



EMPLOYMENT TRIBUNALS

Claimants: (1) Mr F Austin
(2) Ms M Newton

Respondent: Royal Borough of Kensington and Chelsea

Heard at: London Central
(Via Cloud Video Platform)

On: 1, 2, 3, 6, 7, 8, 9, and 10 September
2021 and 28 September and 1
October 2021 (in chambers)

Before: Employment Judge Joffe
Ms C Brayson
Mr D Carter

Appearances

For the claimants: In person

For the respondent: Ms A Ahmad, counsel

RESERVED JUDGMENT

1. The respondent was in breach of section 26 (2) of the Equality Act 2010 in subjecting the claimants to unwanted conduct of a sexual nature as follows:
 - a) Ms Shields suggesting to colleagues on 29 November 2019 that the claimants were sleeping together;
 - b) Ms Shields saying to colleagues on 29 November 2019 that the second claimant was 'sucking [the first claimant's] cock'.
2. The respondent was in breach of section 26(1) Equality Act 2010 as follows: Ms Shields telling colleagues that the second claimant was a 'cunt' in late 2019.
3. It is just and equitable to extend time to hear the claimants' harassment complaints.

4. The claimants' remaining claims of harassment are not upheld and are dismissed.
5. The claimants' claims of public interest disclosure detriment contrary to section 47B of the Employment Rights Act 1996 are not upheld and are dismissed.
6. The claimants' claims of victimisation contrary to section 27 Equality Act 2010 are not upheld and are dismissed.

REASONS

Claims and issues:

1. The parties had agreed a list of issues for each claimant which were not in a very easy to use or concise format. In respect of allegations of harassment, the individual allegations were not clearly identified as being either or both related to sex or of a sexual nature, We asked the claimants to set out some missing aspects of the lists at the outset of the hearing, including detail of the information said to have been disclosed on each occasion when a public interest disclosure was said to have occurred and the nature of the wrongdoing which it was said that that disclosure tended to show. The result was lists which had become unwieldy and unhelpful because of the level of detail which had been inserted. The new lists did not deal with the question we had asked about whether the alleged harassment was of a sexual nature or related to the protected characteristic of sex.
2. It would in any event have been more helpful, given the significant pool of common issues, if a joint list of issues had been formulated. We appreciated however that the claimants, although educated professional people, were not lawyers and were doing their best.
3. In order to render these Reasons comprehensible, the core issues from the lists of issues have been extracted but we considered the full lists as expanded by the claimants in response to our requests to ensure we were having regard to all of the evidence and assertions put forward by the claimants in relation to each claim.
4. We also had to make some amendments to the list of issues to reflect the correct legal tests and these are indicated below with strike out and underlining. Idiosyncrasies in the formulation of the issues are reproduced from the original lists.

Mr Austin's list

1 WHISTLEBLOWING CLAIMS:

1.1 The Claimant relies on the following alleged disclosures set out in Table 1 below:

Table 1

Claimant Reference	Date	Description
FAPD1	23.01.2020	Alleged FA oral disclosure to Taryn Eves RE: obstruction of Ms Newton work
FAPD2	29.01.2020	Alleged FA oral disclosure to Taryn Eves in a meeting RE obstruction and harassment
FAPD3	13.02.2020	FA email (with attached emails) to Taryn Eves RE alleged obstruction and harassment
FAPD4	18.02.2020	FA email to Taryn Eves RE alleged harassment and the Respondent's to take sufficient action.
FAPD5	27.02.2020	FA meeting with Reg Davies RE alleged obstruction and

1.2 For each alleged protected disclosure as set out in Table 1 the following issues should be considered:

- a) Was there a disclosure of information?
- b) ~~Does the disclosure~~ Did the C believe that the information tended to show that one or more of the six specified types of malpractice or failure has taken place, is taking place or is likely to take place? (section 43B(1) ERA 1996)
- c) Did the C have a reasonable belief that the disclosure tended to show one of the above types of malpractice?
- d) ~~Was the disclosure in the public interest? If so how can the disclosure be said to be in the public interest?~~ Did the Claimant have a reasonable belief that the disclosure was in the public interest?
- e) Was the disclosure a qualifying disclosure to the Claimant's employer? (S.43C ERA 1996)

2 VICTIMISATION

2.1 The Claimant relies on the following Protected Acts as set out in Table 2 below:

Table 2

Claimant Reference	Date	Description
FAPA1	23.01.2020	Obstruction of Ms Newton's Work – Meeting 1
FAPA2	29.02.2020	Meeting 2 with Ms Eves
FAPA3	13.02.2020	Meeting between Ms Newton and Mr Austin on 13 February 2020

2.2 Does each alleged protected act as set out table 2 amount to a protected act? (S.27 EA 2010)

2.3 In particular did the Claimant do any of the following:

- a) giving evidence or information in connection with proceedings under EA 2010 (S.27(2)(b));
- b) doing any other thing for the purposes of or in connection with EA 2010 (S.27(2)(c));
- c) making an allegation (whether or not express) that the Respondent or another person has contravened EA 2010 (S.27(2)(d)).

2.4 Did the Respondent believe the Claimant had done or may do a protected act?

3 DETRIMENT:

3.1 The Claimant alleges the following detriment as set out in Table 3 below:

Table 3

Claimant Reference	Date	Description
150.3	23.01.2020	Alleged inadequate and evasive approach adopted by the Respondent to the protected disclosures
150.4	18.02.2020	Alleged that the Respondent made no attempt to keep the Claimant's disclosures confidential
150.5	17.03.2020	Alleged the Respondent took no steps to communicate the results of the investigation
150.19	23.01.2020	Alleged that the Respondent failed to protect the claimants by suspending those against whom the allegations were made
150.20	23.01.2020	Alleged that no reasonable investigation into the whistleblowing disclosures took place.
150.21	18.02.2020	Alleged that the Respondent failed to interview key witnesses or to obtain relevant documents
150.9	26.02.2020	Not communicating outcome of Reg Davies's report
150.15	17.02.2020	Alleged that Mr Hughes failure to properly investigate whistle-blowing email
RELATING TO THE TERMINATION OF THE CLAIMANT'S CONTRACT		
150.11	12.02.2020	Alleged that placing Mr Austin in a competitive selection process application for his own role against his deputy on February 12 2020 and then not applying any such process
150.2	18.02.2020	Alleged that Ms Eves split the Finance for Grenfell Team demoting FA. Lesley Shields and Mr Rahman were not suspended, and Lesley Shields was effectively promoted.
150.12	09.04.2020	Alleged that the process for deciding whether to continue to employ and/or to terminate the engagement of Mr Austin.
150.16	31.03.2020 - 09.04.2020	Alleged that no documents were assembled or shown to either claimant prior to the dismissal
150.17	31.03.2020 - 09.04.2020	Alleged that the claimant was not given the chance to be heard or to his response to the alleged reasons for termination of the contract
150.18	31.03.2020 - 09.04.2020	Alleged that no opportunity to have a colleague present at the meeting when dismissed.

150.13	09.04.2020	The decision to terminate the engagement of Mr Austin.
150.14	31.03.2020 - 09.04.2020	Alleged termination of Mr Austin was with immediate effect and security and network access were instantly withdrawn preventing a hand over

- 3.2 In respect of each alleged detriment as set out in Table 3 was the Claimant subject to a detriment because they made
- A protected disclosure; and/or
 - a protected act?

4 HARASSMENT:

- 4.1 The Claimant alleges the following harassment as set out in Table 4 below:

Table 4

Claimant Reference	Date	Description
FAHA01	29.11.2019	Lesley Shields alleged comment: "Yes, I think they are probably sleeping together".
FAHA02	29.11.2019	Lesley Shields allegedly stated "she's (Ms Newton) sucking his (Mr Austin) cock about now".
FAHA03	Nov 2019 – Feb 2020	Alleged that Ms Newton was described repeatedly by Lesley Shields as "bitch" and "cunt"
FAHA04	Nov – Feb	Lesley Shields's persistent claims that Mr Austin was lazy and incompetent

NB: the final alleged matter in this table had not been referred to in the agreed list of issues and, in discussion with the Tribunal, Mr Austin indicated that it was not of itself a substantive claim of harassment.

- 4.2 Did each alleged act of harassment take place and if so, was it as described by the Claimant?
- 4.3 Does each alleged incident of harassment constitute sexual harassment? (s.26 EA 2010)

Ms Newton's list

5 WHISTLEBLOWING CLAIMS:

- 5.1 The Claimant relies on the following alleged disclosures set out in Table 1 below:

Table 1

Claimant Reference	Date	Description
MNPD1	23.01.2020	Alleged MN oral disclosure to Taryn Eves RE: obstruction of Ms Newton work
MNPD2	29.01.2020	Alleged MN oral disclosure to Taryn Eves in a meeting RE alleged obstruction and harassment
MNPD3	18.02.2020	Meeting between MN and FA on 13 February 2020 and subsequent email RE alleged harassment and the

		Respondent's to take sufficient action.
MNPD4	18.02.2020	Details of Ms Newton's interview with Reg Davies

5.2 For each alleged protected disclosure as set out in Table 1 the following issue should be considered:

- a) Was there a disclosure of information?
- b) ~~Does the disclosure~~ Did the C believe that the information tended to show that one or more of the six specified types of malpractice or failure has taken place, is taking place or is likely to take place? (section 43B(1) ERA 1996)
- c) Did the C have a reasonable belief that the disclosure tended to show one of the above types of malpractice?
- d) ~~Was the disclosure in the public interest? If so how can the disclosure be said to be in the public interest?~~ Did the Claimant have a reasonable belief that the disclosure was in the public interest?
- e) Was the disclosure a qualifying disclosure to the Claimant's employer? (S.43C ERA 1996)

6 VICTIMISATION

6.1 The Claimant relies on the following Protected Acts as set out in Table 2 below:

Table 2

Claimant Reference	Date	Description
MNPA1	23.01.2020	Email from MN to Taryn Eves RE alleged obstruction of Ms Newton's Work
MNPA2	23.01.2020	Meeting between MN and Taryn Eves RE alleged obstruction of MN work
MNPA3	29.02.2020	Meeting 2 with Taryn Eves RE alleged obstruction and harassment
MNPA4	13.02.2020	Meeting between Ms Newton and Mr Austin on 13 February 2020 Re alleged comments
MNPA5	13.02.2020	Email between Ms Newton and Mr Austin on 13 February 2020 Re harassment

6.2 Does each alleged protected act as set out table 2 amount to a protected act? (S.27 EA 2010)

6.3 In particular did the Claimant do any of the following:

- a) giving evidence or information in connection with proceedings under EA 2010 (S.27(2)(b));
- b) doing any other thing for the purposes of or in connection with EA 2010 (S.27(2)(c));
- c) making an allegation (whether or not express) that the Respondent or another person has contravened EA 2010 (S.27(2)(d)).

6.4 Did the Respondent believe the Claimant had done or may do a protected act?

7 DETRIMENT:

7.1 The Claimant alleges the following detriment as set out in Table 3 below:

Table 3

Claimant	Date	Description
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Reference		
150.3	23.01.2020	Alleged inadequate and evasive approach adopted by the Respondent to the protected disclosures
150.4	18.02.2020	Alleged that the Respondent made no attempt to keep the Claimant's disclosures confidential
150.5	17.03.2020	Alleged the Respondent took no steps to communicate the results of the investigation
150.19	23.01.2020	Alleged that the Respondent failed to protect the claimants by suspending those against whom the allegations were made
150.20	23.01.2020	Alleged that no reasonable investigation into the whistleblowing disclosures took place.
150.21	18.02.2020	Alleged that the Respondent failed to interview key witnesses or to obtain relevant documents
150.9	26.02.2020	Not communicating outcome of Reg Davies's report
RELATING TO THE TERMINATION OF THE CLAIMANT'S CONTRACT		
150.6	23.03.2020	The alleged process applied to decide whether to continue to engage Ms Newton.
150.7	31.03.2020	The decision to terminate Ms Newton's contract
150.8	Up to 31.03.2020	Alleged 'failure' to consider other roles for Ms Newton and/or to re-deploy her on Covid-19 and/or otherwise.
150.10	Up to 31.03.2020	Alleged Second (wider) request to re-deploy Ms Newton to Covid-19.
150.16	31.03.2020 - 09.04.2020	Alleged that no documents were assembled or shown to either claimant prior to the dismissal
150.17	31.03.2020 - 09.04.2020	Alleged that the claimant was not given the chance to be heard or to his response to the alleged reasons for termination of the contract
150.18	31.03.2020 - 09.04.2020	Alleged that no opportunity to have a colleague present at the meeting when dismissed.

- 7.2 In respect of each alleged detriment as set out in Table 3 was the Claimant subject to a detriment because they made
- a) A protected disclosure; and/or
 - b) a protected act?

8 HARASSMENT:

- 8.1 The Claimant alleges the following harassment as set out in Table 4 below:

Table 4

Claimant Reference	Date	Description
MNHA1	29.11.2019	Lesley Shields alleged comment: "Yes, I think they are probably sleeping together".
MNHA2	29.11.2019	Lesley Shields allegedly stated "she's (Ms Newton) sucking his (Mr Austin) cock about now".
MNHA3	23.01.2010	Alleged that Ms Newton was described repeatedly by Lesley Shields as "bitch" and "cunt"
MNHA4	November 2019 to February 2020	Alleged comment: "You are going to talk to me (...) Don't you walk away from me, young lady"
MNHA5	29.11.2019	Alleged comments by Ms Shields RE MN and FA leaving together.
MNHA6	27.02.2020	Alleged monitoring of the Claimant's diary and disputing a meeting.
MNHA7	November 2019 to February 2020	Alleged comments by Lesley Shields RE hiring on MN.

- 8.2 Did each alleged act of harassment take place and if so, was it as described by the Claimant?
- 8.3 Does each alleged incident of harassment constitute sexual harassment? (s.26 EA 2010)

9 TIME LIMITS

- 9.1 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
- 9.2 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
- 9.3 If not, was there conduct extending over a period?
- 9.4 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
- 9.5 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
- a) Why were the complaints not made to the Tribunal in time?
 - b) In any event, is it just and equitable in all the circumstances to extend time?

10 REASONABLE STEPS

- 10.1¹ Did the respondent take reasonable steps within the meaning of section 109 of the Equality Act 2010 to prevent Ms Shields from committing any act of harassment found to have been proven?

¹ This issue was not in the agreed lists but we ultimately heard evidence and submissions on the point without objection from the claimants.

Findings of fact

The hearing

5. We heard from the claimants on their own behalf and also from Mr D Nahar. Ms Ronica Barard gave a witness statement for the claimants but did not attend to give oral evidence. For the respondent, we heard from Mr Christopher Buss, Mr David Hughes, Ms Debbie Morris, Ms Lesley Shields, Mr Mohammed Mahmoud, Ms Samira Gengi and Ms Taryn Eves.
6. We had an electronic bundle of 1342 pages, a supplementary bundle from the claimants of 253 pages and finally a remedies bundle of 163 pages which we did not have to consider at this stage of the proceedings, in which we were considering liability only.
7. The claimants commenced the hearing by asking us to consider their application to strike out the respondent's response for alleged failures to comply with case management orders. The claimants withdrew their strike out application after discussion of the principles the Tribunal would have to apply and the amount of hearing time that would be absorbed by the application; hearing the application would have created a significant risk that the evidence and submissions could not be completed in the time allocated, had the application been unsuccessful.
8. The respondent applied to admit into evidence some late documents which we concluded were variously relevant only to remedy or insufficiently relevant to justify their admission and we did not admit those documents.
9. We rejected the claimants' application to exclude some of the witness statements relied on by the respondent where the claimants' objection was simply that they had not been signed at the point when they were exchanged.

People

10. The following is a list of the main individuals we heard from or about and their positions and responsibilities:

David Hughes: Director of Audit, Fraud, Risk, and Insurance. He also had whistleblowing responsibility. As named whistleblowing officer he would review all whistleblowing disclosures. If they were within his remit – fraud and corruption – he would instigate an investigation within his own team. Otherwise, if the disclosures related to conduct or safeguarding, he would refer them to another appropriate service.

Chris Buss: Director of Finance from August 2017, interim Executive Director of Finance from March 2018, left respondent July 2018 after permanent appointment made

Taryn Eves: Director of Financial Management since February 2018

Lesley Shields: Group accountant, agency worker for R since 9 January 2017
Mohamed Mahmoud: Finance and business support officer
Aklakur Rahman: Principal accountant, Grenfell, an agency worker engaged since November 2016
Ronica Barard: Finance Manager for Grenfell
Mike Fitch: Accountant
Deepa Thakkar: Senior accounting assistant
Graeme Wiltsher: Accountant, finance assistant
Ray Chitty: Head of Insurance Services
Robyn Fairman: Acting Executive Director Grenfell
Mike Curtis: Executive Director of Resources and Assets
Reg Davies: Independent HR consultant
Sue Hollingworth: HR business partner
Jacquie McIntosh: Interim Head of Operations
Sophie LeCalve: Insight and Intelligence Manager
Joe Philp: Implementation manager – Grenfell
Andy Hyatt: Head of Fraud
Debbie Morris: Director of HR and Organisational Development
Dipankar Naha: Senior accountancy assistant
Deepa Thakkar: Senior accountancy assistant
Barry Quirk: Chief Executive
John O'Rourke: Head of Operational HR & OD

Policies and procedures

11. We were referred to the following relevant policies:

Whistleblowing policy

12. The following section was relevant:

4. HOW TO RAISE A CONCERN?

4.1 You may raise your concern by telephone, in person or in writing. The earlier you express your concern, the easier it is to take action. You will need to provide as much detail as possible including:

- *the nature of your concern and why you believe it to be true*
- *the background and history of the concern (giving relevant dates)*

4.2 Although you are not expected to prove beyond doubt the truth of your suspicion, you will need to demonstrate you have a genuine concern relating to suspected wrongdoing or malpractice within the Council and there are reasonable grounds for your concern

Recruitment and selection guidance

13. The following section was relevant:

The guidance aims to:

- ensure that recruitment and selection methods and practices are fair, efficient, thorough and consistently applied across the Council;*
- all appointments are made on merit to ensure the selection of the best candidate and no prospective or existing employee receives less favourable treatment because of a protected characteristic in accordance with the Equality Act 2010;*
- all recruitment is made in accordance with our commitment to being Disability Confident to include an offer of interview to all candidates declaring a disability who demonstrate that they meet the essential criteria for a post;*
- ensure that there are reasonable levels of core employees who reflect the council's diverse community;*
- fill vacancies quickly to support day-to-day service provision and*
- fulfil the Council's vision and values.*

Responsibilities:

Employees involved in recruitment are responsible for ensuring that:

- All good practice, guidance and legislative requirements contained in this document are followed;*
- Unlawful discrimination during any part of the recruitment or selection process does not occur;*

...

Advertising

All jobs are advertised in Success Factors and will appear in the 'internal job opportunities' tile and on the Council's website. This is the standard means of advertising.

If you require advice on external media, please contact Penna via retained HR.

The advertisement must:

- accurately reflect the post title, department, location, salary, responsibilities of the job, a summary of the selection criteria, person specification and include any contractual obligations*
- reflect the Council's commitment to equal opportunities in service and must not discriminate directly or indirectly against people with a protected characteristic*

□ *should include positive encouragement for under-represented groups where Appropriate*

...

Employees should not take part in any recruitment involving a relative, personal relationship or where there might be a conflict of interests.

Policies / practice in relation to agency workers:

14. We were not referred to any general policies or procedures about the engagement of agency workers. The parties agreed that agency staff were provided at a premium in terms of cost to the respondent. Mr Austin said that if there were performance concerns about an agency worker, it would be normal practice to terminate the engagement rather than follow a performance process and that appeared to be an agreed position as between the parties.

Chronology

15. On 15 March 2017, Mr Austin was engaged by the respondent for three months; he was an agency worker employed in an interim position of group finance manager / deputy CFO. He is a CIPFA qualified accountant who has worked in local government for many years. His contracts were subsequently renewed for three or six months at a time. He had a one month notice period. He was paid at a rate of £650 a day at the time his contract was terminated.
16. On 14 June 2017, the tragic fire occurred at the Grenfell Tower. The respondent is the local authority with responsibilities for the residents of Grenfell Tower.
17. The respondent had many responsibilities arising from the tragedy. Broadly speaking we understood that a directorate was set up to manage those responsibilities and a dedicated finance team was also put together. Inevitably those activities and structures would be time limited. At some point a body called Finance for Grenfell was set up which was the team which provided accountancy support to the respondent's Grenfell response.
18. This body was referred to in various ways in the evidence, but it what we mean when we refer to the Grenfell finance team.
19. In October 2017, Ms Eves was appointed as head of financial strategy. Mr Austin had also applied for that role. There was then a restructure and Ms Eves became director of financial management, a role she had been acting up into. Ms Eves had seven finance teams reporting to her and was responsible for 84 staff.
20. Chris Buss was managing the Grenfell finance team at the level above Mr Austin until he left in August 2018, after which it fell under Ms Eves' management

21. In January 2018, Mr Austin prepared a business plan for the Grenfell finance team and on 24 January 2018 sent a copy to Mr Buss.
22. As Mr Austin said: *I have set out a work plan that is in effect a business case for extension of the existing staff.*
23. Our understanding was that Finance for Grenfell was being staffed by agency staff because of uncertainties as to what was required and how long it would be required for.
24. Mr Buss wrote back on 25 January 2018, generally agreeing Mr Austin's plan.
25. In February 2018, Ms Eves became director of financial management. Mr Austin remained as head of Finance for Grenfell.
26. On 6 March 2018, Mr Austin emailed his business plan to the Finance for Grenfell team. He said it was a draft and comments were very welcome.
27. On 8 March 2018, Mr Austin emailed a copy of the plan to Ms Fairman:
The current business plan on which the budget is based assumes that a full service will be required for the next two years followed by stepped reductions over the next two years to a service focused of finalising the legacy arrangements and departing in 2023-24.
That strategy is probably right, but there are options to reduce the size of the team. The first option in the appendix shows the team reducing from April 2020 onwards — one year earlier than the original plan. The team also does not need the full budget from next year onwards. This option would save £282,450 over the next five years.
28. In November 2018, Mr Austin drafted a 5-year plan. This was sent to Ms Eves on 16 November 2018 in a form which included comments by Ms Shields. Mr Austin received no formal response from Ms Eves or any other senior person. There was a dispute between the parties as to the status of this document. The claimants said that it had been accepted or approved by the respondent. The claimants relied on the following section:

Legacy Records

When the Council begins to defend insurance claims and public liability litigation, it will need to be able to quantify how much families and individuals have received in support from the Council. The Council's offer has been varied and diverse and its record keeping is similarly disparate. The Council has at different times provided emergency and temporary accommodation, resettlement packages, rent/service charge, Council tax and utility bill free periods as part of its housing offer; whilst also providing food allowances, travel costs, respite breaks, one-off contributions and additional support as part of its welfare offer. The different payments are held on different systems with different levels of granularity, depending on the normal practices of the department maintaining the record. Thus, Housing's standard unit is a family, whereas Care and Support record transactions at the individual level. Some data is formally structured, but lacking in readily accessible detailed records (e.g. Food SB49 payments) whereas other data cannot be clearly linked to particular

families without considerable work on the existing records (e.g. hotel costs). There is also data held by Insurance where they have arranged payments.

All of this information needs to be brought together in an accessible format that provides adequate ledger data and supporting documents to back submissions in a legal claim. This is a very large piece of work that is not being undertaken at present; instead the Finance for Grenfell position has been trying to ensure that nothing is done today that will make the situation worse in the future rather than trying to sort out any deficiencies in the old data. Current service demands mean that we are a long way away from having the capacity to sort out the legacy data. These legacy support requirements mean that financial staff are likely to be amongst the last to leave the dedicated Grenfell support set up.

29. A significant issue between the parties ultimately was whether the respondent had a need for this legacy project.
30. Mr Austin said that his five year plan was approved and that that plan recognised that what was described as 'legacy work' would continue until the end of March 2024. He stated in his plan that: 'The legacy support requirements mean that financial staff are likely to be amongst the last to leave the dedicated Grenfell support arrangements.' He had sent the plan to Ms Eves and the executive director of Grenfell. He said that although there was no email saying the plan was approved, there was no email saying it had not been approved. He said that there was no formal approval process.
31. Mr Austin said that approval of the plan meant that his role and the role which Ms Newton came to fill would be required for the period described in the plan. He said he had a reasonable expectation that his role would be required until March 2024. He accepted the situation was dynamic but said that there was no replacement business plan which changed that picture. He said that the plan was that he and Ms Shields would be 'the last out the door', despite being the most expensive staff in the Grenfell finance team.
32. The respondent's evidence differed from Mr Austin's. Ms Eves did not recall seeing the five year plan but said that the Grenfell finance project was always time limited. The Grenfell directorate itself was set up to manage the immediate aftermath of the fire and set up processes for recovery. Given the quantity of work, it made sense at the outset for there to be a dedicated finance team but the intention was always to transition the financial processes into the general finance team at an appropriate time. She had never approved a five year plan and had checked with Ms Fairman, who also said she had not approved it.
33. Mr Buss told us that the Grenfell finance service was always intended to be of short duration. Everyone in the team was on a temporary contract or was an agency worker. He did not recall agreeing any five year plan for the service and his recollection was that the intention was for the team to be in post for two to three years. If he had felt the service was required for five years he would have recruited permanent staff.
34. We concluded that Mr Austin's plan was produced and circulated but never signed off or officially approved by anyone senior to Mr Austin. No one explicitly challenged Mr Austin on it and it seems likely it was forgotten about by others. It certainly was not regarded as set in stone as it was recognised that the needs in relation to Grenfell

were changing over time. The document itself recognised that there were different possible courses. We note that the document was also somewhat self-serving since it suggested that Mr Austin's role would need to be retained until 2024.

