EMPLOYMENT TRIBUNALS

Claimant: Mrs A Prior

Respondents: 1 Greycoat Real Estate LLP
2 Mr N Millican

Heard at: London Central **On:** 22, 23, 24, 27, 28 February, 1, 2 & 3 March 2023

Before: Employment Judge H Grewal
Ms H Craik and Mr M Reuby

Representation

Claimant: Mr D Tatton Brown, KC

Respondent: Mr N Siddall, KC

JUDGMENT

The unanimous judgment of the Tribunal is that;

1 It does not have jurisdiction to consider any complaints of direct sex discrimination, sexual harassment or pregnancy/maternity discrimination about acts of failures to act that occurred before 29 November 2021; and

2 The complaints of direct sex discrimination, pregnancy/maternity discrimination and victimisation about acts that occurred on or after 29 November 2021 are not well-founded.

REASONS

1 In a claim form presented on 5 April 2022 the Claimant complained of direct sex discrimination, sexual harassment, maternity discrimination and victimisation. Early Conciliation ("EC") against the First Respondent was commenced on 28 February 2022 and the EC certificate was granted on 9 March 2022. EC against the Second

Respondent was commenced on 5 April 2022 and the EC certificate was granted on 5 April 2022. The particulars of claims and the particulars of the response were amended in September 2022.

List of Issues

2 It was agreed at the outset of the hearing that the issues we had to determine were as follows.

Direct sex discrimination

2.1 Whether the following acts occurred and, if they did, whether they amounted to direct sex discrimination:

(1) In late 2018 Mr Millican requested the Claimant to liaise with CH (a junior female employee) with regards to her relationship with Mr Millican, her health, career and intentions and instructed the Claimant to persuade her to resign;

(2) In late 2018 Mr Millican instructed the Claimant to call a fertility clinic, pretending that she was pregnant, to ask about the procedure to terminate a pregnancy while he listened on speakerphone;

(3) On 11 November 2019 Mr Millican attempted to kiss the Claimant, putting his hands on her knee and telling her that he had always wondered whether something could have happened between them (these were alleged to be three discrete allegations);

(4) In September 2020 Ewen MacPherson suggested that the Claimant may wish to take a sabbatical after her maternity leave as the firm was looking at ways to save costs;

(5) On a call to the Claimant on 19 January 2021 Mr Bunnis said “trust all is well in the garden”;

(6) During calls to the Claimant in August 2021 while she was on maternity leave Mr Millican –

(a) informed the Claimant that she would be joining the Residential team;
(b) Informed the Claimant that her 4% stake in the Respondent’s Office activities would cease;
(c) offered the Claimant a 5% stake in the Residential team;
(d) presented the Claimant with the two options for her return to work (as specified in paragraph 36 of the Amended Grounds of Complaint) and/or refused to accept her offer to work across both Office and Residential as workloads required;
(e) told the Claimant that as a mother she would not manage to be in the Office team as the role would be too tough given her family commitments.

(7) On 30 November 2021 the Respondents sent the Claimant a draft LLP agreement which meant that she had no stake in the LLP, that she was a “passive member” and would have reduced voting rights;

(8) The Respondents divested the Claimant of her career in the ways summarised in paragraph 47 of the Amended Grounds of Compalint (other than in respect of her non-inclusion in the ManCo which the Claimant no longer pursued as an allegation of discrimination).

The comparators relied upon by the Claimant were a hypothetical male comparator, John Henry Forde and Andrew Gartshore. All the complaints above, except 2.1(4) and(5), are made against both Respondents.

Pregnancy/maternity discrimination

2.2 In the alternative, whether in respect of the matters set out at paragraph 2.1(4)-(8) the Respondents treated the Claimant unfavourably because of pregnancy or because she was exercising or had sought to exercise a right to maternity leave.

Harassment

2.3 In respect of the matters set out at paragraph 2.1(3) above, whether that was conduct of a sexual nature and had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant.

Victimisation

2.4 Whether the Respondents subjected the Claimant to a detriment by removing her access to her email on 21 February 2022 and/or restricting her mobile phone access because they thought that the Claimant might do a protected act, namely bring a claim or make an allegation of discrimination.

Jurisdiction

2.5 Whether the Tribunal has jurisdiction to consider complaints against the Frist Respondent about any acts or failures to act that occurred before 29 November 2021 and against the Second Respondent about any acts or failures to act that occurred before 6 January 2022.

The Law

3 Section 13(1) of the Equality Act 2010 ("EA 2010") provides,

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

Sex and pregnancy and maternity are protected characteristics (section 4 EA 2010). On a comparison of cases for the purposes of section 13 there must be no material difference between the circumstances relating to each case (section 23(1) EA 2010).

4 Section 18 EA 2010 provides,

> "*(1) This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of pregnancy and maternity*
> *…*

(4) A person (A) discriminates against a woman if A treats her unfavourably because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave
…

(7) Section 13, so far as relating to sex discrimination, does not apply to treatment of a woman in so far as –
…
(b) it is for a reason mentioned in subsection (3) or (4).”

The reference to the right to ordinary and additional maternity is a reference to the rights conferred under sections 72 and 73 of the Employment Rights Act 1996. Under those sections employees have that entitlement, which is an entitlement to a total of 12 months’ maternity leave – section 213 Equality Act 2010, sections 72 and 73 ERA 2010 and Regulation 7 of the Maternity and Parental Leave etc Regulations 1998.

5 In **The Commissioner of the City of London Police v Geldart [2020] ICR 920** Lavender J in the EAT said,

“*It will be noted that section 18(7) does not provide that section 13, so far as relating to sex discrimination, does not apply to any case of discrimination because of pregnancy or maternity, but only that section 13 does not apply to treatment covered under section 18.”*

He also stated that **Webb v EMO Air Cargo (U.K.) Ltd (No.2) 1995 1WLR 1454** remained good authority for the proposition that a claimant who has been treated unfavourably on the ground of her pregnancy or maternity has been the victim of sex discrimination and does not need to, and indeed cannot, prove that a man would have been treated differently. The decision that the claimant in that case had been subjected to sex discrimination was overturned in the Court of Appeal on the grounds that the tribunal’s conclusion that the claimant had been treated unfavourably because of her maternity leave had been an error of law. However, the Court of Appeal did not disagree with Lavender J’s statements set out above and confirmed the principle as correct. The Court of Appeal held that the claimant in that case had not been paid a particular allowance because of absence rather than maternity absence. Underhill LJ went on to say,

“*Webb v EMO, together with Dekker and Hertz, which followed it, are cases of a different kind. They were not concerned with pay but with dismissal. That is a fundamental distinction. It is one thing to proscribe the dismissal, or other adverse treatment, of a woman for being absent as a result of pregnancy/maternity; but is quite another to require that she be paid during a period of pregnancy/maternity absence. The scheme of both the domestic and the EU legislation is that a woman should receive “maternity pay” on a prescribed basis for a prescribed period; but the whole premise of the scheme is that that is required because she would not otherwise be entitled to be paid since she is not available for work. .. It is plainly not sex discrimination not to pay a female employee who is absent on maternity leave more than the amount of maternity pay to which she is entitled during the prescribed period, nor, if she remains absent beyond that period, not to pay her at all.”*

6 A woman's entitlement under regulation 18(2) of the Maternity and Parental Leave etc Regulations 1999 to return after maternity leave to the job in which she was employed before her maternity leave only applies to employees.

