RESERVED JUDGMENT

Case Nos: 2416368/2018
2415427/2018
2416830/2018
2402191/2019

EMPLOYMENT TRIBUNALS

Claimant: Mrs P Day

Respondents:
1. The Bee Hive (NW) Limited
2. Mrs V M Robinson
3. Mr S J Robinson
4. Mr L Robinson

Heard at: Manchester **On:** 13-16 September 2021
3 December 2021
(in Chambers)

Before: Employment Judge Slater
Mr S Anslow
Ms S Howarth

REPRESENTATION:

Claimant: In person
Respondents: Mr M Davies, solicitor.

JUDGMENT

The judgment of the Tribunal is that:

1. The complaints of direct sex discrimination are not well founded.

2. The complaints of harassment related to belief and/or sex are not well founded.

3. The complaint of victimisation pursuant to section 27 Equality Act 2010 Is not well founded.

4. The complaint of indirect philosophical belief discrimination is not well founded.

5. The complaints of public interest disclosure detriment are not well founded.

6. The complaints of instructing, causing or inducing and/or aiding contraventions contrary to sections 111 and 112 Equality Act 2010 are not well founded.

7. The remedy hearing provisionally listed for 11 February 2022 will not take place but there will be a costs hearing on that date, if a costs application is made within 28 days after this judgment is sent to the parties.

REASONS

Background to this final hearing

1. The claimant presented four claim forms. In addition to the complaints which were the subject of this final hearing, the complaints presented by the claimant included age discrimination, race discrimination, disability discrimination, sexual orientation discrimination and marriage discrimination.

2. There were a series of preliminary hearings before a number of judges prior to this final hearing, the last of which was a preliminary hearing on 29 March 2021 before Employment Judge Leach.

3. The claimant withdrew a complaint of disability discrimination in relation to thyroid dysfunction in case number 2416368/18 by email dated 28 March 2019. A judgment dismissing this complaint was sent to the parties on 16 April 2019.

4. As a result of deposit orders being made in relation to certain complaints in respect of which the deposits were not paid, a considerable number of the original complaints were struck out. Employment Judge Hoey made deposit orders sent to the parties on 14 January 2020. Employment Judge Leach made deposit orders sent to the parties on 13 November 2020 and 18 January 2021. Judgments were issued for the complaints which were struck out because the deposits were not paid. A deposit in respect of one complaint was paid, and that public interest disclosure complaint is included in the complaints decided at this final hearing. The claimant appealed to the Employment Appeal Tribunal against the making of the deposit orders made by Employment Judge Hoey, but her appeal was unsuccessful.

5. We note from the record of the final preliminary hearing on 29 March 2021, that Employment Judge Leach recorded that all the complaints in case numbers 2415427/18 and 2402191/19 had previously been struck out (which we understand to be because of deposit orders being made and the deposits not being paid) but Employment Judge Leach retained the claims, pending costs applications. We understand judgments have already been issued dismissing all the complaints in those two claims, so do not consider there is any further judgment for us to make in relations to complaints included in those two claims. If the respondents wish to pursue costs applications in relation to those two claims, and any other matters, as noted in our

judgment, that application must be made within 28 days after this judgment is sent to the parties.

6. The claimant failed to comply with the case management order to send her witness statements to the respondents by 30 July 2021. An unless order was sent to the claimant on 1 September 2021, informing the claimant that, unless she provided her witness statements to the respondents by 6 September 2021, her claims would stand dismissed without further order. The claimant provided her witness statements within the time period required by the unless order, so her claims were not dismissed.

This hearing

7. The final hearing was listed in May 2020 to take place in September 2020 in Manchester. At the time, it was contemplated that the hearing would take place in person. The hearing length was reduced to four days at a preliminary hearing in March 2021. In the context of the continuing pandemic, the Tribunal informed the parties on 3 September 2021 that the final hearing would take place by video conference. The claimant asked for the hearing to take place in person. The respondent asked for it to take place by video conference. The parties were informed that the Tribunal, on the first day of the hearing, would decide how the remainder of the hearing should proceed. The Tribunal members and the claimant attended the first day in person and the respondent attended by video conference.

8. After hearing submissions from the parties, the Tribunal decided that the respondent's sole witness, Mrs Robinson, should be allowed to attend remotely. The claimant did not object to Mr Davies, the respondent's representative, attending remotely.

9. The reasons for the Tribunal's decision were given orally, as follows.

9.1. The claimant has accepted Mrs Robinson has the condition of sarcoidosis, an auto-immune disorder, and that this affects her respiratory system. Coronavirus is a virus which can particularly affect someone's ability to breathe. In general, we understand people with conditions affecting their respiratory systems may be more liable to serious illness if infected. Mrs Day says she has seen evidence that sarcoidosis does not increase risk of serious illness from coronavirus, but she does not have that with her. However, even assuming there is scientific evidence to this effect, we would not feel confident in relying on this to decide that there would be no increased risk to Mrs Robinson of catching coronavirus and getting seriously ill if she were to attend the Tribunal in person. We consider that, in these times, we must err on the side of caution.

9.2. Given that Mrs Day has accepted that Mrs Robinson has the condition, we do not consider it would be proportionate or a good use of NHS resources to require Mrs Robinson to obtain a report from her GP, even if this can be done in time for the hearing to proceed as listed.

9.3. Mrs Day believes that justice cannot be done if a witness does not attend in person to be cross examined by someone in the same room. We disagree. The Tribunal has experience now of well over a year in frequently hearing evidence remotely, and we can manage the type of concerns which Mrs Day has raised. We consider that to allow Mrs Robinson to give her evidence remotely would be in the interests of justice.

9.4. Mrs Day has not asked for a postponement of the final hearing, but, on the basis of arguments that have been put to us in relation to the request that was made, we would not have granted a postponement on those grounds.

9.5. The hearing will, therefore, proceed with Mr Davies and Mrs Robinson attending remotely. Mr and Mrs Day can choose to attend the hearing in person if they wish to do so, or they can choose to attend the remainder of the hearing remotely if they wish to do so.

10. After this decision was given, the claimant and Mr Day, who was also giving evidence, chose to attend the remaining days of the hearing remotely.

11. We concluded hearing evidence just before 4 p.m. on the fourth and last day of the listed hearing. There was insufficient time to hear the parties' submissions on the day. The respondent had already prepared written submissions. The respondent asked that the tribunal accept written submissions rather than the parties attending on another day to give oral submissions. The claimant preferred to give oral submissions on another day. The Tribunal decided that it would be disproportionate to put the respondent to the expense of attending another day's hearing on a future date. The claimant had demonstrated that she could express herself as well in writing as orally and we did not consider that she would be substantially disadvantaged by being required to prepare written submissions. The Tribunal, therefore, ordered that submissions should be made in writing.

12. We agreed a timetable for written submissions with the parties. The respondent was relying on the written submissions already provided. The Tribunal agreed that the claimant could have until 14 October 2021 to provide her written submissions to the Tribunal and the respondent. The Tribunal had proposed two weeks from the last day of the hearing but the claimant asked for four weeks because she said that her tinnitus slowed her down with writing and she did not know from day to day how bad this would be. The respondent was given seven days from receipt of the claimant's submissions to respond to these submissions.

13. The parties were advised that the Tribunal would be meeting in chambers on 2 December 2021 to decide on liability. This in chambers day was subsequently moved to 3 December 2021. A provisional date for a remedy hearing, if required, was arranged for 11 February 2022, to be held by video conference. Case management orders would be made on paper if required for preparation for a remedy hearing.

Applications made by the claimant after close of evidence

14. By an email dated 21 October 2021, the claimant made an application to put additional material in evidence on the grounds that it was evidence of Vanessa Robinson giving perjured witness evidence under oath. The claimant did not identify in that application what statements in Vanessa Robinson's evidence she alleged were wilfully false statements in relation to which the evidence the claimant sought to admit was relevant. Part of the claimant's application relates to material which Employment Judge Leach ruled was not admissible and not relevant. There does not appear to be any material change of circumstances which would permit the Tribunal to make a new ruling on an application which has previously been refused. Part of the application relates to an audio recording which it appears the claimant had not disclosed to the respondent and the relevance of which to the issues the Tribunal has to determine is unclear.

15. The Tribunal considers that new evidence should only be admitted after evidence has closed in exceptional circumstances. It would not, except in the most unusual circumstances, be in accordance with the overriding objective of dealing with the case fairly and justly to allow a party to re-open the evidence stage of proceedings, particularly taking into account the requirement to deal with the case in ways proportionate to the complexity and importance of the issues, avoiding delay, so far as compatible with proper consideration of the issues; and saving expense. The claimant has not made out a compelling case as to why such an unusual course of action should be allowed in this case.

16. For these reasons, the claimant's application dated 21 October 2021 to admit further evidence is refused.

17. On 24 November 2021, the claimant made a further application to admit new evidence, being evidence of a default judgment obtained by Woodcock Ltd against the first respondent for the balance of its invoice plus court fees. The respondents responded in writing on 29 November 2021. We do not consider the evidence to be of relevance to the issues we need to determine and refuse the application to admit it in evidence.

18. The claimant's submissions also include a number of applications to strike out allegations, particular evidence from the respondent and the ET3 responses to all the claims against all the respondents.

19. The Tribunal refuses the application to strike out allegations made in paragraph 140. The allegations referred to are evidence relevant to the reasons for the respondent's actions, or causation. It is not a change to the respondent's defence that the respondent did not act as it did because of the claimant's sex, or related to her sex or philosophical belief or because of making protected disclosures or doing protected acts.

20. The Tribunal refuses the application at page 83 of the submissions to strike out Vanessa Robinson's witness and oral evidence relating to the claimant's NLP session with Luke Robinson and Vanessa Robinson on 20 December 2017 on the grounds

that it was not pleaded in any of the responses. The responses must contain the basis for the defence; they do not need to (and should not) contain all the evidence relevant to the issues before the Tribunal.

21. The Tribunal refuses the application to strike out the responses made at page 82 of the submissions. The Tribunal has heard the evidence and the submissions relating to all the claims and issues in the case. It is time to decide on the merits of the case. It would not, in the circumstances of this case, be in accordance with the overriding objective if, after all the evidence had been heard and closing submissions made, the Tribunal, instead of deciding on the merits of the case, decided to consider strike out applications. If we have omitted to refer specifically to any other applications contained in the claimant's lengthy submissions, we refuse the applications for the same reasons as in relation to this strike out application.

Claims and issues

22. The claims to be determined at the final hearing were of sex and religion/belief discrimination, victimisation under the Equality Act 2010 and public interest disclosure detriments. The claimant also brought complaints about instructing, causing or inducing and/or aiding contraventions contrary to sections 111 and 112 Equality Act 2010.

23. The claimant relied on an empathy belief and rule of law belief as her philosophical beliefs for her complaints of religion or belief discrimination.

24. There was an agreed list of issues which made reference to a Schedule of Allegations documents which was annexed to the record of the preliminary hearing on 30 October 2019 (being a version of this document updated at that hearing). We had a discussion on the first day of the hearing about the Schedule of Allegations, as a result of which some amendments were made to this by agreement.

25. There remained an issue about whether allegation 15(a) remained as part of the claim. The Tribunal, after hearing the parties' submissions and doing its initial reading into the case, decided that this complaint of victimisation "that the respondents did not withdraw the letter of termination [of 13 June 2018] and did not therefore restore the contractual relationships under which the claimant worked for R1" did not remain part of the claimant's claims. We gave the following reasons for this decision.

25.1. The notes from Employment Judge Leach's preliminary hearings on 19 - 20 October 2020 and 29 March 2021 are clear that the only complaint of victimisation remaining to be determined at the final hearing is the complaint in claim three (case number 2416830/18). The complaints of victimisation in claim one (2416368/18) were, Employment Judge Leach concluded, withdrawn by the claimant at the preliminary hearing before Employment Judge Ross on 28 February 2019 and Employment Judge Leach issued a judgment dismissing these. The complaint of victimisation in case numbers two and four (2415427/18 and 2402191/19) were the subject of deposit orders sent

to the parties on 13 November 2020. The deposits were not paid so those claims were struck out.

25.2. It is clear to us that Employment Judge Leach considered the only complaint of victimisation in claim 3 to be the complaint about the letter of 1 November 2018 referred to in allegation 15(b) in the schedule of allegations. Having now read the particulars of claim in claim three, we agree with his identification of this as the only complaint of victimisation in claim three. We refer, in particular, to section 6 (p.64) where the claimant outlines the complaint of victimisation.

