



EMPLOYMENT TRIBUNALS

Claimant

Miss M Pletini AND

Respondents

- 1. Asser Ltd**
- 2. Mr Jake Panayiotou t/a The Wellington Club**
- 3. Nic Brooks**
- 4. Phil Drummond**
- 5. Miss Nicola Brooks t/a The Wellington Club**

Heard at: London Central

On: 22 & 23 September 2020

Before: Employment Judge Brown

Members: Ms Z Darmas
Mr J Carroll

Representation

Claimant: In person

All Respondents: Did not attend and were not represented

JUDGMENT

The Judgment of the Tribunal is that:

- 1. Nicola Brooks, trading as The Wellington Club, was the Claimant's employer.**
- 2. Nicola Brooks and Phil Drummond subjected the Claimant to sex harassment.**
- 3. Nicola Brooks victimised the Claimant.**
- 4. Nicola Brooks shall pay the Claimant £12,891.80 for injury to feelings, including interest for sex harassment and victimisation. Phil Drummond is jointly and severally liable to pay the Claimant £3,222.95 of that sum, on account of sex harassment.**
- 5. Nicola Brooks and Phil Drummond shall pay the Claimant £1,734.71 for economic loss arising from sex harassment. Nicola Brooks and Phil Drummond are joint and severally liable to pay that sum.**
- 6. Nicola Brooks made unlawful deductions from the Claimant's wages and shall pay the Claimant £3200 net on account of the unlawful deductions.**

- 7. Jake Panayioutou was not the Claimant's employer. Asser Limited was not the Claimant's employer. They are not liable for any of the Claimant's claims.**
- 8. The Claimant's claim of sex discrimination is dismissed.**
- 9. The Claimant's claim for failure to provide terms of employment under s1 Employment Rights Act 1996 fails because the Claimant was not employed for 2 months, so that her employer was not in breach of the duty to provide terms of employment within 2 months under the provisions of s1 ERA 1996 in force at the relevant time.**

REASONS

Preliminary

1. By a claim form presented on 24 December 2020, the Claimant brought complaints of direct sex discrimination, sex harassment and victimisation against the First Respondent and The Wellington Club as Second Respondent, victimisation against the Third Respondent (Nicola Brooks), and sex harassment against the Fourth Respondent (Phil Drummond). She also brought complaints of unlawful deductions from wages against the First Respondent and The Wellington Club as Second Respondents.
2. The Wellington Club as Second Respondent, Nicola Brooks as Third Respondent and Phil Drummond as Fourth Respondent presented ET3 Responses to the Claimant's claims. The Wellington Club stated that "The Wellington Club" was a trading name only. The form said this: "Wellington is a trading name only – please see Asser Ltd".. "Please see Asser Ltd for all employment information." Asser Limited did not present a response to the claim.
3. The Claimant and Respondents had been sent a Notice of Hearing for a Preliminary Hearing on 6 May 2020. All Employment Tribunal hearings listed 23 March 2020 – 26 June 2020 were converted to telephone hearings because of the covid19 pandemic. The parties were therefore sent a standard covid 19 direction to provide their telephone and email contact details so that the hearing could proceed remotely. The Respondents did not provide their telephone or email contact details, either on their Responses, or in any other correspondence to the Tribunal. Tribunal Judges, who were working remotely due to the pandemic, were therefore unable to send the Respondents the telephone dial-in details for the Preliminary Hearing on 6 May 2020.
4. Nevertheless, the Respondents had been sent Notice of a Preliminary Hearing to be held on 6 May 2020 when the claim was served on them. The Employment Tribunal website had covid guidance on it. The Respondents did not contact the Tribunal in any way to enquire about the hearing on 6 May 2020. The Hearing, attended by the Claimant, proceeded in their absence.
5. At that hearing, the Claimant stated that the Wellington Club had been formed as a partnership by Miss Nicola Brooks (the Third Respondent) and Mr Jake Panayiotou. "Mr Jake Panayiotou t/a The Wellington Club" was substituted for the Second Respondent and "Miss Nicola Brooks t/a The Wellington Club" was added

as a Fifth Respondent. The Claimant had been employed at The Wellington Club and, if those Respondents were a partnership who traded as The Wellington Club, they were potentially liable for a remedy in the claim as employers.

6. Miss Nicola Brooks was the same person as the Third Respondent, Nic Brooks. However, because she had not been served as the employer “trading as the Wellington Club”, she was also added as fifth respondent, so that she had an opportunity to present a response as employer.
7. The proceedings were then served on Mr Panayiotou and Miss Nicola Brooks at their respective residential addresses.
8. The Claimant was given permission to amend her particulars of claim to include the Fifth Respondent in all allegations against the Claimant’s employer.
9. There was a further Telephone Preliminary Hearing on 22 June 2020, after the new Respondents had been served and given time to present their Responses.
10. On 15 May 2020 the 2 new Respondents, and all other parties, were sent a Notice of the Telephone Preliminary Hearing to be held on 22 June 2020 at 2pm. All parties were told to send the Tribunal the direct line telephone number of the person who would be conducting the telephone hearing.
11. None of the Respondents attended that hearing either. They did not provide their telephone numbers or email addresses to the Tribunal.
12. The 2 new Respondents had been served with the proceedings at their residential addresses. They were told that, if they wished to defend the claim, their responses must be received by **18 June 2020**.
13. On 9 June 2020 the Tribunal received a Response from Mr Panayiotou. In it, he said that he had never met the Claimant and that, although he was involved in promoting the Wellington Club in its first few months, he had no involvement in its management and staff matters.
14. No Response was received from the Fifth Respondent, Miss Nicola Brooks.
15. On 29 June 2020 the Tribunal wrote to Miss Nicola Brooks, saying that, because she had not presented a Response, a rule 21 judgment could be issued against her.
16. On 24 July 2020 the Tribunal sent a strike out warning to the Fourth Respondent, Phil Drummond, saying that EJ Brown was considering striking out his Response because it had not been actively pursued. The Tribunal said that, if the Fourth Respondent wished to object, he should give his reasons or request a hearing by 7 August 2020.
17. The Fourth Respondent, Phil Drummond, did not respond to that strike out warning. On 19 September 2020 judgment was entered against the Fourth Respondent, striking out his response.

18. On 16 September 2020 the Tribunal sent a strike out warning to the Third Respondent (Nicola Brooks), saying that EJ Brown was considering striking out her Response because it had not been actively pursued. The Tribunal said that, if the Third Respondent wished to object, she should give her reasons or request a hearing by 7 days.
19. The Third Respondent did not respond to that strike out warning.
20. The First Respondent has never presented a response.
21. On 25 June 2020 a rule 21 judgment was entered for the Claimant against the First Respondent.
22. In summary, rule 21 judgment has been entered against Asser Limited, the First Respondent. Phil Drummond's (the Fourth Respondent's) Response has been struck out. A rule 21 judgment could be entered against the Fifth Respondent, Miss Nicola Brooks. She had also been sent a strike out warning, in respect of her original Response as Third Respondent, saying that she must give reasons why her response should not be struck out by 23 September 2020.
23. The Claimant attended the Final Hearing.
24. None of the Respondents attended.
25. The parties had all been sent a Notice of Hearing for the Final Hearing on 22 – 15 September 2020, when they were originally served with the proceedings. The Tribunal was satisfied that all the Respondents knew about the Final Hearing. It proceeded, as it has originally been notified to them, in person, at Central London Employment Tribunal.
26. The Claimant had drafted a List of Issues, which the Tribunal used to establish the following issues in the claim and responses:

Factual Issues

2. Who was the Claimant employed by?

2.1. It is noted that the First Respondent has not completed an ET3 Response Form. Further, the ET3 Response Form completed on behalf of the Second Respondent states at Paragraph 3.1 of the ET3 Response Form that 'The Wellington Club' is a trading name only and does not employ anyone.

