was in any way inappropriate. At this hearing Miss Veitch's evidence was that Mr Whitelaw had in fact asked her to take the photograph in question because he wanted a photo of himself wearing cycle shorts with work shoes to send to Mr Thompson but did not have his own phone so asked Miss Veitch to take the photo and send it to him. Her evidence of this point was supported by a message from Mr Whitelaw to Miss Veitch in which he said 'Hey send me that photo please'. We find Miss Veitch's evidence on this point persuasive and find that the facts were as she said: Mr Whitelaw asked her to take the photo because he wanted to send it to Mr Thompson but did not have his own phone. It is apparent that Mr Whitelaw subsequently misrepresented the true facts to Mr Evans and Mr Evans was willing to simply to accept what Mr Whitelaw said without question.

78. Mr Whitelaw left the meeting and Mr Evans asked Miss Veitch what she wanted to do and where she wanted to go from here. We accept Miss Veitch's evidence that she was in tears. She said she did not know what her options would be. She was upset at the thought of working within a company with Mr Whitelaw. This was partly because she felt uncomfortable working with him because of his Facebook message and what he had said about women in management: her role meant she would have to work closely with Mr Whitelaw on a day-to-day basis and she felt, as she put it, she 'emotionally did not want to do this.' Another reason she did not wish to work with Mr Whitelaw was because she thought it would affect her personal life and relationship with her partner. Mr Evans said Miss Veitch had three options: to escalate her claim to HR; to continue within the company and he would monitor the situation for a few weeks; or to opt for redundancy, with redundancy pay, if Miss Veitch felt she could not work with Mr Whitelaw. Mr Evans asked the claimant to make a decision. She replied that she could not make such a big decision without speaking to her partner or family.

79. Miss Veitch's evidence is that, when Mr Evans said she could escalate the matter to HR, he added that, if she took that option, it could get 'messy' and become public knowledge within the company. Mr Evans denied having said that. Miss Veitch did not refer specifically to Mr Evans having said this when she emailed him the following day. However, as recorded below, we find that Mr Evans pressured the claimant to make a decision very soon after this meeting. As recorded above, we have also found that Mr Evans was willing to accept, without question, what Mr Whitelaw said to him about the claimant having taken an inappropriate photo of him, just as he was prepared to accept Mr Whitelaw's version of the conversation he had had with Ms Veitch about women in management without first asking Ms Veitch herself for her account of the conversation. The impression we gained from the totality of the evidence is that Mr Evans' assertion in his email of the previous day that the company had a zero-tolerance policy towards sexism did not reflect the reality. Looking at the evidence in the round we find that Mr Evans did say to Miss Veitch that if she escalated the matter to HR it could get 'messy' and become public knowledge within the company.

80. The next day, 14 November, Miss Veitch started work at 9 am. We accept Miss Veitch's evidence that she immediately received a phone call from Mr Evans asking why she had not emailed her decision the previous night; she referred to that phonecall in an email she sent to Mr Evans later that day. The claimant replied that she had not made a decision and did not want to make such a decision lightly. We accept Miss Veitch's evidence and find that Mr Evans then told Miss Veitch she needed to make a decision that day and put it in an email. Miss Veitch felt very pressured and that she was being pushed into making a decision without time to think.

81. Later that day Mr Evans emailed Miss Veitch asking her to work from Jarrow the following day saying this was 'so we can work through a strategy for the next couple of weeks.'

