Case no: 2203476/20

EMPLOYMENT TRIBUNALS

Claimant: Ms LR

Respondents: (1) Westminster City Council
(2) Mr CC
(3) Mr AH

London Central **21-23, 28-30 September, 3 October 2022**
Panel deliberation 4 October 2022

Employment Judge Goodman
Mr R. Baber
Mr T. Robinson

Representation:
Claimant: in person
Respondents: Simon Harding, counsel

JUDGMENT

1. The unfair dismissal claim fails
2. The victimisation claim fails
3. The sexual harassment claim fails
4. The wrongful dismissal fails
5. The claimant was not discriminated against because of religion and belief
6. The claimant was not disabled at the material times, and the disability claims fail, whether because she was not disabled, or because the respondent did not fail to discharge any duty to make reasonable adjustment for disability, and the respondent did not discriminate because of something arising from disability

REASONS

1. The claimant worked for Westminster City Council as assistant finance manager from 2 January 2017. Male colleagues, including the individual respondents to this claim, AH and CC, complained that she had harassed them, and on 31 January 2020 she was suspended while the complaints were investigated under the disciplinary procedure. In April 2020 the claimant brought a grievance about the men who complained about her, and about the

officers conducting the investigation. Her grievance was investigated but not upheld. On 25 November 2020 she was dismissed for gross misconduct. The council's reasons for dismissal were that she had sexually harassed three male colleagues between 2018 and 2020, that when they complained she had brought malicious and vexatious grievances alleging sexual harassment of her by them, and that she had also maliciously and vexatiously contacted the professional body of one and the new employer of another.

Claims and Issues

2. On 12 June 2020 she presented a claim to the Employment Tribunal against the Council and 10 individual respondents making allegations under the Equality Act, including sexual harassment by colleagues, and religion and disability discrimination.

3. On 29 April 2021 she presented a second claim, adding claims that she had been unfairly and wrongfully dismissed, with some other claims.

4. The two claims were consolidated and there have been five effective preliminary hearings. As a result of these, claims against 8 of the 11 respondents, and a claim of age discrimination, have been struck out under a deposit order.

5. A list of issues was drawn up and finalised in June 2022, based on the draft made by the respondent. After that hearing the claimant gave some further information about her disability-related discrimination claim. Employment Judge Stout identified from that four further matters to be added to the list of issues. The final list, updated by the tribunal chairman to include the additional material, is appended to these reasons.

6. In summary, the tribunal has to decide whether the claimant was unfairly dismissed, whether she was wrongfully dismissed (that is, should have been given notice or pay in lieu), whether she was sexually harassed by CC, by AH and by another for whom the first respondent is vicariously liable, and whether there was religious discrimination when AH complained about a leaving card she sent him, or victimisation because of a message the claimant sent to a colleague in January 2020.

7. Finally, for the claims of disability discrimination, the tribunal has to decide whether she was disabled by reason of ADHD, or autistic spectrum disorder (ASD), or depression and anxiety. If disabled, the tribunal has to decide whether she was treated unfavourably because of something arising from one or more of those conditions, and whether the employer failed to make reasonable adjustments for any disability to the grievance process and at various stages of the disciplinary process, or in failing to pay for a formal assessment of a condition.

Anonymity and Restricted Reporting

8. In December 2021 Employment Judge Stout made orders under rule 50 for the anonymity of the claimant and second and third respondents, because of the allegations of sexual misconduct. The claimant opposed the orders, and applied unsuccessfully for reconsideration. The claimant herself received

permanent anonymity by order 21 March 2022. CC, AH and another employee, EM were anonymised until the conclusion of the hearing on liability, when a decision would be made on whether the restriction remained. (See case management summary by Employment Judge Stout 18 March 2022). She also made a restricted reporting order in respect of all four up the date of judgment on liability.

9. Our conclusion after reaching our decisions on the claims was that AH, CC and EM should have permanent anonymity. There should also be continued restrictions on reporting (in written or broadcast form) any matter not within the written reasons which might identify LR, CC, AH and EM. Our reasons for permanent anonymity and restricted reporting are that (1) all three are accused by the claimant of sexual misconduct, and although we have made clear findings on this, there must be concern that a perception that there is no smoke without fire may persist, especially if the claimant makes use of social media to tell her story and name them without reference to the judgment and reasons (2) they have a right to privacy under article 8, to be balanced with open justice (3) the public will be able to understand the reasons why the case was decided as it was by reading the judgment, without needing to know their names as well; press interest in knowing the names is diminished by not knowing the claimant's name (4) the claimant has permanent anonymity. If the names of AH, CC and EM are made known, it may not be hard for others to piece together her identity.

Evidence

10. To decide the issues the tribunal heard live evidence from the following:

LR, the claimant

AH, third respondent, Finance Manager, and the claimant's line manager until January 2020. He now works elsewhere.

CC: second respondent, Finance Manager in another team

Jennifer Worthington, Employee Relations Strategic Lead (HR). She assisted Gerald Almeroth's investigation of the claimant's grievance, and handled HR welfare matters during the disciplinary process.

Janine Gray, Head of Revenues and Benefits, investigated allegations against the claimant under the disciplinary procedure.

Tim Mpofu, former employee. Attended without witness statement under a witness summons on the claimant's application, he having complained about her.

Nicky Crouch, Director Family Services, conducted the disciplinary hearing and decided to dismiss the claimant.

Andrew Durrant, Director of Community Services, investigated the claimant's grievance

Gerald Almeroth, Executive Director Finance and Resources, approved the

claimant's suspension on 30 January and heard her appeal against the outcome of the grievance.

Melvyn Caplan, a Westminster Cty Councillor who chaired the panel hearing the claimant's appeal against dismissal.

11. Witness orders had been made on the claimant's application for two further witnesses, EM and Marine Andre, but neither attended the hearing**.**

12. We read an unsigned and undated character reference from David Burton, the claimant' previous line manager. It contained no first hand evidence of disputed events.

13. There was a bundle of documents of 2,432 pages, and a few late additions.

14. After the hearing the claimant sent a further version of her annotation of the meeting minutes of 26 February 2020 (one version annotated by her was already in the bundle). We examined it (after hearing from the respondent by email on the point) but did not consider the change significant.

Conduct of the Hearing

15. The hearing was held in person at the claimant's request.

16. The claimant was not represented. She was intelligent, literate, (having written very comprehensive and structured statements and submissions in the course of proceedings), articulate, and familiar with many of the facts she wanted to present to the tribunal and the points she wanted to make, but it was clear that she was under-prepared. The first day had been reserved for tribunal reading. Over two hours of that day was taken up with a remote case management hearing by the tribunal chairman to consider the claimant's application to postpone the start of the hearing to the following week, and for additional documents. Some of these documents, it turned out, were already in the hearing bundle. At that date the claimant had not read the respondent's witness statements, and said she had not re-read her own statement of 93 pages. It was agreed to deal with this by reversing the previous order of witnesses, so that she would give evidence over the first two hearing days, then would have a break of four days (the weekend and the next two weekdays when the tribunal was not sitting) in which she could prepare her questions for the respondent's witnesses. She worked from a book of handwritten notes, but had not made notes of where documents could be found in the hearing bundle, despite more than one request that she include this in her preparation, even on the last hearing day, when she had had a second weekend to find the pages. Counsel for the respondent and the tribunal worked to find the references for her when she could describe the document she had in mind.

17. Like many litigants in person, the claimant found it hard to formulate a question rather than making a further statement herself. The tribunal attempted to formulate questions based on her statements, checking with the claimant that this expressed what she had meant. The tribunal also prompted the claimant to use the list of issues, with which she appeared unfamiliar, and suggested questions that she needed to ask to support her case on issues

she had overlooked.

18. Part way through day 6, when questioning Janine Gray, the claimant asked to add two further protected acts to the victimisation claim, namely the complaint she made to the police on 4 March 2020, and the formal grievance she lodged on 24 April 2020. The application was considered having regard to the factors set out in **Selkent Bus Company Ltd v Moore**, and how they weighed in the balance of prejudice to either side. The application was refused, with oral reasons. She had had the list of issues from June 2022, and had not sought to query or apply to amend until more than halfway through the hearing. Her explanation for this was that she " thought these matters would be included in the protected act", which was identified on the list of issues only as the message to Grace Okinowo, but she should have known from the way Judge Stout had allowed some matters to be added to the list of issues, but not others, that precision of the list of issues was important. Allowing amendment now would require additional time for the respondent to take instructions or formulate submissions. It was unlikely amendment would require the claimant to be recalled, but the hearing was already behind schedule, much of that because of the claimant's lack of preparation, and if it did not finish within the allocated time, it might not be possible to complete the hearing or give judgement until 2023. Having regard to the second and third respondents' right to a determination of the sexual harassment claims against them within a reasonable time (ECHR Article 6), that was an important consideration. The claim of a protected act in the report to the police was weak, in that she was reporting a crime, not alleging a breach of the Equality Act. Paragraph 15.4 of the claim form only identified as detriment hostility on the part of the first respondent, manifested by delay handing her phone to the police and impeding the investigation. The weight placed by the respondent on the fact that she had lodged her grievance was already part of the unfair dismissal claim, given that following the grievance determination, the respondent had added bringing a malicious grievance to the existing disciplinary charges. This mitigated the disadvantage to the claimant of not allowing the amendment.

19. Part-way through making submissions at the conclusion of the evidence on the afternoon of day 7, the claimant asked to add the practice of hot-desking to the claim of reasonable adjustments for disability. This was refused. In short, the reasons for refusing were that the added matter involved new facts, was not taken from the claim form, and would require witnesses to be recalled. It was not known which disability this related to. It was certainly out of time. No explanation was given why it was to be added at this stage. **Chandhok v Tirkey UKEAT/0190/14** makes it plain that a claim form is not something to start the ball rolling, but should state what the case is about. These claim forms had been particularly detailed.

20. Also on day 6 the claimant asked to play a four minute recording to the witness. The claimant said that "5 or 6" recordings had been provided to the respondent in the proceedings, though only a couple of them had been transcribed. None had been sent to the tribunal. In answer to questions from the tribunal, we were told that the four minute recording was one of four recordings, in total 48 minutes, of a telephone call the claimant made to a colleague, Anita Singh, who was no longer friendly with her, and was not prepared to give evidence to the tribunal. Ms Singh was not aware that the

call was being recorded. The call was made after the claimant had been suspended, after the first disciplinary investigation interview, and after she had referred an alleged assault to the police. The tribunal concluded that playing a four minute recording was unlikely to assist in deciding the facts. It would largely consist of the claimant telling Anita Singh about past events. It was undesirable to extract 4 minutes from a call of at least 48 minutes, because the tribunal would lack the context, and in particular what Anita Singh thought the claimant was talking about. We also knew that the claimant had supplied selected extracts from Skype conversations to the respondent for the grievance investigation, and that when the full conversations had been obtained by the respondent from their systems, that shed a different light on some of those conversations. It was also known that in supplying character references for the disciplinary hearing, the claimant had selectively, and very misleadingly, extracted comments from documents which had a different purpose. There were therefore grounds for concern that the claimant's four minute selection could be misleading. There was no time to get a full transcription and give the respondent's legal team an opportunity to consider the call, and without transcription the tribunal would not appreciate the context either. The evidence would therefore have little value. To conclude, the tribunal did not hear the recording.

21. The claimant was allowed generous time to cross-examine the second and third respondents. There were lengthy gaps between questions while she read her notes and found documents. After questioning the individual respondents with reasonable fluency, when moving to the witnesses on process, the claimant confessed that she had not read the witness statements. She was urged to read the statements for the next witnesses, but there was less indulgence of her lack of preparation for the witnesses dealing with the grievance and dismissal processes, and on occasions time limits were imposed, always with notice. Despite several reminders, she continued not to make a note of the page numbers she wished to take a witness to, adding delay while others found pages for her. As a result there was an overrun into a day which would otherwise have been spent in deliberation.

22. At the conclusion of the evidence we heard oral submissions from the parties and then reserved judgment.

23. The claimant had been supposed to return her laptop to the council on dismissal but she had in fact retained it and used it throughout the tribunal hearing. The respondent asked on Friday 3 October for its return at the end of the hearing, and for the claimant meanwhile to cease accessing the internet through it, as it interfered with the security of their systems. The claimant stated she needed to retain it to reactivate her police complaint, which the police had ceased to investigate on advice from the CPS in March 2021. The police had reviewed the claimant's phone but not the laptop, having been provided with message and email data by the first respondent. She was asked on Friday 3 October to extract what she needed onto to a flashdrive, over the coming weekend, so that it could be handed back. She did not do this. It was stated by the respondent on the final hearing day that despite the discussion on the Friday the claimant had, according to their IT team, accessed the internet through the laptop, though the claimant denied this. In discussion on this at the conclusion of the hearing, upon Ms Karen Thain, solicitor for the first respondent, giving an undertaking to the tribunal not to

alter or delete any material until the end of Friday 7 October, so that the claimant could attend by appointment at the council premises to remove or copy material under supervision, the claimant handed over the laptop. In subsequent emails the claimant asked the tribunal to order an extension of this. The tribunal considered it had no power to order Ms Thain to alter her voluntary undertaking.

Findings of Fact

24. The respondent is the local government authority responsible for providing services in the City of Westminster.

25. The claimant was in her early 30s at the relevant time. She lives in Chelsea with her parents. They are both from Bangladesh. The claimant has always lived in London. In adult life she has become a Jehovah's Witness. She did well at school and obtained good grades in GCSE (A stars, and As, and B in Maths), then elected not to stay on at school to do A-levels but instead went to sixth form college, where her grades were disappointing (BBCD). She then went to Brunel University (while continuing to live at home) where she obtained a 2.1 degree in Psychology and Social Anthropology. Before working for Westminster Council, she worked in the finance team as an accounting technician at Royal Borough of Kensington and Chelsea (RKBC).

