



EMPLOYMENT TRIBUNALS

Claimant: Ms J Celerier

Respondent: Chargepoint Network (UK) Limited

RESERVED JUDGMENT

HELD AT: Nottingham

ON: 25, 26, 27, 28 + 29 November 2019,
3 February 2020;
(and in chambers on 4, 5 + 6 February
and 6 March 2020)

BEFORE: Employment Judge Batten
Mr M Alibhai
Ms J Bonser

REPRESENTATION:

For the claimant: In person
For the respondent: Mr C Milsom, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:

1. the complaints of direct sex discrimination succeed in respect of allegations 4, 6, 7, 13, 14, 16, 17, 21, 27, 31 and 44;
2. the complaints of harassment related to sex succeed in respect of allegations 1, 4, 6 - 9, 11, 13 - 20, 23, 26, 32, 33, 35 - 37, 39, 44 and 45;
3. the complaints of victimisation succeed in respect of allegations 33, 37, 39, 44 and 45; and

4. remedy shall be determined at a hearing on a date to be fixed.

REASONS

Background

1. In a claim form presented on 13 August 2018, the claimant claimed sex discrimination, arrears of pay and other monies due at the termination of her employment. On 2 August 2018, the respondent entered its response to the claims. On 20 December 2018, a preliminary hearing was held for case management, as a result of which the claimant served a Scott schedule comprising the acts and omissions relied upon in respect of her complaints of direct discrimination, harassment and victimisation, extending to 97 particularised matters. The claimant later served an amended Scott schedule of 124 particularised matters.
2. By a Judgment sent to the parties on 14 January 2019, claims of equal pay and indirect sex discrimination were dismissed upon withdrawal by the claimant.
3. The respondent raised objections to the claimant's amended Scott schedule and a further preliminary hearing took place on 29 April 2019. At that preliminary hearing, Employment Judge Blackwell decided that the claimant would not be permitted to amend her claim to include 5 of the allegations in the amended schedule and that the claimant still needed to particularise her complaints about unpaid monies including bonus commission. On 12 June 2019, the claimant served a statement setting out her claim for outstanding bonus commission. On 21 June 2019, the respondent provided its response to the Scott schedule and statement of commission. The sex discrimination and money claims then proceeded to hearing. However, by consent of the parties and following discussion with them, this hearing has dealt only with the sex discrimination claims for reasons set out below under "The respondent".
4. The hearing of the oral witness evidence took place over 5 days, which included several lengthy days, to accommodate a number of witnesses who gave evidence via remote video link from outside of the UK and in different time zones. The oral evidence was completed only at the very end of the fifth hearing day and the case was adjourned, part-heard. A further day was listed for the Tribunal to hear the parties' submissions and Judgment was reserved.

Evidence

5. An agreed bundle of documents consisted of 4 full lever arch files, which were presented at the commencement of the hearing in accordance with the case management Orders. To these were added 2 emails supplied by the claimant (dated 9 February 2018 from the claimant to Mr Mills – at page 785a; and 15

February 2018 from Mr Mills to the team – at pages 831a and b) and copies of 4 of the respondent's organisational charts for the period January to March 2018. References to page numbers in these Reasons are references to the page numbers in the bundle.

6. The claimant gave evidence from a written witness statement and was subject to cross-examination. The respondent called 8 witnesses, being: - Mr John Grady, VP Channel Sales US; Mr Martin Hale, sales executive; Mr Scott Miller, VP EU Sales; Mr Tony Mills, Director of Sales Channel EU and UK and the claimant's line manager; Mr Anish Kishoendajal, HR Director; Mr Joury De Reuver, product developer; Mr Mark Boesveld, sales manager; and Mr Christopher Burghardt, Managing Director – Europe. Each of the respondents' witnesses gave evidence from a written witness statement, save for Mr Hale, Mr Miller, Mr Mills, Mr De Reuver and Mr Burghardt each of whom also tendered supplemental statements, and all witnesses were subject to cross examination.
7. In addition, Counsel for the respondent had drawn up a chronology of events and each party provided written closing submissions and copies of a number of case law authorities.

The respondent

8. At the start of oral evidence, the Tribunal raised the issue of which company had employed the claimant. In the bundle of documents prepared for the hearing is an offer letter and a contract of employment between the claimant and "Globalization Partners Limited". The respondent as named in the claim, Chargepoint Network (UK) Limited, is a subsidiary of Globalization Partners Limited, and was set up in order to expand that company's operations into the UK market.
9. Counsel for the respondent explained that while the claimant had in fact been employed by Globalization Partners Limited, she was seconded to work for the respondent. It had been envisaged that the claimant would, in time, have been transferred onto a contract of employment with the respondent, however, the transfer of employees took place after the claimant had been dismissed. The respondent conceded that the claimant was a contract worker pursuant to section 41 of the Equality Act 2010 ("EqA") and on that basis the respondent accepted liability for the sex discrimination complaints, if they succeeded.
10. However, the Tribunal considered, and the parties agreed, that the money claims were contractual claims which can only be brought against the claimant's employer as in her contract of employment - Globalization Partners Limited. In the circumstances, the Tribunal afforded the parties a short adjournment to consider this aspect and make submissions. Counsel for the respondent suggested that there was an indemnity between the respondent and Globalization Partners Limited and so argued that it was not necessary to

join in Globalization Partners Limited or to adjourn the contractual money claims to another date. The claimant's position was that, as a lay person, she had not appreciated the legal position with regard to liability under her contract.

11. Having heard from the parties, the Tribunal exercised its powers under rule 34 of the Employment Tribunals Rules of Procedure to add Globalization Partners Limited as a respondent to the proceedings in respect of the contractual money claims, which shall be separated from the claim of sex discrimination and adjourned to a future hearing date. The Tribunal considered that jurisdiction in relation to the contractual claims extends only to the claimant's employer under the contract of employment. The Tribunal did not consider that the existence of an indemnity between the respondent and Globalization Partners Limited had any bearing on which company should properly be the respondent to the money claims, although it may have a bearing on which company shall meet any Judgment if those complaints succeed. The claim will need to be (and by the time of this Judgment, has been) formally served on Globalization Partners Limited which will be invited to enter a response to the contractual/money claims only.
12. In those circumstances, and with the consent of the parties, the hearing proceeded to hear evidence on the sex discrimination complaints of direct discrimination, harassment and victimisation only.

Issues to be determined

13. Counsel for the respondent had drawn up a list of issues to be determined by the Tribunal. These included 51 allegations of incidents of discrimination which had been derived from the Scott schedule. The claimant was given time to consider the list of allegations and the list of issues, which the Tribunal then discussed with the parties. It was decided, after discussion and by consent that 3 points set out in the claimant's Scott schedule, numbers 14, 44 and 45 on pages 225, 243 and 245 of the bundle, amounted to background matters and not allegations to be included in the list of issues.
14. It was therefore agreed with the parties that the issues to be determined which are relevant to the sex discrimination complaint were as follows.

Allegations of fact

15. **The claimant advances the following allegations by reference to the Scott schedule: -**
 - 15.1. **Calls, texts and emails from Tony Mills prior to his employment at 'Chargepoint' including the "bringing one of his girls" comment;**
 - 15.2. **A phone call from John Grady on 19 January 2018 during which he asked "why [the claimant] had not told him about [her] freelance meeting generators" in an aggressive and accusatory manner;**

- 15.3. The direction by Mr Mills that the claimant attend dinner on an inconvenient date on 25 January 2018;
- 15.4. Mr Mills' request that the claimant pick him up from Coventry train station on 25 January 2018;
- 15.5. Mr Grady's response to the claimant's query of whether there were pending leads from marketing activity, "none that I am aware of";
- 15.6. Mr Mills' refusal to help the claimant with the Master Sales and Services Agreement and refusal to send the claimant's draft content to Jon Kaplan (the respondent's General Counsel) on 28 January 2018;
- 15.7. An email of 29 January 2018 from Mr Mills asking the claimant to attend dinner with Pat Romero (CEO of Chargepoint) on 30 January and with TSG on 31 January. Mr Mills' initial refusal to allow the claimant to be released from the TOTAL workshop;
- 15.8. A comment by Martin Hales at OXO on 30 January 2018 that the claimant should leave Chargepoint which Mr Mills failed to address;
- 15.9. Mr Mills' response to the claimant's request for assistance in sourcing bank details, "sorry I can't help you there", on 1 February 2018;
- 15.10. A request by Mr Mills that the claimant provide him with a copy of her contract and/or job description on 3 February 2018;
- 15.11. Mr Mills adding to a 1:1 agenda "PROPOSAL FROM GAIL" on 9 February 2018;
- 15.12. Mr Mills' failure to add performance issues onto the 1:1 agenda on 9 February 2018;
- 15.13. Mr Mills' failure to provide equal support/resources to the claimant in accessing a meeting through the Ring Central platform on 9 February 2018. "I was the only female member of the team and the only person in the team required to provide my own resources to complete my role which included a computer and sales support;
- 15.14. Mr Mills' apathy towards the claimant functioning on webmail rather than full email and/or failure to support the claimant in getting a work computer/"I was essentially screened out of participating or benefitting fully in any meetings and operating on more basic systems than my male team members";
- 15.15. Mr Mills replying to commission queries on 9 February 2018 that he did not know what the claimant's goal was or how she would be commissioned and/or his failure to find out;
- 15.16. Giving the claimant a higher sales goal than Jon and Norbert on 13 February 2018;
- 15.17. Mr Mills' requirement that the claimant arrange a meeting with Gail Benton and assist in her proposal;
- 15.18. Mr Mills' request on 14 and 19 February 2018 that the claimant process various requests regarding Gail Benton;

- 15.19. Mr Mills' email of 14 February 2018 in which he raised concerns as to the claimant's unresponsiveness to communication. It is said that these concerns were fabricated partly in view of Mr Mills' failure to raise them at the 1:1;
- 15.20. Mr Mills' continued request on 14 February 2018 that the claimant undertake the duties of an administrative assistant re. Gail Benton;
- 15.21. Mr Mills' differential expectations of the claimant to make contact with him whilst travelling as evidenced by his email of 15 February 2018;
- 15.22. Mr Mills' cc'ing the claimant's personal email address on 15 February 2018;
- 15.23. Mr Mills' instruction that the claimant increase her performance whilst giving male colleagues some leeway for underperformance on 14 February 2018;
- 15.24. Giving the claimant an unimportant business title;
- 15.25. Mr Mills' failure to address the claimant's lack of IT resources on 16 February 2018;
- 15.26. Mr Mills calling the claimant on 15 and 16 February 2018 and instructing the claimant to chase a freelance meeting generation proposal;
- 15.27. Mr Mills' failure to recognise the claimant's performance in the local, European or global teams;
- 15.28. Email from Mr Mills on 22 February 2018 asking the claimant to secure the Cenin CPE200 order;
- 15.29. Mr Mills' failure to contact the claimant following her email of 26 February 2018 in which she sought assistance with a customer (Synergy Renewables);
- 15.30. The failure to offer support during the claimant's sickness absence whilst the Campbell Sales Conference was ongoing';
- 15.31. The failure to directly reference the claimant in connection with Rolls Royce on or around 9 March 2018;
- 15.32. Mr Mills' team-wide email of 9 March 2018 in which he used the phrase "dog and pony show" with the intention of undermining the claimant;
- 15.33. The phone call of 12 March 2018 during which: -
 - a) Mr Mills accused the claimant of "not being responsive" to him during a phone call on 12 March 2018 and "literally making matters up to suit his own agenda";
 - b) Mr Mills accused the claimant of "not disclosing the installing partner for the Rolls Royce deal" was not going to be TSG;
- 15.34. Mr Mills' email of 12 March 2018 in which he recognised his 'error' but raised as a heads-up a request for more detail on the claimant's mobile phone costs;
- 15.35. Mr Mills sending the claimant an "exaggerated magnification of a copy of his telephone call log which he had pasted into the body of the email and titled "call log just for the record";

- 15.36. Mr Mills' email of 12 March 2018 in which he challenged the claimant over the Rolls Royce/TSG installer issue;
 - 15.37. Mr Mills' comment on 13 March 2018 that he was "not going to allow me further support for installations if I was not going to win TSG work";
 - 15.38. The team call on 13 March 2018 in which there had been a failure to provide appropriate support and Joury referenced Rolls Royce as the "dog and pony show", later telling the claimant "with all due respect I'm not sure you know";
 - 15.39. Mr Mills' failure to answer the claimant's phone calls on 14 March 2018 and/or his text message to the claimant: "Really interested to hear what caused the last-minute RR decision when you have time and also what the new plan is";
 - 15.40. The team response to changes to the Rolls Royce plan: "As you can imagine, not best pleased", "Quite a bummer indeed", "This is very disappointing to hear";
 - 15.41. Luc's failure to praise the claimant on 14 March 2018 (as compared to his emails to Adam Hart);
 - 15.42. The failure of the team to give the claimant praise for "winning" the Rolls Royce deal and/or Mr Mills' failure to circulate her success to the team;
 - 15.43. Mr Mills' email of 19 March 2018 in which he informed the claimant that the UK bank details of a Dubai-based company were 10 days away, "can you manage the Fidelity relationship with this news. Also, can you answer Scott's question, he is still confused as to why an Eire based company would insist on UK bank details";
 - 15.44. The termination of the claimant's employment;
 - 15.45. The telephone call with Anish Kishoendajal and Mr Mills in which the claimant's termination was discussed, including the comment that the working relationship "just doesn't jive";
 - 15.46. Mr Kishoendajal's failure to respond to the claimant's requests to discuss outstanding commission/expenses;
 - 15.47. Mr Kishoendajal's failure to advise the claimant on her rights of appeal against dismissal on 13 April 2018;
 - 15.48. Mr Kishoendajal's failure to respond to the claimant's emails of 3, 6 and 17 May 2018;
 - 15.49. Failure by the respondent to pay the expenses claimed and omissions from expense statements;
 - 15.50. The grievance outcome response; and
 - 15.51. Upholding the decision to dismiss on internal appeal.
16. Are the above allegations well-founded on the facts?
 17. Who is said to be the responsible decision maker/s?