82. After speaking to members of her family and friends the claimant decided to opt to leave with redundancy pay. She sent an email that night to Mr Evans. In that email the claimant referred to the announcement the previous week about redundancies and the new roles available to apply for. She said 'I did not choose to go for or interview for either of those roles, instead asking for the role of retention manager to be considered. I have had no formal written confirmation of my new role neither have I started this role as of yet.' She referred to the statutory trial period that applies when alternative employment is offered in a redundancy situation and said 'I feel the new role is unsuitable due to working in such close proximity to the employee in question in the issue raised. I also feel that as this is also affected my personal circumstances, I am unable to fulfil the role to its poor requirements. Therefore please take this email as my retraction from the role and to take redundancy. I would like to state that this is not an option I would have liked to have taken..' The claimant then referred to the three options Mr Evans had presented her with the previous day and said 'I feel the option above for redundancy, whilst deeply upsetting, is my only option to take which I myself feel comfortable with. I understand the employee in question has been dealt with, however does remain in the company-and would also be someone who I would have to be in contact with on a day-to-day basis. The complaint in question is not the only issue that has been raised about the employee in question within the timeframe they have been with the company (around one month) and therefore I do not feel comfortable that this would not happen again or another issue would arise, not only with myself but another employee. I hope you understand that due to the incident in question, I, myself feel uncomfortable working with the employee in question and I also have to consider the effect on my partner whose name also was brought into it, and the effect this would have on my personal life in the future. Thus compromising both my work and personal life.'

83. The following day Miss Veitch went to the Jarrow club as requested by Mr Evans. Mr Whitelaw was there, which made the claimant feel uncomfortable. When Mr Evans arrived at the club that afternoon Miss Veitch asked why she had been made to work in Jarrow with Mr Whitelaw when she had said she could not work with him. About an hour later, Mr Evans told Miss Veitch that he and Mr Thompson had agreed she could leave with redundancy pay but that she would

have to work her notice period at the Stockton club. Miss Veitch was emailed a letter which began 'It is with regret that I write to inform you that the company has decided to make you redundant with effect from 8 January 2019. You are aware that the company is being restructured. We are aware that you have declined the offer to apply for one of our new roles advertised. You are entitled to 8 weeks notice of termination which you may be required to work at one of our sites.…' The claimant signed a copy of that letter.

84. Miss Veitch said in her claim from that no other members of staff who left as a result of the restructure had been required to work their notice period and that they had been 'let go' on the day. This contradicts what she said in her evidence in support of Miss Sobihy's claim: there, Miss Veitch said every other member of staff other than Miss Sobihy had worked their notice period. As recorded above, we prefer Mr Evans' evidence on this point given the inconsistencies in what Miss Veitch has said and find that some staff who left as part of the restructure worked at least some of their notice whilst some did not.

85. Miss Veitch asked if she would receive travel money if she worked at Stockton; Mr Evans told her she would not. Miss Veitch also asked why she was being moved to Stockton. Mr Evans said it was to keep her away from Mr Whitelaw as she had requested. Miss Veitch told Mr Evans she felt she was being penalised for Mr Whitelaw's actions and that it was unfair.

86. There then followed a discussion between Miss Veitch and Mr Evans about the possibility of her leaving without working her notice if she did not want to work in Stockton. We heard conflicting evidence as to what was said in that conversation. What is not in dispute, however, is that, following that conversation, Mr Evans agreed, the following day, that the claimant would be paid for but not required to work her notice and would be placed on garden leave. Miss Veitch's evidence is that Mr Evans told her during the conversation that if she were to leave without working her notice she would have to 'sacrifice a percentage of her redundancy pay': she alleges that this was detrimental treatment which Mr Evans subjected her to because she had complained about Mr Whitelaw's behaviour. Miss Veitch acknowledges, however, that after she said that it was unfair to make her work in Stockton, Mr Evans and Mr Thompson agreed to place her on garden leave. Mr Evans denied having said Miss Veitch would have to sacrifice a percentage of her redundancy pay. It is for the claimant to prove that she was subjected to the alleged detrimental treatment. Looking at the evidence in the round, and although we did not find Mr Evans to be a credible witness in many respects, we are not persuaded that he did suggest that Miss Veitch would have to lose part of her redundancy pay if she wanted to leave early. It seems that if that was Mr Evans' intention he is unlikely to have changed his mind so quickly upon Miss Veitch pushing back.