7 Section 26 EA 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 (!)(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.

8 Section 27 EA 2010 provides,

"*(1) A person (A) victimises another person (B) if A subjects B to a detriment because –*
(a) B does a protected act, or
(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act –
(a) bringing proceedings under this Act;
(b) giving evidence or information in connection with proceedings under this Act;
(c) doing any other thing for the purposes of or in connection with this Act;
(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation made, in bad faith."

9 Section 136 EA 2010 provides that if there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred unless A shows that A did not contravene the provision.

10 In **Igen Ltd v Wong [2005] IRLR 258** the Court of Appeal gave guidance on what

is required under section 136 to shift the burden to the Respondent. It said,

> "*(1) … it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant which is unlawful… These are referred to below as "such facts."*
> *(2) If the claimant does not prove such facts he or she will fail.*
> *(3) It is important to bear in mind in deciding whether the claimant has provided such facts that it is unusual to find direct evidence of sex discrimination. In some cases the discrimination will not be an intention but merely based on the assumption that 'he or she would not have fitted in'.*
> *(4) In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.*
> *(5) It is important to bear in mind the word 'could'* [in section 136] *At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage the tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.*
> *…*
> *(8) Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant and if so, take it into account in determining such facts … This means that inferences may also be drawn from any failure to comply with any relevant code of practice.*
> *(9) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.*
> *(10) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.*
> *(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since "no discrimination whatsoever" is compatible with the Burden of Proof Directive.*
> *(12) That requires a tribunal to assess not merely whether the respondent ahs proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not the ground for the treatment in question.*
> *(13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, the tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of facts."*

11 In **Madarassy v Nomura International plc [2007] IRLR 247** Mummery LJ stated,

> "*The court in Igen v Wong expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the tribunal could conclude that the respondent 'could have' committed an unlawful act of discrimination. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that, on the*

balance of probabilities, the respondent had committed an unlawful act of discrimination.

"Could conclude" … must mean that "a reasonable tribunal could properly conclude" from all the evidence before it. This would include evidence adduced by the complainant in support of the allegations of sex discrimination, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. It would also include evidence adduced by the respondent contesting the complaint. Subject only to the statutory" absence of an adequate explanation" at this stage … the tribunal would need to consider all the evidence relevant to the discrimination complaint; for example, evidence as to whether the act complained of occurred at all; evidence as to the actual comparators relied on by the complainant to prove less favourable treatment; evidence as to whether the comparisons being made by the complainant were of like with like …; and available evidence of the reasons for the differential treatment."

12 In **The Law Society v Bahl [2003] IRLR 640** Elias J restated the principles to be applied in establishing direct discrimination as follows,

"*First, the onus lies on the claimant to establish discrimination in accordance with the normal standard of proof.*

Second, the discrimination need not be conscious; sometimes a person may discriminate on these grounds as a result of inbuilt and unrecognised prejudice of which he or she is unaware.

Third, the discriminatory reason for the conduct need not be the sole or even the principal reason for the discrimination; it is enough that it is a contributing cause in the sense of a 'significant influence' …

Fourth, in determining whether there has been direct discrimination, it is necessary in all save the most obvious cases for the tribunal to discover what was in the mind of the alleged discriminator. Since there will generally be no direct evidence on this point, the tribunal will have to make appropriate inferences from the primary facts which it finds …

Fifth, in deciding whether there is discrimination, the tribunal must consider the totality of the facts … Where there is a finding of less favourable treatment, a tribunal may infer that discrimination was on the proscribed grounds if there is no explanation for the treatment or if the explanation proffered is rejected …

Sixth, it is clear from the structure of the statutory provisions that the need to identify a detriment is in addition to finding less favourable treatment on the prohibited ground … The test for establishing detriment is in general easily met. It was defined by Lord Hope in the Shamoon case as follows … Is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment? An unjustified sense of grievance cannot amount to "detriment".

Elias J then dealt with the relationship between unreasonable treatment and finding discrimination. He said,

"*There is clear authority for the proposition that a tribunal is not entitled to draw an inference of discrimination from the mere fact that the employer has treated the employee unreasonably …*

The significance of the fact that the treatment is unreasonable is that a tribunal will more readily in practice reject the explanation given than it would if the treatment were reasonable. In short, it goes to credibility. If the tribunal does not accept the reason given by the alleged discriminator, it may be open to it to infer discrimination. But it will depend on why it had rejected the reason that he has given, and whether the primary facts it finds provides another and cogent explanation for the conduct."

13 Section 123 EA 2010 provides,

"*(1) Subject to sections 140A and 140B proceedings on a complaint within section 120 may not be brought after the end of –*

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

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

…

(3) For the purposes of this section –

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

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

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

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

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

Section 140B EA 2010 provides for extension of time limits to facilitate Early Conciliation before the start of proceedings.

14 12 In **Hendricks v Commissioner of Police for the Metropolis [2003] IRLR 96** the Court of Appeal was considering a decision made by a Tribunal at a preliminary hearing on how to approach the issue of an act extending over a period. Mummery LJ said at paragraph 52,

"*The concepts of policy, rule, practice scheme or regime in the authorities were given as examples of when an act extends over a period. They should not be treated as a complete and constricting statement of the indicia of 'an act extending over a period'… Instead the focus should be on the substance of the complaints that the Commissioner was responsible for an ongoing situation or a continuing state of affairs in which female ethnic minority officers in the Service were treated less favourably. The question is whether that is 'an act extending over a period' as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed."*

Mummery LG stated,

> "*She is, in my view, entitled to pursue her claim beyond this preliminary stage on the basis that the burden is on her to prove, either by direct evidence or by inference from primary facts, that the numerous alleged incidents of discrimination are linked to one another and that they are evidence of a continuing discriminatory state of affairs covered by the concept of 'an act extending over a period' …*
>
> *At the end of the day Miss Hendricks may not succeed in proving that the alleged incidents actually occurred or that, if they did, they add up to more than isolated and unconnected acts of less favourable treatment by different people in different places over a long period and there was no 'act extending over a period' for which the Commissioner can be held legally responsible as a result of what he has done, or omitted to do, in the direction and control of the Service in matters of race and sex discrimination."*

15 In **Robertson v Bexley Community Centre [2003] IRLR 434** Auld LJ said,

> "*When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse, a tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time so the exercise of discretion is the exception rather than the rule."*

16 In **British Coal v Keeble [1997] IRLR 336** the EAT suggested that it might be useful to a tribunal in exercising its discretion to consider the list of factors specified in section 33(3) of the Limitation Act 1980. They are as follows –

> "*(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 parties sued had co-operated with any requests for information;*
> *(d) The promptness with which the* [Claimant] *acted once he or she knew of the facts giving rise to the cause of action;*
> *(e) The steps take by the* [Claimant] *to obtain appropriate professional advice once he or she knew of the possibility of taking action."*

17 In **Aberatwe University v Morgan [2018] EWCA Civ 640** Legatt LJ said,

> "*it is plain from the language used ('such other period as the employment tribunal thinks just and equitable') that Parliament has chosen to give the tribunal the widest possible discretion. Unlike section 33(3) of the Limitation Act 1980, section 123(1) of the Equality Act does not specify any list of factors to which the tribunal is instructed to have regards, and it would be wrong in these circumstances to put a gloss on the words of the provision or to interpret it as if it contains such a list…*
>
> *That said, factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons, for the*

delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh.)"