Division of work between Mr Austin and Ms Shields

35. Mr Austin and Ms Eves were the most senior staff in Finance for Grenfell. There were significant differences between the parties as to what work Ms Shields and Mr Austin respectively were doing, how much work they were doing and the quality of that work.
36. Ms Eves' evidence was that Ms Shields and Mr Austin worked on a very similar level, although in the structure chart Ms Shields reported to Mr Austin. She said that Mr Austin was involved in negotiating with government and external bodies and Ms Shields was the 'go-to person internally for delivery'. She said that she and others approached Ms Shields with operational queries. Ms Shields said that she increasingly took responsibility for managing the rest of the team and for revenue budget monitoring.
37. Ms Eves said that Mr Austin left the day to day running of the finance team to Ms Shields. Ms Eves said that she kept Mr Austin on because of his in-depth knowledge of Grenfell. She said that by 2020, the legacy aspects of the work were winding down and they had less need for Mr Austin's input. She commented that Mr Austin had a reputation for being lazy and that Kevin Bartlett, previous executive director, and Chris Buss had flagged performance concerns.
38. Mr Austin by contrast gave evidence about what he said were Ms Shields' work deficiencies. He said that in relation to the 2019 budget, Ms Shields was supposed to upload budgets but she missed deadlines. Further criticisms made by Mr Austin about Ms Shields are described below. Ms Shields was responsible for capital accounting and ultimately for the management of the finance team who were responsible for producing the financial statements we discuss further below.
39. We note that structurally Mr Austin was Ms Shields manager and there were no documented performance concerns about Ms Shields. Ms Eves' evidence was that Ms Shields worked very hard.
40. Asked about why he had not raised performance concerns with Ms Shields if he genuinely had them, Mr Austin said that he had meetings with Ms Eves to express concern that Ms Shields had taken on too much work. We noted that Mr Austin said later to Mr Davies in the course of his interview about the complaints raised in February 2020:
FA stated that he felt LS was failing in her task, so he wanted to talk to TE to take excess work from LS
41. It appeared from all of the evidence we saw, including a quantity of emails which to an extent reflected which tasks were being carried out by Ms Shields and which by

Mr Austin, that Ms Eves' account of the division of labour between Mr Austin and Ms Shields was a fair one.

42. In August 2019, a member of the Finance for Grenfell team who was an agency worker was asked to remain on leave at home whilst an allegation made outside of work was considered by the respondent. We mention this because it was raised by the claimants as demonstrating that 'suspension' of agency workers was a practice known to the respondent.

Financial statements

43. Financial statements are documents which began to be produced in earnest by the respondent in Autumn 2019. They were records of payments made to Grenfell Tower residents for food and other necessities but not housing costs. Previously some ad hoc statements had been produced after external requests or complaints but by July 2019 there was a request to produce such statements for all residents and there was then a formal exercise to produce the statements in bulk. It was still the case that there might also be urgent requests for individual statements, for example from a resident's solicitor. Information for the statements had to be gathered from other parts of the Council and production of the statements was time consuming. Preparation of the statements required care and precision.
44. In July 2019, Ms Barard and Ms Thakkar were engaged as more resource for the production of financial statements. Structurally, Ms Barard managed the financial statements team and was herself managed by Mr Rahman.
45. It was clear from the documents we saw that there could be tensions due to competing priorities including tensions with other parts of the Council. There was for example pressure from Ms Fairman to move faster on the statements because there was pressure from outside the Council. There had to be further recruitment and training of staff and systems had to be put in place for the bulk production of the statements. These responsibilities ultimately fell on Ms Shields.
46. We were referred to documents showing that Ms Fairman was complaining in September 2019 about the pace at which the financial statements were being produced.
47. Mr Austin told the Tribunal that Ms Shields was responsible for the slow pace of the financial statements but at the time, for example in an email to Ms Shields of 2 October 2019, he said that there was a "blame culture creeping into what should be a coordinated push to process the statements." He was pointing out bottlenecks which occurred elsewhere in the Council and also the tensions between the demand for the statements and other work the team had, such as dealing with complaints. In other words he was not laying blame at Ms Shields' door. Mr Austin was the head of service and it appeared that Ms Shields had taken on overall responsibility for the financial statements, which was a significant addition to the existing workload. Mr Austin did not at the time identify any fault on the part of the finance team or take

action to address any such problem. Overall, it appeared that the expectations from outside of the finance team may have initially been unrealistic.

48. On 24 October 2019, Mr Austin was due to attend a meeting with HMRC. This related to a project to reclaim VAT on hotel bills incurred on behalf of residents. Mr Austin was leading this project and he was supposed to attend the meeting with Joanna Monaghan, a junior employee. Mr Austin did not turn up to the meeting and Ms Shields then joined remotely to support the junior member of staff. Mr Austin denied that he failed to attend this meeting but we accepted Ms Shields' evidence on this point. We did not believe she would have invented the incident, which was not central to the case, and there was no documentary evidence which contradicted her account.

Programme manager role

49. Also in the autumn of 2019, Mr Austin turned his attention to the housing legacy project.
50. At some point Mr Austin approached Ms Newton about a role as programme manager for the project. Ms Newton and Mr Austin had worked together at the London Borough of Lambeth in 2005. Mr Austin said he did not approach an agency about the role because it required a very specific skill set which he knew Ms Newton had and which justified a direct appointment.
51. There was some uncertainty as to precisely when Mr Austin first approached Ms Newton about the role. The notes made by Reg Davies during the investigation into the complaints raised in early 2020 included the following:

MN: Advised that FA approached her in September 2019 and advised that he had a problem and he had been studying her career on LinkedIn. FA advised her that he had a whole lot of data that was unstructured, and so he and she agreed to meet to discuss.

...

Explained that she advised FA to make a business case for her role to give to his manager, Taryn Eves, and that she (MN) was happy to go through a competitive process

Explained that she was supposed to be hired sooner, but it was not approved for a while and she had to ask FA what was happening as a new role had emerged elsewhere.

52. The notes made by Mr Davies were challenged by Mr Austin and Ms Newton, who had not been given an opportunity to comment on the drafts after their meetings with Mr Davies.

53. Mr Austin denied he had discussed the role with Ms Newton in September 2019 and denied that it was Ms Newton who advised him to prepare a business case. He denied a suggestion put to him in cross examination that he had colluded with Ms Newton to get her appointed to this role.
54. Ms Newton said that the notes were inaccurate and she had not met with Mr Austin in September. They had had a brief conversation in October 2019 when they met for a drink. She said that Mr Austin had offered her the role in November.
55. We concluded that we had no reason not to accept the notes as a reasonably accurate if not verbatim account of what was said in the meetings with Mr Davies and recorded by the notetaker . We could certainly see no reason why the notes would be deliberately false although we accepted they might contain the kind of errors which could arise from the notetaker being unfamiliar with the subject matter under discussion. 'September' would be an unlikely error for 'November' and we could see no reason why the notes would refer to Ms Newton advising Mr Austin to make a business case if that did not reflect what Ms Newton had said to Mr Davies.
56. What is significant about the date is that, although Mr Austin was discussing the possible role with Ms Newton, his discussions with others in the respondent took place much later. In particular, he did not consult with any of those internal to the Council for whose departments the project was said to be useful. The fact that he involved Ms Newton significantly before he discussed the possible appointment with anyone in the Council helped lead to a situation in which Ms Newton's appointment was regarded by Ms Shields in particular with suspicion.
57. On 18 October 2019, Mr Austin wrote to Ms Newton to say he had had 'some further thoughts on the scope of the potential project role.' He set out what the areas it would cover were:
 - The housing costs project
 - Possible responsibility for records of overseas visitor payments which was currently the responsibility of another team
 - Devising a template for SARS
 - Acting as a go between between the Grenfell finance team and other sections in relation to finance statements.
58. It was unclear whether Mr Austin had spoken to Ms Eves about the project and the role by this point. It was suggested that there was information in the email which was confidential to the respondent and should not have been disclosed to Ms Newton. We heard some inconclusive evidence on this issue and were unable to reach any conclusion about it.
59. Ms Eves said that Mr Austin had a conversation with her in around October 2019 which was an informal discussion about housing legacy work. It appeared that this discussion probably took place around 24 October 2019 from an Outlook invitation in the bundle. Ms Eves suggested that she, Mr Austin and Ms Shields have a meeting to discuss the work. This was arranged for 30 October 2019. That same day Mr Austin sent Ms Eves and Ms Shields documents setting out the programme manager role and a business case for it.

60. Ms Eves saw the business case on 30 October. She said that Mr Austin at the meeting already had someone in mind for project and was pushing for it. Ms Shields had concerns as to whether some of the work needed to be done, needed to be done immediately, or needed an external person to be brought in to do the work. She was also concerned that some of people who would need to be accessed were tied up in meeting budgetary deadlines. Mr Austin assured them that there would be no impact on the team. Ms Eves said that it was discussed that they would consider the appointment further in two weeks.
61. On 31 October 2019, Mr Austin emailed Ms Eves and Ms Shields:
Further to our discussion yesterday, I followed up Lesley's point about engaging with Housing and asked Rachel Sharpe her views on getting someone in to kick start the housing costs legacy work. She recognised that this needed doing and thought that it was an excellent idea. The costs aspect is not being picked up in their current legacy work.
62. On 05 November 2019, Mr Austin wrote to Ms Eves and Ms Shields asking them if they were happy for him to go ahead and appoint to the post or did they need a further discussion.
63. Ms Shields replied:
I have some comments before we go ahead.
I haven't managed to write them down yet. I'm unhappy with some of the text in the business case. I hadn't had chance to read it before last week's meeting.
I will try and get them across to you by close of play tomorrow.
64. Mr Austin then responded:
If we can agree in principle that we are going ahead, I can set the ball rolling. I am more than happy to be flexible to make this work and we take on board your comments.
65. On 6 November 2019, he sent an email to Ms Eves in relation to an email he had received:
This request is quite ironic as it goes to the heart of the hotel costs project. There is no ready answer to this question without doing that work.
Are we any nearer to agree the extra Project Resource? Lesley wants to add some comments to the business case, but I think accepts that we should press ahead with this. I would be keen to start sooner rather than later given that Christmas will be on us.
66. Ms Eves wrote to Mr Austin that day:
I would like us to take on board Lesley's comments in terms of this resource so if you can pick up with her this week before we progress that would be helpful.
In terms of the Grenfell finance team, it has grown quite considerably over the last 6months – much of this is related to bespoke pieces of work, such as the statements but we do also need to ensure that everyone is working to full capacity

A couple of comments have been made to me recently and I have defended the size of the team in terms of the ask of them but we do both need to assure ourselves that we are using the resources we have.

There is a lot of joint work with service colleagues and in particular around the statements. I know I raised before but think we do need to re-consider whether some of the resources – particularly those doing statements and the legacy work would be more productive if they were co-located with the service.

I also have a challenge with accommodation as you know that I am also trying to address.

67. Mr Austin said that, although no document evidenced this, Ms Eves did agree to the appointment of Ms Newton. He said that the approval was evidenced by a document to Commensura (an organisation which, as we understood it, was responsible for the administration of agency appointments) which he said showed that Ms Eves had approved the appointment on 8 November 2019. We were taken to an email from Commensura to Ms Shields dated 9 December 2019 which showed that on 11 November 2019 an order for a programme manager had been filled. Mr Austin said that this proved Ms Shields was the person who approved the order. Ms Shields said that it was a standard email sent to her as the person Commensura sent such notifications to.
68. We saw emails dated 7 – 8 November 2019 which showed arrangements made by Mr Austin to set Ms Newton up as a new starter and arrange ID and equipment for her. Ms Newton was employed at a daily rate of £450.
69. On 8 November 2019, Mr Austin wrote to Georgina Clark in HR
- Hi Georgina,*
- I have completed the form below. Could Monika be put on weekly timesheets/payroll?*
- Thanks for your help. If HR have any queries, Taryn Eves has approved this recruitment as Director of Financial Management and my line manager.*
70. Mr Austin said that Ms Clark was based in the same building as himself and Ms Eves. He said that this showed he must have obtained approval from Ms Eves as he would not have risked being caught out in an untruth.
71. Mr Austin said that he had complied with Council policy by not being involved in the decision to hire Ms Newton, which he said was a decision made by Ms Eves. He said he took himself out of the process and let Ms Eves make the decision.
72. The terms of Ms Newton's appointment were that she was engaged as an agency worker on a fixed term basis until 31 March 2020 to do the first stage of research into the housing legacy project. An extension of the contract would occur if a decision was made to proceed with the project.
73. Ms Newton gave evidence about her impression as to how long the role would last. She said that she was told by Mr Austin that 'stop would not be an option' and that

the legacy project definitely needed doing, but internal documents showed that the initial stage was scoping to see if the project was required at all. There was no expectation on the part of the respondent that the project would definitely be required. There was clearly a tension between what Mr Austin was telling Ms Newton about the longevity of the appointment and what he was saying internally. Ms Newton was asked in cross examination if she felt misled by Mr Austin and she said that she did.

74. On 12 November 2019, Mr Austin sent Ms Shields and Ms Newton an invitation for a meeting on 13 November entitled ‘Housing Costs Project Briefing’.

75. Ms Shields emailed Mr Austin the same day:

I am happy to meet Monika tomorrow. Following our meeting yesterday afternoon I thought I had agreed for you to ask her in for a chat. I am assuming that's the case as you have set the meeting over lunch time, but just wanted to be sure.

It does concern me that you already have her set up on email. Does that mean she is starting tomorrow?

I would like to have time for us to review the Team in general as we discussed with Taryn yesterday lunch time. It may be that Aki is a better fit for the Housing work and we employ someone to deliver the Financial Statements and manage that Team. I don't feel that the Team have been given the space to explore these types of options or that we are giving the existing staff opportunity to move around and develop.

76. Mr Austin replied:

I thought we had agreed that she would start tomorrow and that the first thing to do was to explore the brief — hence the meeting, which would naturally kick off this work. We agreed that it was important that we defined every member of the team's roles and responsibilities and that you would be involved in defining the scope of this project. I suspect once we know what this will entail, there will be plenty of work (probably too much work) to go round and plenty of opportunities for the rest of the team to become involved.

...

As you know, I have given this much thought. I said yesterday, I am sorry if my approach, which was intended to avoid directing yet more work in your direction, came across as side—lining you. It wasn't meant to, but if it came across that way, then that is solely my fault. It was good that you felt able to speak frankly and make me aware of some issues that I had not previously noticed. I am sure we can work together to resolve these. I am also very clear that bringing in additional resource will not add to your management burdens, far from it — I want this to relieve some of the pressure points. I believe we share the same objectives and work very well together. I hope you understand what I am trying to achieve and that we can work together to make this a success. I have a sense of urgency about this as we are being asked for this legacy data and the longer we leave commencing this project the more knowledge will have left the organisation, hence my desire to start this work now. If we approach this on a 'see how it goes' basis and provide each other with honest feedback, I believe that we can make this a real success and build a team that really delivers.

77. We make a number of observations about these emails. It was clear that there was no 'agreement' as to when Ms Newton would start or that she would start at all and we find that Mr Austin was aware of that. Mr Austin acknowledged in his email that Ms Shields had a heavy workload and that there were no existing difficulties in their working relationship at that point. He assured her that the appointment of Ms Newton would not add to her management burdens.
78. Ms Eves told the Tribunal that when she realised Ms Newton had already been appointed, it did not seem to her fair to change position if there had been an internal misunderstanding and she said that she had to trust Mr Austin's judgment. She had not in fact agreed the appointment. She would have expected that Mr Austin would have spoken about the project in advance with people within the directorate and also with Ms Sharpe, Director of Housing Needs, Mr Philp, and others who would be expected to have involvement such as Mr Chitty, Mr Hughes and Mr Hyatt.
79. Mr Austin was challenged about the appropriateness of the recruitment process he followed and his evidence was that he complied with the respondent's recruitment policy because he did not make the decision on Ms Newton's appointment; Ms Eves did. A direct appointment was appropriate, and he took himself out of the decision making because he knew Ms Newton. Our findings were that in fact Ms Eves had not approved Ms Newton's appointment before Mr Austin began setting her up to start her engagement with the respondent and that in all material ways, he was responsible for the appointment. He had not consulted with relevant individuals as he should have done and the appointment was not in accordance with the spirit of the respondent's recruitment policies.
80. On 13 November 2019, Ms Newton started work. She had a meeting with Mr Austin and Ms Shields.
81. Mr Austin and Ms Newton said that Ms Shields said she did not see the point of the project, she had opposed it and it had still gone ahead. She did not think that Ms Newton should have been engaged but she would work with her as she was a professional. The amount of that work would be extremely limited as she was too busy.
82. Ms Shields told us that at the meeting she had a number of questions about how Ms Newton's role would function, who would be managing the role, whether Ms Newton was part of the team as a whole, what information she would need from the team and what resources. She said that Ms Newton said: 'I know you didn't want me here'. Ms Shields responded by saying she had nothing against her personally but she did object to the way she was brought in and the way that that this had been handled but that issue was between her and Mr Austin. She explained that she had raised her concerns before Ms Newton was brought in and felt that her appointment did not go through due process.
83. We did not feel we had to choose between what were basically similar accounts of a meeting which no one had minuted. The general gist was that Ms Shields expressed the view that she was not convinced by the project or happy about the way Ms Newton was appointed but said that she would work with her.

84. We considered that the way Mr Austin had gone about appointing Ms Newton without waiting for approval of completing his discussions with Ms Eves and Ms Shields had created tension. Ms Shields was perhaps too frank about her reservations with a new appointee but she was under considerable pressure of work at the time and Mr Austin had behaved inappropriately. Ms Eves should really have stepped in when she realised that Mr Austin had proceeded with the appointment without her authorisation.
85. Ms Shields' evidence was that there was a change in Mr Austin's behaviour after Ms Newton's appointment. He came in to work late and went home early, and often took Ms Newton for lunch. She said that there were grumbles in the team about how little work Mr Austin was doing. Mr Austin was going to all of Ms Newton's meetings when there was no need for him to do so.
86. Ms Barard in her witness statement said that when Ms Newton started work, Ms Shields told her and others that Mr Austin had not sought permission to employ Ms Newton. We accepted that evidence, although Ms Barard did not give live evidence, for reasons which we expand on later in these Reasons.
87. We concluded that Mr Austin did spend a considerable amount of time with Ms Newton on the housing legacy project after her appointment at a time when Ms Shields was under a lot of pressure given the share of the workload she had and that this added to the pressure on Ms Shields and her unhappiness with both Mr Austin and Ms Newton.
88. On 15 November 2019, Mr Austin wrote to various people in the council:

Housing Costs Legacy Project

I am keen to progress a project to consolidate the legacy housing costs data so they we can readily report on expenditure at the household and individual level. This will also facilitate an overview of total payments to families and individuals in terms of their housing costs and care and support expenditure. This project will entail identifying users of this data, their information needs and required level of granularity. We also need to ascertain where the various financial and non—financial information is held for the various types of accommodation used and how it can best be structured to deliver the project's objectives. We will need to build accurate and comprehensive records of who was where when. We will also need to record any other payments made under the housing remit.

This is a major piece of work that needs to be carefully scoped to ensure that it delivers all user requirements.

For this reason I have brought in an experienced project manager to undertake the exploratory work, define the brief, draft a project plan and commence the actual project work. Her name is Monika Newton. She will shortly be arranging a meeting with you to introduce herself and to explore your requirements from this project.

I hope that you can spare some of your time to kick start this project. If you feel there is someone more appropriate for your area or that you do not need to be involved, please let me or Monika know.

Allegation that some time in November / December 2019 Ms Shields called Ms Newton a cunt and/or a bitch to other employees

89. In February 2020, Ms Newton says she was told by Ms Barard that Ms Shields had repeatedly called her a cunt and a bitch in conversations with colleagues in November / December 2019.
90. Ms Barard gave a statement but did not attend to give oral evidence. In her statement she said: "Lesley Shields called Monika a cunt some time in November / December 2019. I was surprised that Lesley used that word on a colleague, and I remember telling her that I had not expected that word to be used by her."
91. The other evidence we had was from Reg Davies' report. Reg Davies had interviewed the whole of the finance team but most of the interview notes had been lost. We saw Ms Barard's notes in which there was no mention of Ms Newton being called a cunt or a bitch, but equally no direct question was put by Mr Davies about that issue.
92. In his report, Mr Davies found: 'It was further alleged that it had been reported to Monika Newton that Lesley Shields had used an expletive in describing her when Monika was again not present (called her a "cunt"). Lesley denied used such language in this instant and no evidence was found supporting the allegation.'
93. Ms Shields denied using either term about Ms Newton and said that she would not have used that sort of language. We found on the balance of probabilities that Ms Shields did describe Ms Newton as a cunt on one occasion. We accepted Ms Barard's evidence for reasons we expand on later and because, as we discuss in our Conclusions, this was an area of Ms Shields' evidence where we found her less reliable than in other aspects of her evidence.
94. Ms Newton complained that Ms Shields did not find time to meet with her during this period and blocked her access to the finance team; she said and that the finance team meeting in December was focused on Christmas, a finance team meeting in January was cancelled and that a further team meeting on 23 January 2020 became a training session. She said that Ms Shields was blocking her access to team.
95. We concluded that there was some tension because Mr Austin had promised that Ms Newton's project would not affect the finance team workload or add to Ms Shields' burdens but he did not then act on that promise or manage the situation. We concluded that Ms Shields was not prioritising Ms Newton's project because she and the statements team were very busy.

29 November 2019

96. Ms Shields' evidence was that both Mr Austin and Ms Newton came in late that day, then spent the lunch hour together. She said that they gathered their bags and coats at 1:45 pm and Ms Shields asked where they were going. They said they were going to the Tower. Ms Shields asked why and they said they were going to meet with

James Caspell and Ms Newton wanted to see the Tower. Ms Shields looked at Mr Caspell's diary which did not show such a meeting.

97. Ms Shields said she was frustrated as she thought they were ducking out of work. There was no need for them to go to the Tower. They could have done the round trip in an hour but they did not return. The whole team was under pressure but they seemed to be wasting time and money. She herself was working evenings and weekends and under pressure to meet budgeting deadlines and had personal issues. She said that people were commenting and gossiping about Ms Newton and Mr Austin's movements.
98. Ms Shields accepted that she said something along the lines of: "*she's (Ms Newton) sucking his (Mr Austin's) cock about now*" to Ms Barard. She said she regretted it immediately and apologised.
99. Ms Barard in her witness statement said that Ms Shields initially approached the bank of desks where she and others were sitting and said that Mr Austin had nothing in his diary so she was not sure where Mr Austin and Ms Newton had got to. She said they must have got a hotel room. Ms Barard asked Ms Shields if Mr Austin and Ms Newton were sleeping together and Ms Shields said that she did not know. About half an hour later Ms Shields approached the desks again and said: 'She must be sucking his cock right now.' Ms Thakkar was also present.
100. Ms Shields denied the remark about the hotel. We were conscious we had to weigh that evidence up against the untested evidence of Ms Barard. We were impressed by the fact that Ms Barard in her statement was very careful about the evidence she was able to give. She did not give evidence in support of a number of assertions made on her behalf by the claimants. And she said 'other than the three points listed, there is not much for me to write'. We felt able to give her statement more weight than we normally would give to an untested witness statement where the witness did not attend.
101. Furthermore the earlier part of the conversation described by Ms Barard made sense as the context in which the remark Ms Shields admitted had been made. On its own, the remark would have seemed, we thought, abrupt and possibly incomprehensible to listeners. It seemed to us on the balance of probabilities, more likely that it occurred in the context of the earlier remark about going to a hotel, the gist of which remark was to suggest that the claimants might be having a sexual relationship / 'sleeping together'.
102. We were not able to form any clear conclusion as to whether Ms Shields had forgotten the context or was consciously being untruthful about it – it does not seem to have formed part of Mr Davies' later investigation and she may not have been reminded of it until considerably later. We considered that she was very invested in a version of the discussion in which she made a one-off remark which she immediately regretted.
103. On 12 December 2019, Ms Newton had a meeting with Mr Austin and Ms Eves and did a presentation about the housing legacy project. This indicated that they had had 14 meetings at which had met with 44 Council employees – some were people who held relevant information, some were managers who would 'overlook the work undertaken' and some were senior managers who needed to be consulted about the project. It was suggested by the claimants that the 44 people consulted with were all 'stakeholders' in the project but it was clear to the Tribunal from the document

presented that these were not all stakeholders in the sense that they had a vested interest in the project.

