EMPLOYMENT TRIBUNALS

Claimant: **Miss Jemma Rowe**

Respondent: **Sammyjo Pearson t/a Longlox Hair Extensions**

On: **08, 09, 10 February 2022 (further deliberations on 16 March 2022)**

Before: **Employment Judge Sweeney**
Members: **Pam Wright**
Steve Wykes

Appearances
For the Claimant, in person
For the Respondent, Morgan Brien, counsel

RESERVED JUDGMENT

The unanimous Judgment of the Tribunal is as follows:

1. **The complaints of sexual harassment and direct sex discrimination are not well founded and are dismissed.**

2. **The complaint of unfair constructive dismissal is not well founded and is dismissed.**

REASONS

The Claimant's claims

1. By a Claim Form presented on **06 November 2019**, the Claimant brought claims of unfair dismissal and discrimination based upon sex, age and pregnancy/maternity.

Procedural history

2. At a case management preliminary hearing on **17 January 2020**, Judge Speker directed that the Claimant provide further information regarding the complaints of unfair constructive dismissal and each and every respect in which she

alleged she was subject to the discrimination, setting out the incidents, the places where they occurred, the actions taken and the individuals involved. He also made a number of standard case management orders, including completion of the hearing bundle by **23 March 2020** and exchange of witness statements by **13 April 2020** (subsequently varied by Judge Johnson on **27 February 2020** to **10 April** and **22 May 2020** respectively).

3. The complaints of age discrimination and pregnancy and maternity discrimination were dismissed upon withdrawal in a judgment of **09 November 2020.** That left complaints of harassment/direct sex discrimination (in the alternative) and constructive unfair dismissal to be determined at a Final Hearing.

4. On **01 February 2021**, the Respondent applied for a restricted reporting order in advance of the final hearing which had by then been listed for **22 to 26 March 2021**. On **10 March 2021**, the Claimant's solicitor applied for the hearing to be postponed because the case was not ready for a final hearing. Among other failings, witness statements had not been exchanged. There was a telephone preliminary hearing before Employment Judge Johnson on **12 March 2021**. He postponed the final hearing and made fresh case management orders, which included a direction for witness statements to be exchanged by **30 April 2021**. Judge Johnson also made a restricted reporting order under Rule 50(3)(d) and Rule 29 of the ET Rules of Procedure and an Anonymity Order in respect of Sammyjo Pearson.

The Final Hearing

5. The postponed Final Hearing was re-listed for 4 days, commencing on **07 February 2022**. On **05 February 2022**, the Claimant's solicitor, Ms Chaudry, emailed the Tribunal to say that the Claimant would be representing herself at the hearing. On **06 February 2022**, the evening before the first day of the hearing, the Tribunal received further emails from Ms Chaudry, explaining that the Claimant had tested positive for Covid by way of a lateral flow test, that she was happy to attend the hearing but was aware of the need to self-isolate. She explained that the Claimant was happy to attend the hearing by video on her mobile phone. The Claimant was not seeking a postponement.

6. The Respondent attended on the first morning with counsel and solicitor. Rather than invite the Respondent into the hearing room in the absence of the Claimant, the Tribunal convened a private preliminary case management hearing by telephone at 10.30am. It was agreed that the Claimant would attend a test centre for a PCR test that morning.

7. The following afternoon at 12.30pm, the Claimant's solicitor emailed the Tribunal to say that the Claimant had received a negative PCR test and would attend the hearing for 2pm. That is what she did, accompanied by her father. The Claimant had a bit of a cough at the outset of the hearing but confirmed

that she was okay to continue and would prefer to do so. Therefore, the hearing commenced on Tuesday **08 February 2020** at 2pm.

8. At the outset of the hearing we discussed the correct identity of the Claimant's employer. The name of the Respondent was amended by agreement. We then discussed the complaints and the issues in the case. The issues are attached as an appendix to these reasons.

9. Mr Brien wished to have some further clarity on what allegations the Claimant maintained were false. She identified them as:

    9.1.1. That she had pulled Bev Pearson's hair,
    9.1.2. That she had used tanning injections,
    9.1.3. That she had taken drugs at work,
    9.1.4. The allegations about her behaviour in Magaluf, as contained within the written statements given to her by Professional People Management prior to her resignation;

10. The Claimant gave evidence on her own behalf. She also relied on an unsigned witness statement, Safron Imerson, who was not called to give evidence.

11. The following witnesses were called on behalf of the Respondent

    (1) Paula Barclay, (Professional People Management HR consultancy)
    (2) Monique Ewart, (Professional People Management HR consultancy)
    (3) Beverley Pearson, (Salon manager, mother of the Respondent)
    (4) Matthew Pearson (Father of the Respondent and husband of Bev Pearson)
    (5) Kendal Forrest, (Employee of the Respondent)
    (6) Tamlyn Smith, (Former employee; and niece of Matthew Pearson)
    (7) Linda Smith, (Mother of Tamlyn and sister of Matthew Pearson)
    (8) Edith Pearson (Mother of Matthew Pearson)

12. The parties had prepared a hearing bundle, split into two volumes:

    12.1.1. Volume 1, pages 1-120 consisted of documents agreed by both parties;
    12.1.2. Volume 2, pages 1-367 consisted of additional documents from the Claimant;

13. It was not until after evidence had started in the case, that the Tribunal was informed that witness statements had only been exchanged on **03 February 2022**, and only then after a question from the Employment Judge. We wish to record our deep dissatisfaction with this and the way in which this case was prepared generally. Witness statements were originally to be exchanged in **April 2020**. It beggars belief that this did not happen until the second working day before the commencement of this hearing in 2022. The Tribunal was at no point alerted to this. Tribunal directions are made for good reason.

14. The further information ordered by Judge Speker on **17 January 2020** was at **pages 34 – 36** of Volume 1, dated **10 February** 2020.

15. There was also some CCTV footage, which had been sent to the Tribunal on a google drive on **01 February 2022** and which we were invited to view. One clip, dated **22 June 2019,** was of the Claimant in the staffroom on the telephone to her boyfriend (in respect which the Respondent provided a transcript on **pages 118-120**). Five other people, including the Respondent and Bev Pearson, were present. The second clip, dated **03 June 2019,** was of the Claimant in the staff room with another member of staff, Ashleigh Haselhurst, whereby the latter could be seen injecting the Claimant with a solution of some sort. The Respondent had also provided a transcript of their discussion in the bundle at **pages 116-117**. We will say more about the CCTV footage in our findings of fact.

Findings of fact

16. The Respondent is a sole trader. She operates a hairdressing salon under the trading name of Longlox Hair Extensions. Although she was the Claimant's employer, she took no part in these proceedings. No allegations were made against her and, aside from being on the holiday in Magaluf, she played no substantial part in the events which were the subject of the proceedings and there were no references to her personal circumstances.

17. The Claimant commenced employment with the Respondent in **April 2015**. She was employed as a hairdresser. The salon was managed by the Respondent's mother, Beverley Pearson (known as Bev). Matthew Pearson (who was the subject of a complaint of sexual harassment in the proceedings) is the Respondent's father, and husband of Bev Pearson. Although he initially helped his daughter financially establish her business, he was not involved in its management. He had no role in the running of the salon in any respect until **26 June 2019**, and even then this was for a very limited period of time. The Claimant agreed at the beginning of the hearing that it was only from then that he temporarily became involved in the running of the Respondent's affairs. However, he was in the habit of visiting the salon regularly. He went there every 3 weeks or so to have his hair cut, and sometimes he would go to collect his wife Bev from work or to help out by carrying out odd repairs around the salon.

18. Tamlyn Smith is Matthew Pearson's niece. She too worked for the Respondent as a hair stylist. She and the Claimant got on well and from the evidence we have seen and heard were, on any account, good friends. Her mother is Linda Smith – Mr Pearson's sister. Edith Pearson is the mother of Matthew and Linda.

19. The Respondent's business has been the subject of a television programme, which we were given to understand is a reality tv show. Filming started after the Claimant's resignation.

CCTV cameras

20. There are CCTV cameras operating in various locations within the Respondent's premises. At the material time, there were cameras in the salon itself and there was also a camera in the staff room. The CCTV camera in the staff room was the subject of controversy in these proceedings. The Claimant's case was that she was unaware that she was being recorded while in the staff room – indeed, she maintained that she did not know there was a camera in the CCTV room. The Respondent on the other hand contended that everyone, including the Claimant knew that there was a CCTV camera in the staffroom; that it was in an obvious position and there was a sign displayed in a prominent position on the wall. All cameras, the Respondent contended, were in place when the premises first opened back in 2016.

21. CCTV was installed and was commonplace within the premises from the outset and that this was well-known to all, including the Claimant. Contrary to he Claimant's position, we find that she was aware that there was a CCTV camera in the staff-room.

22. The camera was in such a position that it was very hard to miss and the Claimant had been in and out of the room too many times to count over a period of 3-4 years. She could not fail to have noticed it. The Claimant said nothing at all about the CCTV in her witness statement. The only evidence she gave on the subject was in cross-examination.

23. We reject the Claimant's evidence given in cross examination that it was only on **27 August 2019** that she discovered there was a CCTV camera in the staff room. That is simply not credible, given the location of the camera and the length of time the Claimant had worked there. We accepted the evidence of the of the Respondent's witnesses that the camera had been there from the outset. Further, in the Claimant's own documents, volume 2, **page 172**, she says: '*I was unaware that CCTV with audio was within the staff room'*, (tribunal's emphasis) not that she was unaware of there being a CCTV camera. Further, on **page 173**, she wrote that no CCTV signs were placed in the staff room, not that she was unaware of a CCTV camera being in the room. We shall address the issue of 'audio' later.

24. Therefore, we were satisfied that the CCTV camera in the staff room was there throughout the Claimant's employment; that she knew this and that she believed it to be active. However, we were less convinced by the Respondent's evidence that the CCTV sign in the staff room had been there during the Claimant's employment. The Claimant argued that someone had put that sign up after she had left. Photographs of the staff room were at pages **108** and **110** of volume 1 of the bundle. They show a sign in a prominent position on the wall, below the camera. The sign read: '*CCTV in operation*'. It was not in dispute that those photographs were taken after the Claimant's departure and indeed were

taken for the purposes of these proceedings. Mrs Pearson said that they looked for, but could not find, any photos of the staffroom taken during the Claimant's employment. There was, she said, never any reason to take a photo of the staff room until this litigation. All photos which they had taken were promotional ones and were thus taken in the salon, for promotion purposes.

25. We accept that there would have been no reason for the Respondent to take a photo of the staff room prior to this litigation. That there is no photo showing CCTV signage during the Claimant's time does not establish that the sign was not displayed during that period. Equally however, the fact that there was a photo, taken after the Claimant's departure, showing a sign in place is not proof that it had been there during the Claimant's time. We were left with the oral evidence of the individuals and the competing evidence of the parties.