Harassment

18. The claimant advances allegations above at 15.1 – 15.11, 15.13 – 15.20, 15.22 – 15.23, 15.25 – 15.26, 15.28 – 15.29, 15.32 – 15.39, 15.40, 15.43 – 15.45 and 15.49 as allegations of harassment.
19. To the extent that these are factually well-founded: -
- i) who is responsible for this conduct?
 - ii) does the allegation of fact amount to unwanted conduct?
 - iii) did that conduct have the purpose or effect proscribed by section 26 EqA?
 - iv) was that conduct related to sex?

Direct discrimination

20. The claimant advances allegations above at 15.1 – 15.4, 15.6 – 15.7, 15.12 – 15.14, 15.16 – 15.17, 15.21, 15.24, 15.27, 15.31, 15.37, 15.41 and 15.44 as allegations of direct discrimination (to the extent that they do not amount to acts of harassment).
21. Insofar as these allegations are factually well-founded: -
- i) was it less-favourable treatment by reference to an actual or hypothetical comparator? The claimant identifies the following actual comparators: -
 - a) Jon Cerino;
 - b) Adam Hart;
 - c) Martin Hale;
 - d) Gilles Michaud;
 - e) Joury de Reuver;
 - f) Norbert Juchem.

Are these valid comparators for the claimant's discrimination complaints?
Alternatively, how should a hypothetical comparator be constructed?

- ii) was this treatment because of the claimant's sex?

Victimisation

22. The claimant alleges that on 6 March 2018, she told Mr Mills that "his picking on me was not acceptable or reasonable and ... that I thought he was doing this to me because he didn't want me, a female in his team ... I then said to Tony that I would report the matter is it didn't stop.":-
- i) is this allegation well-founded?
 - ii) If so, did the claimant commit a protected act?
23. If so, was the claimant treated as alleged above at 15.33 – 15.40 and 15.42 – 15.50 detrimental treatment because of that protected act?

Limitation - EqA

24. Are any aspects of the claimant's complaint time-barred or was there an act extending over a period?

25. If any of the complaints are time-barred is it just and equitable to extend time?

Findings of fact

26. The Tribunal made the following findings of fact on the basis of the material before it, taking into account contemporaneous documents where they exist and the conduct of those concerned at the time. The Tribunal resolved such conflicts of evidence as arose, on the balance of probabilities. The Tribunal has taken into account its assessment of the credibility of witnesses and the consistency of their evidence with surrounding facts.
27. Having made findings of primary fact, the Tribunal considered what inferences it should draw from them for the purpose of making further findings of fact. The Tribunal has not simply considered each particular allegation, but has also stood back to look at the totality of the circumstances, to consider whether, taken together, they may represent an ongoing regime of discrimination.
28. The findings of fact relevant to the issues which have been determined are as follows.
29. On 21 August 2017, the claimant commenced employment with Globalization Partners Limited and was contracted to work for the respondent, Chargepoint Network (UK) Limited. The claimant was offered and accepted a package of a basic salary of £88,000 per annum and variable sales commission of up to a further £88,000 together with a car allowance of £400 per month. The claimant is a single parent and the sole breadwinner in her family and has parental responsibility for her disabled son.
30. The claimant was issued with a 'Management By Objectives' plan ("MBO") with 5 objectives, including generating £70,000 revenue. (Bundle page 402)
31. At or around the time when the claimant was engaged, Nigel Reading was also taken on to develop sales for the respondent in the UK, under the same MBO plan as the claimant.
32. Scott Miller was the claimant's manager and also Mr Reading's manager in the initial period of the claimant's employment up to the end of 2017.
33. On 18 October 2017, Nigel Reading resigned and sent a highly critical summary of his view of the respondent's business model. The document sets out Mr Reading's difficulties with the respondent and makes compelling reading. (Bundle page 464)
34. On 6 November 2017, the claimant tendered her resignation due to concerns about her long-term earnings potential, citing the lack of product availability, competitive pricing and volume of sales. The claimant's concerns reflected Mr Reading's concerns. (Bundle pages 468-471)

35. The respondent sought to persuade the claimant to stay. Scott Miller, the claimant's manager, was anxious to retain the claimant and commented, in an email on 6 November 2017, that the respondent had not fully understood what it was "up against in Europe". In order to incentivize the claimant to stay, the respondent decided to pay the claimant her quarterly commission of £22,000 in December 2017, despite that she had not achieved the MBO revenue target of £70,000 by then. The respondent said that it would resolve the issues that the claimant had raised and Scott Miller personally assisted the claimant to close deals that were in the pipeline. The MBO first quarter plan was then extended to 31 January 2018 to coincide with the end of the respondent's financial year. (Bundle page 522)
36. On 13 December 2017, the claimant had been expected to go to the respondent's premises in Amsterdam for a party but she did not attend because she was hosting client meetings in the UK.
37. On 2 January 2018, the claimant received a call from Tony Mills who introduced himself as a potential new "Head of Channels" at the respondent. The claimant was unaware of Mr Mills' appointment. Mr Mills commented to the claimant that he wanted to bring "one of [his] girls" into the team from his then employer, TSG.
38. Mr Mills continued to contact the claimant during early January 2018, by text and telephone calls, trying to set up meetings to get to know the claimant and her work. The claimant was reluctant to deal with Mr Mills until he became officially employed by the respondent. In addition, the claimant was, during this period, focussed on achieving her sales target under the MBO by 31 January 2018.
39. On 19 January 2018, the claimant received a telephone call from John O'Grady, the respondent's Vice President of Sales and Customer Success. Mr O'Grady was concerned that the claimant had engaged her friend, Gail Benton, to find sales leads when this was his area of responsibility.
40. On 22 January 2018, Tony Mills began employment with Globalization Partners Limited; he was contracted to the respondent as Director of Commercial Accounts and Channel Europe. Mr Mills became the claimant's line manager.
41. At some point, the respondent had established a WhatsApp group for its sales team and Mr Mills joined the group. He used the group as a vehicle for the sales team to get to know each other and to build "camaraderie" in the sales team. The claimant was never invited to join the WhatsApp group and indeed was not aware of the existence of the group until it was mentioned in oral evidence at the hearing.

42. On 23 January 2018, the claimant attended a meeting with Mr Mills, Mr O'Grady and Mr Albakri of 'Fulcrum' at the Renaissance Hotel in St Pancras. The purpose of the meeting was to introduce Tony Mills to Fulcrum so that he could manage the respondent's relationship with Fulcrum. This was also the claimant's first meeting with Mr Mills.
43. Thereafter, Mr Mills looked for opportunities to meet with the claimant in order to understand her work and how she had achieved sales successes. He suggested that the claimant should pick him up from Coventry train station and for the claimant to drive them both to Surrey for a meeting in Redhill. The claimant politely refused due to other work pressures.
44. On 25 January 2018, Chris Burghardt, the respondent's Managing Director of Europe, emailed the sales team about their availability for dinner with the respondent's Chief Executive, Pat Romano, on either the next Tuesday or Wednesday, in London. The claimant replied that she could do Wednesday. The dinner was eventually arranged for Tuesday 30 January 2018 and the claimant attended although she was late. During the dinner, the claimant's previous resignation was mentioned, at which Martin Hale, who had just joined the respondent, commented that if people did not like working for the respondent they could leave. Mr Mills did not interject or indicate that this might be an inappropriate comment.
45. On 31 January 2018, the claimant, Mr Mills and Mr Hale, amongst others, went to Redhill to meet with 'TSG' in a pub. TSG were Mr Mills' previous employers and a company which installed electric car charging points. The claimant was told that TSG were Mr Mills' preferred installers. 31 January was the end of the claimant's extended MBO period and also the end of the respondent's financial year. The claimant was concerned to close as many deals as she could that day and so she spent some of her time whilst in the pub on the phone to complete sales that she had already initiated. Mr Mills did not intervene nor say anything to the claimant at the time about her conduct.
46. On 1 February 2018, the respondent had arranged a workshop with 'TOTAL'. The claimant had been told by Mr Mills to attend and give a presentation at the workshop. Mr Mills had been adamant that the claimant must attend, until he had a conversation with Mr Hale who suggested that the claimant be allowed to not attend. (Bundle page 674)
47. As part of the claimant's role in closing sales, the claimant had to sort out paperwork including contracts for customers. The claimant emailed Mr Mills at the end of January 2018, about an apparent irregularity in the contractual documentation. Mr Mills directed the claimant to the respondent's General Counsel, John Kaplan, and she emailed him about the matter. Mr Kaplan's reply is terse. (Bundle page 667)

48. In addition, the claimant sought confirmation from Mr Kaplan of the respondent's bank details, for receiving payments by customers. This was critical to closing a sale with 'Fidelity' in early February 2018. Having emailed a number of the respondent's staff in Europe, the claimant had asked Mr Mills for information. He was unable to help her. Mr Mills' response to the claimant's request for assistance in sourcing bank details was "sorry I can't help you there", and he made no attempt to assist the claimant or to redirect her enquiry to an appropriate person at the respondent.
49. On 3 February 2018, Mr Mills asked the claimant for a copy of her job description. At the time, Mr Mills was looking to recruit to replace Nigel Reading although he did not explain this to the claimant. The claimant was disconcerted by the request and felt threatened, believing that she might be replaced.
50. In January 2018, in order to source sales leads, the claimant had engaged the services of a friend, Gail Benton who ran a company called 'New Business Juice', with whom the claimant had worked with in the past. As the number of sales leads the claimant generated increased, the respondent became interested in engaging Ms Benton directly as the respondent had no sales development (SDR) presence in the UK. On 27 January 2018, Mr O'Grady agreed that the respondent would use Ms Benton's organisation in the UK rather than the existing Amsterdam based SDR. Mr O'Grady tasked Mr Mills with progressing this. On 2 February 2018, Mr Mills had an initial discussion with Ms Benton. Mr Mills then included the matter in the agenda for the claimant's supervision meeting on 9 February 2018.
51. On 9 February 2018, the claimant attempted to join a telephone conference call without success. The claimant emailed Mr Mills, saying "Ring Central doesn't work for me – can you call my mobile?" Mr Mills responded with "Sure" but was unable to assist in resolving her issues with the Ring Central function.
52. Mr Mills then instructed the claimant to gather more information and chase up concrete proposals on the SDR, which Ms Benton sent direct to Mr Mills on 12 February 2018. On 13 February 2018, following a discussion with the claimant, Mr Mills then emailed the claimant to set up a call with him and Gail Benton to clarify her proposal and the respondent's expectations. It is unclear whether Mr Mills expected to be on the call, from his email and Mr Mills was travelling to the USA at the time. (Bundle page 820)
53. The claimant sought clarification with Ms Benton on a couple of points and relayed these to Mr Mills. The claimant considered that she was being asked to do administrative tasks for Mr Mills and that this was a distraction from her sales job.
54. On 14 February 2018, Mr Mills emailed the claimant late in the morning, saying that he was concerned over what he described as the claimant's "unresponsiveness to communications" because the claimant had not set up a

- call with Gail Benton as he requested. In that email, Mr Mills acknowledged that the claimant was “pushing on sales and [he] appreciated[d] that that is the end game after all...].” (Bundle page 828)
55. Also on 14 February 2018, Mr Mills emailed the sales team in advance of the respondent’s sales conference. Within his email Mr Mills asked the claimant to “flatten your number some” and suggested that reward was on offer for overachievement. This was a reference to moving some of the claimant’s sales into the previous quarter. The claimant was concerned that moving the figures like this would put pressure on her to perform to higher figures in future. The claimant was further concerned that she had been given a higher target than the respondent’s 2 European salesmen, Jon and Norbert, who benefitted from SDR support via Amsterdam. Later that day, the claimant emailed Mr Mills to say that she presumed her numbers would be reduced due to a second salesperson being recruited into the UK although she asked to discuss an increase of 20% for the next quarter.
56. In addition, on 14 February 2018, all of the respondent’s sales staff were invited to a “Sales Kick Off” conference in California, USA. The invite said that registration to the event was mandatory. (Bundle page 834)
57. On 15 February 2018, the claimant emailed Mr Kishoendajal of HR about when her commission would be paid and also raising issues about her expenses for lead generation, her car and computer. The expense issues had been raised by the claimant with Mr Mills previously. In the course of the email exchanges between managers of the respondent, Mr Mills commented “I am also keen to understand what we may have or have done for her in terms of provision of facilities: No Company laptop provided, unclear expectations on the provision of mobile phone etc....” (Bundle pages 845, 846) However, when Mr Mills replied to the claimant about her performance for quarter 4, later that day, he made no mention of her expense issues or tools required to do the job.
58. The next day, 16 February 2018, Mr Mills told the claimant that the “IT guys” had confirmed that they would prepare and ship a laptop to the claimant shortly. He acknowledged that there was an outstanding request from when the claimant joined but that it had no urgency attached to it. (Bundle page 855)
59. On 19 February 2018, the claimant emailed Mr Mills and Mr Kishoendajal to say that she had been unwell over the weekend with a kidney infection and had been advised not to fly. The respondent’s sales conference in California was due to start on 20 February 2018 and to last for 4 days. Mr Mills told the claimant, “Only travel if you are 100%, your health comes first”. The claimant updated the respondent’s managers on her health from time to time including that she had been sent to hospital for tests for suspected kidney stones and the claimant was apologetic. She was signed off work on 22 February 2018 for a week. The claimant’s non-attendance at the sales conference was unavoidable.