Conclusions

Claim number 2500025/2019: Miss Veitch

Allegation that the Respondent harassed Miss Veitch (or in the alternative directly discriminated against her because of her sex) by doing the following: Mr Whitelaw made comments about women in management in October or November 2018.

87. We have found as a fact that, in or around mid-October 2018, Mr Whitelaw said to Miss Veitch that he was surprised Mr Thompson had women as management in the company; that 'the Adam I know' would never have women in management roles; that Miss Veitch and the two other female managers 'just ramble on and are too emotional' in meetings and 'go off on a tangent'; and that if he were in charge, things would be run differently.

88. By making this comment Mr Whitelaw was, in essence, saying that women in general, and the claimant and her female general manager colleagues in particular, were not capable of performing management roles as well as men. This was clearly conduct related to sex.

89. Mr Whitelaw was in a more senior role to that of the claimant. Although Miss Veitch did not make a complaint about his comments at the time, she did complain about them when it became apparent to her that he would be responsible for deciding on her continued employment in the 'new' club manager role. The comments contained sweeping, derogatory statements about female managers in general as well as direct criticisms of Miss Veitch and the other female general managers which, on any objective interpretation of what Mr Whitelaw said, were linked to the fact that they were female and drew on disparaging stereotypes of women as being 'too emotional'. We have no doubt that his comments were unwanted by her and that she perceived them as creating a hostile, degrading, humiliating or offensive environment for her and clearly it was reasonable for the conduct to have that effect.

90. This claim is well founded.

Allegation that the respondent directly discriminated against Miss Veitch because of her sex by selecting the general managers to be made redundant from the general manager role because they are women.

91. In late October 2018, the respondent's managers decided that all three of the existing general managers, including the claimant, were to be made redundant from their existing general manager role. They notified the claimant, and the other general managers, that they had been selected for redundancy at the meeting on 5 November 2 018.

92. There are facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the respondent selected the general managers, including Miss Veitch, to be made redundant from the general manager role because they are female and that they treated the claimant less favourably than they would have treated a male general manager. In particular we note the following facts. Mr Whitelaw had made comments to Miss Veitch suggesting he believed that women in general, and the claimant and her female general

manager colleagues in particular, were not capable of performing management roles as well as men. At around this time, Mr Whitelaw was heavily involved in restructure plans and was influential in the decision to make the claimant and her colleagues redundant from the general manager roles and require them to reapply for the 'new' club manager positions (or one of the new sales roles) if they wanted to stay with the company. Notwithstanding what was asserted in the ET3, and despite the fact that the club manager role was in substance no different from the role the claimant and her colleagues had already been performing, save for having sales responsibilities removed, the claimant was not offered a club manager role, but rather was told she would, in effect, need to apply for such a role in a competitive interview process. Interviews for those roles were to be conducted by Mr Whitelaw alone, who would then reach a decision based on his subjective view as to the respective merits of the candidates. No job descriptions were drawn up for the 'new' roles, the claimant and her colleagues were given very little time to decide whether they wished to be considered for the new roles, and the respondent's managers falsely represented that appointments would be made by reference to a selection matrix. Not only did the respondent open up the new roles to competition internally, Mr Whitelaw also arranged to interview male candidates from outside the organisation for those roles before the incumbent general managers had been informed of the redundancies. Mr Whitelaw appointed three men to the three 'new' club manager posts. He did so before one of the female employees (who was on holiday) had an opportunity to apply for any of the club manager posts. One of those men had been working as a club host/reception position and was appointed without interview.

93. It is for the respondent to prove that its decision to make the claimant redundant from her existing general manager role was in no sense whatsoever because of sex.

94. We are satisfied that the respondent's plans to set up a new telesales team were genuine and that the respondent's managers genuinely intended that the new telesales team would take over the responsibilities for sales that had, until then, been carried out in each of the clubs by the club hosts/receptionists and the general managers. We accept that those decisions were made for financial reasons and were untainted by sex discrimination.