In **Rathakrishnan v Pizza Express [2016] IRLR 278** there was one claim (a complaint of failure to make reasonable adjustments) out of the many claims brought by the Claimant, which was 17 days out of time. The Respondent led evidence on the reasonable adjustments claim and there had been no suggestion that the delay had prejudiced the Respondent's ability to defend that claim. The Tribunal had heard all the evidence and were in a good position to assess the merits or otherwise of that claim. The EAT held that in those circumstances the question of balance of prejudice and potential merits of the reasonable adjustments claim was a relevant consideration for the Tribunal and they had been wrong not to weigh those factors in the balance.

18 Section 45 EA 2010 makes it unlawful for LLPs to discriminate against, harass or victimise its members.

The Evidence

19 The Claimant and Nick Prior (the Claimant's husband) gave evidence in support of the claim. The following witnesses gave evidence in support of the Respondents (their positions in brackets are those that they held at the material time) – Nick Millican (Chief Executive Officer), Adrian Bunnis (Chairman), Ewen MacPherson (Partner and Finance Director), John-Henry Forde (Partner, Acquisitions Director) and Iain Morpeth (partner, McCarthy Denning, the First Respondent's solicitor). The documentary evidence in the case comprised 1587 pages. Having considered all the oral and documentary evidence, the Tribunal made the following findings of fact.

Findings of fact

(In the rest of this section the First Respondent is referred to as "the Respondent" and the Second Respondent by his name).

20 The Respondent is a real estate investment business specialising in the central London office market and regional residential development land. It operates as a Limited Liability Partnership ("LLP"). It currently has about 11 partners (or members) and 10 employees. Mr Millican is, and was at all material times, the Chief Executive Officer with over 50% voting rights and share of the profits.

21 The Claimant became a partner (member) of the Respondent with effect from 1 April 2018 by signing a deed of adherence to the October 2015 LLP Partnership Agreement on 1 May 2018. There were six or eight partners at the time and the Claimant was the only female partner. The Claimant had 4% voting percentage, was expected to spend 100% of her working time on working for the LLP ("LLP Time Percentage 100%"), was entitled to monthly drawing of £12,500 on account in respect of any profits or anticipated profits of the LLP, (provided there were sufficient funds to pay the drawings), priority profit shares of £150,000 and a 4% share of Waterfall C super profits. The 2015 LLP Agreement contained, among others, the following provisions –

"*10.8 If a Member who is entitled to a share in Super Profits derived from Waterfall C ceases to be a Member that Member's entitlement to a share in Super*

Profits derived from Waterfall C (save for the vested rights, as to which see below) will automatically transfer to the Chief Executive.

10.9 If a Member who is entitled to a share in Super Profits derived from Waterfall C ceases to be a Member and is a Good Leaver he will nevertheless continue to be entitled to receive certain amounts by way of a share in Super Profits in respect of the projects comprised within Waterfall C at the time he ceased to be a Member (each such project being a "Relevant Project"). Such a Member is entitled to an amount equal to the amount of any promote, carried interest or similar receipt (but not any management or similar fees) which would otherwise have been paid to him by way of a share in Super Profits in respect of each Relevant Project multiplied by the Applicable Percentage for that Relevant Project and the amount which would otherwise have been paid to that Member is to be found using his percentage share in Super Profits from Waterfall C at his Cessation Date. The Applicable Percentage for a Relevant Project depends on how long after inception of that Relevant Project the Member's Cessation Date falls" [these were set out in a table].

"14 Maternity Leave

14.1 Each female Member shall be entitled to such maternity leave as she would be under the Employment Rights Act 1996 if she were an employee of the LLP having more than one year's continuous service with the LLP.

14.2 During Maternity Leave the Member shall be entitled to her normal share of the profits of the LLP.

14.3 As soon as reasonably practicable a Member who becomes pregnant shall notify the LLP of her expected leave of confinement and the date upon which she expects to commence her maternity leave and as soon as reasonably practicable after the commencement of her confinement she shall notify the LLP of the date on which she expects to resume her duties."

"34 Passive Members

34.1 If but for this Clause a Member would cease to be a Member on a particular date and would be a Good Leaver to whom future amounts might be allocated or payments might be due to be made by the LLP (for example in respect of future accruals of Soper Profit) then that Member will continue to be Member of the LLP notwithstanding his Cessation Date until all amounts which might be allocated or become due to him from the LLP have been allocated and are paid.

34.2 A member to whom clause 34.1 … applies is a Passive Member and he shall have no rights under this Agreement save for his rights to be allocated and paid amounts under this Agreement after the Cessation Date and to such information (and only such information) as he needs to validate the amount payable to him and in all other respects this Agreement shall have effect as if he had ceased to be a Member on the date which (but for this clause 34) would have been his Cessation Date. A Passive Member shall cease to be a Member of the LLP as soon as all amounts which might be allocate or become due to him under the Agreement have been fully allocated or paid as the case may be."

22 The Respondent also facilitates co-investment by its partners by affording them the option to invest their own personal capital into projects, which is then aggregated and invested alongside that of the Respondent and third part investors. A partner who invests in this way is entitled to the return of his/her capital, a core return on the sums he/she invested and a share of the surplus after various other payments have been made.

23 As the Claimant's previous experience was in residential property, her mandate when she joined the Respondent was to set up a residential arm to the business, focusing on buying land in the Greater London region, which would then be developed into apartment blocks to be rented out to individual tenants. In October 2018 the Respondent established four business divisions – Development and Construction, Management, Acquisitions and Residential. The Claimant was placed in the Acquisition team. Mr Millican headed that section.

24 In August 2018 the Claimant recruited CH (a woman) to work in an administrative/PA role. The Claimant and CH had a good relationship at work and also met outside work. Sometime towards the end of 2018 Mr Millican, who was married with children at the time, began an affair with CH. The Claimant was aware of the affair and willingly engaged in conversations with both of them about it and gave them her advice. For example, on 11 December 2018 at 9.31 pm the Claimant sent Mr Milican the following messages,

> "*Ok -you've got this. Be the forthright, decisive person that you are and bring* [CH] *into you decision making. That's how you form the foundation of your future. She's very valuable for support in all respects. Don't ask too much sympathy, she'll give you it boundlessly when you don't ask. Seek her admiration and you'll become a better person for it."*
>
> *"PS Not seek –"earn" her admiration. I meant earn".*

Mr Millican responded,

> "*Ok, not going super well so far but appreciate the advice. Hope all well."*

The Claimant continued with the following messages,

> "*Try harder"*
>
> *"You get out what you put in."*
>
> *You've got this."*

Mr Millican then sent the Claimant an exchange that he had had with CH about the impact that their relationship was having on his wife and children. The Claimant responded with the following message,

> "*Slightly selfish of her."*
>
> *"You can show her compassion."*
>
> *"You're in a period of new prioritisation."*

"Tell her that. Let her feel that. A part of how you prioritise [CH] *is that you recognise your family situation to become the best part of your future."*

"[CH] *is a part of this so tell her all of this."*

Mr Millican thanked her and said that it was really good advice, to which the Claimant responded,

"*Really happy to help here – you must prioritise you and your future. Your children will be wonderful with you on the top of your game."*

On the following day the Claimant sent Mr Millican the following message,

"*Hope you're ok.*
If I can look after [CH] *later at the event, or if you'd like me try speaking to her to help, just let me know."*

25 On 1 January 2019 the Claimant sent Mr Millican the following message,

"*We've been thinking of you and hope all was as great as poss, despite it inevitably being a tough time through Christmas.*

My great uni friend (who I'm here with skiing) left his long term partner and mother of his two small children last summer, having had a long affair with my other uni friend, and they announced yesterday that she's 5 months pregnant … Rich tapestry of life!

