



EMPLOYMENT TRIBUNALS

SITTING AT: LONDON CENTRAL
BEFORE: EMPLOYMENT JUDGE F SPENCER
MEMBERS: MS D KEYMS
MR I MCLAUGHLIN

CLAIMANT MS J NICCOLINI

RESPONDENT ALGEBRIS (UK) LIMITED

ON: 11- 21 OCTOBER and (in chambers) 14-16 NOVEMBER 2022

Appearances:

For the Claimant: Ms R Tuck, KC
For the Respondent: Mr D Stilitz, KC

RESERVED JUDGMENT

The unanimous Judgment of the Tribunal is that:

- (i) The Claimant was unfairly dismissed.
- (ii) The Claimant's claims of harassment related to sex succeed in relation to 2 of the 3 comments relied on.
- (iii) The Claimant's claim of direct sex discrimination is not well founded and is dismissed.
- (iv) The Claimant's claim of victimisation contrary to section 27 of the Equality Act succeeds.
- (v) The Claimant's claim of dismissal for having made a protected disclosure is dismissed.
- (vi) The Claimant's claim of discrimination arising from disability contrary to section 15 of the Equality Act is not well founded and is dismissed.
- (vii) The Claimant's claim of indirect sex discrimination fails and is dismissed.

- (viii) If the Claimant had not been unfairly dismissed and victimised, she would have left the Respondent's employment within two months of her return.
- (ix) The issue of remedy for the successful parts of the claim is listed for a hearing over two days on 11 and 12th May 2023.

REASONS

1. The Respondent is an independent global asset management firm. It is owned by its founder and current Chief Executive Officer, Mr Davide Serra. The Claimant worked for the Respondent, or its predecessor entity, from 16 September 2013 until her dismissal which took effect on 17 December 2021.
2. The Claimant has submitted 3 separate claims which have been consolidated and were heard together. The Claimant brought the following claims:
 - a. direct sex discrimination
 - b. indirect sex discrimination
 - c. harassment related to sex
 - d. victimisation
 - e. discrimination arising from disability
 - f. "ordinary" unfair dismissal
 - g. automatic unfair dismissal for making a protected disclosure
 - h. a claim of direct disability discrimination was withdrawn.
3. The issues in those claims were set out in an agreed list of issues extending to over 7 pages. They are appended to this Judgment for ease of reference. (Time points arose in respect of some of the complaints but the successful parts of the Claimant's claim are in time.)
4. The Tribunal had a bundle of documents extending to over 2,000 pages. We heard evidence from the Claimant and, on her behalf, from Ms L Lami and Mr M Bertolino. Mr Bertolino works for Frontis NPL S.p.A a company which previously was a business partner of the Respondent, working from the same premises in Milan and Ms Lami is a lawyer who had provided consultancy services to the Respondent and Frontis.
5. On behalf of the Respondent, we heard from:
 - a. Mr Craig Partington, Group Senior HR Manager
 - b. Ms Ginevra Casalengo, Director Business Development
 - c. Mr Alex Lasagna, Deputy CEO
 - d. Mr Davide Serra, CEO
 - e. Mr Sebastiano Pirro, Portfolio Manager.

Relevant facts

6. Background. The Respondent is a global asset management firm, which was founded by Mr Serra in 2006. From small beginnings it has grown to an entity that employs around 130 individuals. Mr Lasagna joined in 2010 working initially as an independent contractor. The key individuals in the narrative of this case are Italian, and many of their communications were in Italian.
7. The Claimant and Mr Serra knew each other from their days at university. They came across each other again when Claimant was working for The Children's Investment Fund (TCI), a London-based hedge fund, holding various senior roles in Business Development and Investor Relations.
8. Mr Serra had founded Algebris (here defined to include its predecessor legal entity) in 2006; and it was initially affiliated with TCI. In 2012 the Claimant's daughter was born and the Claimant moved to Milan for her maternity leave. While she was on maternity leave TCI decided to relocate their BD and IR function to New York. The Claimant was unable to move to New York and Mr Serra offered the Claimant a role at the Respondent. The Claimant began working for the Respondent in September 2013, alongside 2 other investor relations/business development directors. Her title was Director, Investor Relations and Business Development
9. At that time the Respondent was fairly small. It had no office in Milan and the Claimant initially worked from home. She operated exclusively within the European market and her main focus was on Italy. In February 2015 the Respondent opened an office in Milan and the Claimant worked from the Milan office, with the occasional visit to London. The Claimant is a single mother, and it was agreed that the Claimant would not be required to travel extensively and would not have to travel outside Europe.
10. It is common ground that the Claimant and Mr Serra were very good friends. There has been some dispute between the parties as to the extent of that friendship, but for the purposes of this litigation it is sufficient that we record that during most of the Claimant's employment- until approximately mid 2019 - the two enjoyed, and were perceived by other employees to enjoy, a particularly close and cordial relationship. In cross examination the Claimant said that Mr Serra was "her closest friend at Algebris", which was why it was so painful. We also accept that the Claimant and Mr Serra would speak frankly and informally to each other, and they enjoyed both a friendship and a business relationship. Both could be impulsive and volatile and might speak frankly to each other.
11. On the other hand, Mr Serra was prone to making wholly inappropriate comments. We accept the Claimant's evidence that on more than one occasion while hosting clients at his chalet in Chamonix Mr Serra made a comment about the size of the Claimant's breasts. We accepted that he once said it was best to have men presenting to large audiences of financial advisers as they were mainly male audiences and said more than once that there were meetings where he had to go to by himself as they were to discuss things amongst men. In 2016 Mr Serra made a comment to clients

that the Claimant would do anything for them “including prostitute herself”. The Claimant was furious and made that clear. Mr Serra sent her flowers by way of an apology after this incident. (He also sent flowers on another occasion by way of an apology when he had undermined her position with clients.) Ms Lami said that in meetings Mr Serra would make comment to female colleagues about their dress being smart or “you look elegant today” rather than concentrating on their work. The Claimant for her part had once emailed Mr Serra saying, “I’m on top- the way I like it” and regarded him as a friend. In a presentation in June 2019 the Claimant concluded with a photo with Mr Serra holding a roller foam in a phallic innuendo. (2/255)

12. The Claimant accepted in cross examination that prior to the events of September and October 2019 she had no complaints about the way Mr Serra treated her (or women in general) even though he had made a number of sexist remarks.
13. Mr Lasagna has worked for Respondent either as an employee or as a consultant since 2010. Before that, in 2006, he had been appointed to the board of the first Algebris Fund. Initially he was recruited to lead the Sales/BD Team but in 2011 Mr Lasagna was appointed as Chief Operating Officer (COO), looking after the middle and back-office functions in addition to the work that he did in Sales. Despite the title of COO, he continued to retain responsibility for sales and asset raising, with a client facing role. Initially the middle and back-office functions had been outsourced to a subsidiary of TCI, but the support was withdrawn in 2016 and Mr Lasagna was tasked with setting up this function.
14. In 2017 the Claimant told Mr Serra that she wished to move to the UK with her daughter. This was not what Mr Serra wanted for the business, as her focus and experience was in the Italian market. However, Mr Serra agreed. She moved to London in September 2017 and was based in the London office – although she continued to focus on the Italian market. The Claimant did travel to Italy on business from time to time and tended to base herself in Italy during her daughter’s school holidays. In November 2017 the Claimant was also appointed as deputy COO (1/407) - although Mr Lasagna’s view was that she was unable to be any effective help to him in the COO role and was reluctant to take responsibility and was risk averse. He was critical of her approach, but the Claimant continued to be well regarded by Mr Serra.
15. Mr Serra, who had been based in London moved to Milan in June 2018. The Claimant was then the most senior employee in the London office.
16. It was Mr Serra’s evidence, which we accept, that the Claimant was precise, detail oriented and good with words. Mr Lasagna was less focused on the detail and more strategic and sales focused. Both were valuable to the business.
17. Working from home. In general, significant flexibility as to working from home had been allowed at the Respondent. In January 2016 Mr Lasagna

sent an email reiterating to staff that all work from home needed to be approved and included in the electronic diary “who’s off”. (1/320). In 2018 following a reported incident when it was felt that an individual had not really been working when ostensibly working from home, Mr Serra sent an email to all staff to the effect that working from home was to be done on an exceptional basis only, needed to be approved and such days were capped at 12 days per year (1/465). The Claimant had already exceeded this but, in an email of 16 August 2018, Mr Serra noted to his personal assistant that the Claimant would have exceptions as she was a single mum. (2/34). Mr Serra also sent an email to both the Claimant and to another employee which said that, as they were “working mums”, he was happy to make an exception for them (2/1). It was common ground that the Claimant would frequently work from home/remotely when she was in Italy during school holidays, and that this was never challenged. It was the Claimant’s evidence was that her pattern every year was to spend the summer away from the London office, either working remotely or on holiday. She told the Tribunal that in August the markets were quiet, and she would focus on housekeeping matters. In 2019 she had been working from her mother’s flat at a holiday resort but was working. The Respondent’s records (4/316) show that in 2016 the Claimant worked from home on 26.5 days, in 2017 on 12 days, in 2018 on 25.5 days and in 2019 on 37 days.

18. In 2018 the Respondent won the Employer of the Year award at the Italy Women in Finance Awards. The Claimant assisted with the application (1/433 – 441). In its presentation the Respondent referred to its “strong commitment to equal opportunities”, to the fact that 4 out of 8 of Team Heads were women and that 42% of the workforce was female. In 2016 or 2017 the Respondent introduced a maternity package in which employees who had worked at the Respondent for more than 4 years would receive 100% of their salary for 12 months while on maternity leave. (Employees with less than 4 years service would have their pay calculated pro rata basis –less that 2 year’s service 25% of salary and then 50% for 2 years service and 75% with 3 years’ service for 12 months.)
19. It was the Claimant’s evidence that all of this was image building - and did not reflect a genuine commitment to equality - as this was at odds with Mr Serra’s sexist remarks. We do not accept that. Employing significant numbers of women in senior positions cannot be said to be image building.
20. Seniority and roles It was the Claimant’s case that throughout her time at the Respondent she had been one of the 3 most senior people at the Respondent with Mr Serra and Mr Lasagna. It is a significant part of her claim that Mr Serra discriminated against her because she was female by paying her smaller annual bonuses and discretionary pay than Mr Lasagna. It is her case that she was equal in seniority to Mr Lasagna, and they were both second only to Mr Serra. The Claimant explained that Mr Lasagna and Mr Serra were the only members of the Algebris Business group. This was a WhatsApp group which started in June 2017 and where strategic business decisions were discussed. Later she was part of the Algebris 3 Exco group

on Telegram and was given the title of deputy COO in November 2017 at the same time as Mr Lasagna.

21. While we do accept that the Claimant was one of the 4 most senior people at the Respondent (to include Mark Conrad on the investment side), we do not accept that she was of equal seniority to Mr Lasagna. Mr Lasagna, alongside Mr Serra, was a statutory director of Algebris (UK) Ltd and other limited companies as well as a director of the Algebris funds. The Claimant largely reported to Mr Serra but the structural charts (4/284, 1/293) show that she was junior to Mr Lasagna. The charts all show Mr Serra and Mr Lasagna at the top and then beneath then 3 various teams (i) the investment team (ii) the BD and IR team and (iii) Risk, Compliance and Finance. While the Claimant was authorised by the regulatory system as a CF1 Customer, in regulatory terms Mr Lasagna was responsible for compliance oversight, money-laundering reporting and was a CF1 director as well as a CF1 customer (4/621, 4/290). A further organisational chart (1/293) shows Mr Serra and Mr Lasagna above the Claimant in the organisational hierarchy. (We refer also to 1/350)
22. In addition to the above documents, it was apparent from the evidence of Mr Serra and Mr Lasagna that the latter's role within the Respondent was wide-ranging. We accept Mr Serra's evidence that Mr Lasagna, together with Mr Serra had, over time, made many strategic decisions relating to the business, including the decision to move into UCITS, responsibility for setting up the middle and back office when TCI withdrew, and that throughout this period she also had responsibility for sales and asset raising.
23. The Respondent's operations were divided into 3 key areas. The investment team which was led by Mr Serra, the business and operations led by Mr Lasagna and Business Development and Investor Relations led by the Claimant. The Claimant's title as set out in her contract was Business Development and Investor Relations Director. Her responsibility was Europe which accounted for some 80% of the Respondent's business. The Respondent employed two other Business and Investor Relations Directors (Mr Surrency in Asia and Mr Monogenis in the USA). Mr Lasagna been responsible for setting up the Asian and US offices and the Heads of Business Development and Investor Relations in Asia and the USA did not report to the Claimant, but to Mr Lasagna.
24. In 2018 the performance of Algebris funds was down. There were concerns about the prospects of redemptions. Informal complaints had been expressed to Mr Serra, by those on the investment team, (Mr Pirro and Mr Gallo) that the Business Development Teams had not been proactive enough in building pipeline and new investment. Mr Gallo thought that the Claimant was "boycotting" his fund. Mr Pirro reports that they had several heated conversations around this time because Mr Serra would not accept his (critical) feedback about the performance of the sales team. Mr Lasagna had also begun to sense that the Claimant was not performing and was spending too much of her time on marketing, branding and advertising rather

than sales. Despite those complaints Mr Serra continued to support the Claimant.