The claimant and AH

26. She started work at Westminster Council in January 2017, and seems to have got on well with her previous line manager David Burton, who described her as hard-working and conscientious. When he retired, AH, a chartered accountant and a much younger man became her line manager in April 2018.

27. In June 2018 AH invited her to go for lunch on her birthday and in conversation earned they were both single. AH says this was just social conversation by a new manager getting to know his team. Soon after, we can see from the emails, the claimant made enquiries from colleagues about whether he was single or had a girlfriend, and who that was - she was told he did have a girlfriend. AH did not know about these enquiries until later in 2018, when he was sent some of them by a friend.

28. The claimant says that until AH became her line manager, she had had little continuous instruction or supervision from with a series of contractors line managing her after Mr Burton. AH therefore arranged weekly one-to-one supervisipn meetings, and the minutes of these show lists of tasks identified, deadlines for completion, and when and whether the deadlines had been met. In early August he had cause to speak to her about a dispute in the office over a fan on her desk - the claimant had complained loudly when someone had borrowed the fan which she was not using. The mid-August one-to-one meeting notes conclude: "mixture of work currently. Workload currently okay – would like some more technical elements…the deadlines have been missed, and working towards getting the fundamentals correct in order to progress to much more technical elements".

29. The claimant wanted to sit near AH, she said so she could receive more support from him. She arranged a number of extra one-to-one meetings

which AH says were all after core working hours, at which she expressed her lack of support. AH reported to his own line manager, Daniel Peattie, on 4 September, about an occasion when the claimant had wanted to switch their meeting rooms, "she said it's too big and I spent 10 minutes looking for a smaller one". He was worried the claimant was taking too personal an interest in him. He reported that the claimant complained he did not take an interest in her personal life, and was distant, that he was cold, that he had not told her when it was his birthday. He anticipated a similar discussion at the next catch up meeting. AH was discussing his concern that the claimant's interest in him was not all about work, as well as his concern that despite close supervision, her performance fell behind that of others. Daniel Peattie asked him to "make a concerted effort over the next few weeks to be more available for Lisa in terms of sitting closer in the office et cetera where possible". They could then review progress against targets at the end of September. The claimant says that after meeting in mid-September, AH asked her if they could have a personal relationship after he ceased to be her line manager, something he vehemently denies. On 4 October, according to the claimant, she told Daniel Peattie at a manager training session that she felt excluded and unsupported by AH, and it was suggested there should be separate one-to-one meetings for each with HR about this. On 8 October the claimant asked to reschedule the meeting, and when it took place next day she became upset. She complained that he had left without resolving that, and next day said she wanted him to sit next to me the following day and on Friday, so she could get "the capital pooling stuff sorted". On Wednesday, 10 October she sent him a message: "OK. Are you deliberately distancing yourself more from me?… The distance from where we are sitting".

30. On Friday, 12 October Daniel Peattie had separate meetings with AH and the claimant. It was part of AH's complaint that the claimant sent him texts and messages out of hours. By the end of Friday she was messaging AH saying she was not coping well emotionally, because of him. Asked what he could do about it, she replied "I think it would have been nice to show concern and come and speak to me if you cared", and then: "Are you going to talk to me or not today".

31. AH asked Daniel Peattie if he could speak to HR, and they did. He produced messages showing the claimant , as he put it, "prying" into his personal life, and the messages about feeling unsupported. Daphne Clark of HR then spoke to the claimant, who did not respond when told about his concerns. (On the performance issue, namely missed deadlines, Daphne Clark queried whether perhaps the claimant had dyslexia). AH was then advised by HR to sit next to the claimant from time to time, but to make sure that other colleagues were present. Later on the day of the meetings (20 October), the claimant asked AH if they could go for coffee for the next one-to-one meeting, and he replied that it would be better to use the meeting room so they could use the screens to go through the work, whereupon she asked if they could go for coffee another time because "it would be nice to catch up outside of the office". When he did not reply to this, 10 minutes later she added: "thanks for excluding me". He responded: "whatever we need to catch up on should be in our one-to-one meeting", demonstrating his need to keep a boundary between work and social relationships. The claimant's version of the October 2018 meeting with HR is that it was arranged for her to discuss concerns about AH, not his about her.

32. There was a follow-up meeting on 15 November 2018. The claimant's own notes (added to the respondent's minutes of meeting on the 26th of February 2020) state that it was at this November 2018 meeting that she learned that AH was concerned about her harassing him, and (in the claimant's own words) that Daphne Clark said: "if I ask AH for coffee again that will be harassment. I told her I would not do that again".

33. Summarising, the claimant's presentation of these events is that she wanted closer supervision by AH because she was concerned that her performance was lacking and she needed coaching, while his perception was that she wanted a closer personal relationship. Whichever was right, there is no doubt that from November 2018 the claimant knew that AH was uncomfortable about it, and that she had been told to keep things strictly professional. AH sat near the claimant so as to provide supervisory support, but continued to feel uncomfortable that she complained to others, in front of him, that he did not support her. He arranged a series of training meetings with her. We can see from the hearing bundle that behind the scenes the claimant complained to colleagues that AH spoke one-to-one or had coffee with other female members of staff, but not her. At Christmas the claimant sent AH a text message complaining that it was rude that he had not come over and wished her personally a nice holiday. He spoke to his manager about this in the New Year, and was asked to leave it until after the year end (closure of accounts) in May.

34. In May 2019 the claimant sent AH a text out of hours. She also complained to a colleague that he was not supporting her.

35. In June 2019 AH was told by a colleague that the claimant was making remarks about him, and in particular that she had asked another colleague, Sally Tierney, to remind him to give her (the claimant) a birthday kiss. AH asked Sally Tierney about it, and became upset when she confirmed it. This was referred to his line manager, who in a minuted discussion on 17 June 2019 suggested he make a formal grievance. AH says he decided that he had no faith that this would be swift or effective, having regard to how his previous approach to HR had been handled, and preferred to find a job with another employer. Meanwhile, the assistant director of the finance department decided that a tactful solution was to rotate the claimant out of the team so she could gain experience in areas other than housing finance, but this was not delayed until October 2019 so it coincided with new starters, while in the meantime the claimant continued to complain that she wanted to stay in the team and be managed by AH, and in fact did not take effect until December 2019.

36. In December 2019 AH had succeeded in finding another job, gave notice to the respondent, and was due to leave mid-February 2020.

The Leaving Card and the Grievance

37. In January 2020 the claimant wrote a lengthy message in a leaving card for AH, giving it to another manager to hand to him. The text is reproduced below (see section on discrimination because of religion and belief) but it is enough to say here that while it purported to be pleasant, it was not. As AH saw it, she contradicted herself by both praising him and complaining about his bullying

behaviour, then denying prying into his personal life, when he had evidence that she had.

38. This episode at the end of January 2020 coincided with CC (see below) telling AH about his own experience of the claimant, and in particular that he had perceived a "cyclical pattern of behaviour", in which he would ask the claimant to leave him alone but sooner or later she would resume trying to get his attention. Based on his own experience in the autumn of 2018, AH advised CC to write it all down, and that he would feel better about it. They also both went to speak to Dave Hodgkinson of HR about the claimant. On 30 January 2020 AH completed a formal grievance form complaining, in summary, that the claimant had continued to message him out of hours, to complain of lack of support, and had asked a colleague to give him a birthday kiss, despite his concerns about her having been drawn to her attention by HR in October and November 2018. He described feeling stressed when she sat next to him, and by having to have discussions about work at the desk in sight of others, rather than in a meeting room. He was later interviewed as part of the disciplinary investigation of the claimant, on 26 June 2020.

The claimant and CC

39. CC, the second respondent, joined Westminster Council in October 2018. The claimant says she first took note and began to talk to him in November 2018. Initially she heard from friends that he was single, but at the beginning of 2019 she learned that he was in fact married.

40. This is the start of a series of interactions which are alleged by the claimant as sexual harassment of her by him, and we take them in turn.

41. The first was on 4 January 2019. On the previous day the claimant sent a message asking how he was, and was he back in the office as she was working from home. He replied he was too. Next morning the claimant emailed asking how he was. CC declined to chat, saying "we can catch up properly" later. The claimant replied that sounded good, a proper catch up, and asked him to tell her about collection funds. She then asked: "what interesting things President Erdogan has been up to lately - your from Turkey right?" CC replied that he was from Turkey but he was not a fan of Erdogan and would rather not talk about it. The claimant said she was from Bangladesh. She went on to ask if he was a Muslim and he replied "no – are you?", She said she was a Christian, and early Christians had lived in part of what's now known as Turkey, and did he follow any faith? He replied he did not want to presume, and he was not religious. Explicitly, we do not find, as stated in the list of issues, that it was CC who said he could tell the claimant about collection funds. As far as we can see from this exchange it was the claimant who took the initiative in starting and prolonging the dialogue, and she was the one to mention collection funds, while CC responded politely but without much encouragement or engagement.

42. The pattern of an unsolicited enquiry from the claimant, with a short polite reply from CC is repeated in emails seen on 10, 14 and 17 January. Later on the morning of 17 January the claimant sent him an email: "do you know the answer to this Latin question: give an example of a third person plural fourth conjugation verb, in the pluperfect objective tense, in the passive voice". CC replied: "no idea, sorry". The claimant then supplied the answer, adding that it

was a random question, she had never learned Latin at school but she would like to. CC replied: “no worries. Nice dress”. Again, it was the claimant who initiated contact, which was rebuffed politely, with a compliment to indicate he was not annoyed with her. This could only be viewed as harassment with other context, which so far is lacking.

43. It is then alleged that towards the end of January 2019, CC started emailing and messaging the claimant out of hours. Having examined the material in the hearing bundle, as far as we can see, it was the claimant who started messaging out of hours. CC saw nothing sinister about it at the time. He used the same phone for work and personal use, and also used it to access work emails and work Skype. From 24 January to 23 July 2019 CC was largely absent from the office on jury service, though he sometimes returned at the end of the day to catch up and help out, especially for closing at end of year. This meant he was using it outside normal hours for work purposes.

44. On 31 January 2019 around 10 am the claimant sent CC an email “out of the blue”, saying that life was devastating. He replied (7 hours later, presumably he was in court): “smile and move on”. Half an hour later she sent a message that it was not all that bad. He replied: “take a break with someone you love”. She responded teasingly asking who that could be, saying she loved fashion, and when he asked “no bf?” (boyfriend), she said no one ever; there followed some banter, which he brought to an end around 6pm with “I’m off”, after which she said she was taking 3 weeks leave to get married in Mauritius. He concluded the conversation. Later she must have sent him another message, as at 8.20pm he replied “no I’m at home”, leading to a brief exchange on working from home.

45. On 3 February, at 8.25 pm, she sent a message saying she was “not going anywhere fancy on leave,” (i.e, Mauritius, or getting married) but sorting out her two bed property in South Croydon, and could he let her know if he knew anyone interested in renting it. He wished her a good break.

46. On 15 February, a Friday, the claimant, at 6:33 pm, emailed CC: “I can see why you are (his line manager’s name) favourite. Working on jury service…wish I had that level of focus with work”. He asked why she thought he was his favourite. She replied: “I heard someone say”. He asked who, she said it was a secret. He asked how he would know, then what had happened yesterday (Valentine’s Day). She responded that he would not find out LOL, and asked *him* what happened yesterday. He persisted in wanting to know who had said he was his manager’s favourite. She asked again about his valentines. He said: “I was just asking about the dates with your bfs (boyfriends) for Valentines! You said you have many”. She responded that she spent the day at the flat, she never celebrated Valentines, and she had one message from someone on a dating app, but he was not tall enough. He returned to ask: “what do I need to do for you to tell me” (meaning who had said he was his manager’s favourite). An hour later she restarted the conversation, pushing him to say what he could do for her. He then asked: “you want affection from me?, leading to some fencing, with long gaps on his side. Shortly before midnight he returned to: “are you going to tell me who said about the favourite?, and she replied: “you want to know that badly? That you do anything?. He said “no, it depends but I will try?”. She said: “depends?

What does that mean?". He protested she was just playing with him, and by 12.15 he said he was getting confused – good night. She then reopened the conversation, with some ambiguity about what he would do to find out. Continuing into the early hours of Saturday morning, the claimant commented "you looked cute today". He replied "thanks, my wife said the same thing!". Again he asked to know who said he was the favourite, then said: "we are going in circles. No worries. Good night" . We then get the first example of CC taking the initiative in conversation, when he asked if she had photographs of her flat. There was a tease about whether he would view it; he said lots of his friends were looking. Between 12.30 and 1 am there was more exchange of messages about finding out who the favourite was: she said a lady never tells, and he replied you are hard work, and then, around 1 am, that he had to pick up his wife, finishing with: "good night and please let me know who told you about me being fav". At 1.25 am she began the conversation again, with a flirtatious reference to what he wanted for her to tell. Resuming at 9 am (Saturday morning), she said she could not write it, he said he would be in the office late on Tuesday, but not (in reply to her question) the following Friday. She might not be in on Tuesday, because of the flat. He asked if she'd be in the flat, she replied "I can't write it nor say it. So……". He replied "no worries take care". Three quarters of an hour later she replied: "I'll stop messing around. I'll just let you know. You have my permission to do whatever you want to do with me. You said I was missing out previously, so I wanted to take some responsibility to correct that now. Just let me know if you want to". This clarifies any sexual innuendo on her part on what he would do to know who had said he was a favourite. His response was: "not sure what you are on about. Speak another time". In the evening, 12 hours later, she backtracked when she emailed: "sorry for being so flippant". She had meant work with the flat, which have been delayed by cowboy builders, she wanted his help with the flat: "because you seem sensible and elderly older type. Otherwise I have no other male relative to ask. It's not really safe for a female doing by herself especially the experience I have had". He had boosted her morale by expressing interest in property. He replied briefly to say he understood, he hoped she could find tenants soon. We read this as a retreat on her part to more conventional seduction by flattery.

