



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Jutrzenka

**Respondent:** 17 Clarges Street RTM Company Limited

**Heard at:** London Central

**On:** 17, 18, 19, 23, 24 & 25 August 2021

**Before:** Employment Judge Khan  
Ms T Shaah  
Mr F Benson

## Representation

Claimant: In person  
Respondent: Mr R Fitzpatrick, Counsel

# RESERVED JUDGMENT

The unanimous judgment of the tribunal is that all the complaints fail and are dismissed.

# REASONS

1. By an ET1 presented on 11 August 2020 the claimant brought complaints of sex and/or sexual orientation discrimination or harassment and victimisation. The respondent resists these complaints.
2. We granted the claimant's application to amend his claim to add four additional allegations of harassment on day one of this hearing, this application having been made by the claimant orally on 6 January 2021. We also granted the claimant's application to add a further allegation of discrimination or harassment on day five, this application having been made orally by the claimant on the same date.
3. Over the course of this hearing the claimant withdrew the allegations of direct discrimination, harassment and/or victimisation set out at paragraphs 2.2 (a), (e) and (i) of the Case Management Summary and Order dated 7 January 2021 ("CMO").

**The issues**

4. We were required to determine the following issues on liability which were based on the summary of the claim in the CMO and updated to take account of the allegations which were added by way of amendment or withdrawn by the claimant:

(1) Time limits

1.1 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010 (“EQA”)? The tribunal will decide:

- a. Was the claim made to the tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
- b. If not, was there conduct extending over a period?
- c. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
- d. If not, were the claims made within a further period that the tribunal thinks is just and equitable? The tribunal will decide: (i) Why were the complaints not made to the tribunal in time? (ii) In any event, is it just and equitable in all the circumstances to extend time?

(2) Direct discrimination: sex and/or sexual orientation (section 13 EQA)

2.1 The claimant is a heterosexual man.

2.2 Did the respondent do the following things:

- a. On 11 February 2020, Ms Sacks being abusive to the claimant as follows: There had been some disagreements between the claimant and Ms Chong and Ms Sacks and the claimant asked for a clear the air meeting. Instead of holding a meeting, Ms Sacks came down to reception and started shouting at the claimant, words to the effect of ‘Who are you to request a meeting? I haven’t got time to deal with you.’ The claimant asked Ms Sacks to stop dealing with the matter in a public area and to have a private meeting but Ms Sacks refused to do so.
- b. A false allegation of sexual harassment made by Ms Sacks in an email of 12 February 2020 and also by telephone to representatives of KFH.
- c. The claimant’s suspension on 13 February 2020 by representatives of KFH including the formal letter from HR department of KFH.

- d. Fiona Chong making derogatory comments to the claimant. The claimant raised with Ms Chong and her sister several times the leaving of bicycles outside their flat as being a fire evacuation hazard and trip hazard. They did not change their behaviour so on 14 January 2020, the claimant wrote a formal letter to Ms Chong and sister about not leaving bicycles there. From that point, Ms Chong was more hostile and ignored the claimant when he greeted her and glared at him. She continued to make comments like 'typical man' when they discussed issues and to say things like 'You can always rely on a man to make things more difficult' and 'that's the way men deal with things' but they became more aggressive in tone. She eventually stopped speaking to the claimant altogether.
- e. Ms Chong colluding with Ms Sacks to make false allegations of sexual harassment.
- f. Ms Sacks and Ms Chong colluding with HR to stop the claimant's grievances being investigated.
- g. Ms Sacks and Ms Chong colluding with KFH in dealing with the claimant's SAR request to stop them releasing the email of 12 February 2020.
- h. Mr Hunter-Lee lied and falsified his statement dated 14 February 2020 in that he alleged that the claimant had:
  - (i) become extremely aggressive and refused to engage;
  - (ii) taken keys;
  - (iii) physically assaulted him;
  - (iv) had his hands around the neck of Jason Fielden;
  - and (vi) he omitted to refer to Mr Fielden's comment that he was a "madman".

2.3 Was that less favourable treatment? The tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's. If there was nobody in the same circumstances as the claimant, the tribunal will decide whether he was treated worse than someone else would have been treated. The claimant relies on a hypothetical comparator.

2.4 If so, was it because of the claimant's sex and/or sexual orientation? The claimant relies on the protected characteristic of sex (and not sexual orientation) in relation to Ms Chong.

(3) Harassment related to sex and/or sexual orientation (section 26 EQA)

3.2 The respondent relies on the allegations listed at paragraphs 2.2 (a) – (i) and also:

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- a. On 13 February 2020, Ms Chong enjoying the claimant's removal from the workplace and smirking at the claimant.
- b. Ms Chong involving a member of the public in the events of 13 February 2020.
- c. On 13 February 2020, Ms Chong being involved in the police being called twice, which was unreasonable and disproportionate.
- d. On 13 February 2020, Mr Hewitt-Lee accusing the claimant of stealing keys belonging to residents.

3.3 Was that unwanted conduct?

3.4 Did it relate to sex and/or sexual orientation? The claimant relies on the protected characteristic of sex (and not sexual orientation) in relation to Ms Chong.

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

3.6 If not, did it have that effect? The tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

(4) Victimisation (section 27 EQA)

4.1 Did the claimant do a protected act as follows:

- a. Allegations of discrimination because of sex/sexual orientation in the claimant's grievances submitted on: (i) 19 February 2020; (ii) 20 February 2020; (iii) 20 February 2020 (second); (iv) 24 February 2020; (v) 24 February 2020 (second); (vi) 26 February 2020; and (vii) 3 March 2020.

4.2 Were any of these allegations made in bad faith?

4.3 Did the respondent do the following things? The claimant relies on the allegations set out at paragraphs 2.2 (f) and (g).

4.4 By doing so, did it subject the claimant to detriment?

4.5 If so, was it because the claimant did a protected act?

**Preliminary matters determined at this hearing**

*The without prejudice material*

5. In correspondence dated 30 July 2021 the claimant complained that the respondent's solicitor "tampered and perverted" his evidence in redacting

five documents. These are at pages 262, 263, 267, 285, 490 of the agreed bundle. In a response dated 3 August 2021 the respondent denied this and contended that the redacted material is covered by the without prejudice rule and inadmissible.

6. We were satisfied that this material, which we did not review, was inadmissible because the claimant agreed that (a) at the time that the information in dispute was communicated there was a potential for litigation and (b) this material related to an offer made genuinely to settle this potential dispute (see Unilever v Proctor & Gamble [2001] WLR 2436).

*The respondent's application to admit evidence*

7. We granted the respondent's application to admit CCTV footage and two mobile phone recordings, one video with audio and the second audio only, relating to events on 13 February 2020, because we were satisfied that this material was relevant and probative and there was no reason which militated against this. We did not find that admitting this material as evidence prejudiced the claimant's ability to bring his claim. This material had been disclosed prior to the exchange of witness statement and we were satisfied with the respondent's explanation for its delay in making this disclosure. In respect of the CCTV footage, the claimant also sought to rely on this material (and did in fact rely on this and also the audio recording). In respect of the video recording, although the claimant had been unable to access before this hearing he had not informed the respondent of this issue in advance of the hearing, he was able to view the recording before giving evidence on day two and to put any questions in cross-examination to the respondent's witnesses.

*The claimant's applications to amend*

8. The claimant made an oral application at the preliminary hearing on 6 January 2021 to amend the claim to add four allegations of harassment related to sex and/or sexual orientation. He made a second application to amend the claim in writing on 13 January 2021 to add a new allegations of new victimisation and whistleblowing detriment. The claimant made a further oral application to amend the claim to add nine new allegations of discrimination and/or harassment on day five of the hearing. The respondent objected to these applications.
9. The core test is the balance of hardship and injustice caused to the parties in allowing or refusing the application (see Vaughan v Modality Partnership [2021] IRLR 97, EAT). The focus is on the real practical consequences of allowing or refusing the amendment. This is likely to involve consideration of the factors set out in Selkent Bus Co v Moore [1996] ICR 836, EAT: (a) the nature of the amendment; (b) the effect of the proposed amendment on a time limit if this would add a new complaint; and (c) the timing and manner of the application. Where an application raises new causes of action a tribunal should also consider the extent to which it will involve substantially different areas of factual and legal enquiry (see Abercrombie v Aga Rangemaster Ltd [2013] EWCA Civ 1148, CA).

10. We granted the first application to amend. We were satisfied that the respondent was not practically impaired in defending all four allegations, and as Mr Fitzpatrick, for the respondent, conceded there was no prejudice to the respondent in allowing this application; the three allegations which related to Ms Chong's alleged conduct on 13 February 2020 amounted to the provision of further particulars of the extant claim and specifically to the assertion that Ms Chong had "acted maliciously" towards the claimant; the new allegation which related to Mr Hewitt-Lee did not involve a substantially different area of enquiry and in fact overlapped with one of the agreed issues. The issue of jurisdiction only applied to this latter allegation and would be determined by us when we completed our factfinding, if necessary.
11. We rejected the second application to amend. We were satisfied that the greater prejudice and hardship would be caused to the respondent if this application was granted as it would need to obtain further witness evidence, amend its response and this would necessitate the postponement of this hearing for many months. The claimant's new allegation in relation to KFH would, if granted, require the respondent to call new witnesses. The claimant would still be able to proceed with his allegations in relation to the failure to provide him with the details of the sexual harassment allegation and the failure to investigate his grievances albeit by reference to his pleaded case of collusion by Ms Sacks and Ms Chong. The new allegation of whistleblowing detriment would involve substantially different areas of legal enquiry and on a summary assessment there was little prospect of the claimant being able to show that his disclosures were made in the public interest; in relation to jurisdiction, the claimant faced the more onerous hurdle of establishing that it had not been reasonably practicable for him to have presented this claim in time and if so to also show that the additional period taken to make this application (on 13 January 2020) had been reasonable. It was also relevant that this second application had been made one week after the lengthy preliminary hearing on 6 January 2020.
12. We rejected the third application to amend save for one new allegation which related to Mr Hewitt-Lee's statement dated 14 February 2020. We rejected eight of the nine allegations the claimant sought to add to the claim because we were satisfied that the respondent would need, in order to defend these allegations, to obtain additional witness evidence and/or disclosure which would necessitate a prolonged adjournment on day five of this hearing so that the evidence we had already heard, including the claimant's, would go stale. These allegations were also substantially out of time. We allowed the claimant to add one new allegation because it was predicated on a part of the claim which had been withdrawn but which the respondent had already prepared for and was therefore able to defend. The issue of jurisdiction would, if necessary, be determined by us when we completed our factfinding.