104. In mid-December 2019, Mr Austin went on annual leave until after Christmas and did not return until 13 January 2020.
105. Between 23 and 24 December 2019, emails were exchanged which showed that there was some tension between the financial statements team and other departments about the pace of work. Emails between Ms Shields and Sharla Gorsia become heated. Mr Fairman complained to Mr Austin by email about Ms Shields' pace and Rana Rahul said in email to Fairman it was the 'umpteenth time [Ms Shields] has flown off the handle without any justification'.
106. There was also an email from Ms Shields saying that she was struggling with the amount of work Mr Austin had left her which was supposed to have been done before Mr Austin went on leave.
107. What we could make of this evidence was that, by Christmas Eve, Ms Shields was under a great deal of pressure. She was in receipt of criticism from other departments and there appears to have been conflict. It was not necessary or possible for us to adjudicate on the rights and wrongs of that conflict.
108. On 9 January 2020, Ms Shields sent an email to the finance team:

I know that one way or another we have all caught up with Monika this week regarding the Housing Legacy project.

As important as I think we all agree this project is, I have been very clear from the outset that working on this project should not deflect from the many important deadlines we have within the Team. in order to protect that position can you please make sure that you speak to me before directing resource to this project. if we have the capacity in the short term then I will be happy to divert that resource to Monika.

However priorities remain

Achieving statement deadlines

Delivering a Budget on system

Delivering quarter 3 budget monitoring by middle of next week

Receding ledger for 2019/20

Roll out of Budget manager training/business partnering

Preparation for closing

Assistance for me on capital monitoring for housing.

All of which are due in the next 12 weeks.

As a Team we are under increasing scrutiny to deliver the above to deadlines. I would appreciate your assistance and respect in regards to supporting me to deliver these outcomes.

If you have any queries I would be happy to speak to you.

109. Ms Newton and Mr Austin said that this email was an example of Ms Shields deliberately obstructing Ms Newton's work. Mr Austin said that the staff 'read

between the lines' of the email that they could not speak to Ms Newton after this and that this had been Ms Shields' intention in sending the email.

110. Mr Austin said in evidence said that the team was not under pressure although it was 'failing to deliver'. He said that criticisms were directed at Ms Shields 'because she was failing' and not the team. The issues were not because of pressure of work. He said that he was taking measures to address the issues but was being held back by Ms Shields and not getting support from Ms Eves. He said in evidence that he was the manager of the whole team and Ms Shields was not. There was no evidence before the Tribunal that he did anything substantive to address issues with the allegedly failing team or the allegedly failing Ms Shields prior to February 2020.
111. Mr Austin also took issue with Ms Shields' account in the email of why the team was busy. He said that this was the quietest time of the year bar August. Some things on the list were late because of Ms Shields' failures. He challenged Ms Shields' account of the deadlines.
112. We heard detailed evidence from Ms Shields, supported by Ms Eves, about what needed doing and why it was a pressured time. Ms Eves said that it was one of the busiest times of the year; one of the tasks was setting the budget which went to council at the beginning of March. She said that January to March was a very busy period due to the matters listed. In the email. During this period setting the budget was the priority. She considered this email to be reasonable.
113. Ms Shields said additionally that after the housing legacy project started, Mr Austin as a manager became 'virtually invisible'. He was so busy with meetings and one to ones with Ms Newton; she could not get time with him to discuss budget setting. This put her under more pressure than she had been under previously.
114. Mr Austin said in oral evidence that Ms Shields' plan was to save the housing legacy project for later so as to extend her own and Mr Rahman's contracts and this was why she was obstructing Ms Newton's work.
115. We accepted that this was a busy time for Ms Shields and the finance team. There was ample evidence that both were under pressure, including an email which Ms Shields sent to the financial statements team on 10 January 2020:

You may or may not know but just before Christmas I dealt with an issue that came straight from Robyn Fairman, the Executive Director of Grenfell. I was asked to attend a meeting to explain why the performance to date regarding the issue of statements was in her words "unacceptable".

I have challenged her assumptions and the meeting was cancelled, but I am under pressure now to produce monthly monitoring information to the Grenfell Assurance Board, Chaired by Barry Quirk, the Chief Executive, relating to statement performance. Taryn is meeting with Robyn on 24th January to discuss the way forward. Before that Taryn, Aki, Ronica and I are meeting with the Insight & Intelligence Team to agree a collaborative approach to statement production.

I do understand and reiterated to Taryn that the environment you work in is under a level of scrutiny that I have not experienced before. Saying that however, I do feel sometimes when I look around the Team, that there is a lack of urgency. I prefer to work in a relaxed environment as you well know, but I do expect that people still step up to the plate with regards achieving targets.

...

There is an expectation that this will be updated and available at the beginning of every week. This is not a new request. I know that I have spoken to you all regarding keeping us up to date on what you are working on. Without this there is little to no chance of us managing resources effectively, highlighting issues and I would say, is also stopping us from allocating additional duties that I know some of you are keen to access for personal development reasons.

Ronica is going to set up a meeting with you for Monday, so that I can speak to you together, but in the meantime can you make sure you go to your 1-2-1's fully prepared.

116. We considered that 9 January 2020 email was a reasonable email for Ms Shields to have sent and that its purpose was not to obstruct Ms Newton's work but to ensure that members of the finance team were able to concentrate on their core duties.
117. On 13 January 2020, Mr Austin returned from annual leave.
118. On 22 January 2020. Ms Eves received an email from the agency Penna saying that Mr Austin's and Ms Shields' contracts amongst others were due to finish on 31 March 2020 and asking whether they would be extended.

23 January 2020 finance team meeting

119. On 23 January 2020, there was a team meeting for the Grenfell finance team. Mr Fitch at the meeting gave some budgetary training which was due to be rolled out elsewhere in the service by him. The purpose was in part to test the training on the finance team before rollout but, we were told, the training was also useful for the finance team. Mr Fitch had not delivered training for some time and had told Ms Shields that he was feeling nervous.
120. Ms Newton was frustrated about not having had a meeting with Ms Shields or the financial statements team and that this meeting was being used as a training session. She said in evidence that she was participating in the training even though it was irrelevant to her.
121. Ms Newton was taking notes on her laptop during the training and said that she saw that Mr Austin had apparently sent an email to her although he did not have his laptop with him. She said that she pointed this out to him silently and they were alarmed that Mr Austin's laptop might have been compromised so Ms Newton said she would go and check Mr Austin's laptop and left the room to do that. She came back; there was a further notification of an email so they agreed that Ms Newton would go to the IT helpdesk. At this point Ms Shields, who perceived that they were talking and being disruptive during the training, sent an email to both Mr Austin and Ms Newton:

am really unhappy that you are working during Mike's presentation. it's really disrespectful.

122. According to Mr Austin and Ms Newton, during a break in the meeting, the claimants were by the lifts when Ms Shields rushed towards them. Ms Newton said that Ms Shields came towards them 'quite aggressively'. Ms Newton held up the palm of her hand towards Ms Shields. Ms Shields did not stop and Ms Newton moved away from

her. Ms Shields said: 'Don't you walk away from me, young lady.' Mr Austin said that Ms Shields was telling them off like a teacher speaking to misbehaving school children. Ms Newton said that she felt like a child reprimanded by a head teacher.

123. Ms Newton said that she went into the meeting room and Ms Shields 'screamed at her to get out'. Ms Newton packed up her laptop said that she was going to put in a complaint.
124. Ms Shields' account was that at the outset of the training she asked everyone to put their laptops away. Ms Newton did not do so. Mr Fitch asked everyone to fill in a questionnaire. He asked Ms Newton if she had filled in her questionnaire. She threw it across the table rudely and said that she did not know any of it.
125. Throughout the presentation, Ms Newton continued to type on her laptop and speak with Mr Austin and they both looked at their phones. There were ten people in the room, the claimants were not discreet and it was distracting. She therefore sent an email to them.
126. After the comfort break, she waited for Mr Austin and Ms Newton to return as she wanted to have a word with them. She asked if she could have a word please and Ms Newton tried to ignore her and walk round her. Ms Shields said she was unhappy with her returning to the room and Ms Newton put her hand up in her face and told her not to talk to her. Ms Shields said that she did not make the young lady remark. Mr Austin and Ms Newton left and did not return to the training.
127. After the meeting Ms Newton emailed Ms Eves and Mr Austin saying that she would like to formally complain in relation to Ms Shields' behaviour and attitude, "having a particular incident that took place today in mind".
128. Ms Shields said that she wanted to speak with Ms Eves about what had happened but she had to leave work before Ms Eves got out of the meetings she had been in all day.
129. Mr Austin and Ms Newton did meet with Ms Eves at the end of the day; no one made any notes of the meeting.
130. Mr Austin's and Ms Newton's account of the meeting with Ms Eves was that they recounted the incident at the training session including the 'young lady' remark. Ms Newton also complained about three other incidents: the 13 November meeting, on 9 January 2020, Ms Shields cancelling a finance team meeting and Ms Shields sending the email which Ms Newton said stopped her gathering the information she needed and on 23 January 2020, Ms Shields changing the meeting to a training session and not arranging another meeting. Ms Newton said that Ms Shields was obstructing the project. Mr Austin said that Ms Shields was obstructing Ms Newton's work and harassing her. By obstructing Ms Newton's work, Ms Shields was failing in her fiduciary duty to taxpayers as to how funds were used.
131. Ms Eves told us that at the meeting, the claimants presented their version of the events at the training session and Ms Newton said that Ms Shields was obstructing her access to the team so she was unable to progress the project. Ms Eves said that they might have used the word 'harassing'. Ms Newton's biggest complaint was about not being able to progress her project, not about what happened in the meeting. The claimants had however said that Ms Shields made the 'young lady' remark.

132. Ms Newton made a note in an email she sent to herself on 23 January 2020 which she said she used as a script of what she wanted to say to Ms Eves:

Meeting today

- I knew nothing about training at the team meeting today, until 13:17 (45 min prior). Had I known before, I would have re-structured my workload differently, or I would not have attended (due to lack of resources, two hours is a long time to allocate to something I am not here to do)

- Different approach to things- sending an email that priorities are outstanding, than attending 3 days of training for something not directly related to her work.

- We were not warned that the training requires a full visual commitment. That is what she expected, but did not communicate.

- The incident happened during the meeting and I left twice.

- Email was sufficient, the aggressive approach at the corridor was completely uncalled for, unprofessional, provoking and directly bullying.

133. When cross examined about the claimants' behaviour in the training session, Mr Austin said that when he spoke to IT, they said there was probably just a delay in emails being delivered and he should run a virus scan on his laptop and reboot and come back if there were any problems. Mr Austin said he had done 'exactly what the right thing was' in terms of how he had dealt with the issue in the training session. When it was pointed out that Mr Fitch had said in the notes of his meeting with Mr Davies that there was rudeness, he said that Mr Fitch had also said that it was 'no big deal'.

134. Mr Fitch's evidence to Mr Davies, when asked about the training session, was recorded as:

Stated that overall it went well, but a couple of people were really rude in the session.

Stated that Monika Newton (MN) was on her laptop. MF then explained that he (MF) had wanted an audience non-financially minded to do the session and that there was an exercise to be completed. MF continued that MN was on her laptop and talking to FA. MF stated that he (MF) should have said something at the time, but it was no big deal.

Stated that if MN was not going to participate. she (MN) should not have attended. MF explained that MN was rude and threw the paper she was handed for the session to FA. MF stated that if MN did not want to be there she (MN) should not have come.

135. Ms Newton said in evidence that it was inappropriate for Ms Shields to have sent the email in the training session but that, having chosen to broach the matter by email, she should not then have tried to speak with Ms Newton about it and should have waited for an email in reply. Ms Newton said that Ms Shields approached in an aggressive manner and that holding her hand up to stop her was appropriate. It was almost an instinct to out her hand up; he had to stop her because she saw aggressiveness in her face.

136. We concluded that Ms Newton was impatient about attending the training and displayed her impatience at the meeting. She did not think the training was relevant to her and wanted an opportunity to discuss the housing legacy project.
137. It was clear that the claimants' behaviour was disruptive and rude and perceived to be so by Mr Fitch. Ms Shields' email was possibly a bit blunt but the situation was that Mr Fitch was trying to present training and the head of service was not paying attention. The fact that Ms Shields sent such an email to someone who at least structurally was her line manager demonstrated a level of breakdown in the relationship and the fact that for practical purposes Mr Austin was not necessarily operating as the head of service. We did not think there was anything inappropriate in Ms Shields wanting to speak with the claimants before they returned to the meeting in order to ensure there was no further disruption. Ms Shields probably seemed angry but Ms Newton putting her hand up as she did and refusing to speak to her was, we considered, rude and inappropriate.
138. We accepted that at that point, Ms Shields in her anger did make the 'young lady' remark. The fact that it was reported the same day to Ms Eves was corroboration of the claimants' account. We concluded that Ms Shields had repressed or simply did not remember a remark she made in a state of heightened emotion.
139. We considered that Mr Austin's handling of the incident was very poor; after his initial poor behaviour, he did nothing to defuse a situation which had arisen between two members of staff who were structurally subordinate to him but simply took Ms Newton's part and went and reported Ms Shields to Ms Eves.
140. The complaint made to Ms Eves was largely centred on Ms Newton's impression that Ms Shields was obstructing her work. We did not accept that Mr Austin had said to her that there was a breach of Ms Shields' duty to taxpayers. Ms Newton did not report that having been said and nor was it put to Ms Eves that it had been said. We considered that this was a gloss Mr Austin had subsequently put on what was said about the obstruction of Ms Newton's work.
141. On 24 January 2020 Ms Eves replied to Penna to say that in respect of the Grenfell finance team, she needed a few days to respond about the contracts of the agency staff because there was a wider discussion underway.
142. Mr Austin also wrote to Mr Fitch that day:
I thought your presentation was very good — comprehensive and pitched at the right level.
143. On 28 January 2020, Ms Newton emailed Mr Austin:
I understand that, in the light of the informal complaint pending resolution, it will not be appropriate for me to attend the Supply and Allocation Board meeting at 10am. I can foresee the risk of the situation which occurred last Thursday repeating itself and if it goes occur in front of this forum, it would mean we (as a team) were unable to keep this conflict at the team level and the exposure will be to the whole department. I am mindful that this exposure will not be particularly helpful, hence my decision to send the HLC project to red at the end of the week instead.
I am taking this opportunity to flag my professional need to have access to information, align risks and issues with various colleagues. I hope that this is the last week of alienation and that the resolution will bring a productive way forward.

144. On 29 January 2020, Ms Eves had a meeting with Ms Newton and Mr Austin and said that she would be taking no further action in relation to Ms Shields and that she considered the incident closed. She had met with Ms Shields, who had said to her that the claimants had been rude and disrespectful in the meeting and that Ms Newton had been furious and stormed off when she tried to have a quiet word with her.
145. Ms Eves' evidence was that she would have expected Mr Austin to take control and manage the incident but he had taken sides with Ms Newton. She felt he had exacerbated the situation. She had spoken with Ms Shields, who had denied the use of the phrase 'young lady' Mr Fitch had confirmed that he found the behaviour disruptive. She considered that this was an altercation between colleagues and there was fault on both sides.
146. Mr Austin's evidence was that he and Ms Newton protested to Ms Eves at this meeting that it was not right and that it was a serious matter. Doing nothing would not resolve it. The Council would be failing in its fiduciary duty if Ms Shields was allowed to carry on obstructing Ms Newton's work. He had heard Ms Shields refer to Ms Newton as 'young lady' and the tone and phrasing were inappropriate. He hoped Eves would reconsider her decision.
147. We accepted that Mr Austin had protested that something should be done and continued to take Ms Newton's part. We considered that, given that Mr Austin was not dealing appropriately with the situation, Ms Eves should probably have taken more action at this point to mediate between the parties.
148. The claimants did not attend a lunch organised for Ms Shields' birthday that day although Mr Austin had previously accepted the invitation. He told the Tribunal that he had been kept busy on a work matter and would have had to attend late and that he was also unhappy with Ms Shields' behaviour so did not feel bad about missing the meal. It was a small matter, but it seemed to us that it demonstrated Mr Austin's inability or unwillingness to try and deal fairly with Ms Shields and resolve the issue which had arisen.
149. In oral evidence Ms Newton said that she had lunch with Ms Barard at some point after this and was complaining about the 'young lady' comment when Ms Barard said words to the effect of 'why did Ms Newton keep going on about the young lady comment when Ms Shields was calling her a cunt or a bitch?'
150. Ms Eves said that at the end of January or early February, she reviewed the Grenfell finance team. The fixed term and interim roles were due to expire on 31 March 2020 and she had to consider the need for staff. On 3 February 2020, she met with Joe Philp from the Grenfell team and discussed the work of the Grenfell finance team. It was agreed that the team would continue to provide business as usual ('BAU') support. The legacy work would be split off and would focus on the financial statements which should be completed within six months; as to the housing legacy project, Mr Philp did not have clarity as to whether it was necessary to pursue it at that stage or at all.
151. On 4 February 2020, Mr Philp wrote to Ms Eves:
Just thought it would be helpful to summarise what I think we agreed:

The Grenfell Finance team will continue to provide BAU Finance support (business partnering etc) to budget managers across the Council responsible for workstreams funded through the £50m

They will also provide more strategic support to Callum/me at the centre to ensure we can monitor the picture across the piece (including through the in-year monitoring and budget setting processes)

On the Grenfell legacy work, we agreed that the main focus needs to be the financial statements. I know you mentioned another legacy project which is in train, but it would be helpful to understand in more detail what this is and to be sure that it is absolutely necessary.

For financial statements, I think we agreed:

We will both commit resource to this, to ensure that the statements are jointly owned by Finance and the Grenfell team

Staff on both sides will be line managed separately but (ideally) they will be co-located, at least for part of the week.

To ensure join up, we will have weekly joint meetings early in the week to go through what needs to be done for the week, with a mid-week check in on progress if necessary.

Progress will be reported to Taryn and me on a weekly basis and (monthly) to the Delivery Assurance Board

It sounds like there is a bit of work to ensure we are all agreed on exactly what is being reported and how calculations are being made. To help with this, I suggest we use the first meeting to work through a couple of examples. I can ask Sharla to support with that (probably helpful if we are there for that first meeting, as you suggested).

152. On 5 February 2020, Mr Austin emailed Ms Eves:

This is the work plan which I am intending to use to refocus the team the next- two months. I have scheduled an initial meeting with my direct reports plus Aki and Mike to discuss what needs doing and how to monitor it effectively.

Can we have the rescheduled one-to-one tomorrow?

He attached a bulleted plan which included in particular provision for more performance management of the team.

153. On 6 February 2020, Mr Austin held with the more senior members of the finance team (Mr Rahman, Mr Fitch, Ms Shields, Mr Wiltsher, Ms Newton) what he called a performance monitoring preliminary meeting. He told the Tribunal he revealed his discontent with current performance levels and introduced a performance tracker. He had asked Ms Newton to help him with the performance framework as she had expertise in that area. At a further meeting, on 11 February, they would allocate tasks to particular individuals.
154. It appeared to the Tribunal that at the point where Ms Eves was making decisions about the future of the Grenfell finance team and the contracts of the agency staff, Mr Austin was seeking to position himself as performing a necessary role and to play a

far more active role in management of the finance team. He was also trying to embed Ms Newton by expanding her role.

155. On 7 February 2020, Ms Barard wrote to Mr Austin to say that members of the financial statements team she was managing were asking what happening about their contract extensions.

156. Mr Austin replied: *I can fully understand the team's concern and it was always my intention to resolve this matter before the end of January. Clearly that hasn't happened and the blame for it lies with me.*

I am engaging with Taryn to decide where we need to go as an authority and in the light of the management changes now being made. At this stage I cannot make any commitments to extend contracts but neither can I say that there are no prospects of an extension.

I am aware that as head of service I can seem a little remote from the operation of the service. I must say I am more than happy to discuss the working environment with any member of the team. Indeed I think that may be beneficial. To which end I propose setting up planning and development meetings with your team on a voluntary basis. Clearly the staff members can decline and I am not trying to undermine your authority. Sometimes every little helps and perhaps we are in times where genuinely meant gestures can help.

157. That email seemed to the Tribunal to reveal much about Mr Austin's historical lack of hands on involvement with management of the team and his desire in February 2020 to increase his involvement.

158. The same day Mr Austin emailed Ms Newton assigning new tasks to her:

Per our last one to one, I would like you to undertake two new tasks.

The first is a review of the Team's compliance with the GDPR regime. The overseas Visitors claim should be used as a starting point, but please accept this email as authority to probe any other area of data compliance on the team. This task is of high priority - I expect all members of the team to assist you in this. This email provides your authority and non-compliance will be treated as a disciplinary matter.

I am also concerned that the arrangements for recording, monitoring and ensuring compliance with the requirements of FOIA requests, SARS, complaints, fraud inquiries and police statements are inadequate and potentially expose the Council, the team, me and individual members of staff to criminal and civil liabilities . I therefore authorise you to investigate this. For the avoidance of doubt, I authorise you to engage with any member of my team without any restriction. I shall not accept attempts to obstruct you in doing what is a vital assignment. This email gives you full authority to act within the parameters set out. Please refer any attempt to obstruct or frustrate the intent of this email to me so that I can consider whether any disciplinary action is merited.

I hope this content of this email is clear and that my purpose in addressing a clear and present danger in the Team's current working practices is clearly expressed by the authority given in this email.

I have not circulated this email more widely as I hope that it is unnecessary as co-workers will fully recognise their responsibilities without direction from me; but if

anyone wishes to argue about your role and authority, I am happy for you to produce this email as evidence to substantiate it and to refer the matter to me. I hope this supports you delivering your assignment.

159. It seemed to the Tribunal that Mr Austin was giving Ms Newton new tasks to shore up her position in advance of decisions which were going to be made about contract extensions.
160. On 10 February 2020, Ms Eves had a meeting with Mr Austin and Ms Shields to discuss the contracts of the many temporary staff in the finance team which were expiring at the end of March 2020.
161. Ms Eves said that they discussed the proposal to split the team. They discussed three areas – BAU, financial statements and the housing legacy project. They discussed the perception that the financial statements team was underperforming and she said that they agreed that Ms Barard was not the best person to take that work forward, because of her background, which was not in finance. She should have been dealing with managing day to day issues regarding the financial statements but was pulling Mr Rahman into those issues which meant that he was not free for other tasks he needed to do.
162. Ms Eves said that she told Mr Austin and Ms Shields that she had been discussing the housing legacy project with Mr Philp and suggested Mr Austin arrange a meeting with herself and Mr Philp to look at progress. She said that she noted that Ms Newton had said she was not able to progress the project without more access to the team and that the team did not have time to work with her. She said that at the meeting she agreed to extend the contracts of those involved in the BAU side by six months and she said she would put thirty minutes in the diary to speak with Ms Shields and Mr Austin about their own contracts.
163. Mr Austin did not challenge Ms Eves' account of the meeting except that he said that what was said in the meeting was that Ms Barard's contract was not to be extended due to poor performance, as assessed by Ms Shields and Mr Rahman. Ms Shields corroborated Ms Eves' account of what was said about the reasons for not extending Ms Barard's contract. She said that it was also agreed to extend by six months the contracts of the financial statements team. They discussed the fact that Mr Mahmoud was struggling with financial statements work and was not interested in staying in that role.
164. Ms Eves sent a follow up email to Ms Shields and Mr Austin:
- Hi Both*
- So this is how I thought we left it —- sorry I know we dotted around a bit so the confusion was probably my fault:*
- Francis to speak to everyone as Head of Service and also to ensure consistency in the discussion although*
- Lesley would raise with Aki in terms of feedback on Ronica.*
- Here is what I believe we discussed:*
- Financial Statements*
- Ronica — do not extend*

Dee — extend for 3 months but with the expectation that likely to be 6 months

Mo - speak about plans and encourage to hand in notice

Samira and Dip — no changes

Think through skills needed for manager to head up Financial Statements Team this week with the expectation that go to agencies next week.

Housing Legacy

Francis to arrange meeting with Joe, Callum and myself to update on housing project and decide if continues.

BAU - if we can call it that

Aki / Mike / Graeme — all extended for 6 months

If housing legacy project continues — possibility that Graeme works half week on housing and half week on BAU.

Look at scope of taking on AAT I graduate

Taryn to put in half an hour with you both separately to discuss own contracts.

165. Mr Austin then forwarded this email to Ms Newton. Ms Newton said that this was appropriate as she needed to know what resources were available. The Tribunal considered that it was manifestly inappropriate for Mr Austin to have sent to a more junior member of staff an email which reflected a discussion Ms Eves had held with the two most senior members of the Grenfell finance team about plans for the rest of the staff in that team.

166. Mr Austin then wrote to members of the team:

I would like to invite you to have a quick chat with me about contract extensions, future work and plans for next year. I would like to understand what you are looking for and what expectations you have for next year. This is your opportunity to tell me anything that is on your mind so that I can take in to account when planning next year.

I have booked four slots on Wednesday:

...

I shall allocate the slots on a first come, first served basis. Please let me know your preference.

167. On 11 February 2020, Ms Eves met with Ms Shields and suggested that she continue with the BAU work for which she had primarily been responsible. Ms Shields agreed to a six month extension of her contract.

