Case No: 2206953/2020

EMPLOYMENT TRIBUNALS

Claimant: Ms F Laloui

Respondent: **1.** Parks (London) Limited
2. Mr R Symons

Heard at: London Central
On: 13, 14, 15, 16, 20, 21, 22, 23, 24, 29 June 2022 and 30 June 2022 8 and 9 August 2022 in chambers

Before:
Employment Judge Heath
Mr J Carroll
Mr D Schoffield

Representation
Claimant: Mr K Harris (Counsel)
Respondent: Mr C Johnson (Tribunal Advocate)

RESERVED JUDGMENT

1. The claimant's claims of sex discrimination are not well-founded and are dismissed.

2. The claimant's claims of sex-related harassment are not well-founded and are dismissed.

3. The claimant's claims of victimisation are not well-founded and are dismissed.

4. The claimant's claim of unfair dismissal is not well-founded and is dismissed.

REASONS

Introduction

1. The claimant was the Sales Director of the first respondent company. She claims that from around January 2018 until her dismissal for the given reason of redundancy, which took effect on 31 October 2020, she was subject to a course of conduct which she says was sex discrimination, sex-related harassment and (after she complained of discrimination) victimisation. She says she was shouted at by the second respondent, marginalised and effectively managed out of the business in a sham redundancy.

The issues

2. The issues the tribunal had to decide were agreed between the parties, and are annexed to this judgment. The List of Issues agreed by the parties dealt with the issue of fairness under section 98(4) Employment Rights Act 1996 briefly. It was discussed with the parties and agreed that in determining fairness or unfairness of the dismissal the tribunal would be considering whether the employer had adequately warned and consulted, adopted fair criteria for selection (including), applied those criteria fairly and made reasonable efforts to offer alternative employment.

Procedure

3. The final hearing was listed for 12 days between 13 June 2022 and 30 June 2022.

4. On the first day of the hearing, the tribunal first considered the claimant's application to strike out the respondents' Responses on the basis that the manner in which proceedings have been conducted by or on behalf of the respondents had been unreasonable, and that a fair trial was no longer possible. We did not grant that application for reasons given in an oral decision on the morning of 14 June 2022. A judgment was sent to the parties on 17 June 2022, and written reasons were not requested. In short, we concluded that the respondents had not behaved unreasonably and a fair trial was possible.

5. On the morning of 14 June 2022 the claimant made an application to adjourn the hearing on the basis that one of her witnesses, Ms Nardozza, was outside the jurisdiction in Italy. The claimant's solicitors had contacted the Taking of Evidence Unit directly to enquire on whether it was lawful for a witness to give evidence to a tribunal from Italy, and made similar enquiries to the Italian embassy. They then contacted the tribunal. In the meantime, the *Presidential Guidance on Taking Oral Evidence by Video or Telephone from Persons Located Abroad* ("the Guidance") was published on 27 April 2022. As of today's date no communication from any source had been received indicating that it was lawful in Italy for a witness to give evidence to a tribunal in England and Wales. Mr Harris submitted that the witness was an important one, who gave evidence of discriminatory attitudes and who corroborated evidence of incidents relied on by the

claimant to show discriminatory conduct. The respondent did not oppose the application.

6. The tribunal considered that it would like to hear from the claimant's representatives of any efforts to secure Ms Nardozza's evidence by other means, specifically whether she was able to travel to the UK (as *per* paragraph 21 of the Guidance). The claimant was given until the afternoon to make enquiries, during which time the tribunal would read into the case.

7. At 2pm Mr Harris informed us that Ms Nardozza would be able to travel to the UK on 29 or 30 June 2022 to give evidence.

8. We were provided with a 900 page bundle, to which certain other documents were added as they were disclosed during the course of the hearing.

9. We heard from the following witnesses for the claimant:

    a. The claimant (15 and 16 June 2022);

    b. Ms Z Khan (16 June 2022);

    c. Ms S Chalmers (16 June 2022)

    d. Ms F Nardozza (29 June 2022);.

10. We heard the following witnesses for the respondents:-

    a. Mrs C Symons (20 June 2022);

    b. Ms Sylwia Lohez (20 June 2022);

    c. Ms L Hidasi (20 June 2022);

    d. Ms R Kunz (20 June 2022);

    e. Mr J Jordan (20 June 2022);

    f. Ms P Chen (21 June 2022);

    g. Mr D Shaw (21 June 2022);

    h. Mr N Gilbert (21 June 2022);

    i. Mrs A Thompson (22 June 2022);

    j. Ms L Dickinson (22 June 2022);

    k. Mr J Bond (22 June 2022);

    l. Ms R Townsend (23 June 2022);

    m. Mr R Symons – second respondent (22, 24, 29 June 2022);

11. Mr Johnson also tendered witness statements from the following but did not call them: - Ms A Pagett, Ms J Harling, Mr J Playfair, Ms L Massey,

Ms Payne, Mr N Paget, Mr P Broom, Ms P Long, Mr R Cranstone, Mr S Whelan, Mr Symons, Ms S Crupa. The tribunal did not attach any weight to these witness statements as the evidence contained within them had not been tested by cross-examination.

12. Mr Harris and Mr Johnson provided written submissions and made further oral closing submissions on 29 June 2022. The tribunal reserved its decision.

13. The tribunal deliberated in Chambers on 30 June 2022, 8 and 9 August 2022.

The facts

Approach to fact-finding

14. Before finding the facts, we would observe that there is a sharp difference in the accounts being put forward by the claimant and her witnesses, and the respondents and their witnesses. Before we embarked upon our fact-finding we reflected on the observations made by Leggatt J in *Gestmin SGPS SA v Credit Suisse (UK) Limited and another* [2013] EWHC 3560 (Comm) about the fallibility of human memory. He observed that the vividness of memories and the confidence in their accuracy of those who hold them is no guarantee of reliability. Memories are fluid and malleable and external information can cause dramatic changes to them. Memories of past beliefs can be unreliable in that they are liable to be brought into alignment with current beliefs by external influences. The process of litigation itself "*subjects the memories of witnesses to powerful biases*" which cause the memory of events to be based increasingly on such things as the contents of a witness statement and later interpretations of an event rather than the original experience of the event.

15. All of this led Leggatt J to the conclusion that "*the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts*". These observations, though made in the context of commercial litigation in the High Court, are applicable to employment litigation.

Preliminary observations on reliability

16. On the afternoon of 15 June 2022 an incident took place which, to a degree, had some influence on the way in which the tribunal assessed credibility. The claimant had started giving evidence on the morning of 15 June 2022. There had been a short break in the middle of the morning and the claimant was advised by the judge that she must not discuss the case with anyone during this break. Everyone present in the CVP room was advised to switch off their camera and microphone and that the hearing would resume when the panel members switched their cameras back on.

17. There was a further short break in the middle of the afternoon session. Again, the claimant was advised not to discuss the case with anyone during this short break. Shortly before the hearing resumed it was

apparent that someone attending the hearing had left their microphone on. A male voice was heard saying "Don't keep trying to justify yourself, it makes you sound bad". A female voice was heard, but the words were indistinguishable. The panel members switched on their cameras and microphones and shortly after this the claimant appeared on screen. Mr Johnson, who was cross-examining the claimant at this point, asked the claimant if she had been talking to anyone. The claimant said that she had been talking to an Amazon delivery driver.

18. The following morning Mr Johnson asked through the tribunal whether the claimant could provide evidence of an Amazon delivery the previous day. Later that day Mr Harris told us that he was instructed that there was no proof of an Amazon delivery because the delivery had been for the claimant's neighbour.

19. The nature of the comment we overheard is strongly suggestive of someone talking to a witness in the course of their evidence. On balance we find that this comment had been picked up by the claimant's microphone which we find she had not switched off. The comment was in the nature of someone trying to coach the claimant. It may be that this was unsolicited and the claimant was resisting this effort, but we cannot tell. We are less concerned by this than we were by what we find was an attempt to mislead us by the claimant about speaking to a delivery driver. We find that the claimant did not tell the tribunal the truth about this incident.

20. A finding of the claimant not telling the truth about this does not lead us to reject the claimant's evidence wholesale. Just because someone has not told the truth about one incident does not make them inherently unreliable, and does not mean that they are not telling the truth about other things. However, where there is a conflict between the evidence of the claimant and someone else, all other things being equal we would be likely to prefer the evidence of the other person.

21. We found that Mr Symons could be a little verbose and at times would give lengthy answers to simple questions, saying that he did not want to give an answer that could be misrepresented. We found nothing significant to undermine his overall credibility and reliability. There were numerous examples in the documentary evidence of his being open to criticism and prepared to accept blame.

The claimant

22. The claimant has worked in sales and marketing for over 20 years and has headed up sales, marketing and design teams for the international and domestic market. She is a French national, and is fluent in English and French as well as speaking a number of other languages. She was often referred to as "Fous" by her colleagues.

The respondent

23. The first respondent will be referred to as "the respondent" in these reasons, and the second respondent will be referred to as "Mr Symons". To avoid confusion, Mr Sidney Symons will be referred to by his full name.

24. The respondent was founded by Mrs Carol Symons and her husband Mr Sidney Symons in 1989. The respondent is a family owned and run company which manufactures fragranced products in its factory near Kidderminster, Worcestershire, and has a head office in central London. At the end of December 2019 and early January 2018 the respondent moved offices to those they currently occupy at 48a George Street, London. The move was from neighbouring premises.

25. For most of the time in which the events we are concerned with took place the respondent occupied the 48a George Street premises. There was a shop/showroom upstairs and an open plan office area downstairs. Virtually all of the protagonists involved in this case worked in this open plan space.

26. In December 2014 Mr Sidney Symons, who was 79 at the time, was diagnosed with cancer. Mr Symons, his son, had built up and run media businesses, but had no previous experience in manufacturing and retail, was "parachuted in" to help run the business from January 2015.

27. It became apparent before too long that Mr Sidney Symons stood a good chance of making a recovery. It was also apparent that the respondent required significant modernisation and restructuring, and that its legacy as a luxury brand had been damaged by many years of discount sales.

28. A programme of modernization was undertaken, which involved the development of non-discounted ranges aimed at the luxury retail market. A sales team would be recruited to drive sales in this area. It is against that context that the claimant was recruited on 3 April 2017. Mr Symons was impressed with the claimant's passion, commitment and drive. Her contract of employment set out a job title of "Business Development/Sales" but she was also known as a Sales Director or Head of Sales.

Ms Khan

29. In early November 2017 Ms Khan was working in the respondent's head office, having recently transferred from a shop in Wembley. Her exact role is not clear, but appears to have been a reasonably junior administrative role. In November 2017 Ms Hidasi, who also at that time had and administrative role, asked Ms Khan to add a list of products held in the factory at Kidderminster captured within an Excel spreadsheet to a delivery note so that the products could be delivered to a customer. It was not a complicated job (essentially involving just matching numbers), but it was one that required focus and attention to detail. Ms Hidasi initially gave Ms Khan some help.

30. Ms Khan took longer doing this job than Ms Hidasi expected, and also made errors which made Ms Hidasi frustrated. Mr Symons also became aware that a seemingly simple job was taking a long time and was not being done correctly. He explained that an inaccurate spreadsheet was useless. We find that, while he may have allowed his frustration to become known to Ms Khan through the tone of his voice, he was not shaming her or bullying her. This was simply a senior manager concerned that a simple but important job was taking a long time and not being done properly and

allowing his irritation to show. That said, we do not doubt that Ms Khan felt embarrassed and put upon.

31. Around this time Ms Khan discovered that she was pregnant. The first person she told was Ms Nardozza, but initially she did not make this information more widely known. Certainly, by the end of December she had not told Mr Symons. The office move was coming up, and towards the end of December Ms Khan was asked to pack some items in boxes in readiness for the move. The items that she packed would not have been heavy. Ms Khan asked for help with this and Mrs Thompson, Ms Hidasi and others helped her.

32. Ms Khan was concerned about this type of work and how it might affect her pregnancy. She told Ms Nardozza, the only one at this stage who knew Ms Khan's pregnancy, about her concerns. Ms Nardozza told the claimant that Ms Khan was pregnant and was worried about packing. At some point, and it is impossible to tell when, the claimant told Ms Khan that she herself had approached Mr Symons and Mr Taylor (the commercial director at that point) to say that Ms Khan was pregnant and doing heavy lifting and that they had "*just laughed and didn't care*". We find that the claimant did in fact tell Ms Khan this, but that no such approach took place and Mr Symons and Mr Taylor did not laugh at or disregard Ms Khan's concerns.

33. The respondent moved offices at the very end of December 2017 and early January 2018. Ms Khan was not required to lift or move heavy boxes.