26. Kendal Forrest said that there were stickers at various points in the salon informing them that there was CCTV and that they were noticeable (paragraph 5 of her witness statement). In her witness statement, she did not specifically say anything about CCTV within the staffroom. However, in her oral evidence she said that she was aware of CCTV in the staff room and that the sign shown on **page 108** had always been there. Bev Pearson said that there were CCTV cameras and signs throughout the premises, other than in private areas such as toilets and beauty rooms. In her statement, she did not address the staff room in particular. However, in oral evidence, she said that the sign as appears on **page 108** was always present. Edith Pearson (Matthew Pearson's mother) also gave oral evidence. Her evidence regarding CCTV signage in the staff room was more confusing and was given in oral evidence only. We accept that she was not an employee or manager and might not be expected to have the same knowledge as Bev or of some of the staff. However, Edith Pearson visited the salon every week and was regularly in the staff room. She regularly stood by the sink and did the washing up. In her evidence she said that there was a CCTV sign on the window and one on the door to the staff room. Tamlyn Smith, in her witness statement at paragraph 11, said that everyone knew there was CCTV in the salon and in the staff room. However, she makes no reference to signage in that statement. In her oral evidence, she said the CCTV sign was on the door in the staff room.

27. We were not satisfied that the 'CCTV in operation' sign had been on the wall in the staff room at all times. In the notes which the Claimant prepared for the purposes of the disciplinary hearing in **September 2019** (which we address below) she refers to there being no sign in the staff room. That was a fairly contemporaneous document. We believed the Claimant that the sign showing that CCTV was in operation was not present in the staff room during her period of employment and we infer that it was placed there afterwards. We were conscious that the Claimant could be lying about this, bearing in mind we had found (contrary to her evidence) that she was aware of the CCTV sign in the staff room. Where a tribunal considers a witness to have been untruthful in one or more parts of their evidence, there is a temptation to disbelieve all aspects

of their evidence. Sometimes that is a justifiable conclusion. However, it is perfectly possible that a person may be lying about some aspects but telling the truth on others. It was a feature of this case that we considered both parties to have exaggerated and to have been untruthful in certain respects but honest in others.

28. It was Edith Pearson's and Tamlyn Smith's evidence that gave us real doubt about the veracity and reliability of the evidence of Bev Pearson and Kendal Forest on this point. If, as the Respondent contended, the CCTV sign had been displayed so prominently, they too might have been expected to recall where it was. However, their evidence was inconsistent with that of Bev and Kendal. Of course, we were conscious that they might simply have been mistaken. However, coupled with the Claimant's contemporaneous reference to the absence of signage, her oral evidence and the inconsistent evidence of the Respondent's witnesses, we accepted what she said and find that the CCTV sign was not on the wall during her employment. It is more likely that the signs were placed in the public area (the salon) to alert customers to the fact that CCTV was in operation. We conclude that it is also more likely that the sign in the staff room was placed on the wall after the Claimant's employment ended and before the commencement of filming of the television programme.

29. That does not detract from our finding that the Claimant always knew that there was an active CCTV camera in the staff room. What she did not appreciate, however, was that the CCTV camera had an audio facility and that management had the facility to record and, if necessary, listen to what was said in the staff room.

30. This issue of whether the Claimant got changed in the staff room was also a matter of dispute. There are rooms within the premises which are lockable and where members of staff could get changed (for example, if going on a night out after work). Four lockable rooms were in the sunbed area, marked with an 'x' on **page 113** of the bundle. There were also staff toilets. In addition, there was a lockable toilet in the staff room. Unquestionably these are areas where the Claimant and anyone else could get changed. We consider it likely that the Claimant did get changed in those areas at times during her employment.

31. The Respondent suggested that she never got changed in the staff room. However, it is not possible for the Respondent to say with certainty that the Claimant never got changed in the staff room. That very much depends on whether we believed what she said on the matter. We accepted the Claimant's evidence that, on the odd occasion, she would get changed in the staff room, without going into the toilet or to a private room. We infer that this would have been a 'quick change'. As CCTV was common-place in the premises, we find it more likely than not that as staff got on with their day to day business, the existence of CCTV was simply unimportant to them. They became oblivious to it. Therefore, we find that from time to time she did quickly change in the staff room – although we are unable to say when or how often it happened, because

the Claimant never said. However, we are also clear that Bev Pearson did not know that the Claimant even very occasionally got changed in the staff room.

32. As far as the audio facility is concerned, only the cameras in the staff room, office and the back entrance have that facility. The cameras in the salon do not record sound. The CCTV monitor does not have speakers. In order to hear any audio, one would have to download a file on to a computer or other system and play it back.

33. We must make it clear that, while the Respondent had the facility to see and listen to what was said in the staff room, we do not find that she or anyone else in management monitored the goings on of those in the staff room in real time. Save for the situation described in paragraph 34 below, nor did she or anyone connected with her, such as Bev or Matthew Pearson, routinely monitor CCTV footage after the event. The CCTV was there if needed. Certainly, Matthew Pearson did not look at any CCTV footage. The only time he viewed any footage was after the Claimant's suspension, in relation to the two clips which we were invited to watch.

34. In about **April 2019**, Bev Pearson suspected that the Claimant may have been guilty of some misconduct (we would add, there was no evidence of any wrong-doing before us). Therefore, without telling any of the staff, she covertly activated the audio facility on the staffroom CCTV camera. She said in evidence that she did this for the purposes of her 'investigation', thinking that she might hear the Claimant talk about the subject matter of the investigation. This was the first mention of this. We found Ms Pearson's evidence on the matter very unconvincing. This had never been mentioned before her oral evidence and she was reluctant to go into detail and mentioned a few times that she and others were scared of the Claimant. Having purposefully switched on the audio for the purposes of obtaining some evidence against the Claimant, we infer that on the balance of probabilities, she must at some point have watched and listened to some footage as part of her investigation.

35. What Bev Pearson said in evidence about the audio only being activated in **April 2019** was, however, inconsistent with the Respondent's pleaded case. In paragraph 26 of the amended response (**page 42**) the Respondent contended that the Claimant knew the CCTV cameras had audio and that this had been confirmed at several staff meetings. However, in her evidence, Mrs Pearson said she did not tell any of the staff that the audio was activated as this would have defeated the purpose of using it for the purposes of listening for evidence of suspected theft. We were troubled by this inconsistency. It made us wonder if this was another instance of the Tribunal being misled. We concluded that it was, and that it was the pleading that was untruthful – and quite significantly so. We find that Bev Pearson did activate the audio facility in the staff room without telling any of her staff and she did not subsequently de-activate it. Contrary to the Respondent's pleaded case, we find that there was no basis on

which staff could have known that their voices were being recorded. It was certainly not the case that staff knew the CCTV cameras had audio and that 'this had been confirmed at several staff meetings' (para 26, **page 42**).

36. The first time that the Claimant became aware that management could abd did listen to her and others in the staff-room was when Ms Ewart sent her the report and statements on **31 July 2019** from which she could see that Ms Ewart had listened to audio recordings, as she quoted what the Claimant had been saying to her boyfriend on the phone.

CCTV footage of the Claimant' injection

37. The Claimant had asked other members of staff to assist her with injecting a substance into her body in the staffroom. There was a dispute about the nature of that solution: according to the Respondent, it was tanning solution; according to the Claimant, it was a fat dissolving solution. The Respondent suggested that the CCTV footage showed the Claimant hiding in the corner, knowingly out of the sight of the camera (thus demonstrating that she was aware of the CCTV camera). However, although we found that the Claimant was aware of CCTV in the staff room, we reject that she went to the corner believing herself to be out of sight of the camera. She was, in fact, not out of sight and Ashleigh was clearly not out of sight. If she really wanted to be hidden, it is more likely that she would have gone into the toilet and ensured that Ashleigh came with her. That option was plainly available to the Claimant.

38. We could see from the footage that Ashleigh was helping with an injection. The Claimant had sought her assistance (and that of Kendal) because she was squeamish with needles and could not inject herself. We are satisfied that the Claimant went to the corner of the room by the toilet simply because she wanted a modicum of privacy in case someone opened the door and came into the staff room and also that she wished to wash her tummy with some water (however ineffective that might have been given that needles were involved). We do not accept that the Claimant was trying to evade the camera as the Respondent suggested. Had she been, she would, we conclude, have undertaken the whole exercise in the toilet. It is more than likely that this was another example of the staff simply having become oblivious to the existence of cameras in the building.

39. The CCTV footage that we observed showed Ashleigh injecting a substance into the Claimant. We accept the Claimant's evidence that this was a fat dissolving solution and not a tanning solution. However, she had led her colleagues to believe that it was a tanning substance. She knowingly gave people this impression by not disavowing them of their stated belief to her that it was tanning. Rather than tell those, such as Ashleigh and Kendal what it was that they were injecting, she was happy for them to believe that it was for tanning purposes. The Claimant did this to avoid the embarrassment of admitting to injecting a fat dissolving substance. She did, however, tell Bev

Pearson that it was fat dissolving solution – but only upon being confronted by Bev. This too, was the subject of dispute between the parties, which we resolve below.

40. During Bev Pearson's oral evidence, the Claimant put to her that she was aware that she had been injecting fat dissolving solution and contended that she had never been given a 'warning' about this. Bev Pearson denied this. Bev Pearson said that she found out, in about May 2019, that the Claimant had (with assistance) been injecting herself with tanning solution and she gave the Claimant a verbal warning. She also warned Kendal Forrest and Ashleigh Haselhurst. We accept that Bev told the Claimant that she was not to inject tanning solution when in the salon. In the Claimant's document at **pages 167 – 173**) prepared for the disciplinary investigation, at **page 170**, the Claimant says about tanning injections: '*I denied this then, and I deny this now*.' The words 'I denied this then' clearly suggest that she had been confronted about it in the past, and we find that she was confronted by Bev Pearson about it because Bev had been told by staff that the Claimant was injecting tanning solution.

41. Insofar as Bev Pearson said she gave the Claimant a 'verbal warning', in fact what she said was that it was not acceptable to inject tanning solution in the salon and she should not do it again. That is what Bev also said to Kendal and Ashleigh. She regarded it as a 'verbal warning', but it was not recorded any where as being a disciplinary sanction. We are satisfied that it was not a 'warning' which followed any disciplinary process. There was no investigation or meeting to discuss the matter. The Respondent had, certainly at the time, a very lax approach to disciplinary procedures and to management in general. It was more akin to an old fashioned 'telling off'. Nevertheless, the essential point is, that was how Bev Pearson chose to deal with it.

42. Whether it was a 'warning' or not, we find that the Claimant was told by her manager, Bev, that she had heard she was injecting tanning solution and that she should not do this at work. When confronted, we find that she denied it and that it was at that point she told Bev Pearson it was not tanning solution but fat dissolving. Therefore, to the extent that the Claimant's case was that Bev Pearson knew that it was fat dissolving solution and was not 'warned' about it, we do not accept this. However, we do accept, and we so find, that the Claimant told Bev it was fat dissolving solution when confronted. Whether Bev Pearson believed her or not is a different matter.