25.3. We are unclear of the origin of allegation 15(a) in the schedule which Employment Judge Leach prepared as an attempt to identify the claimant's complaints from all the claims. However, we are clear that it was not in claim three which contains the only complaint of victimisation to be to determined by this tribunal.

26. We have set out, in the Annex to these reasons, a list of claims and issues which, as a result of the discussion on the first day of the hearing and the Tribunal's decision in relation to allegation 15(1) in the Schedule, were to be determined by the Tribunal at this final hearing. This list incorporates the agreed list of issues and the relevant parts of the Schedule of Allegations.

Application by the claimant for an Unless Order

27. On the first day of the hearing, the claimant made an application for an unless order for the respondent to bring to the Tribunal the physical signing in book in which the claimant asserted that all full-time staff signed in and out. The claimant said that Employment Judge Leach had ordered the respondent to bring the physical copy of this book to the hearing, rather than printing it out to include in the hearing bundle. The claimant submitted that this document was relevant and necessary for her to prove her Equality Act claims and protected disclosure claims. She submitted that it would prove the timings of aspects of events during her employment; which people were present on certain days.

28. The respondent submitted that the respondent did not have a physical register and could not disclose what they did not have.

29. We refused to make an Unless Order for the following reasons which we gave orally.

29.1. The respondent's representative tells us that the physical document, which is the subject of the request, does not exist. We cannot make an Unless Order to strike out the response for not producing a document which we are told does not exist.

29.2. If the claimant does not believe the respondent's assertion that there was no such document, the claimant can cross examine the respondent's witness on

this area, and the Tribunal may draw inferences adverse to the respondent if the evidence suggests that the respondent has not produced a relevant document which does, in fact, exist.

Evidence

30. We had written witness statements from the claimant and her husband and co-owner and director of Woodcock Ltd, Mr Robert Day, for the claimant and from Mrs Vanessa Robinson, a named respondent and co-owner of the first respondent company, on behalf of all the respondents. We heard oral evidence from all these witnesses.

31. Mr Day's witness statement bore a remarkable similarity to certain parts of the claimant's witness statement, down to the words and style used. Mr Day gave evidence that he had prepared the statement himself and that the words used were his own words. We find that the similarity in the two statements is too great to be a coincidence and find that both statements must have been drafted in large part by the same author. We find it more likely than not that Mrs Day drafted a substantial part, if not all, of Mr Day's witness statement. This is supported by the original text of the witness statement, before it was corrected by Mr Day before he confirmed the truth of the amended statement, referring in places to "my husband" and "me as the claimant". We find it difficult to put much, if any, weight, on Mr Day's evidence in these circumstances.

32. The third respondent, Stephen (Steve) Robinson, is the husband of Vanessa Robinson. The fourth respondent, Luke Robinson, is the son of Vanessa and Steve Robinson. Luke and Steve Robinson did not provide witness statements and give oral evidence. Vanessa Robinson said she did not want Luke subjected to any more stress and she felt the buck stopped with her. Steve Robinson had no contact with the claimant in 2018. As we find later, he was involved in the decision, made jointly with Vanessa Robinson, to terminate the claimant's contract.

33. We had a bundle of documents prepared by the respondent which ran to 1207 pages and a further bundle prepared by the claimant which ran to 695 pages. We refer to pages in the bundle prepared by the respondent as "RB[number]" and pages in the bundle prepared by the claimant as "CB[number]". Page references are to the numbers written on the pages, rather than to the electronic numbering in the electronic version. We were not referred to, and have not read, all the documents in the bundles.

34. The claimant's bundle was delivered at a very late stage to the respondent and, initially, delivered to a nearby address, leading to a delay in Mr Davies being able to access the bundle. However, the respondents did not apply to postpone the hearing.

35. The claimant made an application after close of evidence, to admit further evidence, which we deal with separately below.

Summary

36. All the complaints brought by the claimant are brought on the basis (now agreed) that she was an employee of the first respondent company, within the Equality Act sense, and a worker, within the meaning in the Employment Rights Act 1996. The claimant had a contract to work for the first respondent from January 2018 until this was terminated in June 2018. The claimant's involvement with the respondents went back earlier than her "employment" relationship. Woodcock Ltd, a company owned by the claimant and her husband, entered into arrangements with the first respondent in September 2016 in accordance with which the claimant and her husband provided various services to the respondents, without any payment calculated on a time spent basis, in anticipation of being rewarded eventually by a share of commissions earned by the first respondent. All relationships between the claimant, Woodstock Ltd and the respondents were terminated summarily by a letter from Vanessa and Steve Robinson in June 2018. The claims brought by the claimant arise in that context. There is a commercial dispute between Woodcock Ltd and the first respondent as to what, if anything, Woodstock Ltd was entitled to be paid for the services that company provided through the claimant and Rob Day. These services are distinct from the services the claimant provided to the first respondent in accordance with the "employment" contract. Issues relating to this commercial dispute are not a matter for this Tribunal.

Facts

37. The first respondent company operates an estate and letting agency. The shares in the first respondent company are owned by Pennine Property Management Limited. Vanessa and Steve Robinson are the owners and directors of Pennine Property Management Limited. Vanessa, Steve and Luke Robinson were directors of the first respondent company at relevant times. Vanessa remains a director. Steve and Luke have ceased to be directors. Vanessa Robinson was responsible at relevant times for the day-to-day management of the first respondent's business and for the property lettings. Luke Robinson, son of Vanessa and Steve Robinson, was responsible for property sales. Steve Robinson was rarely involved in the day-to-day management of the respondent business.

38. The claimant had little contact with Steve Robinson. They did not speak at all in the period January to June 2018.

39. In around January 2017, the claimant alleges that Steve Robinson told her that she was more like a man when dealing with Luke, because she had not had children, unlike his wife who was more protective of her children. Later in 2017, the claimant alleges that he got angry, referring to the claimant and Vanessa Robinson as "you two women". Vanessa Robinson did not recall these comments but did not deny them. We find, on a balance of probabilities, that Steve Robinson made these alleged comments. It is agreed that another employee, Peter, referred to Vanessa Robinson as "the boss lady". We accept Vanessa Robinson's evidence that this description was a joke, arising from a taxi driver in the Caribbean, when she was on holiday, referring to her as "boss lady". Peter sent emails to the claimant and Vanessa, beginning "Hi Ladies".

40. The claimant describes herself as a trained and qualified teacher, trainer, coach and mentor with additional NLP (Neuro-linguistic programming) practitioner qualifications and skills. The claimant and her husband, Rob Day, are the owners and directors of a company, Woodcock Ltd, which operates under the trading names of Insource and Insource Consultancy.

41. The claimant was introduced to Luke and Vanessa Robinson in 2016. The claimant is a member of BNI, a business networking and referral organisation. She was introduced to Luke Robinson by a fellow member of BNI, from Community and Business Partners (CBP). The claimant was recommended for providing business mentoring support.

42. The respondents were interested in business mentoring for Luke Robinson, primarily because of struggles he had with reasoning, spelling, punctuation, attention and focus and lack of confidence.

43. Under a mentoring scheme, the claimant initially provided 12 hours of her time to the respondents free of charge.

44. In September 2016, Woodcock Ltd began providing services to the first respondent. A document entitled "Non-disclosures and confidentiality agreement" was signed by Vanessa Robinson and Luke Robinson on 15 September 2016 (RB 329-330, and 280). This document describes "the Insource journey" and Insource's consulting service. Under the heading "agreed objectives" are included the following:

> "New Insource™ Psychometric Marketing, Sales Training and Coaching To Generate Additional Sales of £150k.
>
> Cost Of The Annual Licence To Rob and Pam For The New Insource™ Psychometric Marketing, Sales Training and Coaching = One Third Of Additional Sales = £50k"

45. It referred to generating maximum additional sales for the next 30 years.

46. The claimant has referred to this document as a legally binding agreement. The respondents dispute that it was. There is also a dispute as to the meaning of its terms, if it was a legally binding agreement. It is not necessary for us, in deciding on the issues before the Tribunal, to make a finding as to whether it was a legally binding agreement and, if it was, to interpret its terms. This may be a matter which is considered in another court. We do not make any findings of fact or reach any conclusions as to the legal status of the document or the interpretation of its terms. If we refer to this as an "agreement" it is as shorthand for the document and not intended to indicate any finding or conclusion reached by us as to its legal status.

47. The parties' intention was to set up a business model for sales with Quality Procedures (QPs) designed by the claimant to be followed by all those working in the business which would lead to excellent performance by all staff and, in particular, allow

Luke Robinson to become a high performing sales director. There was also an intention to explore the possibility of rolling out this business model to other locations on a franchise basis.

48. The claimant, Rob Day and Woodcock Ltd were not paid on a time spent basis for work done with the respondents (other than payment to the claimant under a separate agreement for her to work, from January 2018 as an HR/legal assistant). The claimant and Rob Day anticipated being rewarded for their work, through payments to Woodcock Ltd related to commissions from sales over a 30 year period.

49. The claimant recruited a number of people to the first respondent's business. She drafted contracts for those she recruited. A number of the people the claimant recruited were employed as apprentices at the suggestion of the claimant who was also involved in their training. It appears that there was a high turnover of those employed as apprentices in the less than two year period during which the claimant was involved with the first respondent's business, although we heard of one who stayed on to become a permanent employee after a one year apprenticeship. The HMRC report, referred to later, wrote of being informed that there had been 6 or 7 apprentices.

50. The claimant and Rob Day provided coaching and training to Luke Robinson and assisted with setting QPs. The claimant asserts in submissions that it was only Rob Day who provided coaching and that the claimant supported Luke Robinson in her role as QP manager and under a recruitment contract. We agree with the respondent's submission that the claimant is splitting hairs in the terminology used to describe her involvement with Luke Robinson. Based on emails from the claimant to Luke Robinson, we find she was providing a form of mentoring or coaching to Luke Robinson. The claimant in cross examination said that she was there to help Luke and get him to be where he wanted to be, which we also consider indicates a "coaching" relationship.

51. The claimant gave evidence in cross examination that she had previous experience in lettings but declined an invitation to elaborate. We had no other evidence to suggest that the claimant had any particular experience with sales or lettings. We understood that Woodcock Ltd t/a Insource, through the services of the claimant and Rob Day, was, rather than providing any expertise in the lettings and sales business, providing a business model, which could be used in any small or medium sized business, aimed at achieving success. This finding is supported by what is written in the "Non-disclosure and confidentiality agreement" about Insource's "formula" or "blueprint" being able to help any SME business to double their profits by getting their marketing to work and getting their staff to work (RB282).

52. The rental side of the first respondent's business was much more successful at this time than the sales side and its profits supported the sales side.

53. It is clear from the emails we have seen that Luke Robinson was an enthusiastic and willing student of the claimant and Rob Day and was keen to please them. The

coaching provided included daily hour-long review telephone calls between Rob Day and Luke.

54. It appears that the respondents were happy with the arrangements between them and the claimant's company through most of 2017. In July 2017, Luke Robinson was reporting to Rob Day that the respondents were in the best financial position they had ever been in with the Beehive, showing that all their hard work was paying off (RB381).

55. By December 2017, it is apparent that Vanessa Robinson was beginning to have concerns about the impact on Luke Robinson of the claimant's work with him. In a WhatsApp message on 16 December 2017 (RB437), she wrote: "Luke has emailed you - he's feeling really low at the moment so mind how you push him."

56. Vanessa Robinson was also suffering ill health around this time, which she considered had been exacerbated by stress.

57. In January 2018, the first respondent added the claimant to the payroll. The claimant began receiving a payment of £600 per month. Also, in January 2018, the claimant was set up with a Beehive email account. The claimant, Vanessa Robinson and Luke Robinson set up a WhatsApp group to communicate with each other. A written contract was produced by the claimant in the same form as contracts she had drafted for employees recruited by her to the business. It was signed by the claimant and backdated to 1 January 2018 (RB462). The claimant gave evidence she signed it on 3 January 2018. Vanessa Robinson gave evidence that it was not produced until around 9 April 2018. We do not consider it necessary to make a finding of fact as to when the claimant did sign the contract. The contract was never signed by anyone on behalf of the first respondent. The claimant accepted in evidence that Vanessa Robinson probably did not see the contract until April 2018. We find that Vanessa Robinson had not seen the contract before April 2018 and that the respondents, when they wrote the termination letter of 13 June 2018, believed, as alleged in that letter, that the claimant had backdated the written contract from April to January 2018.