60. On 22 February 2018, Mr Mills emailed the claimant about a customer, Cenin, asking her to secure the order. The email ends with Mr Mills saying, "Hope you are feeling better". (Bundle page 859)
61. On 26 February 2018, Mr Mills thanked the claimant for an update on her health and asked about a potential new client, 'Syzygy Renewables'. The claimant replied, reminding Mr Mills that they had discussed Syzrgy before the sales conference and saying that she had understood it would fall into Mr Mills' remit rather than hers. She heard nothing more from Mr Mills on the matter.
62. Around this time, late February 2018, the respondent's managers began to actively discuss matters in relation to the claimant.
63. On 27 February 2018, Scott Miller explained the respondent's commission structure to Mr Mills by email and pointed out his view that the UK target figures, and those for the claimant, were too high and should be reduced.
64. On 1 March 2018, one of the respondent's solutions engineers, Ore Oluwatudimu, was taken into hospital with chest pains. Mr Mills, who was not his direct line manager, responded to the news by email, saying "Oh wow. Get well soon buddy". During Mr Oluwatudimu's absence, cover for his customer queries was provided to him by the respondent and upon his return to work, Mr Mills emailed Mr Oluwatudimu to say, "Take it easy man". On 5 March 2018, Christopher Burghardt, the respondent's Managing Director for Europe, also welcomed Mr Oluwatudimu back to work, as did Martin Hale. (Bundle pages 893 and 899)
65. At the beginning of March 2018, the claimant secured a sales lead with Rolls Royce. The potential was for the respondent to be awarded all of Rolls Royce's future orders for electric vehicle charging points, with at least 20 orders in sight, in preference to one of the respondent's main competitors. It was one of the respondent's first installations in Europe and was described as "a big deal". The claimant attempted to arrange a demonstration of the respondent's electric vehicle charging points in Washington, Tyne & Wear, within the week as Rolls Royce were due to be visited by a Government minister. The ministerial visit was then moved to another site because of security concerns. However, the respondent had found itself unable to deliver or install any units of its products in such a short timescale.
66. When the Rolls Royce installation in Washington was cancelled because the ministerial visit was moved, the team expressed their disappointment after the significant efforts they had made to set it up under pressure. In the initial email exchanges amongst the sales team, and in sales team conference calls, the Rolls Royce installation had at first been described as a "show and tell". However, Mr Mills began to refer to the Rolls Royce installation as the "dog and pony show". His expression was picked up by members of the sales team and

- came to be used as a reference to the Rolls Royce installation. The claimant said that the installation should not be called a “dog and pony show” and that it was disrespectful of the customer.
67. On 11 March 2018, Scott Miller asked Mr Mills about the claimant’s phone usage and expenses, saying, “Before I approve it, I just want to make sure that this follows whatever policy we have developed.” The next day, Mr Mills told the claimant that Mr Miller had asked for more detail on the “high mobile phone bills that you have been submitting.”
 68. An issue also arose in that Mr Mills had pushed for his former employer, TSG, to be given the installation work and he was angry when he discovered that Rolls Royce had appointed their own choice of installer. On 12 March 2018, Mr Mills reacted to the claimant’s involvement after he learned that TSG were not going to do the installation work, by emailing her and asking, “Jen, what exactly is going on here? ... This is not going to go down well on the relationship front and is very frustrating.” (Bundle page 929)
 69. Mr Mills also tried to call the claimant at 14:38 and 17:29 that day. At 17:47, Mr Mills emailed the claimant to send her a screenshot of his mobile call log, in an email entitled, ‘Call log just for the record’ with the body of the email as “I left you voicemail more than 6 hours ago”.
 70. Later in the evening of 12 March 2018, the claimant had a telephone conversation with Mr Mills during which Mr Mills expressed his frustration that the claimant had not answered him earlier or contacted him whilst travelling and he set out his concern that TSG were not getting the Rolls Royce installation. The claimant told Mr Mills that she had been waiting for a response from him for over 24 hours, that she felt he was picking on her and not supporting her and that she believed he did not want a female in his team. The claimant said that if his treatment of her did not stop, she would report it. Mr Mills made little response to what the claimant said.
 71. Shortly after the call with the claimant, Mr Mills sent her an email saying, “Jen, Yes, let’s call a truce here.” He admitted to missing her emails and making errors of judgement. (Bundle page 937)
 72. The next day, 13 March 2018, Scott Miller suggested that the claimant should be congratulated for getting the respondent the opportunity with Rolls Royce. Mr. Mills emailed Scott Miller back to report that he had “had huge management challenges with Jen this week ... She tells me that I am not supporting her, which as you know could not be further from the truth ...” and “To be honest she might be the one doing the business but it is draining me, there is no pleasing her.”
 73. Mr Mills then emailed Mr Kishoendajal to say “Anil, just a heads up on Jen. Managing her is terrible and getting worse ...” Mr Mills also added “the awful

- calls I have had with her over the past couple of days ...” but without going into detail. Mr Mills went on to say that “... if the new employment contract does not scare her away it might become very difficult to cut her loose after she becomes a full employee.” Mr Kishoendajal responded to this email by suggesting that “If we truly feel she is not right person for us. We need to think about options.” Involving the CEO in the USA was also suggested.
74. On 16 March 2018, Mr Mills texted Mr Kishoendajal to ask, “Can we summarize and decide on path forward on the Jen situation please? ... in the light of everything I think separation is looking more likely than a fix.”
75. Later that day, Mr Mills then sent Mr Kishoendajal and also Chris Burghardt, the respondent’s MD Europe, a document entitled “Pro’s” and “Con’s” (*sic*) about the claimant. There is one “Pro”, “Only one to bring in UK business thus far, although not what I deem to be huge success after 7 months though really.” There are 13 “Cons”, some of which are historic, lacking in detail and unsubstantiated. They majority of the “Cons” had never been raised directly with the claimant and the Tribunal considered these to be a reflection of Mr Mills’ inability to manage the claimant effectively. The ‘sales meeting debacle’ is a misrepresentation of the situation when the claimant was unwell and unable to attend the respondent’s conference in California. (Bundle pages 1009 – 1010). Mr Mills then compiled a template letter of dismissal including 8 reasons as suggested additions/amendments to the template (Bundle page 1033).
76. On 19 March 2018, the claimant received a calendar invite from Mr Mills for a telephone conference entitled “UK Sales status update”. The claimant dialled in but there was nobody on the call and it was later rearranged for 21 March 2018.
77. On 21 March 2018, the claimant joined the telephone conference call of around 20 minutes duration, with Mr Mills and Mr Kishoendajal, during which the claimant was notified of her termination of employment with immediate effect. At that point, and by agreement, the claimant recorded the call and the transcript appears in the bundle at pages 1028 - 1032. The claimant asked why she is being let go and Mr Mills said that “... it just doesn’t jive with the kind of people that Chargepoint are looking for ...”. The claimant suggested that her face didn’t fit and that it came down to Mr Mills’ personal dislike of her, in response to which Mr Mills did not deny that he disliked her but said that had nothing to do with it. The claimant said that she had not heard a reason why, at which Mr Mills said, “That will be supplied” without expanding on such.
78. The claimant’s dismissal was confirmed in a letter dated 21 March 2018, which said that the claimant’s employment was being terminated for performance reasons including “continued absence at required meetings”. The template dismissal letter had initially been added to by Mr Mills but his additions were taken out. (Bundle page 1033 and 1044)

79. On 9 April 2018, the claimant presented the respondent with a list of enquiries about her commission and expenses. The respondent failed to respond to the claimant on the points raised.
80. On 12 April 2018, the claimant asked Mr Kishoendajal if she was entitled to appeal the decision to dismiss her. Mr Kishoendajal expressed his view that it was “not proper to advise [the claimant] on [her] rights to an appeal”. In response, the claimant pointed out that she was not asking him for legal advice; she just wanted to know whether there was a right to appeal because her termination letter did not mention appealing the decision to terminate her employment.
81. Having received no reply to her enquiry about a right to appeal, on 26 April 2018, the claimant wrote to the respondent to appeal against her dismissal. Her letter also sets out, in detail, the treatment by Mr Mills which the claimant considered to be harassment and bullying. The letter is 12 pages long. (Bundle pages 1077 – 1089)
82. On 3 May 2018, having received no acknowledgement of her appeal, the claimant emailed Mr Kishoendajal about a number of matters and said that she believed the respondent’s senior management had been “hugely misled by Tony Mills” and hoped that the respondent would thoroughly investigate matters. The claimant also said that she was experiencing continuing harassment from Mr Mills. (Bundle page 190)
83. On 10 May 2018, Mr Kishoendajal acknowledged the claimant’s appeal and confirmed that the matters raised would be investigated. Mr Kishoendajal confirmed that he was appointed to investigate. The claimant objected to Mr Kishoendajal being the investigator due to his involvement in the telephone call in which she was dismissed. The claimant did not consider that Mr Kishoendajal was a neutral party. This request was ignored.
84. On 24 May 2018, Mr Kishoendajal sent the claimant an email headed “Termination: follow up”, stating that he proposed to investigate her grievance based on her letter alone and without meeting her, and that he would then pass his findings to Heather Sullivan at the respondent, who, the claimant was told, would conduct the claimant’s “disciplinary appeal”. (Bundle page 1099) Despite this, no hearing was ever arranged to consider the claimant’s appeal against dismissal. Mr Kishoendajal’s email of 24 May 2018 also included a statement to the effect that he understood from his contacts that the claimant should have received all expenses due to her.
85. On 30 May 2018, Mr Kishoendajal interviewed Mr Mills about the claimant’s allegations of discrimination. He went through each allegation and asked Mr Mills to respond. However, Mr Kishoendajal did not challenge the responses given by Mr Mills even though a number were inaccurate. In the days following

the meeting, Mr Mills sent Mr Kishoendajal a number of documents which were then appended to Mr Kishoendajal's record of the interview as evidence of what Mr Mills had said. Mr Kishoendajal did not interview any other individuals, nor did he speak to or interview the claimant.

86. On 7 June 2018, Mr Kishoendajal sent the claimant an investigation outcome letter. (Bundle pages 1182-3) The claimant's grievances were not upheld and she was advised that any appeal would be forwarded to Heather Sullivan of the respondent, who would arrange an appeal meeting. The claimant was also asked if she wished to "move forward with [her] appeal on the decision to dismiss".
87. On 19 June 2018, the claimant sought to appeal Mr Kishoendajal's decision on her grievance and also to challenge commission calculations. The claimant set out her grounds of appeal in some detail in a 7-page letter.
88. On 19 July 2018 an appeal hearing took place by telephone, conducted by Mark Kerstens, the respondent's VP for Strategic Accounts, with the claimant. The notes pertaining to that hearing appear at pages 1257-1263 of the bundle.
89. On 7 August 2018, Mr Kerstens sent the claimant a letter headed "Appeal – Termination of Employment on 21/03/18" in which he dismissed her grievances. The letter also mentions that a different senior manager, Jon Kaplan, would be hearing the claimant's appeal against the decision to dismiss her. (Bundle pages 1267-1282)

The Law

90. A concise statement of the applicable law is as follows.
91. The complaints of sex discrimination were brought under the Equality Act 2010 ("EqA"). Sex is a relevant protected characteristic as set out in section 4 of EqA.
92. Section 39(2) EqA prohibits discrimination against an employee by dismissing her or by subjecting her to any other detriment. By section 109(1) EqA an employer is liable for the actions of its employees in the course of employment.
93. Direct discrimination is contained in section 13 EqA which provides that a person (A) discriminates against a person (B) if, because a protected characteristic, A treats B less favourably than A treats or would treat others. For the purpose of establishing less favourable treatment between B and others in a direct discrimination claim, there must be no material difference between the circumstances of B and of the comparator(s).