43. What was not obvious to us was when Bev Pearson gave the Claimant what she regarded as a 'verbal warning'. We had to work through the likely date from the available evidence. The best that Mr Brien could do was to suggest to the Claimant that the warning had been given 'before Magaluf'. Bev Pearson said in evidence it was when she came back from holiday at the start of June. In her statement prepared for the disciplinary proceedings on **page 75 of volume 1**, she refers to May. The CCTV footage which was shown to us was of **03 June 2019**. Whether May or June this was wholly inconsistent with the Respondent's

pleaded case in paragraph 15 of the Amended Grounds of Resistance (**page 41 of volume 1** of the bundle) which refers to a verbal warning on **16 February 2019** – of which there was no evidence at all. We find that Bev Pearson spoke to the Claimant about what she believed was tanning injections after **03 June 2019**. She learned about Ashleigh injecting the Claimant that day and she had been told about previous injections. She could have, but did not, take more formal disciplinary action against the Claimant. She did not give her a 'warning' under any disciplinary procedure and she never recorded it anywhere – she simply had a word with her telling her, as per **page 78** of volume 1 of the bundle, that tanning injections were not allowed on the premises. There was no evidence that the Claimant had administered any injection after **03 June 2019**. We infer that she did not as she required the assistance of a colleague to perform the injection and they had been told by Bev not to assist her again.

CCTV footage of the Claimant on the phone to her boyfriend

44. We viewed the CCTV footage of the telephone call which the Claimant made to her boyfriend (or the other way round) in the staff room on **22 June 2019**. During the hearing, we could not clearly hear the content of the call because of the poor sound quality from the laptop. We were able to hear only a little more clearly in our deliberations and in any event, the Claimant did not dispute that she had sworn at her boyfriend and did not dispute the words attributed to her in the 'transcript' at **pages 118-120**. We hesitate to call it a transcript, because the document contains comments and interpretations of the Respondent.

45. Having watched the footage, we could see that the door to the staff room had been opened a number of times as staff came and went. We could also see that, whilst Bev Pearson pointed to the toilet in the corner of the room, indicating that the Claimant should continue the conversation with her boyfriend in the toilet (and at one point went into the toilet when the Claimant was in there on the phone). She did not insist that the Claimant end the call. Everyone carried on in the staffroom as normal, making drinks and eating lunch. Whilst we have no doubt that some staff have felt somewhat uncomfortable with the scene, we were far from convinced that they were 'extremely uncomfortable' or 'scared' as suggested on **page 120.** We could see them carry on as normal. What is clear is that the Claimant was upset and was swearing and that neither the manager (Bev) nor the owner of the business (Sammyjo) took any steps to stop the call. Neither the Respondent, nor Bev, asked to have a private word with the Claimant about her behaviour, tone or language. Bev Pearson could have (as she did with regards to the tanning injections) given her a verbal warning but she chose not to.

46. The essential point is that neither the Respondent nor the manager, Mrs Pearson, did anything to stop the call and neither spoke to the Claimant about her language or behaviour at the time or thereafter. To the extent that Mr Brien suggested that no-one stopped her because they were intimidated by the Claimant, we reject this. That was part of the Respondent's narrative in these

proceedings, one that the Respondent desperately wished the Tribunal to adopt. But we do not accept that people were intimidated by the Claimant – they may have regarded her as being volatile and loud but that was the extent of it. They were prepared to and did tolerate her personality. On the occasion of the phone call, Bev Pearson and the Respondent allowed the conversation to continue, directed the Claimant to the toilet and in between could be seen engaging with others in the staffroom as normal. The Respondent sought to persuade us that a staff member tried to walk into the toilet to retrieve a vacuum but was scared and walked out. From our observations, we could not see any signs of anyone being scared. The Claimant had finished her call and was clearly upset. It is more likely, and we so find, that the member of staff saw the Claimant being upset and that is why she came back out of the toilet.

The allegation of sexual harassment

47. As this was an especially contentious and serious allegation, we need to set out what the complaint against Matthew Pearson was. In her Claim Form of **05 November 2019**, the Claimant alleged that Mr Pearson sexually assaulted her on **06 April 2019**. She said in the ET1 that he '*was being inappropriate with me and touching me inappropriately…fuelled full of drink where I had to ask him several times to stop*.' That was the first time the Claimant had raised this complaint, which was 7 months after the night in question. The lack of specificity led to Judge Speker directing the Claimant to provide further information about the allegation. In her further particulars, dated **10 February 2021**, at paragraph 3 on **page 34** the Claimant alleged that: '*on **06 April 2019** on a work night out, Matty Pearson kept slapping me on my bottom. I asked him many times to stop doing this but he just continued. He was drunk at the time and seemed to think it was a joke. I tried to laugh it off but felt very uncomfortable. Matty Pearson is my manager, Beverley Pearson's husband and is also involved in running the Salon. Although Beverley had seen what Matty was doing she failed to take any action*'. This was the first reference to Bev Pearson allegedly having witnessed the sexual harassment and doing nothing about it.

48. In paragraph 9, the Claimant added: '*at a meeting with the Human Resources service I was informed that Matty Pearson had been recording me on my breaks in the staff room and listening to my phone calls*.' Then, in paragraph 13, **page 36**, she added: *'I had already suffered sexual harassment at the hands of Matty Pearson.*' Finally, in paragraph 17, where she lists the acts complained of, the Claimant says at paragraph numbers (vii) and (x) '*covertly recording me in the staff room where I regularly get dressed/undressed*…' and *'inappropriate touching on my bottom by Matty Pearson*'.

49. Thus, the Claimant's complaint against Matthew Pearson was that:

    49.1.1. He had sexually assaulted her on **06 April 2019** and

49.1.2. He had watched covert recordings of the staff room where she and other young women got dressed and undressed.

50. Her complaint regarding Bev Pearson was that she had witnessed her husband Matthew sexually harassing her but did nothing to prevent it or take any action on it. The harassment was said to have taken place on **06 April 2019** at a bar in Newcastle, the Glasshouse.

06 April 2019 – The Glasshouse

51. It was not in dispute that on **06 April 2019**, the business had celebrated a 're-launch' of the salon, it being the third anniversary of the opening of the new premises. In celebration, the Respondent had arranged a fashion shoot at the premises and food and drinks were put on. At the end of the business day, at around 5pm, everyone remained at the salon for a drink. There was then a spontaneous decision made to continue the celebration at a bar in the centre of Newcastle. It was decided to go to a bar called the Glasshouse. Several taxis were arranged to take people there.

52. Those who went to the Glasshouse were: the Claimant and a friend of hers, whose name was given only as Kelsey; the Respondent, Sammyjo, and her then partner; Bev Pearson, Matthew Pearson, Edith Pearson, Linda Smith, Tamlyn Smith, Kendal Forrest, Saffron Imerson (employee), Holly Dowling (employee), Holly's mother, someone called Nicky and her husband. There may have been some others, but those were the ones we were told about.

53. In order to determine the dispute, we now need to set out the parties' respective positions and evidence. The Claimant's evidence on what happened at the Glasshouse was set out in paragraph 8 of her witness statement. There she said that Mr Pearson groped her bottom several times to the point of causing her pain due to recent cosmetic surgery. She said she had to ask him to stop and that this was witnessed by Bev Pearson and several others and that no one intervened until she pleaded for him to stop. She said that she was left feeling embarrassed, confused and unsure of whether to complain.

54. Mr Pearson denied the allegations. He said that everyone had had a few drinks at the salon and they decided to go to Newcastle city centre for drinks. When at the Glasshouse he sat with Bev and Edith and not close to the Claimant. He said that the Claimant spent the time in the bar with Tamlyn and the Claimant's friend, Kelsey, someone he did not know but about whom he had been told something that night which made him feel uneasy about her being friends with his niece, Tamlyn. He said he did not recall speaking to the Claimant in the bar at all but does recall her acting erratically and causing trouble with another girl which led to 'bouncers' becoming involved. He said he had had several drinks and was having a nice evening.

55. Bev Pearson said that she sat with Mr Pearson and his mother Edith when in the Glasshouse and that Kendal Forrest was next to them. Kendal Forrest confirmed this in her statement. Edith Pearson also gave evidence about the **06 April 2019** event. She too described the Claimant behaving in a way which she regarded as vulgar and being loud and aggressive. She said that she sat with her son, Matthew and that the Claimant was not next to him.

Cross examination

56. In cross examination, the Claimant's account was rather different. Firstly, she accepted that Mr Pearson was not her manager and was not involved in running the business but only became involved when he suspended her on **26 June 2019** in the absence of his daughter. Although the Claimant had accepted this at the beginning of the hearing, it was inconsistent with what she set out in paragraph 3 of the further particulars on **page 34**.

57. The Claimant said that Mr Pearson, who was sitting down at the time next to her, slapped her on the bottom two or three times in succession but on a single occasion. She said that this happened when she leaned to pick something up from the table. She said that at the time, she, Matthew Pearson and her friend Kelsey had been engaged in conversation. The Claimant said that Mr Pearson stopped as soon as she asked him to and that he did not do it again, and that she asked him once. At that point, she said she noticed that Bev, who had been sitting directly opposite, was looking at her angrily. Mr Brien asked the Claimant whether she had discussed what had happened with Kelsey. The Claimant said that she honestly could not remember.

58. When Mr Brien suggested to the Claimant that her oral evidence was inconsistent with paragraph 3 of the further particulars, where it said she had asked him to stop many times, the Claimant said that the further particulars were not accurate. She then added that she had described it as set out in the further particulars because she had been indirectly asking him to stop by saying 'ow' each time he slapped her, but that she only asked him once to his face to stop, which he did.

59. Mr Brien further suggested that the Claimant's oral evidence was also inconsistent with paragraph 8 of her witness statement, where she says that the assault was witnessed by Bev Pearson and others but that they did not intervene until she pleaded with Mr Pearson to stop. The Claimant then accepted that she was could only assume that Bev and others had seen what happened but that Kelsey certainly witnessed it because the two of them spoke about it afterwards. That was inconsistent with her earlier answer to Mr Brien, which was that she could not remember whether she spoke to Kelsey about it or not. The Claimant later added that she had subsequently spoken to Kelsey about it more than once.

60. We reject the Claimant's account, about which we say more in our conclusions. We accept Mr Pearson's evidence that he did not in any way touch the Claimant. However, we do not accept all of what the other witnesses told us about the Claimant's conduct that evening, much of which we find to be exaggeration. We conclude this exaggeration to be the result of a sense of outrage that the Claimant should falsely accuse Matthew Pearson of sexual harassment. It has, we find, poisoned the minds of all those on the Respondent's side against the Claimant. As far as the events of **06 April 2019** are concerned, our essential findings are in paragraphs 61 to 64 below.