168. Ms Eves also wrote to Mr Philp that day:

Agreed on the approach now and separating the statements from the BAU stuff.

The current manager will not be continuing but will be bringing in someone to manage the team. It is quite a distinct role in terms of what we need and we are speaking out in terms of the skills they need. The key will be that they will be

responsible for the collaborative working with your team. The new manager will be in post from 31 March when the current manager's contract ends.

However, this does not prevent us putting in some of the changes sooner and we can see how we can do this asap.

Met with Lesley today — she is likely to stay on and head up the BAU stuff.

Francis knows the changes but am meeting him tomorrow in terms of not extending his contract.

169. Ms Barard wrote to Mr Austin:

I am aware that you are meeting with the statements team tomorrow. Would it be possible for us to meet as well so I am better informed about the future of the team? Happy to do this today or tomorrow if this is ok

170. Mr Austin also wrote to Mr Philp about the housing costs legacy project:

Since I wrote to you in November, I haven't managed to organise a meeting with you to explain the rationale of the legacy projects including their proposed benefits. I also haven't introduced Monika, who has been working on this for the last three months. I understand that there are discussions with Taryn about whether to progress this workstream. I therefore thought it might be help to have a quick walk through before we have a discussion on merits with Taryn.

171. On 12 February 2020, Mr Austin had his meeting with Ms Eves. Ms Eves said that she told Mr Austin that she had reviewed the Finance for Grenfell team and that it no longer required as many interim workers and she had to ensure value for money. She said that the respondent would no longer require his services at the end of his contract which would not be extended past 31 March 2020.

172. Mr Austin told the Tribunal that he had believed his contract was going to be extended. He said that Ms Eves said that she understood that he wanted to leave as he was suffering from 'Grenfell burnout' and that she would therefore not be extending his contract. He said that he said that was not the case and he wanted to stay. He said that Ms Eves was surprised and suggested that there should be a competitive process between himself and Ms Shields. Mr Austin said that the approved budget provided for the current level of staffing until the end of the year.

173. Ms Eves said that she recalled the competitive process being Mr Austin's idea. Once he suggested it, she had thought it was an option which could be explored. We concluded that the idea had come from Mr Austin, which was consistent with the document he subsequently produced outlining how the process might work. We accepted that Ms Eves had made an initial selection based on the actual division of work between Ms Shields and Mr Austin but that she was open to considering a selection process. She told the Tribunal that there was no requirement for a competitive process to choose between two temporary agency workers and that later events made it inappropriate ultimately. We concluded that if there was a reference to 'Grenfell burnout', it was not the main reason Ms Eves put forward for not extending Mr Austin's contract.

174. On 13 February 2020, Mr Austin had meetings with members of the finance team: Mr Naha, Mrs Gengi and Ms Thakkar. He said that Ms Barard portrayed the team as high performing and delivering high quality work that consistently exceeded the set

targets, contrary to what Mr Austin said that Ms Shields had said at the meeting on 10 February.

175. Mr Austin said that the members of staff made complaints of bullying and harassment. He said that they said they felt held back by Ms Shields and Mr Rahman and that work was being done more slowly than it needed to be.
176. Mr Austin told the Tribunal that he made notes of these meetings but he no longer had possession of these notes. They might be in his locker at the respondent's premises. When the respondent reported during the course of the hearing that the locker had been searched and no notes found, Mr Austin then suggested that the notes had been in some other location – a finance team locker. He said he reduced the notes to a list of bullet points, which list was in the bundle, but these bullet points do not say who had which concern or provide any detail. We were not persuaded that Mr Austin had in fact made any notes of these meetings, given his inconsistent accounts of where the notes had been kept and the fact that he had not asked the respondent to locate and produce the notes during the course of the proceedings.
177. When asked by the Tribunal, if there were widespread issues with the junior staff, why he had no previous awareness of the problems, Mr Austin said that the staff thought they could not express concerns to him. Ms Shields was keeping him from seeing what was going on.
178. At some point around this time, Mr Austin told Ms Barard her contract was not being extended due to alleged poor performance. This did not reflect what had been said in the meeting with Ms Eves. Ms Barard was upset and wanted to produce evidence that her performance was not poor. Mr Austin said that 'she was shocked at having her performance questioned'.
179. The notes of Ms Barard's interview with Reg Davies record:

Explained that she (RB) was advised by FA that her contract was not being extended as she was underperforming and not meeting the targets. RB stated it was alleged that AR and LS was doing her (RBs) work
180. During her discussion with Mr Austin, Ms Barard then made allegations about other members of staff to Mr Austin and spoke about her own good performance. She alleged that, during a discussion about financial statements in August 2019, Mr Rahman had told members of the team that they needed to slow down or their contracts would not be extended.
181. We note that Ms Barard did not put anything about this remark in August 2019 in her witness statement. Mr Mahmoud's evidence to the Tribunal was that Mr Rahman's comment was obviously sarcastic and a joke and that Ms Barard laughed at the time.
182. Mr Austin told the Tribunal that he considered that this was a 'eureka' moment when he realised that Ms Shields and Mr Rahman were deliberately slowing work down to extend their own contracts. We observe that the remark (or joke) was made openly to the team and Ms Barard did not say she had been asked to or in fact had carried out any 'slowing down' of the financial statements work. There were targets for each member of the team and a tracker for the statements.
183. On 13 February 2020, Ms Newton also met with Ms Barard. She said that Ms Barard said to her:

- Ms Shields was regularly monitoring her and Mr Austin's diaries and commenting on them. She said that on 29 November 2019, when the claimants left the office, Ms Shields laughed, saying it looked like they had left for the day and that there was nothing in their diaries,. She said that the claimants must have booked a hotel room together. Ms Barard asked Shields if she thought there was anything going on between the claimants and Shields said 'Yes, I think they are probably sleeping together;
 - Later that day Ms Shields said 'she's sucking his cock about now'. in the presence of Ms Barard and Ms Thakkar. Ms LeCalve was walking past and in earshot;
 - Between November 2019 and February 2020 on several occasions in front of team members, Ms Shields repeatedly described Ms Newton as a bitch and a cunt;
 - Ms Shields on several occasions said that Mr Austin had employed Ms Newton without agreement from Ms Eves;
 - Ms Shields frequently referred to Mr Austin as an idiot and described him as lazy.
184. Mr Wiltsher was said to have added some detail on another occasion to these allegations.
185. Ms Newton disclosed what had been said to Mr Austin shortly after lunch that day.
186. Mr Austin wrote to Ms Eves:
- I appreciate that you are really busy, but there are a couple of matters I would like to discuss with you.*
- I have now meet with all members of the Financial Statements team and a consistent (and frankly disturbing) picture emerges with regard to Aki. I have alluded to some of the concerns in the attached proposal but there are other issues that I need to make you aware of.*
- Secondly, further to our meeting yesterday, I have given some serious thoughts to making a fair decision on whose contract should be extended. I have drafted a proposal and attached the Performance Tracker.*
- Finally, I was a bit concerned yesterday that you thought I wasn't involved in close down. In fact for the past two years I have led the close down process, attended all the close down meetings and managed the team's work. I have pulled together and reconciled the revenue position (Lesley did the same for capital), written the Grenfell Note in the SOA and provided the RO figures. In the Performance Tracker I am shown as the lead for close down. My concern is that you may have been given a misleading picture of who does what at present. My current workload is as high as it has ever been and shows no sign of reducing in the near future.*
187. Mr Austin attached a proposal for how to select between himself and Ms Shields; he also sent this document to Ms Newton. He said that he sent the proposal to Ms Newton because 'I wanted some feedback to say whether it was appropriate'
188. The proposal set out a competitive process for Mr Austin and Ms Shields but also included these passages with other proposals:

Information gathering meetings with the Financial Statements team have indicated that the current management arrangements are hampering the effective work of the statements. The team effectively has two managers in Ronica Barard and Aklakur Rahman. Their instructions can contradict one another. There is a feeling that the more senior manager is hard to contact and slow to turn around work sent for review. His current working pattern is to work from home three days per week. There is a suggestion that Ronica is not delivering and may not be the right person to manage this statements team. The Head of Service is not convinced that that is a fair assessment. It is understood that since December 2019 the team has achieved its target every week. This is documented in a performance monitor which has not be shared with the Head of Service prior to now. There is a lack of trust in Aklakur Rahman across the whole statements team, each member of which has raised similar concerns about his conduct. Members of the team who make valid suggestions for improvements, find the suggestion is ignored. There is also issues around seemingly holding back personal development without proving any reason pour justification for the action taken. The present position is untenable from a management perspective and need immediate remedy. It is therefore suggest that Aklakur Rahman in relieved of all responsibilities for the Financial Statements team with immediate effect. Monika Newton should take over the whole team, including Ronica Barard upon her return from leave on 24 February 2020. Monika should be tasked with developing and implementing an improvement plan and putting in place a more project management focused approach to the Financial Statements work-stream. This assignment will include a review of the suitability of the individual team members on a fit for purpose basis. Monika will continue to report directly to the Head of Service. Short contract extensions will need to be put in place to facilitate this review.

189. We note that this was a proposal that Mr Rahman be removed and Ms Newton take on his role and other tasks which were not within the scope of her original appointment.

190. Mr Austin also wrote to Ms Newton about their discussion:

You raised with me today that you had recently found out that obscene and inappropriate comments had been made about you to members of the Finance for Grenfell team.

My understanding is that Lesley Shields described you to the team as a "cunt" and a "bitch" and that she also said that you "sucked Francis's dick" and that we were sleeping together.

I understand that you found this distressing.

You have told me that members of the team who heard these things said are willing to give statement to management to that effect.

Could you please confirm that this is the case and that you would like to raise this as a grievance?

191. Ms Newton replied:

This is sexual harassment in a workplace and to that effect extremely distressing, derogatory and offensive.

I am really unsure what to do with this. I am not sure how to stop it.

I find it distressing to even discuss it, but I think this will be a number one issue at my 1- 2-1 with you this afternoon. I think I would prefer a colleague to join us as you are a named person and this issue therefore require a witness, I just do not know who. Can we please do that?

Workplace sexual harassment takes many different forms; those intimidating comments and vulgar slurs are not only explicitly sexual in nature but also intimidating and reputationally damaging, and even more so as expressed by a Senior Manager to a group of people in a distasteful manner, behind my back, in a local authority office. I thought that we have addressed this colleague's behaviour towards me a few weeks ago when I have emailed you and Taryn about an incident of bullying that took place in the common area. I am uneasy about this all, finding it upsetting, especially as Lesley seems to be laughing it off.

I am at the loss what has caused it as I have from the beginning had a very limited contact with her. This behaviour is quite clearly getting worse. I have suggested that Lesley takes some time off to sort out her issues, but this was not taken seriously. if this does not stop, I will be considering grievance, yes. I do not find this funny at all. But also, I am too busy with my tasks to lower myself to this level, I just cannot understand why this kind of behaviour is tolerated. As with my previous concern, this will not be taken seriously.

192. Also that day, Ms Barard sent Mr Austin a long email including the following passage:

I appreciate your feedback regarding my performance and conversations concerning contracts. I must admit, this meeting has left me in a complete state of shock as I am unsure what has changed since Wednesday 29 January 2020.

193. Ms Barard was disturbed that performance concerns had not previously been raised with her and said:

I will admit that targets were not achieved from October to December but this was due to the very flexible approach adopted by Lesley Shield and Aklakur Rahman as well as their constantly changing templates, rules and lack of response to issues and obstacles.

194. In that context she said:

It was witnessed by Deepa Thakkar in August 2019, that Aklakur told me to slow down else we would not have our contracts renewed in March because I would have completed all the work. I was in absolute shock as I have always been target driven and base my own personal growth on achieving my goals. Deepa has agreed to be witness to this statement should it be necessary for me to clear my name. I informed Aklakur that I was a target driven individual and it was necessary for me to complete my work professionally and honestly.

195. We note that the allegation against Mr Rahman was made in the context of Ms Barard's long passionate defence of her own performance, which she understood to have been criticised. Ms Barard attached a statement tracker showing that the financial statements team had met its targets almost every week since Christmas.

196. Mr Austin sent a further email to Ms Eves:

I mentioned in my earlier email to you that the Financial Statements team have separately and independently raised with me concerns about Aki's conduct. I have

today received an unsolicited email (attached) from Ronica Barard which sets out these same concerns in some detail and a number of other grievances which indicate that she feels that she is being victimised and scapegoated. The contents of the email go far beyond my conversation with her but are consistent with concerns raised by others. As a manager I feel I have to act, but I do think I need to agree with you what that action should be

Secondly, and as far as I know separately, Monika has raised with me a number of inappropriate comments that have apparently been made about her (and for that matter me). Given the nature of the comments, I have asked her to confirm the allegation in writing and state whether she wishes a formal grievance to be raised. Clearly, as neither of us were present when these words were allegedly said, neither I nor Monika cannot ascertain without further investigation and evidence the veracity of the claim.

However, given the nature of this matter, even though Monika has not raised a formal grievance, I do believe that as a manager I cannot leave this unaddressed.

It has also been drawn to my attention (and Ronica's email refers to this) that members of my team have been instructed not to raise issues with me. This has created a climate of fear where staff feel if they say anything out of turn to me they will be punished, probably via refusal to extend contracts. My direct offer of an informal (and entirely voluntary) chat was seized upon by all members of the Financial Statements team, including Ronica whom I did not initially invite, but who subsequently asked me for a meeting. The majority used this as an opportunity to raise serious concerns about the way they were being treated. The picture painted is not pretty.

There seems to be an element of inappropriate controlling behaviour creeping across the whole team. As an example I have attached an email where any assistance to be provided to Monika by any members of my team must be cleared by Lesley. This was not discussed with me and was sent while I was on leave.

Again it creates an atmosphere where people think they will be punished for even talking to Monika. This concern has been raised with me in those terms.

I am sorry to add further problems to your workload, but in this instance I am unable to act on one matter as I am a named party in the complaint and in the first matter I need your counsel on a proportionate and acceptable means to address the issue. I have offered you one possible solution that would address the problem immediately.

I hope we can discuss these issues as a matter of urgency.

197. Ms Eves responded that evening:

I am sorry to not [have] caught you but none of the meetings could have been moved. We can speak tomorrow but to be honest I think I need to seek advice from HR on all of this and now speak with each member of staff across Grenfell finance, including the statements team myself before any decisions are made on contracts.

I will prioritise this on Monday and clear my diary for these meetings.

198. We heard evidence from Mr Mahmoud about events he said took place on 14 February 2020. The background was that Mr Mahmoud had been working in financial statements but had made it clear that he did not wish to continue to do this work. He

had clashed with Ms Barard as he felt that she did not understand aspects of the work he was doing, due to her lack of financial background.

199. Mr Mahmoud said that Ms Newton approached him in the kitchen area on that day and told him that she was aware he was not happy in his role. He felt that she must have obtained this information from Ms Barard as he had not spoken with Ms Newton about his role. Ms Newton told him she could get him a better salary and opportunities and could get him out of the financial statements team.
200. Ms Newton approached him again later and asked him how he felt about the previous conversation and would he like to stay and work with 'them', meaning herself and Ms Barard. She said that Ms Shields and Mr Rahman were going to be sacked and that he could have a better job with herself and Ms Barard.
201. Later Mr Mahmoud was called into a meeting room with Ms Barard and Ms Newton. Ms Newton said that Ms Shields and Mr Rahman were going to be sacked that day and that once they were out of the way, they would sort out the roles. Ms Newton said that Mr Austin was behind the arrangements.
202. There was a statements team meeting at which Ms Barard said that Ms Shields and Mr Rahman would be dismissed. She said that Mr Rahman fancied Ms Gengi and that she was his favourite. Ms Barard said that if Ms Shields or Mr Rahman tried to contact staff over the weekend not to answer their calls as they would try to bribe staff to say what they wanted them to say.
203. Ms Newton denied the conversations and Mr Austin denied that he was behind what looked, on Mr Mahmoud's account, like a kind of workplace coup.
204. Mr Mahmoud was challenged in cross examination as to why Ms Barard and Ms Newton would involve him in such a plot when he did not know Ms Newton well and said that he did not get on well with Ms Barard. Mr Mahmoud said by way of explanation that he had worked on Grenfell since 2017; he had detailed knowledge about how the financial statements worked and knowledge about residents Ms Newton wanted for the housing legacy project. He said that Ms Barard and Ms Newton thought he was dissatisfied with Ms Shields and Mr Rahman when in fact his dissatisfaction was with the work he was doing.
205. Ms Gengi gave evidence that she had been at a team meeting before staff met with Mr Davies. Ms Barard said at the team meeting that she had heard Ms Shields make a rude comment about Ms Newton and that they must tell the truth about what they had heard. They would not be sacked for telling the truth. Ms Barard suggested that Ms Shields was going to be sacked for making the comment. She told the staff that if Ms Shields or someone else tried to contact them over the weekend before their meetings with Mr Davies, they should not pick up the phone as they might try to persuade them to change their evidence.
206. It appeared to us that the date of 14 February 2020 was probably wrong as the date for the team meeting described by both witnesses because at that point there was no proposal that staff should be interviewed by Mr Davies. We accepted however that Ms Newton and Mr Barard did approach Mr Mahmoud about joining with them and Mr Austin around 14 February 2020, although we were not persuaded that Mr Mahmoud had a very clear memory about dates and some of the detail. What Mr Mahmoud said that he was being approached about seemed to us to be consistent with what the documentary evidence suggested that Mr Austin was seeking to

achieve – the removal of Mr Rahman and Ms Shields and a new structure which contained Ms Newton and retained Ms Barard. We noted that Ms Eves gave evidence that Mr Mahmoud spoke to her on 18 February 2020 about his unhappiness that he and other team members were being pressured to say or agree to things that they had not heard.

207. We concluded that the team meeting referred to by both Mr Mahmoud and Ms Gengi must have happened somewhat later and that Ms Barard and Ms Newton were suggesting at that point that Ms Shields and Mr Rahman were going to be sacked and Ms Barard was advising the staff not to speak to Ms Shields or Mr Rahman.
208. It appeared to us that to some extent the claimants saw Ms Barard's revelation about Ms Shields' remarks on 29 November 2019 as a golden opportunity for removing her and securing their own positions.
209. Ms Eves discussed the situation with HR at about this time and was told that it was not appropriate to instigate a grievance investigation as the complaints had not been made by employees. She explained her proposal to split the team and it was agreed that it would be sensible to do that at that point given the breakdown in relationships. At this point Ms Eves proposed to review the issues raised herself and diarised meetings with all members of the Grenfell finance team.
210. At this stage, it appeared to the Tribunal that the Grenfell finance team had become extremely dysfunctional. If there were historic problems in the team, Mr Austin as head of service seems to have failed to get a grip on them and by the early part of 2020, he and Ms Newton were actively encouraging division.
211. On 16 February 2020: Ms Eves wrote to Mr Philp:

On another note - I have had a difficult week with the Grenfell finance team and have called a team meeting for Tuesday. As a result of a series of events last week within the team and discussions with HR, with immediate effect after Tuesday, the team is being split as I mentioned to you before.

Lesley will be heading up the team that will look after the management of the £50m - — as well as other projects such as NHP, capital housing etc.

The legacy stuff (statements and the project below if it continues) will be managed by Francis.

This is not where I had intended to be and some contracts were due to end in March but following discussion with HR the extension seems the most sensible option while I investigate some of the issues raised with me last week.

The team will be completely separated.

All contracts will be extended until May but a review will be done at the end of March. Lesley and Francis will have clear objectives and deliverables which I will set next week and which will be assessed against on a weekly / bi-weekly basis.

I will get more involved in both areas and as soon as I have had the meeting on Tuesday I will expect our planned arrangements for the statements to be put into place so will set up the first meeting for the week of the 24th.

212. On 17 February 2020, Mr Philp replied to Ms Eves:

On the housing legacy costs project, I was going to go back to Monika and Francis directly (and can still do so if helpful) but, if I'm honest, I'm really [not sure] I can see the value of it.

Robyn, Callum and I are pretty clear that it's not something that is of any use to us in the Grenfell team, either for the work on archiving the response or for our work on the recovery programme moving forward. So if it is something that Finance decides to pursue, I don't think we would be the key stakeholders. That said, I am wary of the possible demands it might make on our data/insight team, so I think we need to be clear about the value the project would be adding.

I am a bit concerned by the claim in the information deck that the project will 'map the resident's housing journey from the time of the tragedy until their move into a permanent home'. In reality, as Francis and Monika acknowledged when we met, the work will rely on the placements data that already exists about who was where and when. The project won't add anything to this — the only thing it will enable us to do is link the costs of accommodation to particular individuals. I'm not sure this is something we need (or even want) to be able to do.

I can see this may be of interest to the Fraud team, though the case-by-case approach that has been pursued to date may well be sufficient for what is in reality a very small number of cases. Francis and Monika seemed to think that the project was of interest to Audit and Insurance so I think you'd have to speak to them for their perspective.

213. On 18 February 2020 Mr Austin sent further documents to Ms Eves about Mr Rahman and Ms Shields:

Prior to your meetings with the individual members of the team, I thought it might be useful to summarise the concerns raised with me about Aki Rahman and Lesley Shields. I have attached bulleted one-pagers for each.

There are common themes running through the issues raised: controlling and coercive behaviour, bullying and harassment, particularly by belittling and undermining staff, and favouritism.

214. As we have observed above, the bullet point one pagers did not indicate which member of staff was said to have made which complaints and they were expressed in fairly general terms.
215. Mr Austin suggested that the team might be protected as whistle-blowers and that it might be appropriate to suspend Ms Shields and Mr Rahman.
216. Ms Eves replied saying that she had diarised meetings with every member of the team the following week.
217. There was a Finance for Grenfell meeting on 18 February 2020 including Ms Eves. Mr Austin said in evidence that he made an impassioned speech asking Ms Eves to protect the team given the serious concerns they had raised. Ms Eves announced the split of the team into two parts: the BAU side to be managed by Ms Shields and the legacy team to be managed by Mr Austin. Mr Austin said that Ms Eves told him that this was her decision and it was not up for discussion immediately prior to the meeting. His case to the Tribunal was that this was a demotion for him and a promotion for Ms Shields as they would now be formally on the same level. Ms Eves

said that both were temporary appointments and it was open to the respondent to determine how their services could most usefully be deployed.

218. Ms Eves also said at the meeting that she was extending all contracts for temporary staff on the team until 31 May 2021. It appeared from the correspondence we have referred to above that this was to allow some time to look into the issues which had emerged. She also said that she would be meeting with everyone the following week to hear their complaints.
219. Ms Barard also emailed Ms Austin about the bullet point list of complaints which he had also sent to her. She added some points about Mr Rahman, saying that he had not been truthful about Ms Barard's performance and that he told other people that Mr Austin was lazy and did absolutely no work, whilst offloading some of his own work to Mr Mahmoud. She also complained about Ms Shields, complaining in particular that she had not responded to some emails about challenges facing the financial statements team.
220. On 19 February 2020, Ms Eves had a meeting with Mr Austin and Ms Shields about the split of the team and who would be responsible for which parts. Mr Austin wanted to retain some corporate tasks which Ms Eves considered fell within BAU rather than legacy work.
221. Mr Austin wrote to Ms Eves that day sending her his CV and setting out his professional experience as he said that Ms Eves had "been subjected to the campaign of misinformation that has been waged against me" and that lies were being told about him.
222. Ms Hollingsworth wrote to Ms Eves about the situation which had arisen within the team. She advised that the disciplinary and grievance procedures did not apply to the agency staff but it was sensible to have meetings with the team to hear their concerns. She said that the HR department did not have capacity to carry out the work but they could engage an independent adviser to help. Suspension and disciplinary warnings would not be appropriate for agency staff.
223. Ms Eves agreed with Ms Hollingsworth's proposal and that led to the engagement of Mr Davies, an independent HR consultant.
224. On 20 February 2020 Mr Austin wrote to his new team:

I think it would be a good idea to have an initial meeting to clarify the areas for which we now have responsibility, crossovers with the BAU team and training and knowledge transfer needs for activities that we have not previously controlled. We can also discuss how we will manage our performance, new reporting and monitoring arrangements and changes that I would like to make that should improve our working environment.

He also proposed that the team would have fortnightly training slots to be run by Ms Newton.

225. On 21 February 2020, Mr Austin wrote a long letter to Ms Newton about his own contract renewal. The letter began:

As a colleague who I have known and worked with for some years, I feel I need to tell you about my concerns over the process to renew my contract and to address our complaints.

226. Mr Austin then set out allegations about the decision not to extend his contract and in particular an allegation that Ms Shields had been 'systematically undermining my position'. He criticised Ms Shields and said she had been trying to 'usurp my role' and described his effort to introduce a performance tracker. He said that Ms Shields had been undermining Ms Newton's project and harassing Ms Newton. He expressed the view that her behaviour was gross misconduct. The letter is relevant to quote in detail:

When I returned from holiday, my impression was that my deputy was seizing work for herself, which she then failed to deliver. She claims that she had to do this as otherwise the work would not get done, as I was not doing it. This is simply untrue — I wanted to do this work, but it was taken from me and barriers put in place to stop me taking it back. She adopted an aggressive attitude where she assumed responsibility for work, set about doing it in her way, restricted access to the working documents, would not accept any offer of help from me, and when asked, refused to hand back any of this work.