58. We find that Vanessa Robinson and the claimant agreed that the claimant should be engaged as an HR/legal assistant to Vanessa and Luke Robinson with a payment of £600 per month from January 2018. An email from Vanessa Robinson to the claimant dated 18 January 2018 began "Hi Legal Pam". (CB594)

59. The claimant was paid through payroll from January 2018 until the termination letter on 13 June 2018.

60. The respondents pleaded, in response to the claimant's claims, that she was not an employee or worker of the first respondent. Prior to a case management preliminary hearing on 30 October 2019, the respondents made a concession as to the claimant's status. This was recorded and clarified at the preliminary hearing as being that the respondent accepted that the claimant was an employee within the requirement of section 83(2) of the Equality Act 2010 and a worker under section 230(3) Employment

Rights Act 1996 (ERA). No concession was made that the claimant was an employee under section 230(1) ERA.

61. Before Christmas 2017, the claimant had a telephone Neuro-linguistic programming (NLP) session with Luke Robinson. On 4 January 2018, the claimant messaged Vanessa Robinson, asking if she had seen any change since the session. Vanessa Robinson replied that she had, but wrote that she was concerned that Luke was so anxious and that he needed to be less stressed (RB464).

62. By March 2018, it appears that the business was not developing in the way which the claimant and the respondents had hoped. On 4 March 2018, the claimant sent an email to Vanessa Robinson asking to arrange a meeting to discuss what was stopping Luke Robinson from achieving the planned results (CB377).

63. Vanessa Robinson and the claimant met at the Tickled Trout on 9 March 2018. They discussed the sales numbers which were not good. There is a factual dispute as to what exactly was said at this meeting. Neither the claimant nor Vanessa Robinson made notes about the meeting at the time and we do not consider that either's recollection as to exactly what was said is likely to be reliable. Some light is shed on what was discussed in the meeting by the emails before and after that meeting. We find, relying on these, that there was a discussion about things not working as they had all hoped and, in particular, about Luke not achieving the goals which had been set. There was some discussion about the possibility of giving up. Because of the email she sent subsequently, we find that the claimant understood she had been asked why she and Rob didn't give up. Vanessa Robinson's recollection was that she had said they needed to give up but she felt the claimant wasn't listening. We consider both parties may have come out of the meeting with the understandings they expressed in evidence. Vanessa Robinson thought there was no alternative but to carry on, given the claimant's expressed views. We reject the claimant's evidence that they spoke about Luke possibly not complying with legal obligations under the Insource contract. This is not consistent with the reference to "promise" in the claimant's subsequent email of 10 March 2018.

64. The claimant wrote on 10 March 2018 (CB376):

> "You asked me yesterday why Rob and I didn't give up. Rob and I, like you and Steve, are old fashioned and believe that if someone makes a promise then they have an obligation to deliver on it. And Luke made Rob and I a promise that if we worked intensively with him and trained him to use our licensed world-class QPs, then he would apply them until he was a master of them and then he would work with us for 30 years with us all reaping the rewards. And so Rob and I want Luke to be honourable and deliver on this promise."

65. Vanessa Robinson replied that Luke had had a revelation that day as he had applied something that Rob showed him and he understood how it worked. The claimant wrote that they might be turning the corner and Vanessa Robinson replied that she hoped so.

66. On 12 March 2018, the claimant messaged Vanessa and Luke Robinson to ask when she was going to terminate the employment of Kealy and get Luke to take over her 360 degree BTLive (Buy to Live) role (RB424). Luke asked to discuss this and the claimant replied that there was nothing to discuss because he had made the decision to dismiss Kealy as there was no work for her to do and all he had to do was to ring the Federation of Small Business (FSB) and ask them how. In a further message to Vanessa Robinson, the claimant wrote that she was not prepared to accept Kealy staying when Luke hadn't made it work "and she is getting paid when we aren't. Luke has to make the 360 degree BTLive work himself now" (RB468). Vanessa replied that they had decided to dismiss Kealy, but just needed the plan how. The claimant told her to ring the Federation of Small Businesses (FSB).

67. Vanessa Robinson was notified on 13 March 2018 by ACAS that AH, a former employee who had been employed under a contract describing her as an apprentice and paid apprentice National Minimum Wage rates, was considering bringing a claim to an employment tribunal against the first respondent. The basis of the claim was that she had not been paid at the correct rate because she was not an apprentice as a result of the failure to provide training. Vanessa Robinson forwarded this letter to claimant. AH had approached Vanessa Robinson in October 2017 seeking a pay rise since she said she was doing much more work than she expected as an apprentice. Vanessa Robinson raised this with the claimant in an email. She wrote that she had told AH she did not know about the legalities of apprenticeships' pay and would discuss it with the claimant (RB384A). Vanessa Robinson understood the claimant's view to be that AH had signed her apprentice contract and was bound by it. AH resigned after not receiving a positive response to her request. Vanessa Robinson sought advice from the FSB which was that AH had not been treated as an apprentice and would be entitled to a higher rate of pay than she had been paid. Vanessa Robinson relayed this view to the claimant (RB400).

68. A few days later, Vanessa Robinson was informed that HMRC was doing a national minimum wage investigation triggered by AH's case.

69. We find that the claimant encouraged Vanessa Robinson to defend robustly AH's claim, despite the advice Vanessa Robinson had received from the FSB. The robust approach was demonstrated even before AH had formally notified ACAS of a claim. Following AH's resignation, on 2 December 2017, the claimant wrote that she had been reading a recent judgment on dishonesty that could potentially apply to AH (RB405). We find that this was most likely to be in anticipation of AH bringing a claim and demonstrates an attempt to discredit AH; we have seen nothing to suggest AH was dishonest.

70. On 14 March 2018, Vanessa Robinson emailed the claimant, writing that HMRC wanted to arrange an appointment, to look through their records with regard to the minimum wage.

71. On 14 March 2018, the claimant emailed Luke Robinson about training to use Blooms Taxonomy to master the link between his time and his results. She wrote that his actual versus his planned results for this year had not matched and they had to the following year. She set out things that he had to learn and questions to answer before they moved onto specific training (CB383).

72. On 15 March 2018, Vanessa Robinson emailed the claimant a copy of a letter from ACAS, notifying the first respondent of a potential claim by AH and asking to discuss the matter.

73. On 16 March 2018, the claimant messaged Vanessa Robinson, telling her, in relation to AH's case, to tell ACAS to speak to the claimant, describing her as her HR assistant who was handling this for Vanessa Robinson, and, if ACAS asked, to confirm the claimant was an employee. (RB468)

74. On 21 March 2018, the claimant messaged Vanessa and Luke Robinson, writing that she had realised that Luke had 9 of the 12 most common bad unconscious time habits and that this was a major part of what was stopping him achieving the sales targets (RB426)

75. On 21 March 2018, Vanessa Robinson gave permission for the claimant to speak to the FSB on the first respondent's behalf, to get advice on employment law.

76. Also, on 21 March 2018, the claimant emailed Vanessa Robinson with advice on wording to include in a letter to Kealy, considering dismissal for redundancy. The first respondent was proposing to dismiss Kealy because Kealy did not have enough instructions to process to sale. Luke Robinson was not converting enough Market Appraisals (MAs) into instructions to sell to keep Kealy occupied with processing sales.

77. On 22 March 2018, there was a meeting between Vanessa Robinson, Rob Day and Luke Robinson. Vanessa Robinson gave evidence that she and Rob Day discussed potential termination of their arrangements at this meeting. Rob Day denied that this had been discussed. Vanessa Robinson had written of this meeting as being the last meeting she attended with both Rob Day and Luke. She accepted, in evidence, that she had been mistaken about when the last meeting was, and that there had been one on 12 April 2018. Given the mistake about the date of the last meeting, we consider it likely that Vanessa Robinson has become confused in her recollection of what was said on 22 March 2018. We do not find that potential termination of the arrangements was discussed on 22 March 2018. We will return to the meeting on 12 April later in these reasons.

78. On 27 March 2018, Vanessa Robinson gave Kealy a letter terminating her employment, on which the claimant had advised.

79. On 28 March 2018, the first respondent won the gold award for the British Property Awards in the region.

80. On 28 March 2018, Luke Robinson wrote to Rob Day, writing that he was extremely thankful of Rob and the claimant's time and experience helping him through difficult challenges.

81. On 29 March 2018, the claimant and Vanessa Robinson met with Kealy to discuss the proposal to make her redundant. Kealy's redundancy was subsequently confirmed by a letter dated 3 April 2018 giving her one month's notice.

82. Despite the industry recognition of the gold award, sales figures by 31 March 2018 were disappointing.

83. In early April 2018, Woodcock Ltd invoiced the first respondent for nearly £25,000 commission. Although the invoice is dated 30 March 2018, both parties agree it was not sent until early April. There is a dispute between the parties as to whether Woodcock Ltd was entitled to 1/3 of all sales or 1/3 of additional sales achieved because of the work of the claimant and Rob Day. It is not necessary for the Tribunal to resolve this dispute, which would require decisions on the contractual status of the document signed in September 2016 and the interpretation of this. It is possible that interpretation of this document may need to be considered in other court proceedings. If the respondents did not accept that this amount was due, they did not challenge it at this time and went on to make some payments towards settlement of the invoice; they first challenged the amount invoiced on 13 June 2018 in the termination letter. Vanessa Robinson gave evidence that she felt under pressure to make payments because of the ongoing HMRC investigation and the AH Tribunal. We consider this provides a plausible explanation as to why the invoice was not challenged at the time. However, we do not consider it necessary to make a finding as to whether the first respondent considered the invoice to be incorrect at the time of receipt, or only came to this view on reflection, and perhaps after taking legal advice, prior to the termination letter of 13 June 2018. As we state later in these reasons, we accept that, at least by the time of the termination letter, Vanessa and Steve Robinson had come to the view that Woodcock Ltd was not entitled to invoice for the amount it did.

84. On 5 April 2018, AH presented a claim to the employment tribunal, claiming that she had been entitled to be paid the national minimum wage rather than apprenticeship rates.

85. On 9 April 2018, an inspector from HMRC attended the respondent's premises for an inspection. The claimant met with Vanessa and Luke Robinson after the meeting to debrief. The claimant alleges that she made protected disclosures at this meeting. We find that they talked about the need to improve sales figures and Luke not following QPs. The claimant has not satisfied us, on a balance of probabilities, that she talked about duties of company directors at that meeting.

86. At the time of the inspection, the inspector noted that there was one apprentice. The claimant informed the inspector that there had been 6/7 apprentices engaged in similar apprenticeships and/or training regime. This supports Vanessa Robinson's evidence that she was concerned that they were training people who did not stay with

the business. The inspector informed them that he had contacted the business because of a complaint from AH with regards to the national minimum wage. She had alleged that, although she had been taken on as an apprentice, there was no college attendance or agreement signed with a training provider.

87. On 12 April 2018, the claimant emailed Luke Robinson about a meeting that day with Rob Day and Vanessa Robinson, asking him to take with him his plan to transfer from Kealy to him the responsibility and strategy for achieving the 360 degree BTLive (buy to live) sales targets. She wrote that, from 1 May, he would be solely responsible for doing all steps in the sales process from getting MAs through talking to buyers/drops etc to doing the viewings, negotiating offers and doing the sales progressions to achieve the sales targets for BTLive. Another employee would remain responsible for buy to let targets.

88. Vanessa Robinson accepted in cross examination that the meeting on 12 April 2018 had been the last meeting between Rob Day, Luke and her, and she had made a mistake in the termination letter of 13 June 2018 in alleging that there had been no meetings after March 2018. The claimant (who was not present) and Rob Day have alleged that Vanessa Robinson shouted at Luke in this meeting. Vanessa Robinson disputes this. We do not find it necessary to make a finding on this allegation; it is not relevant to any issue we need to decide. We prefer the evidence of Vanessa Robinson to that of Rob Day in finding that Rob Day said, at that meeting, that it was a harder business than he had thought, and that the claimant was not listening. We consider we are unable to put much weight on Rob Day's evidence for the reasons previously given. Such a comment would also be consistent with the email Rob Day sent the claimant on 25 May 2018 (see paragraph 105).

89. The Tribunal wrote to the first respondent on 13 April 2018, giving notice of AH's claim, requiring a response by 11 May 2018 and listing AH's case for a final hearing on 13 June 2018 with a time estimate of one hour (RB603).

90. Emails sent on 16 April 2018 show that Luke Robinson was still communicating normally with the claimant at this time.

91. Rob Day postponed a meeting with the claimant scheduled for 19 April 2018 because of car problems.

92. On 25 April 2018, Luke Robinson replied to a message from the claimant about whether he wanted to give the planned meeting with Rob Day the next day a miss, to say he was very busy getting ready for the handover with Kealy so could do with the time to get on top of it.