I hope [CH] *has also had a wonderful break in the sun, she'll return feeling hugely refreshed I'm sure."*

The Claimant also arranged for Mr Millican to talk to her husband about the challenges of leaving his wife as her husband had been in the same position.

26 On 5 January (Saturday) CH sent the Claimant an email and asked whether there was any chance that in the following week they could have "*a catch up on some work stuff (and ideally some life stuff also, because I really need to talk to someone."* The Claimant responded that she could and they arranged to meet for lunch on Monday. The Claimant told Mr Millican about their meeting. On Monday Mr Millican asked the Claimant how the lunch had gone and the Claimant responded,

"*We had a lovely lunch. I remain very positive on you both! She is obviously head over heels for you and wants you to do whatever it takes to make you happy and support you though this tough time. She knows you need more time to work this all through, but is anxious about you enduring more sadness by receiving current therapy recommendations. She's hoping that you can get a 2nd opinion from another professional to help you and not hurt you. She has thought about trying to give you more space but she doesn't want to distance from you at the time you may need her most. She has full support from her family about you guys and doesn't want to tell them about any wobbles between you so as to protect you and them. She seems to be receiving good advice from her best friend, to stay*

calm and trust that things have come so far for strong reasons and to believe in a positive future, and therefore reduce the stress levels."

She continued,

"*So you can't go wrong if you continue to follow your heart, take care of your children and yourself and given* [CH] *is a super strong beam of light in your life, absorb it all to the max!"*

Mr Millican tanked her and said that it was really kind of her, to which the Claimant responded,

"*Happy to help you, no matter what."*

27 The following week Mr Millican told CH that he was ending the relationship. On 13 January (a Sunday) Mr Millican asked the Claimant whether she would be free for a drink/chat later that afternoon or evening. The Claimant told her husband about his message. She said,

"*He's in trouble. I feel like it might be a good offer to make to meet up with him."*

Her husband's view was,

"*I see this as an opportunity for you to gain more power with him."*

28 Following the break up of the relationship CH went abroad for a few days and was due to return to work on 24 January 2019. In the early hours of 24 January the Claimant sent Mr Millican an email in which she said,

"[CH] *asked to meet outside of the office at 9am tomorrow. Let me know if you'd like me to say anything in particular.*

My guess is she has something to say, by asking for this before the working day on her first day back."

Mr Millican responded,

"*The problem is it's not sustainable her being here and I don't know that I have it in me to push her out. I think she doesn't get what a bad idea it would be to stay in terms of her career and also how it will make us both feel it always was a bad idea but she seems to have pulled back from moving on*

…

PPS – thanks for asking and sorry again about you getting caught up in this mess I've made. I do really appreciate your support.

You have a better head for this stuff than I do so if you think I'm doing something insensitive or stupid please let me know"

The Claimant replied,

"All totally understood and agreed. I'll do what I can. She knows my thoughts and I will stay consistent to my recommendations to move onwards to other things"

29 Following her meeting with CH the Claimant told Mr Millican that CH had come to realise that she should move on and wanted a payout to cover her until she found another role. On 28 January, having sought legal advice, the Respondent drafted an open letter terminating her employment immediately and a "without prejudice" letter making her a settlement offer. However, those letters were not given to her until **327** 25 February.

30 In February CH informed Mr Millican that she was pregnant and provided him with details of the clinic where she was going to have a termination. Mr Millican shared that information and his scepticism about its truth with the Claimant. He had had a private detective observe CH enter and leave the clinic and was suspicious because she had been there for a short period. In messages exchanged with the Claimant, he said that he thought that it was a "fairy tale". The Claimant's response was,

"*Yup I think you're right. My medical friend thinks so too. Plus I'm awaiting on her obstetrician friend writing back to me answering the questions you wanted me to ask."*

Mr Millican shared with the Claimant text messages that CH had sent him and the Claimant's comment was,

"*She's full of explanations which is odd. Someone actually going through a termination would more likely write about how they're feeling. Doesn't add up to me."*

Mr Millican agreed and commented that the offer of providing him with a letter looked like she had planned a cover story in detail. The Claimant responded,

"*Totally. Like a justification. That's not normal."*

She then asked Mr Millican whether there was anything else he wanted her to ask her friend. Mr Millican suggested that she ask whether the clinic in question did the kind of procedure which CH claimed to have undergone. Later that morning the Claimant informed Mr Millican that the obstetrician had said that she did not know and had suggested that she call the clinic to ask but that she had not done that. Mr Millican asked the Claimant whether she could call the clinic and pretend to be pregnant and ask about the termination procedure, what it would involve and how long it would take. The Claimant agreed and made the call on speaker phone so that Mr Millican could hear the conversation.

31 CH's employment terminated shortly thereafter as part of a settlement agreement between her and the Respondent.

32 In October 2019 the Respondent shut down Residential and the Claimant was moved to running acquisitions for London West End offices. On 23 October Mr Millican asked the Claimant to meet him for a meeting in the pub. The partners at the Respondent went to the pub near the office regularly and often had meetings in the pub. The Claimant went to the pub at about 3 p.m. At that meeting Mr Millican told the Claimant that she would be head of West End Offices. The Claimant was at the

pub until about 7.30 and told her husband in messages that she sent him that she had had four glasses of wines and was "*properly tipsy."* They also had a discussion about partners' entitlement to maternity leave at the Respondent. The Claimant sent the following messages to her husband about that –

"It's v v positive"

"He's going to give me full maternity leave on full pay for as long as I want. Especially because he said his wife was treated terribly."

"He said that he will go SAS on anyone that considers going against a mat leave solution for me."

33 On 11 November 2019 the partners had a meeting at midday to discuss whether control of the Respondent should lie with the other partners or remain vested in Mr Millican. Mr Millican had prepared a paper in which he had discussed the two options and made it clear why he did not favour control being vested in the rest of the partnership. He had agreed that he would not attend the meeting. The Claimant had exchanged messages with Mr Forde that morning in which she had said that Mr Millican's paper was clear and honest and kept him in the driving seat *"with the economics a bit more spread".* She said that she was supportive of it and asked Mr Forde whether there was anything else they should raise to support him.