The Financial Statements team raised a large number of serious concerns: Lesley's harassment of you (Monika Newton), the campaign to undermine me and favouritism to Aki; and Aki's harassment and bullying of the Financial Statements team. Several team members said that they have not previously spoken out about what has been going, as they feel Lesley is protected and untouchable. There is a wide-spread view, fuelled by comments that Lesley makes to team members, that Taryn, Jacqui and Lesley are friends and drinking buddies.

They are the management and whatever they say goes. Each will look out for the other, so all are untouchable.

I have said in writing to both Taryn and Sue Hollingsworth that I am amazed that Lesley and Aki have not been suspended. Suspension is a neutral act that prevents intimidation and allows witnesses to speak freely. It prevents further allegation that undue pressure was applied.

Suspension protects all parties in serious disciplinary matters of this nature. I believe we are witnessing precisely the type of behaviour that suspensions are designed to prevent. It is my view that RBKC have failed to protect me from harassment and that, when they know from more than one source of very serious allegations, by failing to suspend those accused, the Council have failed to discharge their legal obligations to me, which arise for reasons other than employment status.

I feel at this point I must raise concerns that there is ostensible bias in the way that Taryn works that results in women being favoured over men. Here is a list of areas where women have been preferred to men without good reason and contrary to the results of any objective assessment of knowledge and experience:

...

To my mind the common theme here which is that these women are clearly being preferred to me as a man. I can see no other reason that explains this, as Taryn has no direct knowledge of my work performance since there have been no supervision meetings. I can only conclude that this results from gender bias and therefore amounts to unlawful sexual discrimination.

This is a terrible position that we find ourselves in, through no fault of our own. We are the victims in this and we need to see that justice prevails. I suspect RBKC have acted so recklessly that there is no real prospect of rectifying the situation without going to court. I know that you have a legal background and deal frequently with legally qualified persons who will be able hopefully to confirm my interpretation of the law and the merits of our case.

I look forward to your views on how to take this forward.

227. The Tribunal found this a very strange letter for Mr Austin to have sent, as the manager of Ms Newton and of others referred to in the letter such as Mr Rahman. We also noted that his account of his own perception of the situation, at least at this point, was that he was the victim of sex discrimination. He did not allege, as he later did, that Ms Shields and others were engaged in criminal fraud or that he had whistleblown about any such fraud.
228. On 24 February 2020, Mr Austin wrote to Ms Eves and Ms Hollingsworth urging the suspension of Ms Shields and Mr Rahman. He alleged that he saw Ms Shields and Ms McIntosh talking to Ms Thakkar and that Ms Thakkar looked distressed, although he had not heard any of the conversation. He suggested that Ms Shields must have been intimidating Ms Thakkar to stop her revealing the comments which had been made about Ms Newton and himself in November 2019.
229. Ms Eves wrote to the finance team to tell them that the planned one-to-one meetings would be with an external person and not herself.
230. On 25 February 2020, Ms Eves got in touch with Mr Chitty and Mr Hyatt about the housing legacy project. She said that the Grenfell directorate had confirmed that the project was not of value to the work they were doing but she wanted to understand the views of the fraud, risk and insurance team. She was interested in their initial thoughts and they could meet with Ms Newton in order to hear about progress to date.
231. Mr Chitty wrote to Ms Eves on 26 February 2020 saying that he had expressed his concerns about the project being an 'FOI nightmare' but he would like to see progress to date and costs.
232. On 27 February 2020, Mr Austin had his interview with Mr Davies. There were alleged protected disclosures at this meeting. Mr Austin set out what he says he said in his witness statement as directly reported speech:

"Ms Barard's report of Mr Rahman's comments on prolonging work to gain a contract extension was revelatory. It was my 'Eureka!' moment. Suddenly, what Ms Shields and Aklakur Rahman had been doing made sense. They were deliberately frustrating work for their own gain."
233. He said in his statement that he gave a further example of Ms Shields' instruction to the team not to correct spreadsheet records. There was no professional justification for this and it was a deliberate act to spin out work. He said that he believed this was fraud. He said that looking at all of the evidence, including a failure to produce a performance tracker for months and trying to get rid of Ms Barard on trumped up performance grounds and a failure to accept performance monitoring, there was evidence that they were prolonging the work.

234. Mr Austin did not make notes of the meeting and his account to the Tribunal of what he told Mr Davies differed significantly in tone and content from what was recorded in the notes of the meeting with Mr Davies.

235. The meeting notes show he raised the following:

Further explained that he (FA) believed a work creation scheme was going on, in that he had been advised by Ronika Barard (RB) that AR had instructed her (RB) to slow down as the team would run out of work.

FA advised that he had also learnt that as the team was working through records of what had been paid out they had been instructed not to make any corrections until right at the end of the scheme. FA stated he could not understand why they had been given this instruction.

Advised that MN had advised him (FA) that LS was causing a bad atmosphere in the office and that the offensive comments were made the afternoon of 29 November 2019. FA explained that he had heard that LS went through his (FA's) and MN's electronic diaries and saw that they were meeting with James Caspell (JC), then looked into JC's diary and stated that there was no meeting scheduled there.

Then further explained about the contract extensions and advised that RB was not recommended for an extension at first, as LS and AR had concerns about her and AR did not feel she (RB) was right for the role. FA stated he was not sure about this and advised that he needed to see a tracker of the statements for a week, as the target was 10 a week. FA stated that he had looked, and RB was on top of her target and that there was belief that RB's work was being changed by AR. FA stated that he suspected that someone was being 'thrown under the bus' so AR could stay. FA stated that he had since asked MN to do a fit for purpose exercise to review and look at what work was being done.

236. Ms Newton's meeting with Mr Davies also took place that day and there were also said to have been protected disclosures at that meeting. She told the Tribunal that she told Mr Davies about Ms Shields' harassment of her and also of Ms Shields' obstruction of Ms Newton's work. She told the Tribunal that she said that Ms Shields' behaviour was not in the best interests of the Grenfell residents or the respondent and that Ms Shields was failing to meet her professional and legal duties.

237. The notes of the meeting showed that Ms Newton raised the following with Mr Davies:

- The obstacles she said Ms Shields had put in the way of her project, in particular blocking access to the finance team

- [About the 9 November 2019 remarks] *Advised that she had raised the matter with FA and stated that she (MN) believed that this was sexual harassment. MN further advised that she had raised the issue with legal friends and they have advised that this should be acted on and that LS should be dismissed.*

- *Advised that she had had an open discussion with team members advising that LS should not have hijacked the team meeting for a training session that was not relevant to all. MN explained following that training session team members had come forward and advised her about an inappropriate comment made by LS that alleged that MN had performed a sexual act on FA.*

Explained that she had understood that on 29 November 2019 LS had checked the diaries of her (MN), FA and JC, then made the comment. MN advised that RB had advised her (MN) that others were there.

Advised that she believed that she was caught in the crossfire between LS and FA That predated her (MN)

- The bitch and cunt remarks. She was not sure who had told her that Ms Shields had called her a bitch.
 - *Stated that she had evidence that LS had done everything in her power to stop her (MNs) work and stated that this was not effective for the Council as she (MN) was [on] a high daily rate*
238. Ms Newton said that she provided Mr Davies with a document which was in the bundle. That document referred, amongst other complaints, to:
- Ms Shields' bad attitude at the meeting on 13 November 2019 and the January 2020 email, Ms Shields making it clear to Ms Newton that she did not think the project needed to be done
 - Mr Wiltsher telling Ms Newton that Ms Shields told the finance team that Mr Austin did not have permission to hire her
 - Ms Shields making the remarks on 29 November 2019 and saying Ms Newton was a cunt and a bitch
 - complaints that Ms Shields was unprofessional, gossiped and was bullying.
239. Between 27 February and 5 March 2020, Mr Davies interviewed Ms Eves, Mr Austin, Ms Shields, Mr Rahman, Mr Newton, Ms Barard, Mr Fitch, Ms Thakkar, Mr Mahmoud, Mr Wiltsher, Mr Naha and Ms Gengi.
240. The only notes which survived and were in the bundle were those of the interviews with Mr Newton, Ms Austin, Ms Barard and Mr Fitch. We were informed that the others had been lost.
241. In Ms Barard's interview, we noted the following:
- *Explained that she (RB) was advised by FA that her contract was not being extended as she was underperforming and not meeting the targets. RB stated it was alleged that AR and LS was doing her (RBs) work*
 - She complained about lack of support from Mr Rahman
 - She referred to the comment she had said Mr Rahman had made about the financial statements team slowing down and said she believed it was put into practice because 'AR was lazily and did nothing'
 - *Stated that it was all nothing personal but when it had been stated that she (RB) was not doing her work, she felt the need to speak out. RB stated that she was not even sure if AR could do the email box.*
 - In relation to the training session incident, she said:
RB stated that at the time she (RB) could see how it could appear disruptive, but it was the way LS had asked MN to leave and it could have been dealt with differently.
- She said that Ms Shields checked people's calendars all the time and was very vocal about it.

242. As to Mr Fitch's interview:
- He had not heard any of the inappropriate comments
 - He had no comments about the financial statements team.

Discussions about the housing legacy project

243. Ms Eves had raised the issue of whether the housing legacy project should continue at the meeting with Ms Shields and Mr Austin on 10 February 2020. Mr Philp had expressed his reservations about the project on 17 February 2020 and she had made further enquiries with fraud and insurance.
244. Mr Hughes was contacted by Mr Philp after Mr Philp wrote to Ms Eves and they spoke about the project after Mr Hughes returned from leave on 27 February 2020. He told Mr Philp that from his perspective the project was not necessary as his team had access to and would use the source data for any work they needed to do. Mr Philp later fed these views back to Ms Eves.
245. It was put to Ms Eves that she had not consulted the correct stakeholders about the project. She said that Ms Fairman and Mr Hughes were the key directors. The ultimate decision was hers. She was seeking their views through colleagues such as Mr Chitty, Mr Philp and Mr Hyatt.
246. On 6 March 2020, Mr Davies gave feedback on his investigation and findings orally to Ms Eves and Ms Hollingsworth.
247. As March 2020 progressed, the effects of the pandemic were becoming clear and the respondent began to prepare for the possibility of home working. 16 March 2020 was designated as a test working from home day. The respondent went into emergency mode in preparation for lockdown.
248. In mid March 2020 there was a meeting which was held remotely. Ms Gengi was reluctant to turn her camera on, she told the Tribunal because Mr Austin had attended wearing a dressing gown or bath robe with no top on underneath and his bare chest was visible. She said that Ms Newton was allowed to turn her camera off but she was told to put hers on.
249. Mr Austin and Ms Newton denied that there was a meeting which Mr Austin attended in a dressing gown / bath robe. Mr Naha said he could not remember a meeting where Mr Austin was wearing informal dress.
250. Ms Gengi had in fact attended the office that day and said that Ms McIntosh saw that she was upset after the meeting and she and her colleagues explained what had happened. A meeting was arranged for them with Ms Eves the following Monday 16 March 2020.
251. Ms Gengi and Ms Thakkar met with Ms Eves and told her about the Teams call and also that Ms Gengi felt Ms Newton had behaved aggressively towards her at a meeting and was booking unnecessary long meetings with staff members which meant they could not meet their deadlines for financial statements. The two put their concerns in writing to Ms Eves:

Further to our meeting today regarding some issues I and Dee have been facing in the Grenfell Legacy Team (Francis Team).

On Friday 13th, Grenfell Legacy team were having a team meeting at around 12.00pm (Monika, Samira, Dee and Dipankar) We were asked to log in teams for the meeting, when I join the meet in call, Francis Austin was not wearing appropriate clothing (he had a robe on and not fully covered) which made both of us very uncomfortable, I turned the camera off and Francis asked us to turn it back on which Samira said "I am not comfortable turning the camera on" as we were using Samira's laptop for this meeting, yet he kept saying "I think everyone should keep their cameras on", Samir switched the camera on facing Dip. in the middle of the conversation, Francis stood up close to the camera and it was front facing us and we could see that he had no shirt on under the robe and it Vi open, We turned away as we were afraid just in case he has nothing underneath. Monika had the camera off the whole meeting, and he didn't say anything to Monika about turning the camera on.

On Wednesday 11th Dee, Dip and Francis had a meeting with Monika. Monika told Dee that she will be presenting in the next meeting, but this was told in very aggressive manner in front of everyone including Francis. She has been booking unnecessary meetings which is distracting us from completing our work and meeting targets, we have at least 3 hours meetings a day which is not useful sometimes as we are more worried about not completing our work.

We were all told to work from home on Monday 16th however Samira and Dee had to come in for the meeting with Taryn as we felt it was important for us to speak to her when no one is around in the office, when Monika found out that we were in the office, we were told that there will be consequences for this and she said this in a very aggressive manner. We feel that Monika is controlling us and we feel scared to speak to anyone when they are around because they question us that is why we chose Monday to speak to Taryn as they were working from home. Samira and Dee feels uncomfortable working with Francis and Monika as she is not our manager and she doesn't manage our workload; her approach is completely unacceptable.

252. On 18 March 2020, Ms Eves wrote to Mr Chitty and Mr Hyatt:

As COVID-19 hits - we are all being forced to re-prioritise work and what can be pushed back.

I think I had drawn this conclusion anyway but events over the last few days has confirmed my opinion I think.

I have struggled to get into the detail of the housing legacy project which Francis brought Monika in to do and the project has stalled over the last two months. I spoke to Joe who felt the project was not adding any particular value from his perspective and also dropped an email to yourselves back last month and I am not hearing great support at the moment.

Therefore, I am going to stop the project at this stage If we decide at a future date it would be useful then we can re-establish but I think the next 4 months are going to be tricky for us all and I am challenging what are the essential pieces of work. Ray—you mentioned that if any of the info was needed then we could obtain under a legal process and privilege

If either of you think my decision should be re-considered please do let me know.

253. Ms Eves telephoned Mr Austin that day to say that she had spoken with various people within the respondent and they did not consider that the housing legacy project should be progressed at that time. She was putting the project on hold and Ms Newton's contract would therefore terminate on 31 March 2020.

254. Mr Austin emailed Ms Eves, urging the retention of Ms Newton until the end of May, as he thought had already been agreed:

At present Monika is working with me and Ronica on improving the team's performance. This is actually a fairly significant piece of work. This is not welcome in all quarters as it does expose individuals' performance to scrutiny. I do however think that we are making real progress and will soon be in a position to outperform the 10 statement per week target by some margin. I would want to complete the process improvements and I very much doubt that that can take place by the end of next week, particularly while we are finding our feet on protracted remote working. We have no shortage of work; indeed, I think workloads are currently as heavy as they have ever been.

255. The same day Mr Austin sent Ms Newton an email saying:

Misia, Could you take the lead on the Statements meeting and go out of your way to impress Taryn with how much work you have done and what still remains to be done and how this will really improve throughput? I want you to come across as indispensable.

256. On 19 March 2020, there were emails between Mr Hughes and Mr Austin about the housing legacy project. Mr Austin enquired:

I understand that you met with Taryn to discuss the future of the Housing Legacy Costs project. As a result, it has been put on hold. Could you let me know what is the future plan going forward?

257. Mr Hughes replied that he had not met directly with Ms Eves but:

I had a quick call with Joe Philp a few weeks back where we discussed not needing to duplicate in the Legacy Project data we already held in the current and former (Agresso archive) systems and that this was sufficient, from my point of view, for internal audit, fraud and insurance purposes. Not sure if this is what you are referring to?

258. On about 19 March 2020, there was a Teams meeting involving the financial statements team, at which Mr Austin was said to have displayed the email sent by Ms Eves to himself and Ms Shields about the finance team contracts on 10 February 2020, and which he had previously forwarded to Ms Newton.

259. We were provided with a photograph of Ms Gengi's computer screen showing the Teams meeting at the point at which the email was displayed. Ms Gengi said she took the photograph to send to Mr Mahmoud, who was not present at the meeting. Mr Austin initially put forward to the Tribunal a list of reasons for challenging the authenticity of the photograph, none of which seemed to the Tribunal to be persuasive and which he ultimately did not rely on. In particular he suggested that the photograph had been doctored.

260. Mr Austin denied that he had shared the email. It was put to him that he had shared it to incite the team and create greater factionalism, which he denied.
261. Mr Naha in cross examination said that he remembered seeing something like the email for a few seconds. He had seen it but could not remember who had shared it. He said that he probably saw it in a team meeting. He had not received a copy by email or seen it printed. He remembered seeing his name and had not read all of the email.
262. Having heard that evidence, Mr Austin's ultimate suggestion to the Tribunal in submissions was that someone other than him must have shared the email in a team meeting.
263. On 20 March 2020, Ms McIntosh sent an email to Mr Curtis, which the claimants said demonstrated that Ms Eves / the respondent had failed to keep their complaints confidential.
264. Ms McIntosh said in the email that she was providing Mr Curtis with some 'headliners' pending Ms Eves catching up with him:

In essence:

The investigation re the allegations within the Grenfell Finance Team concluded at the beginning of March. Taryn was on leave the following week, and the Team were told that in order to allow her to give due consideration to all the relevant issues around the work and structure of the Team (i.e. the outcome of the investigation, discussions with other relevant officers etc.) and given that some of their contracts were due to come to an end on 31 March, rather than rush her decision she would extend contracts to the end of May, to allow her to be thorough and fair.

Entirely separate to the core work of the Grenfell Finance Team, Monika was brought in by Francis, in November '19, to do a specific piece of work, as a project, on Grenfell Legacy data. The agreement reached between Francis, Monika and Taryn back in December '19 was that Monika would undertake an initial scoping exercise around the value of the Project, with the agreed decision point being the end of March. The Project work itself had therefore not yet begun.

No other work or tasks have formally been given to Monika to carry out.

As part of her overall considerations around the core work and structure of the Grenfell Finance Team, Taryn clearly also had to review the worth of this separate project, so as to reach her decision as to whether it had any value for the Authority, and should continue. She met with senior officers within the Grenfell Service, Audit, Fraud, Risk and Insurance to establish their need for the Legacy work.. None of these officers supported the commencement of the project, or suggested it held real value for the Authority (even given the on-going Public Inquiry).

Francis has informally been involving Monika in other aspects of the Teams work, although not essentially a part of her remit (which sits purely around the Legacy Project) Last week an email was received by Taryn from two of the members of the Grenfell Statements Team highlighting significant issues with Monica's management style and approach, which are impacting upon the smooth running of that team.

Taryn and I (my involvement being as Head of Operations for Finance!) met with Sue Hollingsworth yesterday to discuss the matter including whether the Council have

any policy in place to provide guaranteed extended contracts for any Agency / contract staff in the current circumstances around the Coronavirus. Sue has responded today that no such guarantee is in place and that in essence contracts are purely dependant upon the availability / need of work (I will forward this on to you)

Given all of the above, there appears to be no valid reason to authorise the commencement of the Legacy Project. The consequence of this would be to end Monika's contract at the end of March, all of which is in line with the original agreed process and timelines.

265. Ms Eves' evidence was that Ms McIntosh was properly involved in her role as head of operations and that she had delegated work to her at an extremely busy time. Ms McIntosh did not know what the complaints were about and there was no breach of confidentiality.
266. On 21 March 2020, Ms Eves wrote to Mr Curtis and others, having heard that further complaints were being pursued:

I don't know the detail of the complaint but if it is about ending her contract at the end of March – I stand by this decision because the project has stopped (following consultation with insurance, fraud and Grenfell team).

I also discussed with HR as Jacqui has said.

The outcome of the review by Reg is to put in place a new structure which I am doing. This will be going to the team on Monday. I need to speak to people about performance issues and also to Lesley about her conduct in terms of what she said. I will probably trigger a competitive process for the Head of Service role between Francis and Lesley.

My priority at the moment is to get the money out to businesses and I am leading on this with David and also with Sophie on getting out to individuals. However you decide to take forward the investigation I will of course support so just let me know.

I had planned to end her contract at the end of March. In light of the complaint you have received, if I need to extend, please let me know. I will however be re-deploying her to where her resources can be used given the project she was brought in to do has stopped.

267. Also on 21 March 2020, Ms Eves wrote to key staff within the finance teams about work planning and redeployment for the Covid 19 response. In particular, she asked Mr Austin to explore pausing the financial statements work so staff could be redeployed. Mr Austin replied that he would not like to suspend the financial statements work without consulting with Ms Fairman. He said that the obvious person to redeploy to support the respondent's response would be Ms Newton.
268. On 23 March 2020, Ms Eves wrote back to Mr Austin about Ms Newton; she had written to him previously in response to his email about Ms Newton on 20 March 2020, saying that she had written to HR about Ms Newton's contract and was awaiting a response. She said that her discussions with other services had not convinced her that the housing legacy project was of sufficient value to justify its continuation. She understood that Mr Austin had been involving Ms Newton in work with the financial statements team but that was not her original remit. It was work which was part of his role and which she hoped he would continue:

I am coming at this decision from a business perspective. I have a Project which we appear not to need as an Authority. and perhaps even more so now under the current re-focussing of our work. I also currently have three managers managing three fairly junior members of staff all doing exactly the same area of work and that is not sustainable, even in the short term. I am not doubting Monika's attempts to embed new processes and strengthen the team but I am not in a position to be able to justify three managers for a small team. I am expecting the work that she has started to be completed by yourself or if you feel you do not have the capacity I would like to discuss.

269. Ms Eves went on to comment that Mr Austin had been putting Ms Newton forward for work on the respondent's Covid 19 response. She said that they would be looking to distribute the work to permanent staff initially but that she would raise with the directorate management team the question of whether there were any opportunities for Ms Newton.

270. Also on 23 March 2020, Mr Austin wrote to Mr Hughes seeking "whistleblowing protection":

The specific whistleblowing matter is this:

Lesley Shields and Aki Rahman deliberately and intentionally took actions and directed others to behave in such a way as to delay the production of Financial Statements, which show the care and support payments made to Grenfell Survivors. This was detrimental to the Interests of those survivors and the Council. It is believed that this was done so that the work would take longer to complete and the pair would therefore enjoy financial gain through an extension of their contracts. It is possible that other nefarious motives were at play.

The three whistle-blowers are Monika Newton, Ronica Barard and myself. I have express requests from the other two to seek protection (emails attached) and I too wish to be protected. I believe that even as agency staff we enjoy protection under the RBKC Code of Conduct and since this is a matter of Public Interest that we also enjoy statutory protection.

271. Mr Hughes forwarded the email to Mr Hyatt to review. Mr Hyatt's email in reply said amongst other things, that most of the issues should be addressed through HR or the grievance policy. The allegations that Ms Shields and Mr Rahman were slowing down work to extend their contracts was subjective and difficult to prove. He said that driver for the referral was the ending of Ms Newton's contract and that the author appeared biased and alleged fraud with no evidence. He identified two discrete areas which could be looked at and said:

Overall, it's a referral that lists lots and alludes to much, but it fails to raise any specific fraud concerns. It cleverly highlights actions (and non-actions) which could be deemed "red flags", and because of that, I think it's probably appropriate that we should undertake some assurance work.

272. Mr Hyatt also discussed the position of agency workers and concluded that they did not have to have their contracts extended just because they had blown the whistle. He identified the desire for contract extension as a 'driver' for referrals in cases of this type.

273. Mr Hughes said in evidence that it would have been well within Mr Austin's remit to collate data to back up his allegations, but he did not do so. It therefore felt as if the allegations were frivolous or were being pursued because of some personal motive.
274. On 24 March 2020, Mr Austin wrote to Sophie Ellis, director of customer delivery, to ask about possible roles for Ms Newton. Ms Ellis replied to Mr Austin, copying in Ms Eves, to say that Ms Eves had already spoken to her and that she had explained she did not require additional support. Ms Eves was concerned that at a time when she was overwhelmed with work on the Covid support response, Mr Austin's actions in promoting an interim short term worker 'over and above anyone else' were unusual and undermining. He appeared to be concentrating on creating a role for Ms Newton when everyone else was trying to focus on the Covid response.
275. Also on 24 March 2020, Ms McIntosh wrote to Mr Austin on Ms Eves' behalf to say that Mr Philp had agreed that the financial statements work should be paused for a couple of weeks.

I will be in touch with the wider team regarding my proposals following the work by Reg but much like the work itself, the decision around the Legacy Projects separate to this.

Therefore, following a discussion with HR, my intention is to still end Monika's contract for support to the housing project at the end of March.

276. On 24 March 2020 Mr Austin wrote to Ms Newton:

It is with regret that I must say that Taryn Eves has decided to terminate your contract on 31st March 2020.

Ms Newton had told Mr Austin in a long email on 22 March 2020 that she was in the process of instructing an employment lawyer. She also took advice informally at around this time from friends who were solicitors and barristers and said that contacted lawyers for the first time on 13 February when Ms Barard told her about Ms Shields' comments.