47. The following evening, she took the initiative and at 8.25pm, said: "sorry if you thought I was flirting with you. In your dreams buddy. I already knew your married!! So you didn't need to freak out either as you did at the end." He replied: "I didn't freak out.. It's a compliment". A few minutes later she emailed again "you look cute most days, except for the days when… I won't say it. I keep that one to myself". He did not respond.

48. Next day, Monday, 18 February, she sent him details of the flat. He replied "sorry friends are not looking in Croydon any more". Later that day she picked up on the thread from 15 February, where he had asked whether she wanted affection from him and said "yes to the below". He replied "I can be nice but not affectionate".

49. In the background the claimant was messaging a male colleague about CC, calling him her "beloved" and a "cute teddy bear to play with". On Tuesday 19 February, towards 7pm she emailed: "sorry to have offended you". She had not meant anything sexual, she held him in high esteem, people had told her he was so sweet and she admired his work ethic. He replied "don't worry, I'm

not offended, just really busy with work in court that can't respond sooner. Have a nice evening and week too".

50. On 20 February she initiated another conversation, saying she was working from home and once they moved premises to Victoria Street "I won't ever see you again", because he will be working from Enfield (home), as there would not be enough desks. CC replied that he did not mind working from home "but I think there will always be seats". We note that he ducked the reference to not seeing her again.

51. We have looked at this correspondence in detail because some of it has been selectively quoted, as alleged as items 10 (e), (f), and (g) on the list of issues. On 15 February, it was not CC who was "encourage(ing) C to talk sexually on Skype, out of office hours". On 16 February, it is clear that the words complained of related to her teasing about him being a "favourite", by not telling him where this information came from. On 17 February, saying he took it as a compliment if people flirted with him was a graceful way of accepting her apology, not an invitation to her to flirt with him, which could be unwanted conduct. It was also clear to us that, at any rate up to the end of February, it was the claimant who was initiating conversations with CC to attract his attention, (with the exception noted, which was a business like enquiry about the flat she said she wanted help letting), and his responses were no more than polite.

52. We now move on to events of 25 -27 March 2019 (allegation (h) is now agreed to be 2 April 2019, not 2 March).

53. On 4 March 2019 the claimant asked if she could swap lockers with CC so she could have one at a better height for her back problem, and he agreed. A few days later she messaged a male colleague "how cruel life is – (CC) should be my husband". On 11 March she sent him an email address with the hope he would find people to take furniture. On 18 March she emailed: "a nice time. Back to work look. :-)" He replied that it was just this week he was back,, for end of year closing. She reverted to the alleged mention that he was his line manager's favourite, and "everyone's favourite". CC said that he was "chuffed" and left it there. On 20 March, out of the blue, she asked how tall he was, referring to the height of the man she was talking to on the dating app. He replied with his height. There was an exchange about what his height was in centimetres. On 21 March the claimant emailed to say she'd been disappointed he was out, and only came in to work because she thought he would be there. On 22 March she sent a new email saying she had found him a new locker, but away from hers. Two days later he said she could have the new locker and he would have his old one back.

54. Assessing this, it seemed to us that it was the claimant keeping the dialogue going without getting much back from CC.

55. At 7.30 p.m. on Monday 25 March there is a message from CC to the claimant: "thought you were going to show me the locker". At 9:15 pm, the claimant messaged CC "a nice bomber jacket – very **** Nice colour". He queried the asterisks and she said she could not tell him, he replied "it's obvious S***". She said good night. He then asked how far she was from Sloane Square. It is relevant context to what follows that CC was in the habit

of walking from the office across Green Park to Green Park tube station on his way home, and that the claimant lived near Sloane Square. He said he was going to Green Park (the stop where he took the tube home), he had not been to Sloane Square, she said it was a nice walk; he asked what was at Sloane Square, she replied shops, bars restaurants “quiet walk from the river”. He asked if she wanted to come to Green Park, she replied it was nothing to do her. She said “Green Park is so busy. I like quiet places… Where I can walk in peace. There are nice parts…You don’t get that in Green Park”. CC said “I see. I might check it out”. The claimant said he should check it out, and he said he was going there now. Ten minutes or so later he said he was there, next to the Royal Court. She asked why he was there, he said because it was a nice place. After more banter, she said she was at home. He said no worries, he was going. She asked him to wait. She then said she would see him tomorrow, and had he come to see the place or her, to which he replied “nice place. Both”. She asked again how long he would wait, it would take 20 minutes as she needed to eat; he said don’t worry another time. She asked if he could come back another day, and he said yes.

56. About half an hour later the claimant continued the dialogue “in reference to your earlier question – I only hit on people who…***me”. There followed dialogue about what she might mean. He said: “why do you make it difficult. I know what you are trying to say” and she replied: “no you don’t I have no idea what you’re talking about”. He replied: “okay don’t worry”, and she said “anyone who I like…… who lets me if a guy doesn’t like me then obviously not”. Two minutes later he said “so when was it last time you did” and after another two minutes she said: “right now LOL all the time with men and women.. I flirt with everyone”. Then she said she’d been joking about “right now” - he scared easy, and “whoever wants it”. There followed some banter about who she might go for, and about “who lets me… that thing. No one gives me permission”. CC asked when was the last time she given permission, and she said no guy ever gives me permission, I always initiate.”. He replied “I see so you never did it”. She said “did what? I’m 33 years old. What you think. I’m not 12 LOL”. He asked when it was last; she asked why he was so interested: “men was ask that question is so strange”. He now commented it sounded like a long time, and she said she did not bother. He asked if it was anyone at work; she said “no I’m not desperate”. She said “perhaps you could find me someone tall and hot. Nice body et cetera”, but not from work”, immediately followed by: “who do you think from work would suit me? To which CC replied “AH”. She replied that she could not because he did not fancy her. She then returned to his question, saying “can I ask you a question… answer it honestly. Why do guys ask that ridiculous question… last time?” Why had he asked it? He replied that maybe it was better when someone waited longer, guessing it might be more passionate. He responded to the next questions with smiley emojis; she added that it depended on the guy, and elaborated. He advised her to get a move on: “find someone, I’m sure there are loads”. CC then said he needed to shoot off, speak another time and: “don’t give everyone permission”. The conversation however was drawn out by her after that, by her asking what it meant to be ‘worthwhile’. She added the comment: “but we shall see as long as the guy does all the work. Good night”, prompting him to ask (of ‘work’): “preparing for it? Or doing it?” She said her body was not what it was at 25 years old, he gallantly replied he would not know. After a few more exchanges, he said he really needed to go. She said “maybe yes”, he said it sounds like an invitation, she

asked if he would take it, he replied he could not. With this he brought it to an end.

57. The tribunal notes from the conversation that she engaged (starting with the asterisks) in deliberate sexual innuendo - and that CC was clearly tempted.

58. CC complains that the claimant only provided *selections* from these conversations to the Council when she lodged a grievance 13 months later, and to the police when 11 months later she complained of an assault by him.

59. On Tuesday 26 March, in the morning, the claimant emailed CC "sorry you did similar messages today, whilst I was in the office. My work phone was at home. I was wondering why looking at me. But I thought you were ignoring me… But at least you came to Sloane Square. That was a nice surprise :-) is it just the lucky want me to show you. I could show you my………"

60. That evening (26 March) there is a message from CC to the claimant saying the locker was fine for now. She protested that wanting to show him was totally innocent. He said he was only interested in the locker and she said: "yes of course you were. That's why you came to Sloane Square to find your locker". He protested and said he was going there now, just leaving work to have a stroll on the way home. She said "you can come tomorrow and see me", but today she just got back from the gym. She repeated "you can come tomorrow" he said where, she said "and see me? Obviously I want to show you around". He said he would get in around 7 pm (from court) and could stay till around 9 or 10pm. She wanted to show him some place - "don't worry outdoors, I'm not taking you indoors". She continued that she had been brought up well, very decent, he said he did not doubt it, she added "I was just being silly yesterday. I didn't want to have***with you. But you thought that way", and a bit more of the same.

61. On 27 March, at 13:28, the claimant sent a message to CC saying "let me know if you will see me in Sloane Square in the evening for 20 minutes. Might be working till late in the office today. Might not be in tomorrow et cetera". We wonder if this is the message referred to in allegation (k), where we cannot otherwise find a reference, to *CC* asking the claimant at 1:40 am "at the end of March 2019" to come up and see him. The claimant has not given a date and we have not been able to trace any other message in the bundle. Later that day she asked CC (at 5:30 pm) when he was coming in, and at 6.46 pm expressed pleasure that he had. That evening they met in Sloane Square at about 9:20 pm where, according to the claimant, CC had been waiting about 40 minutes. She says he suggested going somewhere private, he says she suggested St James's Park and he refused, saying they only "sat at a bank" and spoke. She says he kept looking at a fence, to see if they could go somewhere private; he says that she wanted him to walk away with her. There was evidently some conversation about having relationships. According to the claimant, CC was staring at her breasts, and asked if the invitation still open, whether her parents were home, lamenting that there were now tenants in her flat. She says she did not leave (if she was worried about his intentions) as she "gave him the benefit of the doubt", because of good things she had heard about him from colleagues, and she was confused. He says that he left after 20 minutes, after saying would be wrong to have a sexual relationship. Neither of them says there was physical contact that evening. Assessing the

disputed evidence, the tribunal accepts that the claimant is probably right, that the conversation was more explicit than CC suggests, and he may well have thought from the ambiguities of the email and message exchanges leading up to it that she had been looking for more than platonic conversation.

62. CC says he now wanted to put boundaries in place. How he did this and how the claimant responded to that is shown in the next series of messages. He worked at a different bank of desks. This move prompted the claimant to email him on 30 March: “thanks for leaving us” ,and he replied “sorry, really need to work and needed to find someone somewhere less distracting”. Next day the claimant said: “I will stop… Clearly my advances aren’t invited.” On 1 April in the evening she sent him a message “how are you? On 2 April she emailed: “good morning. I wanted to sit next to you today but thought you find irritating enough”. Later she asked: “could you tell me why you are ignoring me please? This is quite rude”, to which he replied “sorry really busy with work in court. I’m in court now!” That afternoon she said “it’s okay. You don’t have to seem if you don’t want to. Just really wanted to see you are not. Since I didn’t get to speak to you proper the last time because I was feeling so shy”. Later that day she asked if he would see her after court tonight ,and he said sorry he needed to work. That evening she emailed: “glad you have time to talk to other girls” (she had watched him speak to a female colleague). Her messages this day suggest to the tribunal that whatever happened in Sloane Square on 27 March, it was not unwanted, otherwise she would not be seeking further contact in and out of work.

63. At around 9 pm on 2 April the claimant stood at CC’s desk and asked if he would walk to St James’s Park with her. We understand that this is when what is alleged at 10 (h), that there “was an incident in the office with CC, the claimant and BM”, occurred. The claimant offered little evidence of what occurred; in our finding her account in her chronology (written 20 Augsut 2020) shows the claimant was jealous of the attention she thought CC was paying to EM (a woman) at work, saying in evidence to investigators in 2020, and again in tribunal, that on this occasion: “he was waiting for EM to be alone with him so he could walk her to the station”. The chronology shows the humiliation was the attention paid to EM, dismissing the claimant’s approach. She wanted to distract CC. In our finding there no “incident” at this point amounting to unwanted conduct towards the claimant. CC replied to the invitation to walk to St James’s Park that he would walk to Green Park station, through Green Park. They left the office relatively late. Within Green Park she said she wanted to go on to St James’s Park, and then occurred what she later reported to the police as an assault. On his account, she stopped and told him to kiss her, she tried twice and on the second occasion he held her shoulders to keep her back, and that he only held her shoulders. In the chronology of August 2020 the claimant says she touched his hand to get him to go back and “he mistakenly thought I wanted to hold his hand”. When the claimant spoke to the grievance investigators the following year, she denied asking him to kiss her, and said:

> “I thought he was about to speak, that’s why, for a long time, he looked at my face. He pulled me in and then let go”.

He continued walking to Green Park, she then said let’s go back, and stood there:

> “quite upset. He then looked at my face again like he was going to kiss me.… “I thought “why is he taking so long to kiss me? I thought that this is

what he wanted. So, I moved in. Then he was just sort of laughing. Then basically he said he can't kiss me", and then "he started touching my breasts and then I grabbed his hands and threw it down to his side and said, "what do you think you are doing", and he grabbed my waist".

64. In the statement of claim, the claimant says CC then put his head on her shoulder and asked if she wanted sex, to which she replied "you were kissing on my lips but you want to have sex". He carried on walking towards the station, and she followed behind asking him to go back. She says he asked if she wanted to have sex, then, a one night stand and she felt insulted. He then, she says, snapped and turned round and pointed back to the path and said "come on that's where going to have sex", then he: "portrayed what I wanted to perform oral sex on him" and she said she just wanted to talk. She says he carried on walking, "pressuring me to take the home train home" when she wanted to take the bus, and he left her in the park at about 11 pm.