34 Mr Millican went to the pub at the time of the meeting. The partners voted for Mr Millican to retain control. After the meeting Mr Forde and the Claimant went to join Mr Millican at the pub. That was at about 3.30-4p.m. Mr Millican, who had been nervous about the outcome of the meeting and had been in the pub for nearly four hours, was clearly drunk. They were sitting on high stools on a narrow table – the Claimant and Mr Millican were on one side and Mr Forde and was on the other side. After they had been there for about an hour Mr Millican put his hand on the Claimant's knee and leant towards her and said something along the lines that he had wondered whether something could have happened between them. The Claimant removed his hand made some comment about that was not something to talk about. The conversation then carried on as normal. At around 5.27 that evening the Claimant sent her husband the following messages –

"*Can you come and save me?"*

"I'm fine. Nick is not"

"I need to manage Nick"

Her husband responded to her messages and asked her some questions. At 5.36 the Claimant sent a message in which she said,

"*I'm now ok so all's good"*

At 5.46 she said, "It's ok now".

The Claimant then remained in the pub for another 30-40 minutes. At 6.48 p.m. she sent her husband a message that she was en route and would be at Bond Street in

about six minutes. Her husband, however, was delayed at work and did not get home until after 8 p.m.

35 Shortly after she left Mr Forde sent the Claimant the following message –

> "*Well done with everything this evening Anna. Pleased to see you being so instrumental on important issues. I genuinely believe you are integral to the future of the firm. #strongwomen#cleverwomen#bravewomen!"*

The Claimant's response the following morning was,

> "*Thank you and ditto you were a great support and big step potentially for Greycoat."*

Much of that message appears to be referring to the partners' meeting that had taken place the previous day and the fact that Mr Forde and the Claimant had taken a particular stance and supported each other.

36 The following morning the Claimant's husband sent her a message in which he said,

> "*I am deeply sorry and a little perturbed about your experience yesterday evening. The worst bit is that you seemingly have to ignore it when frankly I want to punch his lights out. Not that it would serve you of course."*

Mr Forde said to Mr Millican the following morning that he had been quite flirty the previous day.

37 On 28 February 2022 the Claimant made a note of her experiences at the Respondent to use as an aide-memoire in her discussions with her solicitor. There was a reference in that note to Mr Millican's affair with CH and the telephone call to the abortion clinic. There was no reference to the incident in the pub on 11 November. There was no reference to it in the Claimant's claim form presented on 5 April 2022. It did not appear in the list of issues identified at the preliminary hearing on 27 June 2022. It first appeared as a complaint in the Claimant's amended particulars of claim dated 25 August 2022 **171**. That indicated to us that the Claimant had not attached much importance or gravity to the incident.

38 Four days later, on 15 November, the Claimant was in the same pub in the afternoon with Mr Millican.

39 Between December 2019 and March 2020 the Claimant exchanged lots of messages with Mr Forde and her husband in which she expressed her unhappiness about the amount of money that she was receiving and what the other partners received. She was not slow to confront Mr Millican about it. On 10 December 2019 the Claimant sent her husband a message that Mr Millican had asked her whether she felt that she was being treated differently as a woman partner and she had replied that she was and that Mr Millican had been shocked and had wanted to speak to her about it the following day. She then continued that she had just found out that another partner had not only had his salary bumped up to £250k but he was also receiving a bonus. She said, "*I'm fuming. I'm now the least paid partner."* On 12 December the Claimant sent her husband a message that she had "*just confronted"*

Mr Millican and it had not gone well. She said, "*Long story short, he said I haven't earned it yet and I haven't brought in any new deals. I'm furious."* On 21 February 2021 in an exchange of messages with Mr Forde the Claimant complained about the amount of profits they were likely to receive that March and then went on to complain about what another partner was going to receive. She said his extra 1% was *"KILLING"* her. She continued,

> "*Reflecting on the fact that Ewen and Dan both negotiated £150k bonuses before, Adrian secured a big bonus and Tom seemingly projecting a continuation of a big salary. It's pretty gutting that Nick isn't applying the same generosity to you and me. Of course 4% is better than nothing, but this is a relative world and we will be the lowest paid partners at GC for a LONG time."*

On 3 March 2020 the Claimant sent her husband the following message,

> "*just got pulled into a room by NM. He asked me what was wrong. I told him I was pissed off with him and why … big confrontation but peacefully done. He's a twat but he's said sorry. He said he felt I'd been 'too focused on money' from promotes, to pay, to partnership percentages, and that it had upset him because he found it wearing. I told him I'm never going to change because that's why we work doing what we do, to make the best financial outcome. That all my efforts are in pursuit of an improved firm, improved position and I'm let down by others that aren't smart, don't think things though and aren't proactive."*

Her husband' response to that was,

> "*This is wonderful news!"*
>
> *"You have a bigger hold over him than I thought."*

40 On or about 16 March 2020 the Claimant met personally with Mr Millican to tell him that she was pregnant. It was early in her pregnancy but as it was the start of the Coronavirus pandemic and the Government guidance was that non-essential contact and travel should stop and that pregnant women should shield themselves from contact with others.the Claimant felt she should raise it. Thereafter, she worked from home. Mr Millican was pleased to hear the news and congratulated the Claimant. The next day he informed the HR Consultant the Respondent used and Adrian Bunnis, the Respondent's Chairman, of the news. The HR consultant sent the Claimant an email to congratulate her and to offer her any further support that she needed. The Claimant's response concluded with the following,

> "*Your support (and Nick's) is amazing and of course I'll call if need be."*

On 30 March the Claimant sent Mr Millican a message that the sex of her child had been confirmed as being female and Mr Millican responded,

> "*Wow, congratulations. Very excited for you"* (with a smiley face emoji).

41 On 3 September the Claimant complained to Mr MacPherson that she had not received her partner's drawings for August. Mr MacPherson apologised and said that it had been a mistake and arranged for it to be sent to her immediately.

42 On 10 September 2020 a Board meeting took place at Vintner's Place. It was attended by Messrs Millican, Bunnis, MacPherson and the HR consultant The Claimant's baby was due to be born on 17 October. By this stage the Claimant had not given notice of when she intended to commence maternity leave or of for how long. The pandemic had had an impact on the Respondent's business and there was a discussion about the shortfall until March 2022 and how that was to be funded. There was an original draft of the minutes of the meeting by Mr Bunnis which he circulated on 10 September with the comment that on reflection there were certain aspects of the proposals which he believed might be unworkable and/or inequitable. Following discussion some of the proposals were changed and the final version of the minutes was different from the original version.

43 The original draft of the minutes contained the following –

> "*Staff Reductions [See section on People below]*
>
> *No Partner drawings for 18 months to March 2022 (unless situation improves).*
>
> *Further payments required by the Partners in Year 2021-22 to fund 970K shortfall. Contributions to be in proportion to each Partner % entitlement as follows:*
> *NM ?*
> *DH 7.5%*
> *EM 7.5%*
> *AB 5%*
> *[AP - ?% see below – to be funded by NM if she leaves]*
> *JHF 4%*
> *…*
>
> *People*
> *…*
> *c. Review of staffing levels. Provisional list of departures:*
> - *Anna Prior – to be paid surplus with no retention mechanism on basis no entitlement to future payments [Why take it if Vintners payment in future and maternity for next year.]"*

44 It was suggested at the meeting by either Mr MacPherson or Mr Millican that, on the basis that the Claimant might not want to make any contributions and might not want to return to work after maternity leave, she might be interested in an offer whereby she would paid in full any profits that she had accrued to date (and none of it would be retained) but would have no entitlement to any future profits. The comments in square brackets were made by Mr Bunnis as he could not see why such an offer should interest the Claimant. That suggestion did not appear in the final version of the minutes of the meeting.