### **The evidence and procedure**

13. The claimant gave evidence himself. By agreement, the claimant relied on a supplemental statement which was served on the tribunal at the start of day two.

14. For the respondent, we heard from: Jolita Sacks, Director; Georgie Whyte, HR Business Partner at KFH; Fiona Chong, Director; James Hewitt-Lee, Portfolio Director at KFH; Jason Fielden of Orion Land & Leisure Limited; and Gavin Owen, Portfolio Director at KFH.
15. Day one of this hearing was spent dealing with case management issues and was conducted using the Cloud Video Platform (CVP) under rule 46. By agreement, this was converted to a hybrid hearing from day two, when we began to hear evidence, to enable the claimant to attend the tribunal in person and the respondent and witnesses to attend remotely via CVP. In accordance with rule 46, the tribunal ensured that members of the public could attend and observe the hearing. This was done via a notice published on Courtserve.net. The parties were able to hear what the tribunal heard and see the witnesses as seen by the tribunal. Any technical issues were resolved.
16. There was a hearing bundle of 542 pages. We read the pages to which we were referred. We admitted CCTV footage and two phone recordings into evidence relating to the events on 13 February 2020.
17. We also considered closing submissions.
18. References below to [X] are to the relevant pages in the hearing bundle.

### **The facts**

19. Having considered all the evidence, we make the following findings of fact on the balance of probabilities. These findings are limited to points that are relevant to the legal issues.
20. The respondent is a residential management company (the "RTM"). It was created to safeguard the interests of the leaseholders of 17 Clarges Street, a residential building in Mayfair, London, comprising around 25 apartments. At the material times, the directors of the RTM were: Fiona Chong (from 1 March 2017 until 1 July 2020), Jolita Sacks and Nick Galea (both from October 2019).
21. The claimant was employed in the role of Building Services Manager for 10 months, from 3 June 2019 until his dismissal on 23 April 2020. As his contract made clear, the respondent's managing agent, Kinleigh, Folkard and Hayward ("KFH"), was responsible for the day to day management of the claimant although decisions relating to his employment would be made by the respondent following consultation with KFH if needed [80].
22. The claimant was employed on a fixed-term contract to cover the sickness absence of the permanent Building Services Manager, Charles Gay. This was initially for six months. The claimant was interviewed for this position by Richard Owen, then a director of the RTM and leaseholder.
23. By late 2019, a long-running project to replace all windows in the building had begun. There were around 10 or more contractors on site. They had allocated parking in the residents' car park in the basement. Concerned that the contractors were taking advantage of this facility, the claimant emailed

Gareth Pywell, a director of the architect's practice overseeing the project, on 25 October 2019, to inform him that he had decided to remove this parking facility with immediate effect. When Mr Pywell replied that this was "unnecessarily obstructive...small-minded, unpleasant" as well as costly and asked the claimant to reconsider or he would go directly to the RTM and request that the claimant was removed from the project. The claimant responded in the following terms: "Hey you, watch your tone and mouth. Don't you dare insult me again..... watch your mouth!...The decision stands so shut up.....!!" [126]. In a subsequent email to Julian Ayrton, the project manager, the claimant called Mr Pywell as a "Clever Dick" and wanker" who was "welcome to go crying and pissing to the RTM" [125]. In oral evidence, the claimant explained that his approach was confrontation then consultation then agreement; he agreed that his communication had been inappropriate. In a subsequent email to Mr Ayrton, the claimant accused him of "caving in" in relation to this car parking issue [130]. We find that in saying this he felt Mr Ayrton had undermined him and the firm stance he had taken.

24. The claimant's contract was due to end on 3 December 2019. When the claimant approached Mr Olsen in mid-November 2019 about a permanent contract he was referred to Ms Chong because Mr Olsen was no longer a director.
25. Ms Sacks, Ms Chong and Mr Galea agreed to extend the claimant's contract by six months in November 2019. We accept that they did so notwithstanding their discussion of concerns raised by Ms Chong about the claimant's conduct towards contractors, other people involved in the window replacement project and lessees. When cross-examining Ms Chong the claimant agreed that Mr Pywell had complained about him in October. This is also consistent with an email which Ms Chong sent to Gavin Owen, Portfolio Director at KFH, on 29 November 2019 [139] when she said that the claimant had "been less than polite to myself also and I have had words with him already"; and in which she explained that the claimant's contract had been extended because of the need to complete the window project on time and in budget, and given Mr Gay's ongoing absence. She also confirmed that the RTM intended to retain Mr Gay subject to his health.
26. We also accept Ms Chong's evidence that she kept her interactions with the claimant to a minimum and that when Mr Olsen was a director, the claimant routinely directed his enquires to him and not to her. It is agreed that Ms Chong told the claimant that she was unhappy with the service being provided by KFH and intended to replace them once the window project had been completed in March 2020 (as did Ms Sacks). We prefer Ms Chong's evidence that she refused to discuss Mr Gay's future employment with the claimant over the claimant's evidence to the contrary, because we accept her evidence that this was not an appropriate subject for discussion with the claimant as it concerned Mr Gay, KFH and the RTM and also that her communication with the claimant was very limited; and as we have noted, the intention was to retain Mr Gay, if possible.
27. The claimant was awarded a Christmas bonus of £1500 on 3 December 2020 [142]. This was in recognition of the work he did. This was a decision made by all three directors. As will be seen, at this date, neither Ms Chong



nor Mr Galea were aware of the emails and texts which the claimant had sent to Ms Sacks.

The claimant's interactions with Ms Sacks

28. The claimant assisted Ms Sacks in completing and circulating paperwork relating to her becoming a director of the RTM. Ms Sacks emailed the claimant about this on 25 October 2019 when she wrote "look forward to seeing you on Monday and thank you for caring !!" We accept Ms Sacks' evidence that she was referring to the claimant's work and attitude. The claimant misunderstood that this referred to his personal feelings.
29. The claimant also wanted to discuss the extension to his contract. They had coffee twice in her flat in late November 2019. We find that Ms Sacks disclosed personal details to the claimant in response to questions he asked at a time before she knew that he was attracted to her; on other occasions, she told him about her movements for practical reasons, including the collection of post and accessing her flat in relation to the window project when she was away.
30. We accepted that it was the usual practice of Ms Sacks to tip porters and concierges as a reward and incentive to maintain the desired standard of service. It is agreed that Ms Sacks handed the claimant £40 in October when she told him to "buy something nice" and another £50 in an envelope "for some coffee" in early December 2019.
31. Having met in Ms Sacks' flat around 22 November 2019 to discuss his contract, the claimant texted her "Thanks for the coffee and chat. You're nice honest clever lady" [495]. After a second coffee meeting, the claimant asked to meet again on 26 November 2019:

"Thanks for the coffee. We should make it a regular thing. I like chatting with you...you're an interesting and nice lady x"

To which Ms Sacks responded:

"Hahaha very busy lady at the moment !!!"

We accept her evidence that she felt the claimant's text was odd but was unsure about how to respond and decided to use humour. The claimant replied [496]:

"...Take care sweetie, you're a great woman and good fun and very stylish and pretty...x"

We also accept Ms Sacks' evidence that this made her feel uncomfortable. She replied as follows:

"Thank you! Wish you a nice holiday!! X"

32. We also accept that as a result of the claimant's texts, Ms Sacks wished to limit her interactions with the claimant. She did not want to give him the wrong impression. Nor did she want a confrontation. Three days' later, on

29 November 2019, she replied to an email the claimant had circulated to residents about broadband because she wanted to be kept updated [137]:

“Hi Tony  
Just to let you know that I am interested in Hyperoptic broadband service . Please keep me updated.  
Thank you!”

The claimant replied later that day as follows:

“Labas :)  
  
I thought you might be interested, that’s why I kept you in the loop.  
How are you ? Where are you :)  
Hope you are ok and not too stressed...  
I know it’s a bit unprofessional – and probably inappropriate :)  
But I really like you and miss chatting and seeing you.  
I enjoy having a coffee in your shoe warehouse / penthouse .... :)  
  
Best wishes to you  
Tony x”

33. We accept Ms Sacks’ evidence that this made her feel intimidated and humiliated. This conduct was unwanted. As the claimant acknowledged, this communication was both unprofessional and inappropriate. Ms Sacks felt it was of a sexual nature because it was clear to her that the claimant was sexually interested in her. Ms Sacks did not respond. The claimant sent a text to Ms Sacks later that day in which he acknowledged a second time that he had acted inappropriately, however, he continued in the same vein [500]:

“...Sorry for my email – i shouldn’t have been too familiar and sent it to your work email. Don’t worry I’m not going to be silly or embarrass you. You probably realise that I got a crush on you....it’s not my fault you are nice, attractive and clever ! 😊 Anyhow, I’m always happy to help you with anything. Take care x”

34. We also accept Ms Sacks’ evidence that she was now concerned that the claimant had a set of keys to her flat which he could access when she was away on business. She felt vulnerable. Although she wanted her keys back she knew that the window contractors required access to her flat and the work in her flat would take place in January when she would be away on business. She replied “Thank you. No worries” [501]. The claimant continued to act inappropriately, he replied:

“You need to start being horrible to me...so that I will stop being attracted to you :) I’m glad you are cool...”

