EMPLOYMENT TRIBUNALS

Claimant:	**Miss AB**	
Respondent:	**The Commissioners for Her Majesty's Revenue and Customs**	
Heard at:	**Cardiff**	**On: 17 July 2020, 20 July 2020, 22-28 July 2020; and 29 July 2020 (in chambers)**
Before:	**Employment Judge C Sharp**	
Members:	**Mr P Charles** **Ms L Bishop**	

Representation:
Claimant: In person
Respondent: Mr J Allsop (Counsel)

RESERVED JUDGMENT

The unanimous decision of the Tribunal is that:-

(1) The claimant's claim of harassment under section 26 of the Equality Act 2010 is not well founded and is dismissed;

(2) The claimant's claim of victimisation under section 27 of the Equality Act 2010 is not well founded and is dismissed.

REASONS

1. The claimant, anonymised as Miss AB, presented claims of harassment related to her sex or of a sexual nature under section 26 of the Equality Act 2010 ("the Act") and victimisation due to the alleged making of four protected acts under section 27 of the Act against her employer, the Commissioners for Her

Majesty's Revenue and Customs ("HMRC") to the Employment Tribunal on 19 January 2019.

Anonymity

2. A restricted reporting order ("RRO") was made by Employment Judge S Moore on her own initiative on 20 August 2019 preventing the identification of the claimant and another individual, referred to here as Mr XY, until the decision on liability and remedy was handed down by this tribunal. Following submissions by the parties at the end of these proceedings, the tribunal made an anonymisation order. Both parties submitted that while such an order would be an interference with the open justice principle and the right under Article 6 of the European Convention of Human Rights to have a public hearing (as well as the right to freedom of expression under Article 10), such interference was necessary.

3. In the case of the claimant, anonymisation was necessary because she had asserted that she had been a victim of a sexual assault under the Sexual Offences Act 2003 and was entitled to lifetime anonymity under the provisions of the Sexual Offences (Amendment) Act 1992, though it was not clear if the entitlement to lifetime anonymity applied to a legal decision of this nature given the definitions within that Act.

4. In the case of Mr XY, it was submitted that he had been accused of carrying out a very serious criminal offence, but it might affect both his reputation and ability to undertake work to be publicly named; it was also submitted that Mr XY had a right to privacy and respect for his family life under Article 8 of the Convention; Mr Allsop submitted that the evidence before the tribunal showed that Mr XY's mental health had suffered as a result of the allegations made against him by the claimant (which both his employer and the police had investigated and chosen not to progress on the basis that there was no case to answer).

5. The tribunal paid full regard to the principle of open justice, which it acknowledges as a vital safeguard for a democratic society and ensures transparency and confidence in the justice system. It noted previous observations by the senior courts that the public is capable of realising that there is a difference between an allegation being made and it being upheld. The tribunal considered the serious nature of the allegation and the possibility that the claimant's identity could be established if the identity of Mr XY was published. It acknowledged that the lifetime anonymity granted by the Sexual Offences (Amendment) Act 1992 may not cover written decisions of a judicial body, but the tribunal considered it relevant that Parliament had decided that those who alleged to be victims of sexual assaults should be entitled to anonymity.

6. Combined with the evidence before the tribunal of the distress suffered by Mr XY and consideration of his Article 8 rights, together with the need to protect the claimant's anonymity to properly reflect the protection Parliament had put in place, the tribunal judged the granting of an anonymity order covering both the claimant and Mr XY to be a necessary interference with the principle of open justice but also in the interests of justice. The tribunal further concluded that provided these written reasons explained the claim before it, and set out appropriately the evidence considered in the reasons for its decision, the anonymity order would not impair the public's ability to understand what had happened in these proceedings. It did not judge it necessary or proportionate to anonymise the identity of the respondent, who employs a large number of individuals; it was determined that the identities of Miss AB and Mr XY would not be known by the mere disclosure of the identity of the respondent, provided care was taken in drafting these written reasons.

Other applications (start and end of hearing)

7. At the start of the hearing, the claimant's application made by email on the 16 July 2020 to amend the agreed list of issues was considered. The application was successful and reasons given. The claimant also was given permission to amend her witness statement.

8. After consideration of written submissions from the parties by the tribunal, it became clear that the claimant wished to make a number of applications at that stage. The claimant applied to be permitted to produce further evidence regarding her dominant hand, and also applied to be permitted to amend her claim to introduce a new victimisation claim in relation to a whistleblowing complaint she raised in December 2018 and also a claim of suffering a detriment due to the making of a protected disclosure under the Employment Rights Act 1996, which included consideration as to whether time should be extended to allow the claims to proceed The claimant's applications were unsuccessful and reasons were given at the time.

9. The parties were reminded of the time limit to request written reasons in respect of decisions made in relation to applications by the tribunal.

Background

10. There were few disputed facts to be determined by the Tribunal in this case. The facts within this section are undisputed, unless the contrary is stated. Miss AB, the claimant, was at all relevant times (and remains) an employee of HMRC. In order to preserve the anonymity of those covered by the anonymity order, her job title and the team for which she worked will not be stated in these written reasons; neither will the precise building in which she worked or the city be identified. This information is not required to enable the parties or members of the public reading this decision to understand the case or this decision, other

than it would assist the reader to know that the building in which Miss AB worked was a large high-rise building with three wings.

11. Miss AB commenced her employment with HMRC on 20 March 2017, and was promoted that November. The promotion required her to attend "*base camp*" for a period of about six weeks before commencing her role in an area of HMRC's business to which the tribunal will refer to as the "*E department*". The E department dealt with a specific area of HMRC's business within several offices across the UK. Miss AB was a trainee and needed to build a portfolio enabling her to pass her training referred to as a quality assurance framework ("QAF"). In Miss AB's place of work, those working in this department were split into two teams. One team was headed by Mr Webb and the other was led by Ms Ellis-Jenkins. According to the undisputed evidence before the tribunal, the work of the two teams was largely similar, though in 2018 it was anticipated that Ms Ellis-Jenkins' team would take on a new aspect of work which Mr Webb's team was not yet going to deal with. It transpired that in fact this new area of work did not arise in the volumes expected by HMRC and there were few cases dealing with the new work.

12. Miss AB was moved from Mr Webb's team to Ms Ellis-Jenkins' team on 11 June 2018. The tribunal heard evidence about the reason for the claimant's move, though it was accepted that the claimant was content to move teams. The evidence of Mr Webb and his line manager Ms Jones (who also line managed Ms Ellis-Jenkins) was that the claimant was moved because she was one of the causes of stress suffered by Mr Webb which led to him taking a period of sickness absence from 1 May 2018. The evidence of Ms Ellis-Jenkins was that the team were being restructured (by moving staff) and she was keen to have the claimant on her team as she thought the claimant's skills were well-suited to the new area of work she expected her team to deal with in the future. Ms Jones's evidence is that she kept confidential Mr Webb's difficulties from Ms Ellis-Jenkins. It is accepted that the claimant was not told that Mr Webb and Miss Jones viewed her as one of the sources of stress suffered by Mr Webb.

13. It is not disputed that during the period that the claimant was first line managed by Mr Webb she raised a number of concerns with him and was also the subject of concerns raised about her. Mr Webb was concerned about a story the claimant relayed to him early on her arrival into his team; the claimant alleged that Mr Webb had had a conversation with the manager in charge of base camp about allowing the claimant to join his team early which had ended with Mr Webb swinging his arms and muttering. As Mr Webb said he had not spoken to the manager for some time, and certainly not about the claimant, the claimant thought perhaps they had been a misunderstanding and said that she did not want the matter pursued. There was a discussion about the claimant's attendance at the Christmas meal 2017 where the claimant alleged Mr Webb had talked her out of attending.

14. More importantly, there was a number of issues about how the claimant interacted with various colleagues and interpreted comments made to her. The claimant had been assigned a mentor, who had been a relatively recent trainee, but the relationship had not been a positive one. The evidence before the tribunal (and not disputed by the parties) showed that there was an argument with raised voices between the claimant and her mentor on 29 March 2018 and the claimant had asserted that the mentor was not giving her suitable support; that a more experienced member of the team had noted an interaction between the claimant and the mentor and had told Mr Webb that he would not feel comfortable if asked to mentor the claimant; the mentor had felt that the claimant was questioning him and appeared to want a full-time member of staff at her disposal to assist; and that ultimately Mr Webb suggested that the mentoring relationship should end and Miss AB and the mentor should no longer sit next to each other but be located at opposite sides of the office (which is what occurred).

15. Mr Webb in the course of dealing with Miss AB and the mentor made a comment separately to each that he expected them to be professional and to get on, but he did not expect them to bring cake to the office for each other. It is apparent from the myriad of emails and queries that followed from the claimant that she did not appear to understand the face value meaning of this comment (that cake is generally brought by friends or colleagues with positive working relationships to the office, and the mentor and Miss AB were not friends following the breakdown in their relationship) and believed that there was some sinister or adverse implication being made. The claimant kept raising this issue on and off for several months.

16. Additionally, Mr Webb formed the view that Miss AB was trying to force the now former mentor to talk to her when she wished and was trying to control him, while at the same time raising concerns more than once that the mentor was smirking and laughing with others. In an email of 20 April 2018, the claimant emailed Mr Webb and appeared to suggest that the mentor had made a pass at her which she had declined. She then said nothing was going on and that when she was nice to the mentor, he was nice in return. It appeared that the claimant had unresolved issues surrounding the mentor, but did not provide sufficient information to enable Mr Webb to resolve matters. It is also noteworthy that Miss AB claimed to Mr Webb (and this tribunal) that another officer (described by her as lovely) had flirted with her, but she did not want anything done about it as she was quite flattered; she just wanted to make Mr Webb aware.

17. One of the team members on Ms Ellis-Jenkins team was Mr XY. Prior to the claimant's move to Ms Ellis-Jenkins team, Mr XY had dealings with the claimant. There is undisputed evidence that the claimant and Mr XY had been alone together in a room intending to carry out an interview, and had interacted in the office. One of the claims brought by the claimant in these proceedings is that at some point in December 2017 and January 2018, Mr XY had allegedly

looked pointedly and furtively at her mouth on two occasions, but no complaint was raised at the time.

18. Following the claimant's transfer to Miss Ellis-Jenkins' team in June 2018, on 30 August 2018, Miss AB and Mr XY entered the office used by the E department early in the morning. It appeared that they were the first members of the department to arrive. They shared the same lift in order to reach the floor on which the team was based, walked down the same corridor and arrived at a double door containing window panes and a keypad lock on the central pillar of the right-hand door. Much was made by the claimant concerning the suggestion that her and Mr XY were together on this journey, but in the judgment of the tribunal, nothing turned on this point. It was clear, and using the natural interpretation of the language used, that Miss AB and Mr XY had been in the same lift, and while it was not agreed whether they exited the lift at precisely the same moment, Miss AB was ahead of Mr XY while walking down the corridor and reached the door first.

19. It is at this point that the accounts of what happened on 30th August diverge significantly and is a matter that requires the determination by the tribunal. In summary, Miss AB alleges that Mr XY approached her from behind (later described by her as "*trapped*") and something that felt like his genital area touched her bottom; Mr XY denies this and says that all that happened was that his fingers made contact with the claimant's fingers on the keypad as she was struggling to enter the key code. Miss AB denies that their fingers made contact but says if they did, fingers "*have sexual connotations, and are phallic*" and therefore even Mr XY's account is evidence that a sexual assault took place. Miss AB stated in her witness statement that "*touching fingers is especially intimate in my opinion*" and did not accept that touching fingers was "*nothing to worry about*"; she said that she found "*all forms of touching potentially sexual"*. Miss AB also commented that the keypad was "*small*".

20. On Sunday 9 September 2018, the claimant sent by email a lengthy written complaint to Ms Ellis-Jenkins (pages 162-168 of the bundle), in which she spent several pages talking about the death of her dog and her issues with other team members. It is only on the final page that Miss AB alleged in summary terms (one paragraph in length) that Mr XY *"stood extremely close behind me and I felt his body touch my rear, if you get my drift. It lasted about a second, which I felt was too long to be an accident."* Miss AB stated that she "*really don't want this considered formal*" but was concerned that matters with Mr XY might escalate if she did not tell someone what had happened.

21. Earlier within this complaint on the penultimate page, Miss AB also alleged that Mr XY when she first joined the E department "*move his eyes around as though to rub quite intently all the way around my mouth*" while she was speaking to him but she had "*assume he didn't know he'd done it as it didn't occur to me that he might have done something like that deliberately*", though she also said she *"thought perhaps he was a little bit lonely".* Miss AB alleged that the

behaviour was repeated a few weeks later when Mr XY visited her desk to talk to her about something.