Eurostar

34. In January 2018 the claimant, Mr Symons, Mr Taylor, Mrs Thompson, Ms Nardozza, a Mr Garlacz, Mr Sidney Symons and Mr Bond travelled on Eurostar to attend the Maison & Objets tradeshow. The respondent had pre-booked eight seats around two tables. Although a seating plan appeared in the bundle none of the witnesses could accurately recall precisely where each person sat. The claimant got on the train at Ashford International to join her colleagues who had all got on at St Pancras.

35. At some point in the journey the claimant was asked to swap seats. There was a lack of specificity in all of the evidence about who moved where. We find that there was a change of seating during the journey. What is far less clear is the reason for it. The claimant says that she was moved further away from Mr Symons and that he and Mr Taylor discussed sales. She says, in effect, that this was a deliberate ploy to marginalise her and prevent her from talking about sales, which were her domain. She says this was done because she was a woman.

36. There is no clear evidence from which the tribunal could begin to conclude what motivated the change of seating. We find it unlikely that Mr Symons would want to exclude his Sales Director from discussions about sales just before an important tradeshow. It is quite likely that any discussion Mr Symons had with Mr Taylor, the Commercial Director, might have touched upon sales. But this does not mean that the claimant was actively being excluded. The claimant did not make a complaint or even

discuss this with any of her colleagues at the time or for a long time subsequently.

37. We observe, at this point, that in addition to being close working colleagues (Mrs Thompson was in the sales team and was managed by the claimant) the claimant and Mrs Thompson were friends. It is clear that Mrs Thompson held the claimant in high esteem professionally, and valued her friendship. It is clear that the two women, at times, shared some of their frustrations in Whatsapp messages.

Harem

38. The tribunal was presented with varying accounts of an incident where Mr Symons, on his own admission, made reference to female colleagues as a "harem".

    a. In her witness statement the claimant says that to the female members of staff as his "harem" while travelling on the Eurostar train. In oral evidence she was not clear whether this was on the train, or at Paris shortly after disembarking.

    b. Ms Nardozza could not remember much detail, but remembered the word "harem" had been used. She believed it was while they were on the train.

    c. Mr Symons recalled having drinks in Paris before dinner one evening. In response to someone observing he was the only man there he joked "it's like travelling with a "harem". He denied using the possessive "my harem".

    d. Mrs Thompson in oral evidence recalled pre-dinner drinks in the bar of the Hilton hotel. She said Mr Symons made reference to a harem. She described it as an "off the cuff" remark at which no offence was taken. She said the people present "had a giggle and moved on" and that it was "never brought up again".

39. It has not been easy to resolve this conflict. Both 'sides' to this conflict of evidence are entrenched in their own narrative. On balance, however, we prefer the evidence of Mr Symons and Mrs Thompson. While conscious that Mrs Thompson's recollections could be influenced by all manner of things, such as loyalty to a boss or a desire to create a good impression, we found her an impressive witness in general. She came to the tribunal prepared, at times, to voice criticism of the respondents and to offer support to the claimant, who she clearly viewed as a valued colleague and a friend. The overall impression we formed of the claimant is that she was not backwards in articulating any perceived disadvantage. While we can see that there are many reasons why a woman might be reticent about raising criticism of sexism, sex-related harassment or discrimination, it is less likely (but, we accept, still not impossible) that that she would withhold her thoughts from her friends. The claimant's complaints about various matters are very obvious in the evidence before us, but Mrs Thompson and Ms Nardozza were very clear in their evidence that the claimant never raised the issue of sexism or discrimination with them.

40. This leads us to conclude that the likelier account is the one where the remark had a context and appeared a flippant response which was laughed at rather than the one where the remark was out-of-the-blue and poorly received. At this point we are simply finding facts and we will return to this point in our conclusions.

Reporting lines

41. The modernisation of the respondent's business was not a smooth process. The integration of a new software package was troublesome and profitability dipped significantly.

42. Additionally, the structure of the business at varying times gave scope for confusion about roles, responsibilities and reporting lines. At the top of the organisation or its owners Mr Sidney Symons and Mrs Carol Symons. Their day-to-day involvement in the running of the organisation was minimal. Below them was Mr Symons, the managing director. Prior to 2015 he had no experience in manufacturing or retail. In 2017 and early 2018 the respondent had a Commercial Director in the form of Mr Taylor. For a short period in 2019 Mr Charlesworth had the role of Commercial Director.

43. In head office there were also the design team, the sales team and finance. Originally there was a separate sales administration team which later came within the sales team. There was a factory in Kidderminster, Worcestershire and also a separate warehouse. There was significant confusion in reporting lines in that, for example, a sales administrator might have some tasks very much of a sales nature for which they would report to the Sales Director. Other tasks might be more financial or design related requiring reporting to the Head of Design or someone in finance. Additionally, Mr Symons took an active role in everything and people seemed to report to him for various things.

44. Various teams within the head office would also be liaising the factory and the warehouse. Essentially, the respondent's business designed products, manufactured them and sold them, and each of these parts of the business interacted with each other in ways that were not always straightforward.

45. All in all, a picture emerges of distinctly blurred reporting lines and a reasonably complex interplay between the elements of the respondent's business. It is entirely unsurprising in the day-to-day running of a busy business that conversations would be had and emails sent where people were left out of the loop. This is a fact of life in virtually every workplace. It was probably far more likely to happen in a workplace which operated like the respondents.

46. In a workplace such as this, it is also the case that there is probably significant scope for professional jealousies to develop if people perceived that their professional domain was being encroached upon or they perceived they were being left out of something.

February and March 2018

47. On 1 February 2018 the claimant sent an email saying that everything had gone quiet on a line the respondent was developing. She asked Mr Taylor for any suggestions on naming the line. Mr Symons responded asking Ms Chalmers to compile names into a list on a Trello card (Trello is a project management and communication program). Mr Taylor responded that he and Mr Symons were working on this and that there was no need for a meeting about it. Mr Symons asked Mr Taylor when he anticipated being ready to present on this. The claimant wrote on 2 February 2018 "*Due to the lack of communication and consultation on this line by [Mr Taylor and Mr Bond the Head of Design] I have not been consulted in any way shape or form since the start of the project and I will therefore assume that I have no involvement in this very important range*".

48. Mr Symons responded "*Understand . Rest assured your input on the range is very important. I'll speak to them today and ensure any communications are resolved*".

49. On 15 March 2018 Mr Taylor emailed the sales team and others about various products the respondent would be making. The claimant responded "*Just spoken to Federica and Alison and it seems that you have decided without consulting me to produce the line in 1 wick only… Really a pity that there is no communication whatsoever. Please revert urgently*". It appears that Mr Symons was copied in on this (on a number of the emails in the bundle it was difficult to tell who exactly had been the recipient of older emails in the chain) and he responded to Mr Taylor and to the claimant asking Mr Taylor to advise on this.

50. What is apparent is a sense from the claimant that she is being cut out of communication by Mr Taylor and possibly Mr Symons. This was something she was well able to articulate in writing. The background to this is that she had concerns that Mr Taylor may have overstated his experience before joining the respondent, and that he was not up to the role. She shared these concerns with Mr Symons. Mr Symons actually agreed with her and in March 2018 Mr Taylor's employment was terminated by Mr Symons.

<u>October 2018</u>

51. In October 2018 a coach came to do some work in the respondent's business. This involved talking to various people to see their views of what worked well within the business and what worked less well.

52. The coach spoke to the claimant and shared her responses in an email to Mr Symons. Mr Symons replied to this email making comments against the claimant's responses. The claimant was asked was asked "What is working well in the business?". Her response was "*Very straightforward talking to everyone, very transparent workplace*". She was asked "What is not working so well in the business?" And her response was "*Disorganisaton - and those lower down*". Against this, Mr Symons wrote "*AGREE*". She was asked "What should you improve?" And she responded "*The way I speak to Richard - I have improved but need to improve more*". Against this Mr Symons wrote "*AGREE, Fous but not really a problem for me, much more so for [Mr Bond]*".

53. We find that, even by her own admission at this stage, that the claimant spoke to Mr Symons in a challenging way. Mr Symons also felt that the ways she spoke to Mr Bond, the head of design, was a cause for concern.

Losing Ms Townsend and Ms Thompson as reports February 2019

54. The claimant's case is that Ms Townsend and Mrs Thompson were removed from her as staff reports. At this stage Ms Townsend was a sales administrator and Mrs Thompson a business development manager. She alleges that they had to report directly to Mr Symons.

55. Ms Townsend and Mrs Thompson both gave very clear evidence, which we accept, that they continued to report to the claimant. Our strong impression of the claimant is that if she had been undermined in this way she would have mentioned it (as she had when she felt Mr Taylor and Mr Symons had not been consulting her). There is no reference in the contemporaneous documentary evidence of this.

Criticism of Mrs Thompson 3 June 2019

56. The claimant alleges that at a sales forecast meeting on 3 June 2019 Mrs Thompson made a mistake in giving a figure in pounds sterling instead of euros. She alleges that Mr Symons got very angry and called her "incompetent, stupid, unforgettable". She said that Mr Symons would often criticise her and reduce her to tears.

57. Mrs Thompson was asked about this meeting in cross examination. She recalled that she had made an error in the forecast relating to currency. She described this as a "silly mistake" and she was annoyed at herself for making it. It was put to her that Mr Symons got angry, which she denied, saying he was understandably frustrated but not angry. It was put to her that Mr Symons called her "incompetent, stupid, unforgettable". Mrs Thompson replied "*Absolutely not. No way would he speak to anyone like that*". We accept her evidence.

Mr Charlesworth

58. In the summer of 2019 the respondent was looking to appoint another Commercial Director, and it identified Mr Charlesworth is suitable for the role. Prior to his appointment the claimant met him along with Mr Symons and Mr Playfair.

59. On 10 June 2019 Mr Charlesworth was appointed. On that day Mr Symons sent an email to all staff within the respondent. He set out that Mr Charlesworth's "*initial brief will be to review our marketing approach and materials, product listings, website, pricing & delivery strategies, sales processes & structure, reporting, objectives and targets for our various sales areas. In this role, he will work alongside Fous and myself in coordinating and tasking our respective efforts in OEM, off-price and international sales. As we try to move away from our current overdependence on discounted sales, Andrew will specifically be responsible for brand development and awareness, as well as full price UK sales*".

60. On 25 June 2019 Mr Charlesworth emailed the claimant, cc Mr Symons, looking to find time to meet to discuss commercial sales material that she and Mr Symons had been working on. He wanted to avoid any duplication of work and he also asked if he could sit in on the next sales meeting. The claimant responded suggesting a date and asking Mr Charlesworth to be more specific about sales material. Mr Charlesworth confirmed that he was working on sales presentation areas such as catalogues, pricelists, presentation tools etc.

61. On 6 July 2019 Mr Symons emailed Mr Charlesworth and the claimant (and others, it is not clear) about certain ranges. He said "*If Fous and [Mr Charlesworth] are in agreement on this (please feedback guys) then implement ASAP*". Mr Charlesworth emailed back to say that he thought this had all been agreed. Mr Symons emailed to ask for confirmation that they were in agreement on category names as well as ranges in each category. Mr Charlesworth emailed to say he was still confused and he was under the impression that a Mr Jordan and himself would be "*responsible for the website and the shop/showroom going forward*". Mr Symons emailed to say that it was agreed that Mr Charlesworth and Mr Jordan would be looking after the website. Mr Charlesworth sought confirmation that they would also be responsible for the shop and showroom, which Mr Symons did confirm.

62. This was an email chain which the claimant relies on as showing that her role was being undermined and that her tasks were being passed on to Mr Charlesworth. We do not find that this was the case. We note that Mr Charlesworth's duties as outlined in his email introduction to the company touched upon sales in a large degree. However, the stated purpose was to "review" these areas. We also note Mr Charlesworth initially reaching out to the claimant in June 2019 seeking to avoid duplication of work. Thereafter, in an email chain the claimant was part of, he sought clarity of his responsibilities. Mr Symons gave him clarity and the claimant did not seek to challenge this at the time. At least not within that chain.

<u>Mid-July 2019</u>

63. The hiring of Mr Charlesworth clearly was a cause for concern for the claimant. It is easy to see how she saw that her area of responsibility was being impinged upon. Additionally, the respondent organisation was not doing well financially. There were a number of heated exchanges between the claimant and Mr Symons in this period.

64. There was also a dispute between the claimant and Mr Charlesworth about something that is not entirely clear. Reading between the lines, the likelihood is that it related to the respective roles of these individuals. It appears this dispute ended with Mr Symons being required to support one or other of them. He backed the claimant, and Mr Charlesworth resigned on 5 August 2019.