277. On 25 March 2020, Mr Austin wrote to Ms Eves at great length in response to the email from Ms McIntosh. Amongst other things, he complained that he had not been consulted about the suspension of the financial statements work and asked for reassurance that his contract would be extended until the end of May 2020 and that there would be a competitive process between himself and Ms Shields.
278. Ms Eves initially responded that day saying she was struggling to deal with anything other than the crisis so could not respond in detail and then sent him a longer email that evening explaining again that Ms Newton's role was not required and the requirement for additional support for the Covid response was at a more junior level. She raised a concern that it appeared from what he said that management discussions she had had with him were being shared with the wider team.
279. On 26 March 2020, Mr Austin wrote back to Ms Eves commenting in great detail on her email and continuing to argue that the respondent should retain Ms Newton in some role. We note that he appeared to have no sense of the workload Ms Eves was facing at the time and where her priorities had to be.
280. Also on 26 March 2020, Ms Eves wrote to staff about Mr Davies' investigation. She said that she had not found the time to do this previously. She apologised to staff for

the delay and explained that Mr Davies had identified a number of issues about behaviour and performance in the team. She would be taking necessary action and meeting with people on an individual basis. Mr Davies' findings had reinforced her plans to put a new structure in place for the team and she would be circulating that new structure the following week. She explained how busy she was at the time.

281. Mr Austin wrote back to Ms Eves to ask for a copy of Mr Davies' findings, as he was the manager who raised the concerns. He also asked whether the grievance process had been followed and whether individuals would be told of the outcome in relation to complaints which were upheld, including any disciplinary action. Ms Eves replied to say that she would be meeting with people individually about the findings.
282. Ms Eves told the Tribunal that she had intended to meet with members of the team but her plans were thrown into chaos by Covid. She was working seven days a week managing her new responsibilities alongside her usual job.
283. On 30 March 2020, Mr Austin wrote to Ms Newton and Ms Barard saying that he had forwarded their complaints to Mr Quirk and Mr Curtis and Mr Hughes. He said that they should have been protected from having their contracts terminated as they were whistle-blowers.
284. On 31 March 2020, Ms Barard wrote to Mr Austin to say that she did not have a whistle-blowing complaint against Ms Eves or Ms Shields:

My request for whistle blowing protection has always been based on staff who are non performing, having their contracts extended whilst those who are performing, are not having their contracts extended.

285. On 31 March 2020, Mr Austin wrote to Ms Eves, Ms Hollingsworth and Mr O'Rourke referring to an email which had been circulated more generally on the subject of hiring in relation to the Covid 19 response:

Dear Sue, John, and Taryn,

I have an agency member of staff (Monika Newton) whose contract I have been instructed to terminate today as the project that she was originally brought into manage has been put on hold.

...

As her hiring manager I consider Ms Newton's skills as a project manager to be exceptional. She would be highly proficient in any area that requires capture or manipulation of data or organising, tracking and directing of tasks. She is experienced in business continuity work and has managed large numbers of staff in multi-national companies working in crisis management mode.

I know that Taryn has asked Sophie Ellis if there is anything that Monika can do, and the answer was no; but I just wonder whether we are casting the net wide enough before dispensing with the services of someone who could be usefully redeployed elsewhere. I know neither Monika or I have been asked for any information on her skills, background and experience. In the spirit of section 4 below, could I ask that Monika's position is reviewed and a full skills audit undertaken to see if she matches any of the requirements which the Council cannot cover with permanent staff. Given her contract ends today, this would need to be done as a matter of urgency.

I am concerned as a manager that unless we are seen to act fairly in our treatment of Monika, we may expose the Council to legal challenges further down the line.

286. Mr O'Rourke replied that agency workers would be considered for any key roles identified by the respondent where there were no permanent staff who could be utilised, however there was no such role available for Ms Newton at that time which would merit a skills audit being undertaken.

287. On 1 April 2020, Mr Austin wrote to Ms Newton:

I understand that Taryn is currently processing the appointment of a programme manager for capital projects. I have not seen a JD or person specification, but more to the point I was not advised that this was happening or invited to consider asking you to apply. I note that your role would have been known to be on jeopardy at the time this post was being recruited.

I understand an offer has been made to a candidate at £500 per day inside IR35. When informed that this would be inside IR35, the candidate asked for a further £200 per day, which the Council is considering.

I am at a loss as to why you would not be considered for such a role as this strikes me, without knowing the detailed requirements, as something likely to match your knowledge and skill set.

288. He wrote to her further:

At today's budget review meeting, Taryn set out clearly what Lesley was doing. She had previously said when challenged that Lesley was just providing lessons learnt information from Grenfell to inform the Council's COVID-19 response. She made it clear today (as I thought) that Lesley is co-ordinating assessment of the financial impact of all decisions taken in respect of COVID-19. For Grenfell, which was a major disaster, but a discrete area, this was a very large piece of work that occupied me virtually full-time for the first nine months of the Grenfell response. The COVID-19 response is borough-wide, and involves more people/businesses and more Council services. This is therefore a huge piece of work — in fact probably a full-time task to the end of the financial year. Asking someone to volunteer (apparently) off the cuff seems very odd, particularly where the volunteer is a temporary member of staff and effectively extends their contract (and Aki's whose name she also put forward).

This seems wrong.

289. Ms Newton of course was no longer working for the respondent and should not have been privy to Council communications or meetings.

290. On 2 April 2020, Mr Austin wrote a long complaint to Mr Curtis and Mr Barry about Ms Eves and Ms Shields:

I have now received a further complaint that a member of temporary staff who is a whistle blower by complaining of the harassment she was enduring is now being victimised by Taryn Eves, who has reneged on an agreement to extend her contract by another two months.

....

it may be that this matter can still be resolved internally. I should however inform you that at least three individuals have sought legal advice and ACAS has been

consulted. I also understand that people engaged to maximise the coverage of this story, should it go public. I would hope we could avoid courts cases against a backdrop of a media frenzy, particularly at a time when RBKC is subject to much media interest.

As a result of this letter, I would ask you to launch a proper formal investigation into the matters raised, namely the favouritism by Taryn Eves and the original allegations, which have not been dealt with appropriately. In the meantime, can I seek your permission to extend Monika Newton's contract to the end of May as previously agreed to prevent any detriment to her or the investigation?

291. The allegations in that complaint largely concerned alleged favouritism by Ms Eves towards Ms Shields.
292. In early April 2020, Ms Eves had a catch up with Ms Morris. Ms Morris said that Ms Eves told her that Mr Austin was questioning her decisions and sending her lengthy emails at a time when she was working 24/7 to set up new systems to manage the Covid response; he had not accepted her decision about Ms Newton's contract, challenged her directly and spoke to a number of senior people in a way which suggested that he did not trust what she had said to him.
293. Ms Morris said that she asked Ms Eves if there was a business need to keep Mr Austin until the end of May 2020. Ms Eves said there was not – she had taken control of the statements team and the housing legacy work had ended.
294. Ms Eves told the Tribunal that she felt that Mr Austin was a disruptive influence rather than a support. His reaction to Ms Newton's contract terminating and the redeployment of staff had created extra work for her in trying to manage him and his disruptive behaviour. He was sending her lengthy emails challenging her decisions at a time when he knew she was very busy with the Covid response. She felt his response to the termination of Ms Newton's contract was deeply unprofessional, as were his efforts to obtain a new role for her outside of normal protocols. She decided to terminate his contract early and pay him in lieu until the end of May 2020.
295. On 3 April 2020, Ms Eves emailed her team:
- As of 8:30 this morning, I am the silver for Covid-19 until next Friday morning. As a result, on top of the other Covid-19 meetings, I also have daily dedicated meetings for my silver duty in addition to the 12pm meeting I already attend. Therefore, I would ask you to bear with me over the next week. I have tried to cancel any non-essential meetings but it may mean an even longer period before I get round to emails — sorry. I will still, as I am at the moment catch up on them all in the evening. If you need to urgently get hold of me, please text. I will also be in the Town Hall for the next seven days.*
296. That day Mr Austin emailed Ms Newton
- Taryn held a catch up meeting at 14:40 until 15:02 on 3 April 2020.*
- The meeting was for both Finance for Grenfell and Housing finance teams, most of whom attended.*
- At this meeting no mention was made of either the restructure or the outcome of the complaints.*
297. On 6 April 2020, Ms Eves emailed Mr Curtis:

I have just been told by someone in the Grenfell Finance Team that a further complaint is on its way about me and Lesley – have absolutely no idea what now but this really is getting really tiring and to be honest feels like this is one that certain individuals are not going to let go of until they have won. Not sure where that leaves me to be honest. It is on its way to you I think.

The thing I wanted to raise is that the complaint quotes that Ronica has made the complaint again me and Lesley. She has just called me to say that is untrue and it has nothing to do with her.

Sue – I have some space over the next few days so would really like to get this one resolved one way or the other because this needs to be moved on for everyone's sanity – whichever way it goes!.

298. Ms Barard had spoken with Ms Eves and said that she regretted having got caught up in Mr Austin's and Ms Newton's complaints. She had been caught up in something she did not feel comfortable with.
299. On 9 April 2020, Ms Morris telephoned Mr Austin and read a script explaining that his engagement was being terminated early. The reasons were said to relate to the restructure and the need to ensure resources were focused on frontline services. He was told he would be paid until the end of May 2020. His access to Council systems was suspended. Mr Austin said to the Tribunal that it was 'reckless folly' to terminate his employment summarily. He said that no one knew what documents he was working on and which criminal cases he was giving evidence in. Other witnesses gave evidence that there had been no issues arising from the lack of handover. Mr Austin also said cutting him off like that with no opportunity to inform the team gave the appearance that he was involved in fraud.
300. On 11 April 2020, Mr Davies produced his written report.
301. The claimants were critical of his investigation. When asked who else should have been interviewed, Mr Austin said Sophie LeCalve, who witnessed the 29 November 2019 incident and other witnesses who had been near the lifts during the confrontation at the training event. He had not named them himself to Mr Davies as he did not know who they were but he said that Ms Barard could have said who they were.
302. Mr Davies' findings were that:
- Ms Shields admitted making the oral sex remark and said she bitterly regretted it.
 - She denied calling Ms Newton a cunt and he had found no supporting evidence so did not uphold that complaint.
 - Ms Shields accepted that she openly criticised Mr Austin in the office, commenting on his lack of competency and laziness. She accepted that she should not have done that; she said she was frustrated by his management, lack of output and frequent absences from team.
 - Ms Shields had opposed Ms Newton's appointment and made that known to a number of people. This was not misconduct but would not have assisted Ms Newton in her role.

- As to the 23 January 2020 training event: the evidence generally supported Ms Shields' contention that Ms Newton was more to blame for any inappropriateness than her; no action was required on the incident.

303. Mr Davies said in respect of Ms Shields' remarks: ... *were Lesley Shields a RBKC employee, the investigation would recommend that some form of disciplinary process and sanction take place, the seriousness to be determined as part of that process. The investigation noted however, Lesley was an external contract worker and was not therefore subject to internal processes — the appropriate action to be determined by her line management — Taryn Eves.*

There clearly was a feeling amongst members of the team, including Taryn Eves herself, that Lesley Shields was taking over managing both upwards (towards Francis Austin) and downwards (towards Aklahur Rahman). Fed back by the investigation that Lesley was positively attempting to resolve problems within the team and issue needed to be discussed with her during effective 'supervision'.

304. Mr Davies' findings in respect of the complaints about Mr Rahman were:

Although the number of concerns raised about Aklahur Rahman were numerous the investigation determined that any concerns about his management should be discussed with him and addressed if necessary though effective supervision, especially any concern that in effect, he allows Lesley Shields to manage difficult issues and messages for him.

There were two significant allegations on his conduct which were not substantiated during the investigation and therefore no further action need occur. These were

1) That he had paid unwanted/unwarranted to a female junior member of staff, Samira Gengi. Vociferously denied by both parties.

2) That he had verbally encouraged staff to work slower in order that contracts might have to be extended. No substantiating evidence provided and Aklahur stated he may have, on one occasion, joked about it which was accepted by the investigation.

Reported back to Taryn Eves on 6 March 2020 that both staff connected to 1) above were concerned about how and why the allegation had been reported — investigation advised that management would need to handle the situation delicately

305. On 17 April 2020, Mr Hughes emailed Mr Austin to say that his email of the 23 March did not meet the threshold for a protected disclosure. He asked for further information to determine whether the email could merit an investigation.

306. On 22 April 2020, Mr Austin wrote to Mr Hughes describing Mr Hughes' email as a 'holding response' and saying that his email already specifically set out the allegations:

Lesley Shields and Aki Rahman deliberately and intentionally took actions and directed others to behave in such a way as to delay the production of Financial Statements, which show the care and support payments made to Grenfell Survivors. This was detrimental to the interests of those survivors and the Council. It is believed that this was done so that the work would take longer to complete and the pair would therefore enjoy financial gain through an extension of their contracts. It is possible that other nefarious motives were at play.

307. Mr Austin said that the allegation was clearly defined and was whistleblowing as it alleged criminal conduct: fraud and breach of fiduciary duty. He said that the information required would be in the interviews with Reg Davies and that Mr Hughes should obtain the notes:

The matter was investigated by Reg Davies, who interviewed all parties with a direct interest in these allegations. It is understood that his report concluded that the issues complained of were well-founded and proven.

308. Mr Hughes arranged for letters to be sent to Ms Barard and Ms Newton asking if Mr Austin had permission to submit complaints on their behalf and whether they wished to continue with those complaints. He received no response from either.
309. On 11 May 2020, Mr Hughes wrote again to Mr Austin, again asking for further information. He asked for detail of what Ms Shields and Mr Rahman were alleged to have done and when. Mr Austin did not provide that information.
310. The claimants submitted their claim forms on 30 June 2020, early conciliation having commenced for both on 11 June 2020. Mr Austin's certificate was issued that same day and Ms Newton's on 12 June 2020.
311. On 2 October 2020, a letter was sent to Ms Shields by Mike Curtis following a meeting between Ms Shields, Ms Morris and Mr O'Rourke earlier in the week. The letter raised the findings in Reg Davies report and said:

On consideration of this matter, I would remind you that as a finance professional contracted to the Council by an external agency, you are expected, as are all Council employees, to maintain the highest standards of professional conduct and behaviour with your colleagues whilst at work and externally with our customers at all times. These expectations are set out in the Council's published standards of values and behaviours to all employees which I have set out at the end of this letter. You should be aware that any future repetition of such behaviour may lead to your contract with the Council being terminated.

312. Ms Shields was asked in evidence about her training and she told the Tribunal she had some equality and diversity training in late 2019.

Law

Protected disclosures

313. Section 43B(1) ERA 1996 defines a qualifying disclosure as a disclosure of information which in the reasonable belief of the worker making the disclosure is in the public interest and tends to show one of a number of types of wrongdoing. These include '(b)that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject'.
314. To be a protected disclosure, a qualifying disclosure must be in circumstances prescribed by other sections of the ERA, including, under section 43C, to the worker's employer.

315. Guidelines as to the approach that employment tribunals should take in whistleblowing detriment cases were set out by the EAT in Blackbay Ventures (trading as Chemistree) v Gahir (UKEAT/0449/12/JOJ):
- 315.1 each disclosure should be identified by reference to date and content
- 315.2 the basis upon which the disclosure is said to be protected and qualifying should be addressed
- 315.3 if a breach of a legal obligation is asserted:
- each alleged failure or likely failure to comply with that obligation should be separately identified; and
- the source of each obligation should be identified and capable of verification by reference for example to statute or regulation
- 315.4 the detriment and the date of the act or deliberate failure to act resulting in that detriment relied upon by the claimant should be identified
- 315.5 it should then be determined whether or not the claimant reasonably believed that the disclosure tended to show the alleged wrongdoing and, if the disclosure was made on or after 25 June 2013, the claimant reasonably believed that it was made in the public interest.
316. There is a number of authorities on what a disclosure of 'information' is. It must be something more than an allegation; some facts must be conveyed: Cavendish Munro Professional Risks Management Ltd v Geduld [2010] ICR 325. There is no rigid dichotomy between allegations and facts. A statement must have sufficient factual content and specificity such as is capable of showing one of the matters listed at s 43B(1): Kilraine v Wandsworth LBC [2018] ICR 1850.
317. There is little authority on the issue of what 'likely' means in the various limbs under s 43B(1). In Kraus v Penna plc [2004] IRLR 260, the EAT interpreted 'likely' as meaning 'probable or more probable than not' and said that there must be more than a possibility or risk that an employer might fail to comply with the relevant legal obligation. We note that more recent authorities on the meaning of the word 'likely' in other employment law contexts such as in the context of the definition of disability under the Equality Act 2010 have adopted a lower test for likelihood; in respect of the definition of disability, 'likely' means 'could well happen' but accept that for these purposes we must apply the guidance in Kraus v Penna.
318. The burden of proof is on the worker to show that he or she held the requisite reasonable belief. The tribunal must look at whether the claimant subjectively held the belief in question and objectively at whether that belief could reasonably be held. The allegation need not be true: Babula v Waltham Forest College [2007] IRLR.
319. The reasonableness of the worker's belief is determined on the basis of information known to the worker at the time the decision to disclose is made: Darnton v University of Surrey [2003] IRLR 133.

320. Factors relevant to the issue of whether a worker reasonably believed that a disclosure was in the public interest include:

320.1 the number in the group whose interests the disclosure served (the larger the number, the more likely the disclosure is to be in the public interest)

320.2 the nature of the interests affected (the more important they are, the more likely the disclosure is to be in the public interest)

320.3 the extent to which those interests are affected by the wrongdoing disclosed (the more serious the effect, the more likely the disclosure is to be in the public interest)

320.4 the nature of the wrongdoing disclosed (the disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing)

320.5 the identity of the alleged wrongdoer (the larger and more prominent the alleged wrongdoer, the more likely the disclosure is to be in the public interest)

(1) Chesterton Global (2) Verman v Nurmohamed [2017] IRLR 837.

321. A worker has a right not to be subjected to a detriment by any act or deliberate failure to act on the part of his or her employer done on the ground that the worker has made a protected disclosure under s 47B ERA 1996.

Causation of detriment / burden of proof

322. Where the employee complains of detriment under various provisions of the ERA 1996, including and s 47B and s 44, the tribunal will consider the complaint under s 48. S 48(2) provides that it is for the employer to show the ground on which any act or deliberate failure to act was done.

323. The worker must show:

323.1 that he or she made a protected disclosure / and

323.2 that he or she suffered less favourable treatment amounting to a detriment caused by an act, or deliberate failure to act, of the employer

323.3 a prima facie case that the disclosure was the cause of the act or deliberate failure to act which led to the detriment.

(International Petroleum Ltd v Osipov & others 2017 WL 03049094, EAT and Serco Ltd v Dahou 2017 1RLR 81, CA)

324. Once the worker has done that, the employer must show:

324.1 the ground on which the act, or deliberate failure to act, which caused the detriment was done

324.2 that the protected disclosure played no more than a trivial part in the application of the detriment (Fecitt v NHS Manchester [2012] ICR 372, CA).

325. A detriment is anything which an individual might reasonably consider changed their position for the worse or put them at a disadvantage. It could include a threat which the individual takes seriously and which it is reasonable for them to take seriously. An unjustified sense of grievance alone would not be sufficient to establish detriment: EHRC Employment Code, paras 9.8 and 9.9.

Harassment

326. Under s 26 Equality Act 2010, a person harasses a claimant if he or she engages in unwanted conduct related to a relevant protected characteristic, and the conduct has the purpose or effect of (i) violating the claimant's dignity, or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. In deciding whether conduct has such an effect, each of the following must be taken into account: (a) the claimant's perception; (b) the other circumstances of the case; and (c) whether it is reasonable for the conduct to have that effect.
327. By virtue of s 212, conduct which amounts to harassment cannot also be direct discrimination under s 13.
328. In Richmond Pharmacology Ltd v Dhaliwal [2012] IRLR 336, EAT, Underhill J gave this guidance in relation to harassment in the context of a race harassment claim:
- 'an employer should not be held liable merely because his conduct has had the effect of producing a proscribed consequence. It should be reasonable that that consequence has occurred. The claimant must have felt, or perceived, her dignity to have been violated or an adverse environment to have been created, but the tribunal is required to consider whether, if the claimant has experienced those feelings or perceptions, it was reasonable for her to do so.....Not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers and tribunals are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other discriminatory grounds) it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.'
329. An 'environment' may be created by a single incident, provided the effects are of sufficient duration: Weeks v Newham College of Further Education EAT 0630/11.

Sexual harassment

330. Section 26(2) of the Equality Act 2010 provides that person A harasses person B in circumstances where:
- A engages in unwanted conduct of a sexual nature, and
 - The conduct has the purpose or effect of violating B's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

331. The EHRC Employment Code gives examples of sexual conduct which include unwelcome advances, touching, sexual assaults and sending emails with sexual content.

Victimisation

332. Under s 27 Equality Act 2010 a person victimises another person if they subject that person to a detriment because that person has done a protected act or the person doing the victimising believes that person has done or may do a protected act.
333. The definition of a protected act includes the making of an allegation that the person subsequently subjecting the claimant to a detriment (or another person) has contravened the Equality Act 2010 or done 'any other thing for the purpose or in connection with' the Equality Act.
334. A detriment is anything which an individual might reasonably consider changed their position for the worse or put them at a disadvantage. It could include a threat which the individual takes seriously and which it is reasonable for them to take seriously. An unjustified sense of grievance alone would not be sufficient to establish detriment: EHRC Employment Code, paras 9.8 and 9.9.
335. The protected act need not be the only or even the primary cause of the detriment, provided it is a significant factor: Pathan v South London Islamic Centre EAT 0312/13.
336. A claim for victimisation will fail where there are no clear circumstances from which knowledge of the protected act on the part of the alleged discriminator can properly be inferred: Essex County Council v Jarrett EAT 0045/15.

Time limits

337. Under s 123 Equality Act 2010, discrimination complaints should be presented to the Tribunal within three months of the act complained of (subject to the extension of time for Early Conciliation contained in s 140B) or such other period as the Tribunal considers just and equitable. The onus is on a claimant to convince the tribunal that it is just and equitable to extend the time limit: Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434, CA.
338. Under s 123(3), conduct extending over a period is to be treated as done at the end of the period.

Credibility

339. We bore in mind when assessing different accounts of the same events and any inferences about credibility which we might draw, that memory is fluid, memories are rewritten when recalled and the process of reducing them to a witness statement further distorts memory and crystallises the version presented in the witness statement, a version which may have been influenced by reading documents and discussing the events with others. We bore in mind the guidance provided in case

law that we should base factual findings on inferences drawn from the documents and known or probable facts where possible. Confidence in recollection is not an indicator of the truth of that recollection. We had regard to the guidance given by Gestmin SGPS SA v Credit Suisse (UK) Ltd [2013] EWHC 3560 (Comm).

Reasonable steps defence

340. Section 109 of the Equality Act 2010 provides that:

4) In proceedings against A's employer (B) in respect of anything alleged to have been done by A in the course of A's employment it is a defence for B to show that B took all reasonable steps to prevent A—

- (a) from doing that thing, or
- (b) from doing anything of that description.

341. The onus rests on the employer to establish the defence by showing either that it attempted to prevent the particular act of discrimination or that it attempted to prevent that kind of act in general. Only steps taken before the discriminatory act occurred are relevant: Mahood v Irish Centre Housing Ltd EAT 0228/10. It is not sufficient for an employer to show that the discrimination was promptly remedied: Fox v Ocean City Recruitment Ltd EAT 0035/11.

342. The EHRC Employment Code suggests the following as possible reasonable steps:

- implementing an equality policy
- ensuring workers are aware of the policy
- providing equal opportunities training
- reviewing the policy as appropriate, and
- dealing effectively with employee complaints

343. The proper test of whether the employer has established the defence is to identify:

- first, whether there were any preventative steps taken by the employer, and
- secondly, whether there were any further preventative steps that the employer could have taken that were reasonably practicable.

Canniffe v East Riding of Yorkshire Council [2000] IRLR 555

Submissions

344. We received oral and written submissions from both sides. We have considered those submissions carefully but refer to them below only insofar as is necessary to explain our conclusions.

Conclusions

Competing narratives

345. This was a case where the parties had radically competing narratives.
- The claimants' narrative in essence was that there was valuable work they were doing well, including the scoping of the housing legacy project. There was a conspiracy of Ms Shields and Mr Rahman, who were performing poorly, to extend their own employment by slowing down the financial statements work and reserving the housing legacy project for themselves. That led to Ms Shields' hostility to Ms Newton and attempts to block her access to the finance team. It also led to her derogatory remarks which constituted harassment.
346. The claimants blew the whistle on Ms Shields and Mr Rahman and complained about sexual harassment by Ms Shields. As a result they were subjected to detriment including termination of their contract.
347. The respondent's narrative was that Mr Austin shoehorned Ms Newton in to do a project about which he had not properly consulted, using an inappropriate process and without agreement from Ms Eves. Ms Shields was doing the lion's share of the senior Grenfell Finance work under considerable pressure. After giving undertakings that the project would not impact on the team and Ms Shields, Ms Newton did not act in accordance with Mr Austin's assurance and there was tension. Mr Austin took Ms Newton's side in the resulting conflict with Ms Shields.
348. When Ms Eves came to review the future of the interim workers in the department and of the finance team, Mr Austin acted to organise complaints against Ms Shields and Mr Rahman and to protect the position of the claimants. He and Ms Newton planned what was in effect a coup to replace Ms Shields and Mr Rahman and made use of Ms Barard, having told her that her performance had been criticised by Ms Shields and Mr Rahman.
349. We chose between those narratives insofar as was necessary to determine the issues; sometimes there were differences in perception which we did not need to resolve.