45 The final version of the minutes of the meeting referred to a maximum forecast cashflow shortfall of £0.76 million. The minutes said the following about payments to the partners –

> "*c. The following adjustments to Gross Surplus Entitlement for each Partner to be made prior to distribution:*

- *No drawings are assumed to have been made from April 2020 by any Partners, therefore subtract 5 months of drawings at £12.5K per month per Partner (where appropriate) from their Schedule C % Gross Surplus Entitlement.*
- *A fixed deduction calculated as £0.76m x Schedule C% entitlement.*

d. Planned distribution and timing :
Payment of the adjusted Gross Surplus Entitlement are to be made to each Partner imminently, subject to confirmation of outstanding insurance on Premier Place (EM to chase).

e. No further retention mechanism:
Assuming the Key Variations in this paper are implemented, there is no shortfall anticipated over the period to March 2022.

f. Schedule C Contributions, being each Partner's % entitlement for the next 2 years are as follows:
DH 7.5%
EM 7.5%
AB 5%
AP 4%
JHF 4%
Greg 10%
NM 62%"

46 Following the Board meeting there was a drinks event at Vintner's Place attended by all the Partners, including the Claimant. In the course of a conversation about the Coronavirus pandemic and the downturn of business and how that was likely to impact the business until March 2022 Mr MacPherson suggested to the Claimant that it might be a good time to take a Sabbatical after her maternity leave. He explained how he regretted not doing so at a time when he could have because the opportunity never arose again. He did not suggest it as something that would save the company costs. At that stage the Partners were not receiving drawings and were having to contribute to the shortfall. The Claimant being on a sabbatical would not have saved the company any money. There was nothing in the bundle to show that the Claimant raised the matter with anyone after that meeting. There were no messages between the Claimant and her husband or Mr Forde about it. It did not appear in the note that the Claimant made to use as an aide memoire with her solicitor. After the drinks event the Claimant sent everyone a message in which she said,

"*Good to see you all today! The property and the weather were ace. Thanks for organising."*

47 By 29 September the Claimant had still not notified the Respondent of the date on which she expected to commence her maternity leave. On that date Mr Millican asked the HR consultant whether she had had the chance to speak to the Claimant about it.

48 On 1 October 2020 the Claimant informed the Respondent by sending WhatsApp messages that her baby had been born that day, about two and a half weeks before she was due to be born. Her maternity leave commenced de facto on that date. Her colleagues sent her messages congratulating her and wishing her well. They also

sent her flowers and gifts and the Claimant sent them a thank you letter in which she thanked them all very much *"for being so thoughtful and supportive.".*

49 On 16 November 2020 Mr Bunnis contacted the Claimant to see whether she was interested in co-investing in some projects. On 19 November Mr Bunnis told the the HR consultant that they were having a Board meeting the following week and asked whether there was any update as to when the Claimant expected to return from her maternity leave. The HR consultant contacted the Claimant that she wanted to have a chat with her. The Claimant asked Mr MacPherson if he had any idea why she wanted to talk to him, and he replied that it was probably about her maternity leave. The Claimant also told Mr MacPherson that Mr Bunnis had called her to talk to her about co-investing in "*deals he knew nothing about so couldn't talk about them. Clueless. Also clueless about promotes and JV structures."*

50 In a text message to her sister on 23 November 2020 the Claimant said in respect of her return to work after maternity leave, "*I'm hoping that when it comes to it I can slide though the summer as it will likely be quiet and not worth going back for July/Aug and actually start again in Sept."* Although the Claimant had decided that she would probably not return to work until September 2021 she did not inform the Respondent of that.

51 On 15 January 2021 Mr Bunnis asked the Claimant by email whether they could schedule a call for the following week for a general catch up. They agreed to speak on 19 January. During the call on 19 January Mr Bunnis asked the Claimant whether she could give any indication as to when she would return to work and the Claimant responded that it would be no sooner than six months and probably in the range of six to nine months. Mr Bunnis told her that they were busy and that cash was likely to become tight later that year and that everyone was focused on getting in new business to keep afloat. He gave her information about some of the ongoing initiatives. He wound up by saying that that he thought that they needed all hands on deck to get in new business. In an email that Mr Bunnis sent to Mr Millican about the conversation he said that he had concluded that the earliest the Claimant would be back would be June, but he wouldn't count on in unless they pushed. He added, "*I can't say that she sounded like it was her duty to get back and give a hand!"*.

52 Following that call the Claimant sought legal advice from DLA Piper on 19 January 2021.

53 In early 2021 Mr Millican was approached by a private equity firm with a view to them taking a stake in the Respondent and investing in it. Mr Millican was of the view that the Respondent needed working capital and investment capital. Difficult negotiations, involving complex terms and various permutations, took place, on and off, over a period of many months. All the partners, including the Claimant, were aware that these discussions were taking place.

54 In a telephone call with the Claimant in about March 2021 Mr Bunnis either left a voicemail or began a conversation by saying something like "*trust all is well in the garden."* It sounds more like something that one would say in a voicemail rather than in actual conversation. It was known that the Claimant and her husband had a house in Wiltshire, in addition to their house in London, and that they spent a lot of time there. The Claimant's evidence was that she had taken part in Zoom meetings at a table with a glass door behind her and the garden beyond that. Mr Bunnis had a

recollection of having seen the garden. A lot of people were working from home at that time because of the Coronavirus pandemic and Mr Bunnis kept in contact with them. The comment was a harmless conversation opener. It had nothing to do with the Claimant being on maternity leave and had nothing to do with garden leave.

55 By May 2021 the Claimant had still not notified the Respondent when her maternity leave would end. No one questioned the Claimant's right to take twelve months' maternity leave, but she as obliged under clause 14.3 of the LLP agreement to notify the Respondent as soon as reasonably practicable after the start of her maternity leave of the date when she expected to return to work. It was on the agenda of a Board meeting on 18 May 2021 that it was not known when the Claimant's maternity leave would end. Mr Bunnis sent the Claimant an email that day and asked whether she had time for a brief catch up call. The Claimant forwarded that message to Mr Forde with the comment "*Dread".* He asked her what it was all about and she replied, "*Maybe about wanting me to return to office as an unpaid new mum?"* The Claimant responded toMr Bunnis' email and they tried to arrange a time to talk.

56 Mr Millican arranged to speak to the Claimant on 22 May about some business matter. In the course of that conversation he asked her about her maternity leave plans. Following the conversation he sent Mr Bunnis an email. He said that he had spoken to her as he had wanted to ask her advice on something. He continued, "*Sounds like she wants to take the full 12 months maternity, which is fair enough."* On 24 May the Claimant said in a message to Mr Forde, "*I managed to dodge Adrian and chatted to Nick over the weekend, he's cool with me taking my full leave. Phew. Saves me for paying a nanny to be able to work for no pay."*

57 On 8 June 2021 Mr Millican sent an email to all the partners, including the Claimant. He said that he was conscious that they were all working hard and it was far from ideal that they had been doing so without monthly drawings. He continued,

> **"***I've transferred some money to the business – of which some is to cover Stirling Square co-invest but there will be enough left to fund full (net of tax as it's capital and already taxed) priority drawings catch up for the 5 of you and re-instatement of current drawings on the same basis through March 2022. By which time I'm pretty confident we will be back in the black on a running basis.*
>
> *We can do some sort of true up when we next get a big promote."*

He added the following two minutes later,

> "*PS – it's obviously your money to do what you want with, but it would slightly grate for it to be used as co-invest as it's not really what it's meant for."*

On 24 June 2021 payments were made to the partners to cover the period until March 2021. A payment of £90,000 was made to the Claimant on that date.