65. Again, Mr Symons sent an email to all staff in the respondent announcing that Mr Charlesworth would be moving on. He cut and pasted the roles that he'd outlined in Mr Charlesworth's introduction email and pointed out that "*these will be taken over by myself until a suitable replacement can be found*". This indicates that the Commercial Director

role was one that the respondent intended to fill at some point in the future.

Autumn-Winter 2019 Gift Focus and Nocturne

66. We were taken to a number of email chains during the course of evidence. Before we address the detail, we remind ourselves that the respondent's was a busy business where hundreds of oral conversations, emails, Trello communications and other messages would be happening on a daily basis. We are aware that isolated email chains and other communications can acquire something of a prominence from the "armchair" view of the tribunal, which might be unwarranted against the backdrop of what would have been a blizzard of communication. We were told that there were around a hundred projects a year, and we were only taken to a few that happened over the course of a couple of years.

67. Additionally, it can sometimes be difficult to get a handle on the detail of emails that, no doubt, make a great deal more sense to those within the business. Matters have been complicated slightly further by some of the emails within the bundle not showing all of the recipients in older emails within the chains.

68. On 5 November 2019 Mrs Thompson emailed about a proposed half page advert in the magazine Gift Focus. She set out that she had discussed the issue with the claimant and outlined the specifications, the aims of the advert and what the company wished to communicate. It also set out the deadline of the following day, 6 November 2019. She followed this email up with an example attached.

69. On 6 November 2019 she forwarded this chain to Mr Bond, the Head of Design, with some further information. Mr Bond emailed Mrs Thompson asking whether they needed to check licences before running adverts. Mrs Thompson replied to him "*I just tried to call Fous and ask her, bear with me I'll try again*". This was the day of the deadline. Mr Bond suggested some text for the advert, and indicated that things needed to be checked with the claimant. At 3.06 pm Mr Bond emailed Mrs Thompson a proposed advert design asking for various things to be checked. 20 minutes later Mrs Thompson emailed this to Mr Symons and the claimant asking them to decide on which one they liked as it needed to be sent by 5 pm that day.

70. On 7 November 2019, the day after the deadline, the claimant emailed Mr Symons to say that she did not agree with his decision not to use and gave three reasons.

71. On 8 November 2019 at 1.46 pm the magazine emailed a low resolution PDF proof of the advert, asking for it to be checked and corrections to be suggested by the end of that day. At 2.34pm Mr Symons replied to the email, cc the claimant, Mr Bond, and Mrs Thompson, approving the advert. 20 minutes later the claimant emailed to say "*I'm extremely concerned that this document has been sent directly to Gift Focus without being shared with us. Feel this is been done behind our back… Where is the trust… I have no words to describe how disappointed I am. Wishing you all a great weekend because for now…I'm off!!!!!!!!!".*

72. Mr Symons replied "*James and I did the best we could in the limited time we had. Sorry or disappointed. If it's any consolation, I'm also unhappy with what we've had to publish*".

73. We find that the emails tend to show that a quick decision had to be made on the contents of the advert. Mr Bond communicated transparently with Mrs Thompson, someone who reported to the claimant, and attempted to involve the claimant in the decision-making but she was not available on the day of the deadline for its submission. The proof was sent back for checking and Mr Symons, as managing director, made a decision to approve. The evidence does not suggest that the claimant was being undermined or that things were done behind her back.

74. On 3 December 2019 there was reasonably extensive email correspondence involving members of the design team, the claimant and Mr Symons. It is not easy to get a handle on the technical detail, however, what is clear is that it there was some sort of breakdown in communication where Mr Bond indicated that he was struggling to find where he had missed some information. There was further to-ing and fro-ing between the claimant and Mr Bond, which led to Mr Symons setting out a new procedure to follow to avoid communication difficulties.

75. Mr Symons set out that in order to avoid misunderstandings in the future that a process would be followed in relation to bespoke items where the sales team would place a specification on Trello, Design would clarify it with Sales and then would be responsible for the output. With respect to licensees, Sales would input to Mr Symons, Mr Symons would brief and review with Design, and then Design and Mr Symons would present to Sales.

76. The claimant presents this as her being excluded from new product development and marketing and Mr Symons trying to make her look like a fool. We find that Mr Symons, on the contrary, was fairly and in measured terms setting out a process to avoid further communication difficulties which had led to some difficulties.

77. In November 2019 there were further serious difficulties for the respondent. The production at the factory was in disarray and there were delayed orders which tied up the sales and sales admin teams in chasing client orders. This had a devastating financial impact with an £805,000 loss being sustained for the 2019-20 financial trading year ending 31 January 2020. This was on top of the previous year's losses of £754,000.

<u>Maison & Objet</u>

78. in January 2020 the respondent was to exhibit at a tradeshow known as Maison & Objet. Ms Chalmers was the administrator coordinating the organisation of this.

79. On 13 December 2019 Mr Bond emailed Ms Chalmers to ask what stand number the respondent was to exhibit from. Ms Chalmers provided it. Mr Bond used this information to mock up a draft of an invitation to be sent to customers. He emailed this mockup to Ms Chalmers, Ms Chen, one of the sales administrators, and Mr Symons. Ms Chen emailed the

claimant to say that she needed a list of distributors to sign up for a mailing list to be sent out by a program called Mailchimp.

80. On 16 December 2019, the claimant emailed Ms Chen asking to look at the mockup before sending it out. Mr Bond emailed shortly afterwards to say that he was confused that what was needed.

81. On 20 December 2019 the claimant emailed Ms Chen, cc Mr Symons and Mr Bond, to say "*Please note the following before using the attached file for Maison & Objet invitation, as the responsibility will fall on you Richard and James as I had no consultation on the matter*". She went on to say that the invitation was not fit for purpose and set out a number of criticisms and said that they should proceed with this at their own risk. She addressed Mr Symons, saying that she would appreciate it if he would make clear from the outset if he wished to have her involvement in projects and not to assume that she had been copied in, only to ask for her opinion when it is too late.

82. The claimant suggests that, once again, she is being excluded. We cannot find that there was any such exclusion. Ms Chen had emailed the claimant on the day the mockup was produced, and it could have been requested then. It may have been the case that Mr Bond had neglected to cc the claimant, but it is difficult to see how this was an attempted exclusion as opposed to oversight.

Wades

83. In 2019 Mr Bond and visited a component supplier of the respondents, Wade Ceramics. On 11 November 2019 he had updated by email the sales team (including the claimant) on all the projects the design team was working on. He indicated that he was awaiting feedback from Wade and asked Mr Symons to contact them and to advise how to proceed. The claimant was kept updated by email on how the potential collaboration was progressing. The project came to nothing as it was interrupted by the subsequent pandemic.

84. We do not find that the claimant was excluded from a project. There is no evidence of her seeking involvement, or complaining about lack of it at the time.

Marie Claire advert

85. In December 2019 the respondent was proposing advertising in the French edition of the prestigious magazine Marie Claire. Ms Chen was in email communication with Mr Symons about it, and on 20 December 2019 Mr Symons said he would work on 100-word version of the advert. At around this time Mr Gilbert, an external consultant who worked with the respondent on a number of projects, had seen Mr Symons at the head office. Mr Gilbert worked with a native French-speaking subcontractor. Whilst in the office Mr Symons mentioned the advert and Mr Gilbert offered the subcontractor as someone who could provide the wording of the advert in French.

86. During his correspondence with Ms Chen Mr Symons emailed on 23 December 2019 "*If Nick Gilbert hasn't responded with French translation*

by 11am GMT, suggest forwarding to Alison or Fous to translate for Sophia". Later that day Ms Chen forwarded the proposed text for the advert in French to Ms Harling, a native French speaker who worked as a sales administrator for the respondent.

87. Ms Harling picked up that day that the proposed French text was not suitable. She responded to Ms Chen, cc the claimant, saying that she could provide a proper translation and she would be prepared to help on such matters in future provided she was contacted before the deadline.

88. The claimant responded to this email with a number of comments including to Ms Chen saying "*I have asked to be kept in the loop when I gave you the contact to follow-up which <u>again</u> has not been done*". Ms Chen, despite being on annual leave, responded to this saying that she refused to be the one "*taking the heat for any of this. I have been trying and trying to do things and the way you are treating me is completely unnecessary. First, I believe you are cc'ed into emails between me and Rich which had the French translations and I assumed that if it was bad French you would speak up and inform us, as I am not a French speaker and have no idea*." The claimant responded with a number of observations including "*When "a" person is cc'd → . By being cc'ed it is only for my information. Which was the case in this chain*".

89. We do not find that the claimant was excluded from this. Mr Symons accepted an offer of help from an external consultant. While it was the case that he could have relied on the claimant, Ms Harling or Mrs Thompson, who spoke good French, to help with the advert, he took the offer that was in front of him.

<u>Birch & Brook, Hurlingham</u>

90. In January 2020 Mr Symons was looking to organise a meeting with a Mr Gibbon at a candle manufacturer called Birch & Brooke, with a view to a project. There was an email chain involving Ms Chalmers, Mr Symons, the claimant and two individuals, including Mr Gibbon, from Birch & Brooke. On 10 January 2020 Mr Gibbon sent a detailed email outlining some agenda items for a proposed meeting. Part of the email covered sales, and Mr Gibbon specifically asked for comment from the claimant on aspects of sales. Mr Symons CCed the claimant in his reply.

91. There is no evidence here of the claimant being excluded from this project.

92. In early January 2020 there was email correspondence between a Ms Wakefield, the brand licensing manager for Hurlingham and Mr Symons and the claimant. In an email of 6 January 2020 Mr Symons replied to an email of Ms Wakefield's in which she had asked a number of questions, by embedding his responses in her email. There is one reference to the claimant being involved in renders for some candles and for the claimant's input in respect of other matters. On 8 January 2020 Ms Wakefield emailed raising a few issues including saying that she received an email from the claimant with a royalty report. She went on to say she would discuss future strategy with Mr Symons.

93. On 18 January 2020 Mr Symons emailed Ms Wakefield to say that Ms Chalmers would liaise with her to set up a meeting "*with myself and Fousilla at our offices in two weeks time*". Ms Wakefield sent a few chasing emails looking for a date, and Ms Chalmers proposed 6 February 2020. On 29 January 2020 the claimant emailed Ms Chalmers to say "*Please note that I don't need to be part of the meeting. I'm only in charge of raising the royalty invoice*." Ms Chalmers replied to the claimant "*Sorry just saw this email after I responded to Sarah. Rich mentioned you and himself to be involved at the meeting? Are you okay to be part of the meeting? Your calendar is free from the Thursday, apart from Tom Dixon which is at 3 PM which you are both going to anyway*".

94. We find that the claimant was not being excluded from this project, but rather that Mr Symons was actively including her. It is the claimant herself who sought to withdraw or minimise her involvement, in this project.

Heated exchange about Omyague trade fair

95. On 23 January 2020 Mr Symons was at his desk working on a time critical piece of work which he needed to complete by noon. At 11.45am the claimant and Mr Sidney Symons approached Mr Symons asking for his agreement to exhibit at the Omyague trade fair. Mr Symons was under pressure, somewhat preoccupied, and did not want to discuss this issue as he had a deadline to hit. The claimant and Mr Sidney Symons continued to press him for an answer. Mr Symons became somewhat irritable, raised his voice and said words to the effect that if they wanted an answer now it would be "no". Voices were raised on all sides of this argument. This account was confirmed by Mrs Thompson who saw what went on. We accept her evidence.

96. But this, the claimant grabbed her bag and stormed out of the office saying that it was impossible to work there. Later that day the air was cleared and Mr Symons agreed to the respondent exhibiting at the trade show.

28 January 2020 "Granary" meeting

97. On 28 January 2020 a strategy meeting took place at the Granary Hotel near the respondent's factory in Kidderminster. As set out earlier, the respondents had just recorded devastating losses for the previous financial year. Prior to the previous Christmas the factory had not been able to fulfil orders for its biggest customer. We accept the evidence from Mr Symons that this was something of a "make or break" meeting. Mr Playfair, a consultant who works with SMEs and family businesses, specializing in working with clients in financial distress and turning them round, was chairing the meeting. It was a companywide meeting involving both head office and the factory.

98. Mrs Thompson was sitting next to Mr Symons. As we have indicated earlier, we found Mrs Thompson a balanced and impressive witness. She did not strike us as a witness who has simply come to the tribunal to toe the company line. In the events we are about to describe she was critical of Mr Playfair, and to a reasonable degree, supported the claimant.

99. At some point the meeting focused on the implementation of a communications software package called Click Up. Mr Symons was describing how it would operate. The claimant interrupted him and asked a number of times words to the effect of "Who am I? What am I in this?" and getting upset and loud. Mr Symons felt that this was not the time and place for the claimant to be raising this and he attempted to defuse the situation by saying "Fous, Fous, Fous" getting progressively louder as the claimant did not stop her interruption.