61. When the photo-shoot finished a lot of the staff and managers remained in the salon for a couple of hours where they had some drinks. The Claimant travelled to the Glasshouse in a taxi with her friend Kelsey, Linda and Tamlyn Smith. She was in high spirits and she was boisterous in the taxi. We have no doubt that all were in good moods, in all probability, helped along by the consumption of alcohol. When they got to the Glasshouse at about 7pm or thereabouts, Mr Pearson sat at a large table between his wife, Beverley and his mother, Edith. When in the Glasshouse, the Claimant did not sit with Mr Pearson nor did she stand next to him. She largely spent her time there with Tamlyn and Kelsey, her two friends. They were drinking cocktails and were having a good time. All of the others were also drinking and were having a good time. The Claimant, however, got involved in a dispute with a barmaid. She became loud and argumentative, which led to security intervening to calm matters somewhat. However, it was not such as to result in her being ejected from the bar.

62. We are not in any position to say what the argument was about or who started it. However, we are satisfied that her conduct and demeanour for part of the evening was such that it made some feel uncomfortable, particularly Edith Pearson, who was unimpressed by the Claimant's behaviour. That Edith was uncomfortable made Matthew and Bev a little uncomfortable, but not so much as to cause them to call an end to the event. They stayed for two hours. Alcohol was again free-flowing and, we infer, encouraged by management (the Respondent and Bev Pearson). Bev Pearson was also unimpressed by the Claimant's loud behaviour in the bar and it is more likely than not, that if the Claimant noticed her looking with eyes like 'daggers', so to speak, it was because of her displeasure with the Claimant. Mr Pearson too was unimpressed by the Claimant's loud behaviour and particularly so because his mother was witness to it. We would add, however, that we were not convinced that the account given by the Respondent's witnesses was a truly accurate portrayal of the evening. It was, we find, an exaggerated account of her behaviour.

63. All of the Respondent's witnesses took every opportunity to demonise the Claimant. If her conduct was as bad as Bev Pearson and others made it out to be, we would have expected to see some reference to it in the statement she prepared in August 2019 (**pages 163-166 of volume 1**) or we would have expected there to have been some words exchanged the next time the Claimant

was in work. In her statement, it can be seen that Bev Pearson refers to the re launch (5th paragraph on **page 164**), albeit she gets the month wrong (it was not April, not May). In that statement, she refers to the Claimant being nasty to Emily and rude to Laura in the salon that day but says nothing whatsoever regarding her behaviour in the Glasshouse – in contrast to paragraphs 16 and 17 of her witness statement for the tribunal. Linda Smith said nothing at all in her witness statement about the night of **06 April 2019**. Tamlyn Smith describes the Claimant as being in high spirits in the taxi and agitated when in the Glasshouse, complaining about a girl at the bar. Edith Pearson said little about the evening other than that she was uncomfortable and disgusted at the Claimant's actions. It was clear to the Tribunal, and we so find, that Edith Pearson had not directly witnessed the things she referred to in her witness statement and her statement was the product of discussions between her and others after the event.

64. At no point between the **06 April 2019** and the presentation of her Claim Form on **05 November 2019** did the Claimant refer to Mr Pearson's alleged conduct. When she prepared her comments on Bev Pearson's statement for the purposes of the investigation into her conduct (see below) the Claimant specifically refers to the relaunch on **06 April 2019** (see **page 169** of volume 2 of the bundle). Nowhere there does she say that it was a distressing night for her because of Mr Pearson's conduct. We are satisfied that the idea came to her only after the unidentified neighbour intervened to talk about sexual harassment, which was after Tamlyn's dismissal. So that there can be no doubt, we are satisfied that Mr Pearson did not make any physical contact with the Claimant. He did not slap or touch her bottom as alleged by the Claimant then or on any other occasion. We find the Claimant has manufactured the complaint. We must add, however, that we did not accept the Respondent's suggestion that the WhatsApp message from the Claimant on **page 345** is a reference to Matthew Pearson, for which see below.

65. In as much as we were troubled by our finding that the Claimant had manufactured a serious allegation against Matthew Pearson, we were concerned by what we considered to be an attempt by the Respondent to demonise the Claimant at every opportunity. Taken out of context, the message on **page 345** looks like a reference to Mr Pearson. The Claimant, in her evidence, said that it was not a reference to him at all but to the Pearsons' son, also called Matty and that the message was part of a wider exchange with 'Ash' to whom he was to get married. We were concerned to learn that the whole WhatsApp exchange had not been inserted in the bundle and directed that the Respondent produce the entire exchange. The Respondent produced the whole exchange. This was given page numbers **368(1) to 368(22**) and added to the bundle. The Claimant invited us to read them during our deliberations, which we did. We accept the Claimant's evidence that the reference to 'Matty' on **page 345** was to the son Matty, and not to Matthew Pearson senior. The Claimant said 'cos I'm taking them to court' only to explain to Ash why she had

been unable to tell her about a matter which related to Matty junior (see **page 368(2))**.

66. The message which the Respondent disclosed and inserted in the bundle at **page 345** is, we find, a deliberate attempt to make it look like this was a reference to Matthew Pearson senior. The Respondent put it to the Claimant that the words *'I feel so sorry for him cos it's him that's going to take the hit for all of this'* was a reference to the Claimant intending to seek revenge on Mathew Pearson senior. However, it must have been obvious to the Pearsons that it was a reference to the other Matty. That is clear not only from the whole conversation but from Ash's immediate response to those words, where she clearly refers to Matty junior: '*He believes everything they say, which is mad. He hates me gem*.' It is clear from any objective reading of the exchange that, in referring to Matty, Ash believes the Claimant to be referring to Matty junior – because she responds by referring to him. The words 'he hates me gem' are clearly not about Matthew Pearson senior, but Matty junior. Indeed, it would be odd to think that any part of the exchange was about Matthew senior as that would be totally out of context of the conversation. That this is so obviously the case (and moreover would have been obvious to Ashlee) that we were troubled by the text on **page 345** that introduces the exchange which says: '*Gemma went on to state she felt sorry for big matty….It was very odd that she would target matty in all of this as he is a very selfless caring respected man*.' There was no reference to 'big' matty at all in the exchange. We infer that Ashlee, of all people, must have known this. In the absence of the whole exchange, we inferred that the matter was selectively put as it was on **page 345**, for the purposes of misleading the Tribunal.

Magaluf

67. On **23 June 2019** the following went on a holiday together to Magaluf: Sammyjo Pearson, Bev Pearson, Jemma Rowe (the Claimant), Tamlyn Smith, Francesca Toole, Kendal Forrest, Holly Dowling and Saffron Imerson, Emily (surname not given), Nikki (surname not given).

68. There was a dispute between the parties as to whether the trip was a 'team bonding' holiday or simply a 'holiday'. However, we find that it is immaterial how it is described. The simple fact of the matter is that a group of employees and their managers went on a holiday to Magaluf along with one person who was not an employee but who had some peripheral involvement with the salon and was the girlfriend of Bev Pearson's son. That was Francesca Toole. It is natural to expect that a manager might regard such a holiday to be good for staff morale and to be bonding but there is no magic in it being specifically designated a 'team bonding' or not. The intention was that everyone would go and have a good time. It was patently clear from the evidence, which included the text messages provided by the Claimant, that alcohol was expected to be free flowing and was encouraged. We accept the Claimant's evidence (which was not hotly disputed) that on the holiday, alcohol consumption was encouraged

by the Respondent and Bev Pearson, if not necessarily explicitly, certainly by example. We emphasise that we are not expressing any moral point here, nor are we making any judgement on the matter. It is simply a fact.

69. Unfortunately, the holiday was a disaster. It ended in a physical fight involving Tamlyn Smith, Francesca Toole and the Claimant. All concerned, including the managers, had consumed a lot of alcohol.. Whilst it is not necessary for us to determine precisely what happened in Magaluf, what is not in dispute is that the Claimant accepted that she became personally involved in a physical fight with Francesca Toole, along with Tamlyn Smith. Tamlyn also accepted that she was involved in this fight. Whatever the cause of the fight, we are entirely satisfied that the Respondent and Bev Pearson were genuinely shocked and upset by what had happened. Bev Pearson called her husband Matthew from Magaluf in some distress, telling him about what had taken place.

70. Further, it is also not in dispute that somebody pulled Bev Pearson's hair as she attempted to break the fight up. That became the subject of an allegation against the Claimant, which we shall come to. We noted that this is one of the things that the Claimant contended was a false allegation – the false part being that it was 'she' who pulled Bev's hair. It is unnecessary for us to have to determine whether it was, in fact, the Claimant who pulled Bev's hair (as opposed to Tamlyn or Fran). However, we are satisfied that both Bev Pearson and Kendal Forest genuinely believed that to be the case. To the extent, therefore, that the Claimant maintains the 'allegation' to be false (for it was at the point of suspension an allegation) we are satisfied it was not 'false'. It was a genuine allegation and certainly one that warranted investigation.

71. Upon return to the UK, the Respondent, who had also been a witness to the fight, decided that the Claimant and Tamlyn Smith should be suspended. However, the Respondent's mental health declined to such a state that she asked her father, Matthew Pearson, to assist in managing aspects of the salon. It seems to us from the evidence, and we so find, that this was limited to suspending the Claimant and Tamlyn Smith and managing disciplinary allegations against them along with his wife Bev.

72. Therefore, on **26 June 2019**, the Respondent signed a document which stated: 'this document is to give my father, Mr Matty J Pearson the authority to take over and manage my salon including the suspension and any subsequent issues of employment with the following employees: 1) Jemma Rowe 2) Tamlyn Smith. From this point, and not at any time before this, he acted as an agent of the Respondent.

The Claimant's suspension

73. On **29 June 2019**, the Claimant's first day back at work after the Magaluf trip, Mr Pearson suspended her. He told her that her suspension was because of the fight which had taken place during the short holiday in Magaluf and that it

was necessary to suspend her to avoid what he described as animosity in the workplace. He told her that there had to be an investigation. Tamlyn Smith was also suspended. To the extent that the Claimant said she was never told why she was suspended, we reject her evidence. She was told. She knew precisely why she was suspended. We have no criticism of the way Mr Pearson handled the suspension or conducted himself.

74. Mr Pearson offered to give the Claimant a lift home. In her oral evidence the Claimant said that she was happy to go with him and that she wanted to tell him her side of the story. In her witness statement, at paragraph 24, however, she said she was reluctant to get into the car with Mr Pearson and did so only because he was insistent. When Mr Brien pointed out this inconsistency, the Claimant said that it was a bit of both, meaning she was both reluctant and happy, as she wanted to know more and give her side of the story. We reject the Claimant's account. She was, without doubt, upset by being suspended from work and on balance of probabilities also angry about it. As she saw things, you could not be suspended for something that happened on a holiday. Even if she was involved in a drunken, violent and public fight (which on any analysis she was) this could not, in her mind, be ground for suspension. That was the central plank of her argument from the outset – and it was this that led to her subsequently asking for reimbursement of the costs of the holiday. However, she knew perfectly well why she was suspended and she willingly, without any sense of reluctance or hesitation and with no need of persuasion, accepted the offer of a lift home from Mr Pearson. She saw that as an opportunity to tell him her side of the story. However, Mr Pearson did not want to listen, and said that the matter had to be investigated. We would add that, the fact that the Claimant willingly travelled home alone in the car with Mr Pearson was a further indicator, if needed, against the proposition that she had been sexually harassed by him some three months earlier.