95. However, that does not fully explain why the decision was taken to make the existing general manager posts redundant and replace them with the "new" club manager role. The new role was, in substance, the same as the general manager role but with fewer responsibilities and a different job title. An option that was open to the respondent was to simply remove the sales responsibilities from the general manager role without making the role redundant. Indeed, in its grounds of resistance, the respondent asserted that Miss Veitch had been offered the new 'club manager' role. In evidence, however, Mr Evans confirmed this was not correct. When asked why the respondent had chosen not to take that course, but had instead required the incumbent general managers to compete for the new club manager roles, Mr Evans' response was unconvincing. He said the HR consultant, Mr Duncan, had advised them that they should open the roles for all staff. We do not accept that was the case. Not only was that alleged advice not

set out in any documentation (unlike other advice given by Mr Duncan), it would appear to contradict Mr Duncan's email of 16 October 2018, in which he referred to conducting the process in two separate phases, with the general manager/club manager roles being dealt with separately from the club host roles. If Mr Duncan had changed his advice one would have expected him to give an explanation and, in the absence of an explanation, one would have expected the respondent's managers to ask him why he had changed his advice. Mr Evans conceded that neither of those things happened in this case.

96. The respondent also says its senior managers decided to use the "restructuring" as an opportunity to harmonise salaries for the positions previously occupied by general managers. However, the proposed salary for the club manager at Blaydon, where Miss Veitch was based, was £24,000 per annum, compared with Miss Veitch's salary of £23,000 per annum. It was unnecessary to make the claimant's existing role redundant in order to increase her pay and we are not persuaded that this was the reason her role was made redundant.

97. The respondent also pointed to the fact that the respondent agreed to create a new role for the claimant as head of retentions. There is some force in the argument that this demonstrates that Mr Evans and Mr Thompson (who agreed to the claimant's request for that role) did not believe women were less capable managers than men. There is no evidence, however, that Mr Whitelaw played any part in the decision to retain the claimant. Mr Whitelaw was instrumental in the decision to remove the general manager roles and, consequently, make the claimant redundant from that role; indeed, as he had responsibility for deciding who was to occupy the club manager roles, we infer it is more likely than not that it was he, out of the three senior managers, who had the most influence in that decision.

98. In all the circumstances, we are not persuaded that the respondent's decision to make the claimant redundant from her existing general manager role was in no sense whatsoever because of sex.

99. This is claim is, therefore, well founded.

Allegation that the Respondent harassed Miss Veitch (or in the alternative directly discriminated against her because of her sex) by doing the following: Mr Whitelaw sent the claimant a Facebook message in November 2018 commenting on her appearance.

100. It is not disputed that Mr Whitelaw sent the claimant a message on Facebook in the early hours of the morning on Saturday, 10 November 2018. This was a private message. It was in response to picture the claimant had posted of herself with her partner. It was, we find, the comment about the claimant's appearance and, by implication, that of her partner. We find that the comment was related to sex in that it is very unlikely Mr Whitelaw would have sent a message in those terms to a male colleague.

101. Mr Whitelaw was in a more senior role to that of the claimant. The claimant complained to Mr Evans about the message as soon as she arrived at work on her next working day. We accept that the claimant was distressed by this message. When she spoke to Mr Evans immediately after the meeting he had arranged with Mr Whitelaw on 13th November, she was in tears and said she did not know what her options were. We accept that she was upset at the idea of working in the company alongside Mr Whitelaw. We reject the respondent's submission that the claimant has the kind of relationship with Mr Whitelaw in which what he referred to as "banter" was a normal feature. The evidence relied upon by the respondent in support of that allegation was that a photograph was taken by the claimant of Mr Whitelaw. We have found the photograph was taken at his request in the circumstances described in our findings of fact. As for the submission that the conduct was unwanted by the claimant because she, in effect, "invited" comments on her Facebook page, we reject the implication inherent in that submission that the claimant welcomed any and all comments made, whatever they may be.