100. Mr Playfair, the chair of the meeting, got very angry. He walked across the room, red in the face and approached the claimant wagging his finger towards her face saying words to the effect of "If you can't be quiet get out of my meeting".

101. We do not find that Mr Symons shouted at the claimant, but that he was trying to calm her down and in doing so he became louder and louder. We find that Mr Playfair was angry and frustrated that his important meeting was being derailed. We accept the tenor of Mrs Thompson's evidence that Mr Playfair, nonetheless, overreacted and presented as angry and aggressive. We accept the claimant's evidence to the effect that she found Mr Playfair's behaviour distressing and upsetting. We accept Mrs Thompson's evidence that there was not a great deal that Mr Symons could have done differently in what was an extremely stressful and emotionally heightened situation.

Meeting 31 January 2020

102. On 29 January 2020 the claimant emailed Mr Sidney Symons to complain about Mr Playfair's behaviour. She described his tone and language is inappropriate and aggressive, describing him being red and pointing his finger at her and said at one point she thought he was going to hit her. She went on to say that he had created an "intimidating, hostile, degrading, humiliating and offensive environment while he could have easily asked me nicely the same thing". We note the claimant was setting out some of the wording of section 27 Equality Act 2010, but omitting any reference to a protected characteristic.

103. Mr Sidney Symons replied the following day that he had taken into account the claimant's email and would she "but the manner in which you were spoken to will never happen again – you will receive my full support".

104. A meeting took place on 31 January 2020 attended by the claimant, Mr Sidney Symons, Mr Symons and, for some of the time, Mrs Carol Symons.

105. In the bundle were handwritten notes taken by Mr Symons. We accept that these were contemporaneous brief written notes of the meeting. The notes attempt to set out who spoke during the meeting and what they said. In the right hand side of the pages were entries in which Mr Symons set out what he said during the meeting. These minutes have the hallmark of authenticity. They are fairly brief and appear to be attempts to catch the gist of what was being said. They are by no means verbatim.

106. The claimant also presented in the bundle what are described as "Meeting Minutes". During the course of her evidence the claimant explained that she had written some notes before the meeting into a Word

document and then typed into that document some more recollections after the meeting. This became the "Meeting Minutes". We cannot say, with confidence, quite how long after the meeting the content was provided. These "minutes" have some numbered points and some headings. The document does not appear to be authentic minutes. To some extent it might be the case that the claimant was beginning to set out her narrative rather than accurately reflect the meeting. We consider that Mr Symons minutes are a more accurate reflection of what was said, and are more reliable for the purposes of our findings of fact.

107. Mr Symons offered to record the meeting, but the claimant did not want this. The meeting lasted a couple of hours, and covered a lot of ground. Some key points included the following. In this meeting the claimant set out that she had felt humiliated by the actions of Mr Playfair and also complained about the Omyague incident where she felt Mr Symons had been dismissive. Mrs Symons said it may seem that he was dismissive but he was not. Mr Symons said that he had raised his voice in response to the claimant talking over him.

108. The claimant said that she felt she had no support from Mr Symons at the Granary meeting. Mr Symons said that the claimant had interrupted him while he was attempting to answer questions and that Mr Playfair had to rescue him and shout over the claimant.

109. The claimant raised problems with the Maison & Objet leaflet, the Marie Claire advert translation. She said that Mr Symons was the only person that she had a problem with. Mr Symons countered that he was not the only one. The claimant pressed him to name names, and he referred to Ms Bond, to which the claimant responded "the girl who cost us £100k".

110. Mr Symons asked how the claimant proposed the problem should be resolved. The claimant indicated that she wanted an apology from Mr Playfair, and that it must be face-to-face.

111. After the meeting Mr Symons noted some reflections from the meeting. He felt that the claimant had deflected certain points, such as attacking Ms Bond's credibility as opposed to dealing with the issue. He noted she had no recognition or an open mind as to whether any fault lay with her.

112. While we have noted some text from section 27 Equality Act 2010 in the claimant's request for the meeting (which also appears in her "minutes" of the meeting) we do not find on balance that the claimant specifically, or even by implication, communicated that she had been discriminated against or was the subject of any breach of the Equality Act 2010. We find there was no act protected under section 27 of the Act.

<u>Tom Dixon Meeting</u>

113. On 6 February 2020 the claimant and Mr Symons attended a meeting with a firm called Tom Dixon. As she and Mr Symons left the office the claimant she asked Mr Bond where some sales catalogues were. It would have been more appropriate for her to have asked this of a sales administrator than the Head of Design, and it is likely that Mr Symons may have suggested to the claimant that she ask Ms Harling. Mrs Thompson observed this interaction and noticed nothing untoward. We find that there

was nothing belittling or otherwise negative about any such suggestion by Mr Symons.

Exclusion from factory meeting

114. It had not been easy to establish what happened with respect to the claimant's allegation that she was excluded from a project to create a new brand from old stock and to visit the factory to discuss it. We have done our best to piece together a narrative from a fairly murky picture.

115. At some point in early February 2020 Mr Bond attended a meeting at the factory in Kidderminster. There was some discussion during this meeting about ways to clear old stock from the factory and/or warehouse. A tentative idea was suggested of creating a new brand by piecing together old components.

116. In early February 2020 a meeting at the warehouse was proposed involving Mr Bond and the claimant and Mrs Thompson from the sales team. All were involved in an email chain that tried to set this up. On 6 February 2020 the claimant emailed some ideas of how the meeting should go. Ten minutes later Mr Bond emailed all in the chain to say that he had just got off the phone with Ms Massey from the factory "*and confirmed @Alison Thompson suggestion of a new plan of action*". He confirmed that Ms Massey would send components down to head office to be reviewed. Following that a trip would be arranged to the factory "*to discuss the potential plan of action in line with Fous forecast*".

117. The claimant replied to say that she would need to be at the factory and made some other suggestion. Mr Bond replied "*Noted. Seems like we are all on the same page*" and suggested that they could review the stock and then go up to the factory.

118. At some point later in February 2020 Mr Bond had a meeting at the factory to discuss other issues. While he was at the factory there was an impromptu discussion about old stock.

119. Shortly after this meeting on 21 February 2020 Mr Bond posted on Click Up "*Following the meeting at the factory we are going to look at creating a brand to clear the old boy stock. This is to avoid destroying the Parks brand further with poor quality components @Richard Symons @Fousilla @Neil Paget*". Mr Bond clearly tagged the claimant in for her attention.

120. At 6.19pm that evening the claimant emailed Mr Symons quoting the Click Up post and saying that she was "*deeply concerned that this type of decision are being taken without involving any senior sales person. I have been recently facing too many strategic decisions taken between Design and RS and excluding sales team/Senior management*". She went on to make further observations about roles, control and strategy.

121. Twenty minutes later Mr Symons responded saying "the 'decision' that was made was to "look at creating a brand"' to clear stock. He pointed out he had discussed this with the claimant, taken her views on board and relayed to the team. He said that there would be further discussion.

122. The claimant's case was that the project was very much a sales endeavour and that it did not make sense for Design to lead on it. We were persuaded by Mr Bond's evidence on this issue. There was old stock consisting of various components, such as vessels, candles, packaging etc. The first stage of creating a new brand would be to carry out some sort of stock take to see what components were available. The next stage would be for some sort of assessment to be done about how the components worked with each other. Part of this process would involve the design team mocking up designs of potential finished products in a computer-aided-design system. The team could "play around" with colours, designs, shapes and sizes to see what the company could put together. It is only at this stage that the company could have a sense of what it could sell. The design comes first, and it therefore made perfect sense that the Head of Design would lead on the project. We do not find that the claimant was sidelined in any way in the development of this project.

123. We have not been able to establish from the documents what happened about the proposed follow-up meeting involving the design and the sales team that was to take place at the factory. Mr Bond and Mrs Thompson's recollection was that it took place at a time when the claimant and Mrs Thompson were not available. We accept this evidence. We do not find that any active attempts were made to exclude the claimant from this meeting.

Omyague trade fair

124. The Omyague trade show took place on 26 February 2020. On this day Mr Symons had also booked some training for Ms Harling, Ms Townsend and Ms Chen. The claimant attended the tradeshow with Mrs Thompson. The claimant needed to leave the tradeshow early as she had to travel to Spain. Mrs Thompson, who was pregnant, would not be able to clear up. The claimant had tried to ask for Ms Chalmers, Ms Townsend or Ms Harling to come and help clear away by email on 21 February 2020.

125. On 26 February 2020 Mr Symons became aware that Ms Harling had not attended the training he had arranged for her and others. He was told that Ms Harling was helping out at the trade fair. He telephoned the claimant to ask what was going on. Mr Symons was unaware of what had gone on and the reasons for Ms Harling's absence and there was nothing in the diary at that point to indicate that she would be attending the show. He found the claimant to be evasive in her answers and he became frustrated and annoyed. He repeatedly asked her when she had asked Ms Harling, and the call became heated on both sides.

126. We find that there had been something of a breakdown in communication on this issue and that Mr Symons was frustrated and annoyed that a member of staff had been taken away from training. His annoyance was compounded with what he saw was evasive answers by the claimant.

Meeting 3 March 2020

127. On 26 February 2020, after the conversation about the tradeshow, the claimant emailed Mr Symons and Mr Sidney Symons to set up a meeting. She said that in the past she had enjoyed working with the respondent but things have changed and she needed "to review her future collaboration".

128. This meeting did take place on 3 March 2020, and again Mr Symons wrote contemporaneous minutes which we accept give a reasonable, if brief, account of what was discussed.

129. The claimant raised the telephone conversation about the tradeshow. Mr Symons said that the claimant had not let him know that she needed Ms Harling and could not reschedule the training. The claimant raised that she had not received an apology from Mr Playfair, and Mr Symons pointed out that he had not been in London during February. The claimant stressed that it would need to be face-to-face.

130. The claimant said she would prefer to resign than carry on like this, and said she did not recognise herself. Mr Symons urged her not to resign. Mr Sidney Symons asked what the solution needed to be. Everyone agreed that better communication was needed and that there should be no raised voices.

131. Mr Sidney Symons left the meeting and the claimant raised the Maison & Objets leaflet, the Kidderminster meeting about the new brand, the Marie Claire translation and the John Playfair apology. Mr Symons urged a focus on a solution, pointing out that they wanted the same thing, and were both adults.

132. While we find that the claimant aired her grievances, she did not make any complaint that she had been discriminated against or otherwise been subject to a breach of the Equality Act 2010.

Discounted Goods

133. In early to mid March Mr Symons approved the discounting of some of the respondent's range, and this appeared on the respondent's Instagram account. The claimant Whatsapped Mr Symons asking who had approved this. Mr Symons confirmed that he had approved it. The claimant said that she was not happy. Mr Symons said he understood and offered to talk through the issue with her. He acknowledged that he "*shouldn't have gone live without me checking with u and as per usual I got hijacked. That's not an excuse, just the reason*".

134. This was one of a number of examples of Mr Symons being prepared to accept fault and apologise for it. We find, here, that he, as managing director, took a hasty decision which, in retrospect, he accepted he should have involved the claimant in. We do not find any attempt to undermine the claimant.

Appointment of Mr Whelan

135. On 7 March 2020 Mr Symons emailed Mr Playfair about engaging an external consultant, Mr Whelan, to carry out some work for the respondent. He set out the scope this work, which was fairly extensive. Mr Whelan was to conduct a significant review of the sales function and to

make recommendations on what improvements could be made. There would be a review of Mr Whelan's findings and a strategy would be agreed on how to implement improvements. As a third stage Mr Whelan would assist with the implementation of the improvements, review them and fine tune them. He would be paid for his review, and then engaged on a monthly retainer.

136. Mr Whelan carried out his review and produced a report on 19 March 2020. In the course of the review he sat in on a sales meeting and spoke to a number of people within the organisation (including the claimant).

Haven

137. On 27 March 2020 there was an email chain involving Mr Symons, Mr Bond, the claimant, Ms Chen, and Ms Kunz. There was an open exchange of differing views about the naming of a new range. The exchange ended with Mr Symons saying "*Afraid I'm gong to lead here. Please go with HAVEN + flaming rose concept"*. That said, he asked the claimant her view about the name Havre?

138. We find that Mr Symons was not undermining the claimant or imposing his authority in a high-handed way. Sometimes leaders will invite dialogue, listen to views and then impose their own. This was all that happened here, and there was nothing undermining about it.

Furlough

139. On 23 March 2020 the UK went into "lockdown". The pandemic had a significant effect on the respondent's business. The claimant's evidence that tribunal was that she reluctantly accepted furlough. Any reluctance was not apparent in the contemporaneous documentation, although she did ask for her furlough to be delayed for a short while, and her furlough took effect on 1 April 2020. She was one of 32 people, of both sexes, to be furloughed. The head office operated very much on a "skeleton crew".