When Ms Sacks replied to say that she had no intention of being horrible to anyone, the claimant responded [502]:

“...I just wanted to let you know that I have feelings for you. That’s all. Nothing wrong with that. I am a normal man....”

We accept Ms Sacks' evidence that she began to avoid the claimant as she did not want him to know her movements as she was worried that he would try to enter her flat whilst she was out. She started using the back entrance of the building or waited until the claimant's shift had ended. She discussed installing a camera in her flat with a friend.

35. The claimant left some DVDs for Ms Sacks in early December. We accept her evidence that although she could not be certain that the claimant had entered her flat, the neat position in which the bundle of DVDs had been left with a sticky-note facing upwards made her suspicious that he had. When she thanked him he replied on 4 December 2019 [503]:

"You're welcome. You're a great lady. Let me know if you need a date for New Year's Eve....ha ha ha. Just in case one of your millionaire boyfriends let you down :) Take care x"

36. Ms Sacks did not respond. Nor did she reply when the claimant texted her again, around two weeks later, on 20 December 2019, to ask her if she wanted to meet for a coffee or drink that evening [503]. The claimant then emailed Ms Sacks an hour or so later to ask her if she wanted to meet for a coffee when he said she was "a lovely classy lady..." [145]. Ms Sacks replied that she would leave his Christmas gift on his desk as she would be away and would not see him before his holiday started. This was a £100 gift voucher, a bottle of vodka and a box of chocolates. £50 of this was to reimburse the claimant for a doormat he had purchased for her flat. She was re-gifting the vodka and chocolates as she had no use for them. We accept her evidence that she wanted to placate the claimant and not antagonise him. Nor do we find that this was given to encourage the claimant's amorous advances.

37. Once again, when he returned to work on 23 December and found his Christmas gifts, the claimant replied in terms which we find were inappropriate, unwanted and had the effect of making Ms Sacks feel uncomfortable, intimidated and vulnerable [148]:

"Hi Jolita

Thank you for the Christmas gifts...you are a lovely lady and friend.

Like you, I don't drink much alcohol.

But it would be nice to have a couple of shots of Vodka with you, and have a nice conversation and a few laughs.

You are intelligent and have so many good qualities, and you are stylish and attractive.

I can't believe that you are single !!

Although I realise, that you are single because you choose to be....

Don't worry Jolita, I don't want to make you feel uncomfortable or make things 'awkward'..."

38. On 10 January 2020, on her return to London from a business trip, Ms Sacks did not respond in kind when the claimant tried to start a conversation. We

accept her evidence that the claimant made a number of derogatory personal remarks which included that she was grumpy and did not look nice. Ms Sacks replied that he had no right to say these things to her. We find that this is consistent with a text the claimant sent to Ms Sacks that afternoon [502]:

“Actually you’re a bit wrong. I’m not your employee or servant...And I bet you don’t become impatient and brusque with your Clients...Anyhow no big deal...”

and with Ms Sacks’ reply [503]

“I would prefer if you made no more personal comments to me. Thank you”

39. We accept Ms Sacks’ evidence that she took no action at this stage because she felt uncomfortable and was embarrassed, she had not experienced sexual harassment before, and she hoped that by ignoring this issue it would go away. Another factor was that she had to rely on the claimant to facilitate and keep her updated on the window replacement work in her flat commencing in January when she would be away. Nor did she wish to confront the claimant and risk antagonising him. We accept that her fears were realised when, within hours of asking the claimant to refrain from making personal comments, he watched and smiled at her from his desk as she struggled to find her fob from her bag to enter the lobby of the building instead of letting her in. Ms Sacks was relieved that she was due to fly out again on 12 January when she would not come directly into contact with the claimant. The claimant refrained from making any personal remarks in his communications with the claimant for the remainder of that month.
40. However, the claimant sent another email to Ms Sacks on 5 February 2020 in which he recommended a film and suggested she “watch it with a boyfriend and popcorn 😊😊 Hahaha...” [521]. We accept Ms Sacks’ evidence that in combination with the claimant’s previous emails and texts she found this was inappropriate and it made her uncomfortable. Whilst the claimant may have thought this was a friendly joke he failed once again to consider the impact of his texts and emails on Ms Sacks.

The claimant’s email dated 30 January 2020

41. The claimant emailed the three directors on 30 January 2020 when he requested a meeting to discuss KFH [170-1]. He made several complaints and used offensive language to describe KFH staff and about his predecessor. He said he had just had “a ridiculous” conversation with Jeanette Evans, a property manager at KFH, whom he called “stupid and ignorant” and asked the directors to put her in her place. He also called KFH “IDIOTS”. He called Mr Gay, his predecessor, “lazy and rubbish” and “stupid” and alleged he had “sucked up” so that he could “do nothing...and skive”. Whilst we accept the claimant’s evidence that Mr Gay had failed to take action to replace broken glass panels in the foyer and created a potential fire hazard by storing scores of luxury boxes in electrical riser cupboards, we do not find that this justifies the claimant’s language. Whilst we find that all three directors were dissatisfied with the service that KFH

was providing and both Ms Sacks and Ms Chong had said that they would be replaced when the window project had been completed we do not find that this explains or justifies the insulting and unprofessional language used by the claimant.

42. Ms Sacks arranged a meeting at the next convenient date with Ms Chong on 5 February 2020 to discuss the claimant.
43. In the meantime, the claimant emailed Gavin Owen, Portfolio Director at KFH, on 31 January 2020, to complain about Ms Evans and to request some paperwork relating to health and safety and the budget [173-4]. The tone of this email was combative and unprofessional. The directors were copied in. Mr Owen replied to the claimant in which he told him that these documents would not be provided unless KFH was instructed to do so by the directors. He then wrote to the directors, on 3 February 2020, to complain that the claimant was being confrontational and had shouted at Ms Evans before hanging up [172]. She had reported her distress. Although the claimant denied this, we find it likely that he acted as alleged because this is entirely consistent with the claimant's recent email in which he insulted Ms Evans as well as his other comments about KFH. Mr Owen requested a meeting with the directors. Ms Chong replied on the same date to agree. A meeting was arranged for 10 February 2020.
44. The claimant replied to Mr Owen in terms which we find to be emphatically confrontational and insulting [175-6]. Ms Chong emailed the claimant and Mr Owen when she explained that the budget had been agreed (so did not need to be provided to the claimant) and agreed that the health and safety assessment should be shared and she confirmed that the relationship between the RTM, KFH and the claimant would be discussed once she had spoken with the other directors. Emphasising that "I have no tolerance for aggressiveness", Ms Chong requested that all communication should be courteous and professional. This was directed at the claimant because of his aggressive emails. As will be seen, the claimant responded with a personal attack on Ms Chong and made very clear that he wanted her to be removed as a director of the RTM.

#### The claimant's complaints about Ms Chong

45. The claimant replied to all three directors the next day, on 4 February 2020, to request a meeting with them to discuss "a few issues and concerns about Fiona" and to "hear Fiona's side of things, and to hear her concerns and doubts about me" [179]. He complained that Ms Chong appeared to speaking on behalf of all three directors. He also felt that she had undermined him because this is what he wrote in an email two days later. We have already noted the claimant's strongly adverse reaction when he felt Mr Ayrton had not backed him up in relation to the contractor parking issue. He also complained about Ms Chong's "comments and decision making towards me". He did not specify what these were. We do not accept the claimant's oral evidence that by "comments" he was referring to the alleged derogatory remarks and slurs made by Ms Chong about men because we find that had she made them (and he wanted to complain about this) he would have detailed them. It is more likely that this related to the claimant's perception that Ms Chong had undermined him and that she had

told him to be courteous and professional. In fact, the focus of much of this email concerned a complaint that Ms Chong and her sister left their bikes in the hallway and she stored personal items in the basement car park both of which were “wrong”. We accept her evidence that these bikes did not belong to Ms Chong and this was not an issue she felt strongly about. In fact, when the claimant had left a handwritten note [310-11] on 14 January 2020 to highlight that this was a safety hazard, on one of two bikes parked in the corridor, it was addressed to the claimant’s sister’s wife and he wrote that he had already discussed this with the claimant’s sister. The claimant was therefore cognisant that neither bike belonged to Ms Chong.

46. The claimant wrote that if “you don’t appreciate me or my methods, then I need to find another job”. This was an ultimatum. We find that he was saying to the other directors, in effect, back me or I go. Although the claimant said that in writing this email he was seeking a meeting to clear the air, we accept Ms Chong’s oral evidence that she found it very disrespectful, aggressive and a personal attack on her, and not an attempt to rebuild their working relationship. This is entirely consistent with the email she sent to the other directors on the same date when she referred to this being a “personal attack on me and my position...spells out his disrespect and discontent with me personally” [185]. She felt that this demonstrated

“exactly why I think he should look for another work, elsewhere. If he would do this about me, he would or have done it with others...”