93. On 26 April 2018, Vanessa Robinson emailed the claimant and Rob Day. She wrote that Luke was not well and she had insisted that he take some time off. She wrote that he might be back the following Tuesday if he was better (CB225). In response to a concerned email from Rob Day, she replied that she would send Luke

his regards and that she had told Luke to ignore his phone and emails and she would pick up whatever was needed.

94. Also, on 26 April 2018, the claimant wrote to Vanessa Robinson about a letter and report received from HMRC, which she wrote was as expected following the meeting with no NMW breaches. The letter from HMRC dated 20 April 2018 (RB528) asks the first respondent to provide by 11 May 2018 details of all the apprentices during the previous 3 years, to assist him with his enquiry. It is clear from this letter that the investigation has not, at this stage, concluded.

95. Vanessa Robinson wrote to the claimant on 27 April 2018. She wrote that "the issue with HMRC and the tribunal is currently 'renting a room in my head' and I could do with it being 'boxed off'" (RB593).

96. On 3 May 2018, Luke responded to a message from the claimant, agreeing that he would see Rob Day the following week.

97. On 8 May 2018, Rob Day wrote to Vanessa Robinson and Luke Robinson asking if they could have the next training session on 10 May. Vanessa Robinson replied that they were too busy.

98. The claimant advised on the response to AH's tribunal claim. The response drafted by the claimant stated that the respondent would be making an application to strike out the claim on the grounds of it being out of time and also alleging that the manner in which the claim had been conducted by AH had been unreasonable and vexatious and that it had not been actively pursued and for non-compliance with the Employment Tribunals Rules of Procedure 2013 (RB622).

99. On 15 May 2018, the first respondent paid around £4000 to Woodcock Ltd. The respondents had not, at this stage, informed the claimant or Rob Day that they disputed the invoice.

100. On 16 May 2018, Vanessa Robinson messaged the claimant to say that an inspector from HMRC had been on the phone and said that, as AH was taking her case to a Tribunal, he would no longer be involved. He said he was happy with his investigation and what he had seen. (RB554)

101. No meeting between Luke Robinson and Rob Day took place on 17 May. On 15 May 2018, Luke Robinson had emailed Rob Day to say that he had a market appraisal booked which could only be done on 17 May.

102. There was no meeting between Luke Robinson and Rob Day scheduled after that until 21 June 2018. The claimant had messaged Luke on 22 May asking when "normal service" would be resumed, and Vanessa Robinson replied in place of Luke, writing that they had holidays coming up, so they were looking at the week commencing 18 June. We accept Vanessa Robinson's evidence that the message was genuinely meant at the time and they needed a break because it was so intense. She felt she

and Luke were not coping. No meeting took place on 21 June 2018, being after the termination letter of 13 June 2018.

103. On 21 May 2018, HMRC wrote to Vanessa Robinson. They informed her that they were ceasing the part of their investigation relating to AH because of her employment tribunal proceedings. In relation to the check of their records, they wrote that the first respondent appeared to be paying their workers at least the correct rate of NMW.

104. Rob Day felt that, from May 2018, Vanessa Robinson was blocking him from supporting Luke to achieve his sales targets.

105. On 25 May 2018, Rob Day emailed Luke Robinson (CB509) writing that "I would genuinely like to offer you my hand of friendship for any help and support in any way I can." He wrote that this offer would be completely on Luke's terms only and not about the Beehive. He suggested meeting for a chat. He wrote that if Luke did not wish to take up his offer, that would be OK and he would not bother him again. The reference to not bothering Luke again, if Luke did not take up the offer, suggests that Rob Day thought, by this time, that the working relationships with the respondents were, or might be, coming to an end.

106. Luke replied on 30 May 2018, thanking him for the offer but writing that he was not ready to take him up on this. Luke Robinson wrote that he knew he needed to take his vacation mid June and come back refreshed. He concluded by writing that he looked forward to speaking to Rob Day soon.

107. On 5 June 2018, the first respondent made a further payment to Woodcock Ltd, making a total of £6234 paid to date.

108. Luke Robinson continued to send emails to Rob Day with daily plans and ongoing actions up to and including 8 June 2018. Luke went on holiday on 9 June.

109. Luke Robinson never told the claimant or Rob Day that he felt bullied by the claimant. We have no evidence that he told Vanessa or Steve Robinson that he felt bullied by the claimant. We find, based on Vanessa Robinson's evidence, which is consistent with emails sent at the time, that she was concerned that the claimant was putting too much pressure on Luke. We accept that she had a perception that the claimant was bullying Luke.

110. AH wrote to the Tribunal setting out why she considered she was not engaged as an apprentice for the first respondent. The claimant drafted a response to this letter which Vanessa Robinson approved. This letter included an application to strike out AH's claim as being vexatious (RB640).

111. In the early afternoon of 12 June 2018, the claimant messaged Vanessa Robinson to say that the duty judge was looking at the strike out application that day, but she was fully prepared if they needed to go. She then informed Vanessa Robinson

that the duty judge had postponed the hearing and put it back to be listed for a full day's hearing and an email had been sent to Vanessa Robinson (RB721-722).

112. The postponement of the hearing on 13 June 2018 was confirmed by a letter from the Tribunal dated 12 June 2018. Employment Judge Feeney's views were recorded as being that no time would be saved by holding a preliminary hearing to consider whether the claim should be struck out as the issues were the same as would be determined at a final hearing. The matter would, therefore, be listed for a one day hearing and case management orders issued (RB651).

113. A settlement was reached in the case, through ACAS conciliation, later on 12 June 2018. The COT3 confirming this was signed by AH on 13 June and on behalf of the first respondent on 14 June 2018 (RB727). We accept the evidence of Vanessa Robinson that she thought they had no option but to settle, in the face of further months' more stress, uncertainty, wasted time and costs.

114. We accept the evidence of Vanessa Robinson that the claimant had encouraged them to fight AH's case, although others had advised the case was weak. The FSB had advised that AH did not appear to be an apprentice. We accept the evidence of Vanessa Robinson that, once AH had presented her claim, a number of advisers approached her, potentially with a view to offering representation in the Tribunal proceedings. They provided initial free oral advice. When Vanessa Robinson had explained the situation, they had advised that they did not consider the respondent had a good defence.

115. On 13 June 2018, Stephen and Vanessa Robinson wrote to the claimant and Rob Day, addressing this to "Pam and Rob", writing that they were terminating their professional working relationships with immediate effect (RB729). The letter included a statement that they did not accept that a purported backdated employment contract drafted and introduced by Pam for herself in 2018 was valid or legally effective. They asserted that Insource had not provided psychometric sales and marketing training and coaching since March 2018 due to an irretrievable breakdown of trust and confidence. They provided a non-exhaustive list of matters which they said the irretrievable breakdown was due to. This was as follows:

- "negligence and failures to admit or adequately address errors in relation to a purported apprenticeship;

- a consequential and very stressful and unnecessary HMRC investigation into alleged minimum wage breach caused by the above failures to perform duties adequately and/or competently to establish and organise a valid apprenticeship;

- the consequential employment tribunal claim caused by the above failures which has generated considerable stress and anxiety to key personnel at the Bee-Hive as well as financial losses including the sum of £3500 required to settle this claim due to the lack of realistic prospects of

success, considerable anxiety and stress, business disruption and risks to reputation and business of reopening the HMRC investigation;

- the unreasonable award to Pam Day by herself of a purported employment contract in about April 2018, backdated to New Year's Day. We do not accept that this purported contract of £600 gross per month was fairly negotiated, nor did it bring additional valuable service to the Bee-Hive above Insource consultancy services. The award of the purported contract involved an obvious and significant conflict of interest. In any event, Pam is in repeated breach of this purported contract i.e. she has not requested consent to work for Insource or other businesses, has not adequately or at all reported at the Beehive and has not adequately notified the Bee-Hive of problems that have arisen (see above);

- the issuing of a grossly inflated Insource invoice for the period 1 April 2017 to 31 March 2018 which failed to only claim 1/3 of additional sales turnover generated with the assistance of Insource and instead claimed 1/3 of all Beehive sales turnover. This invoice also fails to acknowledge additional sales that were not generated by any marketing but directly from the Bee-Hive's existing contacts e.g. landlords, and existing contacts.

- Bullying conduct at times by Insource, instead of coaching support, which has caused substantial stress and anxiety affecting the health and well-being of key Bee-Hive personnel and which you are already aware of."

116. The letter asked the claimant and Rob Day not to contact by telephone, email or text message any Bee-Hive personnel, including Vanessa and Luke Robinson.

117. Vanessa and Steve Robinson both had input into this letter. Vanessa Robinson first said she could not recall whether Luke had any input. When it was put to her that Luke was on holiday at the time, she said that, if he was on holiday, he wasn't involved. In answer to questions from the Tribunal, Vanessa Robinson said that Luke Robinson did not have any input into the decision to terminate the agreements or into the termination letter. We find that Luke Robinson was on holiday at the time the letter was written and did not have any input into the decision to terminate the claimant's contract and into the sending of the termination letter. Vanessa and Steve Robinson were the only ultimate owners of the business and we find that they took this action, at least in part, because they wanted to protect their son. Vanessa and Steve Robinson took legal advice before sending the letter.

118. The letter was signed by Vanessa and Steve Robinson.

119. The letter was emailed to both the claimant and Rob Day because, following receipt of the invoice, Vanessa Robinson had discovered that both of them were the directors of Woodcock Ltd. Vanessa and Steve Robinson felt that all the relationships needed to be terminated; the relationship with Woodcock Ltd, acting through the claimant and Rob Day; and the separate contract with the claimant personally.

120. We find the letter set out the genuine concerns of Vanessa and Steve Robinson and their reasons for terminating the contract with the claimant as well as the business relationship with Woodcock Ltd.

121. Vanessa Robinson did not tell the claimant before this letter was sent, that she was dissatisfied with the claimant's work in relation to the HMRC investigation and the AH employment tribunal claim.

122. The letter of 13 June 2018 operated to terminate the claimant's employment with the first respondent. No disciplinary procedure was followed before the claimant's employment was terminated. The claimant had less than two years' continuous service as at the effective date of termination so did not have the right not to be unfairly dismissed.

123. In the respondent's subsequent responses to the claimant's claims, the respondent alleged that the claimant bullied Luke Robinson. The claimant asserts in her submissions that the allegation about bullying conduct in the letter of 13 June 2018 was about Rob Day, since he was the person who provided coaching support to Luke Robinson and that the respondent was, therefore, in its responses, changing its allegation. We do not agree with the claimant's assertion. As previously noted, the claimant was providing a form of mentoring or coaching to Luke Robinson, although the claimant takes issue with the term being used in relation to her role, and although Rob Day provided the formal coaching sessions. We consider the respondent's responses to be clarifying the allegation in the letter of 13 June 2018, rather than changing their allegation about the claimant. The respondents have never alleged that Rob Day bullied the claimant.

124. We accept Vanessa Robinson's evidence that she felt under a lot of stress and pressure at the time and felt the AH trial was the final straw. She feared going into the office and finding Luke hanging. The stress was affecting her marriage. We accept the evidence of Vanessa Robinson that she was despairing from 9 March 2018, but did not take action earlier because, with the way the claimant spoke and the emails she sent, none of them wanted to give up.

125. Vanessa Robinson accepted in evidence that she had been mistaken, when writing the letter, in thinking the last meeting had been in March 2018. She realised afterwards that they had had a meeting in April 2018.

126. We accept the evidence given by the claimant in paragraphs 232 of her witness statement about her reaction when she received the termination letter of 13 June 2018, including hyperventilating, her heart racing and adverse impact on her sleep.

127. On 17 June 2018, Woodcock Ltd wrote to the first respondent threatening legal action. Woodcock Ltd sent a statutory demand, demanding payment of £18,702.48, being the balance of the amount included in the invoice dated 31 March 2018.

128. On 24 June 2018, Woodcock Ltd wrote a letter to the first respondent headed "Malicious Communications Act 1988".

129. The claimant presented her first claim (case number 2416368/2018) against all four respondents to the employment tribunal on 28 September 2018. The second claim (case number 2415427/2018) against all four respondents was presented on 3 October 2018.

130. On 1 November 2018, the respondent's representative wrote to the claimant seeking withdrawal of the two tribunal claims which had been presented by that date (RB984). The claim of victimisation is based on this letter. Mr Davies wrote that, unless the proceedings were withdrawn, he was instructed to make a strikeout application accompanied by a costs application. Vanessa Robinson read the letter and agreed it could be sent. Luke did not read the letter. Vanessa Robinson thought that Steve probably read it.

131. The letter makes an error in asserting that the claimant's employment position was only created in response to the HMRC investigation (which the respondents were not aware of until March 2018) and being backdated to the beginning of January 2018. It is now accepted that the claimant's individual contractual arrangement with the first respondent began in January 2018.