22. It is Ms Ellis-Jenkins' unchallenged account that she did not start to read the complaint until she arrived in the office on Monday 10 September and she did not reach the end of this document before the claimant unexpectedly walked into the office and a conversation with her commenced; this meant that she was unaware of the issues raised regarding Mr XY when she first spoke to Miss AB. It is accepted that Ms Ellis-Jenkins asked the claimant set out her complaint in more detail and to go home. The claimant provided more details in writing on 11 September 2018 (pages 174-179 and 180-186 of the bundle), where she said *"As I entered the code I then felt as though his body brushed my bottom with what I can most easily describe as a small press or nudge, making it feel more than a brush. I wouldn't say it was very forceful but I was definitely able to feel it. It lasted about half a second (*updated later that day to *"half a second to a second") which I felt was too long for him not to notice too…I didn't know how to respond and had little space to get out of his way until the door was open so didn't say anything. I felt trapped in the small space by the door as it happened but felt [Mr XY] move back slightly after the contact had finished".*

23. Miss AB also gave more details about Mr XY's alleged staring at her, which she thought took place around January 2018. She said that "*it then appeared that he slowly, from where he was standing, moved his eyes around my mouth in a very precise fashion that appeared two steps forward, one step back, starting at the top of my mouth just below my nose so intently as to make it fell to me that his eyes were rubbing my skin as they moved. The movement continued all the way from just below my nose in this way, completing the entire circle. When his eyes got back up to the top where he'd started, it finished off with three or four backward and forward motions along the same point, a bit like a finishing backstitch when sewing, before stopping*." Miss AB said that her view at the time was that "*it couldn't have been deliberate*", but the action was repeated several weeks later. Miss AB now believes these two incidents occurred slightly earlier in December 2017 and January 2018.

24. Notwithstanding her request with the complaint to be dealt with informally, following advice from Civil Service HR ("CSHR") given to Ms Ellis-Jenkins (page 198), the claimant was told that her allegation was so serious it could not be dealt with informally and must be dealt with as a disciplinary issue against Mr XY. It is worth noting that initially Ms Ellis-Jenkins was advised she could run a formal and informal grievance together at the same time, but the final advice was that the complaint had to be dealt with under the gross misconduct-sexual harassment route. Ms Ellis-Jenkins's evidence was clear that she followed the final advice of the specialist HR team, rather than the initial thoughts of CSHR and her line manager, and handed over the complaint to others as advised. However, due to the initial advice, Ms Ellis-Jenkins had started to analyse the complaint.

25. It is worth pausing to note that the claimant later, and during these proceedings, felt very strongly that her complaint should have been dealt with as a grievance as she would have then been told of the outcome and had the right to appeal. However, the grievance procedure shows that if a grievance of this nature had been upheld, the likely outcome would have been the institution of disciplinary proceedings, the most serious step when dealing with an employee open to an employer. The policy is also clear that it is permissible to proceed with disciplinary proceedings at any point when dealing with a grievance. It does not preclude the respondent from deciding the matter is so serious, it should go straight to the disciplinary route.

26. The claimant was temporarily moved to work on another floor while steps were taken in relation to Mr XY by the respondent. He was notified of the allegations verbally and in writing on 11 September 2018 (pages 196-197 and pages 203-204), moved to work in a different floor and then permitted to work from home until he was signed off sick. The allegation against him was investigated by Internal Governance ("IG"), the most senior and serious professional investigation team available to deal with such matters. Mr XY attempted to resign with notice on 21 September 2018 due to the "*false accusations*", but he later withdrew his resignation.

27. The claimant during the course of the process produced two accounts in writing (amending the second) and had an email exchange with the investigator from IG (page 336 shows part of what is appears to be an exchange from 24 September 2018, page 381 shows another exchange on 28 September) where the claimant said "*what happened was a small press or a nudge…I felt the contact itself mostly towards the mid to upper region of my left buttock area*". Another colleague was asked if he had observed any untoward behaviour between Miss AB and Mr XY, and said that no such conduct had been observed.

28. Mr XY was interviewed by IG and a transcript was before the tribunal. He denied adamantly the claimant's account of events and set out the account summarised above, adding that he wore varifocal lens which caused his eyes to point oddly at times in order to see through the appropriate lens. The work colleague who accompanied him also said that he sat in the centre of the office and noticed nothing untoward generally. Photos of the door were obtained.

29. In addition, it was the oral evidence of Ms Ellis-Jenkins that she was asked by IG to check a point raised by the claimant about the locking of the door. The claimant claimed that about a week after the alleged assault on 30 August, she was told by Mr XY that the door was no longer locked by security automatically. Ms Ellis-Jenkins in her oral evidence said that she had this confirmed to her that the security team and therefore the door may or may not have been locked, depending on whether the last person to leave the office the day before had locked it (which was meant to happen). The claimant considered that the issue of locking the door was relevant to the credibility of Mr XY, though the tribunal

was not persuaded this point was as important as the claimant felt, given the evidence that only the practice of security had changed, not the expectation that the door should be locked on departure of the last member of staff. That said, the tribunal noted that the detailed IG report did not mention asking Ms Ellis-Jenkins to obtain information from the security team and it was not within the reasoning set out within that report.

30. Following the investigation by IG, a detailed recent report exhibiting the evidence gathered was forwarded to the decision maker (pages 267-386). In essence the case depended on the word of Miss AB against the word of Mr XY and it was found that there was no case to answer; in other words, Miss AB had not demonstrated to the satisfaction of IG or the decision maker on the balance of probabilities that what she had alleged had occurred. Mr XY was notified of the outcome and that the matter to come to an end on or around 8 October 2018. He was due to return to the office on 5 November 2018.

31. The claimant was notified on 12 October 2018 by Ms Ellis-Jenkins and Mr Webb that Mr XY would be returning and over the course of the next few weeks, Mr Webb and Ms Jones tried to work with the claimant about the way forward (as Ms Ellis-Jenkins was on annual leave). The claimant was given a number of options such as staying in Ms Ellis-Jenkins team, returning to Mr Webb's team, moving to another department within HMRC and attending mediation. The claimant accepts that she chose to return to Mr Webb's team.

32. On or around 29 October 2018, the claimant reported that she had been a victim of sexual assault on 30 August to the police. The police investigated and invited Mr XY to attend a police station interview, which happened on 19 November 2018. Ultimately, the police informed both Miss AB and Mr XY that there would be no charges (it seems that this decision was taken shortly after the policy interviewed Mr XY). In the meantime, the claimant raised a number of complaints with the respondent about the fact that she had "*not received any feedback*" about her allegation against Mr XY which by 1 November 2018 she described as *"sexual touching (assault) while trapped in a small space where I couldn't move away because the door was right in front of me and I couldn't turn around because [Mr XY] was directly behind me and I'd have been right in his face*" (email to Ms Jones and others – page 444); though she had been told that the disciplinary had concluded and Mr XY would be returning to the office, the claimant did not consider this as "*feedback*". The claimant was later with the permission of Mr XY (given on 18 January 2019) told the outcome that there was no case to answer.

33. The claimant raised grievances about Ms Ellis-Jenkins and Ms Jones to Mr Simons (the line manager of Ms Jones and at the time a grade 6 senior officer) on 1 and 8 November 2018, as well as other grievances. She also approached ACAS and obtained an early conciliation certificate covering the period of 22 November 2018 to 20 December 2018.

34. The claimant took sick leave during November and December 2018 and according to the fit note provided by her GP was due to return on 18 December 2018. By this point, she had transferred back to the team managed by Mr Webb. The cases being dealt with by the claimant had been temporarily reallocated in her absence, and had not been returned by 18 December when she did return. Mr Webb explained to Miss AB that she was still training and had complained about a lack of support when last within his team, so he wanted to have a meeting with her on 24 December 2018 to discuss her return to work and the support point. The claimant then asked have the 24th December as annual leave and due to a combination of the claimant's annual leave, Mr Webb's annual leave and Christmas/New Year, it was not possible for this issue to be picked up again until on or around 7 January 2019.

35. On 7 January 2019, the claimant sent a long email questioning Mr Webb on many points, including decisions he had made and issues relating to the situation with Mr XY. Under cross examination, Miss AB accepted that her email was unreasonable as she could now see following disclosure that Mr Webb had been trying to support her in difficult circumstances. On receipt of the email, Mr Webb forwarded it to Ms Jones complaining that the claimant's conduct towards him had been unreasonable and she was persistently raising the same issues again and again and not accepting the answers given. Mr Webb indicated that he was likely to submit a complaint about the claimant's conduct towards him and was signed off sick on 8 January 2019.

36. While Mr Webb was absent on sick leave, the claimant was moved to a new arrangement of being managed remotely by a manager from the E department based in another location. The claimant issued employment tribunal proceedings against Mr XY on 18 January 2019 (later withdrawn) and these proceedings against the respondent on 19 January 2019. Mr Webb raised a grievance against the claimant on 23 January 2019 while Mr XY raised a grievance against the claimant on 28 January 2019. Both alleged that the claimant was bullying them. On or around 5 February 2019, the claimant was informed that Mr Webb and Mr XY had raised grievances against her.

37. The claimant herself was by then on sick leave and presented a number of fit notes to Mr Simons, describing her as suffering from work-related stress. Mr Simons responded to the claimant's grievances raised in November 2018 on 9 January 2019 and indicated that he expected the claimant to return to work in the office when she was fit. Due to the nature of the fit notes provided by the claimant in February 2019 (there were several, though little information was provided, and they covered a period up to 8 March 2019), they indicated that her GP felt she was fit for work, provided she was allowed to work from home or have any other reasonable adjustments; the respondent's view of the fit notes provided was that they were saying that unless the claimant was able to work from home, she was not fit for work.

38. Mr Simons' evidence was that while he was willing to agree on a week by week basis whether the claimant could work from home, by 1 February 2019 he was unwilling to allow the claimant to continue to work from home as he believed her reason for wanting to stay at home was because she felt her complaints were unresolved. There was an exchange of correspondence between the claimant and Mr Simons by email. Mr Simon's position was that the claimant had been instructed on 1 February that she must return to work in the office and to discuss any reasonable adjustments required *("As I have explained, this [working from home] is no longer reasonable for the business and so if you are unable to return to [the office] on Monday, we will need to manage your sickness absence until you are ready to return to the office there*"), and that her continuing to work from home unauthorised using her IT access was an act of insubordination *("Once you are well enough to return to the work in the office, I expect that you will do so in [the office]. If you continue to refuse to do so, I must highlight that I will consider this refusal in line with HMRC's policy on insubordination");* the claimant's position was that she had not understood that she was being instructed to return to work in the office.

39. When Miss AB's IT access was deactivated on Mr Simons' instructions, and she was unable to work from home, she returned to the office on 8 February 2019. There is no dispute that the claimant gave Mr Simons' less than one hours' notice of her return, and the correspondence shows that she had been told repeatedly that due to the nature of the fit notes, the respondent needed to arrange a meeting with the claimant to establish what reasonable adjustments may be required to allow her to safely work in the office and to discuss how to manage her return given her unhappiness about the situation with Mr XY and the grievances made against her.

40. On 8 February 2019, the claimant gained access to the office; there was no manager present to deal with her given the extremely short notice given by her. Mr Simons gave instructions to colleagues via the telephone to ask the claimant to return home and to arrange the meeting as previously outlined by him; it was not until the claimant was assured that she would receive full pay that she was agreed to do as instructed. Mr Simons suggested that a colleague with whom the claimant was friendly walked out of the building with her; the claimant said that this was not necessary and ultimately left the building on her own, her departure confirmed by security.

41. On 8 February 2019 following this incident, the claimant's pass was deactivated (page 1023) which should have prevented her gaining access to the office but according to an account given to Mr Simons by Ms Jones (page 1226) the claimant had been prevented by security from entering, but a member of staff who knew Miss AB swiped her into the building, circumventing the deactivation of her pass, on 19 February 2019. On 13 February 2019, the claimant had agreed to meet a member of staff from HR on the 19th to discuss her return to work and any support or reasonable adjustments required to facilitate this; she continued to demand her IT access to enable access from home was re-

established but the respondent refused as it was concerned about data security and the claimant's health.

42. On 19th February 2019 the claimant returned to the office, bringing with her another fit note from her GP saying that she was now fit for work with no restrictions. The return to work meeting had been arranged to take place in the afternoon, but the claimant arrived in the morning. Accordingly, Ms Jones met with Miss AB in the morning and was presented with the new fit note, while the return to work meeting with HR took place later as planned. Miss AB temporarily worked in the old restaurant area where working pods had been installed and later was assigned to the 16th floor, away from the E department.

43. The claimant raised further grievances against several members of staff, including Mr Simons, to Ms Hillyer (Mr Simons' line manager) in March and April 2018; the claimant continued to raise complaints over an extended period after these dates but these are outside the scope of these proceedings.

44. In the meantime, the allegations made against the claimant were investigated. The grievance brought by Mr XY was upheld on the basis that the claimant had repeatedly and persistently raised the same allegations internally against him and was refusing to accept the outcome provided by the disciplinary process, though the point was made that the claimant was entitled (as any member of the public is entitled to make complaints to the police and the employment tribunal). The grievance raised by Mr Webb was only partially upheld in that the claimant was found to have bullied him, not the other members of staff mentioned in the grievance.

45. On 30 August 2019, the claimant persuaded an inspector of the local police to send an email to Mr XY which effectively said the claimant was concerned that Mr XY might try and invade personal space and touch her. Mr XY was asked not do so but it was equally made clear within the email that the police had no intention of taking any action in relation to Mr XY or the allegations made by the claimant. The evidence bundle shows that the claimant is continuing to raise complaints about the police to its professional standards department as she does not accept the decision not to press charges against Mr XY (pages 1669-1679).