2.2. In the absence of a contract of employment this fact will require determination by the Tribunal based on the facts of the case.

3. The following matters of fact are alleged by the Claimant and will require determination by the Tribunal:

3.1. On 21st September 2019, Michael asked the Claimant to go to the cinema with him within a few weeks of her commencing employment.

- 3.2. On 27th September 2019, Michael uttered to the Claimant in Italian, “I want you” in a sexual way.
- 3.3. On 27th September 2019, the Respondent failed to take any action after the Claimant reported the incident of sexual harassment by Michael.
- 3.4. On 5th October 2019, Phil Drummond grabbed a bottle of champagne from the bar and said to the Claimant, “let’s go to the car”.
- 3.5. On 5th October 2019, Phil Drummond stated to the Claimant that he will be taking her to his house.
- 3.6. On 5th October 2019, Phil Drummond stated to the Claimant that he just wanted to have a chat and said, “don’t worry I am not going to fuck you”.
- 3.7. On the Claimant’s next shift, following the incident on 5th October 2019, Phil Drummond ignored the Claimant by not saying hello and not looking at her. On 17th October 2019, Michael approached the Claimant and asked to speak to her. Michael grabbed the Claimant by her waist and pulled her towards him.
- 3.9. On 18th October 2019, Phil Drummond grabbed the Claimant by her hand and pulled her towards him aggressively and angrily asking her why she had spoken to his girlfriend.
- 3.10. On 13th November 2019, the Claimant attended a meeting with Nic Brooks and Nic Brooks was aggressive towards the Claimant when discussing the acts of sexual harassment,
- 3.11. On 13th November 2019, Nic Brooks denied that any acts of sexual harassment had taken place without carrying out a fair investigation into the Claimant’s complaints.
- 3.12. On 13th November 2019, Nic Brooks called the Claimant a liar for alleging that the acts of sexual harassment had taken place.
- 3.13. On 13th November 2019, Nic Brooks called the Claimant a liar and asked her to leave for alleging that Marcelo had informed her that she was not required to provide any notice.
- 3.14. On 13th November 2019, Nic Brooks refused to pay the Claimant as she had left work without providing notice.

Legal Issues

Harassment on the ground of Sex / Sexual Harassment

4. If any of the above allegations listed from Paragraph 3.1 to Paragraph 3.14 are well established, did any of the same amount to unwanted conduct by the Respondents?
5. If so, was any such treatment related to the Claimant’s sex and/or of a sexual nature?
6. Has the Claimant shown facts from which the Tribunal can conclude that the unwanted conduct had the purpose or effect of violating her dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment? In deciding whether the conduct had the relevant effect, the Tribunal shall take into account the perception of the Claimant, other circumstances of the case and whether it is reasonable for the conduct to have had the said effect on the Claimant.
7. Have the Respondents shown that the conduct did not have that purpose or effect?

Direct Discrimination

8. Did the First, Second, and or Third/Fifth Respondents treat the Claimant less favourably because of her sex by:

8.1. On 27th September 2019, the Respondent failed to take any action after the Claimant reported the incident of sexual harassment by Michael.

9. Who are the Claimant's Comparators?

9.1. The Claimant relies on a hypothetical comparator.

10. Was the allegation listed at Paragraph 8.1 less favourable treatment than that which would have been accorded to a hypothetical comparator?

11. Was the less favourable treatment done because of the Claimant's sex?

12. Are there facts from which the Tribunal could decide, in the absence of any other explanation that the First, Second, and or Third/Fifth Respondents discriminated against the Claimant?

13. If so, have the First, Second, and or Third/Fifth Respondents proved that it did not discriminate against the Claimant?

Victimisation

14. Did the Claimant do a protected act for the purposes of S.27(2) of the Equality Act 2010, by her alleging to Marcelo on 18 October 2019 that she had been subjected to sexual harassment by Michael and Phil Drummond?

15. Was the Claimant subjected to a detriment contrary to S.27(1) of the EQA 2010 by:

15.1. On 13th November 2019, the Claimant attended a meeting with Nic Brooks and Nic Brooks was aggressive towards the Claimant when discussing the acts of sexual harassment.

15.2. On 13th November 2019, Nic Brooks denied that any acts of sexual harassment had taken place without carrying out a fair investigation into the Claimant's complaints.

15.3. On 13th November 2019, Nic Brooks called the Claimant a liar for alleging that the acts of sexual harassment had taken place.

15.4. On 13th November 2019, Nic Brooks called the Claimant a liar and asked her to leave for alleging that Marcelo had informed her that she was not required to provide any notice.

15.5. On 13th November 2019, Nic Brooks refused to pay the Claimant as she had left work without providing notice.

Unlawful Deduction of Wages

16. Has the First, Second, and or Third/Fifth Respondents made unlawful deductions from the Claimant's wages contrary to S.13 of the ERA 1996 in that they:

16.1. Withheld the sum of £80 for the week of 28 September 2019 to 5 October 2019?

16.2. Withheld the sum of £320 for the working between 5 October 2019 to 17 October 2019?

16.3. Withheld the sum of £170 for the week of 12 October 2019 to 19 October 2019?

Failure to Provide Written Statement of Particulars

17. Did the First, Second, and or Third/Fifth Respondents fail to comply with its duty under S.1 of the ERA 1996 by not providing the Claimant with a written statement of particulars of employment within 2 months of her commencing employment?

Remedy

18. What financial loss, if any, has the Claimant suffered as a result of any unlawful discrimination?

19. Is the Claimant entitled to any award for injury to feelings as a result of any unlawful discrimination?

20. Is the Claimant entitled to any compensation for the unlawful deduction of wages, if so, what would be the appropriate level of compensation for this breach?

21. If the First, Second, and or Third/Fifth Respondent acted in breach of S.1 of the ERA 1996, what would be the appropriate level of compensation for this breach?

22. Did the First, Second, and or Third/Fifth Respondents act in a high-handed, malicious, insulting or oppressive manner so as to justify an award for aggravated damages.

27. The Tribunal proceeded with the hearing. The Claimant's claims had been contested by Nicola Brooks and Jake Panayiotou, even though they did not attend the Hearing. The Claimant gave evidence to the Tribunal. The Tribunal questioned her about the responses presented by Nicola Brooks and Mr Panayiotou. It also asked her about the response of Phil Drummond, to test her evidence.

The Facts

28. The Claimant started work at the Wellington Club, Jermyn Street in early September 2019. Her employment there ended on 18 October 2019.