132. The letter sets out the reasons why the respondents consider the claim to be without merit, including denying the allegations of unlawful discrimination which, at that time, included complaints of disability discrimination. The claims are described as "a vexatious and unreasonable attempt to apply commercial pressure to our client and an unreasonable attempt to come within the tribunal's jurisdiction." The letter states: "It is patently obvious that the focus of the £1.5 million damages claim is your company's "Insource licence contract" rather than any genuine employment relationship" and "It is not credible instead to attempt to base your claims for £1.5 million damages on a purported part-time £600 per month employment contract that even if genuine lasted less than 7 months, when you repeatedly make reference in the claims to "the Insource licence contract" which you unreasonably and unfairly claim had a 30 year term with no break-clause or notice period."

133. The claimant presented the third claim against all four respondents on 13 November 2018 and the fourth claim against Luke Robinson only on 4 March 2019.

134. The claimant described the two beliefs on which she relies for her complaints of religion/belief discrimination in her first claim form and her witness statement paragraph 204 as follows:

134.1. "The claimant's 'empathy belief', that empathy (and the amount/lack of) is the cause of/cure for relationship problems in the world including for example: in business marketing (relationship between buyer and seller); in the workplace (relationship between employer and employee); in the home (relationship between parents and children, husbands and wives, civil partners,

unmarried partners), a belief that the claimant had held and practised since she discovered the role that a lack of empathy played in the malevolent personality traits and disorders such as narcissism, Machiavellianism, and psychopathy.

134.2. "The claimant's 'rule of law belief', that if everyone followed the rule of law as the universal world best practice way to regulate people's behaviour in all societies throughout the world then equality, fairness, and justice would be achieved, a belief that the claimant had held and practised since she was a teenager after watching a miscarriage of justice documentary and was the reason for her applying for a law degree and being the first person in her family to go to University."

135. We accept that the claimant holds these beliefs and seeks to practise them. The respondents suggested, by reference to various emails from the claimant to and about Luke, that the claimant was lacking in the empathy she seeks to practise. It is not necessary for us to decide whether the claimant falls short in the practice of the beliefs she holds. It is only relevant for us to decide whether she holds these beliefs and seeks to practise them. We find that she does. In our conclusions, we will deal with the issue as to whether these beliefs constitute a relevant protected characteristic under the Equality Act 2010.

136. Vanessa Robinson referred in her witness statement to the claimant's "mantra" being that she had empathy and they needed to practise it. We find, based on this, that Vanessa Robinson was aware that the claimant had the empathy belief.

137. Vanessa Robinson gave evidence that she was not aware of the claimant's "rule of law" belief. There is no evidence that there was anything which would have alerted the respondents to the claimant having any particular "rule of law" belief that was above and beyond most citizens' belief that they should comply with the law. We accept that Vanessa Robinson was not aware that the claimant had a "rule of law belief" as described by the claimant.

138. The claimant gave evidence that Luke Robinson had told her that six or seven women had caused him stress/distress and/or bullied him but he never wanted to take any action about it. We did not hear evidence from Luke Robinson. We do not find it necessary, for our decision, to make a finding of fact as to what Luke Robinson said to the claimant as to how he felt treated by these women. We will assume, for the purposes of our conclusions, that Luke Robinson made some comment to the claimant about feeling bullied by a number of named people who are women.

Law

Equality Act 2010 - Protected characteristics

139. Section 4 of the Equality Act 2010 (EqA) lists protected characteristics which include sex and religion or belief. "Belief" is defined in section 10(2) EqA as meaning

"any religious or philosophical belief and a reference to belief includes a reference to a lack of belief".

140. In **Grainger plc and ors v Nicholson 2010 ICR 360,** the EAT set out guidelines for the criteria to be met for a belief to be protected under the Equality Act 2010. These are that the belief: (1) is genuinely held; (2) is not simply an opinion or viewpoint based on the present state of information available; (3) concerns a weighty and substantial aspect of human life and behaviour; (4) attains a certain level of cogency, seriousness, cohesion and importance; and (5) is worthy of respect in a democratic society, is not incompatible with human dignity and is not in conflict with the fundamental rights of others. These criteria are replicated in the ECHR Employment Code as official guidance on what comprises a "religious or philosophical belief" for the purposes of the protected characteristic of religion or belief (paragraph 2.59).

Direct discrimination

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

142. Section 23(1) EqA provides that "on a comparison of cases for the purposes of section 13….there must be no material difference between the circumstances relating to each case."

Indirect discrimination

143. Section 19 EA defines indirect discrimination as follows:

> "(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.
>
> (2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if –
>
> (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
>
> (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
>
> (c) it puts, or would put, B at that disadvantage, and
>
> (d) A cannot show it to be a proportionate means of achieving a legitimate aim."

Harassment

144. The relevant parts of section 26 EqA provide:

> "(1) A person (A) harasses another (B) if –
>
> (a) A engages in unwanted conduct related to a relevant protected characteristic, and
>
> (b) The conduct has the purpose or effect of –
>
> (i) violating B's dignity, or
>
> (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
>
> ……
>
> (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account –
>
> (a) the perception of B;
>
> (b) the other circumstances of the case;
>
> (c) whether it is reasonable for the conduct to have that effect."

Victimisation

145. Section 27 defines victimisation as follows:

> "(1) A person (A) victimises another person (B) if A subjects B to a detriment because –
>
> (a) B does a protected act, or
>
> (b) A believes that B has done, or may do, a protected act.
>
> (2) Each of the following is a protected act –
>
> (a) bringing proceedings under this Act;
>
> (b) giving evidence or information in connection with proceedings under this Act;
>
> (c) doing any other thing for the purposes of or in connection with this Act;

> (d) making an allegation (whether or not express) that A or another person has contravened this Act."

Prohibition of discrimination and meaning of detriment

146. Section 39(2) provides, amongst other things, that an employer must not discriminate against an employee by subjecting that employee to a detriment.

147. In **Ministry of Defence v Jeremiah [1980] ICR 13**, Lord Justice Brandon, in the Court of Appeal, thought "any other detriment" meant "putting under a disadvantage". The House of Lords in **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337**, said a sense of grievance which is not justified is not sufficient to constitute a detriment.

Relationship between harassment and direct discrimination

148. Conduct which amounts to harassment cannot normally be direct discrimination because section 212(1) EqA provides that, subject to subsection 5 (which deals with situations where the Equality Act disapplies harassment), "detriment" does not include conduct which amounts to harassment.

Proving discrimination

149. Section 136 EqA provides:

> "(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
>
> (3) But subsection (2) does not apply if A shows that A did not contravene the provision."

150. The tribunal makes findings of fact, having regard to the normal standard of proof in civil proceedings, which is on a balance of probabilities. A party must prove the facts on which they rely. A claimant must prove they suffered the treatment alleged, not merely assert it.

151. Once the relevant facts are established, the tribunal must apply section 136 in deciding whether there is unlawful discrimination.

152. The Court of Appeal in **Ayodele v CityLink Ltd and another [2017] EWCA Civ 1913**, reaffirmed that there is an initial burden of proof on the claimant; the claimant must show that there is a prima facie case of discrimination which needs to be answered. The Court of Appeal concluded that previous decisions of the Court of Appeal, such as **Igen Ltd v Wong [2005] IRLR 258**, remained good law and should continue to be followed by courts and tribunals. The Supreme Court in **Efobi v Royal Mail Group Limited 2021 ICR 1263** held that the enactment of section 136 EqA did

not change the requirement on the claimant to prove, on the balance of probabilities, facts from which, in the absence of any other explanation, the employment tribunal could infer an unlawful act of discrimination.

153. The effect of the authorities is that the tribunal must consider, at the first stage, all the evidence, from whatever source it has come, in deciding whether the claimant has shown that there is a prima facie case of discrimination which needs to be answered.

154. The EAT in **Talbot v Costain Oil, Gas and Process Ltd and others UKEAT/0283/16/LA** summarised, in paragraph 15, principles to be derived from the authorities in approaching the issue of whether there has been unlawful discrimination under the EqA as follows:

> "(1) It is very unusual to find direct evidence of discrimination;
>
> (2) Normally the Tribunal's decision will depend on what inference it is proper to draw from all the relevant surrounding circumstances, which will often include conduct by the alleged discriminator before and after the unfavourable treatment in question;
>
> (3) It is essential that the Tribunal makes findings about any "primary facts" which are in issue so that it can take them into account as part of the relevant circumstances;
>
> (4) The Tribunal's assessment of the parties and their witnesses when they give evidence forms an important part of the process of inference;
>
> (5) Assessing the evidence of the alleged discriminator when giving an explanation for any treatment involves an assessment not only of credibility but also reliability, and involves testing the evidence by reference to objective facts and documents, possible motives and the overall probabilities; and, where there are a number of allegations of discrimination involving one personality, conclusions about that personality are obviously going to be relevant in relation to all the allegations;
>
> (6) The Tribunal must have regard to the totality of the relevant circumstances and give proper consideration to factors which point towards discrimination in deciding what inference to draw in relation to any particular unfavourable treatment;
>
> (7) If it is necessary to resort to the burden of proof in this context, section 136 of the Equality Act 2010 provides in effect that where it would be proper to draw an inference of discrimination in the absence of "any other explanation" the burden lies on the alleged discriminator to prove there was no discrimination."

155. A finding of less favourable treatment, without more, is not a sufficient basis for drawing an inference of discrimination at the first stage: **Madarassy v Nomura International plc [2007] ICR 867, CA**. In **Dedman v Commission for Equality and Human Rights and others [2010] EWCA Civ 1279 CA**, Lord Justice Sedley said that "the 'more' which is needed to create a claim requiring an answer need not be a great deal. In some instances it will be furnished by non-response, or an evasive or untruthful answer, to a statutory questionnaire. In other instances it may be furnished by the context in which the act has allegedly occurred."

156. The fact that a claimant has been subjected to unreasonable treatment is not, of itself, sufficient as a basis for an inference of discrimination so as to cause the burden of proof to shift: **Glasgow City Council v Zafar [1998] ICR 120 HL**. In that case, the House of Lords held that a tribunal had not been entitled to infer less favourable treatment on the ground of race from the fact that the employer had acted unreasonably in dismissing the employee.

157. If the claimant establishes facts from which the tribunal could conclude there was unlawful discrimination, the burden passes to the respondent to provide an explanation for its actions. The tribunal must find that there was unlawful discrimination unless the respondent provides an adequate, in the sense of non-discriminatory, explanation for the difference in treatment.

158. Less favourable treatment will be because of the protected characteristic if the characteristic is an "effective cause" of the treatment; it does not need to be the only or even the main cause. The motivation may be conscious or unconscious: **Nagarajan v London Regional Transport [1999] IRLR 572 HL**.

159. In some cases, particularly those involving a hypothetical comparator, it may be appropriate for the tribunal to proceed straight to the second stage, considering the reason why the respondent acted as it did. In **Laing v Manchester City Council [2006] ICR 1519 EAT**, Mr Justice Elias commented: "it might be sensible for a tribunal to go straight to the second stage…where the employee is seeking to compare his treatment with a hypothetical employee. In such cases the question whether there is such a comparator – whether there is a prima facie case – is in practice often inextricably linked to the issue of what is the explanation for the treatment."

Victimisation and conduct during legal proceedings

160. The House of Lords in **Derbyshire and ors v St Helens Metropolitan Borough Council and ors 2007 ICR 841** held, in relation to a complaint of victimisation, that distress and worry induced by an employer's honest and reasonable conduct in the course of its defence or in the conduct of any settlement negotiations cannot (save in the most unusual circumstances) constitute 'detriment' for the purposes of the Sex Discrimination Act 1975. The Sex Discrimination Act 1975 has been replaced by the EqA and the same principle will apply to victimisation complaints brought under the EqA. In that case, the employer's actions had gone beyond what was reasonable to protect their interests in the litigation. Lord Justice Mummery, in **British Medical**

Association v Chaudhary 2007 IRLR 800 CA, commented that **St Helens** "reaffirmed the essential statement of law that a person does not discriminate if he takes the impugned decision in order to protect himself in litigation."

Sections 111 EqA - Instructing, causing or inducing contraventions

161. Section 111 EqA provides:

(1) A person (A) must not instruct another (B) to do in relation to a third person (C) anything which contravenes Part 3, 4, 5, 6 or 7 or section 108(1) or (2) or 112(1) (a basic contravention).

(2) A person (A) must not cause another (B) to do in relation to a third person (C) anything which is a basic contravention.

(3) A person (A) must not induce another (B) to do in relation to a third person (C) anything which is a basic contravention.