47. It is evident that Ms Sacks agreed. Prompted by the claimant’s ultimatum, she now felt that he had to go not least because she wanted Ms Chong to remain as a director. In an email she sent to Ms Chong later that day, Ms Sacks said that the claimant’s email in which he had referred to Ms Chong in the third person “confirms that he cannot be building manager anymore” [183]. We accept that she was genuinely concerned about the claimant’s reaction when she wrote “I am not sure how malicious or not Tony can be if we tell him to look for another job ? I am worried about his aggressive attitude now...”
48. We find that as a result of the claimant’s email dated 4 February 2020, Ms Chong decided to avoid any contact with the claimant. It is therefore likely that when she walked through the foyer two days later, she did not reply when the claimant greeted her. We do not find that this was because the claimant was a man but because he had insulted her and also, like Ms Sacks, she was worried about antagonising him.
49. This prompted the claimant to make a further personal attack on Ms Chong when he sent an email to Mr Galea and Ms Sacks on 6 February making his ultimatum explicit with the heading “Me or Fiona” [198] in which he complained that Ms Chong had ignored him and was “ignorant and I don’t like her. None of the residents know her or care about her”, she was a “cheeky, disrespectful idiot” and was “not fit to be a Director”, her flat was “rammed with junk everywhere...this says something about her state of mind. He said that “I’m not having any more of Fiona’s nonsense” or “anymore immature and 3<sup>rd</sup> rate bullshit from a silly idiot like Fiona”. Ms Sacks replied to explain that the claimant could choose to remain working with Ms Chong or leave. She forwarded the claimant’s email to Ms Chong.

50. Ms Sacks emailed Mr Galea about this email in which she explained that the claimant had to go [192]: "It's going too far. We cannot allow that he starts talking against[t] her as director just because he does not like her. Unfortunately he needs to be out before he does any damage". As Ms Sacks had noted, instead of build bridges with Ms Chong as he had been told to do, the claimant had gone on the offensive and issued an ultimatum to the other directors to get rid of her. We find that Ms Sacks' response was not because of or related to the claimant's sex or sexual orientation but because of the claimant's offensive conduct towards Ms Chong. To the extent that her response was in any way connected with the claimant's conduct towards her, this was not because of or related to the claimant's sex or sexual orientation but because she genuinely believed he had been sexually harassing her.
51. The following day, on 7 February 2020, the claimant sent another email in which he apologised to Mr Galea and Ms Sacks although not Ms Chong for calling Ms Chong an "idiot" but he maintained that she had demonstrated some lapses in judgement and complained again that she had undermined him with KFH [203]. He also repeated his complaint that Ms Chong rarely spoke or acknowledged him when she passed through the foyer although he explained "I'm not particularly bothered by this".
52. In none of these emails in which the claimant complained about Ms Chong, did he refer to any of the derogatory comments that he alleges Ms Chong made.

The meeting between Ms Sacks and Ms Chong on 5 February 2020

53. Between the claimant's offensive emails about Ms Chong, Ms Sacks and Ms Chong met on 5 February 2020 when Ms Sacks discussed the claimant's texts and emails with Ms Chong who agreed that this of a sexual nature and should be reported to KFH. We have also found that Ms Sacks and Ms Chong had both concluded that the claimant's position was untenable because of his offensive conduct and not because of or for reasons relating to his sex or sexual orientation, we do not find that they were conspiring to dismiss the claimant. Both directors felt genuinely harassed by the claimant and were now actively avoiding him. They were also concerned about the risk of retaliation should such action be taken against the claimant. However, because neither director was an HR expert, they delegated the management of the claimant and ultimately the decision about how to proceed to KFH. Nor do we find that they discussed the claimant's dismissal with KFH at the meeting on 10 February 2020. We accept Ms Sacks' evidence that although she felt that the claimant had sexually harassed her, and she was also concerned about his personal attacks on Ms Chong, she relied on KFH to decide what action to take.

The meeting between Ms Sacks, Ms Chong and KFH on 10 February 2020

54. Ms Sacks and Ms Chong met Mr Owen and Carl Warland, Block and Portfolio MD at KFH in a nearby coffee shop on 10 February 2020 to discuss the claimant's recent emails to KFH. Ms Chong referred to the claimant's emails about her on 4 and 6 February 2020. Ms Sacks then referred to the claimant's harassing conduct towards her. She had brought print outs of

some of the offending texts and emails. We accept the claimant's evidence that she was embarrassed. This is corroborated by Mr Owen who said that she was visibly embarrassed. Ms Sacks had been reluctant to divulge this issue hoping that it would go away. She had then discussed this with Ms Chong who had validated her reaction to the claimant's texts and emails. She was now having to discuss this embarrassing and harassing material with men. Mr Owen told Ms Sacks that she should put her complaint in writing together with copies of the offending texts and emails, and also for Ms Chong to forward the offending emails so that KFH could investigate these issues under the Disciplinary Procedure. Mr Warland was in attendance because he was aware that the claimant had been the subject of a disciplinary investigation by KFH around ten years before in relation to complaints made about his conduct and attitude. He referred to these historic issues. This underlined the concerns felt by both directors about the risk of retaliatory action by the claimant. Ms Chong decided to change the locks in her flat.

55. Ms Sacks returned to her flat with Ms Chong to telephone Mr Galea to update him. They were sat in the living room having a three-way conversation with Mr Galea who was on speakerphone. The front door was open to allow access to the window contractors. Gus was in the flat. At one point, from where she was sitting Ms Sacks could see the claimant reflected in her mirror standing in the hallway outside her flat appearing to be listening to their conversation. She pointed this out to Ms Chong and they stopped speaking. The claimant said that he came into the flat to check on the window contractors, the door was open and he saw Ms Sacks and Ms Chong speaking. He did not overhear what they were discussing. He sensed that they were discussing him. We accept that seeing the claimant in her flat put Ms Sacks on edge.

The decision to suspend the claimant

56. When Mr Owen returned to his office he reported back to Georgie Whyte HR Business Partner at KFH who suggested that the claimant was suspended. He agreed. These were self-evidently serious allegations which required investigation. Having reviewed the claimant's emails and texts, she was satisfied that his communication with Ms Sacks was capable of amounting to sexual harassment and that his comments about Ms Chong were not only unprofessional but could be deemed to be misconduct. We find that this was her genuine belief not least because we have found that Ms Sacks' complaint of harassment was made genuinely and capable of amounting to sexual harassment and also because the claimant's emails dated 4 and 6 February 2020 were capable of amounting to misconduct. The sexual harassment allegation was sufficiently serious to warrant the claimant's suspension during the investigation. There was an evident need to safeguard Ms Sacks who was using the back entrance to avoid the claimant and also because the claimant had access to her flat. We do not therefore find that the decision to suspend the claimant was because of or related to the claimant's sex or sexual orientation.
57. There was no evidence that Ms Sacks, Ms Chong or Mr Galea had any direct input in this decision. We accept the evidence of Ms Sacks and Ms Chong that as directors they delegated all HR matters to KFH who had the



time, resources and expertise and were paid to take all necessary steps. We also accept Ms Sacks' evidence that she first discovered that the claimant had been suspended when Ms Chong forwarded an email from Ms Whyte to her on 13 February 2020.

58. We therefore find that by 10 February 2020, KFH had decided to suspend the claimant pending an investigation into these allegations of sexual harassment and professional misconduct.

The incident between the claimant and Ms Sacks on 11 February 2020

59. The next morning, Ms Sacks walked into the foyer and told the claimant that she had left her phone in a taxi and asked him if he knew the number to contact to recover it. This was said in passing, Ms Sacks did not want to engage the claimant in discussion, she took the lift up to her flat. Around 20 minutes later the claimant came up to her flat saw that the door was open and called to see if Ms Sacks was inside. She said she was. She did not invite him in. The claimant walked in and sat down at a table in the living room, he had written two telephone numbers on a sticky note which he handed to Ms Sacks who found him there. This made Ms Sacks very uncomfortable.
60. Later that day, the claimant texted Ms Sacks to request a meeting when he referred to her meeting with Ms Chong the day before when he was sure that they were discussing him [524]. Although it is likely that he had not overheard their discussion his email gave the impression that he had. To Ms Sacks, this reinforced her feeling that the claimant was continuing to encroach on her private space. He had overheard her private discussion with the other directors and was now demanding a meeting with her which she felt was an act of aggression. She had had enough and went down to the foyer to confront him.
61. Although Ms Sacks' denied this, we find that it is likely that she used words to the effect of "Who are you to request a meeting? I haven't got time to deal with you" because she agreed that she was emotional and she had had enough. Ms Sacks agreed that she refused to continue to discuss this issue in private which was what the claimant suggested when a lessee entered the foyer. Ms Sacks said in evidence that she was not going to be shut up or waived off because of this. However, we do not find that Ms Sacks was being abusive. Notably, in an email she sent to the other directors afterwards, she stated that the claimant had complained again about Ms Chong and in a raised voice had told her that if they wanted to retain Ms Chong as a director then she and Mr Galea were probably unfit to be directors and he would talk to lessees to get rid of them. It is therefore likely that this was a heated exchange during which they both raised their voices. Nor do we find that this was because of or related to the claimant's sex or sexual orientation because we find that Ms Sacks was upset and had been provoked by the claimant's email in which he had demanded a meeting, had told her that she had time to meet because he had seen her meeting with Ms Chong when they were discussing him, and she therefore understood that he had entered her flat without consent and overheard this private discussion; and this was exacerbated by his previous conduct of sexual

harassment towards her, his abusive emails about Ms Chong and KFH and the historic conduct that Mr Warland had relayed to them the day before.