75. On **09 July 2019**, Mr Pearson wrote to the Claimant regarding her suspension (**volume 1, page 49**). The letter contained four allegations:

    75.1.1. You have generally been aggressive, verbally abusive and threatening towards your colleagues in the salon;

    75.1.2. You swore and used abusive language in the salon when you were on the phone;

    75.1.3. You pulled a colleagues' hair and assaulted her during a team bonding holiday on **23 June 2019**;

    75.1.4. You brought tanning injections into the salon

76. Whilst the Claimant had been told on suspension about the third allegation (and this was the one that in fact caused her suspension) the other three were new allegations.

77. When she read the letter, the Claimant replied by text (**volume 1, page 50**). She said she had been to see a solicitor about what she described as false allegations. She added that if the holiday to Magaluf had been a 'team building' holiday she has a right to be reimbursed.

78. Mr Pearson responded on **10 July 2019 (page 51)** asking her not to contact the Respondent as she was unwell and that he was running the salon in her absence. He added that suspension was not to imply any assumption of guilt, that the investigation was ongoing and that should the investigator determine that a disciplinary hearing was warranted, she would be invited to a hearing and would be provided with documents and evidence relied on.

79. On **17 July 2019**, Monique Ewart, of Professional People Management, met Matthew and Bev Pearson at the salon to take initial instructions. They gave her statements which had been obtained from several members of staff.

80. **23 July 2019**, Ms Ewart wrote to the Claimant. She explained that she had been appointed to investigate the investigations regarding her conduct. She asked the Claimant to attend an investigatory meeting on Friday **26 July 2019** at 2pm. At that meeting she would have an opportunity to explain her actions in relation to the allegations outlined in the suspension letter and that this would form part of Ms Ewart's overall investigation into this matter. The Claimant was asked to confirm her attendance (**page 59**).

81. The Claimant responded on **24 July 2019** agreeing to meet at a convenient location (**page 60**). Ms Ewart replied on **25 July 2019** to say, among other things, that the meeting would be at her office and that the Respondent would pay for a taxi to enable her to attend (**page 61**).

82. On the same day, the Claimant sent a response to the allegations (**pages 62-64**), saying in brief:

    82.1.1. Allegation 1: she denied this at any time and any date;

    82.1.2. Allegation 2: she said this conversation took place during her break in the staff room, in the presence of Bev Pearson who did not say anything to her at the time or afterwards about her tone or manner;

    82.1.3. Allegation 3: she said she had been under the impression this was just a 'girls go to Magaluf and get hammered day and night' and that if the company were now arguing that it was a team bonding holiday, she would like the return of all expenses. She said in relation to the allegation that she had been assaulted, not the other way round and that Bev had pulled Tamlyn's hair; that she was only attempting to break up the altercation.

82.1.4. Allegation 4: she denied this.

83. She said she had taken advice from ACAS and believed that her employer was trying to constructively dismiss her. She mentioned having allegations of her own that will come out at a later stage if my employer wishes to go down this route, in a formal employment tribunal.

84. We find the Claimant's letter to be a rather belligerent letter, picking arguments which are unnecessary, such as there being no mention of a return taxi, and taking issue with Ms Ewart's job title. It is clear to us from this, and from her earlier text, that she was indignant and defensive about the Magaluf issue in particular, thus again emphasising a demand for reimbursement. She said in her email to Ms Ewart that she '*certainly will not attend a meeting with someone who does not know what their job title is*.'

85. The Claimant did not attend the meeting which Ms Ewart had arranged for **26 July 2019**. For some reason, Ms Ewart did not receive the Claimant's email and so she wrote again on **29 July 2019** to say that she had failed to attend the meeting. She told the Claimant that she was rearranging it for Tuesday **30 July 2019** (**page 65**) and asked her to confirm her attendance. The Claimant replied to say that she had emailed and would send the email again, which she did.

86. Upon reading it, Ms Ewart emailed the Claimant on **30 July 2019** asking her to confirm her understanding that the Claimant did not wish to attend an investigatory meeting (**page 67**). The Claimant replied the same day to say that as Ms Ewart had her written answers to the allegations, she saw no reason to attend any meeting as her answers will not change.

87. On **31 July 2019**, Maureen Lindberg of Professional People Management wrote to the Claimant. She enclosed Ms Ewart's report and recommendations and statements that were provided during the investigation. With the exception of Kendal Forrest's (which was prepared and signed on **15 July 2019** – see **page 57**) the statements were not signed until varying dates in August). We infer that the statements referred to by Ms Ewart were prepared at the request of Bev Pearson in the period **15 to 17 July 2019** in preparation for the meeting with Ms Ewart on the **17 July** at which the statements were given to her. Further copies (by now signed) were sent to the Claimant on **21 August 2019** (**volume 1, page 91**).

88. The Magaluf incident aside, Kendal Forrest's statement (**pages 52-53**), is her personal assessment of the Claimant's character. Bev Pearson's is similar. Ashleigh Haselhurst was not present in Magaluf, yet, she was asked to provide a statement. That statement (**page 79-81**) is her assessment of the Claimant's character and a description of the Claimant's wider behaviour in the salon. The same applies to the statement of Chloe Crossman (**page 82**) and Leona Robson (**volume 2, page 178**) who were not in Magaluf. One former member

of staff (Laura Langan) was also asked by Bev Pearson to provide a statement about the Claimant's wider character and general behaviour (**page 89-90**).

89. In contrast to Bev Pearson's oral evidence to the Tribunal, which was that she was scared and intimidated by the Claimant, her statement prepared for the disciplinary proceedings, on **page 75 of volume 1**, displays no such signs. In the third paragraph she uses the phrase 'as supposedly I am scared of her'. Nowhere does she say there that she was scared of the Claimant, and the use of the word 'supposedly' implies that she is not. In her statement at **page 75** Bev Pearson refers to 'several verbal warnings'. However, we infer from how these were described in oral evidence, and from the failure to record any of them, that these were simply cases of the manager giving an employee a 'telling off' (see our earlier finding in relation to the tanning injections). Clearly nothing that the Claimant did warranted Bev Pearson taking any action above and beyond that.

90. Ms Lindberg asked the Claimant to attend a disciplinary hearing on Wednesday **07 August 2019** at 1pm – this was subsequently rearranged by agreement to take place on **05 September 2019**. In the letter of **31 July**, it was explained to the Claimant that if found to have committed an act of gross misconduct this could result in her dismissal (**volume 1, page 69**). In her investigation report (**volume 1, pages 70 – 74**) Ms Ewart recommended that there was a case to answer in relation to all four allegations and that they should proceed to a disciplinary hearing. She refers in the report to watching and hearing CCTV footage of the Claimant in the staff room in relation to allegations 2 and 4.

91. Ms Ewart attended tribunal as a witness. The Claimant did not challenge Ms Ewart's evidence, saying that she had no argument with her. Ms Ewart confirmed to the Tribunal that, whilst she reviewed the statements which formed the basis of her recommendation, she did not take any of the statements. They had all been provided to her by Bev Pearson. Given Bev Pearson was a complainant regarding the Magaluf incident, we were surprised that this was the case. In any event, the upshot was that Ms Ewart did not actually investigate anything, although she would have interviewed the Claimant, had the Claimant agreed to attend an investigatory interview. What Ms Ewart did was to read the statements provided to her, observe the CCTV footage and prepare a report based on the statements given to her by Bev Pearson. She recommended that there was a case to answer on all allegations.

92. The statements which were given to Ms Ewart (to which she referred in her report) were the subject of some controversy in these proceedings. The Claimant maintained – as she did at the time she read them – that they were 'effectively' written by Longlox management. Her case was that the staff were advised on what to say by Bev. The Claimant found the statements hurtful and upsetting. We find that Bev Pearson asked those who provided statements to write a statement about the Claimant's behaviour in the salon. She also asked them to write statements about Tamlyn Smith (although we were never shown

these and they were not relevant to these proceedings). Kendal Forrest (as she confirmed in oral evidence) was asked to write about how the Claimant behaved in general and that '*this was not just a one thing* (referring to Magaluf) *because she had a drink*'. We infer that it was made pretty clear to staff that they were expected to set out in their statements only a description of poor behaviour by the Claimant.

93. On or about **27 August 2019**, Tamlyn Smith was dismissed for gross misconduct as a result of her involvement in the fight in Magaluf. This dismissal caused a rift in the Pearson family. Tamlyn and her mother Linda were bitter and resentful and consequently fell out with Matthew and Bev Pearson. On the day she was dismissed, Tamlyn Smith rang the Claimant, who was at the time her friend. Tamlyn and Linda Smith visited the Claimant and the Claimant's mother later that day to discuss what had happened. They were joined by a friend or neighbour of the Claimant's mother. He was not known to Tamlyn and Linda Smith and we were never given his name. After Tamlyn had explained what happened to her, the Claimant said something along the lines that, if they had sacked Tamlyn (a family member) then she was going to be sacked too and she may as well resign. The neighbour spoke to Jemma and Tamlyn. He asked if there had been any sexual misconduct, to which they answered there had not been. The Claimant asked whether you get more money if there had been and said that she was going 'to google it'. She then searched on her phone and saw references to financial compensation.

94. We do not accept that the Claimant said '*you can get up to £80,000'* but we do accept that she referred to some figure which was obtainable for sexual harassment. With the passage of time, the replaying of events and the switching of sides by Tamlyn and Linda Smith, it is more likely than not that the figure that was mentioned has become exaggerated by Tamlyn and Linda Smith. Our essential finding is that there was a reference by the neighbour to sexual harassment leading to compensation, that the Claimant googled this and that she said in the presence of Linda and Tamlyn Smith, that she would say that Matty Pearson had 'touched her up', or words to that effect.

95. As much as it might appear strange to right-thinking observers, we find that this reference to sexual harassment and compensation was, at the time, said largely in jest. Even Linda Smith, Mr Pearson's sister, and his niece, Tamlyn Smith, laughed at the comment at the time. Distasteful as that sounds (bearing in mind our findings regarding the **06 April 2019**) and emphasising that it is no laughing matter, we accept that they did not think the Claimant was serious about it at the time. Indeed, we find that the Claimant was not serious about it then. However, a seed was planted in her mind by this unnamed neighbour, and it came to the surface on presentation of her Claim Form in **November 2019**.