(4) For the purposes of subsection (3), inducement may be direct or indirect.

(5) Proceedings for a contravention of this section may be brought—

(a) by B, if B is subjected to a detriment as a result of A's conduct;

(b) by C, if C is subjected to a detriment as a result of A's conduct;

(c) by the Commission.

(6) For the purposes of subsection (5), it does not matter whether—

(a) the basic contravention occurs;

(b) any other proceedings are, or may be, brought in relation to A's conduct.

(7) This section does not apply unless the relationship between A and B is such that A is in a position to commit a basic contravention in relation to B.

(8) A reference in this section to causing or inducing a person to do something includes a reference to attempting to cause or induce the person to do it.

(9) For the purposes of Part 9 (enforcement), a contravention of this section is to be treated as relating—

(a) in a case within subsection (5)(a), to the Part of this Act which, because of the relationship between A and B, A is in a position to contravene in relation to B;

(b) in a case within subsection (5)(b), to the Part of this Act which, because of the relationship between B and C, B is in a position to contravene in relation to C.

Section 112 EqA – aiding contraventions

162. Section 112 EqA provides:

(1) A person (A) must not knowingly help another (B) to do anything which contravenes Part 3, 4, 5, 6 or 7 or section 108(1) or (2) or 111 (a basic contravention).

(2) It is not a contravention of subsection (1) if—

(a) A relies on a statement by B that the act for which the help is given does not contravene this Act, and

(b) it is reasonable for A to do so.

(3) B commits an offence if B knowingly or recklessly makes a statement mentioned in subsection (2)(a) which is false or misleading in a material respect.

(4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) For the purposes of Part 9 (enforcement), a contravention of this section is to be treated as relating to the provision of this Act to which the basic contravention relates.

(6) The reference in subsection (1) to a basic contravention does not include a reference to disability discrimination in contravention of Chapter 1 of Part 6 (schools).

Public interest disclosure detriment

163. Section 47B(1) Employment Rights Act 1996 (ERA) provides:

> "A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure."

164. What constitutes a protected disclosure is defined by sections 43A to 43H ERA. Section 43A provides:

> "In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H."

165. The relevant parts of section 43B for this case are as follows:

> "(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following –
>
> (a) [not relevant],
>
> (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
>
> (c) to (f) [not relevant]

166. It is alleged that disclosures were made to the claimant's employer, so section 43C is relevant.

167. Section 48(2) ERA provides that in relation to a complaint including a complaint that the worker had been subjected to a detriment in contravention of section 47B

> "On such a complaint it is for the employer to show the ground on which any act, or deliberate failure to act, was done."

168. In **Babula v Waltham Forest College [2007] ICR 1026**, the Court of Appeal held that an employee who informed the police and other enforcement agencies that he believed that an act of racial hatred had been committed could rely on the protection of the whistleblowing provisions to argue that his dismissal was automatically unfair, even though his belief was mistaken. The Court held that a belief may be reasonably held and yet be wrong.

Submissions

169. The respondent had prepared written submissions running to 10 pages which were provided to the Tribunal and the claimant prior to the end of the Tribunal's hearing with the parties on 16 September 2021.

170. The claimant sent her written submissions to the Tribunal on 14 October 2021. These consisted of 84 pages.

171. The respondent provided a response to the claimant's submissions on 29 November 2021 which consisted of 3 pages.

172. We do not seek to summarise these submissions, which can be read, if required.

173. On 1 December 2021, the claimant wrote to the Tribunal applying for the Tribunal to consider the recent Court of Appeal judgment in **Burn v Alder Hay Children's NHS Hospital** when making our decision. We do not consider this to be of any relevance to our decision. The claimant is not bringing a complaint of breach of contract or constructive unfair dismissal to which the Lord Justices' comments about possibly implying into employment contracts a term that disciplinary processes should be conducted fairly might have had relevance.

Conclusions

Whether the claimant's beliefs were protected characteristics under EqA

174. We have found as a fact that the claimant had the "empathy" and "rule of law" beliefs she described in her first claim form and her witness statement. Applying the **Grainger plc and ors v Nicholson 2010** guidelines, we reached the following conclusions. Both beliefs were genuinely held. They were not simply an opinion or viewpoint based on the present state of information available. The beliefs concern weighty and substantial aspects of human life and behaviour. The beliefs attain a certain level of cogency, seriousness, cohesion and importance. The beliefs are worthy of respect in a democratic society, are not incompatible with human dignity and are not in conflict with the fundamental rights of others. We conclude, therefore, that both beliefs were protected characteristics for the purposes of the EqA.

Direct sex discrimination

175. The treatment set out in paragraphs 1.1, 1.2, 1.3, and 1.4 of the list of claims and issues all relate to the decision to terminate the contract and send the termination letter dated 13 June 2018 to the claimant and Rob Day and to write what was in that letter.

176. The letter was sent, in the form in which it appears at page RB729. It was sent without any prior disciplinary process.

177. We have found that R4 (Luke Robinson) had no input into the letter or the decision to terminate the contract. We have found that R2 (Steve Robinson) agreed that the contract should be terminated and the letter sent. We have not heard any

evidence that Vanessa Robinson persuaded, induced, caused, aided or instructed Luke Robinson and Steve Robinson into agreeing to terminate the claimant's contract, to agree to Vanessa Robinson's reasons for terminating the contract or into signing the letter (which was signed by Vanessa and Steve Robinson, but not by Luke Robinson).

178. We have found that the letter was sent to the claimant and Rob Day because they were both directors of Woodcock Ltd t/a Insource, which had invoiced the first respondent for its services, provided through the claimant and Rob Day. The letter was sent to the directors of that company because it was terminating all arrangements with Insource, as well as the claimant's contract with the first respondent as an individual.

179. We consider this is a case where, in accordance with the authorities, we can move straight to the issue of why the respondents acted as they did, assuming (without deciding), that the claimant has satisfied the initial burden of proof. We have found that the decision makers in relation to the termination of the claimant's contract and the letter were Vanessa Robinson and Steve Robinson; Luke Robinson did not have an input into the decision and the letter. We have found that their reasons for acting as they did were set out in the letter (see paragraphs 115 to 120). Some of the reasons related specifically to the claimant's individual contract; some related only, or as well, to the termination of the arrangements with Woodcock Ltd. Vanessa and Steve Robinson wanted to sever all ties with the claimant and Woodcock Ltd, so this required the termination of the claimant's individual contract as well as the arrangements with Woodcock Ltd. The respondents have satisfied us that the reasons for the termination of the contract and the letter, as set out in the letter, are nothing to do with the claimant's sex. We conclude, therefore, that the complaints of direct sex discrimination in 1.1, 1.2, 1.3, 1.4 and 1.7 of the list of claims and issues are not well founded.

180. Had we needed to decide whether the claimant had satisfied the initial burden of proof in relation to these complaints, we would have concluded that she had not, for the following reasons.

181. We understand from the claimant's submissions, the evidence she gave, and the nature of her cross examination, that the claimant may be relying upon the following matters to prove facts from which, she argues, we could conclude that the decisions relating to the termination of her contract and the sending of the letter conveying that decision:

181.1. The failure of Steve Robinson and Luke Robinson to give evidence;

181.2. That the reasons given for termination of the arrangements, including the claimant's individual contract, in that letter are untrue;

181.3. The respondents not taking the claimant through any form of disciplinary procedure, or otherwise raising their concerns with her, prior to the termination of the contract.

181.4. That the letter was sent to the claimant's husband as well as the claimant and revealed information about her earnings under her individual contract.

181.5. What the claimant describes as a "sexist" culture at the first respondent.

181.6. Luke Robinson's complaints about 6 or 7 women bullying him.

182. The failure of an individually named respondent could potentially be a matter from which adverse inferences could be drawn. Explanations have been provided by Vanessa Robinson for why she alone was giving evidence. If any adverse inferences could be drawn from the failure of Luke and Steve Robinson to give evidence, there is nothing to suggest that the adverse inference should be that the termination of the contract and the letter were connected in some way to the claimant's sex. We have also found that Luke Robinson did not have any input into the termination letter.

183. We have found that Vanessa Robinson believed the reasons given in the letter to be true. There is nothing to suggest that this belief was related to the claimant's sex.

184. The failure to take the claimant through a disciplinary procedure, or otherwise raise concerns with her, prior to the termination of the contract, would not, by itself, be capable of raising an inference of sex discrimination.

185. Vanessa and Steve Robinson sent the letter to Rob Day as well as the claimant because Rob Day and the claimant were both directors and owners of Woodcock Ltd. Whilst the claimant may have been upset by her personal earnings being revealed to her husband, the reference to her earnings from the individual contract is not a matter which suggests that sex played a part in the reason for her earnings being mentioned in a letter written to the claimant and her husband. The reference to her personal earnings was relevant to what was written in the letter.

186. We have found that Steve Robinson told the claimant in January 2017 that she was more like a man when dealing with Luke, because she had not had children, unlike his wife who was more protective of her children and referred once to Vanessa Robinson and the claimant as "you two women" (see paragraph 39). This could possibly be a matter which could, together with other matters, if there were other factors pointing that way, raise an inference of sex discrimination. We consider it insufficient, in the absence of other evidence pointing towards sex discrimination, to pass the burden of proof.

187. We do not consider that Peter's use of "Hi Ladies" demonstrates that there was a generally sexist culture within the first respondent business. Peter was not involved in the decisions about the termination of the claimant's contract or the termination letter. This is not a matter from which we consider we can draw any inference of discrimination.

188. We did not consider it necessary to make any finding of fact as to whether Luke Robinson had told the claimant that he had been bullied by 6 or 7 women. Assuming

for the purposes of these conclusions that we had found this as a fact, we do not consider this to be a matter from which we could infer that the respondents treated the claimant less favourably because of her sex. Whether or not the claimant had felt bullied at various times by other women, the emails we have seen demonstrate that Luke Robinson was an enthusiastic pupil of the claimant over quite some time, despite tough messages that the claimant was delivering at times. This does not suggest to us that the claimant's sex was a factor influencing how Luke Robinson treated the claimant. In any event, we have found as a fact that he was not involved in the decision to terminate the claimant's contract and write the termination letter (see paragraph 117).

189. We conclude, having considered the totality of the evidence, that the claimant has not proved facts from which the Tribunal could conclude that the motive, conscious or unconscious, for the decision to terminate the claimant's contract with the first respondent and the sending of the letter conveying that decision (along with the decision to terminate all arrangements with Insource) in the way it did was because of the claimant's sex.

190. The treatment set out in paragraphs 1.5 of the list of claims and issues is an assertion that Luke Robinson made or sent or persuaded the other respondents and/or Matthew Davies and/or INHR Limited (the company providing Mr Davies' services to the respondent) to make and/or send untrue statements (when Luke Robinson knew them to be untrue) in the responses to the claim 2416830/18 in particular that the claimant had bullied and/or discriminated against Luke Robinson.

191. We have heard no evidence that Luke Robinson had an input into the statements in the response about the claimant bullying Luke Robinson. We expect that, since he was a named respondent, he would have approved the response. However, approving a response which has been drafted is not the same as making or persuading others to make the statements. This part of the response referred back to the part of the termination letter that alleged bullying. We rejected the claimant's argument that the reference in the letter was to Rob Day, since he had been the one coaching Luke Robinson. This part of the letter was written because it was the perception of Vanessa Robinson that the claimant was bullying her son, and she feared this was doing him harm. We conclude that the response was written as it was because of this perception of Vanessa Robinson. We do not know whether or not Luke Robinson shared this view at the time or has come to share this view since, and it is not necessary for us to reach a conclusion on this. We found that Luke Robinson did not have any input into the termination letter. If he approved the response, which we expect that he did, he did not cause this part to be changed. We conclude that the claimant has not proved the facts on which she relies for this complaint and we, therefore, conclude that complaint 1.5 is not well founded.

192. Even if the claimant had satisfied us that Luke Robinson had been involved in the statements in the response to claim 2416830/18 (other than by just approving a response which had been drafted in accordance with the instructions of Vanessa and

perhaps Steve Robinson) we would have concluded that the claimant had not proved facts from which we could have concluded that this was because of the claimant's sex. We refer back to our reasons for concluding that, in relation to complaints 1.1, 1.2, 1.3, 1.4 and 1.7, the claimant had not proved facts from which we could conclude that that treatment was because of her sex. Not all these matters could be of relevance to a complaint against Luke Robinson only, but, to the extent that they are, we conclude that they are not sufficient to satisfy the initial burden of proof on the claimant.