58 Around 12 July Mr Millican was involved in discussions with Mr MacPherson about a restructure of the Respondent to accommodate the proposed investment on the terms offered by the investor. That involved the setting up of a separate partnership ("ManCo") into which the investor would make the investment. The partners of ManCo would be Mr Millican, Mr MacPherson and Kevin Payne, who was

the Respondent's Commercial Director. They were individuals who were active across all the business lines. ManCo would receive 60% of all the profits generated by the business. The remaining members would remain members of the LLP but would work in different "silos" (Office, Residential and Special Situations) and would receive a share of the profits of the silo in which they were based.

59 Sometime in July Mr Millican had a telephone conversation with the Claimant and told her about the proposed restructuring. He also asked her what her plans were about returning to work. The Claimant did not give a precise date of when she would return to work but indicated that she would be looking for some kind of flexibility which would involve reduced hours.

60 On 29 July 2021 Mr Millican sent the Claimant a brief email in which he asked her,

> *"Have you had any more thoughts about whether you want to return to work and if so the timing of that."*

61 On the same day Mr Milican prepared a spreadsheet relating to the restructure of the Respondent. This document showed that the Claimant's interest at that time was 4% share of the profits and that her future interest would be 5 % share of the profit in Residential. It was Mr Millican's view at that stage that the Claimant should be placed in Residential if and when she returned to work. She had previous experience of working in Residential and flexibility and reduced hours could be accommodated in Residential. The Claimant had by this stage still not given the Respondent notice, as she was required to do under the LLP Agreement, of the date when she would return to work.

62 The Claimant responded to Mr Millican's email and they arranged to meet on 4 August to discuss her return to work. At the meeting the Claimant said that she wanted to return to work but that she required flexibility and wanted to return to work part-time. Mr Millican understood her to be saying that she wanted to work reduced hours. If what the Claimant had wanted to convey was that she wanted to return to work full-time but wanted to work part of that remotely, she did not make that clear. Mr Millican said that he would look into it and revert back to her.

63 On 18 August Mr Millican informed the partners that they had agreed the deal with the potential investor.

64 On 20 August Mr Millican tried to call the Claimant and then sent her a message that he wanted to follow up on the conversation that they had had a few weeks before. The Claimant was in Greece at the time and they arranged to speak on the morning of 23 August. Mr Millican told the Claimant that he was proposing to move her to a new Residential team as that was a role where he could accommodate part-time working. He said that she could work 50% of the time or more if she wanted. The team would to be led by Jon Kenny who was to join the Respondent and become a partner. He had previously been involved with Mr Millican in an independent Joint Venture. He also told the Claimant that the effect of moving to a new team would be that she would no longer receive any of the profits for the Office deals. The same applied to Mr Gartshore, who was also moving to a different team. Mr Millican said that no one would be paid profit shares from two different teams. The Claimant made it clear that she was very unhappy about that and thought that it was unfair. She felt that she was entitled to a share of the profits from the Office deals

which had been entered into while she worked in that team. She also felt that she should be allowed to work part-time in the Office team. Following the meeting she sent text messages to her sister in which she complained about what Mr Millican had proposed.

65 On the following morning the Claimant sent Mr Millican the following text message,

> **"***Can you let me know what you have in mind for my resi%? And also can you confirm that my old structure and my past investments remain as they are."*

66 Mr Milican called the Claimant back that morning. He said that she had two options. She would return to work full-time in her previous role in the Office team and receive 4% of the Office profits or she could return to a part-time role in Residential and she would receive a 5% share of the Residential profits. If she took the second option she would still receive 4% of the profits for Vintner's Place and Lime Street and the repayments to cover the loan that he had made would be written off. He said that that would be to the tune of £260,000. He also confirmed that the Claimant would be paid on all the deals on which she had co-invested.

67 Later that morning the Mr Millican sent the partners the papers for a Board meeting later that day to discuss the deal with the new investor and its impact upon the existing business. He attached to it a spreadsheet showing each partner's entitlements to share of the profits. In the email he said,

> "*With apologies to Anna – we are still discussing whether she reverts back to her old job (full time office with 4% of the office carry) or switches to residential going forwards on a part-time basis, at her option. The numbers have the residential option in for the minute, but are subject to change pending reaching a conclusion on that discussion."*

68 The Claimant did not revert back to Mr Millican with which of the options she wanted to accept. Mr Millican contacted the Claimant towards the end of September 2021 and they met on 29 September. Mr Millican apologised if he had been curt or abrupt during the calls in August and explained that he had been under pressure in the closing stages of the deal. The Claimant said that she was not particularly excited about returning to the Residential role and did not want to accept it. She asked whether she could get involved in some other areas of the business to increase her potential remuneration and Mr Millican said that he would give it some thought. There was a also a discussion about extending the Claimant's maternity leave as unpaid leave or "pausing" the Claimant's partnership while she considered the options rather than the Claimant resigning. The Claimant accepted in evidence that it was agreed that she would not be paid for any such period. They agreed to meet again in a fortnight. In a message to Mr Forde after the meeting the Claimant said,

> "*It was ok. He was much softer and more thoughtful. He promised he'd get Ewen to make payments for past salary, so that's the best news of the day. I asked if there was anything more he needs help with beyond the 'silo' of resi and he's thinking about that. Meeting again in a fortnight. We discussed pausing my partnership."*

Mr Forde asked what she meant by "pausing" and the Claimant replied,

"*ie Consider a pause rather than resignation."*

In messages to her husband the Claimant said.

"*He's thinking on things. He's happy to extend my mat leave and see this as a pause to then assess down the line. And he is going to consider non exec/strategic role also…"*

"He noted I should stay as a partner on zero hours during a pause so that I get best tax treatment, encouraging."

"… I've walked away feeling that me keeping all options and a foot in the door are a costless benefit for us for the future. Especially to wait and see if the firm does any better. Plus see what other opportunities I can find (eg Chimark/Gareth)."

69 On 1 October 2021 all the partners, including the Claimant, were paid their monthly drawings for April to 30 September 2021.

70 The Claimant and Mr Millican met again on 26 October 2021. Mr Millican said that he had thought about other possibilities and had discussed the matter with Mr MacPherson, but had concluded that there were none. The position remained the same as before, the Claimant could return to working full-time in Office or part-time in Residential. The Claimant said that neither option appealed to her. Mr Miliican responded that in that case the options were for her to resign or to pause her active partnership while she reached a decision. The Claimant said that she did not want to resign. It was agreed that the Claimant would remain a partner although she would not be doing any work and would not receive any pay (share of profits in transactions entered into during that period or monthly drawings) while she decided whether she wanted to return to either of the roles available. Whether that is called a pause of the Claimant's partnership or an indefinite period of unpaid leave of leave is unimportant. It was not agreed that the Claimant would have an additional indefinite period of maternity leave.