These proceedings

46. The claimant has issued several other claims not before this tribunal. In order to progress matters in an efficient manner and in accordance with the over-riding objective, Employment Judge S Moore ordered on 9 January 2020 that a temporal cut-off date of 20 June 2019 should apply to these proceedings – matters or claims arising after this date have been stayed pending the determination of these proceedings. 20 June 2019 was chosen as this was the last date that the claimant amended her statement of case.

47. Incorporating the amendments made to the list of issues at the start of this hearing and in preceding preliminary hearings, the issues to be considered by the tribunal and with the agreement of the parties are as follows:

    i. Were the claimant's complaints presented within the time limit set out in s. 123 (1) (a) and (b) of the Equality Act 2010 ("the Act")?

       This issue may involve consideration of subsidiary issues including whether there was act and/or conduct extending over the period, and/or a series of similar acts or failures; with the time should be extended on a just and equitable basis; when the treatment complained about occurred.

       Given the date of the claim form and amendment applications were presented and the dates of early conciliation, the tribunal may not have jurisdiction to deal with all of the complaints.

    ii. Did the respondent engage in conduct as follows:

        a. in December 2017 and January 2018 Mr XY pointedly and furtively looked around the claimant's mouth?
        b. On 30 August 2018 Mr XY allegedly sexually assaulted the claimant by inappropriately touching her bottom with what felt like his genital area?
        c. On 19 November 2018 the police informed the claimant that Mr XY claimed to have only touched the claimant's fingers?
        d. On 12 April 2019 Mr Russell Evans required the claimant to justify using a euphemism previously for the word genitals and required her to justify why she had done so?

    iii. If so, was that conduct unwanted?

    iv. If so, did it relate to the protected characteristic of sex and/or was it a sexual nature?

    v. Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

    vi. Did the conduct have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant? Whether conduct has this effect involves taking into account the claimant's perception, the other

circumstances of the case and whether it is reasonable for the conduct have that effect.

vii. Did the claimant do a protected act? The claimant relies upon following:
   a. on 9 September 2018 submitted a written complaint regarding the alleged sexual assault to Ms Ellis-Jenkins;
   b. on 22 November 2018 contacted ACAS to initiate early conciliation regarding the above alleged sexual assault;
   c. on 18 January 2019 initiated tribunal proceedings against Mr XY;
   d. on 19 January 2019 initiated tribunal proceedings against the respondent.

viii. Did the respondent subject the claimant to the following detriment/s:
   a. the claimant's grievances of November 2018, March 2019 and April 2019 were not conducted properly;
   b. the claimant was not informed that she had reported a criminal offence;
   c. Mr XY's disciplinary was not conducted properly;
   d. the respondent suggested that the claimant enter mediation with her assaulter;
   e. the respondent could not guarantee that the claimant would not be prejudiced by any move in teams;
   f. the respondent could not guarantee that the claimant would be safe around Mr XY;
   g. the claimant was given no casework after a period of sick leave at the end of December 2018;
   h. there have been several unfounded grievances submitted against the claimant which have not been properly conducted or investigated;
   i. the claimant was pressured by the respondent to return from working from home when there was nothing in place to enable her to work from the [redacted] office;
   j. the claimant was asked to leave the building after being asked to return to work, initially by being escorted out;
   k. the claimant's pass was deactivated in February 2018 meaning that she was unable to enter her place of work;
   l. the claimant was isolated from her team by being required to ask permission to visit the office and not being able to attend any meetings, even by telephone;
   m. the claimant faced unfounded accusations of "*beefing up*" her story against Mr XY;

n. the claimant has faced disciplinary action for bullying for reporting the sexual assault to the police and to the employment tribunal;
o. the claimant is not allowed to apply for promotion at all since 5 June 2019 as she is under disciplinary investigation for unfounded complaints against her;
p. the claimant's health and safety has been breached by being asked to return to work from the [redacted] office while no process has been in place to ensure her safety during a fire evacuation and nothing is in place to ensure the same standard of others in E department when working late or the same standard of safety as others in E department at all;
q. asking the claimant to move if she did not feel comfortable around Mr XY after her complaint that he sexually harassed her was not investigated at all/not investigated properly;
r. wrong decision being reached in disciplinary against Mr XY. Proper outcome (whether for sexual assault or sexual harassment) was case to answer;
s. the claimant was issued with a notification of a formal disciplinary investigation into her for unfounded complaints after not receiving any feedback whether the grievance test had been applied properly by the respondent with respect to the grievances issued in March 2019 and April 2019 (breach of process);
t. Mr XY was not advised by the respondent that the claimant does not want him entering her personal space, leaning over her or coming into physical contact with her anywhere;
u. the claimant was required to respond to grievances issued against her without having received any response from the respondent that the claimant felt sexually harassed, harassed and victimised by these grievances;
v. claimant was not told her complaint constituted potentially a criminal offence, so she could report to the police, despite informing the claimant (the tribunal assumed this is a typo and actually the reference should be "informing the respondent that she did not…") that she did not feel safe around the assaulter;
w. the claimant was not advised to follow internal health and safety guidance at HR 62085 further to the assault she reported.

ix. If so, was this because the claimant did a protected act and/or because the respondent believes the claimant had done, or might do, a protected act?

x. If the claimant is successful in her claim, what remedy should be awarded?

The statutory framework

48. The claimant's claims all arise under the Equality Act 2010, and her right to present the complaints to the employment tribunal stem from s.39 and s.40.

49. A claim for harassment to be successful must meet the criteria set out in s.26 of the Act:

    a. *"(1) A person (A) harasses another (B) if—*

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

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

    (i)violating B's dignity, or

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

    (2)A also harasses B if—

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

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

    (3)A also harasses B if—

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

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

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

    (a)the perception of B;

    (b)the other circumstances of the case;

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

50. For harassment claims, in R (Equal Opportunities Commission) v Secretary of State for Trade & Industry [2007] ICR 1234 HC, it was accepted on behalf of the Secretary of State that the 'related to' wording (in the Sex Discrimination Act 1975) did not require a 'causative' nexus between the protected characteristic and the conduct under consideration: an 'associative' connection was sufficient. Burton J did not doubt or question the concession and

notwithstanding the provisions of the Equality Act 2010 replacing the 1975 Act, this view has not changed. For example, the EHRC Code of Practice on Employment (2011) deals with the 'related to' and states that the words bear a broad meaning and that the conduct under consideration need not be 'because of' the protected characteristic, but there must be a relationship between the protected characteristic and the reason for the conduct (Naillard).

51. For s.26 claims, the first question that the tribunal has to consider is whether that the act/s complained of happened, which requires the claimant to show that it is more likely than not the conduct occurred. If the claimant satisfies that burden, it is only then that the rest of section 26 comes into play. The burden of proof is explained in more detail below.

52. A claim for victimisation to be successful must meet the criteria set out in s.27 of the Act:

"(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."

53. Mr Allsop on behalf of the respondent confirmed that it was not running an argument that the claimant had given false evidence or information, or made a false allegation, or when making the allegedly protected act had acted in bad faith.

54. For victimisation claims, when considering whether a claimant has been subjected to particular treatment 'because' he/she has done a protected act, the Tribunal must focus on "*the real reason, the core reason*" for the treatment; a 'but for' causal test is not appropriate: Chief Constable of West Yorkshire v

Khan [2001] ICR 1065 HL, para 77 (per Lord Scott of Foscote). On the other hand, the fact of the protected act need not be the sole reason: it is enough if it contributed materially to the outcome (see Bailey cited below).

55. In relation to the s.27 claims, at the start of the proceedings and at regular points throughout, the tribunal reminded the parties that the causal link between any acts of detriment that may be found had to be established to be caused (or significantly influenced or contributed materially) by the protected acts asserted. It was clear that despite this, the claimant's approach was that everything that had happened after the first protected act was made must in itself be an act of victimisation if she disagreed with it. This is not correct as a matter of law.

56. What the tribunal must do is first determine whether the detriment complained of happened, whether any detriment factually proved is a detriment for the purposes of the Act, and only if the first two questions are answered in the favour of the claimant does the tribunal then go on to consider whether the detriment happened because of the protected act. For the claimant to be successful, it must be shown that a significant influence on the mind of the decision maker or the person who caused the detriment to occur was the protected act. This requires consideration of who made the decision complained of by the claimant in order to establish what was in their mind when the decision was made.

57. A detriment arises in the employment law context where, by reason of the act(s) complained of a reasonable worker would or might take the view that he or she has been disadvantaged in the workplace. An unjustified sense of grievance cannot amount to a detriment: see Shamoon v Chief Constable of the RUC (cited below). The Shamoon case also set out that the definition of "*detriment*" was that a "*reasonable worker might take that view*", a point that the tribunal set out to the parties at the outset of the hearing.

58. The tribunal explained at the outset of the hearing the burden of proof for discrimination claims. The burden of proof (known as the "*shifting burden of proof*") is set out in s.136(2) and (3):

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

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

59. On the reversal of the burden of proof, the tribunal reminded itself of the case-law decided under the pre-2010 legislation (from which it understood the 2010 Act did not depart from in any material way), including Igen Ltd v Wong [2005] IRLR 258 CA, Villalba v Merrill Lynch & Co Inc [2006] IRLR 437 EAT, Laing v Manchester City Council [2006] IRLR 748 EAT, Madarassy v Nomura International plc [2007] IRLR 246 CA and Hewage v Grampian Health Board [2012] IRLR 870 SC. In Hewage, Lord Hope warned that it is possible to exaggerate the importance of the burden of proof provisions, observing (paragraph 32) that they have "*nothing to offer*" where the Tribunal is in a position to make positive findings on the evidence. But if and in so far as it is necessary to have recourse to the burden of proof, the tribunal will follow the language of s136. Where there are facts capable, absent any other explanation, of supporting an inference of unlawful discrimination, the onus shifts formally to the employer to disprove discrimination. All relevant material, other than the employer's explanation relied upon at the hearing, must be considered.

60. The tribunal also bore in mind the "*reason why*" test from Shamoon (see citation below) where Lord Nicholls noted that the two-stage test at times might be artificial and confirmed that it was permissible for a tribunal to concentrate primarily on why a claimant was treated as they were and postpone considering other matters until it has decided why the treatment was afforded - was it on the proscribed ground or was it for some other reason?

Legal principles arising from the authorities

61. Mr Allsop on behalf of the respondent referred the tribunal to a number of authorities; the claimant did not but the tribunal took into account that she was a litigant in person. Mr Allsop's written submissions set out the authorities on which his client relied and reasons why, but the tribunal found the following authorities of particular assistance in this case:

Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11
Unite the Union v Naillard [2018] EWCA Civ 1203
Martin v Devonshires Solicitors [2011] ICR 352
Chief Constable of Greater Manchester Police v Paul Bailey [2017] EWCA Civ 425

Durrani v London Borough of Ealing UKEAT/0454/2012/RN
Cordant Security Ltd v Singh and another UKEAT/0144/15/LA

62. The authorities had a number of key observations for this tribunal to consider, many of which are summarised in the section above (for example, that an unjustified sense of grievance cannot amount to a detriment). The Durrani case is dealt with where relevant in the findings below but illustrated by analogy the importance of the causal link between any detriments found and the protected characteristic or protected act.

Evidence and Submissions

63. The tribunal heard oral evidence over the course of five days from a number of witnesses. Due to the global pandemic and the restrictions imposed by social distancing guidance, the tribunal was held as a hybrid hearing, in that the employment judge, Miss AB and Mr Allsop, who appeared on behalf the respondent, attended the hearing in person, while the non-legal members attended through cloud video platform ("CVP"). Witnesses attended either in person or CVP. The claimant gave evidence on her own behalf, while the respondent relied upon the oral evidence of the following witnesses:

Mr XY (in person) - the alleged assaulter of Ms AB;
Ms Catherine Jones (CVP) - the line manager of Mr Webb and Ms Ellis-Jenkins;
Ms Jacqueline Ellis-Jenkins (in person) - the line manager of the claimant between June 2018 and November 2018);
Ms Claire Block (in person) - the decision maker regarding the grievances raised against the claimant in 2019 by Mr XY and Mr Webb;
Mr Russell Evans (CVP) - the investigation manager regarding the grievances raised against the claimant in 2019 by Mr XY and Mr Webb;
Mr Christopher Simons (CVP) - the line manager of Ms Jones;
Mr Mark Webb (in person) - the line manager of the claimant between November 2017 to June 2018 and again from November 2018 to January 2019.

64. The tribunal found the witnesses called by the respondent to be credible and reliable, in that their evidence was consistent with the contemporaneous evidence within the hearing bundle and was internally consistent with previous explanations given (to the claimant or to investigators). The respondent's witnesses answered questions in a straightforward manner and made concessions where appropriate (for example, Mr Simons regarding the

difficulties he faced in getting timely expert HR advice and the "*immense delays*" caused as a result in responding to the claimant's grievances of November 2018). We deal with the credibility of Mr XY specifically below as it is vital to the findings about harassment, but record here that the tribunal found his evidence persuasive and credible, despite the indications that he found answering some of the questions put to him by Miss AB difficult (such as when she suggested to him that he had not suffered the distress he recounted on seeing her in a lift in the office unexpectedly after the allegations had been dismissed by the respondent). Such indications were consistent with his account of events, given Mr XY's position was that the events alleged by the claimant did not happen and she was bullying him by refusing to accept she had not proven her account to the satisfaction of any investigator.