62. The claimant sent an email to Ms Sacks copied to Mr Galea in which he complained that she had shouted [205-6]. He also repeated his complaints about Ms Chong being hostile and ignoring him. He made no reference to her making any derogatory comments. At the end of this email he conceded "I can be very headstrong sometimes, and my language can be a little inappropriate. And maybe sometimes I am a bit blunt."
63. We were taken to an email in the bundle that was said by the claimant to have been written by one of the residents, Nga Nguyen, and which stated that she saw that Ms Sacks was "being aggressive and abusive towards you in a very impolite tone" [224]. Whilst we accept that this resident witnessed around 20-30 seconds of the row between the claimant and Ms Sacks, whilst she was waiting for the lift, we give little weight to the content of this email because the claimant agreed that he had asked Ms Nguyen to write this statement and it was not sent until 9.11am on 13 February 2020 which was after he had received an invitation from KFH to attend a meeting to discuss "a few concerns" which had been raised by the directors [222]. We therefore find that it is likely that the claimant encouraged Ms Nguyen to provide him with this statement with this in mind.

#### The events on 12 February 2020

64. This invitation was sent by Mr Owen at 11.04am on 12 February 2020. The concerns were not specified. This was followed up by Mr Owen at 4.20pm to confirm that the meeting would take place at 11am the next day at KFH's Head Office in Wimbledon [222].
65. Within half an hour, at 11.27am the claimant emailed the directors to inform them that he intended to submit a grievance to complain about Ms Sacks and Ms Chong [210]. He referred to an incident with Ms Sacks as the final straw. He complained about KFH whom he said should not be permitted to intervene or investigate. He said he would make his formal complaints early the next week. In blind-copying this email to several lessees the claimant was therefore first to disclose his dispute to this wider group.
66. Ms Sacks made a formal complaint of harassment against the claimant three hours later at 2.44 pm on 12 February 2020 [214]. We accept her oral evidence that she completed this before leaving for the airport as she was due to fly to Austria. She alleged that this conduct had been taking place since 26 November 2019. Although the claimant complained of harassment and not sexual harassment we have found that she genuinely believed that the claimant had been sexually harassing her because she perceived the claimant's emails and texts to be of a sexual nature. She was not an HR expert and it is very likely that she was embarrassed to use that term. We do not therefore find that she was acting dishonestly or making a false allegation. Nor do we find that this complaint was written in retaliation to the claimant's earlier email because we have found that having discussed her concerns initially with Ms Chong on 5 February 2020 Ms Sacks decided to raise this issue with KFH at the meeting on 10 February 2020 when it was

agreed that she would put her complaint in writing so that it could be investigated.

67. Ms Sacks thereafter arranged for her spare keys to be retained by the Window Project Manager. She informed the claimant of this [221].
68. In an email sent by the claimant to a group of lessees on 20 February 2020, he called Ms Chong a “shameless, unscrupulous, dishonest conniving piece of shit !” [285].

The claimant’s suspension on 13 February 2020

69. When the claimant failed to attend KFH’s Head Office, the next day, Mr Owen who was not available asked James Hewitt-Lee, Portfolio Director at KFH to accompany Ms Whyte to attend 17 Clarges Street to deliver the suspension letter to the claimant.
70. Ms Whyte and Mr Hewitt-Lee entered the lobby of the building. They identified themselves and explained that the purpose of their visit was to deliver a letter of suspension to the claimant. He was told that he was suspended pending an investigation into allegations of sexual harassment and professional misconduct. This was confirmed by Mr Owen in writing on the same date [235-6].
71. Over the course of the next two hours or more the claimant was in and out of the building and had a series of fraught interactions with Ms Whyte, Mr Hewitt-Lee, Ms Chong and Jason Fielden, a business associate, before leaving the premises for the last time. Each of them and Mindaugas Vysniauskas, Project Manager for the window project, who also present to witness some of the events wrote a statement [344-55].
72. We find that the claimant became immediately aggressive and refused to engage with Ms Whyte and Mr Hewitt-Lee. It is evident that the claimant refused to engage with them. We accept Mr Hewitt-Lee’s evidence that he felt the claimant was acting aggressively in standing up and raised his hands (which we could see from the CCTV footage), raising his voice and refusing to engage with them from the outset. We accept Ms Whyte’s evidence which is based on the statement she wrote near-contemporaneously that the claimant immediately reacted by saying “You have no right to be here...this is unlawful...I’m not saying anything to you...you are not to say another word to me until I have some witnesses present”. As claimant himself conceded, in his grievance dated 14 April 2020, he “became very angry and aggrieved” [373].
73. During this two-hour period the police were called twice. The first call was made by KFH as a result of an email sent by Mr Hewitt-Lee which we accept he sent out of genuine concern that there was a risk of escalation because the claimant was acting aggressively and unpredictably. By the time the police arrived on site the claimant had left the building having refused to return the estate keys and his access fob. The police advised that the claimant’s actions in leaving the premises with these items was theft and if he tried to re-enter the building they should be contacted. Ms Chong was also in attendance having been contacted by Mr Hewitt-Lee. It was agreed

to arrange for an emergency locksmith to change the locks for the common parts of the building and also to deploy a security guard that evening. The police left. Ms Whyte left. Some time later the claimant returned accessing the building via the rear entrance. Ms Chong called the police a second time. We do not find that this was unreasonable or disproportionate because the claimant was continuing to act aggressively and unpredictably, and was refusing to engage, and she had been advised to call the police if he tried to re-enter the building.

74. The claimant unlocked the CCTV cupboard using one set of keys which Mr Hewitt-Lee retrieved. The claimant then went into an office which he locked behind him. He had been instructed to collect his personal belongings and he was packing cutlery away in his rucksack. Mr Hewitt-Lee was recording this on his phone from the corridor outside the office. The claimant agreed that there was a metallic sound and the sound of a zip being opened or closed. It is agreed that the claimant remained in possession of one bunch of keys for the building. The claimant had left the building before this with two bunches of keys. We accept Mr Hewitt-Lee's evidence that hearing the sounds from within the office and cognisant that the claimant had left the building once with at least one set of keys he apprehended that the claimant had put another set of keys into his rucksack. He therefore said "I can hear you operating keys in there and I can hear you opening your rucksack. Can you confirm that you're not taking the keys to the flats?" We find that this was a reasonable enquiry to make in the circumstances. The claimant did not respond.
75. On coming out of the office the claimant saw that Mr Hewitt-Lee was filming him with his phone. He agreed that he took this phone out of Mr Hewitt-Lee's hand before throwing into a nearby flat. We find that it is unlikely that the claimant was able to take the phone without making contact with Mr Hewitt-Lee's hand and also that this is likely to have caused Mr Hewitt-Lee to apprehend a physical assault. The claimant was bigger and taller than him.
76. Although this was not captured by the CCTV or on the video recording, we find that it is likely that the claimant pinned Mr Hewitt-Lee against the wall using his forearm across his neck because we find his recollection and his demonstration of the positioning of the claimant's forearm was very clear and consistent when he gave oral evidence. Both Ms Chong and Mr Fielden heard then saw this altercation.
77. Ms Chong had been due to meet Mr Fielden. She telephoned him to cancel when she explained she was dealing with an HR issue. We accept his evidence that Ms Chong sounded anxious and distressed. We also accepted Ms Chong's evidence that she was distressed and it was clear to us that she found revisiting these events during her cross-examination distressing. We do not find that Ms Chong smirked at any time during this incident nor demonstrated that she was enjoying the claimant's humiliation or suspension as the claimant contends. She felt threatened, distressed and overwhelmed.

78. As we was nearby, Mr Fielden walked over to 17 Clarges Street. He saw Ms Chong standing outside. They heard the claimant shouting at Mr Hewitt-Lee and went inside.
79. The claimant released Mr Hewitt-Lee. He put his keys in a pocket and proceeded to walk towards the foyer. He began to insult Ms Chong. He said that she was a lesbian and she accused her of making disparaging comments about men and had bullied, discriminated and victimised him because of his sexuality. Ms Chong is a heterosexual. By this point Mr Vysniauskas was in the foyer and witnessed this abuse.
80. The claimant walked towards the front doors. He was being asked repeatedly for the keys. He was evidently reluctant to give them back. As the claimant said in oral evidence the keys were symbolic and giving them up was like letting his job go. Mr Fielden stood in his way. He had told the claimant that he was “ranting like a crazy man” and had refused to confirm who he was and why he was there. At one point the claimant grabbed the lapels of his coat. In his oral evidence the claimant agreed that in grabbing Mr Fielden’s lapels he had acted aggressively. In his written account, Mr Hewitt-Lee wrote that the claimant had his hand around Mr Fielden’s neck. We accept Mr Hewitt-Lee’s evidence that at the time he wrote his statement he genuinely although mistakenly believed this. It is notable that in making this part of his statement Mr Hewitt-Lee said that this “should be visible on CCTV images”. He therefore wrote his statement in the knowledge that there was CCTV footage and with a degree of confidence that this would verify his recollection. When he finally reviewed this footage he corrected his mistake. We also find that having been pinned down himself this was likely to have effected his recollection.
81. In the end the claimant threw the bunch of keys on the floor and was allowed to leave.
82. Mr Fielden did not call the claimant a madman but said that he was “ranting like a crazy man”. Whilst we do not accept Mr Fielden’s oral evidence that this patently provocative statement was a helpful one to make we do not find that it explains or excuses the claimant’s actions. Nor do we find that over the course of the afternoon’s events this was a significant factor for Mr Hewitt-Lee. As we have found, the claimant was aggressive and refusing to engage from the outset, he had assaulted him by pinning him against the wall and we find it was quite reasonable for Mr Hewitt-Lee to have omitted this detail from his written statement.
83. In an email to Mr Galea on 16 February 2021, the claimant admitted that he had “lost my head and acted stupidly and irrationally” [261].
84. We do not find that Mr Hewitt-Lee’s reference in his statement to “inappropriate sexual messaging” was anything more than an accurate description of the means by which it had been alleged the claimant had sexually harassed Ms Sacks. This was based on the limited information he had. He is not an HR professional nor was he involved in the disciplinary process. This did not have the effect of downgrading the allegation of sexual harassment as the claimant contends.