65. When the interviewer (Daphne Clark) said "are you saying CC sexually assaulted you?", she nodded, and she was told that HR would have to investigate that from an internal perspective, then inform external people, and that they may need to tell the police.

66. The following day, on 3 April, the claimant emailed CC: "were you hoping to see EM instead but settled for second best yesterday since you couldn't keep your eyes off her and were flirting. I didn't I don't like the fact you deceived me and told me were going to St James's Park". She went on: "I think I know what you want but you did not define the rules properly. Then at least people know where they stand". She thought he had a soft spot for her as a person that was wrong: "you just have the same colours as any other guy". CC replied that her messages were "very inappropriate". He did not promise anything, he was honestly sorry if he done anything to upset her, but that was not his intention. "As you say let's just focus on work as colleagues". Allegation (m) is that the claimant's message expressed: "her disapproval of the claimant's behaviour towards EM, deceitful behaviour and lying", as an allegation that CC had harassed the claimant. Of the facts, this is not harassment of the claimant. The claimant seems to have suggested that CC was harassing EM, but EM has never complained of CC.

67. On Thursday, 4 April at 9:23 pm the claimant returned to the topic when she emailed CC: "sorry for my previous email and for accusing you. I was just upset you didn't tell me the truth, that we were going to St James's Park. I'm walking home. Was going to ask if you want to walk back with me. Have a good evening". Later that evening she said: "you deceived me yesterday. We didn't even go near St James's Park!!! That's not nice. You should have told me. It was too late to go anywhere especially now during closing. I was being foolish. We have more important things to concentrate on. Then you flirting with EM". CC replied "you said the same thing yesterday! As I said before this is all really inappropriate, please stop and just relax and enjoy your evening". She protested her behaviour was "innocent playfulness". She would keep messages appropriate. She only used his work phone because he was married. She also wrote: "I respect you and regards your opinion highly and I am sorry for misbehaving. You are older than me and we are mature. I look up to you and there's so much I want to learn from you".

68. On Saturday 6 April at 9.30, the claimant emailed CC of her own initiative: "thank you for stopping me. Sorry for disturbing work yesterday. Have a good day". If this is a reference to the kissing episode in Green Park, it suggests that whatever occurred, it was no assault.

69. On Monday 8 April the claimant replied to CC's message to her of 3 April that her messages were inappropriate, and he had not intended to upset her. She said: "read this message properly now. You did make a promise. You made me believe were going to St James's Park. Why did you lie?".

70. The next day she returned to flattery. She noted he had a new assistant to help him with collection funds, regretting she had missed the opportunity to work with him, "lucky lady to have such an incredibly brilliant manager", and that evening she wrote to the CC saying that his manager had been talking highly of him today, saying that he was doing strategic staff as a national expert. Another manager been praising him and is forecasting: "everyone that has a smile on their face when there is mention of you. But the best thing is – you are so down to earth sweet and humble. With impeccable manners and respect. She asked for his help with the business case. He did not reply.

71. On 18 April she wished him a good weekend. On 22 April she said "I missed you. Went to that place with my sister I wanted to take you. Thinking about being there with you. Would be so nice. That invitation will always be open, for you to come and see me. Perhaps if you ever feel comfortable again, being in my presence". CC did not reply to these messages. On 29 April the claimant said she was leaving Westminster next day and he could have his locker back.

72. The claimant continued with emails: on 2 May, that she was annoyed that some people could not keep a secret, to which CC replied with a simple question mark. On 5 May she emailed about a restructure, of which he knew nothing, and on 7 May she emailed "you left me s**ually frustrated. Thanks to you!! It's not a nice feeling." He replied: "so inappropriate". She wrote again on 8 May: "sorry for being uncharacteristically vulgar. It is not like me at all. Sorry for blaming you also. I received much more worse advice from Sachin that I should have plenty of one night stands to figure out I want in life. I can take jokes bit too serious at times. You are right, I need to chill and put my problems into perspective. So thank you for trying to lighten me up". Unknown to CC, on 10 May the claimant sent a message to a colleague "me and CC would have the cutest babies… He was totally my time… I rarely find. He ticks 99% of boxes… Life is shit".

73. This reference to Sachin and his advice is at the root of the next allegation, 10 (n), in which it is alleged that CC suggested she had one night stand with her managers.

74. On 10 May CC replied to the 8 May message querying "Sachin?"(a work colleague). The claimant replied vituperatively that CC was completely full of himself, and only spoke to her to feed his ego, she had asked him to come and see her so she could show him places, she was attaching pictures to show him, but not the best parts because he wasn't worth it. He had missed his chance to see something amazing in person, she was bored of him and was not going to speak to him ever again. CC replied: "why don't you meet

Sachin, he is a really nice guy", to which the claimant said: "no he doesn't have a nice bum like yours. You are sick… that you should suggest other guys for me to see. You clearly think I'm a slut". She reproached him with trying it on with other women, and said she had truly lost all respect for him. He replied "you don't stop with inappropriate messages?" She sent another message saying she was not going to speak to him again, and then 25 minutes later said: "your suggestion of AH or Sachin is both offensive and inappropriate… I just developed a liking and strong attraction to you. It turns out you are married. My bad luck". CC's response was: "can I kindly ask you to stop this nonsense. Please don't message me unless it's work-related. I'm not annoyed, I'm not angry I just wanted to stop these inappropriate messages. Please." She apologised for "blowing the roof off" and sent another message "could I speak to in person one day? Not about anything appropriate, so don't worry. Sorry for winding you up". In context, the allegation that the claimant have a one night stand with Sachin misrepresents the dialogue. The claimant opened the subject. It was not unwanted conduct. The only unwanted conduct was CC's lack of interest in continuing any non work relationship with the claimant.

75. Despite discouragement the claimant continued. On 14 May she informed CC that there was no finance restructure (as she had suggested earlier, perhaps as a lure) and later in the evening, sent a link to a YouTube video of a man she fancied. On 19 May she asked him to her birthday, confirming she was only inviting a small number of people, and she would behave "with decency and decorum", she was sorry for past interaction and for being so disrespectful. On 20 May she told him how nice Sloane Square was. He replied briefly telling her to enjoy it. On 21 May she sent a very long email about her line manager, AH, not being a good manager, and regretting that she had not applied for post in CC's team. She had wanted to learn and develop with CC. On 28 May the claimant told CC that his work performance was being questioned. He replied that this (her messages) was obsessive behaviour. She responded: "I know what my issues are. Thank you… People who are attention seeking may just need more love". On 30 May, just before 1 am she said she would accept his taunts and jibes since he was moody. He readily accepted compliments but lost his rag over a little reproof. Reproof was for his own benefit. On 1 June she sent an email regretting that they had not gone to St James's Park. She then told him she did not care about his opinion, and on 4 June complained that he was ignoring her messages. CC replied again that this was obsessive behaviour and her remarks were inappropriate. On 5 June she sent an email about when he wanted his locker back and whether he was upset when he heard she was leaving (we do not have evidence that she was leaving Westminster, as indicated in her message of 29 April).

76. These emails suggest that whatever happened on 2 April, the claimant still wanted contact with CC, even regretting that things had not gone further. It is not the case that CC tried "to force the claimant to have sex with him" - allegation (l) on the list of issues.

77. The next allegation (o) is that in late June or early July CC made the claimant feel uncomfortable in the office, asking if they were okay, was she sure, and looked at her breasts. There are no contemporary emails or messages about this episode, other than a message from CC to the claimant on 25 June,

which she says was on the day where he said: "happy belated birthday, totally forgot about it due to jury service. I was meaning to ask if you're coming to CIPFA conference in July". CC has no recollection of an encounter in June or July, but in his long written complaint about the claimant on 30 January 2020 he mentioned she sent him a message in August 2019 complaining about the way he looked at EM, and four days later, another, more aggressive message about his "bad intentions" to EM. He saw her by coincidence in the kitchen that day and asked if they were OK, but on 21 August she emailed saying she was not OK . From the claimant's account, and his, it was a casual meeting in the office kitchen. Given that he had been rebuffing her approaches, and there had been little personal contact it seems for some weeks, by this point, we doubt very much that it was any more than a brief exchange to see if they could have an appropriate working relationship, and he did not ogle her.

78. Allegation (p) is that CC asked the claimant if she was desperate for it and wanted it badly. The allegation is undated and as far as we can see undocumented. We do know that on 10 July the claimant emailed CC: "let me know if you'd like to go for a walk in St James's Park at Battersea Park, one day after work. Till then adios". He replied he'd be in north London, suggesting she came to Finsbury Park or Arnos Grove. She responded that from the pictures Arnos Grove looked very suburban. She then sent him her telephone number for WhatsApp. None of this suggests that he was taking the initiative at this time, or that she found his conduct unwanted.

79. CC related in his January 2020 complaint how in October the claimant tried to renew his interest by messaging him about a meals ordering app, and that in November he had blocked her on his phone and Whatsapp as was "really worried" about her behaviour. On 16 November 2019 there is, without apparent preliminary, an exchange where the claimant said she was sad that CC preferred EM to her: "How many times I caught you staring and chasing her into the kitchen". He replied: "even if I was interested in her it's strange that you mention it and it's none of your business! I really think you have issues and if you keep this up to be known for being weird and strange. I really think you need to stop this crap, alighted into isolate yourself from everyone. Next day he added he was not interested in her, asked why he said: "if you just behave with more maturity and short will find what you are after". When she persisted, he asked her to stop it and said good night. This exchange does not feature in the list of acts alleged by the claimant as harassment, but it did concern CC.

80. The next allegation is (q), that on 11 December 2019, CC and his manager made fun of the claimant. This relates to an office social event. The claimant observed them laughing, but did not hear what was being said. They deny they were talking about her. There is no contemporary message or text. In our finding there is no evidence that CC or his manager were talking about the claimant on this occasion. It is unfounded suspicion.

81. The episode may perhaps have informed a message the claimant wrote to CC on 24 January 2020 (not having sent him any messages since November): "what is your problem? You are so full of yourself. You smile and talk to me and yet harm my reputation by talking to (his manager) about me"; he was constantly on the prowl, chasing "first EM, that other lady from Martin's team and now also M –. "Lurking around to get a chance to speak to

the ladies alone. You did this today also." This is alleged as 10(r), that at the end of January 2020, C wrote to CC criticising his behaviour. The complaint is probably about her message that he was on the prowl. He replied: "I was really glad that you had stopped sending inappropriate messages for some time, but now you have started again. The content of this email are so repulsive, aggressive and extremely inappropriate. I'm really getting frustrated and annoyed with your cycle of behaviour and it really needs to stop. There are times when you say you are sorry to your past behaviour and back off from sending these kind of emails and you come back again". He denied any conversation with his manager about her, and suggested a meeting of the three of them to discuss it. At this rate, he said, he felt he had no choice but to escalate it, as he was worried she was not going to stop: "therefore, I am making one final, kind, request; please stop for and forced to raise this with someone and I kindly and sincerely request that you don't email me other than work".

82. The following Monday, 27 January 2020, CC says the claimant came and sat down diagonally opposite hm, and this was the action that prompted him to complain, in the hope of "finding a lasting solution". Despite having thought he could stop her without public embarrassment, "it didn't stop and her manipulative behaviour continued". There were, he said: "interactions between me and LR which is extremely embarrassing and uncomfortable to talk about" but he wanted to protect colleagues who might suffer in the same way.

83. Thus the exchange of messages on 24 January that CC discussed with AH at the end of January, and their manager, prompted both to write complaints about her, which led to the claimant's suspension. The final allegation of harassment of the claimant is that AH complained about her sending him a leaving card, as he did on 30 January. CC wrote a detailed complaint on 30 January 2020,

84. Before moving on to the complaints about the claimant, her suspension and the investigation that led to her dismissal, we consider whether the conduct complained of by the claimant amounts to sexual harassment of her.

Harassment – relevant law

85. Harassment is defined in section 26 of the Equality Act 2010 as follows:

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

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

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

(i) violating B's dignity, or

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

(2) A also harasses B if—

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

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

86. Subsection (4) states that:

"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.

77. In making decisions on harassment, as in all other matters made unlawful by the Equality Act 2010, we must bear in mind the special burden of proof. Because people rarely admit to discriminating, may not intend to discriminate, and may not even be conscious that they are discriminating, the Equality Act provides a special burden of proof. Section 136 provides:

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

78. How this is to operate is discussed in **Igen v Wong (2005) ICR 931**. The burden of proof is on the claimant. Evidence of discrimination is unusual, and the tribunal can draw inferences from facts. If inferences tending to show discrimination can be drawn, it is for the respondent to prove that he did not discriminate, including that the treatment is "in no sense whatsoever" because of the protected characteristic. Tribunals are to bear in mind that many of the facts require to prove any explanation are in the hands of the respondent. **Anya v University of Oxford (2001) ICR 847** directs tribunals to find primary facts from which they can draw inferences and then look at: "the totality of those facts (including the respondent's explanations) in order to see whether it is legitimate to infer that the actual decision complained of in the originating applications were" because of a protected characteristic. There must be facts to support the conclusion that there was discrimination, not "a mere intuitive hunch". **Laing v Manchester City Council (2006) ICR 1519**, explains how once the employee has shown less favourable treatment and all material facts, the tribunal can then move to consider the respondent's explanation. There is no need to prove positively the protected characteristic was the reason for treatment, as tribunals can draw inferences in the absence of explanation – **Network Rail Infrastructure Ltd v Griffiths-Henry (2006) IRLR 88** - but Tribunals are reminded in **Madarrassy v Nomura International Ltd 2007 ICR all 867**, that the bare facts of the difference in protected characteristic and less favourable treatment is not "without more, sufficient material from which a tribunal could conclude, on balance of probabilities that the respondent" committed an act of unlawful discrimination". There must be "something more".