Credibility / reliability issues

350. We accepted that in the main witnesses were honestly telling us what they were able to remember.
351. The major question mark for us was over the reliability of some of Mr Austin's evidence and in particular his interpretations of events. There was a number of matters which caused us to have doubts about Mr Austin's reliability. His behaviour as a manager seemed to us to be significantly lacking in judgment. His sharing of materials inappropriately with Ms Newton, his failure to take responsibility for the performance of his team, his failure to treat Ms Newton and Ms Shields equitably,

his stoking of conflict in the team and his concentration on finding a role for Ms Newton in the latter stages of his tenure at the respondent all individually seemed to us to be matters for concern. Together they created a disturbing picture.

352. We considered that he inappropriately shared Ms Eves' email with the finance team in order to stoke dissent and that he misled the Tribunal about the fact that he had done so. What was particularly concerning about this aspect of his evidence was that he initially gave the Tribunal eight different reasons why the photograph was fraudulent, then, after Mr Naha gave his evidence, he said that someone else must have shared the email. In other words he went to significant efforts to mislead the Tribunal about this matter relying on submissions about the photograph being fraudulent which he must have known were baseless.
353. We also considered that his evidence about keeping notes of meetings with members of the finance team in February 2020 was simply untrue. Had he made such notes and left them at the respondent's premises, we have little doubt he would have sought disclosure of them, given the care which he took over the proceedings generally. We accepted Ms Gengi's evidence about Mr Austin attending a meeting in a bathrobe and considered that Mr Austin deliberately sought to mislead the Tribunal about that incident.
354. We also concluded that Mr Austin was regularly selective in how he referred to documentary evidence. He insisted that Mr Fitch had said that his behaviour in the training session was 'no big deal' whereas a straightforward reading of the notes of Mr Fitch interview with Mr Davies showed clearly that Mr Fitch had found the behavior rude. Throughout his evidence and submissions he gave to documents an interpretation which was designed to support his case, whether that was a fair reading of a particular document or not.
355. So far as both claimants were concerned, neither accepted any fault in any of their interactions, most notably in relation to the training session.
356. To some extent that was a relevant factor when we looked at whether particular perceptions of the claimants were reasonable.
357. In respect of Ms Newton, overall we had far fewer concerns in relation to reliability and credibility. Although some of her accounts were histrionic and she did not accept that her own behaviour could be open to criticism, we did not think she deliberately misled the Tribunal as to facts. The issue related to the reliability of her judgments not her essential honesty with the Tribunal.
358. In relation to the respondent's witnesses, we have found that Ms Shields did use the word cunt, despite telling the Tribunal that she would not use language of that sort and that there was more to the incident on 29 November 2019 than Ms Shields admitted to. We considered carefully whether that affected the credibility of her evidence as a whole and concluded it did not. On matters relating to work and the division of work, she had the detail at her fingertips and was convincingly corroborated by Ms Eves.
359. The area where Ms Shields had consciously or unconsciously repressed incidents was in relation to her comments about Ms Newton and we concluded that this was

probably an area where she felt both shame and concern about her ongoing engagement with the respondent.

360. We make clear that we have made findings on the balance of probabilities in circumstances where there were areas of evidence which were not properly explored or put to witnesses by the parties so we had to be careful about what findings we could appropriately make. Many of the alleged protected disclosures were not clearly put or conversely challenged and were not dealt with in any great detail in the parties' submissions. We considered only those documents in the extensive bundle and supplementary bundle to which we were referred.

Mr Austin's claims

Protected disclosures

361. Where there were joint communications we had to look at the totality of what was conveyed and whether each claimant had the requisite reasonable beliefs. We also had to consider the communications in context and cumulatively where relevant to do so.
362. We looked at each of the alleged disclosures against the following tests modified from the agreed list of issues:
- a) Was there a disclosure of information?
 - b) Did the claimant believe the information tended to show that one or more of the six specified types of wrongdoing has taken place, is taking place or is likely to take place? (section 43B(1) ERA 1996)
 - c) Did the claimant have a reasonable belief that the disclosure tended to show one of the above types of wrongdoing?
 - d) Did the claimant have a reasonable belief that the disclosure was in the public interest?
363. There was no issue that the disclosures were to Mr Austin's employer (for these purposes), the respondent. Similarly Ms Newton's disclosures were to the respondent.

23 January 2020: Alleged FA oral disclosure to Taryn Eves RE: obstruction of Ms Newton work

364. It is clear from our findings of fact above that information was disclosed about what happened at the training session and other aspects of Ms Shields' behaviour.
365. Did Mr Austin believe that tended to show a breach of a legal obligation? The legal obligations were variously identified as the obligation not to commit harassment contrary to the Equality Act 2010, breach of a statutory duty not to waste council funds, breach of fiduciary duty and criminal fraud. In Ms Newton's extended list of issues it was suggested that Ms Shields' actions were fraudulent misrepresentation

contrary to section 2 of the Fraud Act 2006 , fraud by failing to disclose information contrary to section 3 of the same Act, and abuse of office contrary to section 4. However no allegations of criminal conduct were put to Ms Shields and nor were the allegations of criminal conduct explained to the Tribunal, so we limited our analysis to the other alleged forms of wrongdoing.

366. We were not persuaded that Mr Austin believed the information tended to show any of the relevant types of wrongdoing. We accepted that the word harassing was used but what was described by Mr Austin and Ms Newton was the behaviour of Ms Shields at the training session including the 'young lady' remark and the matters perceived to be obstruction of Ms Newton's work.
367. We did not conclude that at the time Mr Austin believed there to be a breach of statutory duty. Had he done so, we think he would have said so in terms and we found he did not. Similarly, although the word harassing was used, we did not conclude that Mr Austin believed that there was harassment related to sex. What he said in evidence was that he and Ms Newton were spoken to like schoolchildren – that was the behaviour of Ms Shields complained of. There was no focus on the behaviour being related to sex and we find no belief that it was.
368. Furthermore, we did not consider that any such belief would have been reasonable. In terms of whether Ms Shields was obstructing Ms Newton's work so as to create a breach of statutory duty, the reasonable person in Mr Austin's position would have been well aware of the context – that he had appointed Ms Newton without appropriate agreement or authority, had made promises that her appointment would not add to Ms Shields' workload and had then himself allowed Ms Shields' workload to become oppressive. In those circumstances, it could not reasonably be considered that the actions Ms Shields took were designed to obstruct Ms Newton's work as opposed to enabling Ms Shields and the financial statements team to concentrate on work which was a priority to them.
369. Similarly, we do not conclude that Mr Austin could have reasonably believed that the information tended to show a breach of the Equality Act 2010 in the form of harassment related to sex. The objection was that they were spoken to like school children. Given Ms Newton's own inflammatory and inappropriate behaviour at the point when Ms Shields' made the 'young lady' remark, it did not seem to us that Mr Austin could reasonably have believed either that the treatment was related to sex or that it had the proscribed purpose or effect. The reasonable observer would have concluded that Ms Shields responded to some very rude behaviour of Ms Newton, in which she was apparently supported by Mr Austin.
370. Finally we did not conclude that there was either a belief or a reasonable belief that the disclosure was in the public interest. Absent a reasonable belief that there was some kind of wrongdoing to the ratepayers, this was a workplace disagreement which had no wider importance.

29 January 2020: Alleged FA oral disclosure to Taryn Eves in a meeting RE obstruction and harassment

371. The only additional feature of the disclosures on this occasion was that Mr Austin's unchallenged evidence was that he said there would be a breach of fiduciary duty if Ms Shields was allowed to go on obstructing Ms Newton's work.
372. Our findings are essentially the same as our findings in respect of the previous disclosure. Mr Austin could have had no reasonable belief in the wrongdoing asserted or that the disclosure was in the public interest.

13 February 2020: FA email (with attached emails) to Taryn Eves RE alleged obstruction and harassment

373. These documents clearly contained information. Mr Austin said that he had a reasonable belief that they contained information which tended to show that Ms Shields had sexually harassed Ms Newton. We considered, insofar as this related to the 29 November 2019 remarks, that this was a belief Mr Austin held and it was a reasonable belief. The sexual content of the remarks, the fact that they were unwanted and could clearly be seen as humiliating all made it reasonable to hold such a belief.
374. Mr Austin added in his expanded of issues that he also reasonably believed that there was victimisation of Ms Newton but that belief was not explained or explored in evidence.
375. We did not conclude however that Mr Austin reasonably believed his disclosure was in the public interest. What was revealed that was wrongdoing was a one off remark or set of remarks made by Ms Shields which we accept was itself unpleasant of and of some seriousness to Mr Austin and Ms Newton. The effects were limited to a small team in the workplace. They were not matters which reasonably affected any wider group or were of legitimate interest to any wider group. Ms Shields was not a prominent person and her wrongdoing occurred against a background of frustration at poor behaviour by Mr Austin himself.

18 February 2020 FA email to Taryn Eves RE alleged harassment and the Respondent to take sufficient action.

376. The allegations of wrongdoing Mr Austin says were contained in his communications were wrongdoing by Ms Shields and Mr Rahman.
377. So far as the allegations of sexual harassment by Ms Shields are concerned, our findings do not differ from our findings in relation to the previous alleged disclosures.
378. Mr Austin also said that he was complaining of wrongdoing by both Ms Shields and Mr Rahman which amounted to various types of fraud and breach of fiduciary duty. The conduct of Ms Shields and Mr Rahman was slowing the work down for their own financial gain.

379. Mr Austin's email to Ms Eves refers to bullying and harassment but does not mention the other types of wrongdoing Mr Austin now says he was alleging. The attached bullet points do raise the allegation that Mr Rahman instructed the team to slow down the financial statements work in order to get their contracts extended. This is one amongst a long list of complaints about Mr Rahman. In the list of complaints about Ms Shields, it does not feature. The complaints about Ms shields again relate to the remarks Ms Shields made about Mr Austin and Ms Newton, the training session incident, criticisms and alleged undermining of Mr Austin and so forth.
380. It was by no means clear, looking at the documents, that at the time Mr Austin believed there was fraud / breach of fiduciary duty. If he did, we were not persuaded he held a reasonable belief. The one real piece of evidence he had was Ms Barard's report of the remark made by Mr Rahman in summer 2019. He had not investigated that matter with Mr Rahman nor anyone else. He had not made any notes of discussions he had with others in the finance team and did not say in evidence that he had spoken to them about that allegation. He never put to Ms Shields in evidence that she was conspiring with Mr Rahman to slow down the financial statements work for her own ends. What he was doing at this stage, we considered, was gathering material to create a situation where he and Ms Newton's contracts were extended in preference to those of Ms Shields and Mr Rahman.
381. For those reasons we did not consider that Mr Austin had a reasonable belief in the alleged wrongdoing (fraud / breach of fiduciary duty) by Mr Rahman and Ms Shields.
382. If he had had such a reasonable belief, he could, we find, also have reasonably believed that disclosure was in the public interest. We accepted the public would reasonably be interested in deliberate waste of council resources. For the reasons we have stated above, we did not find he could have reasonably have believed the repeated disclosure about Ms Shields' remarks on 29 November 2019 was in the public interest.

27 February 2020 FA meeting with Reg Davies RE alleged obstruction and harassment

383. It was clear that information was disclosed at the meeting. There were no express allegations of fraud or breach of fiduciary duty made in terms to Mr Davies and the allegation about slowing down work appeared with no more prominence than it did in the email to Ms Eves.
384. We reached essentially the same conclusions about reasonable belief that the information tended to show the identified wrongdoing as we did in respect of the previous disclosure. Mr Austin did not reasonably believe there was such wrongdoing. He was still trying to position himself and Ms Newton so that their contracts were extended and those of Mr Rahman and Ms Shields were not.
385. Our conclusions are the same in relation to reasonable belief in the public interest as set out in relation to the previous disclosure.

386. It follows from the above that we did not find that any of the alleged disclosures were protected public interest disclosures.

Victimisation: Protected acts

387. We considered each of the alleged protected acts against the following tests:

Did the claimant do any of the following:

- a) giving evidence or information in connection with proceedings under EA 2010 (S.27(2)(b));
- b) doing any other thing for the purposes of or in connection with EA 2010 (S.27(2)(c));
- c) making an allegation (whether or not express) that the respondent or another person has contravened EA 2010 (S.27(2)(d)).
- d) Did the respondent believe the claimant had done or may do a protected act?

23 January 2020: Obstruction of Ms Newton's Work – Meeting

388. We found that at this meeting the word 'harassing' or 'harassment' was used and there was an allegation that Ms Shields made the 'young lady' remark.

389. We did not consider that at the time Mr Austin and Ms Newton were making an allegation of behaviour that was a breach of the Equality Act 2010 or that Ms Eves understood them to be making such an allegation. The word harassing is used in many ways – it is not necessarily a reference to harassment related to a protected characteristic and nothing that was said would have led Ms Eves to understand that was what was meant.

390. We did not conclude that there was any protected act.

29 January 2020: Meeting 2 with Ms Eves

391. We make the same findings for the same reasons about this meeting.

13 February 2020: Meeting between Ms Newton and Mr Austin on 13 February 2020

392. This was the meeting at which Ms Newton told Mr Austin what she heard Ms Shields had said about them both. We heard no evidence that Mr Austin did anything at this meeting which amounted to a protected act by him.

Detriments

393. The detriments were pleaded as resulting from the protected disclosures and/or the protected acts.

394. Although in Mr Austin's case, we found no protected disclosures and no protected acts, we went on to consider whether each of the alleged detriments occurred and was a detriment and if there was a detriment, also the issue of whether each was a detriment caused by alleged disclosures / protected acts.

23 January 2020: Alleged inadequate and evasive approach adopted by the Respondent to the protected disclosures

395. We did not consider that there was an inadequate and evasive approach by Ms Eves or that her handling constituted a detriment to Mr Austin. She was confronted with a piece of poor management by Mr Austin of a situation which arose from his own and Ms Newton's inappropriate and disruptive behaviour. She chose to deal with it in a lowkey way which reflected the fact that there was fault on both sides and that these were senior individuals, Mr Austin in particular, who should have been able to resolve the matter themselves.

18 February 2020: Alleged that the Respondent made no attempt to keep the Claimant's disclosures confidential

396. The one piece of evidence referred to in support of this allegation was the email by Ms McIntosh which did not demonstrate that she knew about the nature of the complaints or that such involvement as she had was inappropriate to the role she occupied. We could see no detriment in the sense of something Mr Austin could legitimately feel aggrieved about.

17 March 2020: Alleged the Respondent took no steps to communicate the results of the investigation

397. It was clear and accepted by the respondent that there was a failure to feedback to those who had complained the results of Mr Davies' investigation. We did consider that Mr Austin could reasonably be aggrieved about that failure. Ms Eves herself said that she had planned to feedback to relevant individuals
398. We also accepted Ms Eves' evidence as to why she did not feed back the findings. She had an oral report from Mr Davies by 6 March 2020, was on leave the following week, having told staff she did plan to provide feedback and by the time she returned, the respondent was becoming overwhelmed by responding to the pandemic. As time went on and Mr Austin's behaviour became more concerning and her own workload more intense, reporting the outcome of the investigation understandably became less and less of a priority. The documentary evidence showed that her intention had been to provide feedback.

23 January 2020: Alleged that the Respondent failed to protect the claimants by suspending those against whom the allegations were made

399. There certainly would have been no justification for suspending Ms Shields (or asking her to remain at home on leave given that she was an agency worker) as at 23 January 2020.
400. Given all of the information which Ms Eves would have had over the relevant period, including reasons to be concerned about Mr Austin and Ms Newton and the lack of any good evidence that there was any 'interference with witnesses', together with the respondent's need for work to be done, we did not conclude that Mr Austin could legitimately have felt aggrieved that Ms Shields and Mr Rahman were not suspended. Ms Eves split the team earlier than intended in order to separate those who had complained from the subject of their complaints.

23 January 2020: Alleged that no reasonable investigation into the whistleblowing disclosures took place.

401. Insofar as this relates to investigation of the initial complaint made on 23 January 2020, we considered that Ms Eves did as much investigation as was required by the gravity of the incident and there was no detriment to Mr Austin. Insofar as the complaint relates to the investigation by Mr Davies, there was nothing which persuaded us that he did not conduct a reasonable and speedy investigation into what were a plethora of disparate allegations made within a team of people. He interviewed all relevant individuals and appears to have covered with those individuals the areas of concern which were raised.

18 February 2020: Alleged that the Respondent failed to interview key witnesses or to obtain relevant documents

402. The only people Mr Austin said Mr Davies should have but failed to interview were Ms LeCalve as to the 29 November 2019 incident and unnamed people outside the lifts as to the allegation about the training session. As to the former, Ms Shields admitted the remark complained of so there was no need to interview Ms LeCalve. As to 'people outside the lifts', it did not seem to us that the whole incident was of such seriousness that a reasonable investigator was bound to go looking for further witnesses who had not been identified by anyone including Mr Austin.
403. No particular documents which Mr Davies should have looked at but did not look at were identified to us and Mr Austin had the opportunity to draw to his attention any documents which he wished to.
404. We could identify no matter about which Mr Austin could legitimately have been aggrieved.

26 February 2020: Not communicating outcome of Reg Davies's report

405. This is a repetition of the third detriment complained of above.

17 February 2020: Alleged that Mr Hughes failure to properly investigate whistle-blowing email

406. We considered that Mr Hughes perfectly properly requested further information and evidence from Mr Austin in respect of what were perceived to be overstated and unevidenced allegations which might well arise from an agenda on the part of Mr Austin. We could see no grounds for Mr Austin to be legitimately aggrieved.

12 February 2020: Alleged that placing Mr Austin in a competitive selection process application for his own role against his deputy on February 12 2020 and then not applying any such process

407. We concluded that there was a detriment to Mr Austin in what occurred; Ms Eves initially selected Ms Shields as the person she required for the ongoing work which required to be done and then, having acceded to the proposal that there should be a competitive process between Mr Austin and Ms Shields, ultimately decided not to carry out such a process.
408. However we also accepted Ms Eves' evidence as to her reasons for what occurred. She perceived that Ms Shields was the person who was carrying out the bulk of the BAU work and also the person who worked harder of the two. When Mr Austin requested that there be a selection process for the remaining work, she very fairly considered it. Ultimately Mr Austin's behaviour became so inappropriate and disruptive that she decided not to carry out that process.

18 February 2020: Alleged that Ms Eves split the Finance for Grenfell Team demoting FA. Lesley Shields and Mr Rahman were not suspended, and Lesley Shields was effectively promoted.

409. We have already considered the allegation about the non-suspension of Mr Rahman and Ms Shields.
410. The decision to divide the team was, we accepted, made for business reasons. It was speeded up when the team became dysfunctional. We did not consider that Mr Austin had legitimate grounds for feeling aggrieved at a decision made about how the respondent deployed highly paid interim staff.

9 April 2020: Alleged that the process for deciding whether to continue to employ and/or to terminate the engagement of Mr Austin [sic]

411. The allegation appeared to relate to a lack of consultation with and explanation to Mr Austin about the decision.
412. We concluded that Mr Austin could legitimately have felt aggrieved. Although he was an agency worker who was not entitled to the kinds of process an employee would have been entitled to (and to an extent was compensated by increased freedom and a higher rate of pay), he had been with the respondent for an extended period and in ordinary circumstances could legitimately have expected more consultation or explanation before his contract was terminated.

413. However, we were satisfied that the explanation for the decision to terminate the contract in the way which was chosen was a combination of Mr Austin's unreasonable behaviour and Ms Eves' very significant pressure of work.

31 March – 9 April 2020: Alleged that no documents were assembled or shown to either claimant prior to the dismissal

414. In his extended list of issues, Mr Austin said that Ms Morris should have provided him with documents relating to the restructure she referred to and which supported the decision which had been taken.

415. We did not consider this was an issue about which Mr Austin could legitimately feel aggrieved. The respondent was not obliged to enter into a process of negotiation with him about a decision which had been taken for what we found were cogent reasons. The only purpose of producing documents would have been to allow Mr Austin to take issue with the decision, which had in any event been made, for reasons which Ms Morris did not fully share with him about his behaviour.

31 March – 9 April 2020: Alleged that the claimant was not given the chance to be heard or to his response to the alleged reasons for termination of the contract

416. We did not consider there was any detriment as Mr Austin could have had no legitimate expectation that such a process would be followed.
417. If we are wrong about that, we in any event find that the reason was not the disclosures made by Mr Austin but a combination of the respondent's understanding of what process was necessary when terminating the contract of an agency worker, Ms Eves' conclusions about Mr Austin's behaviour and the extreme pressure of work on Ms Eves and the respondent generally.

31 March – 9 April 2020: Alleged that no opportunity to have a colleague present at the meeting when dismissed

418. Our findings on this alleged detriment are the same as our findings on the previous alleged detriment.

9 April 2020: The decision to terminate the engagement of Mr Austin

9 April 2020: Alleged termination of Mr Austin was with immediate effect and security and network access were instantly withdrawn preventing a hand over

419. Both of these were matters which could fairly be considered a detriment, however, we accepted Ms Eves' account of her reasons for deciding to terminate Mr Austin's contract with immediate effect, which we have already rehearsed and which related to his behaviour in the aftermath of the disclosures and not the disclosures themselves.

420. It follows from all of the the above that we did not uphold any of Mr Austin's complaints that he had been subjected to a detriment for making public interest disclosures or victimised.

Harassment related to sex / of a sexual nature

421. We considered each complaint against the elements set out in section 26(1) and/or section 26(2) of the Equality Act 2010.

On 29 November 2019: Lesley Shields alleged comment: "Yes, I think they are probably sleeping together".

422. We concluded that something of this sort was said by Ms Shields. We did not conclude it 'related to sex' because it was a comment made about Mr Austin and Ms Newton and was not about their protected characteristics of being female / male but about an alleged sexual relationship between them.

423. It did however seem to us to be conduct of a sexual nature because it referred to alleged sexual activity. We accepted that it was unwanted by Mr Austin when he found out about it. Ms Shields' purpose appears to have been to vent her frustrations about Mr Austin and Ms Newton to her colleagues but we considered that the conduct, once it came to Mr Austin's attention, would have had the proscribed effect of violating his dignity or creating a humiliating environment for him. It would be reasonable for a manager to feel that an allegation that he was having sexual relations with a subordinate rather than working had that effect and we accepted that it had some such effect on Mr Austin, although we also considered that both he and Ms Newton very quickly also fastened opportunistically on the remarks as material they could use to maintain their own positions.

On 29 November 2019: Lesley Shields allegedly stated "she's (Ms Newton) sucking his (Mr Austin) cock about now".

424. We make the same findings for the same reasons as we made in respect of the first allegation of harassment.

Between November 2019 and February 2020: Alleged that Ms Newton was described repeatedly by Lesley Shields as "bitch" and "cunt"

425. We could not see how this could be an allegation of any type of harassment of Mr Austin by Ms Shields.
426. It follows that we upheld two of the complaints of harassment under section 26(2), subject to the issues about time which we consider in relation to both claimants below.

Ms Newton's claims

Protected disclosures

23 January 2020: Alleged MN oral disclosure to Taryn Eves RE: obstruction of Ms Newton work

427. It is clear from our findings of fact above that information was disclosed about what happened at the training session and other aspects of Ms Shields' behaviour.
428. Did Ms Newton believe that tended to show a breach of a legal obligation? The legal obligations were variously identified as the obligation not to commit harassment contrary to the Equality Act 2010, breach of a statutory duty not to waste council funds, breach of fiduciary duty and criminal fraud. In Ms Newton's extended list of issues it was suggested that Ms Shields' actions were fraudulent misrepresentation contrary to section 2 of the Fraud Act 2006, fraud by failing to disclose information contrary to section 3 of the same Act, and abuse of office contrary to section 4. However no allegations of criminal conduct were put to Ms Shields and nor were the allegations of criminal conduct explained to the Tribunal so we considered the other alleged forms of wrongdoing only.
429. We were not persuaded that Ms Newton believed the information tended to show any of the relevant types of wrongdoing. We accepted that the word 'harassing' was used but what was described by Mr Austin and Ms Newton was the behaviour of Ms Shields at the training session including the 'young lady' remark and the matters perceived to be obstruction of Ms Newton's work.
430. We did not conclude that at the time Ms Newton believed there to be a breach of statutory duty; the documentary evidence did not suggest that she or Mr Austin started to put this slant on the alleged obstruction of Ms Newton's work until much later. The email Ms Newton sent to herself at the time identified what she described as controlling, unprofessional and bullying behaviours by Ms Shields but not suggestions that she was breaching her fiduciary duty. Although the word 'harassing' was used, we did not conclude that Ms Newton believed that there was harassment related to sex. As with Mr Austin, she felt that they had been 'told off' like children. There was no focus on the behaviour being related to sex and we find no belief that it was.
431. Furthermore, we did not consider that any such belief would have been reasonable. In terms of whether Ms Shields was obstructing Ms Newton's work so as to create a breach of statutory duty, we considered that there was no evidence from which Ms Newton could reasonably have drawn such a conclusion.
432. Similarly, we do not conclude that Ms Newton could have reasonably believed that the information tended to show a breach of the Equality Act 2010 in the form of harassment related to sex. The objection was that they were spoken to like school children. Given Ms Newton's own inflammatory and inappropriate behaviour at the point when Ms Shields made the 'young lady' remark, it did not seem to us that Ms Newton could reasonably have believed either that the treatment was related to sex or that it had the proscribed purpose or effect. A reasonable person would have

concluded that Ms Shields responded to some very rude behaviour by Ms Newton and assessed the effect of the conduct in that context.