85. KFH wrote to all leaseholders on the same date [240] to explain that because of an incident involving the claimant in which, having been advised of his suspension, he left the building with some keys, the police had been alerted and the keys returned, it was necessary to change the locks for the office and common parts of the building.
86. In an email the next day, sent to several residents, Ms Chong referred to the claimant's suspension following a complaint of sexual harassment and professional misconduct [259]. We find that Ms Chong disclosed this information to explain why the claimant had been suspended because the claimant had written to other lessees to complain about his suspension.

The disciplinary process

87. Mr Owen wrote to the claimant on 19 February 2020 [277] to invite him to attend a disciplinary meeting on 27 February 2020, the purpose of which would be to consider a new allegation of gross misconduct which was that the claimant had physically assaulted Mr Hewitt-Lee and a member of the public (i.e. Mr Fielden) on 13 February. He was told this this hearing could result in his dismissal. In respect of the initial allegations of sexual harassment and professional misconduct, Mr Owen wrote that they "remain and continue to be investigated". A subsequent email from Ms Whyte on 24 February 2020 confirmed that the assault allegation superseded these original allegations. The hearing on 27 February 2020 would therefore consider only the gross misconduct allegation. We do not find that Ms Sacks or Ms Chong had any direct involvement in this decision.

The claimant's grievances

88. 14 minutes later, the claimant submitted the first of a six-part grievance, the rest of which was sent over the next fortnight:
- a. Part one on 19 February 2020 [279]: In which the claimant complained that Ms Sacks, Ms Chong and the RTM had discriminated against him on the basis of his "male gender" and "sexual orientation Heterosexuality" in relation to his suspension and the alleged fabrication of evidence. The claimant also referred to bullying and harassment, and victimisation.
  - b. Part two on 20 February 2020 [281]: In which the claimant alleged that Ms Chong had discriminated against him by making derogatory comments because of his sex and sexual orientation and that she had also glared at him and ignored him. The claimant made clear that the basis for this allegation of discrimination was his mistaken perception that Ms Chong was a lesbian, in the following terms:

"My understanding is that Fiona Chong's sexuality is lesbian. [I] believe that Fiona Chong has Discriminatory prejudices dealing with some men, and Heterosexual men. [I] have been subject to repeated derogatory comments by Fiona Chong including:

"typical man causing problems"

"Tony making things difficult like a man"

“men are impatient and more difficult”

“problems when men are making the decisions”

On several occasions Fiona Chong has passed through reception and simply said “men” in a dismissive tone.”

These generalised and undated allegations appeared for the first time in this email.

- c. Part two (second) on 20 February 2020 [282]: In which the claimant alleged that KFH was colluding was “clearly acting unfairly, unlawfully, dishonestly and colluding” with the respondent and in which the claimant alleged that Ms Chong had fabricated evidence and was “fitting me up”. This did not explicitly allege that KFH had discriminated, harassed or victimised him.
  - d. Part three on 24 February 2020 [293]: In which the claimant alleged that Ms Sacks had discriminated against him because of his sex and sexuality in making false allegations of sexual harassment and professional misconduct with the aim of engineering his dismissal. He therefore knew or suspected from this date that Ms Sacks had made the sexual harassment allegation. The claimant also questioned the integrity and honesty of Ms Whyte and alleged that she was colluding with Ms Sacks and Ms Chong to “fabricate” and “pervert” the evidence, and whom he suspected was also colluding with Mr Hunte and Mr Owen.
  - e. Part four on 24 February 2020 [294]: In which the claimant repeated his allegation of discrimination against Ms Sacks and provided some background information about their interactions and her three gifts.
  - f. Part five on 26 February 2020 [299]: In which the claimant set out details about his alleged discussions with the directors about KFH and Mr Gay.
  - g. Part six on 3 March 2020 [306]: In which he alleged that Ms Sacks and Ms Chong had bullied and harassed him and he had been victimised in that he had suffered detrimental treatment because he had complained about them.
89. These grievances were acknowledged by KFH. We accept Ms Whyte’s evidence that because these grievances included complaints about KFH, a decision was taken that it would be necessary for an external party to conduct the investigation. As Ms Whyte said in oral evidence, the claimant had named both her and Mr Hunte and alleged that they and KFH were, in effect, unethical and corrupt. There was a potential conflict of interest. As noted, the claimant had written in unequivocal terms that KFH were not to intervene or investigate.
90. KFH also decided that these grievances would not be investigated until after the disciplinary process had been concluded. We also accept Ms Whyte’s evidence that having reviewed the contents of the grievances she was satisfied that these did not relate directly to the disciplinary process which was now focused on the claimant’s conduct on 13 February 2020 and not

the allegations relating to Ms Sacks and Ms Chong. Whilst the events on 13 February 2020 had been precipitated by the claimant's suspension the claimant's conduct on 13 February 2020 in which he agrees that he assaulted Mr Fielden (by holding his lapels) and he was alleged to have assaulted Mr Hewitt-Lee were distinguishable from his texts and emails to Ms Sacks since 29 November 2019 and his emails about Ms Chong on 4 and 6 February 2020. Ms Whyte emailed the claimant on 20 February 2020 to confirm that the grievances would be investigated at the end of the disciplinary process [282].

91. Two months after his suspension, on 13 April 2020, the claimant sent a barrage of nine emails in which he alleged that he had been the victim of "calculated dishonest innuendo to malign me, persecute me" and proceeded to do the same when he questioned whether one or other of Ms Chong, Mr Sacks, Mr Galea, Mr Hunte and Mr Owen used "date rape drugs" or were money launderers or drug dealers or sex traffickers or paedophiles and called all of them "pathetic disgusting turds".
92. The claimant submitted a grievance against Mr Hunte on 14 and 15 April 2020 in relation to his suspension, the events on 13 February 2020, the allegation of sexual harassment, the failure to provide him with any details or evidence in relation to this allegation and the failure to investigate his grievances [373-5 & 407-9]. He also submitted a data subject access request ("DSAR") on the same date.

#### The claimant's dismissal

93. The claimant was dismissed on 20 April 2020 confirmed by letter dated 23 April 2020 [400-5].
94. The claimant submitted an appeal on 30 April 2020.
95. KFH decided and the directors agreed that the claimant's appeal and grievance would be investigated and managed by Hunter Adams, an external consultant. This was confirmed in writing by the directors on 13 May 2020 [426-7] in which they explained that Hunter Adams would make contact to discuss "each issue". The claimant understood that this included all of his grievances, including his complaints about Mr Hunte.
96. Gilliam Williamson, Senior HR Advisor, invited the claimant to an appeal meeting on 19 May 2020 [428-9]. The claimant replied to allege that she and Hunter Adams were being "used" and "deceived" by "unscrupulous, calculatingly dishonest Employers and KFH Ltd" and he asked her 12 questions [435]. When Ms Williamson replied on 19 May 2020 the claimant replied that she was colluding with Mr Hunte and KFH was lying and deceiving him and instructed "Do not contact me again, for any reason...DO NOT CONTACT ME AGAIN" [437].
97. Laurie Finnie, Business (HR) Manager, wrote to the claimant on 18 May 2020 to confirm receipt of the claimant's six-part grievance and to invite the claimant to a grievance hearing three days later [434]. The claimant replied the next day with five questions [453-4]. Ms Finnie replied on the same date when she confirmed that she had been provided with the claimant's six-part



grievance but not the suspension letter. She would discuss this letter and the sexual harassment allegation with the claimant when they met. The claimant responded to request the details and evidence of the sexual harassment allegation. When Ms Finnie explained that she understood that the allegation had been made by an email that she did not have access to and would not have access to until she had heard the claimant's grievance, the claimant told Ms Finnie to "keep your clever deceitful mouth shut...DO NOT CONTACT ME AGAIN" [447].

98. We find that none of the directors of the RTM took an active part in either the grievance or appeal processes. All of the decisions had been taken by KFH before being referred to Hunter Adams. We have found the RTM had delegated these functions to KFH and that the directors delegated all decisions to KFH because it had the resources and expertise. There was no evidence to suggest any involvement or collusion. A further reason for Ms Sacks and Ms Chong to have no direct involvement was that they had both complained about the claimant's conduct.
99. The claimant complains that the respondent failed to have any oversight of these processes and failed to ensure that KFH and Hunter Adams had acted fairly and lawfully. For completeness, we do not find that this omission to act nor the failure to investigate the claimant's grievances were because of or related to the claimant's sex or sexual orientation:
  - a. KFH decided that the claimant's conduct on 13 February 2020 when it was alleged he had assaulted Mr Hewitt-Lee and Mr Fielden superseded the allegations which had led to the decision to suspend the claimant.
  - b. KFH decided the claimant grievances would be dealt with after this disciplinary process had been concluded having been satisfied that the claimant's grievances were not relevant to the claimant's alleged conduct on 13 February 2020.
  - c. KFH decided that these grievances would need to be investigated by an external party because they included complaints about KFH and its officers which raised a potential conflict of interest. This was in fact something that the claimant had insisted on in unequivocal terms.
  - d. KFH identified Hunter Adams who contacted the claimant to progress his dismissal appeal and his grievances.
  - e. Both processes ended and could not be progressed and concluded because of the claimant's refusal to engage and cooperate with Hunter Adams.
100. For all of these reasons the claimant was not provided with any details of the allegations of sexual harassment (or professional misconduct) nor the opportunity to challenge them. We do not find that this was because of or related to the claimant's sex or sexual orientation nor because he had made allegations that he had been discriminated against. A further factor in relation to the sexual harassment allegation was the perceived need to safeguard Ms Sacks.