193. The treatment set out in paragraphs 1.6 of the list of claims and issues is an allegation that all four respondents instructed/induced/caused/aided Mr Davies of INHR to send to the claimant a letter of 1 November 2018, in terms of the process/manner it was sent and in terms of its content.

194. This letter was written by Mr Davies, a legal representative instructed by the respondents, in response to the first two claims presented by the claimant. We dealt with this letter at paragraphs 130 to 132 in our findings of fact. We move straight to the reason why this letter was written; it was to try to dissuade the claimant from continuing with her claims which the respondents asserted were without merit. The respondents have satisfied us that the writing of this letter was nothing to do with the claimant's sex. We conclude that this complaint is not well founded.

195. Had we not adopted the approach of moving straight to the reason "why", we would have concluded, on the basis of all the evidence, leaving aside the respondent's explanation for the treatment, that the claimant had not proved facts from which we could conclude that this treatment was, in any material sense, because of the claimant's sex.

Harassment related to belief and/or sex

196. The claimant relies on the alleged treatment set out in paragraphs 5.1 to 5.6 of the list of claims and issues as treatment which she submits was harassment related to belief and/or sex. The beliefs relied upon are the "empathy" and the "rule of law" belief which we concluded in paragraph 174 were protected characteristics for the purposes of the EqA.

197. 5.4 does not appear to be a separate complaint. We have found that the remainder of the conduct set out in paragraphs 5.1, 5.2, 5.4 and 5.5 occurred as a matter of fact, with the exception of the allegation, in 5.2, that the sending of the termination letter was in contravention of basic human rights, which would be a matter of debate on which we do not consider it necessary to comment.

198. For the reasons we gave when considering the allegation of direct sex discrimination about Luke Robinson in paragraph 1.5, we conclude that the claimant has not made out the facts she relies upon for allegation 5.6. The complaint of harassment in 5.6 is not well founded.

199. We accept that the remainder of the conduct was unwanted by the claimant.

200. We do not have any evidence to suggest the purpose of the various acts was to violate the claimant's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

201. We do not consider it necessary to decide whether the conduct had the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant, because of our conclusion about whether the conduct was related to belief and/or sex.

202. Applying the burden of proof provisions, the initial burden is on the claimant to prove facts from which the Tribunal could conclude that the conduct related to one or both protected characteristics. If she discharges this burden, the burden passes to the respondent to satisfy the Tribunal that the conduct was not related to belief and/or sex.

203. We consider this is a case where we can sensibly move straight to the question of why the conduct occurred and whether the respondent has satisfied us that it had nothing to do with the claimant's sex and/or belief.

204. All the conduct relied on relates to the termination letter. The request not to contact Bee Hive personnel was included in that letter.

205. We have found that the decision makers in relation to the termination letter were Vanessa Robinson and Steve Robinson; Luke Robinson did not have an input. We have found that their reasons for acting as they did were set out in the letter. Some of the reasons related specifically to the claimant's individual contract; some related only, or as well, to the termination of the arrangements with Woodcock Ltd. Vanessa and Steve Robinson wanted to sever all ties with the claimant and Woodcock Ltd, so this required the termination of the claimant's individual contract as well as the arrangements with Woodcock Ltd. The request not to contact any Bee Hive personnel was part of the respondents' attempt to sever all ties with the claimant and Woodcock Ltd.

206. The respondents have satisfied us that the reasons for the conduct relied on as constituting harassment were not related to sex. Given this conclusion, we do not need to reach a conclusion as to whether the claimant satisfied the initial burden of proof. However, had we had to do so, we would have concluded that she did not satisfy this initial burden, relying on the same reasons as given in relation to the complaints of direct sex discrimination.

207. We conclude that the complaints of harassment related to sex are not well founded.

208. In relation to the complaints of harassment related to belief, we again consider first the question of why the conduct occurred. The reasons for the respondents sending the termination letter and requesting the claimant not to contact Bee Hive personnel, were set out in the termination letter, as described in paragraph 205 above. The respondents have satisfied us that the reasons for the conduct were not related

to either of the claimant's beliefs: the empathy belief and the rule of law belief. Given this conclusion, we do not need to reach a conclusion as to whether the claimant satisfied the initial burden of proof. However, had we had to do so, we would have concluded, on the basis of all the evidence, that she had not. We have found that Vanessa Robinson was aware of the claimant's empathy belief, but not the "rule of law" belief (paragraph 137). The respondents could not be motivated, consciously or unconsciously, by a belief they were not aware was held by the claimant. In relation to the empathy belief, we are unclear on what basis the claimant asserts that we could conclude that the respondents' actions in relation to the termination letter were related to this belief. However, we have considered the evidence as a whole and, based on this, can find no facts which would enable us to conclude that the conduct was related to the claimant's empathy belief.

209. We conclude that the complaints of harassment related to belief are not well founded.

Victimisation

210. There is one complaint of detrimental treatment: that respondents 1, 2 and 3 caused, induced, instructed and aided the letter of 1 November 2018 to be sent to the claimant and the claimant's husband. This is the letter from the respondents' legal adviser, Mr Davies, which sought to persuade the claimant to withdraw her claims, setting out why the respondents considered the complaints to be without merit.

211. We conclude that the claimant did protected acts by presenting the three claims identified at paragraphs 9.2, 9.3 and 9.4 of the list of claims and issues.

212. The letter of 1 November 2018 refers to only two of those claims. The third claim, case number 2416830/18, was presented on 13 November 2018, after the letter of 1 November 2018. The presentation of the third claim cannot, therefore, be a cause of the writing of the letter of 1 November 2018 and is not a relevant protected act.

213. It is obvious that the letter was written because the claimant had presented the first two claims. The bringing of proceedings was the motive for the letter, in the same way that the bringing and continuing of equal pay proceedings in the case of **Derbyshire and ors v St Helens Metropolitan Borough Council and ors** was the motive for the Council's letters to the claimants.

214. However, that is not sufficient basis for a conclusion that there was victimisation contrary to section 27 EqA. The claimant must have been subjected to a detriment. The question of whether the claimant the claimant was subjected to a detriment must be considered in the light of the **St Helens** case. In accordance with the **St Helens** case, not all steps taken by a respondent in an effort to protect their position in litigation will be protected from a charge of victimisation. However, an employer's honest and reasonable conduct in the course of its defence will not amount to subjecting the claimant to a detriment.

215. We conclude, applying these principles to this case, that the respondents, in their involvement in the letter of 1 November 2018, did not go further than was reasonable to protect their position in litigation. The letter sets out reasons why the respondents asserted that the complaints were without merit and why the respondents would, if the complaints were not withdrawn, apply to have the complaints struck out, and apply for costs. The claimant did not withdraw her complaints and the respondents did make various applications for strike out and/or deposit orders. Some of the applications for deposit orders were successful. Indeed, all the complaints in the second claim were made the subject of deposit orders. These were no empty threats, made without any good grounds, to try to frighten the claimant into withdrawing meritorious claims. We conclude that the respondents did not subject the claimant to detriment by the letter of 1 November 2018. We conclude that the complaint of victimisation is not well founded.

Indirect philosophical belief discrimination – s.19 EqA

216. We have, for reasons already given, concluded that the claimant held the "empathy" and "rule of law" beliefs and that these beliefs were protected characteristics.

217. The provision criterion or practice (PCP) relied upon for this complaint is "treating part-time employees less favourably than full time employees".

218. We conclude that this is capable of being a PCP. However, the claimant has not satisfied us, on a balance of probabilities, that the respondent applied such a PCP. The claimant submits (paragraph 78 of her submissions), that the PCP is evidenced by the more favourable treatment of Kealy (a full time employee) in the manner, process and content of her dismissal compared to the manner, process and content of the claimant's termination. We do not consider that a comparison of the treatment of two employees is likely to be sufficient to establish that the respondents have a PCP of treating part-time employees less favourably than full-time employees. The circumstances surrounding the termination of the contracts of Kealy (redundancy, because of lack of work) and the claimant (termination for the reasons previously outlined) were very different. The difference in treatment is more likely to relate to these circumstances than to evidence the existence of a PCP of treating part-time employees less favourably than full time employees.

219. If we had concluded that the respondent applied such a PCP, we would have concluded that the PCP does not put holders of the claimant's beliefs at a particular disadvantage, compared to people without those beliefs. There is no evidence to support such a conclusion. We are not persuaded by the claimant's submissions in paragraph 77 that the PCP puts people with a rule of law belief at a particular disadvantage compared to people without a rule of law belief as it violates their belief in the rule of law and creates an intimidating, hostile, degrading, humiliating and offensive environment for those with a rule of law belief by violating their basic human rights. There is no evidence that people with a rule of law belief would be more upset by being treated less favourably, because of being a part-time employee, than would

someone without that particular belief. The claimant did not make any submissions that people who share her empathy belief would be put at a particular disadvantage by the PCP. There is no evidence that people with the empathy belief would be more upset by being treated less favourably, because of being a part-time employee, than would someone without that particular belief.

220. We conclude that the complaint of indirect philosophical belief discrimination is not well founded.

Public interest disclosure detriment

221. We consider first the issue of whether the claimant made protected disclosures. The claimant asserts that she made protected disclosures in a meeting with Vanessa and Luke Robinson on 9 April 2018. The disclosure of information the claimant relies upon, according to the list of claims and issues (paragraphs 20.1 and 20.2), can be summarised as being that Luke Robinson was failing to comply with QPs, leading the first respondent to fail to comply with their legal obligations under the Insource Licence Contract.

222. We found that, at the meeting on 9 April 2018, they talked about the need to improve sales figures and Luke not following QPs (see paragraph 85). The claimant did not satisfy us, on a balance of probabilities, that she talked about duties of company directors at that meeting.

223. The disclosure of information, in essence, was that Luke Robinson was not following the QPs and, because of this, not performing well enough and reaching his sales targets. The business was not, therefore, achieving the results which the respondents and Woodcock Ltd t/a Insource, had hoped.

224. The disclosure of information was made to the employer. It does not matter, in deciding whether this was a protected disclosure, whether or not the information was new, or had been discussed with Vanessa Robinson on previous occasions.

225. We consider next whether the claimant had a reasonable belief that this information tended to show that a person had failed to comply with a legal obligation to which he was subject. We understand the claimant is asserting that she believed the information disclosed tended to show that Luke Robinson and the first respondent were in breach of legal obligations.

226. The legal obligations relied upon were not set out in the list of claims and issues. From the claimant's evidence, questions in cross examination and submissions, we understand the claimant to be relying on what she argues were legal obligations under the "agreement" between Woodcock Ltd and the first respondent and duties as a company director under s.172 Companies Act 2006 to promote the success of the company.

227. We conclude that complying with QPs and meeting sales targets were not legal obligations. Even if the "agreement" between Woodcock Ltd and the first respondent was a legally binding contract (and we make no finding about this for reasons previously explained), meeting QPs and sales targets are not legally binding obligations in this "agreement". We conclude that the claimant, with her legal knowledge, could not reasonably have believed that Luke Robinson and the first respondent were in breach of any legal obligations created by the "agreement".

228. We conclude that the claimant cannot reasonably have believed that failing to comply with QPs and meeting sales targets was a breach of Luke Robinson's obligations as a company director under section 172 Companies Act 2006. We have found that the claimant did not talk about duties of company directors at the meeting on 9 April 2018. We consider it likely that this is an argument thought up after the event. We consider the suggestion to be far fetched that Luke Robinson could be regarded as being in breach of his obligations as a company director by not succeeding as well as had been hoped and not following, to the letter, internal processes (the QPs) which had been put in place.

229. We conclude that the claimant did not have a reasonable belief that the information she disclosed tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation to which he was subject.

230. Although the reasons given above are sufficient to conclude that the claimant did not make a protected disclosure, we go on to consider whether the claimant reasonably believed that the disclosures were made in the public interest. We conclude that she did not. We conclude that the claimant's concerns at the time were that Luke's failures to perform, as she saw it, meant that the business was not performing as well as had been hoped, and that it would not, therefore, be able to provide the financial return on Woodcock Ltd's "investment" of her and Rob Day's time, which the claimant had been anticipating. We conclude that the claimant did not have any wider public interest in mind.

231. We conclude, for the reasons given above, that the claimant did not make a protected disclosure. We, therefore, conclude that the complaints of public interest disclosure detriment are not well founded.