94. In analysing whether an act or decision is tainted by discrimination, an Employment Tribunal may avoid disputes about the appropriate comparator by concentrating primarily on why the claimant was treated as she was, known as the “reason why” approach, in *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337.
95. Very little direct discrimination is overt or even deliberate. In *Anya v University of Oxford* [2001] IRLR 377 CA guidance was given that Tribunals shall look for indicators from a time before or after the particular act which may demonstrate that an ostensibly fair-minded decision was or was not tainted by bias, in *Anya* racial bias. Discriminatory factors will, in general, emerge not from the act in question but from the surrounding circumstances and the previous history.
96. Harassment is contained in section 26 EqA which provides:
- (1) *A person (A) harasses another (B) if-*
 - (a) *A engages in unwanted conduct related to the 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 behaviour of a sexual nature, and*
 - (b) *the conduct has the purpose or effect referred to in subsection (1) (b).*
 - (4) *In deciding whether conduct has the effect referred to in subsection (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.*
97. The concept of harassment under the previous equality legislation was the subject of judicial interpretation and guidance by Mr. Justice Underhill in *Richmond Pharmacology and Dhaliwal* [2009] IRLR 336. The Tribunal has applied that guidance, namely:
- “There are three elements of liability (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 [protected characteristic].”*
98. Victimisation is contained in section 27 EqA which provides that 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 B has done or may do a protected act*
99. A protected act includes making an allegation (whether or not express) that A or another person has contravened the Act.
100. In *Martin v Devonshires Solicitors UKEAT/0086/10* Mr. Justice Underhill analysed the previous similar provisions as follows:
- “The question in any claim of victimisation is what was the “reason” that the respondent did the act complained of: If it was, wholly or in substantial part, that the claimant had done a protected act, he is liable for victimisation; and if not, not. In our view there will in principle be cases where an employer has dismissed an employee (or subjected him to some other detriment) in response to the doing of a protected act (say, a complaint of discrimination) but where he can, as a matter of common sense and common justice, say that the reason for the dismissal was not the complaint as such but some feature of it which can properly be treated as separable. The most straightforward example is where the reason relied on is the manner of the complaint.”*
101. A claim of victimisation does not require any comparison. Answering the question of the ‘reason why’ involves consideration of the mental processes (whether conscious or subconscious) of the alleged discriminator to see whether the protected act had any material influence on the detrimental treatment; see for example *Amnesty International v Ahmed [2009] IRLR 884*.
102. EqA provides for a shifting burden of proof. Section 136 so far as is material provides as follows:
- “(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.”*
103. Consequently, it is for a claimant to establish facts from which the Tribunal can reasonably conclude that there has been a contravention of EqA. If the claimant establishes those facts, the burden shifts to the respondent to show that there has been no contravention by, for example, identifying a different reason for the treatment.
104. In *Hewage v Grampian Health Board [2012] IRLR 870* the Supreme Court approved guidance previously given by the Court of Appeal on how the burden of proof provision should apply. That guidance appears in *Igen Limited v Wong [2005] ICR 931* and was supplemented in *Madarassy v Nomura International*

PLC [2007] ICR 867. Although the concept of the shifting burden of proof involves a two-stage process, that analysis should only be conducted once the Tribunal has heard all the evidence, including any explanation offered by the employer for the treatment in question. However, if in practice the Tribunal is able to make a firm finding as to the reason why a decision or action was taken, the burden of proof provision is unlikely to be material.

105. The time limit for complaints of unlawful discrimination is found in section 123 EqA, which provides that such complaints may not be brought after the end of:

(a) *the period of three months starting with the date of the act to which the complaint relates, or*

(b) *such other period as the Employment Tribunal thinks just and equitable.”*

106. Conduct extending over a period of time is to be treated as done at the end of that period and a failure to do something is to be treated as occurring when the person in question decided on it, *or does an act inconsistent with doing it*, or on the expiry of the period in which that person might reasonably have been expected to do it. A continuing course of conduct might amount to an act extending over a period, in which case time runs from the last act in question.

107. In Robertson –v- Bexley Community Centre (T/A Leisure Link) [2003] IRLR 434 the Court of Appeal considered the application of the “just and equitable” extension and the extent of the discretion and concluded that the Employment Tribunal has a “wide ambit”.

108. In the course of submissions, the Tribunal was referred to a number of cases by Counsel for the respondent, as follows:

Richmond Pharmacology and Dhaliwal [2009] IRLR 336

CLFIS (UK) Limited v Dr Mary Reynolds OBE [2015] EWCA Civ 439

Pemberton v Inwood [2018] ICR 1291

Royal Mail Group v Jhuti [2019] UKSC 55

The Tribunal took these cases as guidance but not in substitution for the statutory provisions.

Submissions

109. The claimant made a number of detailed submissions in writing and orally which the Tribunal has considered with care but does not rehearse in full here. In essence it was asserted that: - during the second half of the claimant’s employment she suffered sex discrimination from her line manager, Mr Mills who did not want the claimant, a woman, in his team; that Mr Mills was actively gender biased and his approach to the claimant was either adopted or

acquiesced in by others; that the culture of the sales team under Mr Mills was one of “hunters”, focussed on male behaviours; that the claimant worked passionately and diligently and Mr Mills was frustrated because the claimant’s performance and the results achieved were better than her male colleagues; that the respondent sought to argue that her efforts lacked value despite the evidence; that the claimant was never invited to join the WhatsApp group of male colleagues which was designed to build the team culture and camaraderie; that Mr Mills classed the claimant as the ‘bottom of the chain’ and he referred to female colleagues as “his girls” and the claimant by her first name whereas he referred to male colleagues by surnames, he instructed the claimant to undertake administrative tasks that he did not ask the men to do, he expected the claimant to be contactable and available without regard for her personal responsibilities and he did not support the claimant to resolve IT issues; he referred to the claimant’s arranging a demonstration to Rolls Royce as “the dog and pony show”; that on 12 March 2018, the claimant raised allegations of bullying and discrimination with Mr Mills as a protected act and was victimised thereafter; that the claimant was dismissed without warning or process and that the reason given for her dismissal was untrue.

110. Counsel for the respondent made a number of detailed submissions in writing and orally which the Tribunal has also considered with care but does not rehearse in full here. In essence it was asserted that: - the claimant’s allegations of sex discrimination were focussed on Mr Mills, the claimant’s line manager from January 2018, and were misconceived, amounting to ordinary management instructions on legitimate aspects of the claimant’s role and not sex discrimination; that many of the matters complained of did not constitute detriments or meet the threshold of harassment – including that the claimant had raised no objection at the time to the gendered language in the sales team; that the claimant had not identified an actual comparator and there was no basis to suggest that a hypothetical comparator would have been treated differently; that the respondent operated in a challenging sales environment, where the claimant had a high salary and generous bonus package designed to retain and incentivise her; that the fact of 51 allegations over a period of 3 months evidenced a dysfunctional dynamic pointing to a conclusion that the claimant’s employment would not have continued further in any event, due to gathering concerns on the respondent’s part, thereby raising questions as to contributory fault on the part of the claimant – there was a breakdown in trust and confidence; and the burden of proof lay with the claimant and it was submitted that she had not discharged such, so the claim should be dismissed.

Conclusions (including where appropriate any additional findings of fact)

111. The Tribunal has applied its relevant findings of fact and the applicable law to determine the issues in the following way. The Tribunal decided to approach the allegations in numerical order and made findings of fact as to what happened. The burden was on the claimant to prove the facts on which her complaints were based. If those facts were proven the Tribunal then had to

apply the law to them. In considering each allegation, the Tribunal also had regard to the evidence overall rather than just looking at each act or event in isolation.

112. Where a conflict of evidence arose, this was resolved on a balance of probabilities, in that the Tribunal preferred the evidence of the claimant to that of the respondent's witnesses. The Tribunal found that the evidence of the claimant's line manager, Mr Mills, was less than credible. His responses to cross-examination were often unhelpful, evasive, defensive or dismissive. At times, he sought to avoid answering the claimant's questions, or did not explain his view, instead resorting to throwing back a question at the claimant, or declaring "that's not sex discrimination", adopting an aggressive, hectoring manner and arguing with the claimant. He described the claimant in contradictory terms: she was "the bottom of the pile" when explaining his expectation that the claimant should follow his instructions, but "a senior employee" when he thought she should know better. Throughout his testimony, Mr Mills displayed a disrespect for the claimant; one example appears in his witness statement at paragraph 22 wherein his evidence was "It was clear from her demeanour that she did not want to attend and I felt it would be better to let her do whatever it was she thought was so important that she shouldn't be attending with us". The Tribunal considered that Mr Mills' continued disrespect for the claimant, even after his behaviour was challenged, and his failure to explain his conduct at the material time led the Tribunal to doubt the veracity of his evidence.
113. In contrast, the evidence of the claimant was measured and stood up to proof. Matters were explained by reference to events and correspondence at the relevant time or by reference to the respondent's procedures. The claimant questioned witnesses in a polite and respectful manner and, on occasion, candidly accepted that she may have been mistaken about a matter in light of the answer she received. Despite Mr Mills', at times, aggressive responses to her cross-examination and his often-argumentative reaction, the claimant remained calm throughout.

The factual allegations

114. The Tribunal made findings in relation to the 51 factual allegations forming the basis of the claim of sex discrimination as follows.
115. Allegation 1: The Tribunal found that the claimant had received a number of calls, texts and emails from Tony Mills prior to his employment at the respondent in the course of which he made a comment about "bringing one of [his] girls" to the respondent. In evidence, Mr Mills said this comment was "regrettable" but he disputed that it was discriminatory and, as justification, pointed to a later email from the claimant to the sales team which she addresses as "Gents". The Tribunal found that, in early January, Mr Mills rang the claimant without notice. She did not know who Mr Mills was and was

- reluctant to deal with him. She made it clear to Mr Mills that his contact was unwanted - the end of January was the end of the claimant's revised sales target period and she considered his continual contacts as interference but he persisted in a manner that the Tribunal considered amounted to harassment of the claimant when combined with his behaviour in other respects – see below under “Cumulative effect”.
116. Allegation 2: It was not disputed that the claimant had received a phone call from John Grady, the respondent's vice president of sales, on 19 January 2018 during which he asked why the claimant had not told him about her use of “freelance meeting generators”. However, the Tribunal did not find that his enquiry was aggressive or accusatory in its manner. Mr Grady was concerned about the possible transfer of the respondent's data to a third party and the tribunal considered that such an enquiry was reasonable in the circumstances.
117. Allegation 3: This relates to arrangements for dinner in London with the respondent's managing director. Sales staff were asked for availability in respect of 2 dates and the claimant had replied saying that she was available on one of the dates. She did not confirm her position in relation to the other date and the dinner was subsequently arranged for that other date – the claimant had not said that she was available on that date but likewise, she had not said that she was unavailable. Given that this was a dinner with the managing director, the Tribunal considered that the direction by Mr Mills that the claimant attend dinner was not unreasonable and did not single her out. In any event, the claimant attended the dinner.
118. Allegation 4: The Tribunal considered that Mr Mills' request that the claimant pick him up from Coventry train station on 25 January 2018 was unusual. He was travelling by train from the north west of England in the direction of London. The claimant lived, at the time, in Leicester and so Coventry was out of her way to London and she made her excuses. However, in the context of Mr Mills' previous reference to “his girls” the claimant felt, and the Tribunal accepted her submission that she felt she was being asked to “run around” for Mr Mills unnecessarily. The Tribunal considered that the claimant found this was frustrating for the claimant who was trying to focus on closing sales at the end of her target period, the end of January 2018, a fact that was known to Mr Mills. There was no evidence that other employees were expected to run around for Mr Mills as the claimant was in this and a number of other respects – see also allegations 17, 18, 20 and 26, and below under “Cumulative effect”.
119. Allegation 5: The Tribunal found that Mr Grady's response to the claimant's query of whether there were pending leads from marketing activity, was an honest reply and account of what he knew. There was no evidence of any discriminatory intention in the remark.
120. Allegation 6: This relates to Mr Mills' actions as the claimant's line manager, in failing to support her, as a member of his team, with understanding important

documents. Mr Mills refused to help the claimant by explaining apparent contradictions in the respondent's Master Sales and Services Agreement (albeit he may not have known the answers) and he refused to send the claimant's draft content to Jon Kaplan (the respondent's General Counsel) himself for explanation on 28 January 2018. Instead, he directed the claimant to approach Mr Kaplan directly. The Tribunal took the view, in light of Mr Kaplan's terse reply, that the claimant should not have approached Mr Kaplan but that Mr Mills did not support her when he could have. Nor did he make any apparent effort to resolve the issue. The understanding of the respondent's contractual documentation was important in the context of securing sales and dealing with customer enquiries. Mr Mills was unwilling to assist the claimant with this as with a number of other important matters including provision of the respondent's bank details without which customers would be unable to pay for goods and the Tribunal found that he proffered no explanation for his indifference to such important matters. The Tribunal considered that Mr Mills' failure to support the claimant showed hostility towards the claimant.