The response to the claimant's DSAR

101. Further to the claimant's DSAR, Ms Sacks was asked for her consent to disclose her email dated 12 February 2020. She said that her preference was that it was not shared with the claimant because she was fearful for her safety and wellbeing, however, she did not object if such disclosure was necessary. This was not unreasonable. She felt that the claimant had sexually harassed her and that there was a risk that he would retaliate if he knew for certain that she had made this complaint about him. Mr Hunte sought clarification from the ICO about this and was told in general terms that disclosure was not required where this was necessary to protect a third party. We accept Ms Whyte's evidence that she also contacted the ICO and received the same advice. We also accept Ms Sacks' evidence that having been copied in to several emails sent by the claimant on 28 May 2020 about his DSAR she contacted KFH to ensure that the respondent had complied with all of its legal requirements and was told that following input from the ICO her email had not been disclosed to safeguard her health and safety. We therefore find that neither Ms Sacks nor Ms Chong this decision which was taken by KFH to protect Ms Sacks.

**The law**

Direct discrimination

102. Section 13(1) EQA provides that a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

103. The protected characteristic need not be the only reason for the treatment but it must have been a substantial or "effective cause". The basic question is "What, out of the whole complex of facts before the tribunal, is the 'effective and predominant cause' or the 'real or efficient cause' of the act complained of?" (see O'Neill v Governors of St Thomas More RC Voluntarily Aided Upper School and anor [1997] ICR 33, EAT).

Harassment

104. Section 26(4) EQA provides that:

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

...

- (4) In deciding whether conduct has the effect referred to in section (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.

105. In deciding whether the conduct “related to” a protected characteristic consideration must be given to the mental processes of the putative harasser (see GMB v Henderson [2016] IRLR 340, CA).
106. In Pemberton v Inwood [2018] IRLR 542, CA, Underhill LJ re-formulated his earlier guidance in Richmond Pharmacology v Dhaliwal [2009] IRLR 336, EAT, as follows:

"In order to decide whether any conduct falling within sub-paragraph (1)(a) of section 26 EqA has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section 4(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section 4(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also take into account all the other circumstances (subsection 4(b). The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant's dignity or creating an adverse environment for him or her, then it should not be found to have done so."

107. The claimant's subjective perception of the offence must therefore be objectively reasonable.

#### Victimisation

108. Section 27(1) EQA provides that a person (A) victimises another person (B) if A subjects B to a detriment because B does a protected act, or A believes B has done, or may do a protected act.
109. Section 27(2) enumerates the four types of protected act as follows:
- (a) bringing proceedings under the Act (i.e. EQA)
  - (b) giving evidence or information in connection with proceedings under this Act
  - (c) doing any other thing for the purposes or in connection with this Act
  - (d) making an allegation (whether or not express) that A or another person has contravened this Act.
110. Section 27(3) provides that such an act will not be protected if the complainant has given false evidence or information, or made a false allegation, or if the evidence or information is given, or the allegation has been made, in bad faith. In determining whether there has been an act of bad faith, the primary question for a tribunal is whether the complainant acted honestly in giving the evidence or information, or making the allegation, and the issue of whether he is acting with an ulterior motive is of less relevance (see Saad v Southampton University Hospitals NHS Trust [2019] ICR 311, EAT).
111. As to causation, the tribunal must apply the same test to that which applies to direct discrimination i.e. whether the protected act is an effective or substantial cause of the employer's detrimental actions.

Detriment

112. Section 39(2)(a) EQA provides that an employer (A) must not discriminate against an employee of A's (B) by subjecting him to any other detriment.
113. A complainant seeking to establish detriment is not required to show that he has suffered an adverse physical or economic consequence. It is sufficient to show that a reasonable employee would or might take the view that they had been disadvantaged, although an unjustified sense of a grievance cannot amount to a detriment (see Shamoon v Chief Constable of RUC [2003] IRLR 285, HL).
114. The EHRC Employment Code provides that "generally, a detriment is anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage".
115. Any alleged detriment must be capable of being regarded objectively as such (see St Helens MBC v Derbyshire [2007] ICR 841).

Burden of proof

116. Section 136 EQA provides that if there are facts from 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.
117. Section 136 accordingly envisages a two-stage approach. Where this approach is adopted a claimant must first establish a prima facie case at the first stage. This requires the claimant to prove facts from which a tribunal could conclude that on the balance of probabilities the respondent had committed an unlawful act of discrimination and something more than a mere difference in status and treatment (see Madarassy v Nomura International plc [2007] ICR 867, CA).
118. The two-stage approach envisaged by section 136 is not obligatory and in many cases it will be appropriate to focus on the reason why the employer treated the claimant as it did and if the reason demonstrates that the protected characteristic played no part whatsoever in the adverse treatment, the complaint fails (see Chief Constable of Kent Constabulary v Bowler UKEAT/0214/16/RN). Accordingly, the burden of proof provisions have no role to play where a tribunal is in a position to make positive findings of fact (see Hewage v Grampian Health Board [2012] IRLR 870).
119. Tribunals must be careful to avoid too readily inferring unlawful discrimination on a prohibited ground merely from unreasonable conduct where there is no evidence of other discriminatory behaviour on such a ground (see Igen Ltd v Wong [2005] IRLR 258, CA).

**Conclusions**

Direct discrimination

120. This complaint fails.

*The incident between the claimant and Ms Sacks on 11 February 2020 (issue 2.2 (a))*

121. Although we have found that Ms Sacks told the claimant on 11 February 2020 words to the effect of “Who are you to request a meeting? I haven’t got time to deal with you” and Ms Sacks agreed that she refused to continue to discuss this issue in private we have found that this was not abusive. Nor have we found that this conduct was because of or related to the claimant’s sex or sexual orientation.

*The false allegation of sexual harassment made by Ms Sacks in 12 February 2020 and the alleged collusion with Ms Chong in relation to it (issues 2.2 (b) & (e))*

122. We have found that Ms Sacks genuinely believed that the claimant’s texts and emails between 26 November 2019 and 5 February 2020 (specifically on: 26 November [495] [496], 29 November [137] [500] [501] [502], 4 December [503], 20 December [503] [145], 23 December 2019 [148] and 5 February [521]) constituted sexual harassment in that:

- a. They were unwanted, unreciprocated and were evidently not encouraged. We have not found that by imparting personal information given in response to the claimant’s questions or otherwise disclosed for practical purposes or by giving the claimant tips of £40 and £50 and the Christmas gifts (which included reimbursement for the doormat) Ms Sacks was consciously or inadvertently encouraging the claimant as he contends. As the claimant himself made clear, the giving of gifts to other workers was part of the “art of management”. Notably, despite acknowledging that one of his emails had been “a bit unprofessional – and probably inappropriate” the claimant continued in the same vein. He also sent the text on 5 February 2020 despite the claimant asking him on 10 January 2020 to refrain from making any personal comments.
- b. They were of a sexual nature. In these texts and emails the claimant patently revealed his sexual interest in Ms Sacks. The claimant told Ms Sacks that she was “very stylish and pretty”; “I really like you and miss chatting and seeing you”; “I got a crush on you...it’s not my fault you are nice, attractive and clever”; “You need to start being horrible to me...so that I will stop being attracted to you”; “I have feelings for you...Nothing wrong with that. I am a normal man”; “Let me know if you need a date...”; “you are stylish and attractive. I can’t believe that you are single”; and that she should watch a film “with a boyfriend and popcorn”.
- c. They had the effect of making Ms Sacks feel uncomfortable and uneasy, vulnerable, intimidated and therefore harassed. Not only was this material unwanted and of a sexual nature but the claimant was installed in her residential building with access to her flat. We have found that the claimant had taken to avoiding the claimant by using the stairs and back exit or leaving the building through the foyer after the claimant’s shift had ended. We have accepted her evidence that she had begun to consider installing a camera in her flat.

123. Nor do we find that Ms Chong colluded with Ms Sacks. In the first place, we have found that these allegations were not false because we have accepted Ms Sacks' evidence that the texts and emails which the claimant sent to her made her feel that she was being sexually harassed. Ms Chong agreed that the material which Ms Sacks showed her on 5 February 2020 was inappropriate and of a sexual nature and warranted a complaint to KFH.
124. We therefore found that the sexual harassment allegation was made genuinely by Ms Sacks and there was no collusion between her and Ms Chong. For completeness, we do not find that this was because of the claimant's sex or sexual orientation but because of the impact of the claimant's conduct and his access to Ms Sacks' flat.

*The claimant's suspension on 13 February 2020 (allegation 2.2(c))*

125. We have found that the claimant was suspended because Ms Whyte concluded that the claimant's conduct towards Ms Sacks was capable of amounting to sexual harassment, Ms Sacks was intimidated and Ms Chong was also avoiding the claimant. She wanted to safeguard their wellbeing. It was necessary to suspend the claimant pending investigation. This was because of the claimant's text and emails which we have found were capable of amounting to sexual harassment.