65. In contrast, the claimant's evidence was unpersuasive. She would not accept the natural meaning of words and strained to twist them into a version that suited her account for example. When questioning witnesses, the claimant would put to the witness inaccurate summaries of their evidence; while this was outside of her sworn evidence, the tribunal felt it was consistent with the respondent's evidence that the claimant was not wholly honest when recounting what had been said to her by others (as highlighted in many emails within the hearing bundle). The claimant sought to adduce new evidence after seeing the respondent's submissions, but said she knew she had wanted to adduce the evidence much earlier. She suggested in her written submissions that she had tried not to put her full evidence within her witness statement in order to avoid giving Mr XY prior warning of deficiencies of the investigation against him. There was a pattern of behaviour shown in both the hearing bundle and in these proceedings of the claimant amending her previous statements as matters went on. This approach indicated in the tribunal's view that the claimant had a tendency to adapt her evidence or accounts in light of developments, rather than present a straightforward account.

66. The claimant's own perceptions about behaviour were also relevant when assessing her claims. For example, under cross examination Miss AB gave an account of her interactions with the mentor which was disturbing from an objective point of view. She talked about staring into his eyes and choosing to get close to him but then keeping him at arm's length. The claimant's evidence was that she thought that if she let the mentor stare into her eyes, he would be happier and that he reacted poorly if she did not look into his eyes or allow him to be close. It was put to the claimant by Mr Allsop that her behaviour towards the mentor was manipulative and in the judgement of the tribunal, this seemed to be a fair observation. The claimant had no basis for any of her suggestions

that the mentor was somehow behind the strange looks she described receiving from male members of the E department or the flirting by the officer who she described as lovely; the claimant even suggested that the "*cake*" comment was somehow connected to the mentor making comments about her or was somehow related to sex.

67. Stepping back and considering the concerns and issues raised by the claimant relating to her male colleagues prior to her transfer to Ms Ellis-Jenkins' team, the picture presented by the evidence is that the claimant had formed the view that male members of the team had an interest in her due to her sex but there was no evidence, even in the claimant's own account, to support such a conclusion. The claimant's evidence about fingers being phallic and sexual, and touching generally being sexual was reasonably described by Mr Allsop as bizarre, and not views that a reasonable objective observer could support. In the judgment of the tribunal, these were indications that the views of others as articulated by the claimant arose from her own mind, rather than objective fact.

68. Further, the claimant's descriptions of colleagues, such as "*ageing*" and "*large*" or making assertions about their mental health or marital issues, were dismissive. In particular, when dealing with the feelings of others, such as Mr Webb or Mr XY (both of whom went on sick leave at points), or the rights of fellow employees, the claimant demonstrated an absence of empathy and a failure to understand that the respondent owed a duty to other people, as well as her. The claimant's approach throughout these proceedings, and as shown within the hearing bundle, was that anything with which she disagreed was a discriminatory act. The tribunal appreciated the difficulties in dealing with the claimant faced by the respondent as set out by its witnesses. Specific issues with the claimant's credibility are addressed in the harassment section below.

69. It is not the role of this tribunal to attempt to label those who appear before it, but the tribunal was concerned that the claimant might be struggling with undeclared continuing mental health issues during the hearing and might require more assistance to ensure a fair hearing. It took steps that the claimant fully understood the issues it had to determine throughout and reminded her not to use her allotted time in pursuing irrelevant points; this was done to ensure a fair hearing. The tribunal regularly allowed the claimant breaks (including times where it directed a longer break than sought), explained matters in simple terms and answered questions as much as it could without descending into the arena. It took into account the evidence before it (see paragraph 118 as an example) of the claimant's vulnerabilities and adjusted its procedure, but it made it clear that it had to apply the law and weigh the evidence before it.

70. The tribunal also had the benefit of a voluminous amount of documentation in the region of 2000 pages. It was not referred to many of the pages within the bundle.

71. Submissions were made by the parties both in writing and with oral amplification in person. To summarise the submissions of the parties briefly, the claimant submitted that her account of events should be accepted by the tribunal and the evidence of the respondent's witnesses should be discounted as not credible as she found it "*most strange*". The claimant, despite being referred to the list of issues repeatedly, made a number of arguments relating to claims not before this tribunal and attempted to adduce new evidence within the submissions (the tribunal made it clear that evidence not adduced at the proper time would not be considered). Miss AB was of the view that the victimisation claims should succeed, though she was not able to draw the tribunal's attention to the evidence that indicated any detriment was due to the making of a protected act, as opposed to other reasons.

72. Mr Allsop on behalf of the respondent submitted that the claimant had failed to show the acts of harassment complained of happened or were carried out by the respondent. He further submitted that the claimant had failed to show that many of the detriments alleged happened. Mr Allsop asserted that for the acts of detriment that the respondent accepted factually happened, the claimant had failed to show that they were a detriment for the purposes of the Act or that there was any causal link to the protected acts. He also submitted that merely contacting ACAS for the purposes of early conciliation was not a protected act, though the other protected acts asserted by the claimant were accepted by the respondent to be so.

Findings by the tribunal

73. The tribunal was aware that the claimant had issued a number of other claims against the respondent and some of the witnesses in these proceedings. It was not willing to trespass on the determinations to be made in the future by other tribunals and therefore confined itself strictly to only making findings relevant to the issues to be determined by it (it set out this approach to the parties at the outset of the hearing). It reminded itself of the temporal cut off of 20 June 2019 ordered by Employment Judge S Moore.

Harassment

Did the respondent engage in conduct as follows:

a. *in December 2017 and January 2018 Mr XY pointedly and furtively looked around the claimant's mouth?*

74. The tribunal noted that the word "*pointedly*" could be seen as a contradiction in terms to the word "*furtively*". Looking pointedly at something is generally an obvious manoeuvre, while looking furtively is by its very nature surreptitious. Notwithstanding this, the tribunal considered the claimant's evidence to be unpersuasive.

75. The claimant under cross examination talked about it being obvious that Mr XY was looking at her mouth in the same way as it would be obvious if someone was looking at the chest area of a female; however, the tribunal observed that the chest area was significantly lower than the face area in a person. The chest area contained in a female exhibit secondary sexual characteristics, while the face does not. The claimant gave evidence that the mouth was a sexual area. While the tribunal appreciated that at times the mouth may well be involved in sexual practices, it was not generally accepted to be sexual in the same way as sexual characteristics, whether primary or secondary.

76. The claimant's evidence was that Mr XY pointedly and furtively looked around her mouth in such a way as she felt it to be offensive and degrading. However at the time, she made no complaint at all and in her written accounts repeatedly said that the first time the conduct arose, Miss AB believed that the conduct was not deliberate (the issue of how what the claimant described as inadvertent conduct could or did give rise to the proscribed effect was never satisfactorily answered). Given that the evidence shows the claimant had no difficulty raising complaints and concerns with her colleagues and managers on a regular basis, if the conduct happened and it had the proscribed effect the claimant described, the tribunal found it difficult to understand how this claimant had said nothing, particularly when she later was keen to report to Mr Webb that a lovely colleague had winked at her but she was not offended. The claimant's evidence is further undermined by the fact that after the events regarding her mouth had allegedly occurred, she was content to sit near Mr XY, to attend meetings alone with Mr XY and to work with him. The claimant accepted that (and the evidence gathered by IG confirms) colleagues were present in the room but nothing untowards was noticed.

77. The tribunal considered Mr XY's evidence. He denied entirely the conduct occurring but went on to explain that he wore varifocal glasses which meant that at times he had to look through the lens in a particular way. It bore in mind that it was possible colleagues had not seen the conduct alleged, but also that Miss AB had a pattern of behaviour alleging sexual interest on the part of a number of male colleagues without any objective evidence supporting her version of events. The claimant when cross-examining Mr XY never challenged his account of his conduct in relation to this allegation, or his denial. The tribunal also considered that the claimant's evidence about her views about what was sexual conduct undermined any weight it could put on her account. The tribunal preferred Mr XY's evidence and placed more weight on it than on Miss AB's account.

78. The tribunal considered that the claimant had not established that in December 2017 or January 2018 Mr XY had acted as she alleged.

> *b. On 30 August 2018 Mr XY allegedly sexually assaulted the claimant by inappropriately touching bottom with what felt like his genital area?*

79. This allegation is the core of the claimant's complaints against the respondent and her colleagues. While whether or not the events of 30 August 2018 happened as the claimant alleges does not affect the victimisation claims, it is fundamental for the resolution of this harassment claim.

80. In essence, the tribunal has Miss AB's word against Mr XY's word. There were no other witnesses, no CCTV, and no contemporaneous evidence. This requires the tribunal to consider the credibility and reliability of the witnesses, the internal consistency of their accounts over time, probability where relevant, the fact that the more serious the allegation the more cogent evidence should be to support it, and any evidence of propensity of such conduct on the part of Mr XY. It can be useful to consider if either witness has any reason to be untruthful, as well as to acknowledge that over time memories of the event can change and an honest witness can give inaccurate or misremembered evidence. Miss AB must show facts on which the tribunal can find that it is more likely than not that her account is correct in order to be successful in her claims.

81. The starting point of any analysis of the events of 30 August must be the first complaint raised by the claimant on 9 September 2018. The claimant sent a

written document to Ms Ellis-Jenkins. The document was lengthy consisting of several pages and it was not until the final page that the claimant made an allegation that Mr XY *"stood extremely close behind me and I felt his body touch my rear, if you get my drift. It lasted about a second, which I felt was too long to be an accident."*.

82. Two days later, the claimant in two slightly different accounts had given the following description *"As I entered the code I then felt as though his body brushed my bottom with what I can most easily describe as a small press or nudge, making it feel more than a brush. I wouldn't say it was very forceful but I was definitely able to feel it. It lasted about half a second to a second which I felt was too long for him not to notice too…I didn't know how to respond and had little space to get out of his way until the door was open so didn't say anything. I felt trapped in the small space by the door as it happened but felt [Mr XY] move back slightly after the contact had finished".*

83. By 28 September, the claimant's evidence was "*what happened was a small press or a nudge…I felt the contact itself mostly towards the mid to upper region of my left buttock area*" but there was no force behind the movement. By late October, she had reported sexual assault to the police involving what felt like Mr XY's genitalia and on 1 November the claimant was alleging that she suffered *"sexual touching (assault) while trapped in a small space where I couldn't move away".* Over time, the claimant asserted that she had suffered an act of "*violence*" and should have been covered by the relevant policy (see below).

84. While the tribunal accepts that complainants of sexual assault or sexual harassment do not present a complaint in any one standard fashion, and they may need to take time to reflect upon what has happened and decide to make an allegation, Miss AB's complaint was only raised, according to her own account, following a conversation with Mr XY about a week after 30 August 2018 about whether the door in question was regularly locked by security. It seems this conversation was the trigger for the complaint, not the acts that may or may not have occurred on 30 August.

85. Further, given the seriousness with which the claimant now asserts she viewed the events of 30 August, describing it as sexual assault and violence, it is striking that she spent significantly more time and space in her initial written complaint talking about other colleagues, including her former mentor, and raising comparatively minor issues before getting to the key point of this case and outlining what she now describes as an act of sexual assault (and for the

avoidance of doubt, the tribunal accepts that the alleged conduct could constitute sexual assault). The tribunal's view was that the written complaint of 9 September is not contemporaneous evidence of the distress and fear that the claimant now says she suffered and continues to suffer; it undermines the claimant's account by presenting such a serious allegation in the way that it was presented. The claimant has described her method of communication as "*indirect*"; the tribunal would describe the claimant's method of communication as close to assuming the recipient is able to translate the claimant's actual words into what the claimant now says was the actual meaning she intended to convey. In the circumstances, the tribunal found it easy to accept Ms Ellis-Jenkins' evidence that she had not got to the end of the document and had not realised there was a complaint be made against Mr XY when she first spoke to the claimant on 10 September.

86. The claimant was asked to set out her complaint in detail after the first complaint, which inevitably means that her account develops over time. The claimant explained why she preferred not to use explicitly clear language when raising her complaint, and in the experience of the tribunal, she would not be alone in preferring to use language such as "*body*" or "*front*". The police required more detail, which is reasonable given that they were dealing with a criminal investigation.

87. However, the claimant's account to the tribunal when asked what she felt was "*one lump and then another lump*". This was not foreshadowed in any of her accounts and quite a striking allegation. The tribunal concluded that anyone who had felt what they believed to be the ball sacs of testicles (though it thought it was unlikely the claimant could have felt testicles in the circumstances she outlined originally of a touch or press of no more than a second) could not have had any doubt of sexual assault occurring. The claimant was not an inexperienced school leaver but was a lady of more mature years and experience.

88. The judgment of the tribunal is that the claimant's account is not internally consistent, though it appreciated that more information may be given due to specific questions, such as the questions asked by the police. The tribunal accepted that an account being wholly consistent and unvarying can be a sign of someone repeating a practised version of events, and an element of inconsistency is both natural and unsuspicious. However, the tone of a report can be relevant and in the claimant's case she went from being apologetic and describing what happened as a touch or a press or nudge lasting no more than a second involving Mr XY's front to Miss AB's rear, which could be innocuous,

to a deliberate incidence of sexual touching which the claimant sees as an act of violence. The term "*front*" may refer to genitalia, but equally may not; the term "*genitalia*" generally refers to the penis and testicles as a whole when referring to a male. The claimant's first account of the events of 30 August bears little relationship to her account before the tribunal in her witness statement or orally in its description or tone. By the time of the hearing, the claimant's account in the judgment of the tribunal had become extreme and disproportionate.