29. The Claimant told the Tribunal that she had met the Fourth Respondent, Phil Drummond, at a party on 24 August 2020. Phil Drummond was a friend of the Claimant's friend Danny Loeber. Mr Drummond informed the Claimant that he was the main DJ at the Wellington Club and was a personal friend of its owner, Nicola Brooks. Mr Drummond offered to help the Claimant obtain work at the Wellington Club.
30. The Claimant and Mr Drummond exchanged text messages and, on 5 September 2020, the Claimant visited the Wellington Club where Mr Drummond introduced her to Marcelo, the manager. Marcelo interviewed the Claimant and offered her a job as a waitress being paid £12.50 gross per hour. The Claimant accepted the offer and worked a trial shift on 7 September and then additional shifts on 12, 13 and 14 September 2019.
31. The Claimant was never given a contract of employment, nor any terms of her employment.
32. The Wellington Club is not a company registered at Companies House.
33. The Claimant told the Tribunal that there was an opening party for the Club around the time she started work. She said that Marcelo, the manager, told her that Mr Panayiotou, the owner of the previous Wellington Club, would be there. The Claimant said that she assumed that Mr Panayiotou was also an owner of the new Wellington Club.
34. The Claimant told the Tribunal that her solicitors had carried out a search and had identified that Nicola Brooks and Jake Panayiotou were the owners of the Wellington Club. However, the searches produced in the Bundle appeared simply to be tracing reports of those individuals' addresses, rather than reports which established their partnership, or their relationship with the Wellington Club, pages 125, 127.
35. Mr Panayiotou wrote to the Tribunal on 3 July 2020, saying that he had never been employed by the Wellington Club and that he had only been involved in promoting it for the first 3 months. He said, "Miss Nicola Brooks is the owner of the Wellington Club and she will confirm all of the above."
36. The Wellington Club presented a Response. In it, it said, "The Wellington Club is a trading name only – it does not employ anyone... Please see Asser Limited for all employment information." Page 35.
37. The Claimant's pay slips give were issued in the name of "Asser Limited". The Claimant told the Tribunal that she understood that Asser Limited was a payroll company.
38. In Nicola Brooks ET3 Response (as Third Respondent) she said, "I do not have access to employee info. Asser Ltd has access to individual staff's employment details."

39. Neither Nicola Brooks nor the Wellington Club's Response stated, in terms, that Asser Limited was the Claimant's employer. The Responses simply said that Asser Limited had the employees' employment details.
40. The Claimant was never given a contract of employment stating who her employer was.
41. The Claimant produced a magazine article from "Hospitality Interiors Magazine" dated 9 April 2019 which stated, "The Wellington Restaurant and private members club opens in St James. The restaurant and club are the creation of Nic Brooks and Jake Panayioutou. Nic is a former city professional while Jake was the main force behind and owner of the original Wellington Club Knightsbridge".
42. On the balance of the evidence, the Tribunal decided that Nicola Brooks was trading as the Wellington Club. She was described by the Fourth and Second Respondents as the "owner" of the club. She did not say, in her own ET3 response, that another person or legal entity was the employer in this case. As the Wellington Club is not a legal entity, it appeared that an individual or partnership was trading in that name. The only real evidence as to the identity of the relevant individual is the evidence, from various sources, that Nicola Brooks is the "owner" of the Wellington Club.
43. The ET decided that Asser Limited was not the employer – no party has ever alleged that it was.
44. The Tribunal found that Nicola Brooks was therefore the Claimant's employer when the Claimant was offered employment at the Wellington Club.
45. The search for Jake Panayioutou produced by the Claimant listed him as a director of "Wellington Knightsbridge Ltd (Dissolved)". The ET decided that Mr Panayioutou was a director of a previous Wellington Club, but was not linked to the owner of the current Wellington Club. The Claimant was told that he was the owner of the previous club. There was no evidence of a partnership. The Tribunal found that he was not a member of a partnership trading as the Wellington Club
46. After she started work at the Wellington Club in September 2019, one of the Claimant's colleague, Michael, who worked as a Kitchen Staff washing the dishes, kept telling the Claimant that he wanted to help her. On Saturday 21 September 2019, he asked the Claimant to go to the cinema with him. The Claimant told the Tribunal that she did not consider this to be sexual harassment, but that it made her feel uncomfortable because he was very much older than she was.
47. The Claimant told the Tribunal that, following this, about a week later, when the Claimant was in the kitchen, Michael spoke to her in Italian and told her that it meant, "I want you". She told the Tribunal that he said this in a sexual way, and it made her feel uncomfortable.
48. The Claimant told the Tribunal that she informed her colleague, Stephanie, about what happened and that previously Michael had invited the Claimant to go to the cinema with him. The Claimant said that Stephanie informed Marcelo, who called

the Chef and told him what happened, in front of the Claimant and Stephanie. Marcelo stated, "Don't worry, I will deal with this".

49. The Claimant told the Tribunal that, nevertheless, she had never been given an outcome to her complaint and had not been told whether anyone had spoken to Michael about it.
50. The Claimant said that, as a result of Michael's action and Marcelo's failure to follow up, she was worried about going into the kitchen. She avoided doing so.
51. The Claimant told the Tribunal that, while Nicola Brooks' ET3 Response said that Michael had been given a verbal warning, no one had ever told the Claimant this.
52. The Claimant was concerned about late payment of her wages and decided to seek Phil Drummond's help. She told the Tribunal that, during her shift on 5 October 2019, she saw Phil Drummond at the Club and asked him whether she could speak to him about work. In response, Phil Drummond said, "Sure, do you want to grab a drink after work?" The Claimant agreed.
53. The Claimant said that she finished her shift at about 1am and saw Phil Drummond waiting on the sofa. The Claimant said that, as she finished her shift, Marcelo gave her some paperwork to complete, to be added to payroll and receive wages into her bank account. This took her some time and she was surprised that Phil Drummond was still waiting for her when she finished.
54. The Claimant told the Tribunal that Phil Drummond then grabbed a bottle of champagne from the bar and asked her to put it in her bag. The Claimant felt that this was ostentatious and was done so that the other staff would notice that Mr Drummond was leaving with the Claimant and a bottle of champagne.
55. The Claimant thought that this was strange as she had thought they would go to a nearby bar to have a drink. She said that Mr Drummond then said, "Let's go to the car". When the Claimant asked where they were going, he said, "Let's go to my house where we can relax and have a good chat" and showed the Claimant a bag of white powder.
56. The Claimant said that she refused this offer, but Mr Drummond kept insisting that she go to his house. She refused and said she was tired and wanted to go home. Mr Drummond told the Claimant he would drop her to the train station, but on the way, he continued to insist that she go to his house. Phil Drummond said that he just wanted to have a chat and said, "Don't worry I am not going to fuck you".
57. The Claimant told the Tribunal that, when she got out of the car, she tried to be friendly and thank Mr Drummond for the lift, but he turned his face away and ignored her and, when she waved goodbye, he looked very angry.
58. During her next shift, Mr Drummond was also working, but ignored the Claimant. He did not look at her, or say hello, although the Claimant saw him being friendly to all her colleagues. The Claimant told the Tribunal that she confided in

Stephanie again, because she felt uncomfortable being at work. She also mentioned that she was struggling to survive on the few shifts she was being offered, as many were cancelled at short notice.