Harassment – discussion and conclusion

80. In this case, the essential point for us was whether the conduct was "unwanted", whether of a sexual nature, or whether it violated dignity, or created a hostile (etcetera) environment for the claimant. In several of the allegations we have is found that the allegation is factually mistaken, for example (a) to (c), (h), (k) (n), (o), (p), (q) and (r). In respect of items (d) to (g), which are about the February weekend conversations, it should be clear from the detail that we have set out that it was the claimant taking the initiative, or persisting in drawing out a conversation CC wanted to end, or trying to lead it in a flirtatious direction. Indeed, CC only persisted because he wanted to know who said he was the "favourite". He more than once tried to shut it down. It was not unwanted conduct, indeed it was scarcely humiliating, hostile or offensive.

81. Of the events of the 25 and 27 March 2019, (i) and (j), it was clear to us that it was the claimant who led CC on, knowingly. If CC did talk of a sexual liaison late at night on 27 March, he cannot have suspected from her earlier

messages that this was unwanted, and when there was no encouragement, he stopped. In context, this was not harassment. Clearly, it would have been wiser for him not to have gone at all, as he appreciated in hindsight, but we could not conclude that his conduct was unwanted.

82. Of 2 April, it is clear from the claimant's later accounts and later messages that his drawing her in to kiss her was not unwanted, it is doubtful that he touched her breast, and anything after that was a discussion, with no physical contact. The discussion of sex clearly followed on from her emails and messages, even if her meaning was misleading or misunderstood. It is hard to understand how what happened was unwanted when she more than once referred regretfully to not having gone to St James's Park, and suggested a further visit. Further, after this episode, there is no evidence that CC did anything but rebuff her approaches. He kept his distance, while trying to maintain a working relationship. It is clear that the claimant was meanwhile jealous of any attention he paid to other women in the office.

83. Of (r), his response to her complaint on 24 January 2020, his reply was hostile, but in context it was not related to her protected characteristic (sex) but to her persistent personal and jealous interest in his private life which underlay his expression of frustration and annoyance, and which he wanted to stop. Though firm, it was courteous. It was not unlawful harassment of her.

84. As for (s), AH complaining about her leaving card, making a complaint to management about unwanted attention by a member of the opposite sex is not the creation of hostile et cetera environment for her related to her sex by his unwanted conduct. It is his complaint about *her* unwanted conduct.

Jurisdiction in the Sexual Harassment claim

85. Although we have made findings on the facts and the application of the law on all the allegations, we also find that all the allegations except (r) and (s) are out of time.

86.The Equality Act provides at section 123(1) that proceedings must be brought within the period of 3 months starting with the date of the act to which the complaint relates, or such other period as the employment tribunal thinks just and equitable. The claimant went to ACAS to start early conciliation on 22 April 2020, so the cut-off date is, on the face of it 23 January 2020, 3 months before.

87. Where there is "conduct extending over a period", time starts to run at the end of the period. In **Hendricks v Metropolitan Police Commissioner (2003) IRLR 96**, the 'conduct' concerns the substance of the complaint that the respondent "was responsible for an ongoing situation or a continuing state of affairs" involving less favourable treatment, as distinct from "a succession of unconnected or isolated specific acts".

88. Even if we had found there was harassment in the activity of February to 4 of April 2019, on the facts, there is no evidence that this conduct continued. After that date the claimant rebuffed all approaches. Even if we had accepted that it did not end at the beginning of April, and that there was some kind of sexual interest at the beginning of July, there is nothing after that. It ended there. There was nothing more underlying those events and exchanges. Even in December

2019, on her own account she did not hear a reference to her, she imagined it. There was no continuation of the conduct complained of after April 2019, and it is out of time. So we should consider whether to exercise our discretion to extend time.

89. On whether it is just and equitable to extend time, in **British Coal Corporation v Keeble (1997) IRLR 336**, it was suggested that employment tribunals would find the list of relevant factors in the Limitation Act illuminating, but in **Abertawe Bro Morgannwg University Local Health Board v Morgan (2018) EWCA Civ 640**, tribunals were told not to use **Keeble** as a comprehensive checklist but to focus on the length of delay and the reason for it, and any other factor that might be relevant to why the claim was late. **Ahmed v Ministry of Justice UKEAT/0390/14** explains: “It is for the Claimant to satisfy the Employment Tribunal that time should be extended. There is no principle of law which dictates how generously or sparingly the power to enlarge time is to be extended. The Employment Tribunal is required to consider all relevant circumstances including in particular the prejudice which each party will suffer as a result of granting or refusing an extension. Relevant matters will generally include what are known as the “Keeble” factors.”

90. The claimant did not begin to explain why she had delayed in bringing her claim. The most plausible explanation is that she only began to consider CC’s conduct unwanted when she was made aware of the allegations against her at the investigation meeting on 26 February 2020. Her reference to the police (4 March 2020) followed on from the discussion with Daphne Clark about the incident on 2 April 2019. Her grievance was sent in 2 months later. The tribunal is well aware that there are good reasons why women do not complain of sexual harassment or sexual assaults: shame, fear of not being believed, fear that investigation will stir up unwelcome emotion, for example. We do not consider that any of these would have deterred the claimant from complaining had she wished to. He was not in her team. There were plans to rotate her away, (because of AH) which she resisted, that would have made it easier for her to complain about CC had she wanted to. They did not deter her from complaining when she was facing a complaint by AH and CC. The contemporary emails show that she did not consider the attention unwanted at the time, and that was why she did not complain. Of course in this case, the delay has damaged the evidence less than in some, because despite the claimant’s complaints that she has still not seen all Skype messages (despite the respondents’ solicitors invitation is to inspect them), the long strings of emails and messages in the hearing bundle are good contemporary evidence. What is lacking is accurate undocumented recollection of events not complained of until a year later. Having regard to the burden on the claimant to satisfy us that time should be extended, we decline to do so.

Events Leading to Dismissal

91. On 24 January 2020, the same day as claimant wrote to CC reproaching him for prowling, she also sent a message to an older colleague, Grace Osinowo, in whom confided from time to time. She said: “CC is being naughty. He is married but following girls into the kitchen. He is not decent. He was doing with this with me, then PM, now M –”. This is the protected act in the victimisation claim.

92. Grace Osinowo showed it to a colleague. They agreed that what they knew of CC suggested that he was an unlikely predator. She went to ask CC what was going on. He said the claimant had been chasing him, and showed her the messages she had been sending. Next day he reported back to her the message the claimant had sent him about speaking to other women. He also told her about AH, and that that was why AH had decided to leave.

Tim Mpofu

93. At the same time, a link was made with the claimant and another colleague Tim Mpofu. In June 2019 the claimant had invited colleagues to join her for a dinner and dance. No one replied except Tim Mpofu, and when it was clear it was just the two of them, he suggested that they go out to dinner to celebrate her birthday, but declined a dance. She then suggested a film. It seems she resented that he did not pay for her (the original invitation would have involved each person paying for themselves). We can see from the messages she sent at the time that the claimant considered him as a date. Afterwards she sent him WhatsApp messages asking if she could see him again. He did not reply. She then sent Teams messages reproaching him for his rudeness, and he blocked her on WhatsApp. Then in September 2019 a colleague came and asked if it was true he and the claimant had been on a date. Mr Mpofu became angry, asked her the claimant to delete his number, and said he'd be keeping his distance. She persisted in asking where the information (that she was talking about their "date") came from, and went round the office asking who had told him. At this point, the manager said, the claimant had insisted that Tim Mpofu was to be her mentor. He declined. Her aggressive search for the informant intensified (so he was informed by a colleague). Then suddenly on 20 December 2019 the claimant sent him a written apology. She said she had not intended to embarrass him or compromise his reputation at work.

94. AH and CC having complained about the claimant, her conduct to Tim Mpofu was added. He made a written statement on 25 February 2020.

Suspension and Investigation

95. The claimant was suspended from work on 31 January pending the investigation of AH and CC's complaints about her. Risk assessment identified that she appeared to have behaved in similar ways towards more than one male colleague and there was a risk of harmful repetition if she remained in the workplace.

96. The investigator appointed was CC's manager, to which the claimant properly objected, and Janine Gray was substituted. That accounts for the delay until 11 February, when the claimant was invited to a meeting on the 26 February 2020. Daphne Clark was present at that meeting, where the claimant gave a limited account of the matters put to her arising from the complaints of CC and AH.

97. Janine Gray, opening the meeting, mentioned an earlier "verbal warning". Daphne Clark interrupted to say it was not a verbal warning, but she had told informally to limit her interaction with AH to work. The claimant asserts it was the other way round, but having considered the evidence our finding is that it was

Janine Gray who had misunderstood, amd Daphne Clark had put her right. The respondent's disciplinary procedure does not include formal verbal warning.

98. As a result the conversation at that meeting about the episode on 2 April, the claimant went to the police on 4 March 2020 complaining of an assault by CC on 2 April, and on 20 March 2020, just as the coronavirus lockdown began, she told Jennifer Worthington that she would be lodging a grievance about Daphne Clark. The immediate effect of lockdown was that the investigation of the claimant was put on the backburner. Meanwhile, the claimant had been asking for the minutes of the 26 February meeting, and was told that they would be provided after second meeting, as they had not been able to complete, and it was then decided that the claimant should have supervised access to emails and Skype messages, to help her answer some of the points. On 20 March se was notified of a resumed meeting on 23 or 24 March, The claimant said she was not available. At this point lockdown supervened, and the first respondent decided, after consultation with the unions, to postpone investigations due to the pandemic. There was some contact after that between Ms Gray and the claimant about returning the council's laptop, but the claimant did not reply.

The Claimant's Grievance

99. On 24 April the claimant presented a formal grievance about Daphne Clark, about the conduct of the disciplinary process, and with a number of allegations about CC. Andy Durrant was appointed investigator. Gerald Almeroth and others decided that there was insufficient risk of harm to justify suspending CC on the basis of this complaint.

100. At this point the respondents, with the help of their IT department, obtained a full download of messages and emails. On 10 May her suspension was reviewed, and continued. Shortly after that the claimant said that she was sleepless and suicidal, and was referred to the Council's employee assistance programme and then to occupational health, where she was seen 16 June 2020.

101. On 26 May 2020, Andy Durrant interviewed the claimant, accompanied by her trade union representative, about her grievance. He then set about interviewing others: Grace Osinowo and M- on 24 June, EM on 10 June, CC on 2 July, Daphne Clark on 23 July. He reviewed his notes with Sally Tierney on 22 May, AH on 26 June and Norman Ullah on 26 June. He decided to interview the claimant again to check details arising from these interviews, and they met on 21 July, again in the company of her trade union representative again.

102. On 6 August Andy Durrant finalised his report on the claimant's grievance. The allegations she had made were identified as sexual misconduct and assault by CC on 2 April 2019, about Daphne Clark referring on 26 February 2020 to a verbal warning in 2018, that Daphne Clark incorrectly interpreted the issues with AH as sexual harassment, that Tim Mpofu made a false claim of sexual harassment, that AH had engaged in bullying and intimidation of her, and that Janine Gray was conducting a disciplinary process badly. He had been asked to focus on Daphne Clark and CC. For the rest, the question of unfairness the disciplinary process must remain part of the disciplinary process, not the grievance, except for AH, who was no longer employed. He then reviewed the evidence he had collected on each allegation in some detail. He concluded there was no compelling evidence that CC had assaulted her, or pursued other female

colleagues in the finance team, as alleged. It was important to his conclusion that the claimant had maintained open relations with CC in the weeks following the alleged incident. This was “completely unexplainable” if her allegation of assault was true. Further, her reasons had changed throughout the investigation.

103. Of the allegation against Daphne Clark, she had told him that the discussion in 2018 was “advice”, not a formal warning, that if the behaviour continued that lead to a more formal process. He rejected the allegation that Janine Parker incorrectly interpreted her behaviour leading to a disciplinary process being pursued. The right procedure was followed on the disciplinary case.

104. After making these findings he added: “this complaint was malicious and vexatious, submitted with the deliberate intent to mislead and influence the ongoing disciplinary process”. He referred to the long delay in making the complaint of assault, the erratic tone of her communication following the alleged assault, despite CC asking her to stop. He recommended that adding this as an allegation to the disciplinary investigation.

105. The claimant asked for more time in which to appeal the grievance finding, and was granted an extension to 26 August. The appeal was conducted by Gerald Almeroth. She was informed on 13 October she had been unsuccessful.

106. Soon after the grievance interview at the end of May, on 18 June the claimant sent a message to a colleague that she was suicidal. Specifically she asked her to “go and tell CC”, and “CC wants me to lose my job, he ruined y friendship with EM. My mental and physical heath has deteriorated. He wants to ruin my career and my life”. The colleague passed on the message that she was suicidal, and unable to reach her any other way, the event the police went to check that she was all right. Counselling was arranged.

107. On 10 August, having seen the grievance report, the claimant complained that staff involved in the investigation had given evidence against her maliciously.

Resumption of Investigation

108. Now the grievance process was decided, Janine Gray proposed a investigation meeting to be held on 7 September, which would include the new allegation grievance. The claimant postponed the meeting because she had an exam, and asked for the meeting to take place in writing. The respondent refused this request (we set out the detail on this below)when discussing the disability claims). The claimant then said on 16 September that she would not be attending, and the meeting on 17 September went ahead without her. The claimant was sent the minutes next day.