232. Given this conclusion, we do not need to consider whether the claimant was subjected to detrimental treatment as alleged in paragraphs 24.1 to 24.9 of the list of claims and issues or the reasons for the treatment. However, we would have concluded in relation to 24.1 – 24.2 and 24.7, that Vanessa Robinson was acting to protect her son because she observed he was under considerable stress and believed (rightly or wrongly – we do not need to decide) that the claimant was a major cause of that stress. In relation to 24.4, we would have concluded that any report of that nature by Vanessa Robinson to Steve Robinson was made because that was what she believed. We would have found that the claimant had not proved the facts on which she relied for 24.5 and 24.7. In relation to 24.8 and 24.9, we would have reached the

same conclusions as to the reasons for the decision to terminate the arrangements with the claimant and Woodcock Ltd as we did when considering the complaints of direct sex discrimination. We would have concluded (in relation to the detrimental treatment which was proved), that the respondents had proved that the information disclosed on 9 April 2018 was not a material factor in their actions. The complaints of protected interest disclosure detriment would, therefore, have failed for these reasons if we had concluded that the claimant had made a protected disclosure.

Instructing, causing or inducing and/or aiding contraventions contrary to sections 111 and 112 EqA 2010

233. We do not understand, having considered the evidence and submissions, the factual basis for these complaints.

234. To the extent that the complaints relate to allegations that the respondents instructed, caused or induced and/or aided other respondents to contravene the Equality Act 2010, we have concluded that there were no contraventions of the Equality Act 2010 by the respondents so these complaints must fail.

235. To the extent that the complaints relate to allegations that INHR Limited (the respondents' legal advisers) committed contraventions of the Equality Act 2010 or was being instructed (or any of the other possibilities) to commit a contravention of the Equality Act 2010, we conclude that INHR Limited could not be contravening the Equality Act 2010 in its own right (as opposed to aiding unlawful acts by the respondents), in relation to the claimant since the Equality Act 2010 does not create any such liability for the type of third party relationship between the claimant and INHR Limited. These complaints would, therefore, fail on this basis.

236. We conclude that these complaints are not well founded.

Employment Judge Slater
Date: 16 December 2021

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON
17 December 2021

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

ANNEX
Claims and Issues

Direct discrimination because of sex

1. Have any or all of the respondents subjected the claimant to the following treatment falling within section 39 of the Equality Act 2010:

1.1. The sending of the termination email/letter in terms of the process/manner it was sent and in terms of its content? (against R1, R2 and R3)

1.2. The termination of the contracts under which the claimant worked for R1 without following any appropriate process by which the concerns would have been put to the claimant and she would have been allowed a right of response? (against R1, R2 and R3)

1.3. The decision to terminate, send and the act of signing and sending the termination letter? (against R2 and R3)

1.4. Persuading, inducing/causing/aiding/instructing R2 and R4 into agreeing R3's decision to terminate, R3's reasons to terminate and into signing the termination letter (against R3)?

1.5. That Luke Robinson (R4) made or sent or persuaded the other respondents and/or Mathew Davies and/or INHR Limited to make and/or send untrue statements (when Luke Robinson knew them to be untrue) in the responses to the claim 2416830/18 in particular that the claimant had bullied and/or discriminated against R4. (against R4)

1.6. Instructing/inducing/causing/aiding Mr Davies of INHR Limited to send to the claimant a letter of 1 November 2018, in terms of the process/manner it was sent and in terms of its content. (against R1, R2, R3 and R4).

1.7. Being asked (specifically in the termination letter and a subsequent email) not to contact by telephone or email or text message any Bee Hive personnel, including Vanessa and Luke Robinson. (against R1, R2, R3 and R4).

2. If so, has the claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment of the claimant and a hypothetical comparator was because of the claimant's sex?

3. If so, what are the respondents' explanations? Do they have a non-discriminatory explanation for the treatment?

Philosophical belief only

4. Can the claimant show that empathy belief and rule of law belief are protected characteristics within the meaning of section 6 of the Equality Act 2010?

Harassment related to belief and/or sex

5. Did any or all of the respondents engage in the following unwanted conduct:

    5.1. The sending (and consequent receipt by the claimant and the claimant's husband) of the termination email/letter totally unexpectedly, completely out of the blue. (R1,2,3)

    5.2. Sending of the termination email/letter terminating the claimant's contract of employment without due process and without the opportunity to discuss the situation, in contravention of basic human rights. (R1,2,3)

    5.3. Copying the termination email/letter to the claimant's husband. (R1,2,3).

    5.4. The claimant relies on the entire contents of the termination email/letter sent to the claimant.

    5.5. Being asked not to contact by telephone/email or text message any Bee Hive personnel, including Vanessa and Luke Robinson. (R1,2, 3 and 4)

    5.6. The comments which were input by R4 in to the terms of the termination letter and the various employment tribunals response documents filed on behalf of the respondents to these proceedings that the claimant had bullied R4 and/or discriminated against R4 which were untrue and which he knew to be untrue (R4).

6. Was the conduct related to the claimant's philosophical belief and/or sex?

7. If so, did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

8. If not, did the conduct have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant? (in considering whether the conduct had that effect the Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect)?

Victimisation pursuant to section 27 of the Equality Act 2010

9. Did any or all of the respondents subject the claimant to a detriment because she did, or because the respondents believed the claimant had done the following protected acts:

9.1. the threat by the claimant to bring employment tribunal proceedings alleging claims of discrimination (and therefore making allegations that the respondents have contravened the EA);

9.2. issuing claim 2416368/2018;

9.3. issuing claim 2416830/2018; and

9.4. issuing claim 2415427/2018.

10. The detrimental treatment alleged (against R1, R2 and R3) is that these respondents caused, induced, instructed, aided the letter of 1 November 2018 to be sent to the claimant and the claimant's husband.

11. Is the identified unwanted conduct capable of being victimisation or is it an exercise of legal rights in litigation?

Indirect philosophical belief discrimination pursuant to section 19 Equality Act 2010

12. Did any or all of the respondents apply the following provision, criterion or practice (PCP): treating part-time employees less favourably than full time employees?

13. Are the Claimant's empathy and rule of law beliefs capable of being protected characteristics?

14. Are the beliefs practised by the Claimant?

15. Did the application of that PCP put people with the philosophical belief of empathy and/or philosophical belief of rule of law at a particular disadvantage when compared to people without the empathy belief and rule of law belief?

16. Is the provision capable of being a PCP?

17. Did the application of the provision put the claimant specifically at that disadvantage?

18. If so, how?

19. If yes, can the respondents show that the treatment was a proportionate means of achieving a legitimate aim in terms of the business need or aim, the necessity of the treatment and the proportionality of the treatment?

Public Interest Disclosure Detriment

20. What were the disclosures of information that the claimant made in the meeting on 9 April 2018? These are alleged to be:

20.1. In a meeting with Vanessa Robinson and Luke Robinson on 9 April 2018, following the HMRC National Minimum Wage investigation, the claimant informed Vanessa Robinson and Luke Robinson that the respondent had failed and are failing to comply with their legal obligations to deliver their part of the Insource Licence Contract to work towards achieving the agreed objectives because of Luke's failure to comply with his legal obligations under the Insource Licence Contract to implement the psychometric sales training and the perfect nine step customer journey for all types of customers (including BT Live (Buy to Live) customers at all property price bands/levels), an integral part of which was Luke following the quality procedures. The claimant and the first, second and fourth respondents used the shorthand of "QPs" during the meeting.

20.2. At the same meeting between the claimant and Vanessa Robinson and Luke Robinson on 9 April 2018 the claimant said the respondents will continue to fail to comply with their legal obligations under the Insource Licence Contract unless Luke fully complies with his legal obligations as by implementing all QPs with all BT Live (Buy to Live customers) at all property price bands/levels. During the course of the meeting the claimant identified Luke had a lack of empathy with BT Live (Buy to Live) vendors at the middle and higher price bands and that this would have been the reason why he was not converting the BT Live (Buy to Live) market appraisals into instructions and why he had not delivered the agreed £150k per annum sales objectives, thereby resulting in the respondent's failure to comply with their legal obligations under the Insource Licence Contract. As a result the claimant agreed to highlight Luke's opportunities to develop and master empathy in all areas of his daily work by using Blooms Taxonomy and Luke would specifically focus on applying it with BT Live (Buy to Live) vendors at all price bands to improve his conversions from market appraisals into instructions. Then the future sales objectives would be achieved.

21. In any or all of those, was information disclosed which in the claimant's reasonable belief tended to show that a person (who) had failed to comply with a legal obligation (what obligation) to which he was subject (how)?

22. If so, did the claimant reasonably believe that the disclosures were made in the public interest?

23. If so, were the disclosures made to:

23.1. the employer; or

23.2. to another person whose conduct the claimant reasonably believed related to the failure?

24. If the disclosures are protected and qualifying within the meaning of the Act, was the claimant, on the ground of any of the protected disclosures found, subjected to detriment(s) by any or all of the respondents, having regard to the burden of proof? The detrimental treatment relied on is:

24.1. Vanessa Robinson failed to act on and/or respond to the claimant's communications about Luke, including those that highlighted Luke's opportunities to develop and master empathy (both when he missed and when he took them, including not following Rob's QPs), and to consistently follow the QPs, and this was repeated and continued up to 14:24 on 13 June 2018.

24.2. Vanessa Robinson intervening in the claimant's communication with Luke Robinson and answering for Luke instead of him answering for himself, creating a very real division between the claimant and Luke that had not previously been there.

24.3. Vanessa Robinson prevented the claimant from performing her agreement to highlight opportunities for Luke to develop and master his empathy and to consistently follow the QPs in line with his legal obligations under the Insource Licence Contract as specifically agreed on Monday 9 April 2018.

24.4. Vanessa Robinson reported to Steve Robinson that her own, The Bee Hive (NW) Limited/Luke's failures to comply with their legal obligations under the Insource Licence Contract and the stress that this failure had caused to herself/ Luke were caused in whole or in part by the claimant when instead the stress was caused by her own/The Bee Hive (NW) Limited/Luke's failures and Vanessa's realisation of her own/The Bee Hive/Luke's failures and the truth in the related protected disclosures made by the claimant.

24.5. Luke Robinson reported to Vanessa Robinson that his failure to comply with his legal obligation under the Insource Licence Contract and the stress that his failure had caused him were caused in whole or in part by the claimant when instead the stress was caused by Luke's realisation of his own failure and the truth in the related protected disclosures made by the claimant.

24.6. Vanessa Robinson stopped the claimant's husband from attending The Bee Hive (NW) Limited offices to deliver his normal weekly training sessions with Luke, causing detriment to the claimant by preventing the claimant from linking up with her husband's training and further preventing her from performing her agreement to highlight Luke's opportunities to develop and master his BT Live (Buy to Live) empathy at the middle and upper price bands and to consistently follow the QPs in line with his legal obligations under the Insource Licence Contract and as specifically agreed on Monday 9 April 2018 with the overall resulting detriment that because Luke was unable to comply with his legal obligations under the Insource Licence Contract the claimant would not receive the financial benefits to which she was entitled in relation to the Insource Licence Contract.

24.7. That Luke Robinson (R4) made or sent or persuaded the other respondents and/or Mathew Davies to make or send untrue statements in the responses to the claim 2416830/18 in particular that the claimant had bullied and/or discriminated against R4.

24.8. The decision to terminate, send and the act of signing and sending the termination letter (against R2, R3 and R4).

24.9. Persuading, inducing/causing/aiding/instructing R2 and R4 to agree R3's decision to terminate, R3's reasons to terminate and in to signing the termination letter. (against R3).

Instructing, causing or inducing and/or aiding contraventions contrary to s111 and 112 EA 2010.

25. Did any of the respondents act as follows? The alleged conduct is:

25.1. The claimant alleges that R1, R2 and R3 instructed caused or induced INHR Limited (contrary to s111 EA) or aided INHR Limited (contrary to s112 EA) to include allegations in their correspondence with the Claimant as well as the responses to the Employment Tribunal in these cases which they knew to be untrue and contravened other sections of the EA (victimisation as already noted).

25.2. The claimant alleges that R1, R2 and R3 instructed caused or induced each other (contrary to s111 EA) or aided each other (contrary to s112 EA) to include allegations in their correspondence with the Claimant which they knew to be untrue and contravened other sections of the EA (victimisation as already noted)

25.3. The claimant alleges that R4 instructed, caused or induced others (being R2, R3 and Mr Davies) or aided those others to include allegations in correspondence and employment tribunal responses that the claimant discriminated against and bullied R4 (to the extent such allegations are contained in the termination letter 0f 13 June 2018, letter of 6 July 2018 and 1 November 2018) as well as the responses in these cases) and did so because:-

25.3.1. The claimant is married

25.3.2. The claimant is a woman

25.3.3. The claimant holds the philosophical beliefs she claims (empathy belief and rule of law belief).

26. If so, did any such act amount to a contravention of either s.111 and/or s.112 EA as alleged?