25. Changes to roles. On 18 April 2019 Mr Serra announced a new sales push. He wanted Mr Lasagna to free up 80% of his time as COO so that he could focus 80% on global sales and managing sales teams in Boston, Singapore, Tokyo, Luxembourg and the Middle East. In order to free up his time to do this, a new individual was to be recruited who would transition to deputy COO. (There was no suggestion that the Claimant should undertake this role.) He said that both he and Mr Lasagna would help the Claimant with sales in Italy and Switzerland as they were base there and to minimise travel time. (2/115) The Claimant had a new task of focusing and developing the UK market. He would give more resources to the Claimant and Mr Lasagna. The Claimant welcomed this initiative
26. In June 2019 the Respondent held its off-site in Argentario. Mr Serra gave a presentation to the company explaining the new strategy, explaining that Mr Lasagna would be responsible for “Global Sales” and that the Claimant “*as Head of Europe will be responsible for maintaining steady and creating relationships in this region.*” By this time Mr Lasagna and the Investment team, Mr Gallo and Mr Pirro felt that the Claimant was not performing and was focusing on micromanaging her staff and finessing documents rather than going out to meet clients and potential clients, though she retained the trust and respect of Mr Serra.
27. The Claimant planned to be in Italy from 10 July to 3 September 2019. In August 2019 Mr Serra decided that Mr Lasagna’s job title should change from COO to Deputy CEO. (An investor had questioned why the COO was being taken to sales meetings, and Mr Serra felt his title of COO was somewhat misleading). During a call Mr Serra told the Claimant that a new COO would be joining, and that Mr Lasagna would take the title of Deputy CEO. He also said that the Claimant could also be deputy CEO “if she wanted”, and that he and that she and Mr Lasagna should decide their job titles between themselves. Mr Lasagna and Mr Serra say that this was said because Mr Serra was worried about offending the Claimant - and we accept that. In any event after the phone call the Claimant and Mr Lasagna agreed that Mr Lasagna should have the title of deputy CEO and the Claimant should take the title of Head of Business Development and Investor Relations. Mr Serra approved that change.
28. The Claimant says that the conversation in August evidenced the fact that she was as senior as Mr Lasagna. She was also offered the title of deputy CEO. She also says that her role changed from one in which she was responsible only for Europe to being Global Head of BD and IR- and notes that the word Europe was omitted from her title. On balance we do not accept that either is right. We accept that Mr Serra was very anxious not to upset the Claimant when he changed Mr Lasagna’s title, and the reality was that despite a change in job titles, the Claimant’s role did not change to encompass responsibilities in Asia and the US. The Heads of BD and IR in

those places did not begin to report to the Claimant. The change to deputy CEO merely reflected the role that Mr Lasagna was already performing

29. In early September 2019 Ms Casalengo, a more junior (but well regarded) member of the Claimant's team complained to Mr Serra of the difficulty she was having working with the Claimant. The Investment team also continued to complain. Mr Serra also received a complaint directly from the CEO of one of Italy's largest banks that the Respondent had sent Ms Casalengo, a relatively junior employee, to a key meeting. He was cross about this.
30. Ms Casalengo had joined the Respondent in 2014 and it was her first real job. She gave evidence that she and the Claimant had worked closely together and got on well. However, during 2018 and 2019 the Claimant's approach had changed and she felt under supported by her. She felt that the Claimant would require her to go to meetings with key clients on her own, which she felt uncomfortable with. Her evidence was that the relationship continued to deteriorate during 2019 and that out of 90 or so meetings she had scheduled in 2019, only one was with the Claimant. Ms Casalengo was particularly concerned when she was required to attend an important conference to be attended by the entire Italian private banking network (the Monti dei Paschi convention) on her own and that, when she asked for help, the Claimant told her she would be fine. A colleague, Ms Spagnolini, was due to come with her but, the day before the event, the Claimant told her she could not go (but that she had to deal with a task which Ms Casalengo regarded as mundane instead). She complained that the Claimant would spend too much time preoccupied with relatively standard due diligence questionnaires and administrative type work such as marketing materials and presentations, rather than visiting clients. In the summer of 2019, during the UK school holidays, the Claimant was out of the office working remotely from her mother's flat in Italy and, while she was able to get in touch, their interactions were fewer, and the Team was moving much more slowly than they had been before.
31. A number of other decisions for which the Claimant was responsible had given rise to criticism by colleagues. Mr Pirro complained to Mr Serra quite frequently about what he perceived as a lack of activity from the sales team and a failure to organise meetings for him. He gave evidence that he remained frustrated with Mr Serra's failure to do anything about it, and about a number of other decisions that the Claimant had taken.
32. Sarah Finley was a member of the Claimant's sales team responsible for the Swiss markets. The Claimant considered that Ms Finley had a bad attitude and behavioural issues and on 31 July 2018 invited her to attend a disciplinary hearing for having altered the content and recipients of a client email. In the end Ms Finley and Mr Serra agreed an amicable exit. Some colleagues including Mr Pirro, in particular, felt that the Claimant was in the wrong in having, effectively, fired Ms Finley and their perception was that she was fired because she had disagreed with the Claimant. Criticism was directed to the Claimant in relation to her decision to hire Ryan Rajkumar to look after the Swiss markets after Ms Finley had left. Mr Pirro and Mr Serra

considered that Mr Rajkumar knew very little about the Swiss markets. Mr Serra said that he would not attend any meetings with Mr Rajkumar. Mr Pirro felt that Mr Rajkumar was “completely out of his depth” and that the Claimant had made a poor choice in putting him in charge of the Swiss market. He complained that the Claimant was away from the office throughout the summer when her team was junior and there was a lack of pipeline.

33. At the beginning of September Ms Casalengo spoke to Mr Serra to complain that the Claimant had been micromanaging the team and failing to support her. She said she was caught in the middle between the Claimant's and Mr Lasagna's disagreements, was not getting support or guidance, that they didn't go to meetings together anymore and that the Claimant asked her to do too many things.
34. The 10 September 2019 was the Respondent's annual Investor Day. At the end of the day Mr Serra sent the IR team an email (3/5) stating that he wanted Algebris to visit its top 50 clients in a physical meeting at least every 2 months, and that he wanted a monthly meeting with “the summary from all IR, and a target focus list potential clients and actions I need to take based on feedback”. He continued *“Start working on this as I will start monitoring sales as I monitor investment side. Using numbers/same logic/same accountability as investment side. Jolanda and Alex in charge I want them to develop something clear/that monitor all/ clear to dos /and I want a monthly meeting with all numbers/actions taken to drive sales.”*
35. Mr Serra then spoke to the Claimant and told her that he was going to run the IR team the way he ran the investment team – that it would be number driven to ensure accountability. The Claimant was upset. She did not agree, and the conversation became a shouting match. The Claimant said she was irritated by Mr Serra's email and its implication that there was no accountability in her team. She believed that there were already accountabilities in place, and she disagreed with his approach. The Claimant shouted and swore at Mr Serra who swore back at her. We accept that it was because of the Claimant's close relationship with Mr Serra that she felt able to express herself so freely and loudly. The Claimant told Mr Serra she did not want to run the team the way he suggested. Mr Serra said it was an order, do it or get out. “The door's open you can leave.” The Claimant said if he didn't like the way she been handling the team she was happy to move on, on agreed terms. Mr Serra's evidence was that he understood the Claimant to be refusing to accept his decision that the way the team was run needed to change. There was no evidence however that after that date she refused to accept his requirement for metrics.
36. The following day Mr Serra asked both Mr Lasagna and the Claimant to write 3 lines on their respective roles in the business and the role of the newly appointed COO (3/10). The Claimant and Mr Lasagna had lunch together. Mr Lasagna advised the Claimant to wait for Mr Serra to calm down to see what he really wanted and that having an argument with him merely exacerbated things.

37. On 12 September (3/16) Mr Serra sent an email to Mr Lasagna and the Claimant. He reiterated that he wanted a sales meeting once a month with all sales/IR teams, and that he wanted to be on top of the sales process. The Claimant was unhappy when Mr Lasagna sent her a revised organisational chart which showed her reporting to Mr Lasagna.
38. On 20th September there was a 3Exco meeting. Mr Serra told the Claimant that he had received internal feedback indicating that Mr Lasagna and the Claimant could not work together and had completely different sales strategies; and that the sales team was not being managed correctly. He told Claimant that she would no longer have any role to play in the Italian and Swiss markets. He would deal with those markets personally with Mr Lasagna's assistance. The Claimant should now focus on the UK, France, Germany, Spain and the Nordic markets. He criticised the Claimant for allowing Mr Rajkumar to cover Switzerland and told her that she "*should realise that an Indian guy was unsuitable for the Swiss market as Swiss people were even more racist than German people.*" Mr Serra also told the Claimant that she lacked leadership because she had spent 36 days working from home in 2019.
39. The Claimant was extremely upset to have had Italy and Switzerland removed from her area of responsibility. She considered that Italy and Switzerland were the most significant markets in Europe for the Respondent. Mr Lasagna gave evidence that he had not, at that stage, said that he could not work with the Claimant – though he considered that he and the Claimant had very different approaches to sales. Mr Serra asked them to find a way to work together to agree a common strategy so that the BD and IR team could operate on the same instructions.
40. Mr Serra asked both Mr Lasagna and the Claimant to prepare a staff announcement of those changes. Mr Lasagna prepared a draft announcement, and the Claimant added her comments on the draft and sent to Mr Serra. Mr Serra did not acknowledge the Claimant's email, but he did amend the draft as she had suggested. He sent the announcement to all staff on 22 September 2019 (3/33). In that announcement staff were told that:
- (i) a new COO would be joining in November,
 - (ii) Mr Lasagna would take on the Deputy CEO role,
 - (iii) the Claimant would become Head of Business Development and IR "*and keep on leading our European coverage with a direct focus on developing the UK and other countries.*"
 - (iv) Mr Serra would take the lead on sales in Italy and Switzerland with the help of Mr Lasagna (as they were now both based in Milan), supported by Ms Casalengo.
41. When the Claimant arrived at the office on 23 September Ms Casalengo was already aware of the changes. She had received a call from Mr Serra who told her she would now be reporting to Mr Lasagna. The Claimant said it was clear from this that she was out of favour.

42. In this context we note that it was Mr Lasagna's evidence that he also had fallen out of favour with Mr Serra in the summer of 2018 when he had been unfairly criticised for working from home too much following his daughter's accident (2/12). His response was to put his head down and let matters blow over – which was the advice he had given to the Claimant after the 10th September row. They had also fallen out when Mr Serra discovered Mr Lasagna's tax arrangements. It was put to Mr Lasagna that Mr Serra had called him a free rider and Mr Lasagna responded that he had been called "many things." Mr Gallo had also been out of favour for a time (see the Claimant's witness statement para 64.)
43. Sales budget. As Mr Serra was now focusing much more on BD and IR, he asked both Mr Lasagna and the Claimant to prepare a sales budget. The Claimant sent Mr Serra a sales budget on 30 September 2019 which she copied to Mr Lasagna and asked him to provide figures for the USA and Asia. Mr Serra did not respond. We accept that he did not respond because the budget was very far removed from what he wanted. Mr Lasagna considered it was not what Mr Serra expected and asked Ms Spagnolini to help him coordinate and gather the data. He also circulated to the wider sales team what he expected from the document (3/82).
44. With Ms Spagnolini's help Mr Lasagna put together his own word document on 15 October 2019 and sent it to the Claimant. The Claimant sent back her version with her tracked changes and asked him to let her know if she was sending it to Mr Serra. In the end Mr Lasagna sent it to Mr Serra without letting the Claimant know. We find that he did not deliberately fail to tell the Claimant, but because he was under pressure in terms of time and delivery. The Claimant was critical of Mr Lasagna's sales budget and emailed Mr Serra to "revisit the data". (3/80)
45. During the sales call on 15 October 2019 Mr Serra told the team he was not happy with the Team's performance in 2019; and that the investment side of the business felt they were not receiving the level of business development support they needed. He criticised the Claimant and her team for mis-allocating resources by promoting one particular fund above other funds. He said that the team had had "*an easy ride as money came in by itself*". He was critical of the team as a whole, but it was, at least by implication a clear criticism also of the Claimant's leadership of the team.
46. The Claimant worked in the Milan office in the week commencing 21st October 2019 as it was half term in the UK. Ms Spagnolini told Ms Casalengo that the Claimant had got angry when Ms Spagnolini had helped Mr Lasagna and had shouted at her for "betraying her". In cross-examination the Claimant agreed that she was angry with Ms Spagnolini. She sensed that she was "*plotting or helping Alex to take my role*", that Ms Spagnolini had "hijacked" internal communications, contrary to the usual distribution. She said that the "manoeuvring behind my back" had upset her. Ms Casalengo also said that another employee Ms Deregibus had also been shouted at by the Claimant because Ms Deregibus had sent a report to Mr Lasagna, and not to the Claimant.