433. Finally we did not conclude that there was either a belief or a reasonable belief that the disclosure was in the public interest. Absent a reasonable belief that there was some kind of wrongdoing to the ratepayers, this was a workplace disagreement which had no wider importance.

29 January 2020: Alleged MN oral disclosure to Taryn Eves in a meeting RE obstruction and harassment

434. The only additional feature of the disclosures on this occasion was that Mr Austin's unchallenged evidence was that he said there would be a breach of fiduciary duty if Ms Shields was allowed to go on obstructing Ms Newton's work.
435. Our findings are essentially the same as our findings in respect of the previous disclosure. Ms Newton could have had no reasonable belief in the wrongdoing asserted or that the disclosure was in the public interest.

Meeting between MN and FA on 13 February 2020 and subsequent email RE alleged harassment and the Respondent to take sufficient action.

436. This disclosure related to what Ms Newton told Mr Austin had been reported about what was said by Ms Shields on 29 November 2019 and the email from Ms Newton which Mr Austin subsequently forwarded to Ms Eves.
437. Ms Newton's extended list of issues includes suggestions that the disclosures tended to show criminal harassment, fraudulent misrepresentation and breach of fiduciary duty. All of this appeared to us to be a subsequent gloss put on what was actually said and believed at the time. The focus was on what Ms Shields had said and an assertion that that constituted sexual harassment and bullying.
438. We accepted that Ms Newton genuinely and reasonably believed that the information she disclosed tended to show a breach of the Equality Act 2010 in the form of sexual harassment.
439. We did not, however accept that the disclosure was reasonably believed by Ms Newton to be in the public interest. What was revealed that was wrongdoing was a one off remark or set of remarks made by Ms Shields which we accept was itself unpleasant and of some seriousness to Mr Austin and Ms Newton. The effects were limited to a small team in the workplace. They were not matters which reasonably affected any wider group or were of legitimate interest to any wider group. Ms Shields was not a prominent person and her wrongdoing occurred against a background of frustration at poor behaviour by Mr Austin which fuelled tension between Ms Shields and Ms Newton and Mr Austin.

18 February 2020: details of Ms Newton's interview with Reg Davies

440. There was information disclosed to Mr Davies.
441. Again the extended list of issues asserted that Ms Newton reasonably believed the information disclosed tended to show fraud, breach of fiduciary duty and sexual harassment.
442. Without repeating ourselves, and having regard to the notes of the interview, we concluded that the information which was disclosed was information which Ms Newton reasonably believed tended to show sexual harassment contrary to the Equality Act 2010. We were not persuaded that Ms Newton actually believed it tended to show the other forms of wrongdoing and her belief would not have been reasonable for the reasons we have already outlined.
443. For the reasons we have stated in relation to the previous allegation, we concluded that Ms Newton could not have reasonably believed the disclosures were in the public interest.

Victimisation: protected acts

444. We considered each of the alleged protected acts against the following tests:

Did the claimant do any of the following:

- a) giving evidence or information in connection with proceedings under EA 2010 (S.27(2)(b));
- b) doing any other thing for the purposes of or in connection with EA 2010 (S.27(2)(c));
- c) making an allegation (whether or not express) that the Respondent or another person has contravened EA 2010 (S.27(2)(d)).
- d) Did the respondent believe the claimant had done or may do a protected act?

23 January 2020: Email from MN to Taryn Eves RE alleged obstruction of Ms Newton's Work

445. We saw two emails of this date; there was one which Ms Newton sent to herself and not to Ms Eves and there was the brief email which Ms Newton sent to Ms Eves before they met which simply referred to Ms Shields' behaviour and attitude. There was nothing in that email which could be construed as an allegation of breach of the Equality Act 2010. This was not a protected act.

23 January 2020: Obstruction of Ms Newton's Work

446. We found that at this meeting the word 'harassing' or 'harassment' was used and there was an allegation that Ms Shields made the 'young lady' remark.
447. We did not consider that at the time Mr Austin and Ms Newton were making an allegation of behaviour that was a breach of the Equality Act 2010 or that Ms Eves understood them to be making such an allegation. The word 'harassing' is used in many ways – it is not necessarily a reference to harassment related to a protected

characteristic and nothing that was said would have led Ms Eves to understand that was what was meant.

448. We did not conclude that there was any protected act.

29 January 2020: Meeting 2 with Ms Eves

449. We make the same findings for the same reasons about this meeting.

13 February 2020: Meeting between Ms Newton and Mr Austin on 13

February 2020 Re alleged comments

450. In this meeting Ms Newton told Mr Austin about the remarks made by Ms Shields on 29 November 2019. This was a protected act because the allegations were of sexual harassment contrary to the Equality Act 2010.

13 February 2020: Email between Ms Newton and Mr Austin on 13 February 2020 Re harassment

451. This was Ms Newton putting in writing the complaints she made at the meeting. It was also a protected act.

Detriments

452. The detriments were pleaded as resulting from the protected disclosures and/or the protected acts.

453. In Ms Newton's case, we found no protected disclosures but we did find that there were some protected acts. We went on to consider whether each of the alleged detriments occurred and was a detriment and, if there was a detriment, the issue of whether each was a detriment caused by the protected acts which we found.

23 January 2020: Alleged inadequate and evasive approach adopted by the Respondent to the protected disclosures

454. We did not consider that there was an inadequate and evasive approach by Ms Eves or that her handling constituted a detriment to Ms Newton. She was confronted with a piece of poor management by Mr Austin of a situation which arose from his own and Ms Newton's inappropriate and disruptive behaviour. She chose to deal with it in a lowkey way which reflected the fact that there was fault on both sides and that these were senior individuals, who should have been able to resolve the matter themselves.

455. In any event, this alleged detriment predates Ms Newton's protected acts so cannot have been caused by those acts.

18 February 2020: Alleged that the Respondent made no attempt to keep the Claimant's disclosures confidential

456. The one piece of evidence referred to in support of this allegation was the email by Ms McIntosh which did not demonstrate that she knew about the nature of the complaints or that such involvement as she had was inappropriate to the role she occupied. We could see not detriment in the sense of something Ms Newton could legitimately feel aggrieved about.
457. We could in any event see no connection with the matters we found constituted protected acts, as opposed to the whole raft of complaints Mr Austin and Ms Newton were pursuing.

17 March 2020: Alleged the Respondent took no steps to communicate the results of the investigation

458. It was clear and accepted by the respondent that there was a failure to feedback to those who had complained the results of Mr Davies' investigation. We did consider that Ms Newton could reasonably be aggrieved about that failure. Ms Eves herself said that she had planned to feedback to relevant individuals but had not done so.
459. We also accepted Ms Eves' evidence as to why she did not feed back the findings. She had an oral report from Mr Davies by 6 March 2020, was on leave the following week, having told staff she did plan to provide feedback and by the time she returned, the respondent was becoming overwhelmed by responding to the pandemic. As time went on and Mr Austin's behaviour became more concerning and her own workload more intense, reporting the outcome of the investigation understandably became less and less of a priority.
460. We carefully considered whether the fact that Mr Davies found that Ms Shields had made the remarks which were the subject matter of the protected acts by Ms Newton was material from which we could reasonably conclude the protected acts played a role in the failure to feed back to Ms Newton. Was Ms Eves influenced by the fact that feeding back to Ms Newton and Mr Austin would have involved an admission of the subject matter of the protected acts?
461. We did not believe that we could reasonably so conclude given the facts we found. It was clear that Ms Eves did initially intend to feed back to all who had been interviewed by Mr Davies. This would have been a large job at an exceptionally busy and challenging time. We accepted in the alternative that the explanation provided was a complete explanation for the failure.

23 January 2020: Alleged that the Respondent failed to protect the claimants by suspending those against whom the allegations were made

462. There certainly would have been no justification for suspending Ms Shields (or asking her to remain at home on leave given that she was an agency worker) as at 23 January 2020.
463. Given all of the information which Ms Eves would have had at this time and throughout the relevant period, including reasons to be concerned about Mr Austin and Ms Newton and the lack of any good evidence that there was any 'interference with witnesses', together with the respondent's need for work to be done, we did not conclude that Ms Newton could legitimately have felt aggrieved that Ms Shields and Mr Rahman were not suspended. Ms Eves split the team earlier than intended in order to separate those who had complained from the subject of their complaints.
464. In any event, we could see no connection between Ms Newton's protected acts and the non suspension of Ms Shields and Mr Rahman and were satisfied by Ms Eves' explanation.

23 January 2020: Alleged that no reasonable investigation into the whistleblowing disclosures took place.

465. Insofar as this relates to investigation of the initial complaint made on 23 January 2020, we considered that Ms Eves did as much investigation as was required by the gravity of the incident and there was no detriment to Ms Newton. Insofar as the complaint relates to the investigation by Mr Davies, there was nothing which persuaded us that he did not conduct a reasonable and speedy investigation into what were a plethora of disparate allegations made within a team of people. He interviewed all relevant individuals and appears to have covered with those individuals the areas of concern which were raised.
466. We could see no logical connection in any event between Ms Newton's protected acts and the ambit of Mr Davies' investigation. The protected acts were fully investigated and Mr Davies made findings about them. It is difficult in any event to see why the fact that someone had done a protected act would be a factor which would have inhibited an independent HR consultant in his investigation of alleged whistleblowing.

18 February 2020: Alleged that the Respondent failed to interview key witnesses or to obtain relevant documents

467. The only people Mr Austin said Mr Davies should have interviewed but failed to interview were Ms LeCalve as to the 29 November 2019 incident and unnamed people outside the lifts as to the allegation about the training session. As to the former, Ms Shields admitted the remark complained of so there was no need to interview Ms LeCalve. As to 'people outside the lifts', it did not seem to us that the whole incident was of such seriousness that a reasonable investigator was bound to go looking for further witnesses who had not been identified by anyone including Mr Austin or Ms Newton.

468. No particular documents which Mr Davies should have looked at but did not look at were identified to us and Ms Newton had the opportunity to draw to his attention any documents which he wished to.
469. We could identify no matter about which Ms Newton could legitimately have been aggrieved and no causative link between the ambit of the documents and witnesses considered and the protected acts.

26 February 2020: Not communicating outcome of Reg Davies's report

470. This is a repetition of the third detriment complained of above. The date is an error.

23 March 2020: The alleged process applied to decide whether to continue to engage Ms Newton

471. We did not consider Ms Newton could legitimately have had a sense of grievance of this matter, except possibly against Mr Austin. She was employed short term for a scoping project at a high daily rate. Ms Eves had fed back to Mr Austin about the (reasonable) enquiries she had made about the necessity for the project and her conclusion that it was not required.
472. Ms Newton could legitimately complain that Mr Austin had misled her as to the longevity of her tenure. At the point when her contract terminated, clearly Mr Austin was not feeding back any reasonable and measured account of the reasons for termination to Ms Newton since both were embroiled by that point in the version of events they subsequently presented to the Tribunal and their own efforts to displace Ms Shields and Mr Rahman. If there was a detriment to Ms Newton in the handling of the termination of her contract, it was a result of Mr Austin's behaviour and not the protected acts.

31 March 2020: The decision to terminate Ms Newton's contract

473. Part of the complaint was that Ms Eves had said there would be an extension of contracts of the agency workers in the finance team until the end of May 2020. That was a statement made at a point when her original proposals had led to Mr Austin presenting a plethora of complaints. We accepted that the decision that the housing legacy project was not required was a business decision made by Ms Eves after carrying out a reasonable amount of consultation. It has to be remembered that this was a project and an appointment she had never approved in the first place.
474. Once the project was terminating, there was no commercial justification for a further expensive agency worker effectively acting as a senior manager in a smallish team. That is what Ms Eves told the Tribunal and what she told Mr Austin at the time. We had no reason to doubt that evidence.

475. Whilst there was a detriment to Ms Newton in having been led to believe her contract would be extended until the end of May 2020, we could see no evidence from which we could reasonably conclude that it was terminated at the end of her fixed term contract because of her protected acts and we were satisfied with Ms Eves' explanation of her reasons.

Up to 31 March 2020: Alleged 'failure' to consider other roles for Ms Newton and/or to re-deploy her on Covid-19 and/or otherwise

476. We did not consider there was any detriment in the sense of anything Ms Newton could reasonably feel aggrieved about.
477. Ms Newton was employed on a daily rate of £450 and had been so employed for a matter of months. Other agency employees who were temporarily redeployed on Covid response work were those whose underlying work had already been identified as necessary (eg Ms Shields and Mr Rahman) and which would be resumed after the response was no longer necessary. Ms Newton's work had been identified as unnecessary and she was expensive. It was made clear that there was work at a lower level for agency workers but Ms Newton and Mr Austin did not express any interest in such work on her behalf. Instead Mr Austin continued to canvass extensively for her to do work which would make use of her skill set as a project manager. He not only approached Ms Eves but others in the respondent who told him there was no such role. There was no material from which we could reasonably conclude that another role was not considered for Ms Newton because of the protected acts and we were satisfied with the respondent's explanation for not seeking an alternative role.

Up to 31 March 2020 Alleged Second (wider) request to re-deploy Ms Newton to Covid-19.

478. We have made findings in respect of all of the requests by Mr Austin to redeploy Ms Newton above.

Alleged that no documents were assembled or shown to either claimant prior to the dismissal

479. We did not consider there was a detriment. Mr Austin had been given by Ms Eves a full and complete explanation as to why Ms Newton's contract was not being extended. He should have explained that to her. There was no need for documents to be produced.
480. In any event we could identify no causative relationship with the protected acts or material from which we could reasonably infer such a relationship.

Alleged that the claimant was not given the chance to be heard or to her response to the alleged reasons for termination of the contract

481. As a short term agency worker, we could see no reason why Ms Newton would have had a legitimate expectation that some more formal process would have been followed. In any event it would have been for Mr Austin as her line manager to have carried out any meeting at which he discussed with her the reasons for not extending her contract.
482. We did not consider there was a detriment and again we could identify no causative relationship with the protected acts or material from which we could reasonably infer such a relationship.

Alleged that no opportunity to have a colleague present at the meeting when dismissed

483. For the same reasons, we found there was no detriment in this respect and no causative relationship with the protected acts or material from which we could reasonably infer such a relationship.

Harassment related to sex / of a sexual nature

484. We considered each complaint against the elements set out in section 26(1) and/or section 26(2) of the Equality Act 2010.

On 29 November 2019: Lesley Shields alleged comment: "Yes, I think they are probably sleeping together".

485. We concluded that something of this sort was said by Ms Shields. We did not conclude it 'related to sex' because it was a comment made about Mr Austin and Ms Newton and was not about their protected characteristics of being female / male but about an alleged sexual relationship between them.
486. It did however seem to us to be conduct of a sexual nature because it referred to alleged sexual activity and it also seemed to us to be clearly unwanted by Ms Newton when she found out about it. Ms Shields' purpose appears to have been to vent her frustrations about Mr Austin and Ms Newton to her colleagues but we considered that the conduct, once it came to Ms Newton's attention, would have had the proscribed effect of violating her dignity and/or creating a humiliating environment for her. It would be reasonable for Ms Newton to feel that an allegation that she was having sexual relations with her manager rather than working had that effect and we accepted that it had some such effect on Ms Newton, although we also considered, as we stated above, that the claimants fastened opportunistically on the remarks as material they could use to maintain their own positions.

On 29 November 2019: Lesley Shields allegedly stated "she's (Ms Newton) sucking his (Mr Austin) cock about now".

487. We make the same findings for the same reasons as we made in respect of the first allegation of harassment.

Alleged that Ms Newton was described repeatedly by Lesley Shields as “bitch” and “cunt”

488. We found that Ms Shields had referred to Ms Newton as a cunt on one occasion.
489. That was clearly conduct which was unwanted by Ms Newton.
490. Was it conduct related to sex? We considered that the word ‘cunt’ is used to express extreme disapprobation of a person of either gender although it is also a word for female genitalia. There are many such words in the English language, derived from words for both male and female genitalia, some of which are used for both men and women. We considered that whether there was a relationship with sex in a particular cases was likely to be context specific. The selection of the word cunt as an insult for Ms Newton in this instance did not seem to us to have the necessary relationship with sex because there was nothing to suggest that Ms Shields would not have used it in respect of a man she disliked.
491. We considered carefully whether Ms Shields’ resentment of Ms Newton was related to her sex. We had to draw inferences about her motivation from the evidence which we had. It was clear that she was upset about the irregular appointment of Ms Newton, about the fact that Mr Austin was not, as she saw it, bearing his share of the workload and the fact that she considered that he was spending time on Ms Newton and her project which was not being used to help with other tasks. At least part of that picture was a perception that there might be a sexual relationship between the two, as evidenced by her remarks on 29 November 2019.
492. It was in that sense that we concluded that the animus Ms Shields had against Ms Newton had some relationship with sex. If the claimant had been male, Ms Shields would not, we concluded, have believed that the situation arose from a workplace affair between the two. The extreme vitriol involved in describing a colleague as a ‘cunt’, arose, we concluded, from the particular level of resentment created by the combination of factors we have identified, including the perception, probably not amounting to any sort of serious belief, that Mr Austin and Ms Newton might be having an affair.
493. We were satisfied that the use of the insult, once Ms Newton found out about it, particularly in conjunction with the 29 November 2019 incident, had the proscribed effect of violating Ms Newton’s dignity and creating an environment that she reasonably regarded as humiliating.

Alleged comment: “You are going to talk to me (...) Don’t you walk away from me, young lady”

494. We concluded that Ms Shields had used the words ‘young lady’ .and that was conduct unwanted by Ms Newton.
495. We did not conclude that Ms Shields had the proscribed purpose. She was angry and upset about Ms Newton’s behaviour and was seeking to ensure that there was no further disruption of the training session.
496. Whatever effect the expression actually had on Ms Newton, we did not consider it could reasonably be considered to have the proscribed effect. Particularly given the context of significant provocation by Ms Newton and Mr Austin, we considered this particular remark was trivial; it would ‘cheapen the words’ to suggest that Ms Newton’s dignity was violated or that the proscribed environment was created.

497. Furthermore, we did not consider there was any relevant 'relationship with sex'. We had no reason to think that a man behaving as Ms Newton would not have been referred to as 'young man'; the use of the word 'lady' was immaterial to the offence created. What offended Ms Newton, as we have indicated above, was that both she and Mr Austin felt that they were being treated like school children. She was offended by the way in which Ms Shields used the word 'young'. There was no allegation of harassment because of age.

29 November 2019: Alleged comments by Ms Shields RE MN and FA leaving together

498. This was part of the sequence of remarks we have already found constituted sexual harassment and for the reasons set out above. We did not consider that it was properly to be regarded as a separate complaint.

27 February 2020 Alleged monitoring of the Claimant's diary and disputing a meeting

499. This was clearly the wrong date. The claimant complained that Ms Shields had questioned whether they were in fact meeting with Mr Caspell as they said they were on 29 November 2019.
500. This was conduct which the claimants did not want but it was neither related to Ms Newton's sex (since it appeared that it was Mr Caspell's diary which was checked) nor did it of itself have any sexual content. It appears to have been her apparent discovery that there was no diarised meeting that led Ms Shields to allege that the claimants had gone to a hotel.
501. Taken together with the whole incident, it could reasonably have had the proscribed effect. The unnatural separating out of different parts of what was in effect a single incident has led to difficulties of analysis. Our finding is essentially that the remarks made by Ms Shields on 29 November 2019 were sexual harassment for the reasons we have set out above. However we make no separate finding on this part of the incident taken in isolation.

November 2019 to February 2020 Alleged comments by Lesley Shields RE hiring on MN.

502. Ms Barard's evidence in her witness statement, which we accepted, was that Ms Shields had said, when Ms Newton was employed, that Mr Austin had not sought permission to employ Ms Newton.
503. This was conduct unwanted by Ms Newton. We could see no relationship at that point with sex. Mr Austin had failed to wait for approval before appointing Ms Newton and his approach had created tension with Ms Shields. There was nothing in the evidence which suggested to us that at that point Ms Shields was doing anything other than expressing her upset at the irregular appointment. We could see no reason to conclude that she would have behaved differently had Ms Newton not been female. The problem was the irregularity of the process. The suggestion that there might be a sexual relationship between the two only arose after Ms Shields observed them lunching together and leaving work together.
504. We did not consider that the conduct had a harassing purpose or effect. It was inappropriate for Ms Shields to express this concern to a more junior colleague but we concluded that it would be an exaggeration and again would 'cheapen the words'

to find that this remark could reasonably be said to violate Ms Newton's dignity or create the proscribed environment.

Vicarious liability / reasonable steps defence

505. It was submitted that the respondent had taken reasonable steps to prevent Ms Shields from harassing the claimants. She told us she had had some equality and diversity training towards the end of 2019. No detail was provided and there was no date. It was unclear whether the training occurred before or after the matters we have identified as amounting to unlawful harassment.
506. We simply had no evidence on the basis of which we could conclude that such training as Ms Shields had had represented reasonable steps taken by the respondent to prevent harassment. We were not even told whether the training covered harassment at all or explained what types of behaviour might constitute harassment.
507. The other matter relied on was the apology Ms Shields was said to have made to Ms Barard after she made the remarks on 29 November 2019. This was after the conduct had taken place. It was not a reasonable step taken to stop it occurring in the first place. The unlawful conduct was not the conduct of Ms Barard in repeating the remarks, it was Ms Shields' conduct in making them in the first place.
508. We did not accept that this defence was made out.

Time limits

509. We have found that both claimants were subjected to unlawful harassment in the respects we have identified above on 29 November 2019 and, in Ms Newton's case, another occasion in late 2019. Both only found out about the matters in February 2020.
510. We have a broad discretion to extend time if it is just and equitable for us to do so.
511. The respondent submitted that the claimants had not explained the delay. There was a delay of six weeks beyond the limitation period before Early Conciliation commenced, even if time was regarded as running from the date when the claimants found out about the harassment². Ms Newton in particular had taken legal advice formally and informally from February 2020. Mr Austin has brought Tribunal proceedings before and would also have reasonably been aware of time limits.
512. It was also submitted by the respondent that it was prejudiced by the non-attendance of Ms Barard as it had not been possible to cross examine her about her motivation in repeating the remarks to Ms Newton. It was said that the passage of time had made it less likely Ms Barard would attend.

² We did not hear submissions on whether the harassment claims only crystallised when the claimants knew about the conduct and it had the relevant effect but the respondent seemed to implicitly be accepting that analysis. If that is not the correct position, the claimants' lack of knowledge would certainly be a strong factor in extending time during the period they were in ignorance.

513. We concluded that it would be just and equitable to extend time. Although the claimants had not put forward an explanation for the delay, it was clear that they had sought to raise the matters internally in the first instance and that the failure to achieve an internal resolution on relation to the complaints of harassment and their other complaints then led to the commencement of proceedings.
514. The fact that the claimants had raised the complaints internally of course enabled the respondent to investigate them when the evidence would have been much fresher. The outcome of the investigation was a finding that Ms Shields had made what was arguably the most offensive of the remarks. We rejected the respondent's evidence that what it identified as a six week period of delay which could be laid at the claimants' door had led to any prejudice. There was no reason to think that Ms Barard would have been more likely to attend to give evidence had the claim been presented six weeks earlier. The email she sent to the claimants asking to be excused from attending said that she was suffering from anxiety at the thought of having to give evidence.
515. In any event, we could see no reason why cross-examining Ms Barard on her motivation for revealing Ms Shields' remarks would have led to any different outcome in terms of the merits. The harassment was the conduct of Ms Shields; the fact that she made the remarks to colleagues created a risk that the remarks would be repeated. Whatever Ms Barard's motivation for repeating the remarks, we were not satisfied that her motivation could have created some kind of *novus actus*, breaking the chain of causation. In any event we heard no detailed submissions from the respondent, supported by any authority, on what would have been a novel point.
516. We weighed up the claimants' lack of a detailed and explicit explanation for the delay and the fact that they would / should have been aware of the time limits against the other matters, including their efforts to seek redress internally and the lack of prejudice caused by what was not a very substantial delay after the claimants had knowledge of the harassment. We considered whether the fact that the claimants were minded to make use of the harassment allegations to improve their own position with regard to contract extensions was a factor which strongly weighed against the exercise of the discretion in their favour but ultimately concluded that it was not, although it might have an impact on the level of injury to feelings we assessed.

Conclusion

517. For all of the above reasons, we have dismissed all of the claimants' claims save for the sexual harassment claims we have identified. If the parties are unable to resolve the remedy element between themselves, they should write to the Tribunal with dates to avoid for a one day remedy hearing from January 2022 onwards.

Employment Judge Joffe
London Central Region
03/11/2021

Sent to the parties on:
03/11/2021

For the Tribunals Office