89. The claimant's credibility is undermined by her failure to understand the natural meaning of words, whether it is a description of two people leaving the lift together (the claimant could not accept that two people travelling in the same lift to the same floor could reasonably be described as travelling together), or the meaning of the comments by Mr Webb that following disagreements between Miss AB and her former mentor, he did not expect them to bring cake for each other to the office. The claimant's views generally on a number of topics also raise concerns for the tribunal. While the claimant denied that her fingers made contact with Mr XY, she vehemently expressed the view that fingers were sexual and phallic and simply touching her fingers would be an act of sexual assault (though she accepted if a shopkeeper touched her fingers in passing when giving her change, that would not be sexual assault). Miss AB as the evidence showed had a pattern of behaviour of attributing perceived conduct by male colleagues as somehow relating to sex or because they wanted to have a relationship with her but without any reason given as to why she thought this. Her oral account of her conduct towards her former mentor, where she described effectively controlling him through looks and allowing him to be close to her, demonstrated that the claimant's perception of what was appropriate and inappropriate behaviour in the workplace was unusual.

90. The claimant's account given to the tribunal before it saw and heard from Mr XY, including oral testimony under cross-examination, gave the impression that she was a female trapped in a doorway by a large ageing man who was deliberately touching her for his own sexual gratification by standing directly behind her leaving her with nowhere to escape.

91. The tribunal then had the benefit of seeing and hearing Mr XY. It was provided with numerous photos of the doorway, the door and the keypad from the outset of the hearing, but it was only upon seeing both Miss AB and Mr XY that it was in a position to judge their respective size and consider the space within the doorway. The tribunal would not have described Mr XY in the terms used by

the claimant; while he was tall (but not abnormally so), he was slender and not physically imposing, particularly compared to the claimant.

92. The doorway in question was an extremely common (particularly in the public sector) set of double doors which were marked as power-assisted. There were windowpanes in each of the doors and they were operated by a keypad located in the centre of the doors but on the right-hand central pillar. When opened, the doors open outward; in other words, when using the handle to open the door it is necessary for the user to step backwards. The keypad itself was a common type which requires the inputting of numbers to be able to open the lock, and with a ”c” button to clear any previous entries.

93. While the claimant provided photos of her standing in front of the doors, the tribunal noted that she had chosen to stand in an unnatural position which was unlikely to be her actual position when approaching the door and operating the lock. The claimant had also stood in a way to stand as widely as possible in the doorway. The tribunal having seen both Mr XY and Miss AB was satisfied that the evidence showed that they could stand side-by-side comfortably without touching (though they would be near to each other).

94. In contrast, Mr XY both in his evidence to IG and before the tribunal was consistent, though making allowances or concessions where appropriate. In the judgment of the tribunal, his evidence was credible for a number of reasons. First, his account was internally consistent and entirely logical and believable. His account could easily be reconstructed, despite the claimant’s assertion to the contrary. Mr XY explained that he had been in the same lift as Miss AB, which they exited same time (possibly not at exactly the same millisecond), walked down the corridor with Miss AB preceding Mr XY, and with Miss AB reaching the door first. Mr XY’s account of his location behind but to the left of Miss AB’s shoulder was possible as shown by the photos. His explanation was that when Miss AB struggled with the door code (which she accepts happened), he stretched over his right arm and hand, making contact with her fingers while he inputted the door code on autopilot. This had been his account throughout all the various investigations made and again was possible, having considered the evidence. The tribunal did not consider it necessary to make a finding about which hand Miss AB was operating the keypad with (though it noted a photograph of her operating the keypad with her left hand, it also noticed in her account of 11 September Miss AB had said she had operated the keypad with her right hand) - this was because regardless of which hand Miss AB was using to operate the keypad, if Mr XY was using his right hand, it was unlikely that his body (especially his genital area) made contact with Miss AB’s bottom in the

way she described as his arm was next to the keypad. Indeed, to Mr XY's credit, he was clear that there could not be an innocent explanation for any contact with Miss AB's bottom as he believed his bag strap was on his left shoulder and could not have made contact.

95. In addition, the fact that the doors once opened would have to swing out towards the user made Mr XY's account of his location logical as it would mean he would not need to step back to enable Miss AB to open the door. The tribunal did not think that anything turned on the issue as to whether or not security routinely locked the door any more as it was in the unchallenged evidence before it that the last person to leave the office was supposed to lock the door. The evidence before it did not support a finding that the claimant had been told by Mr XY a week or so after the events of 30 August that the door was no longer locked, though even the claimant in her evidence had not asserted that Mr XY told her he knew this on 30 August, so this point is somewhat irrelevant.

96. The claimant made much play about Mr XY's use of the word "*autopilot*" when he explained how it was that he came to touch the claimant's fingers. Her point could be summarised as if the door was locked, it did not matter which code was used, or even if the "c" button was used, the door should have opened. However, the claimant by her description said that she was struggling with the door. It is credible for Mr XY to say on noticing that she was struggling, he started to tell her the code while trying to input the code himself on autopilot. In addition, as the claimant herself says, the pad was small; if Mr XY acted as he had said, it was inevitable their fingers would touch regardless of the actual buttons involved.

97. The tribunal also noted that there is no evidence of any propensity by Mr XY to behave inappropriately towards female colleagues. It noted that Mr XY was a bullying and harassment representative, who showed reasonable understanding of such matters when questioned. At least two colleagues had told IG they had seen no untoward conduct by him.

98. The tribunal, having weighed the evidence before it, preferred the evidence of Mr XY to the evidence of Miss AB and found that Mr XY did <u>not</u> assault the claimant by inappropriately touching her bottom with what felt like his genital area.

c. On 19 November 2018 the police informed the claimant that Mr XY claimed to have only touched the claimant's fingers?

99. The allegation made here is that the actions of the police in passing on Mr XY's account is conduct carried out by the respondent. The police are an independent body of the respondent; they are not the respondent's employees, agents or in any way acting on behalf of the respondent. The claimant has adduced no evidence at all that the police were acting on the respondent's behalf. Factually, the claimant has not been able to show that the respondent engaged conduct as she alleges.

d. On 12 April 2019 Mr Evans required the claimant to justify using a euphemism previously for the word genitals and required her to justify why she had done so?

100. The tribunal considered carefully the letter sent by Mr Evans to the claimant on 12 April 2019. What Mr Evans was doing in sending the letter was investigating a grievance raised against the claimant by Mr XY. His letter stated *"[Mr XY] alleges that your accounts of the incident are being elaborated upon to include salacious details. What are your views on this?"* (page 1455).

101. In the judgment of the tribunal, Mr Evans did not require the claimant to justify using a euphemism or to require why she had done so. All that Mr Evans had quite properly done was to put the allegation made by Mr XY that the claimant had changed her account to add salacious details and to enable her to comment if she so chose. Factually, the claimant has not been able to show that the respondent engaged in the conduct she alleges.

102. In conclusion, the claimant has not established that any of the conduct of which she complains occurred, and that she has not met the burden of proof to enable further consideration of the harassment claim.

<u>Victimisation</u>

Did the claimant do a protected act? The claimant relies upon following:

a) on 9 September 2018 submitted a written complaint regarding the alleged sexual assault to Ms Ellis-Jenkins;

b) on 22 November 2018 contacted ACAS to initiate early conciliation regarding the above alleged sexual assault;
c) on 18 January 2019 initiated tribunal proceedings against Mr XY;
d) on 19 January 2019 initiated tribunal proceedings against the respondent.

103. The respondent argued that the contact made with ACAS by Miss AB on 22 November 2018 was not sufficient to be a protected act, though Mr Allsop on its behalf accepted that the other alleged protected acts were indeed such. The tribunal referred back to the definition of "*protected act*" under s.27, which says such an act can be *"bringing proceedings under this Act, giving evidence or information in connection with proceedings under this Act; doing any other thing for the purposes of or in connection with this Act, or making an allegation (whether or not express) that A or another person has contravened this Act."*

104. The tribunal was referred by Mr Allsop to the case of Durrani. It noted that the then president of the employment appeal tribunal, Mr Justice Langstaff, said at paragraph 27:

"*This case should not be taken as any general endorsement for the view that where an employee complains of "discrimination" he has not yet said enough to bring himself within the scope of section 27 of the Equality Act. All is likely to depend on the circumstances, which may make it plain that although he does not use the word "race" or identify any other relevant protected characteristic, he has not made a complaint in respect of which he can be victimised. It may, and perhaps usually will, be a complaint made on such a ground. However, here, the tribunal is entitled to reach the decision it did, since the claimant's unchallenged evidence had been invited to say that he had been alleging discrimination on the ground of race. Instead of accepting the invitation he had stated, in effect, that is complaint was rather of unfair treatment generally."*

105. In Miss AB's case, it was clear from the evidence that from the outset she had been complaining of sexual harassment and she had used that term repeatedly in her complaints to the respondent from September 2018 onwards. In particular, her complaints to Mr Simons in November 2018 prior to going to ACAS (in which she specifically referred to approaching ACAS about these matters) were about the sexual harassment that she believed she had suffered and her unhappiness in how the respondent had dealt with the matter. While the witness statement of the claimant are short on detail on this point, and it is a fact that early conciliation certificates do not specify the head

of claim that the proposed claimant is seeking to bring against the proposed respondent, it is necessary to enter into early conciliation to be able to issue proceedings in the employment tribunal.

106. The tribunal did not think that the case of Durrani sat "*on all fours*" with Miss AB's case as by the time she approached ACAS she had repeatedly and vehemently asserted to the respondent that she believed she had suffered sexual harassment and victimisation at its hands and repeated this belief to the tribunal. She identified the protected characteristic and issued these proceedings on that basis. In the view of the tribunal, the contact with ACAS on 22 November 2018 met the requirement of S.27(2)(c) of the Act and was "*doing any other thing for the purposes of, or in connection with the Equality Act*" - it was a protected act.

Did the respondent subject the claimant to the following detriment/s:

> *the claimant's grievances of November 2018, March 2019 and April 2019 were not conducted properly;*

107. The tribunal took each of these months in turn, noting the general lack of particularisation. It first considered the two grievances raised by Miss AB on 1 and 8 November 2018 to Mr Simons. The first November grievance, set out at pages 439-441 of the hearing bundle, could be summarised as follows - that the claimant was not told that the nature of her complaint regarding 30 August was one of sexual assault; that she was not told that it was criminal and should be referred to the police; that the guidance set out at HR20508, HR20506, HR62085 or on health and safety was not followed; that she was not told the outcome of the disciplinary proceedings against Mr XY; that the claimant did not feel safe and felt harassed; that she felt Ms Ellis-Jenkins victimised her by asking for details of the alleged assault; that IG did not speak to the claimant; that Ms Jones had suggested a physical move or mediation; and that the claimant felt generally Mr XY was being protected.

108. The second November grievance, in pages 482-483 of the hearing bundle, could be summarised as alleging that the claimant was a victim of sex discrimination due to the sexual assault the claimant said took place on 30 August and demanding to know if the respondent accepted her account. The grievance goes on to ask questions about training provided by the respondent on the issue of sexual assault, if the ACAS Code of Practice regarding disciplinaries and grievances was followed, queries about the claimant's safety,

and the options available if there was a repeat of "*further acts of sexual violence*" towards her, as well as concerns about how Miss AB could work together with Mr XY and her unhappiness about not being told the outcome of Mr XY's disciplinary.

109. The claimant complains that the respondent took far too long to respond to her grievances, and in fairness Mr Simons himself agreed. He used the term "*immense delays",* but said that the delay was caused by HR not giving him the advice he required. The evidence before the tribunal shows emails from Mr Simons where clearly frustrated by the lack of assistance from CSHR he expresses his dissatisfaction that he has not been able to go back to the claimant with anything other than bland assurances that advice is being taken. Mr Simons' oral evidence was that he escalated his concerns to his line manager, Ms Hillyer, and as a result she escalated the concerns to her line manager. In the end, dedicated HR support was provided to Mr Simons and he was then able to progress matters. In the view of the tribunal, it was fair to view the delay in responding to the claimant's grievances of November 2018 as not properly conducting those grievances, particularly when it was noted that the timelines to respond as set out by the guidance were exceeded, as Mr Simons accepted.

110. The tribunal turned to look at Mr Simons' outcome letter of 9 January 2019 where the claimant is told the outcome of the two grievances she raised in November 2018 (pages 716-717). The claimant was simply told in respect of her first grievance that it did not pass the grievance test and it was not appropriate to formally investigate her concerns. No further explanation is provided. The second November grievance is dealt with by the claimant being told that it is the same as the matter investigated by IG.

111. It is evident from any reasonable reading of this letter is that the position of the respondent is relatively simple - that the complaint against Mr XY regarding his conduct on 30 August 2018 has been investigated and concluded with no case to answer, and that is the end of the matter. This overlooks that the claimant raised numerous points which were not solely about the outcome of the disciplinary against Mr XY but were about the aftermath and her concerns that arose. Those issues are left unaddressed. The letter was from Mr Simons, and the tribunal was satisfied that he was the decision maker, though he was advised by CSHR and relied on that advice.