121. Allegation 7: This relates in part to allegation 3 above. The Tribunal found Mr Mills' approach to the claimant's availability to be one of failing to take any account of her availability or personal circumstances. He expected all sales staff to be available whenever required, often at short notice, and displayed considerable irritation when the claimant did not comply with a number of his requests, whilst not seeking any explanation for such. His unilateral announcements of events around the end of the month of January caused the claimant difficulties which she worked around, whilst also seeking to close sales towards her target. The Tribunal found that Mr Mills initially refused to allow the claimant to be released from the TOTAL workshop without explanation as to why she, in particular, was required and only relented after the intervention of Mr Hale. Mr Mills acted towards the claimant in a manner that was unwanted and which the Tribunal considered amounted to harassment of the claimant when combined with his behaviour in other respects – see below under “Cumulative effect”.
122. Allegation 8: At the dinner with the respondent's CEO, on 30 January 2018, at OXO, the Tribunal has found that the claimant's previous resignation came up in conversation and that Mr Hale made a comment to the effect that that the claimant should leave the respondent if she was not happy. The respondent has accepted that such a comment was made (bundle page 234) and the Tribunal noted that Mr Mills failed to address it, despite that the implication or effect of such a comment might be to encourage the claimant to leave – Mr Hale confirmed in his evidence that the claimant appeared unhappy with the job although Mr Hale also said in evidence that he had just joined the respondent and had very little dealings with the claimant. In those circumstances, the Tribunal considered this to be an incident of Mr Mills' failure to support the claimant and his response in cross-examination was to suggest that it was a throwaway comment and that if it had been said to him, Mr Mills suggested that he would have laughed at it. The Tribunal considered that Mr

Mills' responses to questions on this matter underlined his view of the claimant – see below under “Cumulative effect”.

123. Allegation 9: The Tribunal has found that Mr Mills' response to the claimant's request for assistance in sourcing bank details, was “sorry I can't help you there”, on 1 February 2018. The Tribunal found it surprising that the claimant's line manager, an experienced sales person, would have no idea of how customers could pay the respondent for goods or no idea of how to find out such important information which would be critical to the success of his team. The Tribunal considered his response to be off-hand and dismissive, leaving the claimant to find out for herself and displayed an attitude of unwillingness to assist or support the claimant, in a manner that the Tribunal considered amounted to harassment of the claimant when combined with his behaviour in other respects – see below under “Cumulative effect”.
124. Allegation 10: This concerns a request, in early February 2018, by Mr Mills that the claimant provide him with a copy of her contract and/or job description. The Tribunal considered that Mr Mills' request was not unreasonable and accepted his explanation that he was thinking of recruiting further sales personnel, including a replacement for Nigel Reading, and so he wanted to review the terms of engagement and possible job description. Mr Mills could and should have requested the documentation from HR who were in a position to support him through a recruitment process, but he considered that it would be quicker and easier to ask the claimant. Although the claimant was suspicious of Mr Mills' motives, the Tribunal found no evidence to suggest that this request constituted harassment of the claimant.
125. Allegation 11: The purpose of the claimant's 1:1 meeting with Mr Mills was, in his view, to get to know her whilst the claimant thought it would be to review her performance. In those circumstances, the Tribunal considered that Mr Mills adding “PROPOSAL FROM GAIL” to the agenda meant that the meeting would be used for other matters and that the claimant's objection was reasonable. Whilst the claimant had been using Ms Benton for sourcing sales leads, the issue of the terms of Ms Benton's engagement by the respondent was a matter for the respondent and not for the claimant. Mr O'Grady had instructed Mr Mills to deal with the matter. The claimant objected to being used as a go-between for Mr Mills and, in that context, the Tribunal considered that, beyond introducing Mr Mills to Ms Benton, there was no reason for the claimant to be involved. However, Mr Mills unreasonably sought to delegate an administrative matter within his remit as Director of Commercial and Channel Sales Europe, to the claimant, a sales person who Mr Mills knew was trying to focus on her sales activity and targets. For example, Mr Mills instructed the claimant to gather information, to chase Ms Benton for him and to set up a telephone conference with Ms Benton, all of which were matters outside of the claimant's role and which might have been expected of a secretary. The claimant was not Mr Mills' secretary. She objected but Mr Mills persisted in directing her to deal with Ms Benton and later to chase her up, rather than to handle the matter

himself. The Tribunal considered that Mr Mills conducted himself over negotiations with Ms Benton by using the claimant in a manner that amounted to harassment of the claimant when combined with his behaviour in other respects – see below under “Cumulative effect”.

126. Allegation 12: The claimant understood that the purpose of a 1:1 would, at least in part, be to review her performance. She was on defined and onerous sales targets at the respondent and had assumed that Mr Mills would be monitoring her performance closely, although the evidence before the Tribunal did not support such an assumption. Mr Mills’ did not include performance issues on the 1:1 agenda on 9 February 2018 because he saw the purpose of their initial formal meeting as getting to know the claimant. The Tribunal considered this to be a matter of a misunderstanding by the claimant, alternatively an oversight on Mr Mills’ part.
127. Allegations 13 and 14: The issue of what resources were provided to the claimant in comparison to other sales personnel was never made clear by the evidence. The claimant has raised a number of issues where she contends that she was not given support or assistance in the way she believed others were. Mr Mills’ failure to provide support and/or resources to the claimant to assist her in accessing a meeting through the Ring Central platform on 9 February 2018 is one example of this. The claimant was the only female member of the team and, from the evidence, the Tribunal concluded that she was the only person in the team who was reliant on her own resources, including a computer, and to source sales support via Ms Benton. It was not until 16 February 2018 that Mr Mills chased the provision of a laptop for the claimant. Mr Mills was asked about the claimant’s issues in cross-examination and, whilst acknowledging that the claimant had such issues, he was dismissive of them – see below under “Cumulative effect”.
128. Allegation 15: In the course of the 1:1, the claimant raised a number of matters that Mr Mills was unable to answer. The Tribunal was concerned to hear that he did not know what the claimant’s target was or how she would earn commission. These matters were important to the claimant and not unusual to have prominence in a sales environment – as Mr Mills confirmed in evidence, the claimant was motivated by the money. However, the Tribunal found that, despite being the claimant’s line manager and the respondent’s Director of Channel Sales Europe, Mr Mills made little or no effort to appraise himself of such matters. The Tribunal considered that Mr Mills displayed a lack of interest in the claimant and the various issues she raised, even though such issues concerned her performance, which might be expected to impact on Mr Mills’ position - see below under “Cumulative effect”.
129. Allegation 16: The Tribunal heard evidence that the claimant was given a higher sales goal than Jon Cerino and Norbert Juchem. These individuals were operating in Europe, whilst the claimant was dealing with sales in the UK. However, the nature of the targets in question, the rationale for targets across

the respondent's sales personnel, and the differences between them, were never fully explained by the respondent, beyond a suggestion that the claimant had negotiated higher targets for herself so as to increase her earnings potential. The Tribunal considered that the respondent resorted to blaming the claimant for apparent less favourable treatment.

130. Allegations 17, 18, 20 and 26: These allegations are dealt with in paragraph 125 above.
131. Allegations 19 and 21: Allegation 19 relates to an email sent by Mr Mills to the claimant on 14 February 2018, in which he raised concerns as to the claimant's unresponsiveness to communication (bundle page 828). At the time, Mr Mills was due to fly to the USA and was trying to progress negotiations with Ms Benton, albeit that he was largely doing so by instructing the claimant – see paragraph 125 above. The email in question comes only 5 days after the claimant's 1:1 on 9 February 2018, and nothing had then been said about any unresponsiveness to communications. However, in cross-examination, Mr Mills stated that he took the view that, if his staff were asked to do something they should oblige and he indicated that he became annoyed, over time, that the claimant did not answer her phone when he expected her to, including when travelling (Bundle page 832) and in contrast to others such as Jon Cerino, who was at one point on a plane and so not expected to be able to respond. Mr Mills' issue with the claimant's responsiveness also came at a time when he was aware that the claimant had problems with equipment and was awaiting resources from the respondent. In light of Mr Mills' evidence the Tribunal considered his repeated conduct towards the claimant in this respect amounted to harassment of the claimant – see below under "Cumulative effect".
132. Allegation 22: The Tribunal considered carefully the documentation relating to this allegation (Bundle page 831a) and the explanation given for this by Mr Mills. The Tribunal accepted that this had been an inadvertent mistake on the part of Mr Mills who had not realised the address embedded in the email was the claimant's personal address rather than her business email. There was no evidence to support the contention that this had been done to harass the claimant, albeit the Tribunal acknowledged that the claimant was concerned that her personal email address had been given out by mistake.
133. Allegation 23: concerns the respondent's decisions on sales goals. The Tribunal accepted the claimant's evidence that Mr Mills had effectively instructed the claimant to increase her performance whilst giving male colleagues leeway for underperformance, in that he was asking them to reappraise market potential, on 14 February 2018. The Tribunal noted that the colleagues in question, Mr Cerino and Mr Juchem, who Mr Miller in his witness statement confirmed had joined the European sales team at the same time as the claimant, had the support of a full-time targeted agency in Germany with dedicated support for their sales meetings. In contrast, the claimant was largely reliant on Ms Benton whose terms of engagement had not yet been

- finalised by Mr Mills. The Tribunal also noted that on 27 February 2018, Mr Miller, the claimant's previous line manager and by then the respondent's VP European Sales, had pointed out to Mr Mills that, in Mr Miller's view, the UK sales target figures, and those for the claimant, were too high and should be reduced. The Tribunal found no evidence that Mr Mills had considered this view nor adjusted the claimant's figures as suggested or at all.
134. Allegation 24: The claimant's title was Account Executive. In contrast, her male colleagues were given titles including words such as "director" or "key account". The claimant submitted that her title denoted a lack of importance and she had believed that the titles denoted a disparity in pay. In fact, the evidence showed that the claimant was on a more generous remuneration package than her colleagues, and particularly so if she made target. Mr Miller's evidence, which was unchallenged, was that the claimant had been appointed in August 2017, at the same time as Nigel Reading, and that they had both been offered the same role albeit on terms which reflected their previous packages. This meant that the claimant started on a higher basic and a higher variable salary than Mr Reading. In the circumstances, the Tribunal did not find that the claimant had been deliberately given an unimportant title as an act of less favourable treatment. Nevertheless, the Tribunal noted that Mr Hale's evidence was that he had been interviewed for the job of key account executive. However, he was later given the title of Director UK and Ireland so as to enhance his status and the Tribunal found that this was done without consideration of the claimant's position or job title – see below under "Direct discrimination".
135. Allegation 25: Mr Mills' failure to address the claimant's lack of IT resources on 16 February 2018 is dealt with at paragraph 127 above.
136. Allegation 27: The claimant alleges that Mr Mills' failed to recognise her performance in the local, European or global teams. In the Scott schedule, the claimant particularises this by reference to an email sent by Mr Mills to the sales team across Europe about a meeting that might result in the supply of 3 charging stations free of charge. The respondent counters this in the Scott schedule by pointing to the fact that the claimant received an email in recognition of a sale to the NHS. The Tribunal reviewed the evidence of the recognition afforded to the claimant over the material time and considered that Mr Mills had several opportunities to recognise her performance but he failed to do so. When asked in cross-examination about the claimant's methods and results Mr Mills suggested that the claimant's methods were inappropriate and sought to play down her sales results as being "down to pure chance" and that she "got lucky". In addition, Mr Miller had emailed Mr Mills on 13 March 2018 (bundle page 959) to say that "[the claimant] got us this opportunity and should be congratulated". The Tribunal considered that Mr Mills' excuses for not doing so, given in cross-examination and re-examination, indicated that he was unwilling to congratulate the claimant or to acknowledge her performance, in contrast to her male colleagues – see for example bundle page 1026.