Hand sanitiser

140. While the claimant was on furlough she submitted a proposal to manufacture hand sanitiser. Mr Symons looked into this, and concluded that the respondent was not in a position to do this as it would require an alcohol licence. At the claimant's suggestion he contacted another company to see if they could manufacture the hand sanitiser for the respondent.

141. There were some difficulties in taking this possible deal forward, and on 15 April 2020 there was a telephone conversation between the claimant and Mr Symons. It was a difficult conversation with both individuals talking over each other and raising their voices. There was irritation, and possibly anger, on both sides and Mr Symons ended the call.

Redundancy at the factory

142. In May 2020 28 members of staff at the Kidderminster factory were put at risk of redundancy.

Ms Hidasi's re-appointment

143. Ms Hidasi had worked for the respondent as a sales administrator from January 2016 until May 2019. She left for a number of reasons, including the fact that she could not work with the claimant or the other sales managers and found there was a lack of communication.

144. In the spring of 2020 Ms Hidasi had been placed on furlough by her employer. She had been talking to Mr Bond informally from November 2019 and again in February 2020 about the possibility of coming back. On 29 May 2020 Mr Symons called Ms Hidasi to tell her that he didn't know if there was a possible role for her. On 3 June 2020 he again called her to ask if she wanted to go back. They agreed that Ms Hidasi would go back and start on 1 July 2020.

145. Ms Hidasi was clear, and we accept her evidence, that she came back into the role of Project Manager. Hers was not a sales role and she was candid about her limited abilities in sales. Her role was a more technical, though client facing role. She would liaise with customers about the practicalities of their orders. It would mean that she would have a role in a first sales meeting with a customer, but her role in this meeting would not be sales-related but to liaise with customer about the more practical aspects of the proposed order.

146. We do not find that Ms Hidasi was engaged in any way to replace the claimant or that her project manager role impinged on any of the claimant's role.

Mr Whelan's expanded role

147. Mrs Thomson was part of the "skeleton crew" which operated during the early months of the pandemic. However, she began her maternity leave on 16 June 2026 weeks early due to the premature birth of her daughter.

148. When Mrs Thompson went on leave Mr Whelan effectively stepped into her role as an external consultant.

Removal from projects

149. The claimant made more generalised claims that she had been removed from clearance projects, bespoke projects, licensed projects and product development. It was not easy to follow her claims, but each time we were taken to emails in relation to these projects she appeared to be in the email chain. It was difficult to see how she alleged that she was removed from these projects as she appeared to be involved in them.

Redundancy consultation

150. On 4 June 2020 Mr Symons followed up a conversation he had had with the claimant with an email subject matter Redundancy Consultation. He indicated that the respondent had to enter into consultation and proposed a meeting the following week. The claimant had health issues at the time having just had surgery.

151. Mr Symons outlined the situation in the company was in, and the impact of the pandemic on retail and its customers. The respondent's largest customer had been unable to place orders for the past two months and would not be placing any further ones for the next three months. This reflected the general picture in retail around the world. This would impact the sales revenue of the company and meant that there needed to be a reduction in team numbers to protect the business.

152. Mr Symons outlined some cost-cutting measures already undertaken, and set out some proposals. As regards sales, he pointed out that the reduced marketplace meant a lower sales forecast and that a post-COVID recession would mean a smaller team would be needed. He indicated that a consultation would take place, and that the claimant would be asked for her suggestions on ways to avoid redundancies.

153. The claimant replied later that day that she had just had major surgery on her jaw, but she could not speak and that she requested that she and the respondent corresponded by email. Mr Symons replied the same day, saying he understood and asked the claimant to "email with options/alternatives on Tuesday and I'll respond in kind".

154. On 9 June 2020 the claimant emailed Mr Symons, Mr Sidney Symons and Mrs Symons. She asked for the numbers and categories of employees involved, the numbers of employees in each category, how the respondent planned to select employees for redundancy, what criteria had they used to select her as redundant, will her position be permanently vacated and what options/changes they considered in respect of the business model.

155. Mr Symons responded later that day embedding his answers in the claimant's previous email. He set out the number of roles at risk across the whole of the organisation. There were 31 roles at risk, 23 of which were in the factory. There was only one role at risk within sales and that was the claimant's role of Sales Director. He indicated that if the role at risk was a stand-alone role performed by one member of staff then there would be individual consultation. He stressed that the claimant had not been selected for redundancy, but placed at risk due to the reduced marketplace and a lower sales forecast. The proposal going forward was that the reduction in headcount would be absorbed by himself. He stressed that this consultation was to see if an alternative solution could be found so that compulsory redundancy would not happen. He said that in the future when profitability returned it was hoped that the sales team would grow again, but this was not likely in the short to mid term. He asked the claimant to clarify what she meant about changes to the business model. If this related to the respondent as a whole, it would be a very long list as numerous discussions had taken place considering options. He indicated that it might be more constructive to outline the business model they were moving towards to see if she could provide alternative options that the respondent had been unable to find.

156. On 1 July 2020 the claimant responded asking for further clarification of certain things. She asked about her own role, Mrs Thompson's role, Mr Symons's role and Mr Whelan's role. She asked how the pool had been identified and what criteria had been used. She indicated that Mr Symons

absorbing the claimant's role, taken together with Mrs Thompson's maternity leave and Ms Chalmers is redundancy would involve Mr Symons working a 155 hour week. She asked for views about retaining two designers and consultants and asked about the basis he had updated a sales forecast.

157. Mr Symons replied on 2 July 2020. He pointed out that Mr Whelan had helped with Mrs Thompson's work after she had gone on premature maternity leave. He pointed out that Mr Whelan's main role was of a consultant and he did not occupy an established role within the structure. He was developing strategy, processes and systems, which needed a particular level of experience. The consultancy would be a more cost-effective option than having a full-time director role on the structure. He pointed out that the services provided by Mr Whelan were not the same as the claimant's role. He set out that there was no pool within sales as only one role was at risk. He set out that within sales the workload has reduced, but management of the sales team was absorbed by himself and that the pure functions of a salesperson have been absorbed between himself, Ms Hidasi and Mr Whelan. He set out an increased workload for design to facilitate the growth in bespoke sales and online and full price products, but said that a particular consultant would no longer be engaged. He set out that the sales forecast analysis had been conducted in the same way as always.

Mr Shaw's appointment

158. Mr Taylor had been the Commercial Director in 2017 and up to March 2018, and that Mr Charlesworth had occupied that role for a month in the summer of 2019. The announcement of Mr Charlesworth's departure had set out that Mr Symons would undertake his duties until a replacement was found.

159. Mr Shaw has considerable experience in the home fragrance industry, having been General Manager at a home fragrance company for 10 years, dealing very much with manufacturing, supply chains and sales. In 2020 he was setting up a consultancy business. Mr Playfair and introduced him to Mr Symons in May 2020 with a view to Mr Shaw doing some consultancy work.

160. On 3 July 2020 Mr had an interview with Mr Symons to discuss a possible working arrangement. On 8 July Mr Shaw had a second interview at which the prospect of a Commercial Director role was discussed.

161. On or before 20 July 2020 Mr Symons offered Mr Shaw the role of Commercial Director. He followed this up with an email on 20 July 2020 in which he set out some proposed terms, which included the following

> *"As I mentioned, we're looking at either a last week of August / first week September start.*
>
> *We'd like to get you to 60k salary (£5k per month) in December (plus bonus on years company-wide performance - our financial year ends 31st Jan) but can afford to start you off at £4k p/m with a view to making up the difference in December (based on achieving target).*

To summarise ;

Package is £60k plus company-wide bonus

Starting salary is £4k per month for first 3 months, with £3k performance-related bonus)".

162. There was further email correspondence about contractual terms into August.

Further redundancy consultation with the claimant

163. On 7 July 2020 the claimant again emailed Mr Symons. She pointed out that management was only a very small part of the functions, that 99.5% of it was sales and marketing and that making someone redundant was not to do with the title but responsibilities and tasks. She said that Mrs Thompson and Mr Symons himself should be added into the pool and that Ms Hidasi should not have been recruited.

164. She went on to say that she had the same experience and expertise as Mr Whelan and did not understand how he could be as cost-effective to retain. She said that redundancy was not to vacate her role and replace it with an external consultant. She considered that Mr Whelan was being hired to do her job. She said that there were no alternatives to redundancy as there were no suitable alternative roles as they would involve demotions or would be lower in package value. Other roles had been filled by people from outside the company.

165. The following day, 8 July 2020, Mr Symons provided a lengthy and thorough response. He acknowledged that redundancy was about responsibilities rather than titles. He outlined the pre-Covid business strategy and set out how this had to change significantly after the pandemic. The new strategy would require a more streamlined sales function requiring only one salesperson to consultant the initial meeting with the rest handled by the design, sales admin and production teams.

166. He pointed out that the claimant's suggestion that Mrs Thompson be pooled with her was contradicted by the claimant's statement that she would not wish to be demoted to a lower level of remuneration (Mrs Thompson earned significantly less than the claimant). He illustrated how he was inappropriate to be in the same pool because of his additional roles outside of sales. He pointed out that Ms Hidasi was a project manager providing primarily a post sales service. He pointed out Mr Williams level of expertise and experience and that his consultancy fees were lower than an annual salary. He was, however, helping out with Mrs Johnson's sales role whilst she was on maternity leave.

167. Mr Symons invited the claimant to give examples of roles she would like to be considered for which had been filled by someone else, and if so the respondent could consider pooling her with these individuals and establishing selection criteria to find the best fit for the role. He said that conducting consultation by email was a little sterile. He proposed conducting the next meeting over the phone and that each party record the proceedings. He indicated that the next meeting could lead to her dismissal if no alternatives could be found

168. On 14 July 2020 the claimant again emailed Mr Symons. She made further comments about her title. She said that she had been trying to make the point that Mr Symons, Mrs Thompson and herself were sharing the same duties and could be scored against each other by an objective selection matrix. She did not consider that she would have scored the lowest had this taken place and would not have gone through the rest of the process. She disputed that Mr Symons's role does not translate to the reality of how much time he spent on sales. She clarified that she was not saying that Ms Hidasi should have been added to the pool, but that she should not have been recruited in the first place. She made further observations about business strategy and the sales forecast. She made observations about the relative levels of expertise and experience between her and Mr Whelan. Finally, she said she was not well enough to deal with matters by telephone and would prefer to continue consultation by email.

169. On 16 July 2020 Mr Symons responded to the claimant. He embedded his responses within her email. He indicated that there was no pool and then pasted his previous responses on this issue. He set out his disagreement on the claimant's interpretation of his role in numbered points. He set out in detail the circumstances of Ms Hidasi's rejoining the respondent, including her first expressions of interest in November 2019, and her agreement to work as project manager but to take on limited responsibilities in "bespoke sales" until Mrs Thompson returned from maternity leave. He set out in detail his disagreement with the claimant's interpretation of the business strategy, and the forecast. He said that he had checked with Mr Whelan and Mrs Thompson about a quote that the claimant had attributed to Mr Whelan, and that both people denied that such a comment had been made.. He said that Mr Whelan had been engaged as a consultant with the claimant's full knowledge and was only helping with sales as a result of Mrs Thompson's premature maternity leave. He made comments about Mr Whelan's experience.

170. On 21 July 2020 the claimant responded to Mr Symons's email. She commented that they were going round in circles repeating things that had already been said. She said that she was to raise two points. First she said that the respondent had failed in its duty to try find her alternative roles within the business, which she identified as Mr Whelan and Ms Hidasi's roles. She then went on to say that over the past two years she had raised "*informal and formal grievances in connection with your attitude towards me for bullying, undermining, sexism, harassment, and persistent shouting and aggression*". As set out above, we find as a fact that the claimant had not raised any previous allegations of "sexism" or anything else which could be interpreted as a breach of the Equality Act 2010.

<u>21 July 2020 "grievance"</u>

171. On 23 July 2020 Mr Symons attached a letter from Mr Sidney Symons and Mrs Symons. In that letter Mr Sidney Symons Mrs Symons acknowledged the claimant's written grievance. They appreciated her desire for written communications but proposed a meeting to investigate the matter further. They proposed that any meeting would be documented and, with the claimant's permission audio recorded with any recording being passed on to her. They proposed two dates where Mr Sidney

Symons and Mrs Symons would attend. They offered her the opportunity to be accompanied by a work colleague of her choice. They set out their understanding that the grievance concerned previous grievances relating to bullying, undermining, sexism, harassment and persistent shouting and aggression; and secondly, that she had been put at risk of redundancy due to her relationship with Mr Symons.