102. We are satisfied that Mr Whitelaw's message was unwanted by her, that she perceived it as creating a hostile, degrading, humiliating or offensive environment for her. Given the fact that Mr Whitelaw was senior to the claimant and in a position to influence decisions about her career, and that he had crossed professional boundaries by sending her a personal message commenting on her appearance, which he sent privately to the claimant, it was reasonable for the conduct to have that effect.

103. This is claim is, therefore, well founded.

Allegation that the Respondent unfairly dismissed Miss Veitch.

104. The respondent concedes that it dismissed the claimant. Its primary case is that the dismissal was by reason of redundancy and it was reasonable to dismiss the claimant for that reason in all the circumstances.

105. The claimant's dismissal came against the background of a restructure as part of which the respondent's managers decided that the existing roles of the general managers, including that of Miss Veitch, were to be made redundant and staff would no longer continue in those roles. Staff were offered the opportunity to apply for alternative roles of club manager or in telesales. Miss Veitch decided not to apply for any of those roles and told Mr Evans her decision. However, she saw that the reorganisation presented her with an opportunity to return to the role in retentions that she had joined the company to perform. Miss Veitch confirmed in her evidence that she saw this as a beneficial move for her: she had not wanted to move out of her original role to act as a General Manager and she perceived the retentions role as a step up from that of general manager. Miss Veitch asked for a new role to be created for her as head of retentions and Mr Evans and Mr Thompson agreed. Therefore, Miss Veitch was not dismissed at that point. A few days later, however, Mr Whitelaw harassed Miss Veitch. Miss Veitch was distressed by the harassment and was upset at the thought of working within a company with Mr Whitelaw. In response to the claimant saying

she did not know what her options were, Mr Evans said she had three options: to escalate her claim to HR; to continue within the company and he would monitor the situation for a few weeks; or to opt for redundancy, with redundancy pay, if Miss Veitch felt she could not work with Mr Whitelaw. The following day, Miss Veitch told Mr Evans and Mr Thompson that she was opting for redundancy. Consequently, Mr Evans wrote to the claimant confirming her dismissal.

106. Looking at all the circumstances, although both Mr Evans and Miss Veitch referred to the claimant's dismissal being for redundancy, we do not believe the claimant's dismissal was wholly or mainly attributable to the fact that the requirements of the business for employees to carry out work of a particular kind had ceased or diminished or were expected to cease or diminish. Rather, the principal reason for the claimant's dismissal, we find, was that Miss Veitch was unhappy working with Mr Whitelaw, having been harassed by him and was, therefore, given the opportunity to leave with a redundancy payment, which opportunity she chose to take.

107. We are satisfied that the fact that an employee who has been harassed by a work colleague is unwilling to continue to work in the employer's business while the perpetrator remains employed and expresses a preference for dismissal with a lump sum payment rather than remaining in employment, may, in principle, be a substantial reason of a kind such as to justify the dismissal of an employee holding the position the claimant held. However, it does not follow that such a dismissal will invariably be reasonable.

108. In the circumstances in which the claimant found herself, having been harassed by a senior manager, any reasonable employer would have investigated the allegation impartially, or at least have given the employee the option of having the allegation investigated impartially, before tabling termination of employment as an option. Although Mr Evans purported to offer the claimant the option of escalating her complaint to HR (by which Mr Evans meant Mr Duncan, the external HR consultant), at the same time he told her that if she took that option it could get 'messy' and become public knowledge within the company. In saying this Mr Evans was clearly trying to deter the claimant from taking the matter further. Mr Evans' own 'investigation' was perfunctory and fell well short of what one would expect from any reasonable employer: he was prepared to accept Mr Whitelaw's account without question. Furthermore, Mr Evans pressured the claimant to decide very quickly whether to accept the offer of termination with redundancy. No reasonable employer would have put the claimant in the position of having to make such a decision so quickly. All in all, we conclude that the choice the claimant was presented with was to 'put up or shut up'.