109. The claimant heard that CC had been nominated for an award by his professional body, CIPFA. On 29 September she contacted the respondent to say that if the ceremony went ahead she would tell CIPFA there were outstanding allegations of sexual assault against him being investigated by the police. After discussion with CC, the respondent withdrew him from the award ceremony. (He was reinstated after the police withdrew their investigation in March 2021).

110. Janine Gray concluded her investigation, and sent her report to the claimant on 20 October 2020, with all the supporting documents and statements, and an invitation to a disciplinary meeting. The statements included notes of the meetings with AH, Sally Tierney, Norman Ullah, Andrew Parkin and EM, and also relied on the statements made in the grievance process by CC and Tim Mpofu. She found that after the informal meeting in November 2018 the claimant had continued to harass AH, referring to the Sally Tierney information in June 2019 about giving AH a kiss on his birthday, and non-urgent use of his personal phone. She discussed her gossip about Tim Mpofu, and concluded that her continued contact despite protest amounted to sexual harassment. On CC, like Andy Durrant, she concluded that in the light of the messages the claimant sent after the alleged assault, events could not have happened as she presented them, including the messages she had sent about him of which he was not aware. Reviewing the picture as a whole, it was the claimant who had introduced innuendo to an apparently consensual conversation, and the claimant had continued to pursue CC after he tried to establish boundaries with emails that were "erratic in nature, sometimes aggressive and uncomplimentary. She appeared to be fixated on his relationship with other female colleagues which all, from the investigation interviews, did not have any concerns with his behaviour". No one but the claimant portrayed CC as "flirting and predatory". The sexual harassment allegation was upheld.

111. In reaching this conclusion, messages about CC, Tim Mpofu and AH that had passed between the claimant and Norman Ullah were relied on heavily. Sally Tierney's evidence about the birthday kiss was referred to, as well as the claimant asking in April 2019 who was the "sexy man opposite", meaning Gerald Almeroth, and in November 2019, asking who is "the sexy Turkish guy", meaning CC. In all, she concluded that her behaviour harassing AH, Tim Mpofu and CC was a breach of trust and confidence. It was for the adjudication officer to decide whether that undermined the employment relationship.

112. There was then a detailed discussion of her unsuccessful grievance. Janine Gray agreed with Andy Durrant that the timing of the police report and grievance itself suggested malicious intent towards CC, and an attempt to deviate attention away from the disciplinary investigation. It was also noted at this point that the claimant had complained to AH's new employer about him, though the new employer was not taking this any further, and that the claimant had threatened to complain to CIPFA about CC being investigated by the police. This "has had a huge impact on mental health and well-being of CC, Tim Mpofu and AH. This is a difficult issue for them to raise, evidence confirms that they have all attempted to resolve the matter without success before making a formal complaint". There was an additional comment that the claimant had failed to engage, providing limited information in the first meeting and not attending the second meeting. She had therefore relied a great deal on the IT download.

113. The claimant asked to postpone the disciplinary meeting, but was refused. Miss Crouch's reasons were that she been suspended on full pay for 10 months, she had already complained about delay, and she was very familiar with the issues.

Disciplinary Meeting and Dismissal

114. The meeting was held on 17 November 2020. The claimant attended with her trade union representative. She submitted 74 additional documents and 6 statements about her character, edited from earlier documents to cherry pick the good parts.

115. The day before the meeting AH's new employer had forwarded to Westminster an unpleasant email she had just sent the new employer about getting AH to attend the disciplinary hearing (he did not), adding to one she had sent them earlier about his character.

116. Nicky Grant conducted a meeting, heard the claimant, and then reviewed all the matters alleged. On 25 November 2020 she to wrote the claimant saying that she was dismissed for gross misconduct, namely sexual misconduct at work, breach of trust and confidence and malicious and vexatious grievances. Her behaviour towards her male colleagues between 2018 and 2020 was harassment of a sexual nature. She was satisfied there was a pattern of behaviour. She had reviewed this in the light of the ACAS guidance, as the council's own policy did not describe sexual harassment. The claimant had persisted despite requests to stop. She took no responsibility, and demonstrated no remorse for the distress she had caused others, instead blaming the complainants and her colleagues. She also agreed with the investigator that there was reason to be concerned that she had acted vexatiously and maliciously when she alleged predatory behaviour on her male colleagues' part in her own grievance. Her behaviour in contacting CIPFA about CC, and AH's new employer was itself both vexatious and malicious, especially as she had first denied that then agreed that she had contacted CIPFA. In conclusion the relationship between employer and employee was irretrievably damaged because of her behaviour towards colleagues. She also expressed concern that so much of the objectionable communications were made in work time and on work devices.

Appeal against Dismissal

117. The claimant appealed, after being granted an extension to do so. There were 134 points in the appeal, and point 134 was that she "may go further at a hearing". There was a five-hour appeal meeting conducted by three councillors, chaired by Melvyn Caplan, on 27 January 2021. Polly Murphy, a support worker, rather than the trade union representative, assisted her on this occasion.

118. Councillor Caplan attempted to group her concerns for review, went over them at the meeting, and then rejected the appeal. In a three page letter, which was accompanied by the minutes of the meeting, answering the grouped points she had made, the panel had concluded that this was not too severe a penalty, given the continued interaction with three colleagues, despite requests to stop, and her reluctance to admit that she had contacted CIPFA and AH's new employer. They rejected an allegation of bias on the part of Nicky Crouch, based on reviewing the evidence presented and the conduct of the disciplinary hearing. They were satisfied there was no breach of procedure, and in particular that there have been no failure of confidentiality (leading to a third complaint), and she had failed to engage in the process. There was no information from any doctor about ADHD, or its effect (a condition first mentioned by the claimant at the disciplinary meeting on 17 November). She had not acknowledged the effect of her behaviour on her colleagues.

Unfair dismissal – relevant law

119. Section 98(1) of the Employment Rights Act 1996 provides that it is for the employer to show the reason for dismissal, and that it was one of the potentially fair reasons. Conduct is a potentially fair reason. Section 98(4) of the Employment Rights Act 1996 then provides that where the employer has shown a potentially fair reason, 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."

120. When determining the question of fairness for these purposes, it is not for the ET to substitute its own view; its task is to consider whether the Respondent's decision fell within a band of responses open to a reasonable employer in those circumstances - **Iceland Frozen Food v Jones (1982) IRLR 439 EAT**, and **Post Office v Foley and HSBC v Madden (2000) IRLR 827 CA**. That applies both to the substantive decision to dismiss and to procedural failures. The fairness of the procedure is t be considered as an overall process - **Taylor v OCS Group (2006) ICR 1602 CA**. Tribunal should consider the fairness of the whole of the disciplinary process. If they find that an early stage of the process was defective and unfair in some way, they will want to examine any subsequent proceeding with particular care. But their purpose in so doing will not be to determine whether it amounted to a rehearing or a review but to determine whether, due to the fairness or unfairness of the procedures adopted, the thoroughness or lack of it of the process and the open-mindedness (or not) of the decision-maker, the overall process was fair, notwithstanding any deficiencies at the early stage. Tribunals should consider the procedural issues together with the reason for the dismissal. The two impact upon each other and the employment tribunal's task is to decide whether, in all the circumstances of the case, the employer acted reasonably in treating the reason it has found as a sufficient reason to dismiss. So, for example, where the misconduct which founds the reason for the dismissal is serious, an employment tribunal might well decide (after considering equity and the substantial merits of the case) that, notwithstanding some procedural imperfections, the employer acted reasonably in treating the reason as a sufficient reason to dismiss the employee. There is particular guidance to employment tribunals on how to assess fairness in a dismissal for conduct. The tribunal must consider whether the employer "entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at that time". As broken down, the tribunal must consider "whether there was a genuine belief on the part of the employer that the employee was guilty of the alleged misconduct, whether that belief was reasonably founded as a result of the employer carrying out a reasonable investigation, and whether a reasonable employer would have dismissed the employee for that misconduct. **British Home Stores v Burchell (1978) ICR 303.**

Unfair dismissal – discussion and conclusion

121. In this case, it is clear that the employer's reason for dismissing was the claimant's conduct towards her colleagues, whether the particular relationships with each of the three of them that they complained about, or her retaliating with the grievance alleging misconduct on their part, and reports to third parties about AH and CC. The decision was potentially fair.

122. We could not fault the process, except that it took too long. There was good reason to suspend her while they investigated. The investigation was conscientious and thorough. There was little input from the claimant, as she was not forthcoming in the first meeting, and by choice did not participate in the second, and only submitted a selection of messages. The council however carried out its own very thorough review of messages, coupled with extensive interviews, to reach what we considered to be a true picture of events. It was in order for Miss Gray, investigating the disciplinary issue, to borrow from the grievance investigation conducted by Andy Durrant, to save duplication. The claimant was supplied with all the evidence. She was accompanied. Her appeal was analysed and considered. She was permitted extensions of time limits. Of the delay, as so often happens, an accumulation of particular difficulties extended the process, and the common criticism that public service bodies often lack urgency and drive in prosecuting disciplinary and grievance processes is mitigated by the Council's crippling operational difficulties of the first lockdown in 2020. The length of time it took was difficult for the claimant and for those who complained about her, but it did not make the dismissal unfair.

123. Was it reasonable to dismiss for this? By themselves, her conduct towards Tim Mpofu and AH did not merit dismissal. It was not frequent, and for long periods she left each alone. In the case of AH there is no very convincing evidence that she pursued him after the November 2018 advice to leave him alone – asking for a birthday kiss was light-hearted and of itself insignificant. A move and a warning would have sufficed. Her conduct towards CC was more prolonged and more serious. She wanted a personal relationship and would not take no for an answer, and then became jealous and unpleasant. The pattern of not letting go of any of the three, even when they were firm in trying to stop her contact, and then being unpleasant, at least to AH and CC, (she did eventually apologise to Tim Mpofu) was relevant. It suggested she might act the same way towards others, and made her conduct more serious.

124. We were cautious about the addition of the allegation of a malicious grievance. It is wrong that employees who bring mistaken grievances should be punished for legitimate use of the process, and even if an employer has reason to think the grievance was made for purposes other than redress of grievance, other employees should not be deterred from using the grievance process for fear that it will be used against them. In this case however, it was clear to the employer, as it has been to us, substantially on the evidence of messages and emails, that the very serious allegation that CC was a predator, which could have cost him his job and his career, was unfounded, that her presentation misleading, and that she knew that. She was defending himself by attacking him, without justification. It was relevant to us howethe intervention of ver that even if Andy Durrant and Janine Gray were wrong to hold that bringing the grievance was so malicious that it was a disciplinary issue, they were proved right by the claimant's conduct with CC and CIPRA, and in writing to AH's new employer about allegations, and her initial denial she had approached CIPRA suggest she knew that. Neither action was a legitimate use of a process, each was vindicative and actually (CC) or potentially (AH) damaging. Those actions certainly contributed to the conclusions reached by Nicky Grant and Councillor Caplan's appeal panel that there was no way back, and dismissal was the right decision.

125. Our other reservation was about the part played in the processes by Daphne Clark, of HR. No doubt because she had personally investigated AH's

concerns in this October and November 2018, she took a strong view from the outset about the claimant's behaviour when AH and CC complained in January 2020, and she seemed to steer some of the interviews in that direction. Had the claimant been dismissed for the behaviour first complained about by CC and AH in January 2020, this would have played more part in the dismissal, and we would have been concerned that the conduct was not investigated with an open mind. But she was not just dismissed because was there a pattern of nuisance behaviour towards male colleagues she took a liking to, which could have been handled another way, she was dismissed for making serious allegations of sexually predatory behaviour, compounded by other vindictive and unnecessary acts. In the face of the claimant's lack of remorse or insight, very few reasonable employers would not have dismissed her.

Victimisation

126. Section 27 of the Equality Act 2010 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.
>
> (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

127. The protected act identified in the list of issues is the claimant's message to Grace Osinowo on 24 January 2020 (see paragraph 91 for the text). We were doubtful that this amounted to an allegation of breach of the Act, but conceivably it is an allegation of harassment related to sex by CC of female colleagues, and motive (the claimant's jealousy of CC paying attention to other women) is not relevant here. If it is protected, was it the reason for the claimant's suspension and eventual dismissal? We did not consider it was. First, the cause of suspension was the complaint made by CC and AH, not the claimant's message to Grace Osinowo. That was just the last straw as far as CC was concerned, leading him to complain, which happened to coincide with AH getting the leaving card, which was nothing to do with the claimant's message to Grace Osinowo, leading to him advising CC to write it all down. Further, the claimant was suspended because the complaint about her was credible, not because she had alleged predatory conduct by CC. Finally, she was dismissed because of the evidence about her conduct to colleagues, her unfounded allegations of serious misconduct, and her vindictive actions to her accusers. Her message to Grace Osinowo played no part in the decision makers' reasoning. It was just a part of the chain of events that brought her conduct to the Council's attention.

128. In any case, had we found it was the reason for suspension or dismissal, we would have held that section 27(3) applied. It was a false allegation, made in bad faith, because whatever the claimant thought about CC and other women, she knew he had not preyed on her.

Discrimination because of religion and belief

129**.** Section 13 of the Equality Act 2010 provides:

> A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

Religion and belief is a protected characteristic.

130. The claimant's case is that AH complained about a leaving card she sent him in January 2020 in which she referred to biblical scripture.