172. On 24 July 2020 the claimant responded to Mr Sidney Symons and Mrs Symons. She outlined her contention that she had raised previous grievances, and said that she did not see how another grievance process would resolve anything given previous grievances have not done so. She did not agree to any meeting.

173. On 28 July 2020 Mr Sidney Symons emailed the claimant indicating his disappointment that she did not wish to continue the process as he would have hoped to hear the grievance and try to resolve her concerns. He said if she wished to withdraw her grievance he would respect this but left the door open for her to pursue it if she wished. He said it he would advise Mr Symons to write to her regarding the ongoing redundancy consultation.

174. On 28 July 2020 the claimant wrote an email to Mr Sidney Symons clarifying that she did not instigate a further grievance that needed to be withdrawn, but suggested that her previous grievances were discussed without resolution.

175. Mr Sidney Symons emailed the claimant on 29 July 2020 indicating his concern that she felt that previous grievances were not resolved. He set out his recollection that on the 5 March 2020 it was confirmed with the claimant that there were no formal or informal grievances, that parties would move forward on the basis of a one month trial period with Mr Whelan engaged as a consultant, and at the end of that trial period the claimant would give her notice if she was still unhappy.

176. The claimant wrote back the same day stating that she had expressed grievances against Mr Symons for sexism and other things and Mr Playfair's "assault", which she viewed as unresolved. She said she had only been made aware on the day of the meeting Mr Whelan had been hired and that there had been no mention of the trial period. She suggested that there was no reference to the claimant serving a notice, but that Mr Symons had promised he would refrain from his bullying behaviour and that this would be reviewed within a month.

177. Mr Sidney Symons sent further emails on 30 July 2020 disagreeing with some of the things the claimant had said, but leaving the door open for a grievance if the claimant wished this. The claimant responded to say they were going round in circles and nothing further was achieved in this regard.

<u>Resumed redundancy consultation</u>

178. On 7 August 2020 Mr Symons responded to the claimant's email of 21 July 2020. He set out that the purpose of consultation was to work with the employee to help find alternative roles. He said that he had made claimant aware of alternative roles and invited suggestions and options for pooling. He indicated that during the consultation process there was consideration

of whether Mrs Thompson's or Ms Hidasi's roles could in principle be bumped. He pointed out that the claimant had stated that the value of the packages of these roles would be too low and were not suitable alternatives to redundancy. He therefore suggested that they were at a stage where all possible alternatives have been exhausted. He invited her to a final consultation meeting on 12 August 2020. He suggested that this took place by phone call which both parties could record.

179. On the same day the claimant confirmed that she wished to continue to consult by email. On 10 August 2020 Mr Symons emailed the claimant. She had declined a telephone meeting, and so further consultation took place by email. In this email he indicated that though no suitable alternative roles have been found there may be an opportunity. He indicated that it he did not necessarily consider it to be a suitable alternative, but he felt he had a duty to offer the claimant the opportunity to be considered for "any vacant position".

180. He indicated that the respondent intended to reintroduce the role of commercial director and were actively recruiting for the role with the view to have someone in post for September. He set out that it would be "*full time office-based, Monday to Friday working closely with me, which we propose will initially be on a package approximately 20% less than your current salary, and subject to initial performance will then increase to a comparable salary after 3-6 months*". He said that he needed a response by the following day but that the claimant should let him know if she wished for extra time to consider things. He set out that the role would be working closely with him full time in the office and that they would need to take all steps to resolve any outstanding grievances so they could work together effectively. The said that he said that if the claimant did not wish to consider the role and had no further alternatives to suggest then the role of Sales Director would be at risk of redundancy and will be removed as a cost saving measure and the claimant would be dismissed by reason of redundancy this final consideration of alternatives.

181. We find that the respondent, in making this offer, would have strongly suspected that the claimant would not have wanted to apply for it. She had worked from home two days a week even prior to the lockdown making working from home more common. A full-time office post would not have been attractive. It was also pretty clear to all concerned that the working relationship between the claimant and Mr Symons was all but strained to breaking point. There is also the matter that the claimant's experience and expertise were very much in sales. The Commercial Director role went well beyond sales. Notwithstanding this, we consider the offer was genuine in that the respondent would have considered the claimant's application in good faith. That said, the application would have been unlikely to be successful because of Mr Shaw's experience in the expanded role.

182. We pause to compare this offer with the offer made to Mr Shaw. Mr Shaw was offered £4000 per month until December and then £60,000. The claimant was offered 20% less for 3 to 6 months and then a comparable salary. The claimant's salary was £57,000. A 20% reduction would amount to an annual rate of £47,916 compared to the £4000 per month (£48,000 p.a) offered to Mr Shaw. Mr Symons told us, and we

accept, that if the claimant had haggled over £2500 annual salary from December or £84 over three months they would not have argued with her. He considered the terms of the role as offered to each of the potential candidates was materially the same. We consider that the offers were broadly the same. We note that the offer to the claimant from December onwards was "comparable" to her current salary.

183. On 13 August 2020 the claimant emailed Mr Symons rejecting the offer to be considered for the alternative role of Commercial Director. The commuting time made it not reasonable or sustainable and that the offer was therefore unsuitable.

184. On 14 August 2020 Mr Symons emailed the claimant. He set out the history of consultation in brief and stated that no alternatives to redundancy had been identified. He confirmed that the claimant was to be made redundant within it with notice of the dismissal to be given that day. He gave her three months' notice, with a last day of employment of 31 October 2020. He said the claimant would receive payment in lieu of this notice. He proceeded to set out some practical arrangements. He gave her the right of appeal against the decision to Mr Sydney Symons.

General allegations

185. As well as the specific events that we have outlined above, the claimant has made more generalised allegations against Mr Symons. She alleges:-

a. He was dismissive towards women when they asked him questions, in a way that he was not with men.

b. He was belittling towards women.

c. He shouted at women and reduced them to tears.

d. He ignored the contributions and ideas of women and excluded them from meaningful discussion in meetings. On the other hand, he entertained the ideas and contributions of men and "fulsomely congratulated" them.

e. He would be rude and unprofessional to women saying things such as "I don't understand what you mean. What are you trying to say? It's rubbish. It doesn't make sense. I'm so ashamed. You are so stupid". He didn't make these sorts of comments to men

186. The claimant was supported to an extent in these allegations by Ms Chalmers, Ms Khan and Ms Nardozza.

187. Ms Nardozza in her witness statement said that Mr Symons had said things like "I don't know what you mean" and "What are you trying to say?" to female members of staff. In her witness statement she said that she did not receive much bad behaviour from Mr Symons but avoided him. She said he lost his temper a few times and the claimant stepped in to defend her and her female colleagues. In her oral evidence was unable to give a specific example of any untoward behaviour from Mr Symons. In her witness statement she had contrasted the way women were taken to task

publicly whilst Mr Symons would have confidential meetings outside with men. She was candid that she would have no idea what was being said to men outside. It was also clear that the evidence she gave about the apparent mistreatment of Ms Khan was based entirely on what the claimant had told her. The reasons we will come to you, we do not consider that to have been reliable information.

188. We have also already dealt with factual findings relating to Ms Khan on the issue of allegedly being humiliated by Mr Symons, and allegedly being forced by him to move boxes. We can quite see how Ms Khan would have felt humiliated when Mr Symons became frustrated and annoyed by the fact that she had taken a long time to do a simple task badly. As we have pointed out, we accepted Ms Hidasi's evidence that she herself become similarly annoyed and frustrated with Ms Khan. We also do not accept that she was forced to move boxes by Mr Symons and that he and other male colleagues had callously laughed at her discomfort. We note that this information, which we have found was not true, was provided to Ms Khan by the claimant.

189. Ms Chalmers, again, gave generalised evidence about how Mr Symons reacted differently to the ideas of men and women and how he would snap at them and put them down in the office as opposed to having private conversations with men. She also gave evidence that Mr Symons belittled Mrs Thompson and Ms Lohez, reducing them to tears.

190. We note that Ms Chalmers was made redundant. We do not dismiss her as a witness with the cliched axe to grind, but (bearing in mind the observations in *Gestin*) we can see how what she perceives as unfair treatment against her by the respondent could have shaped the narrative.

191. Reliable evidence is more about quality than quantity, but quantity is not entirely irrelevant. However, we were struck by both the quality and quantity of the respondent's evidence. There was a balance to it but appeared lacking in the claimant's and her witnesses' evidence. A number of the respondent's witnesses gave evidence that Mr Symons did in fact raise his voice. One witness, Ms Kunz, commenting on exchanges between the claimant and Mr Symons remarked that ended with them both shouting at each other. None of the evidence adduced by or on the half of the claimant in any way suggested that she could be at fault.

192. We have mentioned, on a couple of occasions the impressive evidence provided by Mrs Thompson. She addressed head-on the accusation that Mr Symons had reduced to tears. She denied it. She gave two specific examples when she was in tears at work. The first time was when her husband was seriously ill in hospital. She said that in response to this Mr Symons had offered to put her in touch with his personal doctor for a second opinion. The second time was when she told Mr Symons that she was pregnant and Mr Symons was extremely supportive, to the extent that it made her emotional.

193. Ms Lohez, gave specific evidence about when she had been in tears in the office. She said that it had been nothing to do with Mr Symons but about her own personal grief.

194. It is abundantly clear that numerous people had significant problems working with the claimant.

a. Mrs Thompson, a friend of the claimant's who enjoyed working with her, spoke of her storming out of the building, slamming doors and raising her voice while Mr Symons remained calm.

b. Mrs Symons found her "rather controlling".

c. Mr Jordan found her "often rude and aggressive" and viewed the claimant's days in the office as those where he least wanted to go to work. He found the way the claimant spoke to him as offensive and degrading.

d. Ms Bond's evidence was that the main reason she left respondent was due to the behaviour of the claimant. She found her demeaning, unprofessional and rude towards herself and other staff when things did not go her way. She found the claimant aggressive towards Mr Symons and tried to deflect the blame to other people.

e. Mr Bond had numerous difficulties with the claimant, finding her rude, abrupt, dismissive and confrontational. He tried to speak to Mr Symons about this on a number of occasions and Mr Symons, effectively, said that this was a price worth paying for her passion for sales.

f. Ms Hidasi found the claimant's communication difficult.

g. Mr Gilbert, an external consultant, found the claimant rude and condescending. He recalled a meeting at which the claimant had offended his business partner and become heated. His partner refused to have any further dealings with her and Mr Gilbert found that she could be unpleasant to be around.

h. Ms Chen said that the claimant made her feel terrible and useless. She disclosed Whatsapp messages sent to her partner in which she set out, over a period of 3 months, various complaints about the claimant. She related how the claimant made her so nervous her heart beat fast, her throat felt that it was closing and she struggled to breathe properly. She expressed the fear that the claimant could take her outside where no-one could see or hear and make up a story about her. She explained how the atmosphere was always tense when the claimant was around. She described how the claimant had got angry with Ms Harling. She said she was scared when other senior staff are not around, and that she was scared of the claimant because she shouts and threatens.

i. Ms Dickinson, an external IT specialist, regarded the claimant as a bully who mistreated junior staff and was dismissive to her. She observed Mrs Thompson in tears because of the claimant's treatment of her.

195. It is right to say that a number of the witness statements tendered in evidence contain negative observations.

196. The respondent's witnesses present a broadly positive picture of the claimant. Some of the witnesses, such as Ms Kunz, refer to Mr Symons and the claimant shouting at each other. Some witnesses, such as Ms Lohez refer to both sides raising voices.

197. None of the respondent's witnesses accepted that Mr Symons mistreated women in any way. Mrs Thompson and Ms Hidasi, in particular, were clear in their evidence that he was very receptive to good ideas wherever they came from. When it was put to Ms Hidasi that he spoke to women differently to men she clearly gave her answer some thought. She told us that she herself knew nothing about cars, or speakers, and that Mr Symons might talk about different things with men or women, but that this was to be expected. She felt that she herself was a good example of Mr Symons valuing the input of women in the company.

198. We find that the evidence of the respondent, as a whole, reflects a picture that is far more lilkely to accord with reality. We find that many found the claimant not easy to work with. Mr Symons, was very occasionally prone to impatience but was largely patient and was well-respected by those working for the respondent. On occasion he found himself involved in heated discussions with the claimant. What for some is a heated discussion is for another a shouting match. We find that there were raised voices on either side. We do not find that Mr Symons shouted at women, belittled them, bullied them, devalued them or ignored their contributions.