112. There was much discussion in the proceedings about the process adopted by the respondent when dealing with grievances. The first step is the

application of "*the grievance test*". The tribunal was repeatedly referred to various policies affecting grievances. The tribunal as an expert professional panel observed in passing that in its view policies presented to it were lengthy, complicated, likely to be difficult for those not familiar in HR and employment law to navigate (thus requiring HR advice on the meaning of the policies) and failed in a coherent way to set out what was the grievance test.

113. What was clear from the policies presented was that for a grievance to proceed to an investigation, it needed to be a matter set out in the table shown at pages 1753 onwards of the hearing bundle, but it also needed not to be a vexatious or malicious complaint. The guidance talked about grievances passing the grievance test and being set out in the table but it was unclear to the tribunal what the test was, other than being in the table and not being vexatious or malicious.

114. The tribunal considered therefore that the only fair way to approach consideration as to whether any of the issues raised by the claimant in her November 2018 grievances should have passed a grievance test was to consider whether each point were matters set out in the table, particularly as there was no evidence before it that by November 2018 the respondent considered that the claimant was raising vexatious or malicious complaints. The majority of the points raised by the claimant in the view the tribunal were not covered by the table as potential subjects for a grievance; the fact that they arose from an allegation of sexual assault did not mean that all the points that the claimant was concerned about related to sexual harassment. For example, being unhappy that IG did not speak to her or asking questions about training is not raising a concern about sexual harassment or indeed bullying (issues within the table).

115. However, the grievances raised by the claimant on 1 November 2018 alleging that she felt unsafe and harassed following the outcome of the disciplinary process against Mr XY, that she felt victimised by Ms Ellis-Jenkins asking the details of the assault and the concern that it was an act of harassment that Ms Jones asked her about a physical move or mediation following the decision not to progress her allegations against Mr XY were potentially complaints about sexual harassment or victimisation, though not necessarily well-founded complaints. The grievances raised within the complaint of 8 November 2018 included a complaint that the claimant felt unsafe due to sexual harassment and asked about the options available to her if in the future she suffered an act of sexual violence in the workplace. While the latter question was hypothetical and not in the table expressly, there is an

implied contractual term that an employee should be safe in the workplace, and breach of contract is within the table.

116. The tribunal agreed that the claimant was trying to reopen the matter already investigated in relation to Mr XY on 30 August 2018, and concluded it was appropriate for Mr Simons to refuse to do so. However, the tribunal found that the complaints of November had not been properly conducted because the complaints about safety, alleged victimisation by Ms Ellis-Jenkins, and alleged harassment by Ms Jones should have passed the grievance test and been investigated. It acknowledges that this is not the advice that Mr Simons, the decision maker, received from CSHR, but this is an issue that goes to causation (in other words, why the decision was made).

117. The tribunal considered that the failure to properly conduct the claimant's grievances of November 2018 was a detriment. A reasonable worker might well take that view as the claimant raised issues that were potentially covered by the possible grievance topics set out in the table in the guidance and was simply told that they would not be dealt with because the disciplinary involving another colleague had not been proceeded with; this left the claimant with her concerns regarding the aftermath of the disciplinary decision unaddressed despite raising the matter with Mr Simons. The tribunal did not consider the claimant's feelings on this topic to be an unreasonable sense of grievance, though this does not mean that the points she raised were in fact well-founded.

118. The tribunal then turned to consider the two grievances raised with Ms Hillyer in March 2019 on 25th and 28th of that month (pages 1366-1378 of the hearing bundle). These were addressed together with the grievances raised later in April in an outcome letter on 31 May 2019. It is worth noting that the claimant continued to raise multiple concerns and grievances over a period of months, which made it very difficult to address the claimant's concerns as it was apparent she could not stop emailing various people frequently or trying to amend her earlier emails. The evidence of the claimant was that she had mental health difficulties at that time and her mental health had deteriorated. This is supported by the findings of Occupational Health. The tribunal notes in passing that the claimant's mental health issues appeared to be long-standing, as shown by one report of February 2020 highlighted a concern that the claimant considered hurting a stranger due to anger issues (page number 56-58 of the claimant's supplementary bundle).

119. The grievances raised by the claimant in March 2019 could be summarised as a complaint that the grievances raised against her were vexatious and were

acts of sexual harassment and victimisation. There is also a repeat of the claimant's wish to complain about how the respondent has dealt with Mr XY.

120. The tribunal considered it appropriate to consider the grievances raised also in April 2019 to Ms Hillyer. On 8 April 2019, the claimant again alleged she is suffering from victimisation and raises concerns about breach of contract issues and her wages. She complained that Mr XY lied to IG, the police and Mr Evans, and asserts that his complaint against her is malicious. On 10 April 2019, the claimant alleged that Mr Webb's grievance against her is an act of sexual harassment and repeats in similar terms the complaint three hours later. The complaint is amended but in no significant way on 11 April 2019.

121. Ms Hillyer's response was sent on 31 May 2019. The approach she adopted is different to that previously undertaken by those dealing with the matter on behalf of the respondent. The letter outlines the number of communications received from Miss AB, though it is not an exhaustive list. Ms Hillyer stated that "*I don't think we will resolve your issues through a constant exchange of emails."* She then refers to the vexatious complaints guidance and explains that Mr XY and Mr Webb are entitled to raise a grievance and it is up to the investigation manager and decision maker to deal with the matter using processes adopted by the respondent. Ms Hiller explains that grievances raised with her regarding Ms Ellis-Jenkins and Mr Simons had no causal link to a protected characteristic and she was satisfied that the procedure had been followed as HR had advised. The letter goes on to explain to the claimant a point that the tribunal itself made at the outset of the hearing – *"I understand you may not agree with some decisions that been made but that is not the same as the decisions being discriminatory on the basis of gender*." In other words, the letter confirmed the legally correct point that just because the claimant is unhappy about something after alleging that she has suffered discrimination does not mean that the point in contention happened because of a protected characteristic or the allegation itself.

122. The tribunal considered that it could not be argued reasonably that the claimant's grievances of March and April 2019 had been unduly delayed. The inability of the claimant to allow the respondent or Ms Hillyer time to deal with the issues she raised by as the evidence shows, continually sending emails complaining of the same points over and over and seeking to amend those complaints, made it a difficult situation for any employer to manage. In these proceedings, the claimant has not advanced clearly what was wrong with Ms Hiller's response or approach.

123. It was notable that throughout the claimant's oral evidence and submissions, she found it difficult to understand other employees have rights too or were entitled to their feelings. For example, the claimant submitted that it was incredible for Mr XY to say that on seeing her in a lift, he found himself suffering both emotionally and physically from a stress reaction that required him to take a few minutes to compose himself. This submission overlooked the fact that Mr XY had been investigated repeatedly due to allegations made against him by Miss AB, none of which had been upheld, but had caused him to be moved and ultimately take sick leave. It was a natural human reaction for an individual in the position that Mr XY found himself to be stressed upon being unexpectedly confronted with his persistent accuser, but the claimant was unable to accept this.

124. Another example can be seen at the end of the claimant's amended witness statement, where she talks about living within the city where the events took place and not wanting to see Mr XY by accident on the street or in a new building that is being constructed for the use of public sector workers generally. The implication of the claimant's witness statement is that this tribunal should in some way interfere and prevent Mr XY from being able to work or exist in a completely lawful manner within the centre of the city. Another example arises from the evidence regarding Mr Webb. The claimant now accepts that her email to Mr Webb of 9 January 2019 was unfair and did not reflect the efforts that she now knows he was making on her behalf. However, the claimant continually referred to Mr Webb's grievance against her which directly arose from this email as unfounded.

125. The reality is that there was nothing improper in Ms Hillyer pointing out to the claimant that other employees had a right to raise grievances regarding her conduct towards them, and that once the grievance test was passed, independent investigators would deal with the matter. Equally, it was clear that the claimant was seeking to reopen matters already addressed in relation to the disciplinary process against Mr XY- the matter had been investigated fully following the policy, and the claimant did not have any real new evidence to justify reopening the matter. The text of the vexatious complaints guidance made it clear that repeatedly and persistently raising the same complaint would be viewed as vexatious and in the view the tribunal this is exactly what the claimant was doing. It acknowledges that her mental health issues may well have caused the claimant to behave in the way that she did, but this does not change the factual position.

126. The tribunal considered the fact that it has found that the grievances raised by the claimant in November 2018 were not properly conducted by Mr Simons, but Ms Hillyer took a different view. It did not think that the failure to identify the issues the tribunal has identified meant that the claimant's grievances of March and April 2019 were not conducted properly. Ms Hillyer was advised by HR, who had also advised Mr Simons. More to the point, Ms Hiller made it clear in her outcome letter that she wanted to meet with the claimant and talk to her. The claimant's concerns were not being ignored by Ms Hillyer, but given the circumstances and the claimant's conduct, Ms Hiller's view as outlined in her letter that dialogue was the way forward to address the claimant's concerns was not unreasonable or failing to conduct the grievances properly. Ms Hillyer considered that the vexatious complaints policy had been triggered by the claimant's repeated complaints, which mean that they did not pass the grievance test. The tribunal took the view that the claimant's grievances of March and April 2019 had been conducted properly and it was regrettable that the claimant had not been able to work constructively with Ms Hillyer.

the claimant was not informed that she had reported a criminal offence

127. As a matter of fact, this allegation is correct. The claimant was not told that what she had reported was a criminal offence. The claimant is not precise about when she alleges this should have happened, but from the tenor of her witness statements and questioning, it appears that she believes this should have happened early in September or possibly October 2018.

128. The first point to make is that there has been no conviction; at its highest all that the claimant could have been told is that she had reported something that potentially was a criminal offence. More critically, the claimant in her oral evidence accepted that neither Ms Ellis-Jenkins or Ms Jones were legally qualified or had to her knowledge any experience in a legal field. Miss AB herself accepted that she did not know when she made her report that what she had reported was potentially a criminal offence, though she knew it to be sexual harassment.

129. The tribunal considered that a reasonable worker would take into account the fact that they themselves did not know what they had reported was a criminal offence and that the managers to whom they made the report were in no better position to advise. It judged that this allegation was not a detriment. In passing, the tribunal would comment that if it is incorrect in this finding, there is no evidence that this failure was due to the fact the claimant had made a

written complaint on 9 September 2018; the evidence shows that neither Ms Ellis-Jenkins or Ms Jones knew the legal position.

Mr XY's disciplinary was not conducted properly

130. The tribunal had the benefit of reading the detailed and reasoned report of the IG investigator, which exhibited evidence gathered. The decision maker in her outcome letter sent to Mr XY relied on that report. There is no dispute that IG were professional investigators charged with investigating the most serious matters by the respondent. IG interviewed Mr XY and in addition approached the "*lovely*" colleague who Miss AB said had flirted with her (who said he had seen nothing untoward). It considered the evidence of another colleague who had seen interactions between Ms AB and Mr XY who had also noticed nothing.

131. The claimant's strongest point made in criticism of the process was that she was not interviewed personally. This is not required but would normally be standard procedure. The difficulty the claimant faces with this criticism is that she asked for the matter to be dealt with informally and provided several written accounts about what had happened. She had an email exchange with the IG investigator where she provided information, professed herself to be happy and did not object to not being interviewed in a face-to-face manner. The claimant as shown throughout had no difficulty in objecting when she was unhappy about something. Complainants in these circumstances often prefer to be able to put their account in writing, and the claimant was very comfortable in communicating in this form, as shown by the voluminous emails and correspondence she generated.

132. It is difficult to see why the claimant felt after the event that IG should have interviewed her personally, other than she did not like the outcome. IG picked up on the points raised by the claimant such as why would the claimant lie and asked Mr XY about this, and gathered information about the door.

133. In the judgment of the tribunal, there is no basis on which it could find that Mr XY's disciplinary was not conducted properly. It is evident from the submissions of the claimant that her position at its core is that she is unhappy with the outcome and it must be wrong.

the respondent suggested that the claimant enter mediation with her assaulter;

134. It is important to note that while Miss AB describes Mr XY as her assaulter, this is not been found to be the case by this tribunal. This tribunal has found Mr XY did not assault Miss AB on the balance of probabilities.

135. That said would be unfair to simply refuse to consider this detriment when it is evident what the claimant really means is that the respondent suggested she enter into mediation with Mr XY, who she considered to be her assaulter.

136. As a matter of fact, it was suggested to the claimant in October 2018 by Ms Jones that following the finding of no case to answer in respect of the disciplinary proceedings against Mr XY, mediation might enable Miss AB and Mr XY to find a way forward.

137. The real issue is whether this was a detriment. Contrary to the claimant's position in these proceedings, mediation can be used in both formal and informal processes; indeed, judicial mediation is offered by the employment tribunal to resolve the types of proceedings being considered here. A reasonable worker would be aware that following the finding of no case to answer the allegation that they made had not been upheld; they would also be aware that an employer owes duties to all its employees. The tribunal does not think the suggestion is of a type that might be viewed as a detriment by a reasonable worker, but rather as an option that might lead to both employees being able to work productively for the respondent. It is also relevant that the claimant initially suggested the matter could be resolved informally and even told the police on 6 July 2019 (page 1675 of the hearing bundle) that she had asked the respondent about undergoing a mediation process, adding that this might be better in terms of office politics. This supports the conclusion that a reasonable worker would not view the suggestion of mediation as a detriment.

the respondent could not guarantee that the claimant would not be prejudiced by any move in teams;

138. The tribunal notes that this allegation is not well particularised; it does not define precisely what the claimant meant by guarantee or prejudice, though the statement of case talks about less favourable working conditions. Paragraph 36 of the claimant's amended statement case talks purely about a move to

another team within the respondent; in other words, a team that was not part of the E department. However, the whole thrust of the claimant's case at the hearing was about moving from Ms Ellis-Jenkins' team to Mr Webb's team, because the new work that some months ago which had been hoped to be undertaken by Ms Ellis-Jenkins team would not be sent to Mr Webb's. In essence, the claimant changed the entire basis of her argument on this point, and did not seek to amend her statement of case. As the respondent's counsel pointed out, this is a substantial change. The claimant's account is inconsistent as shown by this change of argument.