96. In paragraphs 8 and 4 respectively of their witness statements, Tamlyn and Linda Smith alleged that the Claimant subsequently repeated this statement that she would falsely accuse Matthew Pearson – with more vigour and anger

– at a meeting with a solicitor, Ms Chaudry. We were very uneasy about this evidence and invited Mr Brien to address us in submissions. Our unease stemmed from a concern that the discussion might be covered by legal professional privilege – in particular, common interest privilege (on the basis that Tamlyn and Jemma shared a common interest). No such issue had been flagged up in advance and we were concerned that the Claimant, being a litigant in person, would not appreciate the potential significance of shared communications concerned with the litigation. If it was privileged, the absolute approach to that concept would render the evidence of Tamlyn and Linda inadmissible, unless the privilege is prevented from arising if the communication was for the purpose of or in furtherance of some iniquitous purpose. The Respondent's position was that the meeting was with Tamlyn's solicitor and that any privilege that attached to the discussion belonged to Tamlyn and she had waived such privilege, enabling her and her mother, Linda, to give evidence about what was discussed. Mr Brien submitted that the Claimant was just 'present' at the meeting for the purpose of being introduced. Even if the discussion was covered by common interest privilege, he submitted that there was an iniquitous purpose – but that submission was made only in response to the Tribunal raising it with him. In the end, we did not have to reach a finding on what, if anything, was said at the meeting with the solicitor because of our earlier findings that Mr Pearson had not done what he was alleged to have done, and that the Claimant had manufactured the complaint against him.

97. Therefore, we make no findings as to what was said in the presence of Ms Chaudry. We would say that we were not overly impressed by the evidence from Linda Smith and Tamlyn Smith. The evidence as to when this meeting took place was extremely vague and Linda Smith especially was very unclear, not only as to when the meeting took place, but why the Claimant was present at it. She was also extremely unclear about when she had provided her own witness statement or when she was first asked to reflect back on the meeting. We find only that there was a meeting at which the solicitor, the Claimant, Linda and Tamlyn Smith were present – that was not in dispute. – and that the Claimant was there for the purposes of meeting with the solicitor, to tell her about her situation and to receive initial advice. For us to explore further into what was in fact said was (in the end) unnecessary and, in light of the deeply unsatisfactory way in which this case was prepared, problematic.

Disciplinary hearing

98. The Claimant attended a disciplinary hearing on **05 September 2019**, which was chaired by Paula Barclay of Professional People Management. The Claimant was accompanied by a friend, Michael Parker. In relation to allegation 1, the Claimant denied that she was generally aggressive to colleagues and that she was verbally abusive and threatening in the salon. She told Ms Barclay that she thought Bev had written the statements for staff because she wanted her out. In relation to allegation 2, the Claimant accepted that she had been angry during the telephone call with her boyfriend but that she was upset and

that Bev had been present but said nothing to her about it. She said she would like to see the CCTV recording of the conversation. In relation to allegation 4, the Claimant said that she did not bring tanning injections into the salon. In essence, she said that others believed they were tanning injections and she did not correct their mistaken belief. She maintained that they were in fact fat dissolving injections but she did not want others to know because she is very self-conscious. She maintained that Bev Pearson knew they were fat dissolving injections. The Claimant said at the meeting that she believed that 'they' wanted her out because of the incident with Fran on holiday in Magaluf (allegation number 3).

99. It was the Claimant's case in these proceedings that Ms Barclay told her at that hearing that Mr Pearson had been recording her on her breaks in the staff room and that he had been listening to her phone calls (**page 35**, paragraph 9). Although there was no evidence to this effect in her witness statement, the Claimant repeated this in cross examination. However, we find that she was not told anything of the sort by Ms Barclay. In fact, when Ms Barclay was asking the Claimant about allegation number 2 (the telephone argument with her boyfriend), rather than express surprise of the existence of CCTV in the staff room, the Claimant said that she wanted to see the CCTV footage of the conversation. The only other reference to CCTV was when Ms Barclay asked about allegation number 4 (tanning injections). The Claimant said that they were fat dissolving injections but that others thought they were tanning injections. The Claimant did not challenge Ms Barclay's evidence and did not challenge the accuracy of the notes of the meeting.

100. Not only did Ms Barclay not say to the Claimant that Mr Pearson had been recording the Claimant on her breaks to the Claimant, we were satisfied that it was not even implied by her. The explicit allegation, as set out in paragraph 17(vii) **page 36** of volume 1 of the bundle against Mr Pearson, is a serious one. We emphatically reject that allegation. The Claimant eventually accepted in cross examination that she had no evidence that Mr Pearson had watched her, or anyone else on CCTV, undressing in the staffroom. When asked what she was basing this allegation on, she said that she just assumed it because Tamlyn had told her – after **05 September 2019**. However, she never put this to Tamlyn Smith. For the avoidance of any doubt, we are entirely satisfied that this was a spurious allegation against Mr Pearson.

101. The Claimant said to Ms Barclay that she had further evidence regarding the allegations which she would provide to Ms Barclay after the meeting and Ms Barclay agreed that she should send them to her by email after the disciplinary meeting. She said she would wait to receive it before making any decision.

102. It is convenient at this stage to address one of the issues raised by the Claimant at the disciplinary hearing (and also in these proceedings) namely that her job was advertised three days after her suspension. We have considered

this carefully. The advert was on **page 9** of bundle 2. It was for a full-time colour technician/hair extension specialist. The Claimant was a part-time hairdresser. She did not do hair extensions. There was an employee called Daryl Page who was a hair extension specialist. He left the business in **May 2019,** shortly before these events. The Claimant accepted that the business would naturally look to replace him. However, she contended that the advertised role was an amalgam of hers and Tamlyn Smith's role. We accept the Respondent's evidence. We find that it was not her job that was advertised. The role advertised was a full time role as a direct replacement for Daryl Page. It was not the same role as the Claimant carried out.

103. After the disciplinary hearing before Paula Barclay, on **05 September 2019** the Claimant emailed to thank her for the meeting and for allowing her to provide written evidence to support the investigation. She said that she would provide her with updates to the other statements and forward copies of everything they discussed today to help with the investigation. She said it would take her a few days to do this (**page 96a**). On **09 September 2019**, Ms Barclay asked the Claimant to send the documents by close of business **11 September 2019**.

104. Although she had prepared comments on the statements given to her during the investigation, the Claimant did not send anything to Ms Barclay or to anyone else. These comments were included in the hearing bundle, **volume 2** at **pages 160 – 187**. Among the comments were some relating to CCTV. On **page 172**, the Claimant wrote: '*with regards to the CCTV in the staff room with audio recording, I was unaware that CCTV with audio was within the staff changing rooms…. Matty Pearson has clearly got remote access to these CCTV cameras and has been able to watch whilst women and young girls got ready both for work and for going out, this is disgusting*…' On **page 173**, the Claimant wrote: '…*I will state at this stage that no CCTV signs are posted anywhere within the staff room where we frequently get changed and at times have been naked*.'

105. As stated above, the Claimant did not send these documents to Ms Barclay. Instead, on **09 September 2019**, the Claimant emailed the Respondent to say that she was resigning. The resignation email (**page 97**) says very little. It simply cuts and pastes some legal phrases and concepts of which the Claimant had been made aware over the past few weeks: 'fundamental breach of contract', 'anticipated breach of contract', 'breach of trust and confidence' and 'last straw doctrine'. It gives no clue as to the thing or things that caused her to resign. In the penultimate paragraph she says that she appreciates the time and energy which the Respondent had invested in training her and that she believes the skills she had gained would serve her well in the future.

106. Tamlyn Smith attended the Newcatle employment tribunal on **19 August 2020**. Her complaint of unfair dismissal was dismissed on the basis that she

had been continuously employed for a period of less than two years ending with the effective date of termination of employment.

107. Although the Claimant's claim had been presented back in **November 2019**, neither Linda Smith nor Tamlyn Smith were aware that the Claimant had, in fact, made an allegation of sexual harassment against Matthew Pearson (which she had earlier only jokingly referred to). They only became aware of this at some point after the Claimant presented her Claim Form. Very unhelpfully, neither witness said when they became aware of this. We infer that it was sometime after August 2020. As at that date, the Smiths and the Pearsons were not speaking and the fallout from Tamlyn's dismissal was continuing to split the family. We are still not sure to what extent the rift has healed. However, it was not until sometime between August 2020 and March 2021, when the Claimant's final hearing had been listed, that the Smiths learned of the allegation of sexual harassment. Albeit witness statements were not exchanged in these proceedings until **03 February 2022**, the Respondent had intended to call Tamlyn and Linda Smith to the hearing in **March 2021**.

108. We infer that it was in early 2021 that Linda and Tamlyn Smith became aware that the Claimant was in fact alleging sexual harassment at the Glasshouse bar when the Respondent's solicitors were preparing for the forthcoming hearing. Having been made aware of the allegation, in as much as they had fallen out with Matthew Pearson, they decided that they could not stand by and let the Claimant say something which they believed to be untrue. They decided that they would give evidence, among other things, about what had been discussed on the day of Tamlyn's dismissal regarding manufacturing a complaint of sexual harassment.

109. Finally, we do not accept that Bev Pearson or others were scared of the Claimant as she said they were. We conclude that there has been much exaggeration in this case by the Respondent's witnesses. They took every opportunity to demonise the Claimant, mentioning how aggressive she was even when her behaviour was not the subject of discussion. We have no doubt that the Claimant's behaviour has at times been loud, rude and vulgar. However, it seems to us that the sort of behaviour the Respondents have been at pains to describe as intimidating on the part of the Claimant, is something which they are not unaccustomed to generally, in her and others. We had concerns about the reliability and credibility not only of the Claimant in this case, but also of some of the Respondent's witnesses, not least Bev Pearson.

110. Those then are our essential findings of fact. We turn now to the applicable legal principles before moving on to our conclusions.

Relevant law

Constructive dismissal

111. Section 95 Employment Rights Act ('ERA') defines the circumstances in which an employee is dismissed for the purposes of the right not to be unfairly dismissed under section 94. Section 95(1)(c) provides that an employee is dismissed by his employer if the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct. This is known as 'constructive dismissal'.

112. The word 'entitled' in the definition of constructive dismissal means 'entitled according to the law of contract.' Accordingly, the 'conduct' must be conduct amounting to a repudiatory breach of contract, that is conduct which shows that the employer no longer intends to be bound by one or more of the essential terms (express or implied term) of the contract of employment: **Western Excavating (ECC Ltd) v Sharp** [1978] I.C.R. 221, CA.