59. On 12 October 2019, during the Claimant's shift, she had a conversation, in Russian with Phil Drummond's girlfriend, who was at the Club. The Claimant mentioned that she wanted to speak to her about Phil Drummond. Phil Drummond's girlfriend pushed the Claimant to tell her what was on her mind. The Claimant was worried that the matter would escalate and that the Claimant would be sacked and not get paid. Mr Drummond's girlfriend promised not to tell him, so the Claimant eventually explained what had happened with Mr Drummond on 5 October 2019.
60. Phil Drummond's girlfriend was very distressed by this news. The next day, the Claimant met his girlfriend again, for dinner. Mr Drummond's girlfriend told the Claimant that she had, indeed, told Mr Drummond what the Claimant had said about 5 October 2019. The Claimant felt that she should hand in her notice to the Club.
61. During the Claimant's next shift, on 17 October 2019, she saw Mr Drummond, but again he did not say anything to her. On the same day, Michael approached the Claimant while she was in the kitchen, collecting ice for the bar. The Claimant said she was busy and did not wish to talk to him. Michael then approached her and grabbed her by her waist and pulled her towards him. The Claimant screamed, "Do not touch me" and rushed off.
62. On 18 October 2019 the Claimant arrived early for her shift and spoke to Marcelo. She told him that she wanted to leave and asked what the notice period was. Marcelo was surprised and asked her why she was leaving. The Claimant responded that there were a few reasons, including that she did not feel comfortable working with Michael and that she was not earning enough to live on.
63. In response, Marcelo promised the Claimant more hours, but the Claimant said that there was another reason for her leaving. Marcelo promised to keep the discussion confidential and the Claimant told him what had occurred on 5 October 2019, when Phil Drummond tried to take the Claimant home and she had refused. She explained that the Claimant felt uncomfortable working at the Club as Mr Drummond had been ignoring her since this incident.
64. Marcelo said that given the circumstances, the Claimant did not have to work her notice period and it was up to the Claimant whether she wanted to have her last shift on Friday 18 October 2019, or Saturday 19 October 2019.
65. The Claimant said that she would work on 19 October 2019 as she did not want to let the Club down.
66. The same night, at around 10pm, the Claimant saw Phil Drummond. He looked at the Claimant very angrily. Later, when the Claimant was picking up empty glasses near the office, she bumped into Mr Drummond as he was walking out of the office. Mr Drummond grabbed the Claimant by her hand and pulled her

towards him aggressively and angrily, saying, "We need to talk". He asked why the Claimant had spoken to his girlfriend. The Claimant pulled away from him. The Claimant told the Tribunal that, throughout the night, Phil Drummond was angry. The Claimant left the Club before the end of her shift, without signing out, as she wanted to avoid him.

67. The Claimant told the Tribunal that she did not work a shift on 19 October 2019, as she was afraid of bumping into Mr Drummond. She did not return to work thereafter.
68. The Claimant told the Tribunal that she had worked for a total of 32 hours between 5 and 18 October 2019 but had not been paid for any of those hours. The Claimant showed the Tribunal pay slips issued to her for the week 28 September – 5 October, in the sum of £80, and for the week 12 – 19 October 2019, in the sum of £170. She Claimant told the Tribunal that the pay slips were not correct and that she had worked 32 hours from 5 October – 18 October, but that she had never received any payment for those hours.
69. The Claimant claims £320 net for the 32 hours' work.
70. On 24 October 2019, the Claimant received a call from her friend Danny Loeber. Mr Loeber told the Claimant that Phil Drummond had telephoned him, complaining that the Claimant had told Marcelo that Phil Drummond had touched her and that Mr Drummond was about to lose his job because of this.
71. The Claimant was surprised to hear this, because she had never alleged that Phil Drummond had touched her. She called Phil Drummond to clarify the situation. During the ensuing phone call between them, Phil Drummond said that there had been a misunderstanding regarding 5 October 2019 and the Claimant had taken everything the wrong way. The Claimant said that she had not alleged that he had touched her, but that she had been talking about the incident where Michael had touched her. The conversation ended amicably and Mr Drummond offered to help the Claimant in future.
72. On 9 November 2019 the Claimant sent Phil Drummond her pay slips and the hours she had worked and asked for him to help her to be paid.
73. On 11 November 2019, the Claimant messaged Marcelo on WhatsApp, asking when she would be getting paid for her 32 hours, p104.
74. On 12 November 2019, Marcelo WhatsApp messaged the Claimant saying, "When you have a chance could you kindly call me pls". The Claimant replied saying he could call her any time, pages 104 and 105.
75. Subsequently, Marcelo telephoned the Claimant and said that Nicola Brooks was carrying out an investigation into the sexual harassment allegation the Claimant had made. He asked the Claimant to contact Miss Brooks about this. Marcelo said that the Claimant's pay was ready to be collected from the office. Marcelo then WhatsApp messaged the Claimant Nicola Brooks' contact number, p105.

76. The Claimant contacted Nicola Brooks and was invited to a meeting with her on 13 November 2019 at 10am at the Club's Office in Holborn.
77. The Claimant told the Tribunal that, at the meeting, Nicola Brooks asked her in a very aggressive manner about the sexual harassment incident with Phil Drummond touching her. When the Claimant confirmed that she had never stated that Phil Drummond had touched her, but that Michael had touched the Claimant inappropriately, Nicola Brooks said that she had done an investigation and had spoken to the staff and had been told that the Claimant had been saying that Phil Drummond had touched the Claimant. The Claimant repeated that this was not true, but Nicola Brooks did not want to listen and accused the Claimant of lying. The Claimant told the Tribunal that she explained to Ms Brooks what had happened on 5 October 2019, but that she had not wanted to get Phil Drummond into trouble and therefore told Miss Brooks that she did not consider it to be sexual harassment.
78. The Claimant told the Tribunal that Nicola Brooks stated there was no incident with Michael, as she had not heard about this from staff, and that the incident with Phil Drummond did not amount to sexual harassment. She said that the Claimant was lying. The Claimant said that there was no point in continuing the meeting as she did not wish to be accused of lying. She asked for her pay. Nicola Brooks responded that the Claimant was not going to be paid as she had not worked her notice period. The Claimant responded that she had been told by Marcelo on 18 October 2019 that she did not have to work a notice period. However, Nicola Brooks continued to accuse the Claimant of lying.
79. The Claimant told the Tribunal that she felt like she was having a panic attack during the meeting, that she began crying and felt humiliated. She said that Miss Brooks had a smile on her face and had a telephone in her hand, filming the Claimant as she left.
80. The Claimant told the Tribunal that she was terrified during her meeting with Nicola Brooks, and was crying and couldn't stop. She felt humiliated by being required to come to the Respondent's office, but then being treated in the way that she was. The Claimant told the Tribunal said that she is now scared to address any issues with managers because she will be the one who will be blamed.
81. The Claimant said that, initially, she was scared to apply for a job because of her experiences. She had no money and fell out with her family because she was in such a distressed state. She left the family home and became homeless for a period. She spent Christmas sleeping in park. Around December 2019, a former colleague from the Wellington club contacted the Claimant offered to help her obtain a job at another Club, the Ministry.
82. The Claimant started working at the Ministry on 13 January 2020, full time. She worked full time until March 2020, when she was furloughed because of the covid19 pandemic. The Claimant was made redundant on 24 August 2020 from the Ministry.

83. The Claimant said that she would not have brought a claim to the Tribunal had she not been humiliated and shamed in the meeting by Nicola Brooks on 13 November 2019. The Claimant said that she had just wanted to be paid, but that she was treated terribly by Nicola Brooks and still has panic attacks and anxiety.
84. The Tribunal tested the Claimant's evidence and questioned it, including by reference to the Responses presented by the Respondents.
85. The Claimant produced several WhatsApp messages showing that she was anxious to be paid, pages 97 - 105.
86. The Tribunal noted that Nicola Brooks' Response said that Mr Drummond provides business development services at the venue. The Response stated that Marcelo and Brett Duarte, Chef, had told Miss Brooks that the Claimant had accused had Mr Drummond of sex harassment and had discussed this with several co-workers.
87. In her Response, she further stated that the Chef had told Michael not to speak to the Claimant, except in relation to work. However, Miss Brooks' Response stated that Michael was warned only in respect of his invitation to the cinema. Miss Brooks said that no other allegation had been made against Michael.
88. Also in Nicola Brooks' Response, she said that she asked for statements from staff members. The statement from Mr Drummond said that, on 21 September the Claimant had asked Mr Drummond to go to a party but he said that he was going home and that the Claimant was welcome to join him if she wished. He took a bottle of prosecco and the Claimant followed him. The statement from Mr Drummond said that, when the Claimant realised how far out of London he lived and that he wasn't coming in the next day, the Claimant decided not to go with him.
89. Miss Brooks' Response also contained the following extracts from statements from other staff members:
- 89.1.** "Angela Pons (AP) ... Margarita had approached AP and had said to her that PD had gave her a car lift and he tried to take her to his place to have some drinks and she refused to go with him. After that, he started acting very strange with her, like ignoring her completely..." (sic)
- 89.2.** "Stephanie Quezada (SQ) ..Margarita had approached SQ also and stated that she wasn't happy due to the fact that PD was single her out (sic) and stop talking to her and ignoring her all together since the day that he gave her a lift and she refused to let him take her to his place..."
- 89.3.** Ricky Hanti (RY) ... saw the day that PD and Margarita left the Club together with a bottle of prosecco..."
90. Miss Brooks' Response said that the Claimant had admitted to both Mr Drummond and Miss Brooks that she had made up the sexual harassment

allegation against Mr Drummond because she was annoyed that she had not got more shifts at the Club.

91. However, the ET considered that the statements of the staff members contained in Miss Brooks' Response corroborated the Claimant's allegations against Mr Drummond. In particular, Ricky Hanti corroborated the Claimant's description of Mr Drummond taking a bottle of sparkling wine when other staff members could see. Ms Quezada and Ms Pons' statements showed that, shortly after the events in question, the Claimant told 2 colleagues that she had refused to go home with Mr Drummond and that Mr Drummond had stopped talking to her as result.
92. The Tribunal noted that, in evidence to it, the Claimant very honestly said that she did not consider that Michael inviting her to the cinema was sex harassment, but that the other things that he did were sex harassment. She also made clear that she was claiming £320 in total for unlawful deductions from wages, rather than the larger sums set out in the list of issues. Furthermore, she told the Tribunal that she would not have brought a claim had it not been for Miss Brooks' treatment of her on 13 November 2020.
93. The Tribunal considered that the Claimant made concessions where appropriate and gave additional detail when asked, to explain her allegations.
94. The Tribunal decided that the Claimant was a credible witness with regard to her allegations of sex harassment, discrimination and victimization. It accepted her evidence regarding them.

Relevant Law

95. By s39(2)(c)&(d) *Equality Act 2010*, an employer must not discriminate against an employee by subjecting him to a detriment.
96. By s39(4)(d) *Equality Act 2010*, an employer must not victimize an employee by subjecting him to a detriment.
97. By s40(1)(a) *EqA 2010* an employer (A) must not, in relation to employment by A, harass a person (B) who is an employee of A's.
98. Direct discrimination is defined in s13 *EqA 2010*.
99. Harassment is defined in s26 *Eq A* and victimisation is defined in s27.
100. The shifting burden of proof applies to claims under the *Equality Act 2010*, s136 *EqA 2010*.

Direct Discrimination

101. Direct discrimination is defined in s13(1) *EqA 2010*:

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

102. Sex is a protected characteristic, s4 EqA 2010.

Victimisation

103. By 27 Eq A 2010,

“ (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 A (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.”

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

105. There is no requirement for comparison in the same or nor materially different circumstances in the victimization provisions of the EqA 2010.

Causation

106. The test for causation in the discrimination legislation is a narrow one. The ET must establish whether or not the alleged discriminator’s reason for the impugned action was the relevant protected characteristic. In *Chief Constable of West Yorkshire Police v Khan* [2001] IRLR 830, Lord Nicholls said that the phrase “by reason that” requires the ET to determine why the alleged discriminator acted as he did? What, consciously or unconsciously, was his reason?.” Para [29]. Lord Scott said that the real reason, the core reason, for the treatment must be identified, para [77].

107. If the Tribunal is satisfied that the protected characteristic is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it had a significant influence, *per* Lord Nicholls in *Nagarajan v London Regional Transport* [1999] IRLR 572, 576. “Significant” means more than trivial, *Igen v Wong, Villalba v Merrill Lynch & Co Inc* [2006] IRLR 437, EAT.

Detriment

108. In order for a disadvantage to qualify as a “detriment”, it must arise in the employment field, in that ET must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work. An unjustified sense of grievance cannot amount to “detriment”. However, to establish a detriment, it is not necessary to demonstrate some physical or economic consequence, *Shamoon v Chief Constable of RUC* [2003] UKHL 11.

Harassment

109. s26 Eq A provides “

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

(2) A also harasses B if –

(a) 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), and

(c) because of B's rejection of ... the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(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.”

110. In *Richmond Pharmacology Ltd v Dhaliwal* [2009] IRLR 336 the EAT held that there are three elements of liability under the old provisions of s.3A RRA 1976: (i) whether the employer engaged in unwanted conduct; (ii) whether the conduct either had (a) the purpose or (b) the effect of either violating the claimant's dignity or creating an adverse environment for her; and (iii) whether the conduct was on the grounds of the claimant's race.

111. Element (iii) involves an inquiry into perpetrator's grounds for acting as he did. It is logically distinct from any issue which may arise for the purpose of element (ii) about whether he intended to produce the proscribed consequences.

112. This guidance is instructive in respect of harassment claims under s26 EqA, albeit under the EqA, the conduct must be for a reason which relates to a relevant protected characteristic, rather than on the grounds of race or sex. There is no requirement that harassment be “on the grounds of” the protected characteristic – *R(EOC) v Secretary of State for Trade and Industry* [2007] ICR 1234.

Burden of Proof

113. The shifting burden of proof applies to claims under the *Equality Act 2010*, s136 EqA 2010.

114. In approaching the evidence in a case, in making its findings regarding treatment and the reason for it, the ET should observe the guidance given by the

Court of Appeal in *Igen v Wong* [2005] ICR 931 at para 76 and Annex to the judgment.

115. In *Madarassy v Nomura International plc*. Court of Appeal, 2007 EWCA Civ 33, [2007] ICR 867, Mummery LJ approved the approach of Elias J in *Network Rail Infrastructure Ltd v Griffiths-Henry* [2006] IRLR 865, and confirmed that the burden of proof does not simply shift where M proves a difference in sex and a difference in treatment. This would only indicate a possibility of discrimination, which is not sufficient, para 56 – 58 Mummery LJ.

Injury to Feelings

116. The Tribunal is guided by the principles set out in *Prison Service v Johnson* [1997] IRLR 162 with regard to assessing injury to feeling awards. Awards for injury to feelings are compensatory. They should be just to both parties, fully compensating the Claimant, (without punishing the Respondent) only for proven, unlawful discrimination for which the Respondent is liable. Awards that are too low would diminish respect for the policy underlying anti-discrimination legislation. However, excessive awards could also have the same effect. Awards need to command public respect. Society has condemned discrimination because of a protected characteristic and awards must ensure that it is seen to be wrong.

117. Awards should bear some broad general similarity to the range of awards in personal injury cases. Tribunals should remind themselves of the value in everyday life of the sum they have in mind by reference to purchasing power.

118. It is helpful to consider the band into which the injury falls, *Vento v Chief Constable of West Yorkshire Police* [2003] IRLR 102. In *Vento* the Court of Appeal said that the top band should be awarded in the most serious cases such as where there has been a lengthy campaign of discriminatory harassment on the grounds of race or sex. The middle band should be use for serious cases which do not merit an award in the highest band and the lower band is appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence.

119. *Joint Presidential Guidance on Employment Tribunal Awards for Injury to Feelings and Psychiatric Injury following Da Vinci Construction (UK) Limited* [2017] EWCA Civ 879 was issued on 4 September 2017. It reviewed the effect of recent case law and inflation on the Vento Bands and said that, when awards are made by Tribunals, the Vento bands should have the appropriate inflation index applied to them, followed by a 10% uplift on account of *Simmons v Castle* [2012] EWCA Civ 1039 *Simmons v Castle* [2012] EWCA Civ 1288.

120. The *Joint Presidential Guidance* concluded as follows, "...as at 4 September 2017, that produces a lower band of £800 to £8,400 (less serious cases); a middle band of £8,400 to £25,000 (cases that did not merit an award in the upper band); and an upper band of £25,200 to £42,000 (the most serious cases), with the most exceptional cases capable of exceeding £42,000. ... the Employment Tribunal retains its discretion as to which band applies and where in the band the appropriate award should fall."

121. Further updated for inflation, the middle band is now £9,000 - £26,500.
122. In *St Andrews Catholic School v Blundell* UKEAT/0330/09 the Employment Appeal Tribunal upheld an appeal against an Employment Tribunal's injury to feelings award of £22,000 and substituted an injury to feelings award of ITF £14,000, plus aggravated damages. In that case, the Claimant was a teacher who was victimised by the head teacher for having brought a sex discrimination claim against the school by: (a) demanding details of the Claimant's complaint about her handling of a complaint about her behaviour by certain teacher governors, (b) assessing the Claimant very negatively following a classroom observation, telling her that everything she had seen was inadequate, that she had grave concerns and her future was under review; and (c) dismissing her. The conduct was not of long duration, its culmination occurring within about four months, but this was a serious case and the claimant suffered a stress related illness and panic attack.
123. In *Da'Bell v NSPCC* [2010] IRLR 19, which was heard at the end of 2009, the EAT adjusted the *Vento* bands for injury to feelings to allow for inflation. From then the lower band was £500 to £6,000, the middle band was £6,000 to £18,000 and the upper band was £18,000 to £30,000.
124. The award of £14,000 in *St Andrews Catholic School v Blundell* UKEAT/0330/09 was therefore towards the upper end of the middle band in *Vento*.

Aggravated Damages

125. Aggravated damages are available for an act of discrimination (*Armitage, Marsden and HM Prison Service v Johnson* [1997] IRLR 162, [1997] ICR 275, EAT).
126. The award must still be compensatory and not punitive in nature, *Commissioner of Police of the Metropolis v Shaw* [2012] IRLR 291, EAT. In that case, a whistleblowing case, compensation was assessed on the same basis as awards in discrimination cases).
127. The EAT said that the circumstances attracting an award of aggravated damages fall into three categories:
- (a) The manner in which the wrong was committed. The basic concept here is that the distress caused by an act of discrimination may be made worse by it being done in an exceptionally upsetting way. In this context the phrase "high-handed, malicious, insulting or oppressive" is often referred to – it gives a good general idea of the kind of behaviour which may justify an award, but should not be treated as an exhaustive definition. An award can be made in the case of any exceptional or contumelious conduct which has the effect of seriously increasing the claimant's distress.
- (b) Motive. Discriminatory conduct which is evidently based on prejudice or animosity or which is spiteful or vindictive or intended to wound is, as a matter of

common sense and common experience, likely to cause more distress than the same acts would cause if evidently done without such a motive – say, as a result of ignorance or insensitivity. That will, however, only of course be the case if the claimant is aware of the motive in question: otherwise it could not be effective to aggravate the injury. There is thus in practice a considerable overlap with (a).

(c) Subsequent conduct.

128. In *HM Land Registry v McGlue UKEAT/0435/11*, [2013] EqLR 701, EAT, the EAT said that aggravated damages 'have a proper place and role to fill', but that a tribunal should also 'be aware and be cautious not to award under the heading "injury to feelings" damages for the self-same conduct as it then compensates under the heading of "aggravated damages"'. Such damages are not intended to be punitive in nature.

Liability of Employers and Employees

129. By *s109(1) EQA 2010*, anything done by a person in the course of their employment must be treated as also done by the employer.

130. In proceedings against the employer, in respect of something alleged to have done by an employee in the course of their employment, it is a defence for the employer to show that they took all reasonable steps to prevent the employee from doing that thing, or from doing anything of that description.

131. By *s110 EQA 2010*, employees can be jointly liable with their employer for acts of discrimination done in the course of their employment.

132. Where there are concurrent discriminators the usual award will simply be that each such respondent is jointly and severally liable, *LB Hackney v Sivanandan* [2011] IRLR 740, [2011] ICR 1374 EAT, upheld by the Court of Appeal, [2013] EWCA Civ 22, [2013] EqLR 249. In such cases, the EAT (Underhill P presiding) held that the Employment Tribunal's discretion to apportion liability to the claimant between each of the respondents exists only where the injury caused by different acts of discrimination is 'divisible' and the Tribunal can—and, indeed, should—apportion to each discriminator responsibility for only that part of the damage done by them. Even then, the EAT said that such 'split' awards should only be made where such an order is sought by one of the parties and if the proper legal basis for the discretion is clearly demonstrated in the particular case.

Discussion and Decision

133. The Tribunal considered all the evidence when making its decision. For clarity, it has addressed the issues in the List of Issues separately when setting out its decision. It accepted the Claimant's evidence as set out above.

Sex Harassment

134. The Claimant told the Tribunal that she did not consider Michael asking her to go to the cinema with him to be sex harassment. She did not pursue this allegation.
135. The Tribunal found that, on or about 27-28 September 2019, Michael said to the Claimant in Italian, "I want you", in a sexual way. This was sex harassment within the meaning of s26 EqA 2010.
136. The Tribunal found that that was unwanted by the Claimant; she complained about his behaviour immediately afterwards. It was related to sex under s26(1) or was conduct of a sexual nature under s26(2) EqA - Michael spoke in a sexual manner towards her. The Tribunal found that the words did have the effect of creating a degrading and offensive environment for the Claimant – she was offended and complained about the behaviour. She avoided Michael thereafter. The Tribunal considered that it was reasonable for those words, spoken in a work environment, to a fellow employee, to have the prohibited effect. Michael subjected the Claimant to sexual harassment.
137. The Tribunal has decided that Nicola Brooks was the relevant employer. No statutory defence was made out – the Tribunal did not find that the Respondent had given Michael training, or had taken all reasonable steps to prevent him from doing things of this nature. Miss Brooks is therefore liable under s109 EqA for this act of sex harassment.
138. The Tribunal found that the management of the Wellington Club did not tell the Claimant that it had taken any action against Michael after she reported the incident of sexual harassment, including his saying "I want you". It was notable that Miss Brooks' Response only mentioned Michael inviting the Claimant to the cinema and a verbal warning given in respect of that.
139. The Tribunal has found that the Claimant complained to Marcelo and the Chef about Michael saying, "I want you". There was no evidence that anyone warned him about that, more serious, matter.
140. The Claimant clearly wanted action to be taken, that was the point of her complaint in the first place. The failure to act was unwanted by the Claimant. However, the Tribunal did not have evidence that the failure to act was related to sex. There was simply no evidence about this; there was no evidence that a male employee would have been treated differently. There was no evidence that a complaint about a different matter would have been acted upon. The Tribunal was unable to conclude, on the evidence, that the failure to take action amounted to sex harassment.
141. The Tribunal found that, on 5 October 2019, Phil Drummond publicly grabbed a bottle of champagne from the bar, said to the Claimant, "let's go to the car", told her that he would be taking her to his house and, when the Claimant objected, said, "Don't worry I am not going to fuck you" and that he just wanted to have a chat. The Tribunal accepted the Claimant's evidence that Mr Drummond repeatedly pressurized the Claimant to go to his house while she was in his car

and sulked when she refused to go. Afterwards, at work, he pointedly ignored the Claimant. In doing all these things, he subjected the Claimant to sex harassment.

142. The Tribunal found that Mr Drummond's repeated insistence that the Claimant go to his house was unwanted – the Claimant refused to go and insisted that he take her to the station instead.
143. The Tribunal also found that Mr Drummond's conduct, in brandishing a bottle of champagne so that other staff members could see, repeatedly insisting that the Claimant come home with him in the middle of the night, and sulking and ignoring the Claimant after she refused to do so, was related to sex. If the Claimant had simply turned down a friendly invitation, it is unlikely that Mr Drummond would have sulked for days afterwards. The public celebratory nature of his departure with a female member of staff also indicated that the conduct was related to sex.
144. The Tribunal concluded that the effect of the conduct was to create a hostile and degrading environment for the Claimant. The Claimant perceived that she was being pressurized into a sexual situation and was distressed by Mr Drummond's reaction when she declined. She felt uncomfortable at work as a result – and confided in other members of staff. The Tribunal considered that it was reasonable for her to feel all these things. This was particularly the case given that she was a junior member of staff, whom Mr Drummond had introduced to employment at the Club. Mr Drummond was therefore a person of influence in the Club and the Claimant was in a comparatively subordinate position to him.
145. The Tribunal did take into account the fact that the Claimant later told Miss Brooks that Mr Drummond had not sexually harassed her. The Tribunal accepted the Claimant's evidence that she said this because she did not want to get Mr Drummond into trouble, or for him to be dismissed. The Tribunal considered that this did not take away from the fact that Mr Drummond's actions were unwanted, were related to sex and did, at the time, create the prohibited environment. The Claimant was being kind in feeling some sympathy for him later.
146. The Tribunal additionally concluded that Mr Drummond was angry and pointedly ignored the Claimant because of her rejection of this unwanted conduct. He treated her less favourably than he had previously done– *ss26(1) and (3) EqA 2010*.
147. Mr Drummond was employed at the club as a DJ and to provide business development services. His conduct in brandishing the champagne, inviting her to his car and sulking afterwards was done in the course of his employment. Mr Drummond and Miss Brooks are jointly and severally liable for these acts of sex harassment under *ss109 & 110 EqA 2020*.
148. The Tribunal found that on 17 October 2019, Michael approached the Claimant, grabbed her by her waist and pulled her towards him. This was sex harassment within the meaning of s26 EqA 2010.
149. The Tribunal found that that conduct was unwanted by the Claimant; she screamed at Michael and rushed away. It was related to sex under *s26(1)*, or was

conduct of a sexual nature under s26(2) EqA – Michael, a man, pulled the Claimant, a woman, towards him in an intimate manner. The Tribunal found that the words did have the effect of creating a degrading and offensive environment for the Claimant – she was outraged and shocked by it. The Tribunal considered that it was reasonable for that conduct by a fellow employee, to have had the prohibited effect; it was grossly intrusive and inappropriate. Miss Brooks is liable under s109 EqA for this act of sex harassment.

150. On 18 October 2019, Phil Drummond grabbed the Claimant by her hand and pulled her towards him, angrily asking her why she had spoken to his girlfriend. This, too, was sex harassment under s26 EqA 2010.

151. The Tribunal found that this was unwanted and aggressive behaviour towards the Claimant. It related to sex – it related to Mr Drummond’s sexual conduct and her reporting of it. The Tribunal considered that the conduct did have the effect of creating an intimidating atmosphere for the Claimant, Mr Drummond was visibly angry and confrontational towards her. Such conduct would naturally be intimidating.

152. On 13 November 2019, the Claimant attended a meeting with Nicola Brooks. Miss Brooks was aggressive towards the Claimant when discussing the acts of sexual harassment and Miss Brooks denied that any acts of sexual harassment had taken place, without carrying out a fair investigation into the Claimant’s complaints. She called the Claimant a liar for alleging that the acts of sexual harassment had taken place and for alleging that Marcelo had informed her that she was not required to provide any notice. Nicola Brooks refused to pay the Claimant as she had left work without providing notice. All this was sex harassment.

153. This conduct by Miss Brooks was unwanted by the Claimant. The Claimant expected to be listened to, but was horrified to be accused of lying instead.

154. The Tribunal found that the conduct was also related to sex – specifically to the Claimant saying that Michael had sexually harassed her and the Claimant telling other members of staff about Mr Drummond sexually harassing her. The Tribunal found that Miss Brooks was only interested in disproving these sex harassment allegations. She was dismissive of discussion about the Claimant’s unpaid wages.

155. The Tribunal also considered that the conduct created an intimidating, hostile and offensive environment for the Claimant. The Claimant could not stop crying and felt that she was having a panic attack. Miss Brooks had conducted no fair investigation. The Claimant was not shown any statements. Miss Brooks accused the Claimant of lying, rather than investigating her allegations against Michael. The Tribunal concluded that the meeting was designed to rebut the allegations of sex harassment, rather than to treat the Claimant with fairness and respect. It all this unfair and disrespectful conduct would naturally have created the prohibited environment.

Direct Discrimination

156. The Tribunal has found that the management of the Wellington Club did not take any action after the Claimant reported the incident of sexual harassment by Michael on 27th September 2019. However, as with the sex harassment claim, the Tribunal did not have evidence from which it could conclude that the Claimant was treated less favourably than a hypothetical male comparator in the same material circumstances. The Tribunal does not find that this failure to act amounted to sex discrimination.

Victimisation

157. The Claimant did a protected act for the purposes of s27(2) *EqAct 2010*, by alleging to Marcelo on 18 October 2019 that she had been subjected to sexual harassment by both Michael and Mr Drummond. Indeed, she repeated the allegation of sex harassment by Michael to Miss Brooks in the meeting on 13 November 2020.

158. Miss Brooks' treatment of the Claimant at that meeting, as set out above under the Tribunal's findings on sex harassment, clearly amounted to a detriment. A reasonable employee would feel disadvantaged by subjected to an unfair investigation, being accused of lying in a supposed investigation meeting and being filmed on a phone camera. It was clear that Miss Brooks' actions were done because the Claimant had complained of sex harassment. The purpose of the meeting was to discuss the Claimant's sex harassment allegation against Mr Drummond. On the facts, Miss Brooks called the Claimant a liar when she alleged that Michael had subjected her to sex harassment. Miss Brooks victimized the Claimant by her conduct in the meeting on 13 November 2020.

Unlawful Deduction of Wages

159. The Tribunal accepted that the Claimant was not paid for 32 hours she worked. On 11 November 2019, the Claimant messaged Marcelo on WhatsApp, asking when she would be getting paid for her 32 hours, p104. Marcelo did not send a message questioning the number of hours the Claimant worked. The Tribunal found that the Claimant was paid £10 net per hour. This was the rate of pay on her pay slips. Nicola Brooks made unlawful deductions from the Claimant's wages in the sum of £320 net.

160. Nicola Brooks is ordered to pay the Claimant £320 net for unpaid wages.

Failure to Provide Written Statement of Particulars

161. Nicola Brooks did fail to provide the Claimant with a written statement of employment particulars. However, the Claimant left work before 2 months. The duty under s1(2) *ERA 1996* at the relevant time was to provide a statement not later than 2 months after the beginning of employment. The employer was therefore not in breach of s1(2) *ERA* when the Claimant's employment ended before 2 months.

Remedy

162. Injury to Feelings, Aggravated Damages

163. The Tribunal accepted the Claimant's evidence that she was frightened and humiliated during her meeting with Miss Brooks. She felt like was having a panic attack and couldn't stop crying. Because of her experiences, she was scared to apply for another job. She had no money after leaving the Wellington Club, having not been paid for the work that she had done. She fell out with her family because she was in such a distressed state. She left the family home and became homeless for a period. She spent Christmas sleeping in park.

164. Fortunately, in December 2019, a former colleague from the Wellington club contacted the Claimant offered to help her obtain a job at another Club, the Ministry. The Claimant was able to start working full time at the Ministry on 13 January 2020 full time. However, she remained anxious about raising any issues at work for fear that she would be blamed again. The Tribunal accepted the Claimant's evidence that, as a result of Miss Brooks' conduct in the meeting on 13 November 2020, the Claimant still has panic attacks and anxiety.

165. The Tribunal decided that Miss Brooks' actions on 13 November 2020 - including calling the Claimant a liar and filming her on a phone camera during a supposed investigatory meeting – were, indeed, high-handed, malicious, insulting and oppressive.

166. While the Claimant said that she would not have brought a claim but for Miss Brooks' treatment of her, nevertheless the Tribunal has found that the Claimant was subjected to sex harassment on 5 occasions by Michael and Mr Drummond. For almost the whole of the Claimant's 6-week employment she was made to feel extremely uncomfortable as a result of these men's treatment of her, including Mr Drummond's pointedly ignoring. Their actions properly fell within the definition of harassment, in that they created "an intimidating, hostile, degrading, humiliating or offensive" environment for her.

167. It is appropriate to award the Claimant some compensation for these acts of harassment.

168. Considering *Vento*, this case did not involve a one-off, or less serious act of discrimination. There were a number of acts, including the particularly egregious conduct of the Claimant's employer, Miss Brooks, in the meeting on 13 November. The Claimant's case properly falls in the middle band of *Vento*.

169. Considering other cases, the Claimant's case was not as serious as that in *St Andrews Catholic School v Blundell* UKEAT/0330/09.

170. In the Claimant's case, the acts took place over a relatively short period of time, in a short period of employment. The Claimant lost her job, but not her career. She was able to return to work full time within 3 months. All the relevant serious conduct by more established employee over a very new employee.

171. The Tribunal considered that the appropriate compensation in this case was towards the bottom of middle band of *Vento*. However, because of the

aggravating features of Miss Brooks' conduct, the award was not at the very bottom of the bracket.

172. The Tribunal decided that the appropriate award for all the acts of sex harassment and victimisation was £12,000, including aggravated damages. Miss Brooks is liable to pay this whole sum, as Michael's and Mr Drummond's employer, as well as for her own actions as employer. The Tribunal has not separated the awards for injury to feelings and aggravated damages, but has made a total award.

173. The Tribunal decided that Mr Drummond was joint and severally liable for £3,000 of that £12,000 total. Mr Drummond's actions continued over a period of weeks. He was an established member of staff, who had introduced the Claimant to the workplace. The Claimant was a very junior member of staff. His actions were not minimal and £3,000 was the appropriate award for them.

Economic Loss because of Sex Harassment

174. The Tribunal accepted that the Claimant left her employment because of Mr Drummond's harassment. The Claimant could not be persuaded to stay, even with the promise of more work, because of Mr Drummond.

175. Her loss of earnings was the direct result of Mr Drummond's conduct.

176. The Claimant lost earnings of £120 per week for 12 weeks and 4 days - £1,680.

177. Mr Drummond and Miss Brooks, as his employer, are jointly and severally liable to pay the Claimant this sum.

178. The Claimant's new employment at the Ministry extinguished her losses. That employment was full time and continued until August 2020. It broke the chain of causation of loss. The Tribunal did not award the Claimant further compensation for economic loss after the Claimant was made redundant in August 2020.

Interest

179. The Tribunal awards interest at 8% on £12,000 from 19 October 2019 – 23 September 2020 (340 days).

180. The interest calculation is $340/366 \times 8\% \times 12,000 = £891.80$ interest.

181. The total award for interest and injury to feelings is £12,891.80.

182. Interest at 8 % on £3,000 for this period is = £222.95. Mr Drummond is jointly and severally liable to pay this part of the interest.

183. The Tribunal awarded interest on the economic loss from the midpoint of the loss and the date of the Tribunal Hearing. The Tribunal assessed the loss as having crystallised when the Claimant started her new job. The Tribunal calculated the loss as follows: $298/366 \times 1680 \times 0.5 \times 0.08 = £54.71$ interest.

184. £1680 + £54.71 = £1,734.71. Miss Brooks and Mr Drummond are jointly and severally liable to pay this sum to the Claimant on account of her economic loss sustained because of sex harassment.

Employment Judge Brown

Dated: ...24 September 2020.....

Judgment and Reasons sent to the parties on:

24/9/20

For the Tribunal Office