109. In all the circumstances of this case, we find that the respondent acted unreasonably in treating the reason set out above as a sufficient reason for dismissing her.

110. The claim of unfair dismissal is, therefore, well founded.

Allegation that the Respondent directly discriminated against Miss Veitch because of her sex by dismissing her.

111. Although we have found that the initial decision to make the claimant's general manager role redundant was tainted by sex discrimination and that the respondent acted unreasonably in dismissing the claimant, it does not follow that the decision to dismiss the claimant was because of the claimant's sex.

112. As recorded above, we have found that the reason for the claimant's dismissal was that Miss Veitch was unhappy working with Mr Whitelaw, having been harassed by him and was, therefore, given the opportunity to leave with a redundancy payment, which opportunity she chose to take.

113. We are satisfied that if a male employee had complained that he had been harassed by Mr Whitelaw, the respondent would have treated that employee in the same way. The company was undergoing a restructure to address concerns about profitability. Mr Evans and Mr Thompson clearly felt that Mr Whitelaw had a key role to play in that restructure and, indeed, we infer that was one of the reasons why Mr Whitelaw had been recruited. On the evidence before us we find that the reason Miss Veitch's complaints of harassment were treated in such a dismissive fashion was not because she is female, or because Mr Whitelaw is male, but, in part, because Mr Whitelaw's continued involvement in the company was more important to the company at that time than that of Miss Veitch and, in part, because the senior managers had little concern for the rights of their employees generally.

114. That being the case, this part of the claimant's claim is not made out.

Allegation that the Respondent victimised Miss Veitch by telling her to work from Stockton on or around 15 November 2018 and telling her, on or around 15 November 2018, that if did not work her notice her redundancy pay would be reduced.

115. In complaining to Mr Evans about Mr Whitelaw's Facebook message, Miss Veitch impliedly alleged that Mr Whitelaw had harassed her and had thereby contravened the Equality Act 2010. It is apparent from Mr Evans' email to the claimant of 12 November that that he understood Miss Veitch to be making such an allegation. That allegation was a protected act within the meaning of that term in section 27 of the Equality Act 2010.

116. The claimant's contract of employment permitted the respondent to require the claimant to work at any of its gyms. The day Miss Veitch was given notice of termination, she was told she would have to work her notice period at the Stockton club. We have rejected the claimant's assertion that she was the only member of staff made to work her notice and we are not persuaded that Mr Evans told Miss Veitch her redundancy pay would be reduced if she did not work her notice. We have also found that, before being told she was to work her notice in Stockton, the claimant had told Mr Evans she could not work with Mr Whitelaw

and had criticised him for asking her to work at the Jarrow club. When Miss Veitch asked why she was being moved to Stockton Mr Evans said it was to keep her away from Mr Whitelaw as she had requested.

117. Miss Veitch did not want to work at the Stockton gym because this was distant from her home and the respondent was not willing to compensate her for her extra travel time and costs. Nor, however, did she want to work anywhere she was likely to come into contact with Mr Whitelaw and she had made that clear to Mr Evans. It appears to us that what Miss Veitch really wanted was not to have to work her notice at all but yet still be paid for her notice period i.e. to be put on garden leave or to be paid in lieu of notice. That is what the respondent agreed to after Miss Veitch said she felt she was being punished for complaining about Mr Whitelaw.

118. In our judgement, it was not detrimental treatment to require the claimant to work her notice period in line with her contractual obligations. In any event we are satisfied that the respondent's decision not to immediately place the claimant on garden leave but instead to require her to work her notice and to do so from Stockton was in no sense whatsoever because the claimant had alleged that Mr Whitelaw had harassed her. We accept Mr Evans explanation that the reason the claimant was asked to work her notice was that he felt the company could still benefit from her skills during that period and the reason she was asked to work from Stockton was that she had made it clear she was unwilling to work with or near Mr Whitelaw.