The law

199. Section 39(2) EA provides as follows: -

> *An employer (A) must not discriminate against an employee of A's (B)—*
>
> *(c) by dismissing B;*
>
> *(d) by subjecting B to any other detriment.*

Direct discrimination

200. In respect of direct discrimination, Section 13(1) of the Equality Act provides as follows:

> *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.*

201. Section 23(1) of the Equality Act deals with comparisons, and provides:-

> *On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case.*

202. The EAT in *Chief Constable of West Yorkshire v Vento [2001] IRLR 124* made clear that using examples of individuals who were not true comparators was a proper way of constructing a hypothetical comparator.

203. The burden of proof provisions (which apply equally to harassment) are set out in section 136 Equality Act 2010:-

> *(1) This section applies to any proceedings relating to a contravention of this Act.*
>
> *(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
>
> *(3) But subsection (2) does not apply if A shows that A did not contravene the provision.*

204. When considering direct discrimination, the tribunal must examine the "reason why" the alleged discriminator acted as they did. This will involve a consideration of the mental processes, whether conscious or unconscious, of the individual concerned (*Amnesty International v Ahmed [2009] IRLR 884*). The protected characteristic need not be the only reason why the individual acted as they did, the question is whether it was an "effective cause" (*O'Neill v Governors of St Thomas More Roman Catholic Voluntary Aided Upper School and anor [1996] IRLR 372*).

205. Guidance on the application of the burden of proof provisions of the Sex Discrimination Act 1975 (which is applicable to the Equality Act 2010) were given by the Court of Appeal in *Igen v Wong [2005] IRLR 258*:

> *"(1) Pursuant to s 63A of the SDA 1975, it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant which is unlawful by virtue of Part II or which by virtue of s 41 or s 42 of the SDA 1975 is to be treated as having been committed against the claimant. These are referred to below as "such facts".*
>
> *(2) If the claimant does not prove such facts he or she will fail.*
>
> *(3) It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the discrimination will not be an intention but merely based on the assumption that "he or she would not have fitted in".*
>
> *(4) In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.*

(5) It is important to note the word "could" in SDA 1975 s 63A(2). At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.

(6) In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.

(7) These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw in accordance with s 74(2)(b) of the SDA 1975 from an evasive or equivocal reply to a questionnaire or any other questions that fall within s 74(2) of the SDA 1975.

(8) Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant and if so, take it into account in determining, such facts pursuant to s 56A(10) of the SDA. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.

(9) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.

(10) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.

(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since "no discrimination whatsoever" is compatible with the Burden of Proof Directive.

(12) That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not a ground for the treatment in question.

(13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice."

206. Tribunals are cautioned against taking too mechanistic an approach to the burden of proof provisions, and that the tribunal's focus should be on whether it can properly and fairly infer discrimination (*Laing v Manchester City Council [2006] ICR 1519*). The Supreme Court has observed that

provisions "*will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence, one way or the other*" (Hewage v Grampion Health Board *[2012] UKSC 37*).

207. The Court of Appeal has emphasised that "*The bare facts of a difference in treatment, without more, sufficient material from which the tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination"* (Madarassy v Nomura International plc *[2007] IRLR 246*). "Something more" is needed for the burden to shift. Unreasonable behaviour without more is insufficient, though if it is unexplained then that might suffice (Bahl v Law Society *[2003] IRLR 640*).

Harassment

208. Section 26(1) Equality Act 2010 provides: -

> *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.*

209. Section 26(4) Equality Act 2010 sets out factors which tribunals must take into account: -

> *(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.*

210. Section 212(1) Equality Act 2010 provides that conduct amounting to harassment cannot also be direct discrimination.

211. The Court of Appeal in Richmond Pharmacology v Dhaliwal *[2009] IRLR 336* stated:-

> *"an employer should not be held liable merely because his conduct has had the effect of producing a proscribed consequence. It should be reasonable that that consequence has occurred. The claimant must have felt, or perceived, her dignity to have been violated or an adverse environment to have been created, but the tribunal is required to consider whether, if the claimant has*

experienced those feelings or perceptions, it was reasonable for her to do so….We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase."

212. The Court of Appeal again emphasised that tribunals must not cheapen the significance of the words of section 26 Equality Act 2010 as "*they are an important control to prevent trivial acts causing minor upsets being caught up by the concept of harassment*" (*Land Registry v Grant [2011] ICR 1390*).

Victimisation

213. Section 27 Equality Act deals with victimisation and provides: -

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

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

214. A person suffers a detriment if a reasonable worker would or might take the view that they have been disadvantaged in the circumstances in which they had to work (*Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11.* An unjustified sense of grievance is not sufficient (*Barclays Bank plc v Kapur (No. 2) [1995] IRLR 87* and *EHRC Employment Code*, paragraphs 9.8 and 9.9).

Limitation

215. Section 123 Equality Act 2010 governs time limits and provides: -

(1)… proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

…

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

Unfair dismissal

216. Section 139 Employment Rights Act 1996 ("ERA") provides:

For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—

(a)…

(b) the fact that the requirements of that business—

(i) for employees to carry out work of a particular kind, or

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,have ceased or diminished or are expected to cease or diminish.

217. Under section 98(1) Employment Rights Act 1996 ("ERA") it is for the employer to show the reason for dismissal and that such reason was potentially fair one under section 98(2). Redundancy is one such potentially fair reason.

218. Section 98(4) ERA provides that:-

"the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

(a)depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b)shall be determined in accordance with equity and the substantial merits of the case".

219. Tribunals are entitled to satisfy themselves that the redundancy situation is genuine, but it is not their function to go behind or examine the commercial merits of the decision to reorganise a business.

220. General principles relating to fairness in redundancy process emerge from *Polkey v A E Dayton Services Ltd [1988] ICR 142* where it was held that an employer will not be acting reasonably unless it:

a. Warns and consults affected employees or their representatives;

b. Adopts a fair basis on which to make selections for redundancy; and;

c. Takes reasonable steps to avoid redundances.

221. In *Williams v Compair Maxam Ltd [1982] ICR 156* guidance was given on the factors which the tribunal should consider when assessing fairness within a redundancy process: -

a. The employer should seek to give as much warning as possible of impending redundancies to employees;

b. It should consult them or their unions about the best means of achieving redundancies, including the applicable criteria in selecting for redundancies;

c. That criteria for selection should, so far as possible, not depend solely on the subjective opinions of decision-makers;

d. Selection is made fairly according to the criteria; and

e. The employer will take reasonable steps to offer alternative employment instead of dismissing.

222. In looking at all these elements it is not for us to substitute our own view, but to assess whether the employer's actions fell within a range of reasonable responses open to a reasonable employer.

223. In terms of establishing a pool for selection, the employer is to be given considerable latitude and the tribunal is to consider whether the choice of the pool is within the range of reasonable responses open to an employer in the circumstances. Identifying the pool is primarily a matter of the employer and the pool does not have to be confined to employees

doing the same or similar work. It is difficult to challenge the establishment of the pool if the employer had genuinely applied its mind to the consideration (*Taymech v Ryan UKEAT/663/94, Capita Hartshead Ltd Byard [2012] IRLR 814).*

224. A pool of one is permissible, and it may be the case that an employer might fairly focus on one individual employee without considering the development of the pool *Wrexham Golf Co Ltd v Ingham UKEAT/0190/12*.

225. Under the principal in *Polkey v AE Dayton Services Ltd [1987] IRLR 503* where there is a failure to adopt a fair procedure at the time of dismissal, dismissal would not be rendered fair just because the procedural unfairness did not affect the end result. Compensation can be reduced to reflect the chance of dismissal taking place had a fair procedure been adopted.

Conclusions

Discrimination, harassment and victimisation

Protected acts

226. As set out above, we have not found, as a matter of fact, that the claimant ever made allegations that she had been the victim of a breach of the Equality Act 2010. In our conclusions below, we refer to acts or omissions not being because of or related to the claimant's sex. For the interests of brevity, we do not refer to conclusions that these actions, insofar as they post-date the alleged protected acts, were not because of a protected act. Our primary finding is that there were no protected acts. We also would record that we do not conclude that the claimants complaints motivated any of the actions or omissions below.

Reference to "harem" 1(a)

227. We have found that Mr Symons responded to an observation that he was the only male in a party of colleagues having a pre-dinner drink in a hotel bar. The meaning of "harem" is the part of a household reserved for wives and concubines. It clearly relates to sex, as the remark was a reference to the sex of the people accompanying Mr Symons at the time. Such a remark holds the distinct potential for causing offence.

228. We find that nobody actually expressed to be offended at the time. This does not mean that they were not, as it is often the case that people let off-colour comments pass without complaint. This is perhaps even more likely when the comment is made by someone with power in a relationship. We are prepared to find that the comment was unwanted by the claimant.

229. In differing contexts we can certainly see ample scope for this sort of comment to amount to harassment. We have carefully examined the context here. We have found that this was something of a throwaway line by someone who was not intending to cause offence. Some women in the group actually did find it funny and we accept the evidence of Mrs Thompson that conversation swiftly moved on. The claimant, an assertive

woman, able and willing to articulate complaint, never complained about it, either formally or in passing to female colleagues she regarded as friends.

230. Having regard to the authorities, we conclude that the comment fell short of violating the claimant's dignity, or creating an environment that was intimidating, hostile, degrading, humiliating or offensive. We do not find that the claimant was treated less favourably because of her sex, or that this was sex-related harassment.

Swapping seats on Eurostar 1(b)

231. We have found that seats were swapped on this journey, but have not been able to determine the motivation. Considering the evidence as a whole, we do not conclude that the reason why the claimant was asked to change seats had anything to do with sex. We do not find that she was discriminated against because of her sex, or that she experienced sex-related harassment.

Transfer of duties to Mr Charlesworth 1(c) and 1(d)

232. We do not find that the claimant's duties were transferred to Mr Charlesworth. He was hired to carry out a role more senior than hers which included a review some of the sales function. Mr Charlesworth appears to have attempted to clarify what his position was with the claimant by reaching out to her to seek to avoid duplication. He also, transparently in email chains with the claimant and Mr Symons, sought to clarify his understanding of his responsibilities with the website and the shop. Mr Symons provided clarity, involving the claimant. He did not transfer elements of the claimant's role. We have found that he backed the claimant in a dispute which led to Mr Charlesworth leaving. We do not conclude that any of this had anything to do with the claimant's sex. She was not discriminated against or harassed.

Exclusion from meeting in Kidderminster 1(e)

233. We found this allegation difficult to piece together on the evidence. However, we found that Mr Bond was an appropriate person to lead on a project where the design element naturally came before consideration of sales. An original plan to visit the factory for a meeting was changed at Mrs Thompson's suggestion, with components then being sent to London. Mr Bond spoke to someone about the project on an unrelated trip to Kidderminster and was transparent in posting something about it on Click Up. We accept Mr Bond and Mrs Thompson's evidence that the claimant was unavailable for a follow up meeting. She was not excluded from a meeting. There was no less favourable treatment or unwanted conduct. Sex had nothing to do with decisions made or the circumstances as they unfolded.

Removal from projects 1(f)

234. As we indicated earlier, we were shown a tiny snapshot of the business of the respondent. It is also a fact of working life that in a busy workplace people do get missed off the odd email chain or not invited to a meeting they ought to have attended. Both from examining the detail and from standing back and taking a broader view of the evidence we have found

no facts from which we could conclude, in the absence of any other explanation, that the respondents unlawfully discriminated against the claimant. We did not find any unlawful sex discrimination, sex-related harassment or victimisation in any of the allegations.

i. We have found that the claimant was not removed from projects. There was no less favourable treatment. We are satisfied, from the totality of the evidence that we have heard, that decisions made about projects were made for business reasons and were nothing to do with sex.

ii. The claimant was included in email chains where adverts were being developed for Gift Focus. She did not respond to any before the deadline and Mr Symons made a quick decision to approve the draft that came back from the publishers for a same day approval. She was not excluded in any way and her sex had not bearing on the decisions taken. With respect to Marie Claire, Mr Symons accepted an offer of help from an external consultant. This was because the offer was made to him and he took the offer in front of him. It had nothing whatsoever to do with the claimant's sex.

iii. We have found that Mr Bond, as Head of Design, was best placed to lead the sales clearance project project as the design elements came first. The claimant was not excluded from the project. The respondents made business decisions in respect of this which had nothing to do with the claimant's sex.

iv. We have found that the claimant was fully involved in licensing projects such as Hurlingham and Birch & Brook. We have not found the less favourable treatment she relies on, but in any event, we cannot find that sex had anything to do with any of the decisionmaking in respect of these projects.

v. We have found that she was not excluded from Maison & Objets meetings. An examination of the email chains in December 2019 does not support this. She cannot show any less favourable treatment, and again there is nothing from which we can conclude that any decision making was influenced by sex in any way.

vi. The evidence does not support that the claimant was excluded from dealings with Wade. There is no less favourable treatment, and nothing from which we could conclude that decision-making related to sex in any way.