137. Allegation 28: This relates to an email from Mr Mills to the claimant, on 22 February 2018, asking the claimant to secure the Cenin CPE 200 order (bundle page 859). The Tribunal considered this to be a reasonable management instruction, arising from Mr Mills' having secured an agreement on supply to the customer.
138. Allegation 29: The claimant alleges that Mr Mills failed to contact her following her email of 26 February 2018, in which she sought assistance with a customer meeting (Synergy Renewables). The Tribunal reviewed the emails in the bundle relating to this matter and has found that the claimant had in fact replied to Mr Mills to remind him of a discussion they had before the respondent's sales conference and their agreement that this customer fell within his remit (bundle page 861). In those circumstances, the Tribunal concluded that Mr Mills had understandably progressed the matter without further reference to the claimant.
139. Allegation 30: This arises from the claimant's non-attendance at the respondent's sales conference in Campbell, California, from 18 to 23 February 2018. The Tribunal has found that the claimant did not attend due to ill-health and that her attendance was unavoidable. She was signed off sick with a kidney infection and had been advised not to fly. The allegation made by the claimant is that the respondent failed to offer support during her sickness absence whilst the sales conference was ongoing. The claimant's evidence was that she was not the only sales person to be ill during the conference, giving examples of 'Boris' who was not well enough to attend and 'Ore' who became unwell after the trip. It was apparent that colleagues had sent them "get well soon" messages. Mr Mills also acknowledged the claimant's sickness in his email about the Cenin order (bundle page 859).
140. Allegation 31: This concerns the claimant's work to secure a sales lead, for installation of up to 20 orders and possibly all future orders from Rolls Royce. A number of emails passed between the team and, despite that this lead had been secured by the claimant, Mr Mills initially failed to mention to the team in early March 2018, that the claimant had secured the lead, which led to team members contacting Mr Mills to progress the matter – see below under "Cumulative effect".
141. Allegation 32: As work on the Rolls Royce order progressed, a number of issues concerning the respondent's ability to deliver a charging station for a demonstration in a short timescale became apparent. A number of the team had worked hard to support the arrangements for the demonstration which was, at first, described as a "show and tell". However, as it became apparent that the respondent was not capable of fulfilling the brief, what had been described within the team as a big deal then became "the dog and pony show", a phrase used in Mr Mills' team-wide emails of 9-12 March 2018 and picked up by others in the team and repeated thereafter. In evidence, Mr Mills sought to explain the implication of his phrase, as a colloquialism, and to deny any negative

- connotations. However, given the developments at the time around the abortive demonstration, the Tribunal considered that, once Mr Mills realised the problems presented by the demonstration, he adopted this phraseology with the intention of undermining the claimant's efforts. In those circumstances, the Tribunal considered that Mr Mills' use of the term "dog and pony show" had the purpose of creating an humiliating and hostile environment for the claimant.
142. Allegation 33: This relates to the phone call of 12 March 2018 between the claimant and Mr Mills, which the claimant relies upon as the protected act for her complaint of victimisation. It was an acrimonious conversation. Mr Mills revisited his previous complaint about the claimant being unresponsive, by reference to her recent failure to answer her phone when he called and of delay in replying to messages. In addition, Mr Mills accused the claimant of "not disclosing the installing partner for the Rolls Royce deal" because this was not going to be TSG, Mr Mills' previous employers, with whom he had an arrangement to direct all installations. Rolls Royce had chosen their own installers, who had provided costings at approximately 50% of those from TSG. The choice of installer by Rolls Royce was out of the claimant's hands but Mr Mills was angry with her nevertheless and in his witness statement accuses her of not seeing the bigger picture. In the telephone call, the claimant accused Mr Mills of picking on her. She said that she objected to the way he treated her and suggested that he did not want her on the team because she was a woman. Mr Mills did not respond on the call. In evidence, he accepted that the claimant was accusing him of bullying her. In light of Mr Mills' evidence, the Tribunal accepted that the conversation between the claimant and Mr Mills on 12 March 2018 constituted a protected act by the claimant for the purposes of her complaint of victimisation. The respondent conceded in submissions that, insofar as the Tribunal finds that the claimant told Mr Mills in this conversation that she was being bullied because he did not want a woman in his team, this constitutes a protected act for the purposes of section 26(1) EqA. The Tribunal also considered that Mr Mills' conduct at the beginning of the call was an hostile act, constituting harassment by Mr Mills.
143. Allegation 34: Following the telephone call on 12 March 2018, which is the subject of allegation 33 above, Mr Mills emailed the claimant that evening to say, "Let's call a truce here". The Tribunal considered that Mr Mills had recognised the issues raised by the claimant. He was contrite, asking the claimant to forgive his mistakes and "errors of judgement" (bundle page 937).
144. Allegation 35: This relates to Mr Mills sending the claimant an email on 12 March 2018, prior to the conversation in allegation 34. The email is titled "call log just for the record" and includes a magnified copy of Mr Mills' telephone call log, pasted into the body of the email. The Tribunal heard evidence from Mr Mills that he had been frustrated not to have been able to speak to the claimant that day and sent the email out of frustration, when he needed to get hold of her. The Tribunal considered the email to be heavy-handed and ill-considered.

145. Allegation 36: This relates to Mr Mills' email of 12 March 2018 to the claimant (bundle page 929) in which he challenged the claimant over the issue of using TSG as the preferred installer at Rolls Royce. As the claimant's manager, he was entitled to question the claimant on this matter. However, the email opens with an accusatory tone: "Jen, what exactly is going on here?" and later says "this is not going to go down well on the relationship front and is very frustrating." As such, the Tribunal considered that this communication by Mr Mills to the claimant was intimidating and hostile, and amounted to harassment of the claimant when combined with his behaviour in other respects – see below under "Cumulative effect".
146. Allegation 37: On 13 March 2018, Mr Mills had a telephone conversation with the claimant, in which the claimant contended that Mr Mills had commented that he was not going to give her further support for installations if she was not going to win the installation work for TSG. That same day, Mr Mills had told Mr Miller that the claimant "tells me that I am not supporting her, which as you know could not be further from the truth". The Tribunal has found that Mr Mills had been angry that TSG had not been given the installation work at Rolls Royce and he had made his view on the matter known to the claimant, in their telephone call on 12 March 2018 - see paragraph 142 above. In those circumstances, on a balance of probabilities, the Tribunal considered that Mr Mills had made such a comment to the claimant and that it was designed to intimidate her.
147. Allegation 38: This is dealt with in paragraph 141 above.
148. Allegation 39: In evidence, Mr Mills made much of the claimant's unresponsiveness to his communications with her. The Tribunal considered that his failure to answer the claimant's phone calls on 14 March 2018 was explained in the context of a busy working environment. However, Mr Mills' text message to the claimant: "Really interested to hear what caused the last-minute RR decision when you have time and also what the new plan is" is laced with sarcasm and designed to put the claimant under pressure to come up with a new plan for Rolls Royce.
149. Allegation 40: This concerns the responses of the members of the respondent's sales team to the changes to the Rolls Royce plan and ultimately the cancellation of the demonstration. The Tribunal considered that a number of the respondent's sales team had worked hard on the project and had made themselves available at short notice. The responses: "As you can imagine, not best pleased"; "Quite a bummer indeed"; and "This is very disappointing to hear"; are understandable in the circumstances but the Tribunal did not find that any such responses were directed at the claimant nor that they implied criticism of her personally.
150. Allegations 41 and 42: These are dealt with in paragraph 136 above

151. Allegation 43: This relates to an email from Mr Mills on 19 March 2018 in which he informed the claimant that the UK bank details of a Dubai-based company were 10 days away, and as a result, he asks her to manage the customer relationship during the delay. In addition, Mr Mills chases the claimant for an answer to the query from Mr Miller about why an Eire based company would insist on UK bank details. The Tribunal considered these to be reasonable requests from Mr Mills as the claimant's line manager.
152. Allegations 44 and 45: On 21 March 2018, Mr Mills invited the claimant to a telephone conference call ostensibly about a "UK Sales Status Update". On the call was Mr Mills and Anish Kishoendajal, the respondent's HR Director. The claimant realised immediately that this was not a Sales Status update and asked to record the call. The transcript is in the bundle at pages 1028 – 1032. The Tribunal considered that the respondent was unable to explain to the claimant at the time, or in evidence to the Tribunal, precisely why the claimant was dismissed. It was not disputed that the claimant was the top performing sales representative although Mr Mills suggested that her performance was still poor, 7 months in, and "not sparkling" despite that male colleagues were shown to have made little or no sales impact in 8-10 months and were not similarly dismissed. Mr Mills' comment was that the working relationship "just doesn't jive". He was asked about this in evidence and expanded to say that it was about attitude and perspective. Mr Kishoendajal also struggled to enlighten the Tribunal, saying that it was about the "whole behaviour" of the claimant – see also below under "Cumulative effect" and "Victimisation".
153. Allegation 46: Following her dismissal, the claimant was keen to chase up outstanding commission and expenses that might be due to her. Her contact was Mr Kishoendajal but he had to obtain information and authorisation from others. There was therefore some delay in responding to the claimant's requests to discuss outstanding commission/expenses but the Tribunal did not find evidence to suggest that this was because of the claimant's sex.
154. Allegation 47: This relates to the claimant's email to Mr Kishoendajal on 12 April 2018, in response to the respondent's letter confirming the termination of the claimant's employment. The claimant asked if she was entitled to appeal her dismissal and Mr Kishoendajal replied to the effect that it was not proper to advise her on her right to an appeal. The Tribunal accepted that a respondent would not be in a position to advise an ex-employee on such a matter. In any event, on 26 April 2018, the claimant submitted an appeal against her dismissal, which was acknowledged and arrangements were made to address the appeal.
155. Allegation 48: Following her dismissal, in April 2018, the claimant was told that Mr Mills had been making derogatory comments about her and her work. The claimant emailed Mr Kishoendajal on 3 May 2018 about this and a number of matters, including her appeal, commission, expenses and the return of equipment. She chased matters and Mr Kishoendajal replied to some of the

issues raised but he was on annual leave during this period. For the reasons set out in paragraph 153 above, the Tribunal did not find any evidence that his failure to respond to the claimant's emails of 3, 6 and 17 May 2018 constituted an act of discrimination.

156. Allegation 49: Within these proceedings, the claimant has made a claim for unpaid monies due at the termination of her employment. It has been agreed that these claims are properly brought against the claimant's employer, Globalization Partners Limited, and not the respondent to the discrimination complaints – see paragraphs 8 – 12 above.
157. Allegation 50: In relation to the claimant's appeal and the respondent's outcome/response, the Tribunal found the respondent's approach to be confused and unrelated to any fair procedure. First, Mr Kishoendajal appointed himself to investigate despite that the claimant had objected - the Tribunal agreed with the claimant's assertion that Mr Kishoendajal was not a neutral party as he had been involved in her termination meeting and, according to the transcript, he had done most of the talking on behalf of the respondent. In addition, he had been party to pre-call conversations about the claimant's future. He proceeded to "investigate" the claimant's appeal and grievances on the basis of her letter of 26 April 2018 alone. He did not take time to meet the claimant and, although he suggested that he would pass his findings to Heather Sullivan at the respondent, who would conduct a "disciplinary appeal" no hearing was ever arranged and there was no evidence that Ms Sullivan had in fact been involved. Instead, Mr Kishoendajal interviewed Mr Mills about the claimant's allegations of discrimination by going through each allegation and asked Mr Mills to respond. Mr Kishoendajal did not challenge the responses given by Mr Mills even though a number were inaccurate and, in the days following their meeting, Mr Mills supplied Mr Kishoendajal with a number of carefully selected documents which were simply appended to Mr Kishoendajal's record of the interview with Mr Mills. There was no evidence that Mr Kishoendajal interviewed any other individuals, nor did he interview or even speak to the claimant and, on 7 June 2018, Mr Kishoendajal sent the claimant an investigation outcome letter effectively upholding what Mr Mills had told him. In those circumstances, the Tribunal concluded that Mr Kishoendajal had done the minimum to investigate the claimant's issues and provide a response, which was inadequate in the circumstances and particularly given the serious issues raised by the claimant.
158. Allegation 51: From the wording of this allegation, it appeared to the Tribunal to relate to a second appeal conducted by Mark Kerstens, the respondent's VP for Strategic Accounts. The claimant had been told that any appeal would be forwarded to Heather Sullivan of the respondent, who would arrange an appeal meeting although nothing happened in that regard. Instead, Mr Kerstens conducted an appeal hearing by telephone, and on 7 August 2018, Mr Kerstens sent the claimant a letter headed "Appeal – Termination of Employment on 21/03/18" in which he dismissed her grievances. The letter also mentions that

a different senior manager, Jon Kaplan, would be hearing the claimant's appeal against the decision to dismiss her but that was never progressed. There appeared to the Tribunal to be considerable confusion within the respondent as to who was dealing with the claimant's appeal and/or grievances. However, the Tribunal did not consider that such confusion arose because of any discriminatory approach to the claimant.