119. It follows that the claims of victimisation are not made out.

Claim number 2500192/2019: Claims by Miss Sobihy

Allegation that the Respondent harassed Miss Sobihy (or in the alternative directly discriminated against her because of her sex) by doing the following: Mr Whitelaw made comments about women in management in October or November 2018.

120. We have found as a fact that, in mid-October 2018, Mr Whitelaw said to Miss Veitch that he was surprised Mr Thompson had women as management in the company; that 'the Adam I know' would never have women in management roles; that Miss Veitch and the two other female managers 'just ramble on and are too emotional' in meetings and 'go off on a tangent'; and that if he were in charge, things would be run differently.

121. By making this comment Mr Whitelaw was, in essence, saying that women in general were not capable of performing management roles as well as men. This was clearly conduct related to sex.

122. Miss Sobihy learned of Mr Whitelaw's comments on 5 November, on the day she also learned that her future as an employee of the company would be in his hands. Miss Sobihy had had managerial aspirations: she had joined the company in the expectation that she would be given a general manager role. We accept

that she was deterred from applying for one of the club manager posts by the fact that Mr Whitelaw was the person deciding who would be appointed and Miss Sobihy, in light of what she had learned from Miss Veitch, thought that he would not appoint a woman: this is consistent with what Miss Sobihy said to Mr Evans in person on 5 November and her emails of 6 November. Although Mr Whitelaw's comments were not made to Miss Sobihy, we accept they were unwanted by her and that she perceived them as creating a hostile, degrading, humiliating or offensive environment for her. In our judgement very many women in the claimant's position would take great exception to Mr Whitelaw's comments and feel unwelcome in a workplace in which he was a senior manager. We are satisfied that it was reasonable for Miss Sobihy to perceive the conduct as creating a hostile, degrading, humiliating or offensive environment for her.

123. We find that the respondent did harass Miss Sobihy as alleged.

Allegations that the Respondent directly discriminated against and/or victimised Miss Sobihy by dismissing her.

124. As recorded above, there are facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the respondent selected the general managers, including Miss Veitch, to be made redundant from the general manager role because they are female and that they treated the claimant less favourably than they would have treated a male general manager. Miss Sobihy was not a general manager. Nevertheless, we are satisfied that many of the facts that led us to conclude that the respondent discriminated against Miss Veitch because of sex also support an inference that the respondent dismissed Miss Sobihy because of sex. In particular, as Mr Whitelaw voiced an opinion about women in management that strongly suggests he believes women are not as capable as men in such roles; we infer that it is likely he feels the same about women in some other roles.

125. However, as recorded above, we are satisfied that the respondent's plans to set up a new telesales team were genuine and that the respondent's managers genuinely intended that the new telesales team would take over the responsibilities for sales that had, until then, been carried out in each of the clubs by the club hosts/receptionists. We accept that those decisions were made for financial reasons and were untainted by sex discrimination.

126. We also accept that the new telesales roles were substantively different roles from those of the existing club hosts/receptionists and there were to be fewer telesales positions than there were club hosts/reception roles, with those jobs being carried out from a single location rather than from within the clubs. Therefore, we accept that, in the case of club hosts/reception roles the need for redundancies is much more apparent than was the case for general managers. Once the respondent decided to do away with the club host/receptionist roles and replace them with a smaller number of different jobs, redundancies were inevitable.