*Ms Chong made derogatory comments to the claimant and became more hostile and ignored him (allegation 2.2 (d))*

126. We do not find that Ms Chong made the alleged derogatory comments to the claimant. We do not find that the claimant's allegations are credible.
- a. We have preferred Ms Chong's evidence over the claimant's that she discussed the claimant's communications with contractors and lessees with him in October / November 2019 and also that whilst she discussed the intention to replace KFH she declined to discuss Mr Gay's employment with the claimant.
  - b. We have also found that Ms Chong kept her interactions with the claimant to a minimum. We have not found that by "comments" in his email dated 4 February 2020 the claimant was referring to the alleged derogatory remarks and slurs made by Ms Chong about men because his email made no reference to them.
  - c. There is no reference to these alleged comments until the claimant's grievance dated 20 February 2020 despite the preceding critical emails.
  - d. We find it is likely that the claimant made these false allegations because he believed that Ms Chong was instrumental in his suspension the week before, and was therefore retaliating, and also because he had the mistaken belief that Ms Chong was a lesbian.
  - e. Not only do the claimant's allegations lack any specificity in relation to when, how often and in what context they were made, they reflect

stereotypical misandrist statements which have historically and unjustifiably been ascribed to lesbian women.

127. We have also found that after the claimant's emails from 4 February 2020 Ms Chong decided to avoid the claimant and there were occasions when she declined to return the claimant's greeting in the foyer. She was offended and felt harassed. This was not because the claimant was a man or heterosexual but because of the claimant's emails dated 4 and 6 February 2020 which we have found were offensive.

*The collusion of Ms Sacks and Ms Chong with KFH to stop the claimant's grievances being investigated and to stop the disclosure of Ms Sacks' harassment complaint email dated 12 February 2020 (allegations 2.2 (f) & (g))*

128. As the claimant conceded on several occasions during this hearing, there was no evidence of any collusion between Ms Sacks and Ms Chong and KFH. Nor do we find that there was any suggestion of collusion by inference based on the facts we have found. We accepted the evidence of Ms Sacks and Ms Chong that they had no direct involvement in these decisions which were taken by KFH to whom they had been delegated.

129. We have found that the claimant's grievances were not investigated because:

- a. Ms Whyte concluded that the claimant's complaints were not relevant to the allegations of physical assault, an external party would need to investigate these grievances because they included complaints against KFH which raised a potential conflict of interest, and the decision was taken to deal with these grievances once the disciplinary process had been completed.
- b. These grievances could not be investigated because the claimant refused to engage and cooperate with Hunter Adams.

130. We found that for these reasons (and not because of the claimant's sex or sexual orientation) the claimant was not provided with any details of the allegations of sexual harassment (or professional misconduct) nor the opportunity to challenge them. A further factor in relation to the provision of the details of the sexual harassment allegation was the need to safeguard Ms Sacks.

131. Nor was there any evidence that Ms Sacks and Ms Chong colluded with KFH in dealing with the claimant's SAR request to stop them releasing the email of 12 February 2020. This decision was taken by KFH based on advice from the ICO to safeguard Ms Sacks' genuine fear about the claimant's actions if he knew for certain that she had been the one to make the sexual harassment complaint. The claimant knew where she lived and had threatened to return to the building as a guest of one of the residents. He also knew where she went to the gym. As we have found, Ms Sacks genuinely felt that the claimant had sexually harassed her; Ms Chong had also felt harassed by the claimant; and the claimant had acted aggressively on 13 February 2020.

132. We therefore found that these decisions were not because of or related to the claimant's sex or sexual orientation nor that he had made allegations that he had been discriminated against.

*Mr Hunter-Lee lied and falsified his statement dated 14 February 2020 (allegation 2.2 (h))*

133. We have not found that Mr Hunter-Lee lied and falsified his statement because we have found that:

- a. He had reasonable cause to state that the claimant had become extremely aggressive and refused to engage; and that he had physically assaulted him.
- b. His statement that he asked the claimant whether he intended to take the estate keys accurately recounted the video recording he made. We also found that the reason for this question, or accusation, as the claimant contends, was that Mr Hunter-Lee had a genuine and reasonable apprehension that the claimant had such an intention in the circumstances in which the claimant had already left the building with estate keys, he was in a locked office from which he could hear the sound of metalware and a rucksack being opened or closed and in which the claimant was refusing to engage or cooperate.
- c. He genuinely although mistakenly believed that the claimant had had his hands around Mr Fielden's neck.
- d. His failure to refer to Mr Fielden's comment that the claimant was "ranting like a crazy man" was reasonable in the circumstances.

134. For completeness, we do not find that there is any evidence, whether direct or by inference, that Mr Hunter-Lee completed his statement in the way he did because of or for reasons related to the claimant's sex or sexual orientation. We have found that he wrote this statement based on his recollection of a fraught and highly-charged situation in which he had been assaulted by the claimant.

#### Harassment

135. This complaint fails.

*Allegations 2.2 (a) – (h)*

136. We have found that these allegations are not well-founded on the facts and/or that they were not related to the claimant's sex or sexual orientation for the reasons set out above.

*Ms Chong enjoyed the claimant's removal on 13 February 2020 and smirked, she involved a member of the public in these events and she was involved in the police being called twice (allegations 3 (a) – (d))*

137. We have found that Ms Chong neither enjoyed nor smirked at the claimant in relation to his suspension and removal from the building on 13 February



2020. We accepted her evidence that she found the incident distressing. We also heard from the voice recording that the claimant shouted and was abusive to Ms Chong. This came on top of the claimant offensive emails of 4 & 6 February 2020. We also accepted Mr Fielden's evidence that she sounded distressed and shaken when she spoke to him by phone. This was in part the reason why Mr Fielden who was nearby came to see Ms Chong at 17 Clarges Street. When they witnessed the altercation between the claimant and Mr Hewitt-Lee they both came inside the building. In relation to the police, it is agreed that Ms Chong did not call the police on the first occasion but she was in attendance when they arrived on site when she was told to call them again if the claimant returned and attempted to re-enter the building. This was why she called the police the second time. This was both reasonable and proportionate. We do not find that Ms Chong's conduct in returning to the foyer accompanied by Mr Fielden or in calling the police was related to the claimant's sex (or sexual orientation) but because of the claimant's conduct in which we have found that he was both physically and verbally aggressive, acting unpredictably and was refusing to engage and cooperate. As we have found, Ms Chong was also distressed.

*Mr Hewitt-Lee accused the claimant of stealing keys on 13 February 2020 (allegation 2.2 (d))*

138. For the reasons set out above we have found that Mr Hewitt-Lee had a genuine and reasonable apprehension that the claimant intended to leave the building with the keys in his rucksack. We do not therefore find that Mr Hewitt-Lee's conduct was related to the claimant's sex or sexual orientation but was once again related to the claimant conduct.
139. We would add that in respect of the claimant's allegations that Ms Sacks abused him (issue 2.2 (a)) and that Ms Chong made derogatory comments, ignored and glared at him (issue 2.2 (d)) we would not conclude that those elements of these allegations which we have found took place, nor would we have concluded that any of these allegations, even if they well-founded, which they were not, had the effect of violating the claimant's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. This is because we find in the circumstances in which the claimant repeatedly acted in a hostile and offensive way that it was not reasonable for this conduct to have had that effect on him. Notably, in relation to the complaint about Ms Chong ignoring him, the claimant confirmed in a contemporaneous email "I'm not particularly bothered by this".

#### Victimisation

140. This complaint fails because we have found that neither Ms Sacks nor Ms Chong were involved and there could not therefore be any collusion between them and KFH in relation to the grievance process or DSAR disclosure.
141. For completeness, we find that the claimant's six-part grievance amounts to a protected act in that he complained that he had been discriminated, harassed and victimised by Ms Sacks and Mr Chong in relation to his

suspension which he believed was based on fabricated evidence and also in relation to Ms Chong ignoring him. We find that the claimant genuinely believed that this treatment had taken place and that it was because of his male sex or heterosexuality. As we found that the claimant falsely alleged that Ms Chong made misandrist comments, we do not find that this allegation was made in good faith.

142. For all of these reasons all the complaints fail and are dismissed.
143. A remarkable feature of this case has been the volume of documentary evidence which demonstrates the claimant's persistently inappropriate and offensive communication. We have found that his actions towards Ms Sacks were capable of amounting to sexual harassment and it mattered not that she neither complained at an earlier stage nor explicitly repelled his amorous advances; we have also found that his emails dated 4 and 6 February 2020 were offensive and a personal attack on Ms Chong, and capable of amounting to misconduct. In relation to the events of 13 February 2020 the claimant admitted that he assaulted Mr Fielden (in holding his coat lapels) and we found that it is likely that he physically assaulted Mr Hewitt-Lee. He also verbally abused Ms Chong on the basis of his firmly held but mistaken perception of her sexual orientation. That KFH decided, without the direct involvement of Ms Sacks or Ms Chong, to proceed with the gross misconduct disciplinary process in relation to the allegations of assault before referring the claimant's grievances to Hunter Adams, and failed to provide the claimant with any details of the allegations of sexual harassment or professional misconduct in the meantime, does not alter these fundamental facts which made the claimant's position untenable. These events were not because of or related to the claimant's sex or sexual orientation but arose because of the claimant's very problematic conduct. The claimant's narrative of deceit, fabrication and collusion is without foundation.

**Employment Judge Khan**

**31.08.2021**

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

31/08/2021

FOR EMPLOYMENT TRIBUNALS