113. In this case, the breach of contract relied upon by the claimant is of the implied term of trust and confidence. That is expanded upon in a well-known passage from the judgment of the EAT (Browne-Wilkinson J) in **Woods v WM Car Services (Peterborough) Limited** [1981] I.C.R. 666:

"It is clearly established that there is implied in the contract of employment a term that the employers will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: ***Courtaulds Northern Textiles Ltd. v. Andrew*** *[1979] I.R.L.R. 84. To constitute a breach of this implied term it is not necessary to show that the employer intended any repudiation of the contract: the tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it: see* ***British Aircraft Corporation Ltd. v. Austin [1978] I.R.L.R. 332 and Post Office v. Roberts*** *[1980] I.R.L.R. 347. The conduct of the parties has to be looked at as a whole and its cumulative impact assessed:* ***Post Office v. Roberts****"*

114. The final incident which causes the employee to resign does not in itself need to be a repudiatory breach of contract. In other words, the final incident may not be enough in itself to justify termination of the contract by the employee. However, the resignation may still amount to a constructive dismissal it the act which triggered the resignation was an act in a series of earlier acts which cumulatively amount to a breach of the implied term. The final incident or act is commonly referred to as the 'last straw'. The last straw must itself contribute to the previous continuing breaches by the employer. The act does not have to be of the same character as the earlier acts. When taken in conjunction with the earlier acts on which the employee relies, it must amount to a breach of the implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant

so long as it is not utterly trivial: **Omilaju v Waltham Forest London Borough Council [2005] IRLR 35.**

115. It is enough that the employee resigned in response at least in part, to fundamental breaches of contract by the employer. The fact that the employee also objected to other actions or inactions of the employer, not amounting to a breach of contract, would not vitiate the circumstances of the repudiation: **Meikle v Nottinghamshire County Council** [2005] ICR, CA. It follows that once a repudiatory breach is established, if the employee leaves and even if he may have done so for a whole host of reasons, he can claim that he has been constructively dismissed if the repudiatory breach is one of the factors relied upon: **Wright v North Ayrshire Council** UKEATS 0017/13 (27 June 2013); **Abbey Cars West Horndon Limited v Ford** UKEAT 0472/07.

116. It is a question of fact in each case whether there has been conduct amounting to a repudiatory breach of contract**: Woods v WM Car Services (Peterborough) Ltd** [1982] I.C.R. 693, CA. In determining this factual question, the tribunal is not to apply the range of reasonable responses test (which applies instead only to the final stage of deciding whether the dismissal was unfair), but must simply consider objectively whether there was a breach of a fundamental term of the contract of employment by the employer: **Buckland v Bournemouth University** [2010] IRLR 445, CA.

117. If, on the other hand, the employee waits too long after the employer's breach of contract before resigning, he or she may be taken to have affirmed the contract with the same result — loss of the right to claim constructive dismissal. The employee must make up his mind soon after the conduct of which he complains': **Western Excavating v Sharp**. This was also emphasised by the Court of Appeal in **Bournemouth University Higher Education Corporation v Buckland** [2010] I.C.R. 908. However, whilst this will always be a significant factor it is important that ultimately it remains a question of all the facts, not just timing – mere delay by itself will rarely constitute an affirmation. If the innocent party calls on the guilty party for further performance of the contract, affirmation may be implied.

118. If the last straw incident is part of a course of conduct that cumulatively amounts to a breach of the implied term of trust and confidence, it does not matter that the employee had affirmed the contract by continuing to work after previous incidents which formed part of the same course of conduct. The effect of the last straw is to revive the employee's right to resign: **Kaur v Leeds Teaching Hospitals NHS Trust** [2019] I.C.R. 1, CA. Therefore, where there is a genuine last straw that forms part of a cumulative breach of the implied term of trust and confidence, there is no need for any separate consideration of a possible previous affirmation because the effect of the final act is to revive the right to resign.

Sexual harassment and harassment related to sex

119. Section 26 Equality Act 2010 provides:

(1) A person (A) harasses another (B) if--

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of--

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) A also harasses B if--

(a) A engages in unwanted conduct of a sexual nature, and

(b) the conduct has the purpose or effect referred to in subsection (1)(b).

(3) A also harasses B if--

(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

(b) the conduct has the purpose or effect referred to in subsection (1)(b), and

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

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account--

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

Direct sex discrimination

120. Section 13(1) Equality Act 2020 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.

Discussion and conclusion

The complaint of sexual harassment/direct sex discrimination

121. There were three aspects to this:

(a) That Matthew Pearson had sexually harassed the Claimant on 06 April 2019;

(b) That Bev Pearson witnessed this but did nothing about it;

(c) That Matthew Pearson had watched CCTV footage of the Claimant getting undressed in the staff room.

122. In light of our findings of fact about the events of **06 April 2019** (**paragraphs 61-64 above)**, the Claimant has failed to establish that Mr Pearson, on that date or at any other time, engaged in unwanted conduct of a sexual nature or that he engaged in unwanted conduct related to sex. We were clear in our findings that the complaint of sexual harassment on **06 April 2019** was manufactured. Therefore, the first complaint of harassment fails and is dismissed. It follows from this that the second complaint – that Bev Pearson witnessed the harassment but did nothing – must also fail and it too is dismissed. It also follows that the direct sex discrimination complaint fails and is dismissed, as this complaint was put as an alternative to the harassment claim based on precisely the same alleged facts. Put simply, the Claimant was not treated less favourably because of sex, as alleged.

123. Further, we were also clear in our findings that Mr Pearson did not view CCTV footage of the Claimant (other than in the very limited case of the two clips obtained for the disciplinary proceedings). While we accepted that the Claimant on occasion would perform a quick change in the staff room, there was no reasonable basis for asserting that Mr Pearson had watched the Claimant undress and we were quite satisfied that he did not. There was no one occasion identified where the Claimant had been partially undressed or when she got changed. For all that anyone knew, the last time it happened might have been years before **July 2019**. To expect Mr Pearson to have retrospectively and randomly gone back through CCTV coverage on the off chance that the Claimant (or anyone else) might have been getting changed (about which he was unaware) was, to say the least, fanciful. This was, as we set out in our findings, an entirely spurious claim and it too fails and the complaints of harassment related to sex/direct discrimination are dismissed.

Constructive unfair dismissal

124. This complaint was not so straightforward. It is for the Claimant to establish that the Respondent repudiated her contract of employment. The term relied upon is that of mutual trust and confidence. As we have dismissed the complaints of sexual harassment, clearly the Claimant cannot rely on those as justifying her resignation.

125. In addition to the (unwarranted) complaint of harassment, the Claimant says that the following conduct seriously damaged or destroyed the relationship of trust and confidence:

125.1.1. By the Respondent giving her incorrect reasons for suspending her (that she had been given an incorrect reason, namely 'animosity');

125.1.2. By the Respondent making false allegations (pulling Bev's hair, tanning injections);

125.1.3. By Respondent operating CCTV in the staff room without her knowledge;

125.1.4. By the Respondent using audio facilities for the purposes of listening to her (and other staff) while in the staff room;

125.1.5. By the Respondent raising allegations against the Claimant about things of which the Respondent and Bev Pearson were previously aware (her language during a telephone call with her boyfriend; that she had injected a solution into her body) and

125.1.6. By the Respondent raising matters about her behaviour more generally and encouraging staff to make statements designed to attack her character;

Incorrect reasons for suspension

126. As to the first, we have set out in our findings that the Claimant was, in fact, told precisely why she was suspended: that it was because of her involvement in a fight in Magaluf and that she had allegedly pulled Bev Pearson's hair and that suspension was necessary to prevent animosity in the salon while the complaint was investigated – something she understood perfectly well. She has not established that she was given incorrect or inconsistent reasons for her suspension. We would add, that we conclude that the Respondent had reasonable and proper cause to suspend the Claimant because of this incident. An alleged assault on a manager is a serious allegation – had the matter proceeded to a disciplinary hearing and had the Respondent genuine and reasonable grounds to conclude that the Claimant had done as was alleged, it is not stretching things too much to say that this would highly likely have resulted in summary dismissal.

False allegations (pulling Bev's hair, tanning injections)

127. As to the second act relied on – that the hair pulling allegation was false – we have found that Bev Pearson and Kendal Forrest, who witnessed the event, were genuinely of the view that the Claimant had pulled Bev's hair in the midst of fighting with Francesca Toole, a fight which also involved Tamlyn Smith. To the extent that we found the allegation based on what Bev Pearson and others described and that her belief was genuine, it was not a 'false' allegation. She has not established, therefore, that the allegation was false. Similarly, she has not established anything other than that when confronted by Bev Pearson about injecting tanning solution, she told Bev that it was in fact 'fat dissolving solution'. Bev Pearson, however, genuinely believed the substance to be 'tanning solution' and, we would add that she had reasonable grounds to believe that, based on what she had been told by other members of staff and (on the Claimant's own account she accepted that she had led those members of staff to believe that it was tanning solution).

Operation of CCTV in the staff room without the Claimant's knowledge

128. As to the third act – the use of CCTV – we have found that the Claimant was aware of the use of CCTV even in the staff room, albeit she did not pay much attention to it, so used were the staff to the presence of CCTV cameras. As with the others, she has not established that CCTV was operated in the staff room without her knowledge.

129. That leaves the final two acts: audio recording and the addition of complaints beyond the Magaluf incident, some of which related to matters of which Bev Pearson had been aware but took no action.

The audio recording

130. It is one thing to know of and accept that CCTV cameras are recording images at work. However, the Claimant did not know that the camera in the staff room could – and in fact was, at least from **April 2019** – record what was being said. The Respondent's pleaded case was that not only did staff know of the use of audio recording but that they were told this in meetings. That was patently untrue based on Bev Pearson's oral evidence – which was that she covertly activated the audio facility in **April 2019**. The Claimant was not aware of this. We were very dubious about the evidence given by Bev Pearson as to the reason for activating the audio at that time, namely that it was to investigate a complaint of bullying and theft as regards to the Claimant – especially in light of the pleaded case. In our judgement, the vagueness of Mrs Pearson in this respect was such that we were satisfied that she had no reasonable or proper cause to activate audio in an area where staff would sit over lunch or breaks and have conversations or where they would speak to friends and family on the telephone. Yet that is what she did.

131. Looking at that state of affairs objectively, we conclude that to covertly activate the audio recording facility on CCTV cameras which would ordinarily not pick up private conversations and without reasonable or proper cause for doing so, is conduct which is calculated or likely to seriously damage the relationship of confidence and trust between employer and employee. We were far from satisfied by Bev Pearson's evidence as to why she activated the audio in April and concluded that the Respondent had no reasonable and proper cause for doing so. We conclude that this was repudiatory conduct on the part of the Respondent.

The wider allegations concerning the Claimant's general behaviour

132. We then considered the impact of adding the allegations to the original charge of assault in Magaluf. In particular, the allegations:

- That the Claimant had generally been aggressive, verbally abusive and threatening towards her colleagues in the salon;

- That she swore and used abusive language in the salon when on the phone;

- That she brought tanning injections into the salon

The allegation that the Claimant had been aggressive generally to staff in the salon

133. Mr Brien, acknowledging that the statements referred to different incidents with the Claimant, submitted that where there was a serious incident, such as there had been in Magaluf, it must be relevant and reasonable for an employer to ask about behaviour more generally in the business. We agree with that in principle. However, in this case, the wider behaviour of the Claimant was known about and either dealt with by management (in the case of the tanning injections, via a 'warning') or tolerated, as being the Claimant's personality.