139. Engaging with the point as put by the claimant, the evidence before the tribunal, including that of Ms Jones, is that the claimant was given several options in October 2018, which included the ability to choose to switch to Mr Webb's team or the option to ask Ms Jones for information about the options available in other departments. The claimant after being given time to consider the matter chose to switch to Mr Webb's team; this indicates she was not interested in other opportunities.

140. No evidence has been put before the tribunal that any detriment has arisen. The new work, according to the unchallenged evidence of Ms Ellis-Jenkins and Mr Webb, never rose in the expected volume and the claimant's cases transferred with her on changing teams. The tribunal is not satisfied that factually this allegation is made out, but it is clear that there is no evidential basis on which it could find it is a detriment.

the respondent could not guarantee that the claimant would be safe around Mr XY;

141. It is not entirely clear what precisely the claimant means by this allegation. It is correct that the claimant raised repeatedly her fear that she would not be safe after the disciplinary outcome in relation to Mr XY was received in October 2018 and onwards. Prior to this point, on receipt of the allegation, the respondent immediately took steps to ensure that Mr XY was not on the same floor as Miss AB (within the confines of a large high rise building with several wings), and Mr XY was then absent from the office either working from home or on sick leave during much the time that IG was investigating the matter. The claimant did not seek any guarantee during September 2018.

142. The claimant's manager was notified of the fact that Mr XY would be returning to the team in order to allow her to inform Miss AB and discuss the way forward in good time before his return. This shows that the respondent

placed weight on the need to address the concerns of both employees and to find a way forward. The claimant was given several options, was able to discuss them with Ms Ellis-Jenkins, Mr Webb and Ms Jones, and given time to reflect. The difficulty is that fundamentally the claimant could not accept that she had not been able to prove her account of events to enable the finding of there being a no case to answer by Mr XY. There is no suggestion that the claimant did not genuinely believe in her account, but equally there is abundant evidence that she could not accept that the respondent could not take any action following the investigation against Mr XY.

143. It is correct that the claimant kept asking how she would be safe. It is also correct that it was repeatedly explained to her that there was no case to answer and therefore from the respondent's point of view Miss AB was no more at risk around Mr XY than around any other colleague.

144. The respondent's actions upon receipt of an allegation of sexual harassment by Miss AB treated the matter extremely seriously, appointed IG (the most senior type of investigators available to it) to investigate, referred the matter to an independent decision maker, and met with the claimant repeatedly to discuss how best to manage the situation upon the decision of no case to answer. Any reasonable person bearing in mind all facts would take the view that the respondent taken all reasonable steps available to it to demonstrate how seriously it viewed the matter and that employees were safe at work as a result. No respondent can give a guarantee of 100% safety but this respondent through its actions could do no more. The tribunal not persuaded that the claimant has factually proven this allegation, but if it is incorrect in this finding, it has no doubt that a reasonable worker would be aware of the actions taken by the respondent and would not view the respondent's position as a detriment.

the claimant was given no casework after a period of sick leave at the end of December 2018;

145. The evidence (including the oral evidence of Mr Webb) confirms that when the claimant returned from sick leave, her cases had been temporarily reallocated. The key issue at this stage is whether this was a detriment. The evidence of Mr Webb was that it was normal to reallocate cases when an employee was on sick leave on the basis that cases needs to be progressed. The claimant did not produce any evidence to challenge this position, and in the industrial knowledge of the tribunal if an employee is signed off sick for a

period, it would not be unusual for their work to be covered by someone else (and the failure to do so could lead to complaints or claims by the employee).

146. The claimant's position was that the work should have been returned by 18 December 2018 as that was the date her fit note expired. However, Mr Webb's evidence was that even when a fit note expired, it was not certain when an employee was going to return - the fit note might be renewed. It is also relevant that the claimant's planned return was very shortly before Christmas, which contained three bank holidays and is a period when employees take leave (as shown by the Christmas leave rota). Both Mr Webb and the claimant took leave in this period. It is therefore unclear what progression could have been made on cases in the circumstances.

147. Mr Webb's unchallenged evidence was that the normal return to work meeting was arranged to take place with claimant on 24 December, and part of the necessity to that meeting was the fact that the claimant was still a trainee and had previously complained of a lack of support. Despite knowing of the meeting, the claimant on 23 December asked to have 24 December off as leave. If the lack of casework was a detriment, it is unclear why the claimant would rearrange the return to work meeting at such short notice and delay resolution. This point was not put to the claimant.

148. A reasonable worker would understand that it is not until they actually returned from sick leave that work would be reallocated. In the circumstances in which Miss AB found herself, the tribunal did not think that a reasonable worker might think there was a disadvantage or detriment in not being allocated work on their return immediately before Christmas or a period of annual leave.

there have been several unfounded grievances submitted against the claimant which have not been properly conducted or investigated;

149. The core of this allegation, though it is not particularly well particularised, from the claimant's evidence and submissions is about the grievances raised against her by Mr XY and Mr Webb. Her position is that they are unfounded, and that they have not been properly conducted or investigated.

150. The tribunal had no difficulty finding this allegation had not been factually proved by the claimant. Mr XY's grievance was based on the repeated and persistent complaints of the claimant against him regarding 30 August 2018, both internally, to the police and to the employment tribunal. The phrase

"*unfounded*" means that there is no basis to an allegation; it does not mean that the allegation has merit. It is a matter of fact that the claimant has repeatedly and persistently alleged that Mr XY sexually harassed her and carried out a sexual assault on 30 August 2018. She has done so repeatedly to the respondent, to the police and the tribunal. Mr XY's grievance was that he found this to be bullying as the first investigation by the respondent and the police investigation resulted in no action being taken. While the claimant may not accept the findings in relation to the events of 30 August 2018, it cannot be said that there was no foundation to Mr XY's grievance.

151. Mr Webb's grievance detailed the ways in which he felt he had been bullied by the claimant and her email of 7 January 2019 was a key part of the basis of his grievance. Again, it cannot be said that there was no foundation, and even the claimant accepts her email was not fair.

152. The claimant's position appears to be that neither Mr XY nor Mr Webb were entitled to say that they felt distress, stress, or negative emotions regarding the way that the claimant has conducted herself towards them. This is not a contention that survives a moment's scrutiny. The evidence shows the claimant persistently and repeatedly has raised the same complaints against Mr XY with a variety of entities, and from her emails and the meeting notes that she adopted an aggressive and hectoring attitude towards Mr Webb by continually raising the same points over and over with him and refusing to accept the answer she was given (for example in relation to his explanation about the cake comment). It is understandable that Mr XY and Mr Webb have expressed the feelings set out within the grievances.

153. As for the allegation that those grievances were not conducted properly or investigated, the evidence with which the tribunal has been provided include the investigation documents and emails gathered by Mr Evans (the investigation manager), and the analysis and conclusion reached by the decision maker, Ms Block. The evidence shows that both Mr Evans and Ms Block considered the guidance under which they operated. No evidence has been provided that could support a finding that the grievances were not properly conducted or investigated.

the claimant was pressured by the respondent to return from working from home when there was nothing in place to enable her to work from the [city redacted] office

154. This allegation is about the events between 1 and 8 February 2019. The claimant had been dealing with Mr Simons by this point and there had been a number of email exchanges between them. Mr Simons' evidence was that he had concluded the claimant had in essence decided she was going to work from home until her complaints and concerns were resolved to her satisfaction. He was deeply concerned at this as the claimant was accessing HMRC information remotely, and was still a trainee. The claimant had provided a number of fit notes from her GP which said that she was only fit to work from home or if other reasonable adjustments made. Very little information was provided with these fit notes to explain the basis of the GP's view, though it is likely to be based on what Miss AB reported to the GP. Mr Simons took the view that he was willing to agree working from home on a week by week basis, but it was essential that the respondent worked with the claimant to find out exactly what the health issues were and find steps to reintegrate her back into the office to ensure both safety of the data and that her training continued. On 1 February 2019, Mr Simons issued a letter to the claimant giving her a management instruction that she needed to return to work in the office once she was fit, and that she should not be working from home if she was unfit. He wanted to arrange a return to work meeting to take place to discuss whether she was fit to work, and any adjustments required.

155. The claimant did not return to work in the office as directed, but continued to work from home while still covered by a fit note that said she was not fit for normal work in the office. Mr Simons' evidence was that he eventually directed that Miss AB's IT access was blocked as he was concerned the claimant was working from home without any discussion of her health with the respondent. The claimant was repeatedly asked to agree to attend a return to work meeting, but failed to do so. With less than one hour's warning, the claimant announced her intention to attend the office on 8 February. As both her manager and Mr Simons were based in south-east of England, neither were available at such short notice to be present. Also at this time the claimant was subject to grievances by colleagues and had walked into the office where the E department was based, having given the respondent no reasonable opportunity to provide a workspace for her away from the team as was the common practice in these circumstances according to the evidence the tribunal heard from a variety of the respondent's witnesses. It is relevant to recall that the respondent owes a duty of care to all its employees.

156. It is correct that the claimant was asked to return to work in the office, but as is clear from the emails with her, the respondent was denied the opportunity to put provisions in place by the way the claimant chose to conduct herself; in particular the unreasonable short notice she gave regarding her return and her refusal to allow the respondent to arrange a meeting where the issue of her return to work could be discussed, particularly light of the fit notes she provided. It was not until 19 February 2019 that the respondent received an unrestricted fit note from the claimant. A reasonable worker would not in the judgment of the tribunal view this as a detriment, given the situation arose directly because of the claimant's actions and failure to co-operate with Mr Simons.

the claimant was asked to leave the building after being asked to return to work, initially by being escorted out;

157. It is factually correct that the claimant was on 8 February 2019 asked to leave the building, and further was asked to leave the building escorted by a colleague with whom she was believed to be friendly (not a security officer). It is not factually correct that she was asked to leave the building in the way that the allegation implies - the claimant was not asked to return to work and then asked to leave; she was asked to return to work from the office (not home) but it was made clear to her that there needed to be a meeting about whether she was fit to do so first.

158. The submissions of the respondent makes it clear that the respondent has seen this allegation as an assertion that the claimant <u>was</u> escorted from the building; that is not the reading of the allegation by the tribunal and the claimant herself accepts that she was not escorted out of the building. The allegation is about the act of asking her to leave the building and about the act of suggesting that she was escorted out; both undertaken by Mr Simons who made the requests.

159. The tribunal accepts that the claimant has established that she was asked to leave the building and she was asked to be escorted out by a colleague to ensure that she had left the building. A reasonable worker might take the view that this is a detriment. There is an implication in suggesting that someone needs to be escorted out of the building - the implication is not a positive one. Mr Symons himself said he wanted to be sure that the claimant had left, which indicates he thought it was possible she would only pretend to leave. In addition, being seen to require someone to escort you out is a negative

perception. The tribunal was satisfied that a reasonable worker might view this as a detriment.

the claimant's pass was deactivated in February 2018 meaning that she was unable to enter her place of work;

160. Factually, it is correct that the claimant's pass was deactivated as she asserts. Mr Simons gave evidence (supported by the contemporaneous emails) that he was the person who made the decision that this should happen because of the claimant's erratic behaviour, her attendance in the office with little warning and the duty of care owed to all employees.

161. The question is whether this was a detriment. in the tribunal's view, a reasonable worker would not view this as a detriment ,given that the claimant was told that she should not attend the office until the return to work meeting took place. In any event, given that the claimant wanted vehemently to work from home, it is not clear what disadvantage she suffered through the deactivation of the pass, particularly as the deactivation of the pass would not be widely known and she was not meant to be in the office.

162. The evidence before the tribunal was that in any event the claimant decided to return to the office on 19 February and had claimed that security had allowed her in. Enquiries having been made with security, Mr Simons was notified that the claimant had been allowed to enter by another member of staff after being told by security that she could not enter. When the claimant entered the building on 19 February, she had not supplied the fit note allowing her to work without restrictions to the respondent, which meant that the respondent only had a note saying she was unfit until 8 March 2019 unless Miss AB worked from home or had reasonable adjustments. A reasonable worker would bear in mind the contents of the last fit note they supplied and the respondent's position that a meeting was required to discuss the return to work (and that the meeting had been arranged by this point).