47. Ms Casalengo told the Tribunal that the environment had become “toxic”. The Claimant felt she had been demoted because she was no longer involved in the Swiss and Italian markets and was engaging in finger pointing. A number of members of the team were considering leaving. When Mr Lasagna started to meet clients, the Claimant asked her team to copy her into everything and told Ms Casalengo that she wanted to be in a position to veto Mr Lasagna’s meetings, as Italy was her responsibility. We accept that the Claimant had become defensive, was suspicious and was engaged in a power struggle for the Italian market.
48. In the meantime, Mr Lasagna was finding it difficult to work with the Claimant. He referred to her “pedantic and obstructive behaviour”, an insistence on treating certain clients as “hers”. His evidence was that the budget exercise showed up differences between their approaches. They also had different approaches to hiring, and different opinions as to how to achieve things. *“Having to argue about how best to drum up sales is not something that I wanted to do.”* Ms Spagnolini and Ms Casalengo had also reported to him that she would tell them that she did not want him to meet certain clients and that they should report to her what Mr Lasagna was doing.
49. On 25th October Mr Lasagna and Mr Serra met for lunch in Milan. Mr Lasagna told Mr Serra that he needed to step away from sales altogether. He said that he and the Claimant had fundamental irreconcilable differences and that their approach and vision for the sales team were very different. He suggested that he should focusing on something other than sales.
50. Mr Serra considered that this was akin to Mr Lasagna saying he would resign. His view was that sales were Mr Lasagna’s forte. As Mr Lasagna could not work with the Claimant on sales Mr Serra decided that Mr Lasagna should take all responsibility for sales. He asked how the Claimant could best contribute to the business. Mr Lasagna said she was best at client servicing and due diligence. Mr Serra decided that the Claimant’s role would henceforth be focused only on Investor Relations, rather than sales, and that she would report into Mr Lasagna.
51. Over the weekend Mr Serra spoke to a number of the Claimant’s direct reports, and some members of the investment team. Mr Serra’s evidence was that he told them that the Claimant and Mr Serra could not work together and were “fighting” and asked them who would they prefer to work for. It was his evidence that 80% of the people to whom he spoke said that prefer to Mr Lasagna should head the sales team. We have not heard from all those individuals, and we find that Mr Serra had made up his mind before the calls. Ms Casalengo’s evidence was that when Mr Serra telephoned her, he had already made the decision to remove business development/sales from the Claimant but was worried that she might leave as a result. His concern was whether the team could carry on without the Claimant. Ms Casalengo told him that the environment had become toxic because of the Claimant, that she was at breaking point, that a number of people were considering leaving

and that Mr Lasagna and the Claimant could not work together on business development.

52. Mr Serra then asked Mr Lasagna to draft an announcement explaining a revised structure in which the Claimant would step down from 3Exco and responsibility for Business Development and would report to Mr Lasagna and not to Mr Serra. His draft (3/142) makes it clear that the Claimant is now to report to Mr Lasagna, as does Mr Serra's slightly amended version (3/143). It is not clear if, in the light of the Claimant's subsequent ill-health, this draft was actually sent to the Claimant's team, but it is clear that was the intention.
53. Claimant's demotion. On 29 October 2019 Mr Serra asked the Claimant to meet him for breakfast in Milan. At that meeting Mr Serra was very critical of the Claimant. He told her that she had been micromanaging her team, and not working well with others. He said she was not good at managing others. He said that Mr Rajkumar had asked to meet with HR to complain about being micromanaged and complained that she was dictating to him how to write an email. He said that firing Sarah Finley was a mistake, that she had sought to humiliate Mr Gallo (from the investment team) in the internal sales meeting in July 2019 when she had been rude to him and in citing that example, he said that he knew women could be "frantic and unpredictable during their periods". He told the Claimant he had called 6 or 7 people and asked for their views and that 80% of those consulted had said that they would prefer to report to Mr Lasagna. Mr Serra told the Claimant that his decision was that, in future, her role should be confined head of IR, that she would now report to Mr Lasagna and that all but 3 of the people reporting to her would be moved to report to Mr Lasagna who would be head of sales.
54. Mr Serra also told the Claimant that her "economics" would not be affected and that he was looking to introduce a long-term incentive plan for members of staff.
55. The Claimant says that she was not told that she would now report to Mr Lasagna and says that she considered that she would continue to report to Mr Serra. On balance we do not accept that. Mr Serra says that after the breakfast meeting he spoke to the Claimant again, and that from her perspective the most important thing was that she should report to Mr Serra, not to Mr Lasagna and that she would be happy with the role providing that was the case. He told the Claimant she needed to report to Mr Lasagna and that he thought there would be difficulties if she did not. We accept that Mr Serra may have left the situation somewhat opaque but nonetheless we find that the Claimant must have understood that the intention was that she should report to Mr Lasagna.
56. The Claimant returned to London on 30th October. Later that day she attended a videoconference with Ms Crompton (General Counsel and head of HR), Mr Pirro Head of Investments, Mr Serra and Mr Lasagna. On that call Mr Serra said that the IR and BD teams would be split. He had decided

to change the Claimant's role and job title to Head of Investor Relations because she could not work with Mr Lasagna. All but three of the Claimant's direct reports would now report to Mr Lasagna. Mr Pirro commented that since the summer Mr Lasagna and the Claimant had not been getting along and had been fighting each other. On that call Mr Serra said to the Claimant "how could you think of sending an Indian guy to send Switzerland where they are even more racist than Germans?" Mr Lasagna told the Claimant that he hoped that they could get back to working with each other.

57. The following day 31st October the Claimant went off sick. On 5th November she saw her GP and was signed off work with work-related stress and anxiety. She never returned to work.
58. Events after the demotion. Following receipt of the Claimants fit note Mr Serra sent the Claimant a text message. The Claimant describes this as threatening. In that email Mr Serra says this "*Jole, I already told you, my choice is only because I think it will be good for the company. If you understand the cause and work in a team where you excel, the company will benefit and you with the company... If, on the other hand, you don't want to work with Alex and keep up the cold war with me like over the last month we aren't going to get anywhere. I understand your decision to take time off..... The only thing I want to tell you, however, is that from now on, which is why I have answered your emails through others, if you talk to me you/you write, I will talk to you and I will write. If you get a lawyer to do it, I will get one of mine to do it and I will not go in for a minutePerhaps it was my fault for asking you to lead by example and not realising it was not working. In good faith because it was a shock for me to understand this You are part of the team, and you have a role. I can understand if you don't like it. Roles and places change. Alex changed it. I myself changed it... .. Think about what you want to do my advice is to let me know when you have decided. If you are the one to tell me, it will be better for you first of all. If you get a lawyer to tell me, I'll tell you now, I know myself well and you will never get attention/honesty and frankness from me again. Only my lawyer will answer. I warn you because I know myself well. The choice is yours. As a friend I'm telling you to think about it... The decision is yours I'm not going to call you. If you want to do it, you know where to find me... Recover and relax.....(3/164)*
59. The Claimant emailed Mr Serra on 3rd December saying she had heard from another employee that he would like to meet with her next time he was in London. She said she was still not well but would meet outside the office. They agreed to meet on 11th December. In the meantime, Mr Lasagna sent an email (3/180) to Mr Conrad that he needed to replace the Claimant in London, suggesting that it was his view that she would not return.
60. Before her meeting with Mr Serra the Claimant discovered that her access to work emails and client contact had been withdrawn from her mobile devices. The Claimant believed that Respondent had deliberately targeted her to withdraw her email access, but it is clear from documents in the bundle that the Respondent was moving to a new cloud infrastructure and

that all employees had to download a number of apps onto their work mobile phone before December otherwise their emails would stop working (3A/5). The Claimant accepts that her emails were restored, but complains that her calendar was not. It was also part of the IT reorganisation and that anyone accessing the remote web would need to go to a different cloud system. See also 3A/3, 3/201 and 3/182 3/5. We do not accept that there was any deliberate targeting of the Claimant in relation to email or calendar access.

61. The Claimant and Mr Serra met on 11th December. The Claimant looked very unwell, and she told Mr Serra that work was making her ill. Mr Serra acknowledged her distress about the changes. He wanted to explain his reasoning again.
62. During the conversation Mr Serra was critical of the Claimant. He told her that he had received many complaints from Mr Gallo, Mr Pirro and others in the investment team about the lack of new clients in the pipeline. He said that Mr Lasagna was unable to work with the Claimant, and that if she was not demoted Mr Lasagna would leave. He was critical of her decision to hire Mr Rajkumar who was regarded as not competent in the Swiss market. He said Mr Pirro was afraid of her. He asked what her intentions were- he was finding her absence “hard to justify” and that some staff have been asking why she was getting special treatment by being able to take time off. He was suspicious of the genuineness of her illness, given the timing. He said that returning to work would require effort to rebuild internal credibility and that she would need to work things out with Mr Lasagna. He said that colleagues had lost respect for her because she had worked from home for 2 months in the summer. Mr Serra said he was tired of complaints from the investment team, that Anna Crompton said she was scared of the Claimant’s manners and mention Sarah Finley again.
63. Mr Serra told the Claimant that he would understand if she decided to quit or not continue working for the Respondent; (we do not accept that he said the same thing on 29 October 2019). He said that he wanted the Claimant to stay at Algebris – but not if it meant that Mr Lasagna left--- so her return to work would be dependent on sitting down with Mr Lasagna to see if they could still work together and that it would take work to build her credibility internally. The Claimant asked if it was a demotion and he said, “call it what you want”, but she would be on the same money, so should not get stressed. He told the Claimant that she had been overpaid in the past and that the new role better fitted her lifestyle. (Mr Serra’s evidence was that he said the new role would be an opportunity to achieve a better work/life balance, but we accept the Claimant’s evidence as to what was said.)
64. At the end of the meeting Mr Serra said he needed to know what the Claimant wanted to do by early January and that she should remain rational because he had seen how she reacted when overtaken by “a hormone tempest.” (The Claimant understood this to a reference back to when she was pregnant in 2012 and decided to separate from her daughter’s father which Mr Serra had thought was irrational) She understood this to mean that if she did not accept the demotion it would be because of irrationality caused

by her female hormones. Mr Serra's view was that the Claimant would be getting the same money for a smaller role, and that her pride was preventing her making a rational decision.

65. Following that meeting the Claimant emailed Mr Serra (3/185) saying that it troubled her that her return to work would depend on sitting down with Alex to see if they could work together. In cross examination she said that she understood that she was to be subjected to Mr Lasagna "validating" as a condition of being able to stay with Algebris and that this meant that Mr Serra wanted her out. The Tribunal finds that at this stage Mr Serra did not want the Claimant out - that he wanted to retain her- but in the Investor Relation role only- and that he still valued her professionalism despite the criticisms of others.
66. On 6 January the Claimant informed Mr Serra that she was still unwell and subsequently she sent a note signing her off until 7th March
67. Grievance. On 7th January the Claimant submitted a grievance to Anna Crompton General Counsel (3/194). In her grievance the Claimant complained about the changes to her role and about the various ways in which she alleged she had been treated by Mr Serra. The principal complaint was about the demotion - (i) she had had her status and role undermined by unfair criticism (ii) she had been unfairly treated and demoted and that (iii) the Respondent had undermined trust and confidence. There was no explicit reference to sex discrimination or to less favourable treatment, but she did refer to Mr Serra saying to her on December 11 that he knew how she reacted when "overtaken by a hormone tempest" and that she took this to be a reference to when she was pregnant in 2012. She also referred to Mr Serra's comment about Mr Rajkumar and the "Swiss being more racist than the Germans".
68. On 10 January the Claimant was told that Mr Partington would be arranging a grievance hearing with Ms Cooper, Head of Compliance. On 14th January Mr Partington wrote to the Claimant to propose that the grievance hearing would take place on 27th January 2020
69. On 13 January 2020 the Claimant was informed by Mr Serra that her bonus for 2019 would be £200,000. This was less than in previous years. In 2016 she had received £350,000, in 2017- £800,000 and in 2018 she had received £620,000. Her bonus was significantly lower than in previous years. Mr Monogenis who led US sales had his bonus reduced by 80% while 2 other members of the BD and IR team received a nil bonus. We deal with the bonus payments in more detail below.
70. The Claimant contacted ACAS on 21 January 2020.
71. On 22nd January 2020 the Claimant informed Mr Serra that she had been diagnosed with breast cancer (3/224). Ms Compton wrote to the Claimant to ask her if she wished to go ahead with the planned grievance hearing and the Claimant responded that she would be unable to attend any work-related

meetings, including any grievance meetings, until she was cleared to return to work by her GP. The Grievance process was suspended.

72. On 7th February 2020 the Claimant sent a fit note certifying her unfit for work for 6 weeks by reason of breast cancer and a further fit note on 19 March certifying unfit for work for 3 months because of “work-related stress and anxiety and breast cancer surgery/treatment.”
73. In the meantime, the Claimant was able to benefit from both group income protection and Group Critical illness insurance policies, the first insurance policy providing monthly payments and the second a lump sum of £200,000.
74. The Claimant presented her first claim to the Employment Tribunal on 4 May 2020. That claim also included a claim of equal pay (like work or work of equal value to that of Mr Lasagna, Mr Pirro and Mr Conrad). The equal pay claim has now been withdrawn
75. The Claimant remained off ill throughout the rest of 2020. Further fit notes were received on 19th June and 17th September signing her off for breast cancer and stress, work-related. The grievance process remained suspended.
76. On 5th November, over a year after her initial absence, Mr Partington requested the Claimant’s permission to obtain a report from an independent consultant – but the Claimant did not agree. Instead, she gave her consent to the Respondent applying to her GP or treating consultant for a medical report. In January 2021 the Claimant’s treating physician Dr Ulrich confirmed that the Claimant had completed the majority of the treatment and had an excellent prognosis, that she was still receiving hormonal injections and tablets but that should not prevent her from returning to work full-time – though he recommended a phased return in the first instance. This was sent to the Respondent on 12th February and Mr Partington emailed the same day suggesting a call with the Claimant to discuss her return to work (3/292).
77. On 16th February , the Claimant sent a further fit note signing her off until mid April 2021. On 19th February she responded to Mr Partington’s email of 12th February saying that she wanted to postpone a call with Mr Partington, that Dr Ulrich anticipated she may be able to begin a phased return to work from the end of April 2021 and that in the meantime she asked for his thoughts on how her return ought to be managed *“including how my outstanding grievance will be handled.”* (3/290).
78. Mr Partington responded that he was content not to ask her to see the OH provider at that stage - and that in relation to her grievance their current thinking was that, as the subject matter of the grievance was due to be adjudicated by the Employment tribunal, it would not be appropriate to proceed with the grievance at this stage. He asked for the Claimant’s thoughts on it.

79. On 26th March Mr Partington emailed the Claimant again, asking to speak with her. He said that he would work on the basis that she would begin her phased return to work at the end of April 2021 and that he anticipated that she could work from the Respondent's Milan office for some or all of her phased return if that would be more convenient for her. He also said that the Respondent could arrange for her to report directly to Mr Serra rather than to Mr Lasagna.
80. The Claimant responded on 30th March (3/290) that she was still "not feeling up to" speaking to Mr Partington, that she was in London and would work remotely from whatever office was suitable. She said she was surprised by the point in Mr Partington's email regarding reporting lines. *"I have never reported to Alex and when I was demoted in October 2019 there was never any indication of my reporting line would change to Alex. To be clear when I return to work, I do expect to be reporting to Davide as usual"* .
81. She also said that she did not agree to the Respondent's suggestion that they should not investigate her grievance on her return. She said she raised a grievance because she was deeply upset about the way she had been treated and she did not think the employment tribunal's role was to tell her what the outcome of that grievance should be .
82. As we have set out above, we do not accept that there was never any indication that the Claimant would report to Mr Lasagna. The whole premise of her grievance was a complaint about demotion. The offer that she could report to Mr Serra was made because Mr Serra had been aware that this would be important to her and was intended to be conciliatory. The Claimant's response was a throwing down of the gauntlet. As she reiterated subsequently, she did not accept that she would be returning to a new role.
83. On 16th April the Claimant was signed off for a further 2 months till 16 June 2021. By now the Claimant been off work for over 18 months. The same day Mr Partington wrote to the Claimant to say that, following receipt of her further fit note, the Respondent now required clarity on her medical condition, including a prognosis of her condition and likely return date from their Occupational Health advisers (OH). He added that the Employment Tribunal would be adjudicating upon all matters raised in the Claimant's grievance, the litigation was at an advanced stage. He added that it was unclear when she would be returning to work and that it was possible that the litigation could have concluded by the time she returned. It would not be appropriate to proceed with the Claimant's grievance as she had requested.
84. On 17 June 2021 the Claimant issued a new claim against the Respondent alleging that their refusal to hear her grievance was an act of victimisation, contrary to section 27 of the Equality Act.
85. The Claimant's entitlement to permanent health insurance payments expired at the end of April 2021.

86. On 26 May 2021 Mr Partington sent the Claimant a consent form for an appointment with their Occupational Health providers. On 28th May the Claimant sent an email stating she would like to discuss her return to work on a phased basis from 15 June. She said that in those circumstances she did not expect to have to attend a physical examination with OH. (3/954).
87. In the end OH conducted a telephone assessment with the Claimant on 24th June. The Claimant had asked to see the report before it was sent to the Respondent, and it was sent to her on 28th June (4/362). The Claimant made some “minor changes” to the report before it was released to the Respondent on 7 July 2021 (4/363). OH reported that the Claimant was fit for a phased return and recommended starting with half days and then gradually working back to full-time over 6 to 8 weeks – but there was no requirement to further adjust her duties.
88. On 8th July 2021 the Claimant wrote to Mr Partington (3/360) to say she was ready to return to work, that she was flying to Milan the next day for family reasons, but she would work remotely from Italy in the first instance. She asked for meetings with clients to be set up, (2 a day) to be attended remotely, starting with the ones based in Italy. She said she would pick up her line management responsibilities after the first month of her phased return. She continued *“To be clear, I do not accept that I have been demoted and expect to be doing the same work that I did before. Also, I continue to object to the suggestion that my grievance will not be heard.”* The tone of the email is aggressive and demanding. In answer to a question from the Tribunal the Claimant confirmed that what she was effectively saying was that she would not be coming back to work unless she could come back to her previous role (i.e., Head of BD and IR).

Redundancy

89. The very next day (9th July) Mr Lasagna wrote to Mr Partington (3/362) to say that as a result of various ongoing changes the requirements of the business had changed, that the Claimant’s role no longer existed and would not be required going forward. Her work had been distributed to one of the Claimant’s former direct report (Iliyana) with support from others. Mr Lasagna’s evidence was that during the period of the Claimant’s 20 month absence, Investor Relations had been renamed Client Relations. The Client relations team had continued to evolve, and work had been successfully allocated between the various team members. He said that the business could no longer justify employing someone at the Claimant’s level and he told the tribunal that as the Client Relations team was working well and all the clients’ needs were being serviced, there was no work for the Claimant to do.
90. On 14 July the Claimant had a phone call with Mr Partington in which he informed her that she was at risk of redundancy. There would be a consultation period over the next two weeks. A note of that conversation is at 3/371). The Claimant says that the news came as “a huge disappointment” but we don’t accept that for reasons set out below.

91. The same day Mr Partington advised her in writing of her possible redundancy (3/369). *“Regrettably your position within the BD and IR function has been identified as being risk of redundancy.”* The letter referred to a restructure of the Respondent’s business development and Investor Relations function and continued that the Respondent *“has provisionally concluded that it no longer requires, and can no longer justify, such a senior and highly remunerated role within this business.”* Mr Partington referred to the decision taken in October 2019 to separate the Business Development and Investor Relations teams. It continued *“further steps have since been taken to bring the company’s business development and investor relations function into line with that of our competitors and peers, and to simplify structures. For example, Investor Relations was rebranded Client Relations and job titles across the team were harmonised, and we decided to cover the US market from London, with a colleague redeployed from the investment team to run this. Since the separation the Business Development and Client Relations teams have continued to evolve. Team members have worked hard to ensure the Company continues to provide the support its clients and the investment team require, and work has been successfully allocated between the team members in the Client Relations team. We have also bolstered the Client Relations team over the past year or so with hires into the Dublin and Luxembourg offices.”*
92. He proposed a redundancy consultation meeting on 20th July at 3 pm Claimant was informed that the Respondent would place her on paid leave pending the outcome of the process.
93. The Claimant responded on 20th July at 12.40 questioning the rationale for the redundancy and expressing concern that this was further discrimination and victimisation. She continued *“As mentioned previously, I do not accept that I have been all demoted and I expect to be doing the same work that I did before. As mentioned in our last meeting, my role is not only Head of Investor Relations, but also global head of Business Development, which is a key role for any company, and as you’ve noted, my role as Head of Business Development is still being carried out by a man, Alex Lasagna (with higher pay than I received). I also understand from our meeting that part of my role (Head of Investor Relations) has now rebranded to a different name (head of Client Relations) and that US sales is now being carried out from London by another man, Simon Peters. I continue to object to the suggestion that my grievance will not be heard, and I do not understand how I can be put at risk when I have submitted a grievance in relation to my demotion and my grievance has not been dealt with.”* She also asked for a response to a number of specific questions
94. On 28th July Mr Partington agreed to pause the redundancy process while the Claimant’s grievance was investigated. The Claimant suggested that Ms Cooper could not be independent and impartial as her ultimate boss was Mr Serra-*“if the company is to proceed on this basis, I reserve my rights in relation to questioning the independence and unbiased nature of the*

process.” (The Claimant had not questioned Ms Cooper suitability to hear her grievance when it was first proposed in early 2020.”)

95. The Claimant met with Ms Cooper on 12 August 2021. On 19 August 2021 Mr Partington responded to some of the Claimants questions which he had raised in relation to her redundancy (3/351). The Claimant makes no complaints before this tribunal as to the outcome of the grievance process.
96. Ms Cooper sent the Claimant her grievance decision on 1 October 2021 (3A/39). The grievance was upheld in part – namely that Mr Serra had made a number of objectionable comments. Ms Cooper did not uphold Claimant’s complaints that her status and role had been undermined by unfair criticism and unwarranted complaints. Her finding was that changes to the Claimant’s role were made for good business reasons and with proper cause. *“While I think that the way feedback was provided was far from ideal, I do not uphold your complaint that the underlying criticism was itself unfair. Indeed, having considered your grievance, I think many of the issues come down to a mismatch of expectations and a reluctance, on Davide’s part, to manage a close friend effectively...”* It was neither possible nor appropriate for her previous position to be restored, though the Claimant could continue to report to Mr Serra.
97. The grievance findings are lengthy and well set out. We are satisfied that Ms Cooper carried out a fair and impartial grievance process.
98. Ms Cooper did find that:
 - i. Mr Serra had on 29th October said to the Claimant that women could be frantic and unpredictable at times in their menstrual cycle. (3A/46)
 - ii. Mr Serra said to the Claimant on 11 December 2019 that he knew how she reacted when “overtaken by a hormone tempest”.
 - iii. Mr Serra told the Claimant that the new role would be a better fit for her life balance” – or something similar.
 - iv. Mr Serra had said “something along the lines of the Swiss were more racist than the Germans”.
99. Finally, Ms Cooper said she had organised for Mr Serra to arrange equality, diversity and inclusion training. (This was lip service - a short online course. Mr Serra said he thought it was multiple choice and took about half an hour).
100. The Claimant appealed against the grievance outcome. Mr Singh, the Respondent’s Chief Financial Officer dealt with the appeal. At the Claimant’s request the appeal was dealt with on the papers. His decision was sent to the Claimant on 16 November 2021 (3A/77 – 81)
101. The hearing of the Claimant’s first two employment tribunal claims was due to begin on 22 November 2021 -- and scheduled to last until 2 December 2021. Following the conclusion of the Claimant’s grievance appeal sent to

the Claimant on 16th November, Mr Partington wrote to the Claimant on 19th November inviting her to consultation meetings on 7 and 16 December 2021. The consultation meetings were timetabled to start after the conclusion of the Tribunal hearing.

102. It is the Claimant's case that the timing of that letter was designed to cause maximum distress to the Claimant. We find that the timing was unfortunate but not deliberate. The Claimant had always been aware that the redundancy process would start as soon as the grievance process had completed. The process had now been delayed by some 4 months and the Respondent was keen not to further delay matters.
103. In the event the Tribunal hearing was postponed by the Tribunal for lack of Judges.
104. On 2nd December the Claimant said she did not feel able to participate in the consultation redundancy meetings and had been signed off with "Tribunal hearing related stress". Instead, she asked a number of questions (3A/106) about who had made the decision and why. Mr Partington responded on 3rd December. He outlined the history leading to the Claimant's demotion and continued

"Since October 2019, further steps have been taken to bring the BD and IR division in line with Algebris' competitors and to simplify structures. For example, responsibility for serving U.S.-based clients was transferred to London. Investor Relations was rebranded Client Relations and job titles across the teams were standardised (although in the light of your absence we did not seek to change your title).

Since their separation, the BD and Client Relations teams have continued to evolve. Team members have worked hard to ensure the company continues to provide the support its clients and the investment team require, and work has been successfully allocated between team members.

Algebris has bolstered the client relations team over the past year or so with hires into the Dublin and Luxembourg offices. Iliyana successfully managed the various client relations processes. She, Puja and the wider CR team have contributed to the growth of Algebris' distribution channels by onboarding new distribution partners. They have reviewed existing distribution agreements and led the client servicing element of the project to migrate from HSBC to BNP. They have continued to provide updates to investors as needed, and to complete the DDQs and other client servicing tasks in a timely and effective manner.

As I have mentioned Karina found that client servicing formed much of your role, even prior to Autumn 2019. This work has been successfully reallocated between Iliyana, Pooja and other members of the team and the business's view is that it simply does not require someone of your seniority to carry out this work. Sales have also been strong. Individual team members have developed and, as with Iliyana and the CR team,

have stepped up. The business has not made any hires at your level – the work has been reallocated between the members of the sales team, overseeing and mentored by Alex.

Against this background and, as I have explained, the business' view is that the company no longer requires, and can no longer justify, your position.

105. The Claimant was also informed that there were no suitable alternative vacancies- – although there was a role available in Zurich which attracted a salary of £75,000 and required fluent German.
106. On 9th December the Claimant wrote to Mr Partington saying she was not able to participate in the redundancy meetings or the process as a whole but she would set out her thoughts in writing. The Claimant was informed that it was not appropriate for the process to be postponed indefinitely and that Mr Partington would reach a decision on the outcome of her redundancy consultation in the week commencing 17th December. On 15 December 2021 the Claimant solicitors responded saying that they were unable to make any further suggestions or representations about the redundancy. On 17th December Mr Partington wrote to the Claimant confirming the redundancy decision. The Claimant chose not to appeal
107. Bonuses. It is the Claimant's case that she was discriminated against because of her sex in the receipt of discretionary pay. It is not disputed that she received significantly lower discretionary remuneration than Mr Lasagna with whom she compared herself.
108. The Tribunal is satisfied that Mr Lasagna was not on a par with the Claimant in terms of seniority or worth to the business. We do not consider that Mr Lasagna was an appropriate comparator. He was not in materially similar circumstances to the Claimant .
109. It is not in issue that Mr Lasagna received significantly greater discretionary remuneration than the Claimant. The Claimant received the following bonuses in addition to her contractual salary;
- 2014 - £163, 547
2015 - £188,147
2016 -£350,000,
2017 - £800,000
2018 - £620,000.
2019 – £200,000
110. Mr Lasagna's remuneration was opaque . From 2011 to 2017 he was engaged as a contractor while resident in Switzerland and paid via an agreement with Algebris Singapore. Further Mr Lasagna appears to have been paid without presentation of invoices or any written agreement. Invoices purporting to reflect the work that he had carried out for the Respondent in the years 2011 to 2017 were only created in 2017. The work set out in those invoices was a post hoc justification for the remuneration

paid to him which did not bear any relationship to the work done/ reason for the payments. Mr Lasagna accepted in evidence that Mr Serra simply told him what he would be/had been paid. When, after the event, Mr Lasagna was required to provide invoices it had been left to him to allocate how those payments should be attributed to what work. Mr Serra accepted that while he would decide the total amount of Lasagna's compensation he did not care, or enquire, how it was structured.

111. The Respondent now accepts that the whole of Mr Lasagna's remuneration until 2017 was effectively discretionary.
112. Mr Lasagna entered into a formal UK employment contract in February 2017 which paid him a fixed salary of – £230,000 per annum. In December 2018 he also entered into an Italian contract which provided for a salary of €265,000. In May 2019 he was made one-off discretionary payment of £200,000.
113. In July 2019 Mr Lasagna was told that he would be entitled to an annual Fixed Allowance of €400,000 gross to be considered as “part “ of his fixed salary effective from September 2019. Mr Lasagna now says that this was deferred bonus for 2018, but that is not documented in the letter (4/247) . In any event, the Respondent concedes, for the purposes of this litigation, that the €400,000 received annually from 1 September 2019 should be treated as discretionary pay.
114. It is clear that Mr Lasagna earned significantly more discretionary pay than the Claimant.
115. Mr Serra's evidence was that bonuses at the Respondents were completely discretionary. Mr Serra decided bonuses for those who were on the Investment Team and for Mr Lasagna and the Claimant. Mr Lasagna decided the bonuses for everyone else. We were told that deciding what to pay was “an art rather than a science” and that he would allocate bonuses based on the value he believed that each employee brought to the business as well as the performance of the company, the performance of the funds, teamwork, market standards and talent retention.
116. It is common ground that Mr Lasagna earned significantly more by way of discretionary compensation than the Claimant. On the other hand, we do not accept that Mr Lasagna is a valid comparator to the Claimant for the purposes of her direct sex discrimination claim. Section 23 of the Equality Act requires that “on a comparison of cases for the purposes of section 13, 14 or 19 there must be no material difference between the circumstances relating to each case.” We are satisfied that Mr Serra regarded Mr Lasagna as significantly more important to the business than the Claimant.
117. The Claimant was one of 3 BD and IR directors. She was responsible for Europe (which was effectively 80% of the Respondent's business) while Richard Surrency was BD and IR director for Asia and Mr Monogenis was responsible for the US market. In the years 2016 to 2019 the Claimant's

bonus was significantly higher than that of her (male) fellow BD and IR directors.

Relevant law

118. Section 39 of the Equality Act 2010 prohibits an employer discriminating against or victimising its employees by dismissing them or subjecting them to any other detriment. Section 40 prohibits an employer from harassing its employees.

119. Section 13 defines direct discrimination as follows:-

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

Sex and disability are protected characteristics.

Section 13 focuses on “less favourable” treatment. A claimant must compare his or her treatment with that of another (actual or hypothetical) person who does not share the same protected characteristic. Section 23 of the Equality Act provides that “on a comparison of cases for the purposes of section 13... there must be no material difference between the circumstances relating to each case.” It is not necessary for all the circumstances to be the same provided that the circumstances are materially similar. In other words, for the comparison to be valid like must be compared with like.

120. Section 19 defines indirect discrimination as follows:-

“(1) A person (A) discriminates against another (B) if A applies to B a provision criterion or practice which is discriminatory in relation to a relevant protected characteristic of B’s.

(2) for the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to the relevant protected characteristic of B’s if-

- a. A applies, or would apply, it to persons with whom B does not share the characteristic,
- b. it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
- c. it puts, or would put, B at a disadvantage, and
- d. A cannot show it to be a proportionate means of achieving a legitimate aim.

121. Section 40 prohibits an employer from harassing its employees. Section 26 defines harassment 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).

- (3)
- (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
- (a) the perception of B;
 - (b) the other circumstances of the case;
 - (c) whether it is reasonable for the conduct to have that effect.
122. The essential characteristic of sexual harassment is that it is unwanted by the recipient. Behaviour that may be acceptable if the recipient welcomes it can be harassment if the recipient indicates that that the approach is unwelcome. It does not need to be deliberate. Behaviour can amount to sexual harassment if the effect of the behaviour is to create an intimidating, hostile, degrading, humiliating or offensive environment for a person, provided that having regard to the individual's perception and the other circumstances, it was reasonable for the individual to have experienced that effect. On the other hand, If it was not reasonable for the conduct to be regarded as violating the Claimant's dignity or creating an adverse environment for her, then it should not be found to have done so.
123. Not every adverse comment or conduct may constitute violation of a person's dignity etc. In Richmond Pharmacology v Dhaliwal Tribunals were advised not to encourage a culture of hypersensitivity by imposing liability on every unfortunate phrase and not to cheapen the significance of the meaning of the words used in the statute (i.e., intimidating, hostile, degrading etc) which were an important control to prevent trivial acts causing minor upset being caught in the concept of harassment. Even if there is conduct which is sufficient to attract the necessary epithets, the conduct must still be related to the protected characteristic.
124. Although isolated acts may be regarded as harassment, they must reach a degree of seriousness before doing so.
125. As to victimisation section 27 provides that
- “(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 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.”
126. Disability discrimination. Section 15 of the Equality Act 2010 provides that

- (1) A person (A) discriminates against a disabled person (B) if—
- (a) A treats B unfavourably because of something arising in consequence of B's disability, and
 - (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
- (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.
127. Although A must know or have been expected to know that the Claimant was disabled, it is not necessary for A to know that the “something” arose in consequence of that disability.
128. Burden of proof. Proving and finding discrimination is always difficult because it involves making a finding about a person's state of mind and why he has acted in a certain way towards another, in circumstances where he may not even be conscious of the underlying reason and will in any event be determined to explain his motives or reasons for what he has done in a way which does not involve discrimination. It is for this reason that the law provides for a two-stage burden of proof as set out at Section 136. It is for the Claimant to prove the primary facts from which a reasonable Tribunal could properly conclude from all the evidence before it, in the absence of an adequate explanation, that there has been a contravention of the Equality Act. Once the Claimant has shown these primary facts then the burden shifts to the Respondent and discrimination is presumed unless the Respondent can show otherwise. It is however not necessary in every case for the tribunal to specifically identify a two-stage process. There is nothing wrong in principle in the tribunal focusing on the issue of the reason why. As the Employment Appeal Tribunal pointed out in Laing v Manchester City Council 2006 IRLR 748 “If the tribunal acts on the principle that the burden of proof may have shifted, and has considered the explanation put forward by the employer, then there is no prejudice to the employee whatsoever
129. In Royal Mail Group Limited –v Efobi 2021 ICR 1263 the Supreme Court reaffirmed the principal applicable to the burden of proof provisions contained in section 136 and that the principles from the predecessor legislation continue to apply. Lord Hope said in Hewage v Grampian Health Board 2012 ICR 1054 that it was important not to make too much of the burden of proof provisions. “They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other.”
130. Protected disclosure. Section 43B of the Employment Rights Act 1996 provided that a qualifying disclosure is a disclosure of information which, in the reasonable belief of the worker making it, is in the public interest and tends to show... (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which is subject.

131. Section 103A of that Act provides that if the principal reason for dismissal is that the employee made a protected disclosure, the dismissal will be automatically unfair
132. Unfair dismissal. In a case of ordinary unfair dismissal it is for the employer to establish a potentially fair reason for dismissal. Once the employer has established a potentially fair reason for dismissal – in this case redundancy then the question of whether or not the Claimant was fairly or unfairly dismissed “depends on whether in the circumstances (including the size and administrative resources of the employers undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissal and shall be determined in accordance with equity and the substantial merits of the case.” The Claimant must be given a fair hearing and a chance to state her case.
133. A dismissal for redundancy is a potentially fair reason for dismissal. Section 139 of the Employment Rights Act 1996 provides that an employee who is dismissed be taken to be dismissed by reason of redundancy of the dismissal is wholly or mainly attributable to the fact that the requirements of the business for employees to carry out work of a particular kind have ceased or diminished, are expected to cease or diminish. In cases of redundancy dismissal will not usually be found to be fair unless an employer has warned and consulted the employee or other employees affected, adopted objective criteria on which to select for redundancy which are fairly applied and take such steps as may be reasonable to minimise the effect of redundancy by redeployment.
134. Time issues arise in respect of some of the Claimant’s complaints.

Submissions and conclusions

135. It was evident that the Claimant and Mr Serra had a close relationship. Mr Serra regarded her as a friend and respected her professionalism. He was pleased to have recruited her, regarded her highly and valued her opinion. Although the Claimant reported to Mr Serra, Mr Serra did not manage the Claimant in a traditional way. There were no annual appraisals or performance reviews. We accept that Mr Serra had at no point prior to September 2019 criticised the Claimant’s performance or suggested that she did not do a good job. Equally he had chosen not to act on or investigate the various complaints made by the Investment team.
136. We accept that the Claimant and Mr Serra would speak to each other frankly. We do not accept, as the Respondent suggests, that they would shout and swear at each other frequently, but we do accept that the Claimant had more latitude than other senior employees because of this friendship. As set out above Mr Serra was prone to making sexist remarks. Mr Serra said to the Claimant on 29th October that women could be frantic and unpredictable during their periods. On 11th December Mr Serra said to the Claimant he knew how she had acted in the past when she had been overtaken by a hormone tempest.

137. The comments on 29th October and 11th December were unacceptable and sexist and amounted to unwanted conduct related to sex which had the effect of violating the Claimant's dignity and amount to unlawful harassment contrary to section 26 of the Equality Act. We accept that the Claimant and Mr Serra were also friends, but he was speaking to her in her professional capacity, and they did diminish the Claimant's dignity. Both comments form part of the Claimant's grievance and we accept that she was appalled by these remarks.
138. In addition to the unwanted and offensive nature of the comments themselves we considered whether those comments were enough to shift the burden of proof such that the Respondent should be required to show that the factual complaints were not due to discriminatory motivation. Those comments were certainly material from which we might well infer discriminatory motivation for the events which then unfolded.
139. Nonetheless, having considered all of the evidence we accept that the reason for the Claimant's demotion (which is really what this case was all about) and the other detriments that go hand-in-hand with that demotion were not less favourable treatment because of her sex. In short, we accept Respondent's explanation as to why the Claimant was removed from sales.
140. The evidence which we have heard makes it clear that the Claimant was, for most of her employment, regarded extremely highly by Mr Serra. He valued her contribution to the business. He had ignored criticism from those on the investment side for some time. However, in 2019 for various reasons, as we have set out above, he began to take more notice of those criticisms. After the 10th September Investor day when they had a shouting match, Mr Serra was, as he said, "mad" with the Claimant because she did not appear to have accepted his decision to make the BD and IR team more accountable. His opinion of her performance began to change. He asked Mr Lasagna to take over responsibility for sales in Italy and Switzerland. That might have worked, but ultimately the Claimant was demoted because she became territorial, and the Claimant and Mr Lasagna could not work together. We are satisfied that this had nothing to do with her sex .
141. In 2018 fund performance was down and experiencing negative returns. Those on the investment side (Mr Pirro and Mr Gallo) were complaining. Mr Serra was cross to have received a complaint from the CEO of Monte dei Paschi di Siena that the Claimant had sent a relatively junior member of the BD and IR Team into a key meeting. In addition, Ms Casalengo had also come to him to complain about the Claimant. He therefore decided that the IR team needed to be properly monitored and evaluated. He decided that he himself would need to be on top of the sales process and that he had spent too much of his energies focusing on investments. This was a reasonable management decision for him to take.
142. The Claimant did not take kindly to the implied criticism conveyed to her on 10 September 2019 and, as we have set out above, the conversation became a shouting match.

143. We are satisfied that the reason why Mr Serra told the Claimant of his proposed changes (with the criticism it implied) was because he had decided to act on the complaints which he was receiving from the investment team, and because he had not realised that the Claimant was sending relatively junior members of her team to important meetings. He wanted some number-based accountability, and this was a reasonable management instruction.
144. Equally while Mr Serra did reduce the Claimant's role on 20th September by removing her from the Italian and Swiss markets, he did so because of the various performance issues and because Mr Lasagna and the Claimant were struggling to work things out together. While he did say that the Claimant lacked leadership because she had worked 36 days from home – this was not because she was a woman, but because she was in charge of a significant team, with some 11 direct reports. A leadership role requires presence in the office, not necessarily all the time, in order to mentor and bring on the junior staff and, as Mr Casalengo's complaints had evidenced, she was not doing this. The Claimant was not closely managed and was given more leeway than others in being allowed to work remotely. As a senior individual she was trusted to carry out her work in a way that best assisted the business and her team. The criticism would have been equally applied to a man in comparable circumstances.
145. We find in relation to issues 3.1 – 3.4 that Mr Serra's actions were based on his genuine perception that the Claimant was not performing in her role and were not influenced by the fact that she was a woman. The comment about Mr Rajkumar was undoubtedly offensive, particularly to the Swiss and the Germans, but was not related to the Claimant's sex.
146. Issue 3.5 refers to the events of September and October and to Mr Serra and/or Mr Lasagna "ignoring excluding and undermining" the Claimant in a number of ways. The facts are set out above. By this time the Claimant had become extremely sensitive. Although Mr Serra and Mr Lasagna had failed to respond to her comments on the draft announcement in relation to her role, Mr Serra had added the Claimant's comments to the draft. Mr Serra did not acknowledge her email because, as he said, he was "mad" with her. He thought she was not accepting his instructions. Equally we find that Mr Serra and the Claimant had different visions of what a sales budget would look like, and that Mr Serra preferred the version adopted by Mr Lasagna.
147. As set out above, Mr Serra was critical of the Claimant's team on 15th October. We find that he was critical of the Claimant at this stage because he genuinely considered that she and the team were not performing as they should have done.
148. We do not accept that Mr Serra carried out "an investigation" into the Claimant when he telephoned a number of individuals over the weekend of 27/28 October. He was seeking a wider view the Claimant's performance and, as he was concerned that the Claimant might leave, identifying whether the business could manage without her. When he told the Claimant that the Respondent's employees had indicated that they preferred to work with Mr

Lasagna he was simply telling her the truth.

149. When Mr Serra told the Claimant during the 30th October video call that he had decided to change the Claimant's role and job title to Head of Investor Relations, he did so because of the complaints he had received and because Mr Lasagna had said that he could not work with the Claimant in sales.
150. In short, we conclude that the Claimant's demotion and her associated complaints occurred because Mr Serra and Mr Lasagna genuinely believed that the Claimant was no longer performing in her sales role and that after September, she was actively working against Mr Lasagna to prevent him from carrying out his sales function as he wished. These events were not influenced by the Claimant's sex.
151. Issues 3.5.7, 3.5.8, 3.5.9, 3.6 and 3.7 all relate to the 29th October breakfast meeting. The content of that meeting is set out above. Mr Serra was critical and told her that the majority of staff who had spoken to would prefer to work with Mr Lasagna rather than with her. His concerns were genuine and not because she was a woman.
152. The comment that women could be frantic and unpredictable during their periods was offensive. While such an offensive comment might ordinarily have led the Tribunal to conclude that the criticisms were tainted with sex discrimination in this case we do not do so. We do not do so because we have accepted the very clear evidence from Mr Pirro, and Ms Casalengo as to their concerns, that by then the Claimant had become territorial and was not co-operating with Mr Lasagna, and that this was causing the atmosphere to become toxic. By 29th October he felt that it was either Mr Lasagna or the Claimant, and that he considered that in those circumstances it would be better for the business if Mr Lasagna had sole responsibility for sales. It is not for us to say if the criticisms of her treatment of Sarah Finley or Mr Gallo were justified, but we accept that they reflected Mr Serra's genuine opinion at the time. Mr Rajkumar had (3/139) only the day before, asked to speak to Mr Lasagna (to whom he did not report) about an email from the Claimant in which she had told him an email should have been phrased differently.
153. 3.5.10 and 3.7.2 relate to the announcement during a video call on 30th October about the Claimant's change of role. The facts of that call are not in dispute. Mr Serra did rely on the Claimant's inability to work with Mr Lasagna and did criticise the Claimant, but we accept that those criticisms were genuinely held. He referred to complaints from staff that the sales team were not providing enough new clients, that Mr Rajkumar was a bad hire, and that she should have known not to appoint Mr Rajkumar because the Swiss were more racist than the Germans. Mr Serra had been a staunch supporter of the Claimant over many years, and we do not infer that his criticisms of the Claimant at this stage were tainted with sex. This was treatment related to his perception of her performance rather than less favourable treatment because she was a woman.

154. Issue 3.9. We accept that on 9 November the text message that Mr Serra sent to the Claimant was, in part, threatening, and sought to warn her off taking legal action. It also sought to persuade the Claimant that she was valued and to explain that the demotion was for genuine business reasons, and that perhaps it was Mr Serra's fault for not having understood that things were not working. Taking it all together we consider that the tone of the email reflected their long friendship and was not tainted with sex discrimination.
155. Issue 3.10 On 11th December the Claimant lost access to her emails and client contacts for a short while though this was not unique to her as we have set out above and was not an action taken by Mr Serra not related to her sex,
156. Issues 3.7.3, 3.8 ,3.11, 3,12 and 3.13 all relate to the meeting on 11th December. The facts are set out above. By then the Claimant had not been at work since her demotion on 30th October. Amongst other things Mr Serra told the Claimant that the new role would be better suit her lifestyle. This was not primarily a reference to her single mother status but to the fact that she preferred to base herself in London but go to Italy for the school holidays.
157. The comment about having seen how the Claimant reacted when overtaken by a "hormone tempest" was unacceptable. The Claimant understood this to me a reference to when she was pregnant in 2012, when he felt she had been irrational.
158. Undoubtedly this was a bad way to manage a senior employee. As the Claimant says no one had previously intimated to her that they could not work with her, that she was bad at managing, or had been critical of her performance. Mr Serra was very "hands off" in management terms. She had been taken entirely by surprise when he began to be critical of her performance. However, the issue is not whether Mr Serra had been a good manager of the Claimant. The issue is whether his treatment of her was because of her sex.
159. The offensive comments made by Mr Serra are suggestive of a sexist mindset. Some of those comments do amount to harassment. On the other hand, we do not consider that they are material from which we should infer that the Claimant's demotion and the criticisms of her performance that went with it were related to her sex. Mr Pirro, Ms Casalengo and Mr Lasagna have appeared were clear in their criticisms of the Claimant.
160. The Claimant relies on Mr Lasagna as an actual comparator as well as a hypothetical comparator. Mr Lasagna was not in the same material circumstances as the Claimant. On the contrary, Mr Serra considered that Mr Lasagna was very good at sales and, so far as we are aware there had been no criticism of Mr Lasagna from other members of the Algebris community.
161. Issue 3.16 relates to the Claimants bonus. We are satisfied that the reduction in her bonus was because Mr Serra had become critical of the

Claimant's performance. As with her demotion the reason for the lower bonus was his judgment as to her performance and not her sex

162. Issue 3.19. Refusal to hear the Claimant's grievance. The Claimant had told Ms Compton in January 2021 that she was unable to attend any work-related meetings including any grievance meetings. She did not raise the issue of her grievance again, until 19 February 2021 when she asked Mr Partington how her return how her grievance would be managed (although she was not in fact willing to speak with him by phone). In the event, she remained off sick until 7th July. In the meantime, Mr Partington did effectively refuse to hear grievance on the premise that the litigation was at an advanced stage and the employment tribunal would pass judgment on those allegations. It was not a good reason to refuse. We do not infer that the refusal to hear grievance at that stage was an act of less favourable treatment because of sex, but we find it was an act of victimisation (see below).
163. Issue 3.17 Discretionary pay differential. Mr Lasagna had received significantly larger discretionary payments than the Claimant. We do not accept that Mr Lasagna and the Claimant were level in terms of seniority. Mr Lasagna had been instrumental in building the business from its inception and had been the driving force in expanding its overseas offices. Mr Serra regarded him as his best salesperson his best salesperson. He had changed roles when asked – from sales to COO and back.
164. Although it is apparent that Mr Lasagna is not a statutory comparator, should we infer from that pay differential and Mr Serra's sexist comments that the difference in discretionary pay between Mr Lasagna and the Claimant was influenced by her sex. Would a hypothetical male comparator in materially comparable circumstances to the Claimant have received higher bonuses throughout his employment? We do not think so. We find that Mr Serra was very fond of the Claimant and, until the events of October 2019 valued her highly. He had ignored criticisms from others for some time. The other Directors of BD and IR (both male) had received significantly lower bonuses than the Claimant (see para 34 of Mr Lasagna's witness statement) and although those bonuses were determined by Mr Lasagna, rather than Mr Serra, they indicate that the Claimant's bonuses were substantial.
165. Redundancy process. Issues 3.18-3.20, 3.21 and 5-8 By the time the Claimant told the Respondent that she was ready to return to work everyone was playing games. The Claimant had no intention of returning in the new role and the Respondent had no intention of allowing her to return in either role.
166. The Claimant had been reluctant to submit to an occupational health report as far back as November 2020. In January 2021 her doctor had suggested that she was ready to return to work. Despite this the Claimant said that she was "not up" to speaking to Mr Partington (with whom she had had no relationship before her absence began), said that she was "surprised" to be told she could report to Mr Serra, had never reported to Mr Lasagna and expected to continue to report to Mr Serra, . She continued to send fit notes

certifying her not fit to work until mid June. When she did say that she was ready to return to work, she did so on the basis that she expected to be doing the same work that she did before. This was deliberately provocative. By this time the Claimant had no intention of returning to work in the new role and was effectively calling the Respondent's bluff.

167. On the other hand, the timing of the announcement that the Claimant's role was redundant is striking. The Claimant sent her email that she was ready to return to work on a phased basis on 8 July 2021. The next day Mr Partington received an email from Mr Lasagna saying that the Claimant's role was redundant. We have no evidence that any such reorganisation was being considered before that date. It is evident that the Respondent commenced the redundancy process in response to her email stating that she was ready to return to work.
168. It was Mr Lasagna's evidence that the decision was his, and that while he discussed matters with Mr Serra, Mr Serra left the decision to Mr Lasagna. We do not accept that. Our assessment of the way that the Respondent was run was that Mr Serra regarded the business as his-and we do not accept that he would have had no input into the decision as to the Claimant's future.
169. Mr Lasagna's evidence as to the timing of the announcement of the Claimant's potential redundancy was that the Respondent would not have considered it right to progress her potential redundancy during her treatment for cancer. He said that if the redundancy had occurred sooner this would have jeopardised her permanent health insurance claim. That might be correct, but we would have expected there to have been internal discussions about the deletion of her role, if it had genuinely been considered at any time prior to the date when the Claimant expressed a wish to return.
170. We find that the issue of the Claimant's role was only brought into focus when the Claimant said that she wished to return. We also consider that, had relations not deteriorated to the extent that they had, the Claimant would have been permitted to return to the IR role. We find that Mr Serra and Mr Lasagna determined that the Claimant could not return for a number of reasons but primarily because Mr Serra could not forgive the Claimant for having bought, at that stage, two Tribunal claims against the Respondent.
171. We accept that, by July 2021, the Respondent was functioning satisfactorily without the Claimant and that in her absence Illiyana had stepped up and was performing what would have been the Claimant's new role - but without the Claimant's level of remuneration. Nonetheless, the history of the Claimant's employment and relationship with Mr Serra indicates that had the Claimant not entered into litigation (and had the Claimant accepted the lesser role) she would have been able to return to work. While it is true that the Claimant was more highly remunerated than Illiyana, we do not consider that that would have been a bar to her returning to work absent the grievance and the employment tribunal litigation. For this reason, we consider that the redundancy process amounted to unlawful victimisation (see below)

172. On the other hand, we do not consider that the redundancy process was less favourable treatment because of the Claimant's sex. We find that a similarly senior man in comparable circumstances who had brought a claim against the Respondent in the Employment Tribunal, would have been treated in a similar way.
173. Indirect sex discrimination. Issue 8. The Claimant relies on the following PCPs.
- a. Treating working from home as not consistent with management
 - b. not respecting staff that work from home
 - c. favouring staff who it perceives the more able to travel for work
174. We do not accept any of those PCPs were applied to the Claimant. The Claimant was, on her own case, one of the 3 most senior individuals at the Respondent and worked from home /remotely more than anyone else. The Claimant was able to manage her direct reports and limit her travel for many years during which she was respected and valued by Mr Serra. The issues that arose were because it was perceived that the Claimant was not performing and her wish to work from Italy during school holidays, while based in London was detracting from her ability to manage and lead her team. It may be that the PCP that was applied to her was "treating working from abroad for 8 weeks" as inconsistent with management, but that it is not the PCP that was pleaded. The Claimant was not required to travel outside Europe, and we have had no evidence that she was unable to travel within Europe.
175. Harassment. Issue 9. Mr Serra's comments that he had seen how the Claimant reacted when overtaken by a hormone tempest were unacceptable comments which had the effect of both violating the Claimant's dignity creating a humiliating and offensive environment for her. They were related to her sex. They amounted to harassment contrary to section 26 of the Equality Act.
176. On the other hand, we do not accept that the reference to the Claimant's lifestyle amounted to harassment related to sex. It was a comment which related to the fact that the Claimant preferred to be based in the UK but to work from Italy in the holidays and cannot be said to have violated her dignity or created an intimidating, hostile, degrading, humiliating or offensive environment for her.
177. Victimisation. Issues 10 and 11. It is the Claimant's case that the redundancy process and the refusal to hear the Claimant's grievance amounted to victimisation. The protected act relied on are the first 2 sets of proceedings and the Claimant's grievance.
178. We have already as set out above we do find that the redundancy process was commenced against the Claimant because in the light of her claims to the tribunal they were not prepared to have her back at work. We also find

that when the Respondent told the Claimant in April 2021 that, despite her wish for the grievance to go ahead it was not appropriate to hear the Claimant's grievance pending the Tribunal hearing it subjected her to a detriment. The Respondent told her this because of the litigation. We do not accept, as Mr Stiltz submits, that this is on a par with Chief Constable of Yorkshire Police v Khan and that the refusal was done to protect the Respondent's position in the litigation. It is best practice to hear a grievance before litigation begins, and an employer may not refuse to hear one in order to protect their position in the litigation. However, as Ms Tuck accepts, the detriment was minor. The Claimant continued to be unwell until June (and had made it clear she did not want the grievance dealt with while she was unwell) and then the Respondent did hear the grievance before the hearing of the claims.

179. As to issue 3.20, as set out in paragraphs 101 and 102 above we do not accept that when Mr Partington wrote to the Claimant on 19th November (very shortly before the Tribunal hearing was due to begin) asking her to attend a redundancy consultation meeting he subjected her to a detriment because of her claims. The Claimant was notified that her grievance appeal had been dismissed on 16 November 2021. The Claimant was well aware that the redundancy process (which had been initiated some 4 months previously) would continue once the grievance process was completed. Mr Partington was simply notifying the Claimant of the next logical step in the process. We do not accept that the email was sent in an attempt to distress the Claimant.

Ordinary Unfair dismissal and Automatic Unfair Dismissal.

180. Section 139 of the Employment Rights Act 1996 provides that an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to the fact that the requirements of the business for employees to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish.
181. We accept that the Respondent was managing fine in the Claimant absence, that the Client Relations team was doing a good job. Nonetheless we do not accept that that was the principal reason for the Claimant's dismissal. We find that the principal reason for her dismissal was that she had brought claims against the Respondent. We find that had the Claimant been away on sick leave for some 20 months without having presented claims to the Employment Tribunal she would have been able to return to work in the new role which had been announced in October 2019. This is not a potentially fair reason for dismissal.
182. Nor do we accept that Respondent's alternative case that the Claimant was dismissed for "some other substantial reason". Mr Stiltz submits that, in the context of the Claimant's assertion that she was entitled to, and would only, return to her previous job, there was some other substantial reason for her dismissal. This was not an explanation which was given in evidence by any of the Respondent's witnesses.

183. In its Grounds of Resistance (1/162) the Respondent refers to a number of matters which it says amounted to “some other substantial reason” including the need to improve the performance of the BD and CR division; the Respondent’s loss of trust and confidence in the Claimant’s ability to deliver the necessary support or to build or repair relationships or to manage her team; the breakdown in relationship caused by her approach to her role in 2018 and 2019. None of the evidence which we have heard supports those explanations. In the new role, the Claimant’s direct reports had been reduced significantly there was no evidence that she could not manage those individuals. Mr Lasagna himself had not said that he could not deal with the Claimant at all; he had simply said that he could not continue in the sales role at the same time as she had responsibility for sales. Mr Serra said, and we accept, that if the Claimant had simply accepted her new role and the new requirement to provide metrics none of this would have happened. When the Claimant first went off sick with stress, Mr Serra was anxious to encourage her to return.
184. The change in attitude arose because she had commenced litigation against the Respondent. Mr Serra’s attitude to those that bring claims against him is evidenced in his text message to the Claimant on 8 November 2019 (3/164) referred to above, as well as a text message (3A/226) to the Claimant (in 2018) in which Mr Serra’s reaction to someone who asks if she has been discriminated against is that “she can get fucked.”
185. On the other and we consider that the Claimant did not genuinely want to return to Algebris - and, as she made plain - she would not have accepted the reduced role as Head of IR. This has consequences in remedy.
186. It was also the Claimant’s case that the principal reason for the Claimant’s dismissal was that she made a protected disclosure when she presented her grievance on 7 January 2020. As we have found that the Claimant was dismissed because she had brought claims against the Respondent, this claim effectively falls away.
187. Disability Discrimination. The Claimant relies on discrimination arising from disability (section 15 of the Equality Act 2010) (The claim of direct disability discrimination was withdrawn during submissions.)
188. The Respondent’s case was that the IR function had evolved while the Claimant was off sick, and that the business no longer needed someone at the Claimant level of remuneration. If that had been the case this claim would have succeeded. However, we have not accepted the Respondent’s evidence that this was the reason for her dismissal. As we have said we consider that the Claimant would have been able to return had she not brought proceedings against the Respondent.
189. Remedy We have found that the Claimant has succeeded in her claims of harassment in respect of the remarks made by Mr Serra and in her claim of victimisation. It follows that she will be entitled to an award for injury to feelings in respect of those claims.

190. However, in assessing the loss flowing from the dismissal it is for the Tribunal to consider for how long the Claimant would have remained in employment with the Respondent absent the unlawful conduct. In response to a question from the Tribunal during the hearing the parties indicated that they wished the Tribunal to deal with the Polkey/Chagger type question in our reserved Judgment.
191. In correspondence the Claimant had had twice made it clear that she did not accept her reduced role and that she expected to return to her old role. We have found that the decision to confine the Claimant's role to head of IR was not an act of discrimination. It may have been poorly handled, but we find that the decision to change her role was made for genuine business reasons and was not related to her sex. The Claimant has rejected the criticisms made of her, but we find that they were genuinely held. Her grievance had been heard and rejected and there is no criticism in these proceedings of the grievance outcome.
192. What would have happened had the Claimant been permitted to return to work. The Tribunal first considered whether the Claimant would in fact have returned, if permitted to do so, when all the chips were down. On balance we concluded that she would have done but that, having regard to all that had gone before and the Claimant's assertion that she expected to be doing her old role, we find that, on the balance of probabilities the Claimant would have refused to confine herself to Investor Relations or to work constructively with Mr Lasagna (who she regarded as having usurped her role) and that a disciplinary process would have followed. Taking all things considered we find that the Claimant would have either have resigned or been dismissed for conduct within two months of her return.
193. A remedy hearing has been listed to be heard on 11 and 12 May 2023. If the partes are unable to make these dates they should inform the Tribunal within 7 days of the date this Judgment is sent to them. In the meantime the parties are encouraged to seek to agree terms as to remedy.
194. Both parties are professionally represented and should agree appropriate directions for disclosure, the preparation of a remedy bundle and exchange of witness statements, but if they are unable to do so they should write to the Tribunal marked for the attention of EJ Spencer.

Employment Judge Spencer
10th February 2023

(Re-issued with a certificate of correction on 12th May 2023)

JUDGMENT SENT TO THE PARTIES ON

12/05/2023

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THE SCHEDULE ISSUES

The Claimant brings the following claims:

- 1.1 direct sex discrimination, pursuant to ss.13 and 39 Equality Act 2010 ('EqA');
- 1.2 indirect sex discrimination, pursuant to ss.19 and 39 EqA;
- 1.3 harassment related to sex, pursuant to s.26 EqA;
- 1.4 victimisation, pursuant to s.27 EqA;
- 1.5 direct disability discrimination, pursuant to ss.13 and 39 EqA;
- 1.6 discrimination arising from disability, pursuant to ss. 15 and 39 EqA;
- 1.7 unfair dismissal, pursuant to s.98 Employment Rights Act 1996 ('ERA'); and
- 1.8 automatic unfair dismissal for making a protected disclosure, pursuant to s.103A ERA.