<u>Strategy meeting 28 January 2020 1.g</u>

235. We have found that Mr Symons was attempting to stop what he viewed as an unwarranted interruption of the meeting by the claimant. He became louder and louder as he attempted to stop her, saying "Fous, Fous, Fous". The reason why he did this was to try to stop her derailing the meeting. We do not accept that the claimant sex had anything to do with this approach.

236. We have found that Mr Playfair acted aggressively. His reaction was an overreaction, but we do not find anything from which we can conclude that the claimant's sex was a factor in any of this.

Shouting and belittling in meetings and phone calls 1h.

237. We have found that the claimant and Mr Symons had a number of heated discussions. We have found the heat was supplied from both sides. Looking at the evidence as a whole, and focusing in on the detail, we can find nothing from which we could conclude that the claimant sex was a factor in any of these incidents.

i. On 23 January 2020 the reason why he got irritated with both his father and the claimant was because they were pressing him for an answer on the Omyague showwhen he was focusing on a deadline. The claimant's sex had nothing to do with this.

ii. On 28 January 2020 the reason why he raised his voice was to prevent the claimant from derailing an important meeting. The claimant's sex had nothing to do with this

iii. We have found no less favourable treatment or unwanted conduct in the interaction that preceded the claimant and Mr Symons leaving the office to attend the meeting at Tom Dixon. Sex was not a factor.

iv. We have found the reason why Mr Symons had a heated discussion on 26 February 2020 was that he was concerned that Ms Hartling had attended the Excel show and not attended pre-booked training. The claimant's sex had nothing to do with this.

v. We have found there was irritation on both sides of the conversation between Mr Symons and the claimant about a hand sanitiser deal that was not going ahead. Any irritation from Mr Symons was nothing to do with the claimant's sex.

Staff reports removed 1i.

238. We have found as a fact that no reports were removed. There was no less favourable treatment or unwanted conduct.

Eroding claimant's role 1j.

239. With respect to Mr Shaw, it is right to say that the respondent had indicated, when Mr Charlesworth had resigned, that they would be looking to appoint a Commercial Director. This is the role Mr Shaw was appointed to. The reason why he was appointed to this role was to fulfil the need for it. Both Mr Taylor and Mr Charlesworth's roles had clearly touched upon sales, and so it was with Mr Shaw's role. We do not find that his appointment eroded the claimant's role. His appointment was for business reasons and had nothing to do with the claimant sex.

240. We have found Ms Hidasi was appointed to a Project Manager role and not a sales role. This appointment did not erode the claimant's role, and had nothing to do with her sex.

241. We have found that Mr Whelan was engaged as a consultant to carry out a review. When Mrs Thompson went on maternity leave he stepped in

to help with her sales tasks. This was not in erosion of the claimant's role, and had nothing to do with her sex.

Placing on furlough 1k.

242. We have found nothing to suggest that the decision to place the claimant on furlough, along with numerous other men and women working for the respondent, had anything to do with her sex.

At risk of redundancy 1l.

243. We conclude from the evidence that the reason why the claimant was placed at risk of redundancy was for the reasons explained to her in the email of 4 June 2020. The impact of COVID on sales, and the need to create a reduced sales team in line with lower sales forecast meant a smaller sales team was needed. These were the drivers of her being placed at risk of redundancy, and her sex had nothing to do with the decision.

Commercial director role 1m.

244. We have found that the claimant was offered the opportunity to apply for the Commercial Director role on broadly similar terms to those afforded to Mr Shaw. We have found that, while there would have been reasonable grounds to expect that the claimant would not have found the role attractive, it was offered in good faith. There was no less favourable treatment and the claimant's sex had nothing to do with the opportunity being offered and the terms upon which it was offered.

Giving notice (1n) and terminating employment 1o.

245. As we set out below, we find that the reason why the claimant was dismissed was because her role was redundant. We have been alive to the possibility that a genuine redundancy situation could have been exploited in order to dismiss the claimant for an unlawful reason. However, we could not find facts from which we could decide, in the absence of any other explanation, that the dismissal was an act of sex discrimination, harassment or victimisation.

Unfair dismissal

Reason for dismissal 9

246. The backdrop to the redundancy exercise was a business with its share of difficulties prior to the pandemic, and an extremely challenging business landscape created by the pandemic.

247. We had some concerns that, while Mr Symons referred to numerous conversations taking place at board level about redundancies, no "business case" document appeared in the bundle. But we bear in mind that this was not a large employer and one which had no dedicated HR function. Such a document or documents, in the experience of the tribunal, would certainly be created by many other employers.

248. We also take account of the fact that Mr Symons, in his consultation correspondence with the claimant, set out the rationale for redundancy with some thoroughness. He also answered the claimant's questions in a very timely manner. This did not give the impression of him making things up as he went along.

249. We have set out above, in the context of the discrimination claim, whether a genuine redundancy exercise was being used as a cloak to disguise a discriminatory dismissal. We have also considered, in a similar vein, whether a redundancy exercise was being used to manage out someone perceived as being difficult or otherwise undesirable. However, this was not the case that was being run by the claimant (she claims the reason why she was dismissed was her sex and her protected acts) and this was not put to any of the respondent's witnesses.

250. We find that the reason why the claimant's was dismissed was that the respondent considered her role redundant.

Warning/Consultation 10

251. Consultation in this case was slightly odd in that it took place entirely by email. This was at the claimant's request. It has meant that we have been able to see in documentary form the entirety of the consultation. We have looked at the entire picture in order to conclude whether the employer has acted reasonably or unreasonably in this regard.

252. We conclude that the respondent began consultation on 4 June 2020 when proposals were at a formative stage. The claimant was given adequate information on the situation which had led up to the risk of redundancy. In particular, she was told of the challenges relating to sales and the need for a smaller team. The purpose of consultation was explained to her, namely to ask for suggestions on ways to avoid redundancies.

253. Within the consultation process the claimant's questions were answered promptly and thoroughly. Any proposals she made were given consideration, even if they were not adopted.

254. In short, we find that the claimant was given fair warning of impending redundancies, and that the way that they consulted with her fell within the band of reasonable responses.

Pool for selection

255. This was a redundancy exercise where the respondent determined that the claimant was in a pool of one. This was communicated to her on 9 June 2020, when the respondent described the role as a stand-alone role, and that the management of sales and the sales team would be absorbed by Mr Symons. It was made clear that the respondent would consider alternative solutions.

256. The fact that there was one role at risk and there would not be a pool was explained again in Mr Symon's email of 2 July 2020. The claimant proposed Mrs Thompson and Mr Symons being in the pool in her email of 7 July 2020.

257. In his email of 8 July 2020 Mr Symons specifically addressed why it was not appropriate to pool the claimant with himself or Mrs Thompson. Mrs Thompson's role was a significantly lesser role than the claimant's, and Mr Symons's role spanned other areas of the business. Mr Symons addressed similar points in further emails.

258. In the circumstances the evidence shows, and we conclude, that the respondent genuinely applied its mind to the question of pooling. It determined that it was appropriate and this was a decision reasonably open to it.

Choice and application of selection criteria

259. Once the claimant had been placed in a pool of one, the question of choice and application of the selection criteria fell away. We do not consider this element.

Alternative employment

260. The claimant was clear in the redundancy consultation that she would not consider a lesser role or a lesser package. The only possibility of a potentially suitable alternative role was that of the Commercial Director. While the offer to the claimant of the possibility of applying for this role came up in slightly bizarre circumstances (in that it had already to Mr Shaw) we consider that it was a suitable and reasonable offer to make to the claimant.

261. In the circumstances we consider that the efforts made by the respondent to offer a suitable alternative employment fell within the band of reasonable responses open to a reasonable employer.

Polkey (if appropriate)

262. We have not found procedural unfairness in the redundancy process, and we do not need to consider Polkey.

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Employment Judge **Heath**

2 September 2022_____

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

06/09/2022

FOR EMPLOYMENT TRIBUNALS

IN THE EMPLOYMENT TRIBUNAL
2206953/2020
LONDON CENTRAL
BETWEEN:

Case No:

MS F LALOUI

Claimant

-V-

PARKS (LONDON) LTD

First Respondent

RICHARD SYMONS

Second Respondent

AGREED LIST OF ISSUES

Acts

1. Did the Respondent carry out the following acts:
    a. In January 2018 the Claimant was travelling with R2, Jeremy Taylor, Federica Nardozza and Alison Thompson, on the Eurostar to Paris for Maison et Objet train show. R2 referred to the female members of staff as his 'harem.'
    b. In 2018 when going to the trade show in Paris R2 asked C to swap seats so he could speak with Jeremy Taylor about a matter that concerned C;
    c. In June 2019 appoint Andrew Charlesworth as Commercial Director, with a job description and duties which overlapped with the Claimant.
    d. On [5 September 2019 OR 7 July 2019] R2 emailed staff setting out Mr Charlesworth's duties, which had previously been carried out by the Claimant
    e. On 21 February 2020 the Claimant was excluded from meetings or not invited by Mr Bond and R2 when they went to a factory meeting to a site near Kidderminster.;
    f. The Claimant was removed from or excluded from knowledge of several projects which were relevant to her role by R2 not inviting her to meetings or not copying her in on emails:
        i. Mid-2019 to March 2020, the Claimant was removed from development by R2 in favour of Mr Bond;

ii. 2019-2020 excluded from magazine and press releases for the following publications:; Marie Clair; and Gift focus, in favour of Mr Bond;
iii. January 2019, excluded from the sales clearance project in favour of Mr Bond;
iv. From December 2019 excluded from the licensing project;
v. Exclusion for the Maison et Objet trade show meetings, in November / December 2019;
vi. Exclusion from the R2 signing with a new brand called Wade in late 2019 in favour of Mr Mr Bond

g. On 28 January at the 2020 Strategy meeting:
   i. When C tried to speak R2 interrupted her and raised his voice, calling out C's name; and
   ii. P approached C with a clenched fish and pointed at C aggressively with his other hand, P shouted 'you stop now, stop now, this is not the time or the place to talk about it. This is my meeting, and I will direct it the way I want and if you don't like it leave the room.'
h. R2 regularly belittled and shouted at the Claimant during meetings and conversations, including:
   i. On 23 January 2020 during a discussion about the Omayague trade show;
   ii. During a strategy meeting on 28 January 2020;
   iii. On 6 February 2020 whilst leaving the office to attend a client meeting at Tom Dixon;
   iv. On 26 February 2020 in relation to Ms Hartling attending the Excel Trade Show;
   v. In April 2020 in relation to a client who was interested in buying hand sanitiser from R1

i. In Around February 2019 C had staff reports taken away from her, Reika Townsend and Alison Alison Thompson;
j. Rs appointed other employees to carry out work C had been doing, thereby eroding her role (Sean Wealan in March 2020, Dan Shaw in Summer 2020 and Linda Hidasi in June 2020);
k. C was furloughed;
l. On 4 June 2020 C was placed at risk of redundancy;
m. On 12 August 2020 C was offered the opportunity apply for the role of commercial director, when involved a pay cut and working hours [at the office] Rs knew C could not carry out;
n. On 14 August 2020 C was given notice; and
o. On 31 October 2020 contract was terminated

The acts complained of and the response to each are shown in the bundle at pages 49-53 and 58-70 respectively.

<u>Harassment s.26(1)</u>

2. Were the acts at paragraph 1 unwanted conduct related to the relevant characteristic of sex.

3. Did the conduct have the purpose or effect of violating C's dignity or creating a hostile, degrading, humiliating or offensive environment for C.

Discrimination s.13

4. Alternatively, did Rs treat C her less favourably due to the protected characteristic of sex by carrying out the acts set out at paragraph 1.

5. The comparators are Jeremy Taylor, James Bond, Andrew Charlesworth, Dan Shaw and Sean Wealan

Victimization s.27

6. Did C carry out a protected act under s.27(2)(d) EqA 2010 :
    a. At the meeting on 31 January 2020;
    b. On 26 February 2020, whilst on the phone discussing staffing at the Excel trade show;
    c. At a meeting on 3 March 2020;
    d. By email on 21 July 2020; and
    e. By email on 24 July 2020.

7. Alternatively Did R believe C would carry out a protected act.

8. Did Rs subject C to detriments (limited to those that occurred after 31 January 2020) because she did a protected act or they believed that she would do a protected act.

Unfair Dismissal

9. What was the reason for dismissal:
    a. R1 asserts that it was for the potentially fair reason of redundancy;
    b. C asserts that it was victimisation or discrimination (see above)

10. If the dismissal was for a potentially fair reason, was the dismissal fair in all the circumstances.

Time Limits

11. Was the claim in time or is it just and equitable to extend time

Compensation

12. What compensation should C receive (if any) including any uplift for failure to follow the ACAS code of conduct.