131. The claimant's message is handwritten, about a page and a half**.** It begins by praising AH as someone with a bright future ahead of him, and she had wanted to work with and learn from him. She goes on to say: "I never had a bad word to say about you, apart from the way you treated me, which I likened to school playground behaviour, with your tending to ignore and put people into boxes; who is worth knowing and who is not. God's love does not discriminate. In God's eyes we are all equal. He makes us all out of love. He makes pottery out of the same lump of clay, whether it is for noble purposes or for common use, so be more loving towards people, without thinking of what benefit they are to you. Learn to love people as God loves. I was not prying into your personal life. I am neither interested in you in that way and I don't consider you to be that important LOL. I am happy for girls to get the guy they really like. It was never about you per se. I want the best for you :-)". She concludes with thanks for giving her a sense of order and clarity and resolution to "work hard to instil the work ethic I have learnt and observed from you".

132. The claimant was not immediately able to relate the reference to a particular passage of Scripture**,** but on suggestions from the respondent's representatives, agreed she had in mind a passage from Paul's letter to the Romans, 9:20-21 –

> "But who are you, a human being, to talk back to God? Shall what is formed say to the one who formed it, 'Why did you make me like this?' Does not the potter have the right to make out of the same lump of clay some pottery for special purposes and some for common use?"

Paul seems to have been quoting a passage from Isaiah 29:6. AH, a conscientious Muslim, agreed there was a similar passage in the Koran about God making men from clay like pottery.

133. AH scorned any idea that he was offended by a scriptural reference. As a Muslim, he said, he regarded Jesus as an important prophet, and held that other faiths should be respected. When interviewed as part of the disciplinary process, he was asked about the time when he and LR are both worked at RBKC, and he mentioned:

> "there was a feeling from staff at RBKC that they were glad to get rid of her. She sent a goodbye email at RBKC apologising for all of the hurt he had done. I think she was a support officer in children's. She might have quoted the Bible or something. A bit like the leaving card she sent me, but she sent it to the whole department. Maybe they didn't get on with her experience the same thing, I am not sure."

134. AH got this card on or around 27 January 2020. In our finding, his complaint was not about the use of scripture, but that while wishing him luck, the claimant

continued to disparage his character by stating that he was behaving like someone in the school playground and using others for his benefit, then denying she had pried into his personal life, when he believed when he knew she had, and he had decided to complain after hearing that CC was also complaining about the claimant.

135. The tribunal has to consider whether AH's complaint about the claimant and her the leaving card, was because of her religious belief, meaning that was the reason why he complained. In our finding the reference to scripture was not why he complained. He complained because it was because it was patronising and unpleasant. In particular she had specifically and defensively referred back to the episode in 2018 where he had had to involve HR, and to the ongoing trouble in 2019. It was not appropriate for a leaving card, where if good things cannot be said, it is better to say nothing. His reference to the RBKC card was not because it quoted scripture, but because he had been asked about her relationships there, and it suggested people there were glad to see her go. This claim is not made out.

Disability - Relevant Law

136. Disability is defined in section 6 of the Equality Act 2010. A person is disabled if he has a physical or mental impairment and the impairment has a substantial and long-term adverse effect on (his) ability to carry out normal day-to-day activities. Employment tribunals should assess the evidence to make findings on: (1) whether the claimant has an impairment (2) whether the impairment has an adverse effect on his ability to carry out normal day-to-day activities and (3) whether it is substantial ,meaning more than trivial - **Aderemi v London and South Eastern Railway Ltd (2013) ICR 591**. These questions are to be decided by the employment tribunal based on all the evidence – **Adeh v British Telecommunications plc (2001) I IRLR 23**, and "it is left to the good sense of the tribunal to make a decision in each case on whether the evidence available establishes that the applicant is a physical or mental impairment with the stated effects." – **McNicol v Balfour Beatty Rail Maintenance Ltd (2002) ICR 1498.** Except for very specialised work, work activity can be a normal day-to-day activity –**Banaszczyk v Booker Ltd. (2016) IRLR 273.**

137.The statutory guidance on the meaning of disability says that the term mental or physical impairment must be given its ordinary meaning. The cause does not have to be established, nor must it be the result of an illness. "The underlying cause of the impairment may be hard to establish. There may be adverse effects which are both physical and mental in nature. Furthermore, effects of the physical nature may stem from an underlying mental impairment, and vice versa".

138.The test of disability is a functional one – **Ministry of Defence v Hay (2008) ICR 1247**. It must be assessed as at the time of the discriminatory acts alleged. If an illness is being treated, the tribunal must look at the deduced effect, without treatment.

139.Section 20 of the Equality Act, imposes a duty to make reasonable adjustments for disability: "The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial

disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage". The second and third requirements are not appropriate here.

140.Section 15 provides that it is unlawful to treat someone unfavourably because of something arising from disability unless doing so was a proportionate means of achieving a legitimate aim, and it is a defence to show that the respondent did not know and had no reasonable cause to know that the person had a disability. It is important always to identify the "something arising", that was the reason for unfavourable treatment.

Disabilty -Factual Findings and Discussion

141. By way of evidence on the three disabilities claimed, we had the claimant's witness statement, which said very little about impairment, a disability impact statement dated 4 April 2022, her GP records, and occupational health reports obtained during the disciplinary process.

142. On depression and anxiety, the claimant says she has had low mood and depression since teenage years, which continues to this day. In 2006 she was formally diagnosed by a clinical psychologist with fear of abandonment, and had some CBT therapy for anxiety, though the records of this are not available. There is no reference in the GP records to any attendance or treatment for depression or anxiety after 2006, until after her suspension in 2020. In the impact statement, she mentions that for much of 2019, when she was out of the office studying for her ACCA qualification, she was "focused and happy", which she contrasted with the workplace, where she says she was not able to focus on work because she was distracted by relationships with colleagues.

143. Assessing this evidence, we concluded that there was no evidence, up to and including her suspension from work in January 2020, of substantial impairment, let alone one that was long-term, by reason of depression and anxiety. There is no evidence that her 2006 symptoms, whatever they were, continued. She attended work regularly, and on the evidence of the many emails and messages we have from 2018 on appears to have been lively and engaged. She did become depressed and anxious as her suspension continued, to the point where in June 2020 she was referred to occupational health. Dr Mary Sherry's reports of 15 and 28 July 2020 attribute her anxiety and distress to the grievance and disciplinary interviews, and she notes that she was now having counselling under the council's employee assistance programme. The tribunal finds that impairment from around June 2020 was a reaction to events at that time, and not a manifestation of a long term condition.

144. The second disability is autistic spectrum disorder. There has never been a formal assessment. The disability impact statement lacks any detail of signs and symptoms of this condition. The claimant never considered she had an autistic spectrum disorder until bringing proceedings. In our finding, there is insufficient evidence to establish that she was impaired by reason of an autistic spectrum disorder.

145. The third disability is Attention Deficit Hyperactivity Disorder (ADHD). In March 2021 (five month after dismissal) the claimant was referred by her GP for an assessment for ADHD. (In her disability impact statement the claimant said

this was going to be done on 5 April 2022, though the report we have from Dr N. Yarger is dated 16 March 2022). The doctor noted that she had not had investigations (required if she was to be prescribed medication for the condition) prior to that interview. The concluding impression was that she fulfilled the criteria for ADHD, combined type, based on her report of lack of concentration unless she was interested in the subject. He noted she used lists and a calendar to organise herself. He noted also that she was cooperative and coherent, not obviously restless, and he noted no abnormal movements. The doctor recommended that she had the physical tests required before she could be prescribed medication for ADHD. It is not known to the tribunal whether she has had tests or treatment. The disability impact statement says that she would provide further information on her future witness statement, but we could not find it.

146. In November 2018, the HR adviser, Daphne Clark, had queried whether the claimant had dyslexia, in the context of poor performance. The claimant did not take up an assessment suggestion, and does not herself believe she has dyslexia. Material she has included in the bundle suggests dyslexia is a condition sometimes associated with ADHD, but the claimant does not consider she has dyslexia.

147. We do know the claimant was able to sit and pass exams while employed by the respondent. As for the quality of her work, there seem to have been no formal performance assessments, or concern about the general quality, bar specific examples of which the claimant complains. She attended work regularly. The tribunal observed that the quantity and frequency of social messages between the claimant and others, using Skype messenger, texts, and work email, could account for some attention deficit as much as any mental impairment amounting to disability.

148. From our own observation, the claimant’s concentration was quite good, and she could pursue points in considerable detail. Her pauses appeared not to be from lack of concentration, but lack of preparation, as she scrolled through bundle and witness statements looking for material she had in mind.

149. We concluded that while the claimant has now had a diagnosis of ADHD, we have little or no evidence that this was a substantial impairment of her ability to carry out normal day-to-day activities, such as to amount to disability. Dr Yergar wrote recommending reasonable adjustments but his letter does not say what those are.

Disability – Reasonable Adjustments

150. In case we are wrong in that conclusion, we have gone on to assess the claims under section 15 of the Equality Act of discrimination because of something arising from disability, and under section 20 of failure to make reasonable adjustments. There is no evidence that the respondent knew that the claimant had ADHD, nor any evidence that they should reasonably have concluded that she might have ADHD. A much earlier suggestion of dyslexia had not been followed up by the claimant. ADHD was never mentioned by Dr Sherry in her July 2020 reports. The claimant did not mention it to the respondent until the disciplinary meeting on 17 November 2020.

151. In the light of those findings about disability, we make the following specific findings on the claim for reasonable adjustments, set out in paragraphs 25 and 26 of the list of issues. On the grievance meeting with Mr Durrant in July 2020, the tribunal does not accept that the process was not explained to the claimant. She was told in the letter of 14 May inviting her to the hearing what the meeting was about and she had the written grievance procedure. On continuing when an employee is upset, there is no evidence indicating that someone with ADHD is at a disadvantage compared to others in the circumstances. On having two grievance interviews, it seemed to us clearly fair, even necessary, to have a second meeting to clarify with her the information provided by others, and we did not understand how ADHD put her at a disadvantage. She already had access to her emails and messages. As for having a mental health support worker with her, she was accompanied by her trade union representative, as recommended by Dr Sherry for the anxiety (see below). Dr Sherry did not recommend any other form of support.

152. On the second preliminary investigation, on 17 September 2020, the claimant had already asked for an adjournment on 7 September 2020 because she had an exam, and she had attended, in person, on 15 September 2020 the hearing of the grievance appeal. We did not understand how the presence of Janine Gray and Daphne Clark at the meeting put her to disadvantage by reason of ADHD. The claimant states that Dr Sherry recommended in her report 28 July 2020 that the meeting should take place in writing, but there is no such recommendation. That came from the claimant. Dr Sherry's recommendation was that the claimant would be supported by the presence of her trade union representative. Further, the claimant was told in writing on 23 August that the meeting had been postponed to 17 September, but she did not raise her trade union representative's availability - she said in tribunal that he did not work on a Thursday, and 17 September was a Thursday. She only informed the respondent, the day before, that they would not be attending, not why. We did not understand how ADHD meant that the claimant could not participate in a face-to-face meeting on 17 September, when she had attended such meetings on 23 February (first disciplinary), 26 May 2020 (first grievance interview) 28 July 2020, (second grievance interview) and 15 September (grievance appeal). We could see that on 26 November 2020 in a WhatsApp message to a friend, the claimant had said "I should have gone to the second investigation meeting but he said…" (rest of the message is cut off but she was referring to her trade union representative), suggesting that she was able to handle another meeting. If the reason for not attending was that she needed her trade representative to be there, it would be reasonable for her to say so. It is not accepted that by going ahead with the meeting there was a failure to make an adjustment for disability; it was not reasonable to cancel the meeting when the claimant had not explained; in any case she had a right to ask for a postponement so that she could be accompanied; and the need for a trade union representative, according to Dr Sherry, was to support her when she was suffering from stress and anxiety, not because of an undiagnosed ADHD. We suspect the real reason for not attending was that she wanted to know the outcome of her grievance appeal first.

153. As for failing to make a reasonable adjustment for the meeting on 17 November 2020, she was accompanied by her trade union representative, and it is not understood how ADHD related to lack of preparation or the number of breaks, or it being a virtual hearing. She had spent several hours with her trade union representative on the previous day preparing for the meeting. Dr Sherry's

report did not support having an NHS mental health worker present. The first respondent considered the request, but decided against, as an external person was not permitted under the procedure. We know that Nicky Grant, who conducted the meeting, had considerable professional experience of dealing with children with ADHD, and although the presentation is different between children and adults, when informed by the claimant in meeting that she had ADHD, she took particular care to take things slowly and to explain herself carefully, checking the claimant had understood. This was a reasonable adjustment to what the respondent knew about the claimant's claimed disability.

154.On failing to pay for an ADHD assessment, there was no evidence that the claimant had asked the respondent to pay for an ADHD assessment, nor, until the disciplinary meeting, was there any reason why they should. Such an assessment had not been recommended by the occupational health doctor. They did sometimes pay for dyslexia assessments, if that seemed to be a reason for performance as presumably adjustments could then be made to improve performance.