Cumulative effect and inferences of discrimination

159. Having decided for the reasons set out above that a number of the individual allegations of discrimination were factually well-founded, the Tribunal nevertheless considered whether taken cumulatively they supported an inference that the treatment was because of or related to sex. In doing so, the Tribunal considered what inferences it should draw from its findings of primary fact, and from the surrounding facts, for the purpose of drawing inferences and the Tribunal has therefore stood back to look at the totality of the evidence and the circumstances of the case to consider whether, taken together, they may represent an ongoing regime of discrimination. The Tribunal was mindful that discrimination cannot be inferred from unreasonable conduct alone. Nevertheless, the Tribunal found that the evidence before it revealed circumstances surrounding the factual allegations in the claim, from which inferences could be drawn of discrimination.
160. The claimant was dismissed, summarily and without due process or clear reasons. The respondent has been unable to explain the reasons for the claimant's dismissal either to her at the time or to the Tribunal in evidence. Prior to the claimant's dismissal, Mr Mills compiled his pros and cons document (Bundle page 1009) which was sent to Mr Burghardt, MD, who gave the go-ahead for dismissal but which document was never shown to the claimant. Mr Mills also compiled a list of 8 reasons to be incorporated in a template dismissal letter, which appears in the bundle at page 1033. However, the letter that was sent to the claimant after the telephone call on 21 March 2018, which appears in the bundle at page 1044, did not include those 8 reasons. Instead the dismissal letter states in general terms "your performance has not been in accordance with expectations for your job duties, nor in accordance with the best practice required ... your continued absence at required meetings is impeding your ability to demonstrate the skill and experience to perform the required responsibilities and duties of your position" and the letter concludes "We are therefore terminating your employment ... for performance reasons", without providing any particularisation or substantiation of that conclusion.
161. In the telephone call of 21 March 2018, when the claimant was dismissed, the transcript of the call shows the claimant asking for the reason(s) for her dismissal: "I am not hearing the reason why I am being let go", "You need to have grounds for dismissing me", "Well, I haven't heard a reason yet as to why then Tony", "Only last week I was told I am the top performer, doing the best job and should be supported in every way to continue what I am doing", "You

- can't just turn up on the phone Tony and say that you are getting rid of me and not even give me a justification or reason for doing so". In response, Mr Mills say very little beyond: "we are just not seeing... the right level of, not engaging with the customer but not engaging ...", "it just doesn't jive with the kind of people that the respondent are looking for and the job that we are trying to build here", and "some of it comes down to ... responsiveness". The claimant suggested to Mr Mills that he disliked her, which he did not deny, saying "That has nothing to do with it" and Mr Mills eventually responds to the claimant's requests for the reason for her dismissal by saying "That will be supplied to you". At the end of the call, when the claimant thanks Mr Mills and Mr Kishoendajal for their time, Mr Mills' response is a sarcastic "My pleasure" which the Tribunal considered to be unwarranted and rude, given that the purpose of the call was to end the claimant's employment.
162. The Tribunal took into account the underhand way in which the telephone conference call on 21 March 2018 had been set up – using a meeting invite titled "UK Sales Status Update" when that was plainly never the intention. The claimant therefore came on to the call unprepared and was shocked at what then happened – see further under victimisation below. The Tribunal considered that the manner of arranging the call showed a lack of respect for the claimant. This is mirrored in the transcript of the recording which shows that the respondent's personnel were unable or unwilling to articulate the reasons for her dismissal.
163. Likewise, in cross-examination, Mr Mills remained unable to articulate his reasons for dismissal or to provide any cogent evidence to support the "performance" allegation. In oral evidence, Mr Mills' reasons for the claimant's dismissal remained in general terms, saying that it was "about attitude and perspective" and that "the way you conducted your role was a problem", whilst offering the fact of the claimant having been a contestant on the TV show 'The Apprentice', over 10 years ago, as an example of what he saw as the claimant's character traits. Mr Mills said that he had had reservations about the claimant's attitude from the start of his employment with the respondent, without explaining why he had adopted that view from the outset. No cogent evidence of the claimant's apparent shortcomings in terms of her attitude was provided. In contrast, a number of the respondent's witnesses did not appear to have experienced any of the matters about which Mr Mills complained in relation to the claimant. Mr Hale, for example, described the claimant thus: "When we did interact, we got on very well and my impression was that she got on well with her job. I believe she was very good at cold calling and at turning a cold call into a sale." Mr Boesveld's evidence was that he had a pleasant working relationship with the claimant and he described the claimant as "open, transparent and funny, but serious in her work". In addition, the pros and cons document which was essentially Mr Mills' case for dismissal included matters that were, in the Tribunal's view misconstrued: for example, what is called "the sales meeting debacle" with the date of the claimant's sicknote and the fact

that she did not tell Mr Mills sooner (when she may have been too ill to do so) held against her.

164. The respondent, and Mr Mills, accepted that the claimant had achieved good results in terms of sales. In his pros and cons, Mr Mills' single 'pro' was an admission that the claimant was the only one of the team to bring in UK business. The claimant had not been appointed by Mr Mills. She joined the respondent before he did. At the time she was recruited, the respondent's view of the claimant was "very strong sales acumen; natural ability ... says she loves to cold call (who loves to cold call? If that's true, this is the kind of person we need)" and "I think she's great" (Bundle pages 315-316). In November 2017, the claimant had resigned and the respondent had persuaded her to stay. The Tribunal noted that the respondent's witnesses sought to play down this aspect, saying it was only because they would have had no sales representative in the UK rather than due to a wish to retain the claimant. That suggestion conflicted with the evidence in the bundle, that Mr Hale had been recruited in September 2017 for the UK market, albeit that he could not join the respondent until January 2018 due to the contractual notice he was required to serve.
165. The Tribunal found that things changed with Mr Mills' arrival. Mr Mills' evidence was peppered with negative comments about the claimant's cold-calling methods and in oral evidence he made efforts to play down the claimant's performance whenever possible. Mr Mills said that the claimant was using the wrong methods to achieve results by cold-calling, about which he simply said, "that's not the right way to do it". It was put to Mr Mills that Mr Hale had not made any sales in 10 months from the 'networking' and "rubbing shoulders with influencers" which Mr Mills espoused. Mr Mills replied that achieving key sales was a "slow process" and his view of the claimant having secured the NHS contract in 4 months was "you got lucky". In respect of other sales which the claimant handled, such as to Fulcrum, Mr Mills said he would not classify it as a sale, and the Rolls Royce sale was qualified by Mr Mills in that he suggested it was a referral from the respondent's US company. However, this was contradicted by the evidence of his senior in the US, Mr Miller, who confirmed that the claimant had secured Rolls Royce.
166. The Tribunal reviewed the language used by Mr Mills. Allegation number 1 was about his referral to "my girls". In his witness statement, Mr Mills said, "In hindsight [his] use of language was regrettable" and went on to seek to justify it by stating that he frequently referred to male team members as "boys". In oral evidence, Mr Mills suggested that "girls" was a label that he had used only once and which he regretted. Mr Mills was also asked about his use of the words "take it easy man" to male colleagues. Mr Mills said this was "just a turn of phrase" and that he used it in relation to the male sales personnel because he had "spent a lot of time with them and knew them better" and it was "a social relationship". He used the opening remark "Sir" in emails to male team members and said this was as in saluting somebody but he was unable to

- provide any equivalent for a female address, and suggested it was “just the way I speak”. On a balance of probabilities, the Tribunal rejected Mr Mills’ suggestion that he had made reference to “girls” only once when speaking of female colleagues, in light of his attempts to justify this by reference to terms he used regularly for males. The Tribunal considered that the term “girls” was in fact used by Mr Mills as a matter of course to refer to women, in the same way as he used male terminology, and that Mr Mills’ chosen language displayed a view of women that seeks to diminish their status and to portray women as subordinates.
167. The Tribunal was concerned to learn, in the course of oral evidence from Mr Mills, of the existence of the sales team WhatsApp group. The claimant, who was the only woman in the sales team, had not been invited to join and she too only learned of its existence at the hearing. It was apparent from the discomfort of other witnesses, when the WhatsApp group was raised, and the evidence which followed, that the group was a method of private communication between the male members of the team and that the respondent’s HR manager was aware of it. Mr Mills was a member of the WhatsApp group which he described as a vehicle to build “team camaraderie, so we knew each other well” and “a social relationship” in the team. Mr Mills claimed not to know who had set up the group or who had invited him to join and he was vague about whether any other female employees of the respondent were members including the claimant. The Tribunal considered it incredible that Mr Mills would be unaware that the claimant was not a member of the WhatsApp group particularly in light of his evidence as to the purpose of it for a relatively small team. When pressed, rather than simply accept that the claimant should have been included in the WhatsApp group, Mr Mills would only go as far as to say, “with hindsight, possibly”. The existence of the WhatsApp group was revealed in oral evidence on the fourth day of the hearing. The respondent could have, but chose not to bring any evidence of its membership or the “chat” involved. Instead, on the fifth hearing day, in supplemental questions, Mr Kishoendajal gave the first names of 3 females who he said were members of the WhatsApp group but none of these names were recognised by the claimant. On a balance of probabilities, the Tribunal considered that the WhatsApp group did not include female sales people, and the Tribunal noted that nowhere in the voluminous documents and witness statements tendered by the respondent is the WhatsApp group ever mentioned despite its apparent importance to Mr Mills, for team-building.
168. Likewise, when explaining his use of the term “dog and pony show” rather than “show and tell” – see allegation 32 above - Mr Mills tried to persuade the Tribunal that these terms meant the same thing. In doing so, he failed to explain why it was that he changed his terminology from “show and tell” to “dog and pony show” when the Rolls Royce demonstration at Washington started to go wrong and when the sales team found that they were unable to deliver what the claimant had arranged. The Tribunal noted that individual members of the sales team picked up the phrase and adopted it as things deteriorated. The

Tribunal's findings in relation to allegation 32 and the phrase "dog and pony show" are that, once Mr Mills realised the problems presented by the demonstration, he adopted this phraseology with the intention of undermining the claimant's efforts, such that Mr Mills' use of the term "dog and pony show" had the purpose and effect of harassing the claimant.

169. Mr Mills had worked with the claimant for a relatively short period of time, approximately 2 months, and he confirmed in evidence that he spent less time with her than with the other members of the team. Mr Mills' evidence made mention of the social relationships that he sought to build with his team, despite that the claimant was effectively excluded, for example, from the WhatsApp group. On his evidence, Mr Mills did not get to know the claimant and the Tribunal considered that he did not give her the benefit of the doubt when issues arose, for example in respect of IT and communications resources, instead holding them against her. The Tribunal considered that Mr Mills behaved unreasonably to the claimant on a number of occasions – see allegations 1, 4, 6 - 9, 13 - 21, 23, 25, 27, 33, 35 - 37, 39 and 42 above. The claimant was looking for support from her manager, Mr Mills, however, he was dismissive of the claimant at the time, and in his evidence to the Tribunal. He was simply not inclined to help the claimant or to direct her to alternative support.
170. The Tribunal considered that Mr Mills had acted upon stereotypical assumptions about the claimant's sex: the Tribunal has concluded that Mr Mills had treated the claimant like his secretary, instructing her to undertake a number of administrative tasks which diverted her from her sales. He did not seek to explain or justify this by, for example, providing evidence that the other, male, sales team members had been asked to undertake similar administrative duties for him, and the Tribunal found no evidence that he had in fact done so with the male sales team members – see allegations 4, 7, 11, 17, 18, 20 and 26 above. Indeed, when it was put to Mr Mills that he could have dealt with Ms Benton directly, he accepted that he could have done so.
171. There was no evidence that Mr Mills treated the rest of the sales team in a similarly manner. Indeed, witnesses for the respondent who had also worked with Mr Mills had a very different experience of him to that experienced by the claimant. Mr Hale was full of praise for Mr Mills: "You couldn't have met a nicer chap" and "I don't recognise the Tony Mills [the claimant] describes in those documents." Mr Boesveld described Mr Mills as "a very committed manager, warm and interested in the human behind the employee ... a typical people manager which he was very good at" and Mr Boesveld stated that he had not experienced any of the challenges the claimant claims. In addition, the Tribunal was concerned that Mr Mills gave no explanation for his treatment of the claimant when each aspect of his behaviour was put to him, save to deny that it happened and to declare it was not sex discrimination without any explanation of why he thought so.

172. In light of all the above matters and surrounding circumstances, the Tribunal concluded that there was significant material in the circumstances of the case from which inferences of discrimination could be drawn. In reaching this conclusion, the Tribunal noted that, when matters were put to Mr Hale, he admitted that he could see why the respondent's sales team might appear "like a boys' club" to the claimant. Taking the factual allegations found above cumulatively, therefore, the Tribunal concluded that there had been unlawful discriminatory treatment of the claimant because of her sex. Because the inference could be drawn, the burden of proof passed to the respondent to show there has been no discrimination. The specific complaints of discrimination are now considered below.