163. In the event that the tribunal was incorrect in viewing the deactivation of the pass as not being a detriment, the evidence which is unchallenged and abundant was that the reason for the deactivation was nothing to do with the protected acts by the claimant but rather her erratic behaviour decision to return to the office on 8 February 2019 with little or no warning without having the requested meeting to discuss the reasonable adjustments required.

the claimant was isolated from her team by being required to ask permission to visit the office and not being able to attend any meetings, even by telephone;

164. There is no evidence that the claimant was required to ask permission to visit the office and her amended statement of case has very little about this allegation. Indeed, as Mr Allsop pointed out in the submissions no evidence was led specifically dealing with this point and the claimant's express preference was to work from home. No evidence has been adduced which could support the finding that the claimant seeks.

the claimant faced unfounded accusations of "beefing up" her story against Mr XY;

165. It is correct that Mr XY did assert that Miss AB "***beefed up"*** her allegations against him as he used the term in his meeting with Mr Evans when his grievance was investigated. However, in the judgment of the tribunal it could not be said that the allegation was unfounded, though perhaps it was described in stronger terms than the tribunal itself would use. If one draws a line from the initial account where the claimant talked about Mr XY's body or front making contact with her rear in a manner which potentially could be innocuous, over time it becomes an act of sexual violence and deliberate sexual touching with what felt like Mr XY's genitals against the claimant's bottom for a period while she is trapped in the doorway (see the earlier summary of the claimant's accounts in the harassment section). The claimant added more and more detail in each account, and was more specific when answering questions from the police. From Mr XY's perspective, the development of the account could be viewed as "*beefing up*". The tribunal concluded that there was a foundation for this accusation, and therefore the claimant has not satisfied it that the allegation is factually proved.

the claimant has faced disciplinary action for bullying for reporting the sexual assault to the police and to the employment tribunal;

166. This allegation elides the initial grievance raised by Mr XY and the findings of the investigation officer, Mr Evans. It is correct that part of Mr XY's grievance as raised concerned Miss AB's decision to complain to the police and the employment tribunal after the respondent had found no case to answer. Mr Simons arranged for Mr Evans and Ms Block to be appointed, but made it clear

in an email of 5 February 2019 (page 933) it was the repeated raising of the same issues internally that he perceived to be a key issue. However, the decision to commence disciplinary action was made after a full investigation by Mr Evans. Ms Block made it clear under cross-examination that the decision to recommend disciplinary action was based on an understanding that Miss AB was perfectly entitled to complain to the police and the employment tribunal without facing disciplinary action; the reason why disciplinary action was recommended was her repeated and persistent internal complaints raising the same issue about Mr XY and the alleged incident on 30 August 2018, which met the definition of a vexatious complaint under the terms of the respondent's policy. The claimant has not shown facts which supports her allegation.

the claimant is not allowed to apply for promotion at all since 5 June 2019 as she is under disciplinary investigation for unfounded complaints against her;

167. No evidence was adduced by the claimant on this point. No witness was challenged on it and at one point during the hearing, the claimant considered withdrawing it. Critically, the tribunal has already found that there was a foundation for the complaints against her. The claimant has not shown facts which support this allegation.

the claimant's health and safety has been breached by being asked to return to work from the [redacted] office while no process has been in place to ensure her safety during a fire evacuation and nothing is in place to ensure the same standard of others in E department when working late or to the same standard to safety as others in E department at all;

168. This allegation turns on both the fire evacuation procedure and the late working procedure adopted by the respondent. The claimant was based on a different floor to the rest of her team from late February 2019 onwards (and in a completely different building to her manager). No witness was asked about the late working procedure, though there was evidence was in the bundle, and the claimant herself has adduced little evidence on the topic of either fire evacuation or late working procedure. In paragraph 199, the claimant mentions that Ms Jones asked Ms Ellis-Jenkins to arrange for the claimant to receive fire warden training (which she said was not received), but she asked neither witness about the matter. It is not clear to the tribunal why a failure to train the claimant as a fire warden (not a claim before it) meant that the claimant was

more at risk than the rest of her department; there is no evidence that most of the department were so trained before the tribunal (or even an allegation).

169. The only oral witness evidence relating to this point came from Ms Jones under cross examination when she outlined that the claimant would be as safe on the 16th floor as she would be on the 15th floor as the fire wardens swept the floor to ensure no one was left behind. Ms Jones went on to say that due to the fact that colleagues were often on different floors to meetings and other matters, the claimant was in no worse position due to being based where she was. Evidentially, the claimant has not shown facts which support this allegation.

asking the claimant to move if she didn't feel comfortable around Mr XY after her complaint that he sexually harassed her not investigated at all/not investigated properly;

170. As highlighted by Mr Allsop on behalf the respondent, under cross examination the claimant accepted that she was not asked to move, but merely given the opportunity to move to a different team in October 2018. The claimant herself accepted that she chose to move to Mr Webb's team. In addition, the allegation against Mr XY was investigated and found by this tribunal to have been conducted properly. Evidentially, the claimant has not shown facts which supports this allegation.

wrong decision being reached in disciplinary against Mr XY. Proper outcome (whether for sexual assault or sexual harassment) was case to answer;

171. As the tribunal has already found, there is no basis on which it could make a finding that the wrong decision was reached against Mr XY. In essence, it was his word against Miss AB's and a reasoned and detailed report was produced, following an independent investigation, which set out in detail the why there was no case to answer. Evidentially, the claimant has not shown facts supporting this allegation. In any event, the case of Cordant Security Ltd v Singh supports a view that there can be no detriment in circumstances where the allegation made has been found not to have been proved, which the tribunal has done in this case.

the claimant was issued with a notification of a formal disciplinary investigation into her for unfounded complaints after not receiving any feedback whether the grievance test had been applied properly by the respondent with respect to the grievances issued in March 2019 and April 2019 (breach of process);

172. The tribunal has already found that the complaints made against the claimant could not reasonably be described as unfounded. Given that the claimant has not been able to show that the complaints were unfounded, this allegation has not been proved on the facts.

Mr XY was not advised by the respondent that the claimant does not want him entering her personal space, leaning over her or coming into physical contact with her anywhere;

173. Mr Allsop on behalf the respondent submits that this allegation relates to an email from the police on 30 August 2019. In the view of the tribunal, the submission is incorrect as it is clear that the claimant is complaining of an omission by the respondent over the entire period to which these proceedings relate.

174. Factually, the allegation is correct. The question is whether this is a detriment. A reasonable worker would be aware that as early as October 2018, Mr XY was returning to work and the disciplinary was not continuing. As early as September 2018, it would be perfectly clear to a reasonable worker from the complaint made by Miss AB as notified to Mr XY that physical interaction was not welcome. The term "*personal space*" is vague as the acceptability of closeness between one individual to another can vary from one set of circumstances to another; for example in a lift packed to the maximum capacity, it is highly likely that individuals will be in physical contact with each other, while physical contact between the same individuals would be inappropriate elsewhere.

175. The tribunal was not persuaded that a reasonable worker might take the view that it was a detriment for the respondent not to give such advice to Mr XY, but in the event that finding is incorrect, there is no evidence at all that could support a finding that the reason this advice was not given by the respondent was because the claimant undertook a protected act. Taking all the evidence into account, the reality is that the respondent having found that there was no case to answer did not think that the events of 30 August 2018

happened as the claimant alleged; the point was not put to any witness by the claimant under questioning that the failure to give such advice was significantly influenced by her protected acts.

the claimant was required to respond to grievances issued against her without having received any response from the respondent that the claimant felt sexually harassed, harassed and victimised by these grievances;

176. Factually, the claimant was correct to say that she was required to respond to the grievances against her (by Mr Evans who invited her response) while her complaint that the grievances were in themselves acts of sexual harassment and victimisation had not been dealt with by the respondent. The tribunal took the view that a reasonable worker who believed as the claimant asserts (and this is not been challenged by the respondent) that the grievances raised against her by Mr XY and Mr Webb were discriminatory acts might take the view that requiring them to deal with the "*discriminatory*" grievances was a detriment. While Mr Evans only invited the claimant to respond, from her perspective it was reasonable for her to view this as a requirement to put her side of the story to the investigator.

claimant was not told her complaint constituted potentially a criminal offence, so she could report to the police, despite informing the claimant (the tribunal assumed this is a typo and actually the reference should be "informing the respondent that she did not…") that she did not feel safe around the assaulter;

177. The tribunal's findings in relation to the detriment previously asserted that the claimant was not informed that she had reported a criminal offence apply with equal force here. It is factually correct that this did not happen but the tribunal does not find it was a detriment for the reasons previously given at paragraphs 126-128 above.

the claimant was not advised to follow internal health and safety guidance at HR62085 further to the assault she reported.

178. The guidance to which the claimant refers in this allegation does not apply in the circumstances where one colleague assaults another. If the entirety of the guidance is read, as the evidence from Mr Simons makes clear, it only

applies when someone who is external (not an employee) acts in a rude or abusive manner, makes threats of violence or commits violence towards staff members. The guidance expressly directs those complaining of actions by their colleagues to different policies and guidance – "*Alleged violence between colleagues should be managed with reference to conduct and discipline policy*". So, while it is correct that factually the claimant was not advised to follow this guidance, in the view the tribunal cannot be a detriment as a reasonable worker would not take the view that it was a detriment not to be told to follow guidance that does not apply in the circumstances.

If so, was this because the claimant did a protected act and/or because the respondent believes the claimant had done, or might do, a protected act?

179. It is worth at this stage recapping what the tribunal has found to date in its deliberations that equate to detriments suffered by the claimant:

a) that the claimant's grievances of November 2018 were not conducted properly, and the decision maker in respect of this detriment was Mr Simons;
b) that the claimant was asked to leave the building, and initially it was suggested that she should be escorted out on 8 February 2019, and the decision maker in respect of this detriment was Mr Simons;
c) that the claimant was required to respond to grievances she perceived as discriminatory before her complaint about the raising of those grievances was responded to by the respondent, and that the decision maker in respect of this detriment was Mr Evans as he invited her to respond to the grievances.

180. Before considering each of the three detriments found by the tribunal, it wishes to be clear that the claimant's position that everything that flowed from her initial complaint on 9 September 2018 with which she was unhappy was an act of discrimination has not been evidenced. The claimant had to show facts that can lead a tribunal to conclude that a significant influence on the decision maker who caused the detriment to occur was because of the protected acts made by the claimant. This the claimant has failed to do in relation to any of the detriment she alleges. Despite this, the tribunal wanted to consider specifically the reason why each of the detriments found occurred.

181. In relation to the failure to conduct the grievances of November 2018 properly, it is apparent that the delay was not because of any protected act but because Mr Simons the decision maker struggled to get timely HR advice as

he required. In relation to his approach to the grievance test, again the emails between Mr Simons and the HR adviser demonstrates that Mr Simons made the decision on the basis of the advice that he had received and because IG had found that there was no case to answer against Mr XY concerning the events of 30 August 2018. The fact that the claimant had made a written complaint of sexual harassment on 9 September 2018 had no influence on his decision, nor did the claimant's decision to contact ACAS on 22 November 2018 in the view of the tribunal.

182. In relation to the decision to ask the claimant to leave the building on 8 February 2019 and the initial suggestion that she be escorted out by a colleague, again a causal link between this decision and a protected act by the claimant has not been made out. The tribunal concluded that the reason why Mr Simons made the decision was because of the erratic behaviour of the claimant (such as the little or no notice given of her plan to return to the office that day), the tone of her emails to him, his concerns as outlined in paragraph 51 of his witness statement that the respondent might not be insured should the claimant return to the office while unfit for work and her persistent ignoring of the requests for a meeting to discuss her return to work, despite the advice he had received from CSHR that the meeting was necessary. Mr Simons' evidence was that he had lost trust in the claimant due to her insubordinate refusal to comply with the instructions to stop working from home. There was no challenge to his evidence that he asked the claimant to be initially escorted out because he wanted to be certain she had left the building. There is no evidence before the tribunal that any of the claimant's protected acts influenced Mr Simons' decision to ask her to leave the building and be escorted out in any way.

183. In relation to the requirement to respond to the grievances made against the claimant, the grievance process does require that grievances be investigated once they have passed the grievance test. The tribunal considered that to act as the claimant wished would have meant that the grievances raised by Mr XY and Mr Webb would not be able to be progressed if the claimant raised a grievance about the act of raising the original grievances and was able to pause their process while her grievance was considered first - the process would become circular and unworkable. The investigative officer of the original grievances is well placed to assess whether they are malicious or vexatious, particularly if the point is raised with the investigative officer by the subject of the complaint. There is no evidence before the tribunal to support the finding that the reason why Mr Evans asked Miss AB to respond to the grievance was because of any protected act that she had undertaken. On the contrary, the

evidence was that Mr Evans had carefully considered the process (and corrected Ms Block at points) and was aware that in order to be fair, the claimant's view of the allegations made against her should be sought. This was why he asked for her view; there is no evidence that the claimant's protected acts had any influence on his decision.

184. In light of the tribunal's findings that the claimant has not established that any detriment she suffered was because she had made a protected act (and it had never been argued that the detriments arose because the respondent believed that the claimant had done or might do a protected act), her victimisation claim fails. The tribunal did not consider it a good use of resources to consider in depth any time limit issues in relation to the detriments found given its findings on the merits. That said, given the dates of the detriments found by the tribunal to have been suffered by the claimant, it did not appear that there was a time limit issue.

185. In conclusion, by unanimous decision the tribunal finds that the claimant's claims of sexual harassment and victimisation are not well founded and are dismissed.

Employment Judge Sharp
Dated: 13 August 2020

JUDGMENT SENT TO THE PARTIES ON

……15 August 2020……..

…… ……..
FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS