



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms D

**Respondent:** E Ltd (1)  
Mr F(2)  
Ms G (3)

**Heard at:** Leeds **On:** 20, 21 and 22 December 2022,  
deliberations on 20 January 2023 and oral  
judgment given on 17 March 2023

**Before:** Employment Judge Miller  
Ms V Griggs  
Mr I Taylor

## Representation

**Claimant:** The claimant's sister  
**Respondents:** Mr J Gidney (Counsel)  
Mr Cummings (solicitor) on 17 March 2023

**JUDGMENT** having been sent to the parties on 24 March 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

# REASONS

## Introduction and issues

1. The claimant has been employed by the first respondent, a homeware retailer as a Sales Assistant, from 14 September 2021. Early conciliation started on 1 April 2022 and ended on 13 May 2022. The claim form was presented on 10 June 2022. The claimant made claims of sexual harassment and harassment relating to sex about the acts of the second respondent and harassment related to sex about the way her complaint was dealt with. Initially, the claimant brought her claim only against the first respondent.
2. The respondent denied the claims and, particularly, sought to rely on the statutory defence under s 109 of the Equality Act 2010.

3. There was a preliminary hearing on 22 August 2022 before EJ Green. The second and third respondents were added as respondents at that hearing. EJ Green identified the issues to be determined at the hearing and they are set out as an appendix to this decision.

### **Hearing**

4. The hearing was held in person in Leeds with the parties on the dates set out above. There was insufficient time in the available hearing to give judgment so a further hearing was arranged to give an oral judgment.
5. At the start of the final hearing, the first respondent withdrew their reliance on the statutory defence under s 109 Equality Act 2010 and the list of issues appended to this claim is amended accordingly.
6. We had witness statements from the claimant and her sister for the claimant. The second and third respondents provided witness statements for the respondents and we also had a witness statement from Mr H who heard the claimant's grievance. All witnesses attended and gave evidence. We also had an agreed bundle of documents and there was a recording of part of the appeal meeting which we listened to in the course of the hearing.
7. We agreed to some adjustments in the hearing including a screen to separate the claimant from the respondent's witnesses and use of CVP (video) and a separate tribunal room to reduce the direct contact between the claimant and the respondents.
8. The respondents were represented by Mr Gidney to whom we are grateful for seeking to conduct his questioning in a sensitive way while properly representing his clients' interests. The claimant was represented by her sister who has no legal training but to whom we express our gratitude for the extremely able way in which she represented her sister.

### **Findings of fact**

9. The claimant was employed by the first respondent (E Ltd) as a sales assistant in one of its stores. She has worked under a series of contracts since 14 September 2021. The claimant's job was to work in the in-store café . It is relevant to note that the claimant is a young woman aged 19 at the time the main allegation in this claim is said to have happened.
10. The second respondent, Mr F, has been employed by E Ltd as a sales assistant since 2014. Mr F is a man who was in his early 40s at the relevant time.
11. The chronology of this claim starts on Saturday 8 January 2022. The claimant worked from 11 am to 5pm. She was not expecting to work in the café as it had been closed due to covid. She did not wear her uniform, but a short-sleeved shirt. The claimant was required to work in the warehouse on that day. This was the first time the claimant had worked in the warehouse.
12. The claimant's job that day was to unload pallets and put stock out on the shop floor. The claimant used a shopping trolley to transfer some of the

products from the warehouse to the shop floor and, when necessary, back again.

13. The claimant says that while working in the warehouse, Mr F touched her in a number of ways that she described in detail and as recorded in the list of issues in the appendix.
14. In summary, the first alleged type of touch was holding the claimant's hand and pulling it towards him, on other occasions he put his hand on her shoulder or stroked and squeezed her arms. On another occasion, he held her hands up, so they were in front of her. The final alleged act was that when the claimant was pushing a trolley, Mr F put his arms under her arms and held the trolley pushing his arms against her breasts and pressing against the claimant's back and bottom so that she was unable to get away. He remained pressing against her and then brushed against her when he moved away. This was a relatively prolonged incident, it lasted for the length of a warehouse aisle as far as we can tell.
15. The claimant carried on working for a short while in the warehouse until she was called back to the café around 1.30pm.
16. Mr F, conversely, denies touching the claimant in any way at all, even accidentally.
17. We prefer the claimant's account, and we find that the incidents happened as set out in detail in her witness statement.
18. There was no reason at all suggested by any of the respondents or their witnesses as to why the claimant might have fabricated this story. As we will set out, she disclosed it almost immediately and has been wholly consistent in her account throughout.
19. The evidence about the incident at the initial investigation was not wholly consistent with the evidence Mr F gave to the tribunal. Particularly, Mr F said in the tribunal that he would not associate at all as far as he could help it with the young people at work, whereas the evidence of Ms I (see below) was that the Mr F joked with other members of staff including nudging them playfully. In his replies to the tribunal, Mr F gave an obviously well-rehearsed flat denial when the specific allegations were put to him. We recognise that this was also a stressful situation for Mr F and he was no doubt nervous, but having regard to all the evidence we heard, we found the claimant's account to be more plausible and, on the balance of probabilities, we find that the incidents happened as described by the claimant.
20. When the claimant returned to work in the café she was working with a friend and colleague Ms I. Initially the café was busy but when it quietened down a bit, the claimant was able to describe to Ms I what had happened in the warehouse. The claimant became upset and was comforted by Ms I who told her that what had happened was not okay. Ms I did ask the claimant if she was going to report it but the claimant said that she wanted to go home and talk to her older sister first. The claimant walked home after her shift and described feeling confused and upset on that journey. When

she got home she reported the incidents to her sister who also gave evidence at the Tribunal.

21. We find that the claimant was, understandably, upset by what Mr F had done at work and that she described the incidents accurately to Ms I and her sister. We find that the claimant did not immediately report the incident to a manager because she wanted the advice and support of her sister before deciding what to do. In all the circumstances of the case this was a reasonable response for the claimant. The claimant told her sister what had happened and her sister provided reassurance. The claimant's sister said that she and the claimant discussed that what Mr F had done amounted to sexual harassment. The claimant decided to report the incident to her managers when she was next in work on the Monday. The claimant believed that the store would have CCTV of what happened.
22. The claimant was next in work on Monday, 10 January 2022. The claimant arranged to talk to a team leader at the store, Ms J, about what had happened on the preceding Saturday when Ms I was in to accompany her. The claimant spoke to Ms J who felt that it was too serious for her to deal with and eventually the matter was referred to a deputy manager Mr K. The claimant explained to Mr K what had happened and Mr K took some brief details and decided that this was also too serious for him to address. He therefore contacted HR and Mr H. We find that neither Mr K nor Ms J suggested that the claimant report the matter to the police.
23. On 13 January 2022 Mr H attended the store and interviewed the claimant. The claimant was accompanied by Ms J to support the claimant at her request. Mr K also attended and took notes. The claimant found this meeting distressing. We prefer the claimant's evidence that she asked Mr H to check the CCTV at the end of the meeting and that she became particularly upset when she discovered that there was no CCTV in the warehouse. We find that the claimant believed before this point that the incident would be covered by CCTV.
24. We also find that Mr H conducted this interview in a reasonable way. Questions were open and not leading and in our judgement the claimant was able to give her own account at this meeting.
25. Mr H then conducted an investigation. Firstly, he met with Mr F that same afternoon. He said that his impression was that Mr F had no idea at all what the meeting was about and that the first time he was aware of the allegations was when they were put to him. Mr F ultimately clearly denied the allegations that Mr H put to him. Relevantly, Mr F said that they were not using trolleys in the warehouse that day. Other than that, he simply denied the allegations and said that he had not touched anybody other than potentially brushing against the claimant and when passing a box to her.
26. Mr H then decided that he needed to speak to Ms I, to whom the claimant had first reported the incident. Mr H described her as the closest he could get an independent witness and we agree with his assessment. At this point in his witness statement Mr H said that he also recalled what Mr K told him after the initial interview on 10 January between the claimant and Mr K. He said that Mr K reported that immediately after his discussion with the

claimant and Ms I on 10<sup>th</sup> January they left the room and he heard claimant and Ms I giggling together. Mr H says “[Mr K] mentioned that he thought this was strange, given the seriousness of the allegations that the claimant had just made against Mr F”.

27. Mr H did not interview Mr K himself but asked colleague, Ms L to interview Mr K. In the course of explaining the need to take the statement to Ms L, Ms L said “[Mr F]? Really???” And when Mr H asked Ms L to clarify she said that Mr F was quiet and unassuming and everyone knew and liked him.
28. Ms L interviewed Mr K and Mr K said that the claimant had been nervous and tearful in the meeting when reporting the incident. He said that he did hear “her loud laughing/giggling” when the claimant and Ms I left the office although in this meeting he clarified that he could not guarantee that it was the claimant who was laughing.
29. Mr H interviewed Ms I on 18 January 2022. Ms I told Mr H what the claimant had described to her on 8 January 2022 and that the claimant had become upset. Particularly, she said that the claimant described one incident when she was pushing a trolley and Mr F got behind her and that she felt really uncomfortable. Ms I confirmed that the claimant was upset at the time but unsure whether to report it or not. Ms I also said that she was shocked about the allegation and that Mr F had never made her feel uncomfortable. She confirmed that she had been shocked by what the claimant had told her but didn’t want to invalidate what she had said. We find that by this Ms I was quite reasonably saying that it would not have been appropriate for her to challenge what the claimant was telling her in the circumstances.
30. Finally, Ms I said “when he cracked jokes during working has a tendency to playfully nudge me but I didn’t feel uncomfortable, it was more just his personality”.
31. Mr H said that he found it very difficult to decide between the claimant’s account and Mr F’s account, as both were credible. We find there was one clear point of difference between them even at the time, and that was that the claimant said that the final incident that happened when she was using a shopping trolley and Ms I seem to confirm that. Mr F denied a shopping trolley being used at all that day. There was CCTV covering the store, if not the warehouse, and checking the CCTV for the store that day would we think in all likelihood have demonstrated whether the claimant was pushing the trolley into and out of the warehouse even if she can be seen in the warehouse. This may well have made a difference to the credibility attached to each of the parties’ accounts.
32. The claimant was not shown any of the statements collected in the course of the investigation so was not given the opportunity to comment on any discrepancies.
33. After this investigation, Mr H made further informal enquiries with other team leaders at the store to ask what Mr F was like as a person, whether he’d been involved in any trouble at work and all reported that he was a ‘nice guy’ just as Ms L had done. There are no notes of these conversations, the claimant was not given an opportunity to comment on

them, Mr H did not ask anyone about the claimant's character and, relevantly, the allegation that the claimant had potentially been laughing or giggling after her meeting with Mr K was not put to the claimant.

34. Mr H confirmed that he took all of these pieces of evidence into account in reaching his conclusion on the claimant's grievance.
35. Mr H decided that he did not have sufficient evidence to justify the respondent taking disciplinary action against Mr F. He met with the claimant on 18 January gave his decision to the claimant. His decision was

"We have taken this very seriously as this was a serious matter. The decision with my investigation I can't take this any further simply due to lack of evidence and no CCTV in that area. No witness to the alleged accusation.

Just to let you know [Mr F] did deny the allegations outright. On that basis I've been unable to take this any further I'm afraid.

I did take into account his previous years' service with no count on inappropriate behaviour. As with any grievance you can appeal the decision you need to do this within 7 days In writing to Ms G.

I do feel on the back of this that as a business if you feel you need support with this alleged incident we can discuss any support you may need. We can make any adjustments that are possible through shift patterns etc. Is there anything you would like to add at this stage?"

36. The claimant had nothing to add.
37. While we have some sympathy with the position Mr H found himself in, we have a great deal of difficulty with the decision that there was insufficient evidence to take the matter any further. The respondent confirmed that the next stage of action to be taken against Mr F would be a disciplinary investigation followed by a disciplinary hearing during the course of which the evidence would be considered and tested.
38. In our view, the very fact that there was insufficient evidence to decide that either the alleged incident had or had not happened at that time was sufficient basis to commence a further disciplinary investigation. We also find that Mr H took into account the opinion of managers that Mr F was a nice guy and that there was a suspicion the claimant had been laughing or giggling after her meeting with Mr K.
39. However, we prefer Mr H's evidence that the reason he did not refer the matter for further disciplinary investigation was, on the basis of advice he received, because he genuinely believed that all that could have been done had been done and there was, effectively, no point in going over the same investigation again.
40. We recognise, of course, that an internal investigation is not the same as a hearing before the Employment Tribunal.

41. However, there was evidence that Mr H took into account in reaching his decision that the claimant did not have a chance to comment on and which could have made a difference to the outcome.
42. The fact that the additional evidence that came to light in the course of Mr F giving evidence and the fact that the claimant has now had a chance to challenge some of the evidence Mr H took into account has resulted in the Tribunal making the findings we have about 8 January 2022, suggests that it would have been reasonable to conduct a formal disciplinary investigation in to the conduct of Mr F.
43. Mr H did not provide a written outcome to the grievance.
44. Mr H did not consider reallocating Mr F to a different store, which was within the respondent's policy, on the basis that it would have felt like a sanction.
45. On 25 January 2022 the claimant appealed against the grievance outcome. The claimant's appeal, in summary, was that:
  - a. She was unhappy with the outcome
  - b. Mr H had preferred Mr F's word over hers and taken into account his previous employment history. The claimant commented that just as Mr F did not have a history of inappropriate conduct, the claimant did not have a history of making false allegations.
  - c. The lack of CCTV in the upper warehouse left her vulnerable
  - d. That the fact that Mr F only touched the claimant in the absence of colleagues and CCTV suggested his actions were deliberate and planned
  - e. The claimant explained, very clearly and eloquently, that she felt let down by the respondent in failing to take her allegations seriously and that the impact of the incidents themselves was compounded by being required to keep talking about them.
46. The appeal meeting was arranged for 2pm on 16 February 2022 with Ms G. The delay was because Ms G contracted Covid, and as the claimant wanted a colleague to attend the meeting with her, she was limited to Wednesdays and Saturdays. The claimant wanted her sister to attend but this was refused in accordance with the first respondent's policies.
47. In the meantime, on 26 January 2022 and 5 February 2022, the claimant had asked Mr H for copies of the statements he had taken in the grievance investigation. He eventually provided the claimant with a copy of her statement on 6 February 2022 but did not provide any of the other statements he had taken.
48. Ms G was provided with all the statements Mr H had taken in advance of the meeting and she spoke to Mr H who told her  
  
"that he had not been able to obtain any evidence to corroborate Mahima's allegations and that he had taken into account [Mr F's] unblemished

employment history and character as described by other colleagues and his length of service for E Ltd (7 years)".

49. We were taken through the appeal meeting in detail, including listening to some extracts of the recording to try to better understand the tone and context. There are two sets of notes of the meeting. The first half is the official company note produced by Ms M the claimant's store manager who was in attendance to take notes, and the second half which is a transcript of a covert recording the claimant made of the meeting.
50. We will address the specific allegations the claimant has made about the meeting in our conclusions. The content of the notes of the meeting are not in dispute – the question for us is whether they amounted to harassment. We do not therefore, propose to set out at this point findings of fact about what was said in the meeting as the words said in the recorded part of the meeting are not disputed.
51. The findings we do make are that by the time of the appeal the claimant had not been provided by all the evidence relied on by Mr H, the claimant was shown a copy of Mr F's statement on Ms G's computer screen and not given a copy, and that the claimant was not informed prior to the hearing that she should bring any additional evidence she had in support of her grievance.
52. The claimant became upset in the meeting and on the second occasion, after about an hour, she requested a break to contact her sister. She told her sister that she felt like Ms G was barely letting her speak, was making her feel responsible for the incident because she had not told Mr F to stop, or reported it soon enough, or reported it to the police.
53. Ms Rahman suggested to the claimant that she record the rest of the meeting to make sure she was not being misrepresented and she did covertly record the rest of the meeting. The claimant did not inform Ms G that the meeting was being recorded.
54. At the reconvened meeting, when the claimant had started recording, she asked Ms G to recap. In our view, the purpose of this was to have a recording of what had been said previously. We do not think that the claimant was deliberately trying to trap or trip up Ms G. It is more likely, in our view that the claimant was genuinely upset and distressed by how the meeting was going and we prefer her evidence that she wanted to make sure that she was not misrepresented in the meeting notes.
55. In the course of giving her evidence to the Tribunal, Ms G confirmed a number of times that the claimant could have told Mr F to stop. When pressed about this, she said unequivocally "I believe she [the claimant] should have told him to stop and she didn't".
56. Ms G also said in evidence that she assumed the claimant did not have the life skills to deal, herself, with the harassment without talking to her sister, which she accepted as reasonable. Ms G was asked, effectively, if she thought older women would have more skills to deal with harassment because harassment was an inevitability for women. We infer from her answers, that this was in fact Ms G's view.



57. Ms G also suggested that had the claimant reported the matter to the police straight away there would have been DNA evidence to support her allegations. Ms G relied on this, as well as the fact that, in her view, the claimant's behaviour surrounding the incident "didn't quite add up". She referred again to the fact that the claimant did not immediately report the incident to a manager or the police and referred to the allegation that the claimant had been giggling after the meeting with Mr K. We have already addressed the first point. The issue of the claimant allegedly laughing was not put to the claimant by Ms G.
58. In the course of the appeal meeting Ms G sought to provide the claimant with advice about what she should have done and what to do if it happened again. While we accept that this was offered with good intentions, it was unwanted by the claimant and was not relevant to the matters to be considered at the appeal which was, in summary, whether Mr H had properly concluded that there was insufficient evidence to commence disciplinary proceedings against Mr F.
59. After the appeal meeting, Ms G spoke to Mr F and put the allegations to him. In that meeting, Mr F said that he was not a touchy feely person and kept to people of his own age group. This was the same as the evidence he gave in the tribunal hearing which conflicted with the evidence of Ms I in the first interview.
60. On 4 March 2022, Ms G wrote to the claimant to inform her that her appeal was not upheld. Ms G found that Mr H had based his decision on the available evidence and the claimant had not provided any additional evidence.
61. Ms G said that steps had been taken to minimise contact between the claimant and Mr F. She also said that while Mr H did not disbelieve the claimant, there was insufficient evidence to take disciplinary action against Mr F. Ms G said that she was investigating whether CCTV could be installed in the warehouse but, subsequently, she was informed that the head of audit had advised that it would be unduly invasive to install CCTV.
62. In her witness statement, Ms G said that she felt that she did not have sufficient reasonable belief that what the claimant had alleged had occurred between her and the claimant (as Ms G put it) to justify her overturning Mr H's decision.
63. While we accept Ms G's appeal outcome and her evidence of it in her witness statement as genuine, we find it difficult to reconcile her (and Mr H's) statement that they did not disbelieve the claimant with the decision not to uphold her grievance and commence disciplinary action against Mr F.
64. We think, on balance, that in fact Ms G *did* believe the claimant but, having regard to all the evidence we have heard Ms G consciously or unconsciously minimised the impact on the claimant or considered that it was just part of life as a woman and that, in light of the good reports about Mr F, the allegations as described by the claimant were not sufficiently serious to warrant the impact on Mr F that disciplinary action against him would cause.

**Law**

**Harassment on grounds of sex**

65. Section 26 of the Equality Act 2010 provides:

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

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

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

(i) violating B's dignity, or

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

(2) A also harasses B if—

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

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

(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.

(5) The relevant protected characteristics are—

66. ...

67. sex;

68. In determining whether the conduct was related to the protected characteristic, the test is relatively broad and is a matter of fact for the tribunal. It is an objective test – while the parties' intentions may be relevant, they are not determinative. It is not sufficient for the relevant protected characteristic to simply form part of the surrounding circumstances (*UNITE the Union v Nailard* [2018] EWCA Civ 1203). This is particularly relevant in this case where allegations of inappropriate potentially sexual touching form the basis of the grievance and appeal. The actual acts of Ms G must be related to the relevant protected characteristic (as well as meeting the other requirements for the test of harassment). It is not sufficient that the grievance appeal and Ms G's comments were all made in the context of an allegation of sexual harassment

69. The question of whether conduct is unwanted is to be assessed subjectively – i.e. was the conduct actually unwanted by the claimant. (*Thomas Sanderson Blinds Ltd v English* EAT 0316/10).

70. As to whether the conduct had the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant, there is a two part test. The conduct must *actually* have had the effect on the claimant (a subjective test) and it must, having regard to all the relevant circumstances, have been *reasonable* for the conduct to have had that effect. This is a matter of factual assessment for the tribunal. (*Pemberton v Inwood* [2018] EWCA Civ 564, citing *Richmond Pharmacology v Dhaliwal* [2009] ICR 724)
71. The legal questions as set out are relatively straightforward – it is predominantly a matter of our assessment of the facts and consideration of whether the tests set out are met. Mr Gidney submitted, however, that in respect of the grievance and appeal, we should be slow to make a finding that the conduct of the appeal amounted to harassment as a matter of public policy. Doing so, he says, would make responsible employers reluctant to consider allegations of harassment of this nature if they were concerned that they would thereby expose themselves to risks of further claims.
72. We recognise this concern and agree that it is important that employers are not discouraged from investigating allegations of harassment. However, in our view the requirement for the alleged harassing conduct to be related to sex (or another protected characteristic) rather than just being the context in which the allegedly harassing comments are made, together with the high threshold required for conduct to objectively create an intimidating, hostile, degrading, humiliating or offensive environment for an employee or to violate the employee's dignity means that the circumstances where this happens will be rare.
73. In our view, the test for harassment itself provides sufficient protection for employers in this regard.

### Conclusion

74. We set out our conclusions by reference to the list of issues.

### Allegations against the second respondent

75. The first set of allegations relate to the conduct of the second respondent on 8 January 2022. The alleged acts of the second respondent, all on 8 January 2022, are that he:
- a. **Held the claimant's left hand, which was by her side, and pulled it towards him with a firm grip**
  - b. **Placed himself behind the claimant, resting his hand on the claimant's back or shoulder**
  - c. **Throughout the day, the claimant was in and out of the warehouse and the second respondent would touch the claimant when the two were alone. On one occasion, on the way back to the warehouse, the claimant stopped to speak with the second respondent; while speaking, the second respondent took the claimant's hands and held them between his, bringing them up**

so they were just below the claimant's breasts. The second respondent stroked the tops of the Claimant's hands with his thumbs.

- d. Later, when the claimant and the second respondent were alone in one of the aisles, he stroked both of claimant's arms with his hands, starting at the top of the claimant's arms going down to the claimant's elbows. He did this stroking motion a few times, but each subsequent time his hands stoked upwards. Then the second respondent stroked the entire length of the claimant's arms in a downwards motion, held both hands with his and lifted them slightly from the claimant's sides. The second respondent then proceeded to touch the claimant by squeezing her arms with both of his hands, such that the claimant's arms were pressed against her body. As the second respondent squeezed the claimant's arms, his upper right torso was pressed against the top left of the claimant's body
  - e. Shortly after, the claimant was again using the trolley to put the stock away on the warehouse shelves. With the trolley in hand, she started moving towards the electrics aisle. The second respondent walked up behind the claimant and placed his right arm underneath the claimant's right arm, pressing the right side of his body against the claimant. Both of the claimant's hands were placed on the trolley and the second respondent proceeded to place his left arm under the claimant's left arm so that his entire body was now pressed against the claimant. The second respondent put his hands on the trolley, in the space between the claimant's hands; his arms were pressed against the claimant's breasts, pushing them together. The claimant attempted to move faster to put distance between her and the second respondent, but the second respondent was controlling the trolley pushing it down the aisle. Whilst walking in this position the second respondent pushed himself against the claimant's body from behind.
  - f. Having reached the end of the aisle, the second respondent moved his body away from the claimant's and brushed his arms against the claimant's breasts and her side.
76. We have found that these acts occurred as the claimant described. This was, in our view, likely to be an escalating infringement of the claimant's personal space, the second respondent apparently becoming more confident as the day went on.
77. The next question for us to answer is whether this was unwanted conduct. It very obviously was. The claimant's evidence was clear that it was not only unwanted but wholly uninvited.
78. Was it related to sex or of a sexual nature? The respondents concede that the "trolley" incident was, if it happened as described, harassment related to sex. There is, therefore, no dispute that this incident was related to the claimant's sex.

79. We go further, and say that this was of a sexual nature. The second respondent was pressing himself against the claimant and attempting to embrace her in an obviously sexual way. The final incident, that that second respondent brushed his arms against the claimant's breasts and side indicate that motivation for the second respondent's actions were sexual.
80. It is artificial to separate out the first set of incidents from the final two. In our judgment this was part of an escalation by the second respondent – perhaps testing the claimant to see how far he could go – and all of this was motivated by his sexual interest in the claimant. The fact that the claimant did not perceive the initial incidents as related to her sex, or of a sexual nature until the final two incidents put them in context is immaterial. Objectively, considering all the evidence, the totality of the allegations amount to unwanted conduct related to sex and of a sexual nature.
81. Did the second respondent's conduct subjectively have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?
82. We, again, have no hesitation in saying that it did and that it is artificial and wrong to separate out the incidents. It was part of a cumulative and progressive act. The claimant was obviously upset by it at the time and remains so. We recognise that Mr Gidney was merely doing his job when advancing the respondents' cases that the initial incidents were, by the claimant's own account, no more than "weird". However, we find that this was a turn of phrase to describe something uncomfortable or unusual or difficult to explain and it is not inconsistent with the act described violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.
83. Further, we are considering the actions of the second respondent on 8 January 2022. It is artificial to separate them out. In our view, it is appropriate to consider the effect of the conduct, taken as a whole, at the point at which the claimant was left in no doubt as to the second respondent's motivations. At that point, namely with the last to incidents or acts of Mr F, we think it likely that the whole course of conduct would have been brought into focus and it is at that point that all of the individual acts (separately and cumulatively, but in the context of each other) would have had the proscribed effects.
84. Finally, we ask ourselves if it was reasonable for the conduct of the second respondent to have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.
85. This is a question of fact for the tribunal having regard to all the circumstances. Again, we have no hesitation in finding that it was reasonable for the conduct, taken together as a whole, to have had the proscribed effect. The claimant was a young woman of 19 at the time. The second respondent was much older than her and his attentions were not invited nor were they wanted.

86. We heard evidence about the fact that the claimant had never experienced that type of intimate touching in any context and about the impact of her cultural background. However, in our view this is not relevant to the question of whether the second respondent's acts amounted to sexual harassment or harassment related to sex.
87. Every woman is entitled to go about her job and her everyday life free from unwanted interference by men and free from the fear of such unwanted interference.
88. On the facts that we have found, the second respondent prevented the claimant from enjoying that freedom and these claims of harassment related to sex and/or sexual harassment are successful and are allowed against the first and second respondents.

### **Allegations against the third respondent**

89. We now address the second and third set of allegations. The second set of allegations relate to comments of the third respondent made in the course of the grievance appeal meeting on 16 February 2022. The alleged acts of the third respondent are that, in that meeting she:
  - 90. Told the claimant that the first respondent could not find in her favour as the investigator could not be persuaded beyond reasonable doubt due to the lack of evidence; she then blamed the claimant for not having reported the incident immediately and for not having called the police. She added the police could have looked for DNA evidence on the claimant's clothing. The third respondent remarked that the first respondent is a retailer and is not trained, as the police is, to investigate such matters.**
91. Ms G asked the claimant three times in quick succession in the meeting why she did not report the incidents. She asked the claimant twice in quick succession immediately thereafter why she did not contact the police and then again, why she did not report it straight away to her line manager who could have called the police. She also said, at that point – i.e. immediately after the incident – that Mr F could have been suspended. (We observe that the respondents could not explain why Mr F was not in fact suspended when the claimant did report the incidents two days later.
92. Ms G then asked the claimant again, twice more, why she did not tell her line manager there and then about the incidents. At this point, the claimant became upset and asked to carry on the meeting another day. Ms G, effectively, refused her request and the claimant says that she was being made to feel like it was her fault for not reporting it straight away. Ms G then said that they were not trying to say it was the claimant's fault but, again said that she was trying to understand why she did not report it straight away.
93. The claimant had explained, on the first occasion of being asked, why she did not report it the same day – she was, effectively, in a state of shock, didn't know what she wanted to do and wanted to speak to her sister first.

94. In our view, this is a wholly unsurprising and reasonable explanation. There was no need for Ms G to keep asking the same question. We also note that the claimant's manager, to whom Ms G said the claimant should have reported the incident, was Ms M who was present in the meeting taking notes.
95. Ms G did refer to the possibility of DNA evidence on the claimant's clothing, but the claimant explained that she didn't know if she wanted to report it to the police. She wanted to see what the respondent did first. Again, a wholly reasonable reaction.
96. Ms G also said later on in the meeting that they were retailers and there were limits to what they could do.
97. On another occasion Ms G said 'next time' the claimant should report it straight away.
98. In our view, the reference to reasonable doubt in this allegation is not a separate allegation, but part of the context.
99. In our view, this conduct did occur and it was subjectively unwanted.
100. It was reasonable for Ms G to make enquiries about these issues but not in the way that she did which was badgering and repetitive. It did make the claimant feel like the incidents were her fault – she says as much in the meeting – and we can see why. We also find that this, subjectively, created an intimidating, hostile, degrading and offensive environment for the claimant. Having been sexually harassed, having had her complaint rejected once and then being, from her perspective, blamed for the perpetrator not being held to account it is clear that this would create the proscribed effects and in our judgment it was reasonable for it to do so. We address whether it was related to sex together with all the allegations about the third respondent a little later.
- 101. Questioned the claimant on why she did not ask the second respondent to stop when he touched her inappropriately on 8 January inferring that the second respondent could have not known that his touch was unwanted. The third respondent proceeded to ask the claimant if there had been any flirting between the claimant and the second respondent.**
102. Ms G did ask the claimant why she had not asked or told Mr F to stop on a number of occasions. She also questioned whether the claimant made any attempts to run away and said that 'next time' she should confront the perpetrator at the time.
103. In respect of the flirting comment which was related to one of the occasions when Ms G asked the claimant about telling Mr F to stop, Ms G said "So, the thing is though, you didn't tell him either to stop. So, he didn't know it was unwanted. What I want to ask you about is did, at any point, was there any flirting going on?"
104. The claimant said no, and then Ms G repeated the question. Then the note taker was recapping and in the course of that part of the conversation, Ms G

asked the question again at which point Ms G and the note taker had a conversation about how they both met their partners at work.

105. Ms G concluded that by saying that there is a difference between consensual flirting and unwanted acts.
106. We recognise that the question of consent is relevant and also that this was undoubtedly a difficult meeting for Ms G. We are wary of retrospectively being too critical. However, it is very difficult to read this extract without finding it to be highly inappropriate. The context of the questions is important and we refer back to the questions asked by Mr H. Those questions were open and neutral and they did not imply any judgement on his part at that stage. These questions were not appropriate. They were asked in an offensive way – it was *put* to the claimant that she did not ask Mr F to stop so he did not know it was unwanted. This is a preposterous assertion. The claimant was then asked if she was flirting with Mr F.
107. This was in the additional context of the claimant stating explicitly in her appeal to Ms G that she felt unable to voice her disapproval in how Mr F was behaving because she felt unsafe. She explained that Mr F had deliberately waited until there were no witnesses. There was simply no need to ask this question so many times in the way it was asked.
108. The inference that the claimant could draw from this is that Ms G believed that she was in some way again to blame for Mr F's conduct. This is undoubtedly unwanted conduct and in our view did create a hostile, degrading and offensive environment for the claimant. It was also reasonable for it to do so in the context.
- 109. Asked the claimant to place herself in the second respondent's shoes in relation to the accusations and the lack of evidence.**
110. Ms G did do this. Although in the course of the meeting, Ms G did not use the exact words, she did say "if you were the person being accused, how would you want to be treated now you understand the process?". We note that this comment comes shortly after the claimant was asked if there had been any flirting.
111. Again, it would be appropriate to explain to the claimant, if necessary, that the respondent has to approach the investigation fairly and with an open mind. However, again, the point was made in a clumsy and offensive way. It is clear from the context that the claimant perceives that she is being asked to think about the impact of her allegation on Mr F. The conversation continues:

"So if you were accused but you felt you were innocent how would you like to be treated by E Ltd?"

The claimant replied:

"I would like to fully understand what I could do to ensure I didn't make someone feel like that any so training on [an internal system] etc".



112. It is obvious in our view that the claimant is, in effect, being asked to consider matters from Mr F's perspective. In the context of the whole meeting where, by this time, the claimant has been made to feel like she was to blame for not telling Mr F to stop, by not reporting it quickly enough and not reporting it to the police; and having been told that Mr F could not have known his acts were unwanted because the claimant had not told him, to be asked to consider matters from the perpetrator's point of view did, in our view, create a degrading, humiliating and offensive environment for the claimant and it was reasonable for it to do so. For the avoidance of doubt, this was unwanted by the claimant.
- 113. Also alluded to the fact the claimant's failure to report the issue sooner and her reactions to the events that occurred on 8 January may be as a result of the claimant's young age. She then went on telling the claimant, in a patronising manner, that she needed to "get rid of the myth" that there are power dynamics in the workplace.**
114. In her grievance appeal letter the claimant described what had happened in the warehouse and then said "This is what happened to me. I felt unable to voice my disapproval in how he was behaving because I felt unsafe, and there was a clear power dynamic in our working relationship".
115. In the appeal meeting, Ms G said "From my point of view, you do have that voice, you can say. Just because you're young - We do have that. Doesn't matter how old you are, everybody should be treated the same and fairly, yeah. So you feeling that he had that power dynamic over you, he doesn't. So you need to get rid of that myth in your head, okay? He's a colleague, the same as you, does that make sense? Regardless of length of service, regardless of - I'm Ms M's boss, if I did something wrong to you I expect you to report me or tell me, okay? So that's important and you've done the reporting bit, the bit I would have wanted you to have done I want you to learn from this is that you should have reported it straight away. Okay?"
116. In our view, Ms G has missed the point the claimant was making. The claimant had a clear perception that there was a power dynamic between her and Mr F, whereby she perceived herself to be in the less powerful position and we think that there was likely to have been that dynamic. This is demonstrated by what the claimant was saying in her appeal – that Mr F was able to control the circumstances when he touched her. It is also demonstrated by the way that their respective cases were treated.
117. It is obvious that the first respondent, Mr H and Ms G took into account Mr F's long unblemished service and that he was well liked (people couldn't imagine him doing that). The claimant made the point that no one was asked if she was likely to make the allegations up, whereas Mr H took into account the fact that Ms L had a high opinion of Mr F.
118. While we understand the point that Ms G was potentially trying to make – that the claimant should be able to speak up – that is not the point that she actually made. In fact, the tone of that whole passage is one of criticising the claimant (again) for not reporting the incident. This is in the additional context of Ms G going on to say that next time she should report it straight away.

119. In fact, by going on to not uphold the appeal on the basis that there was no evidence (when there, in fact, was as we have explained) Ms G further confirmed the existence of that power imbalance. The claimant was told that she was wrong to think there was a power imbalance and made to feel, again, that she was in some way responsible, if not for the acts of Mr F, then for the fact that the first respondent as a whole did not uphold her complaint.
120. For these reasons, this was unwanted conduct and, in the context of the meeting as a whole, did create a hostile environment for the claimant. Further, again in the context of the meeting as a whole, we find that it was reasonable for the claimant to feel this way.
- 121. Further patronised and belittled the Claimant by drawing an alleged distinction between touching someone's hand, which she said could be unwanted conduct, and raping someone, which she described as sexual harassment.**
122. Ms G did make this distinction. It is difficult to understand why – there is no obvious context for it. This is, in our view, obviously offensive and is part of the perception the claimant had that her complaint was being minimised by the first respondent. This came shortly after Ms G explaining that had there been evidence against Mr F he could have been suspended. The inference that the claimant reasonably drew was that Ms G did not think her complaint was that serious.
123. What is slightly difficult to understand about Ms G's reaction is that she gives every indication of believing the claimant – that she is telling the truth – but nonetheless does not feel able to take any action against Mr F.
124. This, in our view, compounds the impact of Ms G's statements on the claimant for reasons that we will address when we consider whether any of Ms G's conduct was related to sex.
125. In our judgment, this conduct of Ms G was unwanted, created an offensive and degrading environment – in that it minimised the acts of Mr F – and it was, in the context of the meeting as a whole, reasonable for it to have that effect.
126. Before we consider the last allegation of harassment from the list of issues, we address the question of whether Ms G's conduct as we have set out was related to the claimant's sex.
127. We start by referring to the comment of Ms G in oral evidence that she believed that the claimant should have told Mr F to stop and she didn't. In her witness statement, Ms G said, about the power dynamic, "As a senior colleague, more experienced female employee and mother, I tried to encourage [the claimant] not to be concerned about these apparent differences between her and [Mr F] (or indeed other people) and in particular, not to feel as though she could not speak out in similar circumstances if they occurred in the future".
128. In oral evidence, Ms G gave a number of additional answers from which we conclude that her view was, effectively, that all women experience

harassment and they learn to deal with it better as they get older. In our view, this view of Ms G – whether conscious or unconscious – influenced the way in which she approached the appeal and the comments she made. It is relevant, also, that Ms G referred on a number of occasion in the appeal to how the claimant should behave next time something similar happens.

129. We would summarise this crudely as Ms G's view being, that *this is what happens to women, get used to it*. In our view, this formed part of the reason for Ms G concluding that there was insufficient evidence to take action against Mr F even though Ms G and Mr H did not disbelieve the claimant. In other words, even though they did believe her.
130. In our judgment this view related to the claimant being a woman and all of Ms G's comments were related to the fact that the claimant was a woman making a complaint about sexual harassment.
131. Ms G's comments and findings were inherently bound up in the view she manifested that it is an inevitable part of being a woman that the claimant will throughout her life be subject to sexual harassment of one kind or another. Ms G then, consciously or unconsciously, minimised the claimant's complaints as we have set out.
132. The harassment complaint does not just form part of the context for the comments it goes much further than that. In our judgment, none of these comments would have been made to the claimant – about delays in reporting the harassment or telling Mr F to stop – if the allegations had been about one man, for example, hitting another man in the workplace or some other non-sexual but serious allegation.
133. For these reasons, these claims of harassment related to sex also succeed against the first and third respondents.
- 134. Further the claimant claims that the investigation outcome on 18 January 2022, the inappropriate comments made by the third respondent during the appeal meeting on 16 February 2022 and the outcome of the appeal dated 4 March 2022, amount to harassment related to the claimant's sex.**
135. This is the final allegation of harassment. We have already addressed the allegations of inappropriate comments in the appeal meeting. The claimant does not rely on any additional comments.
136. In respect of the investigation outcome, this was unwanted conduct. Clearly, the claimant wanted her grievance to be upheld. This did also create an offensive environment for the claimant. She had made a complaint that she had been sexually harassed at work and her employer had told her that they could not uphold her complaint or take further action against the alleged perpetrator.
137. In our judgment, however, there is no evidence to support the assertion that the decision of Mr H was related to the claimant's sex, or sex generally. We have explored at some length the evidence on which we have based our finding about the comments of Ms G. That was a fairly unusual example

based on specific comments which, in our view, demonstrate a potential conscious or unconscious bias about the way in which female victims of sexual harassment ought to conduct themselves. There is no such evidence about the conduct of Mr H.

138. His findings were not perfect – he made the same contradictory statements that he did not disbelieve the claimant but still did not conduct a further disciplinary investigation. While Mr H might or might not have biases about the way that female victims of sexual harassment should conduct themselves, there was no evidence from which we could legitimately draw inferences that he did.
139. For this reason, this allegation is not upheld and is dismissed.
140. Finally, we consider the appeal outcome. Again, the outcome – that there was insufficient evidence to overturn Mr H's decision – was unwanted. The effect of the outcome was a finding that the respondent would not take any action against Mr F and, while they would take some steps to prevent the claimant having to work with Mr F, they could not roster them on different shifts.
141. This reasonably created a hostile and offensive environment for the claimant.
142. In our judgment, the outcome of the appeal was influenced by Ms G's view about the way that female victims of sexual harassment ought to behave and the inevitability of harassment for women. It was therefore related to the claimant's sex.
143. For these reasons, this claim of harassment related to sex is also upheld.
144. Finally, the second and third respondents were added to the claim on 22 August 2022 and that is the date on which the claims against the second and third respondents were brought. The acts of the second respondent took place on 8 January 2022. The acts of the third respondent took place on 16 February 2022 and 4 March 2022 (the appeal hearing and the appeal outcome). The time limit in section 123 Equality Act 2010 for bringing a claim is three months from the date of the alleged discrimination or the last act where the discrimination forms part of a conduct extending over a period.
145. In our judgment, the grievance appeal and the outcome are self-evidently part of conduct extending over a period. This means that the last date for bringing a claim against the second respondent was 7 April 2022 and the last date for bringing a claim against the third respondent was 3 June 2022.
146. The claims against the first respondent are all in time. The claimant applied to join the second and third respondents as parties at the case management hearing when she had the benefit of legal advice.
147. The first respondent submitted their response on 14 July 2022 and in their response they raised the statutory defence under section 109 Equality Act 2010 (that they had taken all reasonable steps to prevent their employees committing acts of harassment). This was, it appears, the reason that the

claimant then felt obliged to add the second and third respondents as named respondents.

148. The decision of EJ Green to allow the amendment to add additional respondents even though they were out of time does not dispose of the time point. We must still decide it. However, we agree with his reasoning that, in the circumstances where the respondent had sought to rely on the statutory defence, it was reasonable for the claimant to apply to add the named respondents and she did appear to do so at a reasonable time.
149. The respondent then withdrew their reliance on the statutory defence on 13 December 2022, one week before the start of this hearing. We observe that in light of the very thorough and competent way in which the claimant's sister has prepared the case for her sister it is very likely that she had also prepared to address the first respondent's defence.
150. The question for us to answer is whether it is just and equitable to extend time to allow the claimant to bring the claims against the second and third respondents. The overriding question for us is the balance of prejudice. In the well-known case of *British Coal Corporation v Keble and others*, *British Coal Corporation v Keeble* [1997] IRLR 336 a number of factors were identified as relevant to this question:
  - a. the length of, and reasons for, the delay;
  - b. the extent to which the cogency of the evidence is likely to be affected by the delay;
  - c. the extent to which the party sued has cooperated with any requests for information;
  - d. the promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action; and
  - e. the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action
151. The three relevant factors to this case are the length of and reasons for delay, the promptness with which the claimant acted once she knew of the facts giving rise to the claim and the steps taken to obtain legal advice.
152. The claimant had obtained legal advice in around February 2022 and she obviously knew to put in a claim because the claim against the first respondent was in time. However, in reality the claimant did not know that she would need to put in a claim against the second and third respondents until she received the first respondent's defence. On the other hand, it would have been wise to make the claim against all potential respondents in the first place.
153. Having understood that the first respondent then intended to rely on the section 109 defence, the claimant applied to add the second and third respondents on 22 August 2022. It is likely that the response would have been served on the claimant around 22 July, so a month before the preliminary hearing.

154. This is not a substantial delay and there was no prejudice to any of the respondents as they all continued to be represented by the same lawyers and no additional delay to proceedings appear to have been caused by the addition of the second and third respondents. Consequently, there is unlikely to have been any impact on the reliability of the evidence. In respect of the third respondent, particularly, there was compelling contemporaneous evidence of what had happened in any event.
155. Both named respondents would both have had to attend and give evidence in any event so there would be no change to the nature or length of the hearing.
156. Although the guidance in *Keeble* is a useful checklist, we are not required to follow it slavishly and in our view it is relevant that the first respondent subsequently withdrew their reliance on the statutory defence. One of the reasons for this seems to be that they realised at the last minute that it would be very difficult for their representatives if the first respondent sought to rely on the statutory defence while the representatives continued to represent all parties.
157. This was not a new set of circumstances. EJ Green noted in the Case Management Orders that all parties would be relying on the same lawyers. The respondent could have withdrawn their statutory defence at that point and avoided the need for the claimant to add the second and third respondents and for Ms Rahman to prepare to address it.
158. Overall, then, in our view it is just and equitable to extend time to 22 August 2022 for the claims to be brought against the second and third respondents. In all the circumstances, including the merits of the case, the balance of prejudice is in favour of the claimant being able to continue to bring her claims against all three respondents and, aside from the obvious prejudice of being found to be liable for discrimination, there is no additional prejudice to the second and third respondents in addressing the claims that they would, to all practical extents, have had to address in any event.
159. The tribunal does, therefore, have jurisdiction to hear claims against all three respondents.
160. For these reasons the claimant's claims against the first second and third respondents are successful.

Employment Judge Miller

Date: 10 May 2023

**Appendix – list of issues**

**Harassment related to sex (Equality Act 2010 section 26)**

1. On 8 January 2022 did the second respondent do the following
  - a. Held the claimant's left hand, which was by her side, and pulled it towards him with a firm grip
  - b. Placed himself behind the claimant, resting his hand on the claimant's back or shoulder
  - c. Throughout the day, the claimant was in and out of the warehouse and the second respondent would touch the claimant when the two were alone. On one occasion, on the way back to the warehouse, the claimant stopped to speak with the second respondent; while speaking, the second respondent took the claimant's hands and held them between his, bringing them up so they were just below the claimant's breasts. The second respondent stroked the tops of the Claimant's hands with his thumbs.
  - d. Later, when the claimant and the second respondent were alone in one of the aisles, he stroked both of claimant's arms with his hands, starting at the top of the claimant's arms going down to the claimant's elbows. He did this stroking motion a few times, but each subsequent time his hands stoked upwards. Then the second respondent stroked the entire length of the claimant's arms in a downwards motion, held both hands with his and lifted them slightly from the claimant's sides. The second respondent then proceeded to touch the claimant by squeezing her arms with both of his hands, such that the claimant's arms were pressed against her body. As the second respondent squeezed the claimant's arms, his upper right torso was pressed against the top left of the claimant's body
  - e. Shortly after, the claimant was again using the trolley to put the stock away on the warehouse shelves. With the trolley in hand, she started moving towards the electrics aisle. The second respondent walked up behind the claimant and placed his right arm underneath the claimant's right arm, pressing the right side of his body against the claimant. Both of the claimant's hands were placed on the trolley and the second respondent proceeded to place his left arm under the claimant's left arm so that his entire body was now pressed against the claimant. The second respondent put his hands on the trolley, in the space between the claimant's hands; his arms were pressed against the claimant's breasts, pushing them together. The claimant attempted to move faster to put distance between her and the second respondent, but the second respondent was controlling the trolley pushing it down the aisle. Whilst walking in this position the second respondent pushed himself against the claimant's body from behind.
  - f. Having reached the end of the aisle, the second respondent moved his body away from the claimant's and brushed his arms against the claimant's breasts and her side.

2. On 16 February 2022 at an appeal meeting with the third respondent, did the third respondent make a series of inappropriate comments and allegations to the claimant as follows:
  - a. Told the claimant that the first respondent could not find in her favour as the investigator could not be persuaded beyond reasonable doubt due to the lack of evidence; she then blamed the claimant for not having reported the incident immediately and for not having called the police. She added the police could have looked for DNA evidence on the claimant's clothing. The third respondent remarked that the first respondent is a retailer and is not trained, as the police is, to investigate such matters.
  - b. Questioned the claimant on why she did not ask the second respondent to stop when he touched her inappropriately on 8 January inferring that the second respondent could have not known that his touch was unwanted. The third respondent proceeded to ask the claimant if there had been any flirting between the claimant and the second respondent.
  - c. Asked the claimant to place herself in the second respondent's shoes in relation to the accusations and the lack of evidence.
  - d. Also alluded to the fact the claimant's failure to report the issue sooner and her reactions to the events that occurred on 8 January may be as a result of the claimant's young age. She then went on telling the claimant, in a patronising manner, that she needed to "get rid of the myth" that there are power dynamics in the workplace.
  - e. Further patronised and belittled the Claimant by drawing an alleged distinction between touching someone's hand, which she said could be unwanted conduct, and raping someone, which she described is sexual harassment.
3. Further the claimant claims that the investigation outcome on 18 January 2022, the inappropriate comments made by the third respondent during the appeal meeting on 16 February 2022 and the outcome of the appeal dated 4 March 2022, amount to harassment related to the claimant's sex.
4. If so, was that unwanted conduct?
5. Did it relate to sex
6. Alternatively was it of a sexual nature?
7. Did the conduct have the purpose of violating the claimant's dignity of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?
8. If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.