Harassment

173. The Tribunal has found that allegations numbered 1, 4, 6, 7, 8, 9, 11, 13, 14, 15, 16, 17, 18, 19, 20, 23, 26, 32, 33, 35, 36, 37, 39, 44 and 45 are factually well-founded. The claimant's case was that the behaviour of Mr Mills in particular constituted harassment because of her sex. He was responsible for each of the factual allegations which form the basis of the complaint of harassment and which are well-founded.
174. The Tribunal therefore considered whether these allegations of fact amounted to unwanted conduct related to the protected characteristic of sex. The term 'related to' a protected characteristic has a broad meaning in that the conduct does not have to be because of the protected characteristic. The Tribunal considered that the claimant has discharged the first limb of the burden of proof, in that she has proved on a balance of probabilities facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the respondent had committed acts of unlawful harassment related to sex. The Tribunal's analysis of this aspect was informed by its conclusion that it was appropriate to draw inferences from the surrounding circumstances of the case. In doing so, the Tribunal assumed there was no adequate explanation for those matters. The Tribunal considered that the respondent had failed on a number of matters to provide any or any adequate explanation for the conduct complained of and Mr Mills in particular was unable or unwilling to explain his approach to the claimant on a number of matters – see for example paragraphs 161, 163, 168 and 170 above. In essence, the Tribunal was not persuaded by Mr Mills' protestations and noted that he did not dispute a number of matters, instead resorted to arguing "that's not sex discrimination" without providing more.
175. The next issue to be determined was whether the conduct of Mr Mills had the purpose or effect proscribed by section 26 EqA. In respect of allegations 19, 32, 33, 35 – 37, 39 and 45, the Tribunal has found that it did have that purpose. In respect of allegations 1, 4, 6 - 9, 11, 13 – 18, 20, 23 and 26, the Tribunal has found that it did have that effect.

176. On the basis of the cumulative effect of those aspects of the claimant's treatment which led ultimately to her dismissal, for reasons which the Tribunal has found have not been adequately explained or substantiated by the respondent, the Tribunal also found that it had that effect as well.
177. In reaching its conclusion that the claimant had suffered unlawful harassment related to sex, the Tribunal considered the perception of the claimant and the other circumstances of the case – see above under 'cumulative effect and inferences - and the Tribunal also considered whether it was reasonable for the conduct to have that effect. In concluding that it was reasonable for the effect of the conduct to be as proscribed in EqA section 26 (1)(b) the Tribunal took account of the fact that the claimant perceived the conduct of Mr Mills as threatening – see for example allegations 33, 35 – 37 and 39. In addition, the Tribunal took account of the environment in which the conduct took place – see cumulative effect above and inferences, including paragraphs 165 - 171.

Direct discrimination

178. The Tribunal has found that allegations 4, 6, 7, 13, 14, 16, 17, 21, 27, 31 and 44 are factually well-founded.
179. The claimant has identified a number of comparators, in section 21 of the list of issues. However, the claimant tendered no evidence of any differential treatment of Adam Hart, Gilles Michaud or Joury de Reuver and none of these individuals are specifically named in the factual allegations. That left as comparators Martin Hale, John Cerino and Norbert Juchem together with a hypothetical comparator.
180. The claimant was the only woman in the sales team managed by Mr Mills. In respect of allegations 16 and 23, the Tribunal has found that the claimant was given a higher sales goal than her colleagues in Europe, Mr Cerino and Mr Juchem, who had joined the sales team at the same time as the claimant, had the support of a full-time targeted agency in Germany with dedicated support for their sales meetings. In contrast, the claimant was largely reliant on Ms Benton and the continuance or not of that situation depended on terms being negotiated by Mr Mills. The nature of the sales targets, the rationale for targets set across the respondent's sales personnel, and the differences between them were never fully explained by the respondent, which instead relied upon its submission that, when she started work for the respondent, the claimant had negotiated higher targets for herself so as to increase her earnings potential. The Tribunal considered that the respondent has resorted to blaming the claimant for the treatment complained of rather than provide cogent evidence to explain its actions. The Tribunal also took account of the fact that it was Mr Miller's view that the claimant's sales target figures were too high and should be reduced. He had told Mr Mills this. The Tribunal found no evidence that Mr Mills had considered Mr Miller's view nor taken any action to address the claimant's figures as suggested or at all. In light of those circumstances and

given the inferences which the Tribunal has drawn, the Tribunal concluded that allegation 16 constituted less favourable treatment of the claimant because of her sex. Allegation 23 is not relied upon by the claimant as an act of direct discrimination.

181. As explained above, the Tribunal considered that the respondent's reasons for the claimant's dismissal were unclear and, in the context of a sales environment, illogical. The respondent accepted that the claimant had been its top performing sales person and, as Mr Mills' pros and cons document says, the only one to bring in UK business by that date. Malcolm Hale had also been recruited to bring in UK business, at the time the claimant was recruited, although due to the notice requirement at his previous job, he started with the respondent on 1 January 2018. He did not bring any business for over 10 months, but no moves were made either to discipline or dismiss him for that performance. In contrast to the claimant, the respondent sought to justify its approach to Mr Hale by describing him as a "whale hunter" whose task it was to find large clients for the respondent in the UK and Ireland. That was also what the claimant was tasked to do. Mr Hale was given the job title of "Director UK and Ireland" as a result of negotiations and because of his aspirations – although ostensibly being recruited for a sales position, he had enquired about the MD position. Despite the difference in job titles, the Tribunal found that the respondent's considerations at the time of recruiting Mr Hale, set out in the bundle page 432, show that it was recruiting him for a role comparable to that of the claimant and Nigel Reading. The respondent submitted that the claimant and Mr Hale were not valid comparators due to their different titles and roles but the Tribunal could not conclude so in the light of the matters discussed within the recruitment documents. In any event, despite that the respondent sought to distinguish the claimant from Mr Hale, the evidence was that the claimant brought in opportunities with Rolls Royce and the NHS, which the Tribunal considered to be 2 of the biggest client "whales" in the UK, in contrast to Mr Hale who brought in nothing for 10 months, and yet he was not dismissed for his performance. In addition, the Tribunal was told that Mr Hale was promoted to "Country Director" not long after the claimant left and at a time when he had yet to achieve any or any significant sales. The Tribunal considered that the respondent's approach to Mr Hale was in stark contrast to that of the claimant who was treated less favourably by virtue of being dismissed – allegation 44. The respondent has not been able to explain its reasons for dismissing the claimant in order to satisfy the burden of proof. Looking at the elements of the claimant's dismissal together, in those circumstances, the Tribunal concluded that the claimant was less favourably treated than Mr Hale and that it was because of the claimant's sex and an act of direct discrimination.

Victimisation

182. The Tribunal has found that the matters raised by the claimant on 12 March 2018, in the telephone conversation with Mr Mills, as set out in the list of issues

- at number 22, constituted a protected act for the purposes of the victimisation complaint. The claimant's complaint was that this protected act was the catalyst for Mr Mills' efforts to have her dismissed. In evidence, Mr Mills acknowledged that the claimant had made a statement to him during that telephone call about bullying and not wanting her on the team because she was a woman. He said he did not reply because he was "gobsmacked" that the claimant would say such things, but that he "paid no heed to it". The Tribunal considered this latter suggestion lacked credibility given Mr Mills' reaction at the time, gobsmacked, and the fact that he sent the claimant an email later that evening, saying "let's call a truce" (bundle page 937). Mr Mills knew that the issue raised by the claimant was serious. In those circumstances, the Tribunal considered that Mr Mills' subsequent conduct and his communications with other managers behind the scenes were because of the claimant's allegation of sex discrimination and bullying made to him at the end of their call on 12 March 2018.
183. The Tribunal reviewed the email correspondence between Mr Mills and other senior managers at the respondent, from 12 March 2018 onwards. The Tribunal considered that, despite being contrite towards the claimant late in the evening of 12 March 2018 (bundle page 937), the following day, Mr Mills began emailing Mr Miller to denigrate the claimant behind the scenes and in response to Mr Miller's suggestion that the claimant should be congratulated for the Rolls Royce opportunity. At page 958 of the bundle, Mr Mills counters Mr Miller's email with "I have had huge management challenges with Jen this week" and "To be honest she might be the one doing the business but it is draining me". He then emails Mr Kishoendajal separately to say, "Managing her is terrible and getting worse", he refers to the awful calls he has had with her over the past couple of days, in contradiction of his complaint to the claimant about her not returning his calls, and indeed the only call evidenced is that containing the protected act on 12 March 2018. Mr Mills opines to Mr Kishoendajal that "if the new employment contract does not scare her away it might become very difficult to cut her loose after she becomes a full employee". In doing so, and so soon after the claimant raises the issue of bullying, the Tribunal considered that Mr Mills begins sowing the seeds of an idea to dismiss the claimant. Mr Kishoendajal duly replies, saying "if we truly feel she is not the right person for us. (*sic*) We need to think about options" and Mr Mills replies thanking him and commenting that he was "mindful that we should not cut off our nose to spite our face, but it is way too much wasted effort."
184. By the end of that week, 16 March 2018, the Tribunal noted that Mr Mills had set up a meeting between himself and Mr Kishoendajal for the purpose of deciding on a way forward regarding the claimant. Mr Mills' view was "in the light of everything I think separation is looking more likely than a fix". By the end of that day, 16 March 2018, Mr Mills has drawn up a list of Pros and Cons (bundle page 1009) which the Tribunal considered to be heavily slanted against the claimant: the one pro, her sales success rested on the fact of the claimant being the only one of the team to bring in UK business but Mr Mills did not see

that as an achievement and qualifies it with: “not what I deem to be huge success”. This is countered by 13 cons, many of which are historic, for example going back to the end of January and to the February sales conference in generalised terms and unsubstantiated, for example, “very negative and damaging partner relations”. These matters had not been raised with the claimant. The Pros and Cons are then sent to Mr Kishoendajal and to Mr Burghardt, the respondent’s MD – Europe; Mr Miller, VP- Europe, who was Mr Mills’ line manager and who had been supportive of the claimant, was not included. Discussions led quickly to a decision to dismiss the claimant, based on Mr Mills’ advice and to an invite being sent to the claimant for the telephone conference call, misleadingly titled “UK Sales Status Update”, set originally for the following Monday morning, 19 March 2018. This call was hastily arranged once the respondent, through Mr Mills, had decided the claimant would be sacked, but which was postponed to Wednesday 21 March 2018 due to unavailability. In light of the above, the Tribunal considered that the manner and speed with which Mr Mills pursued the claimant’s dismissal was a direct result of the claimant’s complaint of sex discrimination on 12 March 2018. Tellingly, the Tribunal noted that Mr Kishoendajal’s evidence was that he had not been made aware of any complaint of discrimination by the claimant until he received her appeal against dismissal. The Tribunal considered that Mr Mills had failed to pass on that information to HR and there was no evidence to suggest that Mr Burghardt was aware either, when he sanctioned the claimant’s dismissal based on his acceptance without apparent question or evidence of any further enquiry into the points in the pros and cons document as compiled by Mr Mills.

185. In the circumstances, the Tribunal concluded that the claimant’s dismissal in terms of its manner and timing constituted an act of victimisation by the respondent. In addition, the Tribunal considered that Mr Mills’ text to the claimant on 14 March 2018 – allegation 39 - and his failure to circulate the claimant’s success as suggested by Mr Miller – allegation 42 – were also acts of victimisation because of the protected act in the circumstances above. Further the Tribunal considered that the grievance outcome, which constituted allegation 50, whilst compiled by Mr Kishoendajal, consisted of Mr Mills’ responses to the claimant’s allegations of sex discrimination, and that there was no evidence that the respondent made any enquiries to ascertain the veracity of a number of the responses, and so constituted a further act of victimisation of the claimant.

Time point

186. The claimant’s claim concerns allegations about matters up to and including her dismissal on 21 March 2018. Primary limitation for a claim, by notifying ACAS to commence Early Conciliation was therefore 20 June 2018. The claimant commenced Early Conciliation on 5 June 2018, within the primary limitation period. ACAS issued an Early Conciliation certificate on 19 July 2018. The claim was then submitted to the Tribunal on 13 August 2018 and is in time,

having regard to the calculation of limitation from the effective date of termination of the claimant's employment.

187. In terms of a continuing act(s), the Tribunal had no hesitation in concluding that the acts of unlawful discrimination for which the respondent, in the guise of Mr Mills, was responsible constitute an act extending over a period such that the complaints which have been determined to be well-founded are not therefore time-barred. The Tribunal has found that Mr Mills maintained his discriminatory approach to the claimant, despite being challenged at the material time. In addition, in oral evidence, the Tribunal considered that Mr Mills' manner towards the claimant reflected his conduct at the material time. Taking into account the surrounding circumstances of this case as set out above, the Tribunal has concluded that Mr Mills was responsible for a continuing course of conduct towards the claimant which amounted to unlawful discrimination.
188. The Tribunal considers that the respondent is vicariously liable for the acts of its manager, Mr Mills. The respondent did not deny that it would be vicariously liable if allegations involving Mr Mills were well-founded.

Remedy

189. A further hearing of 1 day, to determine remedy shall be listed upon receipt of the parties' availability, including an indication of their interest in a remote remedy hearing conducted by video (CVP) if appropriate.

Employment Judge Batten
Date: 12 November 2020

JUDGMENT SENT TO THE PARTIES ON:

FOR THE TRIBUNAL OFFICE