155. As for delay, the completion of the disciplinary process did take an extraordinarily long time. Such delays are difficult for everyone subject to discipline. There is no evidence that the respondent made a practice of delaying disciplinary processes. The delays were unfortunate: substantial delay was caused by the claimant lodging her grievance in April, which the respondent (and she) wanted to investigate before completing the disciplinary process. We also noted that almost every time a meeting was arranged, it was the claimant who asked for it to be postponed. There were also of course the considerable operational difficulties imposed by the sudden and complete lockdown in mid-March 2020 which lasted for at least 3 months before being progressively modified, and affected all organisations at the time. If there was a *practice* of delaying disciplinary processes (which we doubt), we have no evidence that ADHD means substantial disadvantage in this, compared to people without ADHD, and in any case it was not reasonable to adjust it. As for the practice of suspending a person during a disciplinary investigation, which the claimant believed should be adjusted for disability, we did not understand that isolation (the result complained of) had a particular interaction with ADHD. The respondent did carry out an assessment when deciding to suspend her, and again in May 2020 when deciding to continue the suspension. On neither occasion had they reason to believe the claimant had ADHD. It was not arbitrary, and there were reasons for removing her from the workplace until the allegations of harassment made against her had been investigated properly.

156. To conclude, if we were wrong about the claimant being substantially impaired by ADHD at the material time, we did not accept it was reasonable to adjust for it in the ways pleaded.

Discrimination because of something arising from disability

157. Also in case we were wrong about ADHD as a disability at the time, we considered the claim of disability-related discrimination set out in paragraphs 27 to 30 of the list of issues.

158. The first is that Norman Ullah made reference to the claimant being "slow" in 2018. Having reviewed the available messages, he was referring (ironically) to

the claimant being slow in her approach to a man she was interested in, not to her work, and so, in our finding, unrelated to ADHD. The second is that AH made fun of her work performance by gossiping at work to other managers. This was particularised as being that on 9 October 2018, the claimant asked to meet AH to see if difficulties between them could be resolved without the meeting that had been arranged by HR for 22 October. He is said to have told her that HR were getting involved because of her poor work performance, and when challenged that the previous day he had said he was impressed, he replied "but it isn't perfect". It was very difficult to find any evidence about this in the claimant's witness statement. Around August 2018 the claimant had said that she felt unsupported by AH, and needed to sit near him. In October 2018, at the meeting with Daphne Clark of HR, the claimant said she needed AH's support with her work, and in exploring this, Daphne Clark had suggested she had dyslexia. As already noted, the claimant's previous line manager, David Burton had no complaint about her work, and there is scant evidence that AH did either, although we can see from emails that he thought he needed development on the distinction between revenue and capital, and improvement was slower than he hoped, but not that she was slow. The "something arising from disability" is said to be slow processing from ADHD. We concluded there was insufficient evidence that she was slow in processing her work, or that ADHD was the cause.

159.The claimant also refers to an episode when AH made faces at her prior to a meeting with a third party. There are no contemporary documents about this. AH could not remember it. There was so little context we could not relate it to ADHD, if indeed AH did make faces.

160.The next episode complained of is that on 11 June 2019 AH told her, as her line manager, that she had been selected as one of those to get a step up in salary. He told the tribunal that this was not something that he had recommended, and he did not in fact think was merited. He also said that he himself had been recommended for not just one, but two step ups in salary. Another (white) team member had not been recommended for step up, though in his view she merited one. He did not think the claimant merited one. He was dissatisfied about this because his view, looking at the decisions made, was that the respondent was seeking to improve the perceived pay gap between white staff and staff from other racial groups, and he considered this an illegitimate way to carry it out. He would rather be judged on his merits. Our conclusion was that if there was something in his tone of voice when he spoke to the claimant it was not because he considered her slow (and so related to ADHD) but because he disapproved more generally of senior managers' reasons for a range of decisions on salary step ups.

161. There is a complaint that AH had sent her a spreadsheet and asked her to send it on. In fact it contained errors which she did not pick up. The claimant apprehended that he had deliberately sent a spreadsheet with errors in it to catch her out. Having heard the evidence of both, we considered it most unlikely that a conscientious manager, concerned about the performance of his team - and AH both in person and from reading emails impressed us as conscientious and careful – would deliberately set up a team member in this way.

162.The final part of the section 15 disability-related claim is that she was dismissed for something arising from disability. The claimant argues that ADHD made her behave inappropriately and obsessively, the conduct which she was

dismissed, and this was the "something arising". There is little evidence of inappropriate or obsessive behaviour in the ADHD report, which is based on the claimant's account, supplemented by the doctor's observation in a video interview. But in any case, the claimant does not accept that she behaved badly, or that she pursed her male colleagues inappropriately. We could not relate ADHD to her conduct.

Wrongful Dismissal

163. The essential difference between wrongful dismissal and unfair dismissal is that in the case of wrongful dismissal, namely, was there a breach contract in failing to give notice of dismissal, it is for the tribunal to make a finding based on its own assessment of the evidence of the claimant's conduct and whether that amounted to gross misconduct, while in unfair dismissal, it must review the reasonableness of the employer's decisions. Our own analysis of the claimant's conduct with regard to her colleagues, both in the workplace, and in the, in our finding, false allegations of serious misconduct she made against them to the employer, is that it was gross misconduct, meaning conduct so serious that it entitled the employer to treat the contract as at an end. The council could have no confidence in the claimant treating her colleagues professionally and with respect, and she had caused them serious harm and distress. Further, it was clear from the investigation that in her allegations against CC she had been dishonest; honesty is something an employer is entitled to treat as fundamental to the employment relationship.

Conclusion

one 164. None of the claims succeed.

Employment Judge

Date__2nd November 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON

03/11/2022

FOR THE TRIBUNAL OFFICE

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

APPENDIX

LIST OF ISSUES

As appended to the OPH Judgment 6.6.22, and amended 14.6.22

Unfair dismissal

1. The claimant was dismissed on 25 November 2020 for gross misconduct, namely that she had committed acts of sexual harassment and had launched malicious and vexatious grievances

2. Was a reasonable investigation carried out?

3. Was there a fair process to reach that conclusion?

4. Was dismissal for misconduct within the band of reasonable responses?

5. If the process was unfair, if a fair process had been followed, would the claimant have been dismissed anyway? If so, when?

6. Did the claimant in any event contribute up to 100% in her own dismissal?

7. Has she mitigated the losses?

Direct religious discrimination

8. The claimant relies on the following individual act:

a. in January 2020, AH complaining about the claimant sending a leaving card in which she had put Biblical scripture

9. did AH thereby treat her less favourably because of her religion and belief (the claimant is a Jehovah's Witness)?

Sexual harassment

10. The claimant relies upon the following 19 individual acts:

a. on 4 January 2019 did CC email C suggesting a proper catch up and did he respond to an email saying that he could tell the claimant about collection funds?

b. in early January 2019, did CC email the claimant "nice dress"

c. from 29 January 2019, did CC start messaging the claimant out of office hours on work Skype?

d. on 31 January 2019, did CC ask the C whether she had a boyfriend and where she responded she had never had a boyfriend, say that she was missing out?

e. on 15 February 2019, did CC encourage C to talk sexually on Skype, out of office hours?

f. on 16 February 2019, did CC say to that C "… Why do you make things difficult" and "… You are hard work."

g. on 17 February 2019, did CC email to say that he took it as a compliment if people flirted with him

h. on ~~2 March 2019~~ 2 April 2019 (by amendment during the hearing) was there an incident in the office with CC, the C and EM?

i. on 25 March 2019, did CC send sexually provocative message to the claimant?

j. on 27 March 2019, outside office hours, in the Duke of York Square, did CC make sexually provocative comments and suggest a sexual liaison to the claimant?

k. at the end of March 2019, did CC message the claimant at 1:40 AM and ask her to come out to see him?

l. on the 2 April 2019, did CC sexually assault the claimant and try to force the claimant to have sex with him?

m. did the claimant send a message to CC on 3 April 2019 about her disapproval of the claimant's behaviour towards ECM, deceitful behaviour and lying?

n. in May 2019, did the claimant text CC saying she was seeing someone and receive suggestions that she should have one night stands with her managers

o. in late June/early July 2019 did CC make the claimant feel uncomfortable in the office, asking "are we okay" and "are you sure" and looking at the claimant's breasts?

p. did CC ask the claimant if she was desperate for it and wanted it badly?

q. on 11 December 2019, did CC and his manager make fun of the claimant?

r. at the end of January 2020, did C write to CC, criticising his behaviour?

s. In January 2020, AH complaining about the claimant sending a leaving card saying that she was not interested in a relationship with him

11. Did the act occur?

12. Was the act complained of performed at work?

13. Was the act to do with the claimant's sex?

14. Was the act unwanted?

15. Did they create an intimidating, hostile, degrading, humiliating or offensive environment? Was it reasonable for the act to have that effect?

Victimisation

16. Did the claimant send a message to Grace Osinowo complaining that CC sexually predatory towards women in the Department. Was this a protected act?

17. The claimant was suspended on 30 January 2020 and thereafter subjected to disciplinary process. Was this a detriment because the claimant had made a protected act?

18. Was the claimant dismissed because she had done a protected act?

Wrongful dismissal

19. Was the respondent entitled to dismiss the claimant without notice?

Failure to make reasonable adjustments: section 20 Equality Act 2010

20. Does the claimant suffer from

a ADHD

b autism

c depression and anxiety

21. Was the claimant at all material times so disabled within the meaning of section 6 of the Equality Act?

22. Did the respondent apply the following provisions, criteria or practices (PCPs)?

23. If so, did they place the claimant at a substantial disadvantage because of her disability?

24. If so, did the respondent know the claimant have a disability and that it placed at a disadvantage?

25. if so, did the respondent make reasonable adjustments?

26. the PCPs, disadvantages and adjustments on which the claimant relies are as follows:

(a) grievance meeting with Mr Durrant in July 2020

PCPs: (1) continuing with meetings when employees are upset; (2) not explaining the process; (3) interviewing the claimant (twice) for her grievance

disadvantage: the claimant's disabilities make it harder for the claimant to cope with those things

adjustments: (1) that the meeting should have been stopped when the claimant became upset; (2) that the process should have been explained to her; (3) the claimant should not have been interviewed; (4) that the claimant should have been permitted to have her NHS mental health support worker attend with her

(b) 2nd preliminary investigation meeting 17 September 2020

PCP: (1) holding the meeting in person on 17 September 2020; (2) going ahead with it in her absence; (3) having Clarke and Gray conduct the meeting

disadvantage: the claimant's disability makes it harder for her to cope with in-person meetings without her trade union representative and with Clarke and Gray whom she found intimidating

adjustments: (1) for the meeting to take place in writing, as the claimant says was recommended by Dr Sherry of occupational health dated 28 July 2020; (2) hold the meeting when her TU rep was available, as Dr Sherry had recommended; (3) to have someone else conduct the hearing

(c) meeting of 17 November 2020

PCPs: (1) continuing with the meeting when the claimant said she was unprepared; (2) not having enough breaks in the meeting; (3) holding the meeting virtually; (4) conducting it in the same way as for nondisabled person

disadvantage: as a result of the claimant's disability she was less able to cope with these arrangements; in particular she struggled to communicate with her teeny representative through virtual means

adjustments: (1) have the claimant's NHS mental health worker present; (2) adjourn the meeting; (3) have more breaks; (4) hold the meeting in person; (5) ask questions in a simpler manner

(d) failure to pay for an ADHD assessment

PCP: the respondent has a policy or practice of paying for dyslexia assessment, but not ADHD assessments

disadvantage: as someone with ADHD the claimant was thus disadvantaged

adjustments: paying for the assessment

(e) delay

PCPs: (1) taking a long time with formal procedures; (2) suspending pending disciplinary investigation

disadvantage: this disadvantaged the claimant because of her disabilities because she is less able to cope with isolation

adjustments: (1) carry out the process more quickly (2) not suspend her for the whole or part of it

Disability-related Discrimination: Section 15 Equality Act

27. the claimant relies on the following unfavourable treatment:

a. N. Ullah making reference to the claimant being "slow" in 2018

b. AH making fun of the claimant's work performance by gossiping at work to other managers throughout the time he was managing her (further particulars to be provided in accordance with tribunal order)

c. her dismissal

14 June 2022 additions following further information by Claimant

d. on 9 October 2018 AH said to the Claimant "the reason why HR are getting involved is because of your poor work performance" and "but it isn't perfect" and told the Claimant 'her job was to impress him'. The 'something arising from disability' in relation to all allegations is the Claimant's slow processing and deficit in executive cognitive functions

e. at the end of 2018, just before a meeting with the CWH Major Works female colleague, AH made 'faces' at the Claimant, the Claimant asked him if he was making fun and he said 'no';

f. H saying on the Claimant's birthday (11 June 2019) that she was given a step up in salary 'due to her hard work', but being 'very smug' about it and saying it with a 'sarcastic grin'

g. On April 2019 AH laughing when checking a spreadsheet he had given to the Claimant to forward to Corporate Finance and saying that he 'knew she would not catch the errors'

28. was the unfavourable treatment

a. her slow processing abilities

b. her slow processing abilities (sic)

c. her "inappropriate and obsessive behaviour"

29 if so did the respondent have the requisite knowledge of the claimant's disability?

30 if so, was the treatment a proportionate means of achieving a legitimate aim?

Jurisdiction – time limits

31. are any of the alleged acts outside the primary 3 month time limit - section 123 (1) (a) Equality Act 2010?

32. the first respondent avers that all acts before 13 April 2020 (in respect of the 1st claim presented 12 June 2020) and in respect of the 2nd claim (presented 29 April 2021) are out of

time and therefore the suspension (31 January 2020) and the 1st investigation interview (26 February 2020) allegations are out of time

3.3 was the treatment complained of conduct c extending over a period of time such that the earlier act complained of culminating in the claimant's summary dismissal 25 November 2020 are to be treated as done at the end of the period? – Section 123 (3) Equality Act 2010

34. if and to the extent that any act complained of was not part of the continuous act, and is out of time, is it just and equitable to extend time?- Section 123 (1) (b) Equality Act 2010