127. The decision was taken that the existing roles of the general managers and the club host/reception roles were to be made redundant and staff would no longer continue in those roles. There was to be no process of 'selection' in the sense of selecting only some members of staff for redundancy from those roles. None of the staff were to be retained in those roles. There were alternative roles available and staff were offered the opportunity to apply for those roles. Staff were told that if they applied there would have to go through an interview process and that those interviews were to be conducted by Mr Whitelaw. They were given a very short time in which to inform the respondent's managers if they wanted to apply for any of the alternative roles. The next day Miss Sobihy sent an email asking how much notice she would receive and what redundancy package she would be entitled to if she were to choose redundancy and also asking whether she would still be entitled to a redundancy package if she were to apply for an internal role but be unsuccessful. Within a short time of receiving Mr Evans' response Miss Sobihy sent an email to Mr Evans and Mr Thompson which began 'I have decided not to go ahead with an interview with Kris Whitelaw...' and then set out the reasons for her decision, including her belief that Mr Whitelaw would be biased in any interview and that the jobs had already been offered to others in any event. Miss Sobihy did not, in her email, invite the respondent's managers to respond. Miss Sobihy was aware, because Mr Evans and Mr Thompson had explained to staff at the meeting the previous day, that her existing role was to be made redundant and that the only option offered to her for avoiding that eventuality was to apply for one of the alternative jobs. On any objective reading of Miss Sobihy's emails, it is clear she had elected not to apply for any of the available roles and was communicating that decision to her managers. In dismissing Miss Sobihy, the respondent simply did what it had told employees it would do if they did not apply for any of the available vacancies.

128. We are satisfied that Miss Sobihy was dismissed because her role was redundant and she informed the respondent's managers that she did not want to apply for any of the available alternative roles. The respondent would have dismissed a male employee who took a similar decision not to apply for one of the alternative jobs. We are satisfied that the respondent's decision was in no sense whatsoever because of sex.

129. Miss Sobihy submits that, in the alternative, she was dismissed because she had done a protected act, within the meaning of that term in the Equality Act 2020. She contends that the protected acts were the comment she made to Mr Evans on 5 November that Mr Whitelaw had said he did not think women should be in management and her email of 6 November in which she said 'If I was to apply for a role it would be management. After [Mr Whitelaw's] comments that women should not be in charge and he finds it hard to believe how Adam allows women to 'ramble' on in meetings I feel that the interview will be discriminated.' We are doubtful that what the claimant said on these occasions can fairly be construed as her 'making an allegation (whether or not express) that A or another person has contravened' the Equality Act, as opposed to an allegation that someone might in future contravene the Act. However, we have not had to determine that matter because, for the reasons given in the preceding paragraph, we are satisfied that the respondent's decision to dismiss the claimant was in no

sense whatsoever because of what she had alleged about Mr Whitelaw but, rather, was because her role was redundant and she informed the respondent's managers that she did not want to apply for any of the available alternative roles.

130. It was also suggested by the claimant that the respondent discriminated against her by not permitting her to work her notice. We have, however, rejected the claim that Miss Sobihy was the only member of staff to be dismissed straightaway as part of the redundancy process, with every other member of staff having worked their notice period. We have found as a fact that some staff who left as part of the restructure worked at least some of their notice whilst some did not.

131. In our judgement Miss Sobihy has not shown facts from which we could conclude that the respondent's decision not to allow her to work any of her notice period was because of sex or because she had complained about Mr Whitelaw having made derogatory comments Mr Whitelaw about women in management.

132. The complaints that the Respondent directly discriminated against and/or victimised Miss Sobihy by dismissing her are, therefore, not made out.

Allegation that the respondent breached Miss Sobihy's contract of employment by failing to follow its grievance procedure after she complained about Mr Whitelaw's comments about women in management.

133. It is apparent from the clear wording of the claimant's contract of employment that the grievance procedure did not form part of her contractual terms and conditions of employment. The claimant's claim that the respondent breached her contract by failing to follow its own grievance procedure is, therefore, not well founded.

Remedy

134. The Tribunal will be in contact with the parties shortly to arrange a hearing to determine the appropriate remedy in each claimants' claim.

_____
Employment Judge Aspden

Date 4 March 2020

Note
Reasons for the decision having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.