Jurisdiction

- 2 Any act complained of occurring before 22 October 2019 (i.e., 3 months before Day A) is, prima facie, out of time. Accordingly, does the Tribunal have jurisdiction to consider each of the Claimant's complaints of discrimination? In particular:
 - 2.1 Pursuant to s.123 EqA, did the Claimant bring each complaint within three months starting with the date of the act to which the complaint relates (as extended as necessary by virtue of the early conciliation provisions in s.140B EqA)?
 - 2.2 Do the alleged acts of discrimination relied upon by the Claimant in respect of the First Claim (Case Number 2201916/20) amount to a 'continuing act' extending over a period?
 - 2.3 If so, were such claims brought within three months of the end of that period (as extended by virtue of the early conciliation provisions)?
 - 2.4 Alternatively, would it be just and equitable for the Tribunal to extend time so as to consider the Claimant's complaints, pursuant to s.123(1)(b) EqA?

Direct Sex Discrimination

- 3 Did the Respondent treat the Claimant less favourably contrary to s.13 of the EqA because of sex on the basis of an actual/hypothetical comparator? In particular, was the Claimant subject to the following treatment:

3.1 On 10 September 2019, did Mr Serra inform the Claimant that the IR team was run without accountability?

3.2 On 20 September 2019, did Mr Serra reduce the Claimant's role by removing her from the Italian and Swiss markets?

3.3 On 20 September 2019, did Mr Serra say that the Claimant lacked leadership because she worked 36 days from home in 2019?

3.4 On 20 September 2019 and 30 October 2020, did Mr Serra say that the Claimant should have known that Mr Rajkumar was not suited to the Swiss market because of his race?

3.5 Did Mr Serra and/or Mr Lasagna ignore, exclude and undermine the Claimant as follows:

3.5.1 on or around 22 September 2019, did Mr Serra and/or Mr Lasagna fail to respond to the Claimant's comment on the draft announcement in relation to her role?

3.5.2 between 30 September and 15 October 2019, did Mr Serra and Mr Lasagna finalise the sales budget without any input from the Claimant?

3.5.3 on 15 October 2019 at the October IR sales meeting, did Mr Serra criticise the Claimant in front of her colleagues?

3.5.4 in October 2019, did Mr Serra carry out an investigation into the Claimant without telling her he was doing so which the Claimant was only made aware of during her discussion with Mr Serra on 29 October 2019?

3.5.5 if Mr Serra carried out said investigation in October 2019, did he not afford the Claimant the opportunity to hear or speak to the concerns he was investigating?

3.5.6 in October 2019, did Mr Serra discuss concerns about the Claimant with her direct reports as part of the above alleged investigation?

3.5.7 on 29 October 2019, did Mr Serra indicate that the Respondent's employees preferred to work with Mr Lasagna rather than the Claimant?

3.5.8 on 29 October 2019, did Mr Serra state that women could be frantic and unpredictable during their periods, inferring that the Claimant's decision making had been affected by her menstrual cycle?

3.5.9 on 29 October 2019, did Mr Serra state that he knew how the Claimant had reacted when overtaken by a hormone tempest?

3.5.10 on 30 October 2019, did Mr Serra involve the Claimant in a video call with senior employees at which he explained the proposed split between the BD and IR team and the resultant changes to the Claimant's role?

3.6 Did Mr Serra tell the Claimant that he had decided to split the BD and IR team and move all but three of the Claimant's direct reports to Mr

Lasagna and restrict her role to investor relations only? If so, did this amount to a demotion?

3.7 Did Mr Serra rely on the following reasons for the changes to the Claimant's role:

3.7.1 When they met for breakfast on 29 October 2019, did Mr Serra rely on:

- a) the Claimant's lack of management skills (including, for example, Sarah Finley's dismissal and the Claimant's micromanagement of Ryan Rajkumar); and/or
- b) the Claimant's questioning of Mr Gallo (Portfolio Manager) in relation to his fund's performance in 2018?

3.7.2 At the video conference on 30 October 2019, did Mr Serra rely on:

- a) the Claimant's inability to work with Mr Lasagna; and/or
- b) that the Claimant should have known that Mr Rajkumar was not suited to the Swiss market because of his race?

3.7.3 When they met on 11 December 2019, did Mr Serra rely on:

- a) complaints from some staff, including Mr Pirro and Mr Conrad (Co Deputy Chief Investment Officers), that the sales team were not providing enough new clients since the summer; and/or
- b) Mr Rajkumar being a bad hire; and/or
- c) that Mr Lasagna would leave if Mr Serra did not demote the Claimant; and/or
- d) that the vast majority of the Respondent's top seven or eight people had suggested that Mr Serra side with Mr Lasagna; and/or
- e) that the Claimant had lost the respect of colleagues because she had worked from home for two months that summer?

3.7.4 If Mr Serra did rely on any of the above reasons, were any of them spurious or inconsistent?

3.8 On 29 October 2019 and 11 December 2019, did Mr Serra assure the Claimant that he would understand if she decided to quit and/or not continue working for the Respondent?

3.9 On 9 November 2019, did Mr Serra send the Claimant a threatening text message?

3.10 On or around 11 December 2019, did the Respondent remove the Claimant's access to her emails and client contacts?

- 3.11 When they met on 11 December 2019, did Mr Serra say he was struggling to justify the Claimant's absence?
- 3.12 When they met on 11 December 2019, did Mr Serra suggest that the Claimant was getting special treatment by being permitted to take time off while she was signed off sick?
- 3.13 When they met on 11 December 2019, did Mr Serra say that returning to work from sick leave and accepting the changes to her role would require effort to rebuild internal credibility and the Claimant would need to have a preliminary sit down with Mr Lasagna in order to ensure her ability to work with him?
- 3.14 When they met on 11 December 2019, did Mr Serra refer to the Claimant's single mother status as a "lifestyle"?
- 3.15 When they met on 11 December 2019, did Mr Serra say that he had "seen how [the Claimant] reacts when overtaken by a hormone tempest"?
- 3.16 Was there a dramatic reduction in the Claimant's bonus from 2018 to 2019?
- 3.17 In relation to pay which the parties agree, for the purpose of these proceedings, should be treated as discretionary (and therefore within the scope of s 13 EqA rather than s65 EqA):
- 3.17.1 Did Mr Lasagna receive higher annual bonuses than the Claimant throughout her employment, i.e., from September 2013?
 - 3.17.2 Did Mr Lasagna receive an annual "fixed allowance" of €400,000 from 1 September 2019?
 - 3.17.3 Did Mr Lasagna receive a one-off payment of £200,000 in May 2019?
 - 3.17.4 Did Mr Lasagna receive any other discretionary remuneration which the Claimant did not receive?
- 3.18 Did the Respondent commence a redundancy process against the Claimant in response to the Claimant's occupational health report stating she was fit to begin a phased return to work?
- 3.19 Did the Respondent refuse to hear the Claimant's grievance until they had commenced a redundancy process?
- 3.20 Was the Respondent's timing of its request that the Claimant attend redundancy consultation meetings, made on 19 November 2021, when the merits Hearing of Claims 1 and 2 was due to commence on 22 November 2022, calculated to cause maximum distress to the Claimant?
- 3.21 Was the redundancy process a sham?
- 4 If the Tribunal finds that the Claimant was subjected to the treatment at para. 3.1 to 3.17 above:
- 4.1.1 is Mr Lasagna an appropriate comparator in the circumstances?

- 4.1.2 if so, has the Claimant been treated less favourably than Mr Lasagna in respect of each act/omission complained of?
- 4.1.3 if not, has the Claimant been treated less favourably than a hypothetical comparator in respect of each act/omission complained of?
- 5 If so, does each act/omission complained of constitute a detriment in the circumstances?
- 6 If so, was the Claimant subjected to the treatment referred to at para. 3.1 to 3.17 above because of sex?
- 7 It is admitted that the Claimant was dismissed. Was the Claimant dismissed because of sex, contrary to s.13 EqA?

Indirect Sex Discrimination

8 Did the Respondent apply to the Claimant a provision, criterion or practice ('PCP') which is discriminatory in relation to the Claimant's sex? In particular:

- 8.1 Are the following capable of amounting to a 'practice' within the meaning of PCP:
- 8.1.1 *"treating working from home as not consistent with management"*; or
- 8.1.2 *"not respecting staff that work from home"*; or
- 8.1.3 *"favouring staff who it perceives are more able to travel for work"*?
- 8.2 If so, did the Respondent have a practice of:
- 8.2.1 *"treating working from home as not consistent with management"*; or
- 8.2.2 *"not respecting staff that work from home"*; or
- 8.2.3 *"favouring staff who it perceives are more able to travel for work"*?
- 8.3 If so, in respect of each alleged practice:
- 8.3.1 Did the Respondent apply it to the Claimant?
- 8.3.2 Did the Respondent apply it generally to men and women?
- 8.3.3 Did it put women at a particular disadvantage when compared with men?
- 8.3.4 Did it put the Claimant at that particular disadvantage?
- 8.3.5 Was it a proportionate means of achieving a legitimate aim?

Harassment

9 Was the Claimant subjected to unwanted conduct related to sex which had the purpose and/or effect of violating the Claimant's dignity

and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for her? In particular:

- 9.1 on 29 October 2019 when they met for breakfast, did Mr Serra say that he "*understood that women could be frantic and unpredictable during their periods*"?
- 9.2 on 11 December 2019 did Mr Serra:
- 9.2.1 refer to the Claimant's single-mother status as a "*lifestyle*"?
- 9.2.2 say that he had "*seen how [the Claimant] reacts when overtaken by a hormone tempest*"?
- 9.3 If so, was said treatment related to sex?
- 9.4 If so, was such treatment done with the purpose of violating the Claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?
- 9.5 Alternatively, did it have the effect of violating the Claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?
- 9.6 If so, was it reasonable for it to have that effect in the circumstances?

Victimisation

- 10 Were the matters at 3.18 to 3.21 above detriments?
- 11 If so, did the Respondent subject the Claimant to any such detriments or dismiss the Claimant because:
- 11.1 the Claimant had issued proceedings (Case Number 2201916/20 and/or Case Number 2203736/21) in the Employment Tribunal;
- 11.2 the Claimant had, in her grievance, made an allegation that the Respondent had contravened
EqA;
- 11.3 the Claimant had done any other thing for the purposes of or in connection with EqA; and/or
- 11.4 the Respondent believed the Claimant had done or might do a protected act under s.27(1)(b) EqA?

Unfair dismissal

- 12 It is admitted that the Claimant was dismissed. Was the Claimant's dismissal unfair? In particular:
- 12.1 was the Claimant dismissed for a *prima facie* fair reason, namely redundancy or "some other substantial reason", within the meaning of ss. 98(1), (2) ERA?
- 12.2 if so, was the dismissal fair in the circumstances within the meaning of s. 98(4) ERA?
- 13 Did the Claimant make a protected disclosure?

14 If so, was the sole or principal reason for the Claimant's dismissal that she had made a protected disclosure, such that she was automatically unfairly dismissed contrary to s. 103A ERA?

Disability Discrimination

15 It is admitted that the Claimant was disabled for the purposes of para 6 Sch1 EqA by virtue of her cancer, and that the Claimant was dismissed.

16 Did the Respondent dismiss the Claimant because of her disability contrary to s.13 EqA?

17 Were the following matters "something arising in consequence of the Claimant's disability" for the purposes of s.15 EqA:

17.1 the Claimant's sickness absence;

17.2 the reasons the Respondent gave for the redundancy?

18 If so, did the Respondent dismiss the Claimant because of something arising out of her disability contrary to s.15 EqA?

19 If so, was the Claimant's dismissal a proportionate means of achieving a legitimate aim for the purposes of s.15(1)(b) EqA?

Remedy

20 If the Respondent is found to have discriminated against the Claimant, what remedy, if any, is the Claimant entitled to? In particular:

20.1 has the Claimant suffered injury to feelings as a result of any treatment found to be discriminatory?

20.2 if so, what award, if any, is the Claimant entitled to recover for injury to feelings?

20.3 what financial loss, if any, has the Claimant suffered as a result of any treatment found to be discriminatory?

20.4 has the Claimant properly mitigated her loss?

20.5 would it be just and equitable to award the Claimant any compensation in the circumstances?

21 If the Respondent is found to have unfairly dismissed the Claimant, what remedy, if any, is the Claimant entitled to? In particular:

21.1 what financial loss, if any, has the Claimant suffered as a result of having been unfairly dismissed?

21.2 has the Claimant properly mitigated her loss?

21.3 to what extent should any compensation be reduced on just and equitable grounds to reflect the fact that the Claimant would have been dismissed fairly in any event?

21.4 to what extent should any compensation be reduced to reflect the extent to which the Claimant caused or contributed to her dismissal?

21.5 would it be just and equitable to award the Claimant any compensation in the circumstances?