134. Mr Brien submitted that it was reasonable and proper for an employer to add additional complaints based on information coming out of an investigation into an initial incident. We also agree with that statement in principle. However, it is always subject to analysis of the factual circumstances in any given case. Taking that first allegation regarding the Claimant's general behaviour: we conclude that the purpose of obtaining statements regarding the Claimant's general character and demeanour was to blacken her name and add support to the 'Magaluf' charge. This was not a case of an employer putting a charge to an employee only to find, in the course of an investigation into that matter, more information, which then formed the basis of additional allegations of misconduct which had been hitherto unknown. In this case, it was the opposite situation. The additional charges (i.e. additional to Magaluf) were set out in the letter of **09 July 2019** (**volume 1, page 49**). The statements were not obtained until after that date (see our findings in paragraph 87 above).

135. It is clear from reading the statements (about which we make no findings on their accuracy or otherwise) that the makers of the statement have been asked specifically to put in writing comments about the Claimant's wider behaviour. Given that allegation 1 (as with the other allegations) were put in writing by **09 July 2019**, it does not take much to infer from this that staff were specifically asked to write about the Claimant being aggressive, verbally abusive and threatening towards colleagues. It is stretching incredulity to expect the Tribunal to accept, as the Respondent contended:

(a) that the allegations arose out of the investigation and

(b) that staff were simply asked to make statements about the Claimant and Tamlyn without more explanation.

136. We infer from the content of the statements and the chronology and sequence of events as set out in our findings that the message to staff from Bev Pearson was, as the Claimant argued, that they should prepare negative statements about her with a view to making good those charges – we make it clear that in reaching this conclusion, we have attributed no weight at all to the untested statement from Saffron Imerson. It is an inference drawn from our findings on the sequence and timing of events, the evidence of Kendal Forrest (see paragraph 92 above) the content of the statements themselves and an assessment of the reliability and credibility of Bev Pearson's evidence on this issue.

137. Further, the statements about the Claimant's general behaviour in the salon contained information about the Claimant's behaviour and character which was not unknown to the Respondent or Bev Pearson. Looking at matters objectively, to encourage staff to write negatively about an employee's behaviour which is already known to the employer, to bolster an allegation of misconduct, is in itself conduct which is likely to seriously damage the relationship of confidence and trust. When the Claimant read the statements, she sensed, rightly in our judgement, that that is what had happened.

Allegation regarding abusive phone call with boyfriend

138. In relation to the second allegation contained in the letter of **09 July 2019** (the phone call), as we have set out in our findings, Sammyjo and Bev Pearson knew about this incident at the time it took place. They were present throughout the call, yet they took no action in relation to the Claimant swearing and using abusive language. There was no discussion, reprimand or warning about this after the event. Although they felt uncomfortable with what they heard, that is as far as it went. However, this phone call was made the subject of a complaint of gross misconduct in the letter of **09 July 2019**.

139. Contrary to the pleaded case, this did not arise out of the investigation into the Claimant's conduct following the Magaluf incident. As with the tanning issue, Bev Pearson and the Respondent were fully aware of what had happened on **22 June 2019** yet did nothing about it. In fact, they went on holiday with the Claimant the following day, **23 June 2019**. There was no discussion between Bev Pearson and Sammyjo Pearson about the Claimant's behaviour on that day or thereafter. To say that the allegation arose out of the investigation is simply not true. We conclude that Bev Pearson decided to raise the issue as an allegation against the Claimant to bolster the case for terminating her employment because of what happened in Magaluf.

Tanning injections

140. As regards the fourth allegation (the tanning injection), on the Respondent's own case, Bev Pearson had dealt with this by giving the Claimant a verbal warning, and there was no evidence of the Claimant performing any subsequent injections after that warning.

141. We have already highlighted in our findings the inconsistency between the Respondent's evidence and paragraph 15 of the Amended Grounds of Resistance, where the implication was that the Claimant continued to inject after the verbal warning. However, that was not borne out by the evidence. In the pleaded case, the Respondent purported to raise '*issues with the Claimant's past behaviour that had come to light as a result of the Respondent's investigation whilst the Claimant was suspended*'. However, the tanning allegation did not arise out of the investigation at all. Bev Pearson knew about it before the investigation and had chosen to deal with it by simply telling the Claimant that it was not allowed on the premises (what she called a warning). Yet this too was made the subject of a gross misconduct allegation in the letter of **09 July 2019**. We conclude that, following Magaluf, she decided to raise the matter as an allegation against the Claimant to bolster a case for terminating her employment because of what happened in Magaluf.

142. In circumstances where an employer decided to take no action on one matter and had, on its own account, taken action in relation to the second matter, to then put those same matters to an employee as allegations of gross misconduct, and to encourage staff to provide negative statements of the Claimant generally, is something which is likely to seriously damage the relationship of trust and confidence.

The effect of this conduct on the contract of employment

143. It is the cumulative effect of the Claimant discovering the use of audio recordings and the laying of these additional allegations and provision of negative statements that, viewed objectively, seriously damaged trust and confidence. There was, we conclude no reasonable or proper cause for that conduct.

144. Aside from the Magaluf incident, all of the things Bev Pearson describes, she knew about. This was not a case of an unknowing employer or manager asking staff about an employee's behaviour more widely only to be surprised by what they were then told and considering that this new information should form additional disciplinary allegations. It was a case of Bev Pearson knowing about elements of the Claimant's personality, formulating disciplinary allegations and then, we conclude, encouraging the staff to write about how the Claimant was aggressive, bullying and made them uncomfortable at work.

145. It was wholly unnecessary for Bev Pearson to do this. It was plain to us that the incident in Magaluf (whatever the truth of what happened there) was such that the Respondent was reasonably entitled to suspend the Claimant, investigate her conduct on that holiday and, if necessary take appropriate disciplinary action against her, which may well have led to justifiable summary dismissal. However, what the Respondent did, through Bev Pearson, was to deliberately obtain negative statements about the Claimant to bolster her own complaint.

146. The Claimant could see this, as soon as she read the statements. To the extent that the Claimant suggested that the statements had been written by 'Longlox management', we disagree. However, we conclude that the employees were invited by Bev Pearson to write about their views of the Claimant as a disruptive employee. Taken alongside the tabling of matters which had previously been dealt with or known and the use of audio recording, this, in our judgement, constituted repudiatory conduct by the employer.

Did the Claimant resign in response to a repudiatory breach?

147. Having found that the Respondent's conduct was repudiatory we next considered whether the Claimant resigned in part because of that. We concluded that she had. As set out in above under the 'relevant law' section, it is enough that the Claimant resigned in response at least in part to repudiatory breaches by the employer. We conclude that the Claimant did resign partly in response to the repudiatory breaches. She also resigned – in much greater part – because she believed she would be dismissed (given that Tamlyn Smith had been dismissed, and she was a member of the Pearson family).

Affirmation

148. We next considered whether the Claimant had affirmed the contract of employment. We concluded that she had affirmed the contract, which is essentially why her complaint of unfair constructive dismissal failed.

149. We looked carefully at the facts and timing before determining whether there had been affirmation in this case. As the authorities demonstrate, if an employee waits too long after the breach of contract before resigning, she may

be taken to have affirmed the contract. However, it is not delay in itself that stands against the Claimant. There must be something more than mere delay, which there was in this case.

150. The Claimant knew from **09 July 2019** what the allegations were and that they included the allegations in paragraph 75 above. She also knew from **31 July 2019** that there was audio recording of the conversation with her boyfriend and what was being said about her in the statements by other members of staff. Therefore, the cumulative repudiatory conduct in response to which she resigned, was known to her by the end of July. She did not resign until **09 September 2019,** effectively pulling the rug of decision-making from under Ms Barclay's feet. In this period, the Claimant positively engaged with the disciplinary process (as she accepted in cross examination). Further, during this time she did not complain about the existence of audio recordings and was not continuing in employment 'under protest'. Indeed, she asked for copies of the CCTV recordings to use in her defence to the allegations. She attended a disciplinary hearing with Ms Barclay. She prepared comments on statements and told Ms Barclay that she would send them to her – even though in the end she did not. Throughout this time, she was aware that she was being paid full pay.

151. We were satisfied, therefore, that by the time she had got to the disciplinary hearing itself (on **05 September 2019**) she had affirmed the contract. It remained for us to determine whether there was any 'last straw' which might have revived the earlier repudiatory breaches of which she had been aware by 31 July 2019. The last straw which the Claimant relied on as triggering her resignation (that Paula Barclay had told her at the disciplinary hearing that Mr Pearson had watched her on CCTV in the staff room) simply did not happen. The Claimant also contended that she had raised the issue of audio recording with Ms Barclay. On our findings, however, she did not raise this issue with the Respondent. We did not accept the Claimant's evidence that she raised the matter with Ms Barclay, whose evidence was not challenged. We were satisfied that the conduct of the disciplinary hearing was reasonable and proper. The Claimant did not challenge any aspect of it. There was nothing that contributed to any previous breaches by the Respondent. On the contrary, the Claimant thanked Ms Barclay for the way in which she conducted the meeting and had said she would send her comments and evidence. There was no last straw that formed part of a cumulative breach of the implied term of trust and confidence such that the right to resign was revived.

152. . Having concluded that the Claimant had affirmed the contract by the time she got to the disciplinary hearing on **05 September 2019** and that, on our findings, there was nothing from then to **09 September 2019** that revived the previously affirmed contract, the outcome was that the complaint of unfair constructive dismissal must fail. Accordingly, it is dismissed.

Closing remarks

153. There was much about the evidence on the Claimant's side and the Respondent's side which we found to be unsatisfactory in these proceedings. We have expressed our criticisms where it has been necessary to do so.

Employment Judge Sweeney

Date: 17th March 2022

APPENDIX

Harassment related to sex/sexual harassment

(1) Did R (through Matthew or Bev Pearson) engage in unwanted conduct related to sex? – the conduct being:

a. Inappropriately touching the Claimant on 06 April 2019

b. Witnessing the inappropriate touching of the Claimant on that date but doing nothing about it;

c. Via CCTV, watching the Claimant undress

(2) Did the conduct have the purpose or effect of--

(i) violating C's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for C?

(2) Did R (through Matthew Pearson) engage in unwanted conduct of a sexual nature? – the conduct being (a) and (c) above;

(3) Did the conduct have the purpose or effect referred to in section 26(1)(b)?

Direct sex discrimination

(3) Did R treat C less favourably on grounds of sex than R treats or would treat others by the conduct in (1) above?

Unfair constructive dismissal

(4) Did R conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between R and C and thus repudiate the contract of employment?

(5) Did C resign, at least in part, in response to R's repudiatory conduct?

(6) Did C affirm the contract of employment before resigning?