71 On 26 November Mr Bunnis circulated the minutes of a Board meeting that took place on 23 November. Those present at the meeting were Messrs Bunnis, Millican and MacPherson. The minutes included the following,

"*3. Partnership (NM)*
…

c. ITEM: Status of AP and maternity cover.
ACTION: Extended maternity cover at no pay until further notice."

That brief shorthand summary did not accurately record what had been discussed and agreed.

72 On the same day Kevin Payne sent Mr Millican a draft note to circulate to the partners about the next moves in respect of the legal documentation following the deal with the investor. He sought to confirm with Mr Millican the existing partners and put a question mark after the Claimant's name. Mr Millican responded that the

Claimant needed to be included as well "*Re participation in historic promotes."*

73 On 30 November 2019 Mr Millican sent all the partners (including the Claimant) various draft agreements relating to the new deal. The documents included a new LLP Agreement, a structure paper and an investment and relationship agreement. Mr Millican said that the next steps were that on 6 December there would be a meeting at which the Respondent's solicitors would attend to explain the structure and interaction of the various entitles to the partners and for the partners to ask them any questions that they wanted to ask. He said that he, Mr Payne and Mr MacPherson would not be present at that meeting. The final documents would be circulated and signed on 10 December and the transaction would close on 13 December.

74 In the draft LLP Agreement the Claimant was designated a "passive member". Mr Millican had been advised by the Respondent's lawyers that that most accurately reflected the Claimant's status at the time, The definition and rights of a "passive member" were largely the same as those found in the 2015 Agreement. The only differences were that the 2021 Agreement made it plain that a passive member would continue to participate in any co-invest agreements and to vote on matters put before members under the Agreement but with the voting percentage reduced to 0.5%. In the schedules to the Agreement the Claimant was shown as having nil LLP Time Percentage (denoting that she did not have to spend any time working for the LLP and nil priority profit shares and nil monthly drawings. She was also shown as having an entitlement to a 4% shares of the profits ("carry") in Vintner's Place and Lime Street.

75 The Claimant sent Mr Millican an email on 1 December and said that she would take a look at the documents. On 1 and 2 December the Claimant exchanged emails with Mr Millican about the Respondent taking a table at an event at the Roundhouse. She did not say anything about the draft LLP agreement.

76 Ian Morpeth from the Respondent's solicitor attended the meeting with the partners on 6 December. The Claimant asked a question at the meeting about entitlement to co-invest returns. On 8 December Kevin Payne sent an email to the partners in which he said,

> "*Additionally he* [Ian Morpeth] *has reviewed a query raised by Anna in regards to the loss of entitlement of a Bad or Very Bad leaver. It is confirmed that this should only capture carry and not true co-investment by the individual, this will be amended in the forthcoming final document."*

In a message to Mr Forde the Claimant said,

> "*I'm reading Kevin's email and he's got it totally wrong about my point as I never referred to bad/very bad leaver. It was a question relating to keeping coinvest returns sacrosanct no matter how someone resigns, but certainly in the case of a good leaver."*

The Claimant also sent Mr Payne an email in which she made the same point. She said,

> "*my question in fact related to the definition of coinvestment & carry in the vesting schedule in the draft GRE LLPA, such that the philosophy would be*

> *consistent with the previous LLPA; that any risk capital would deployed by a partner would be sacrosanct with its coinvestment return and not subject to vesting."*

The Claimant did not raise any issue about her treatment on the basis that she was on maternity leave and without any economic stake in the new partnership and how she could return to the partnership.

77 The Claimant asked Mr Payne some additional questions in her email to which he responded on 10 December.

78 On 17 December at 13.05 the Respondent's solicitor sent Messrs Millican and Payne an email about the signing of the new LLP Agreement. She said that it was with Mr Kenny at that time but after he had signed it, it needed to be signed by Mr Gartshore, the Claimant, Mr Forde, Chris Orr and Greg Hartman. At 14.26 she sent Mr Payne an email that Mr Gartshore had signed and that it was stuck with the Claimant. She sent him another message at 15.26 repeating that it was still stuck with the Claimant. At 3.29 p.m. Mr Payne sent the Claimant a message in which he said,

> "*updated GRELP LLPA is currently with you for signing. It can't go anywhere else until you have signed.. Are you able to log in and sign please."*

The Claimant replied six minutes later,

> "*No probs doing now."*

The Claimant then signed the agreement. After that it still had to be signed by Messrs Forde, Orr and Hartmann. At no stage between 1 and 17 December did the Claimant raise the issue of, or complain about, her having been designated a "passive member".

79 The deal was completed on 23 December 2021. Mr Millican informed all the partners of that fact in an email on the same date and continued,

> "*Following this, all bonuses and staff/partner catch up/other payments as applicable are in the process of being actioned and will be paid before the end of this month."*

80 Attached to that email were individual letters to each of the partners. All the letters used the same format. It showed the following figures –a minus figure (relating to a loss the Respondent had made earlier), £135,000 (the amount used to repay the loan Mr Millican had made to pay the partners' net drawings for the period 1 April 2020 to 30 September 2021, £157.500 (the capital distribution made as a result of funds becoming available – net drawing for the period 1 April 2020 to 31 December 2021) and a net total figure (which was £157,500 less the figure for the earlier loss), The letters to the other partners showed an additional figure of £22,500 (£157,500-£135,000). The Claimant's letter did not show that figure. That was the amount that was paid to the other partners as their net monthly drawings for the period 1 October – 31 December 2021. The Claimant was not paid monthly drawings for that period because it had been agreed that her continued absence would be unpaid. The Claimant's total capital distribution was shown as £157,500. That was an error. It

should have been shown as £135,000. A consequence of that was that her net total wadsalso wrong. A spreadsheet prepared by Mr Millican on 15 November showed the other partners as having £300,000 priority drawings/write off bonus for a two year period and the Claimant having gross priority drawings/.write off bonus of £262,500 (for a period of 21 months). Mr Millican was not asked any questions about that and it was not clear why he had been looking at a two year period and what two year he had been looking at. What was clear was that he envisaged the Claimant not being paid for a three month period which was consistent with her not being paid drawings from 1 October 2021 to 31 December 2021.

81 New organisation and structure charts were drawn up for the Respondent in January 2022. The Claimant's name did not appear on them or among the list of partners. However, her name did appear among the partners listed under the capital for various projects, such as Vintner's Place, Lime St, Suffok St and Stirling St.

82 On 25 January the Claimant sent an email to a contact at the Roundhouse asking her to update her contact email address from her work email address to her personal email address.

83 On 26 January 2022 the Claimant's husband sent Mr Millican an email and asked him whether he was available to meet for a coffee. Mr Millican responded that he was and a meeting was set up 9 February 2022.

84 On 27 January the Claimant met Mr Forde for a quick lunch that was arranged at short notice. The Claimant discussed with him the role in the Residential team and what profits were likely to be generated on the various Office projects and when.

85 On 9 February the Claimant's husband, Nick Prior, met with Mr Millican in the Respondent's office. Mr Prior began the conversation by asking Mr Millican detailed questions about a property which at the time the Respondent was under exclusive negotiations to purchase. Mr Prior disclosed that his business had also been interested in the property and had put in a bid. Mr Prior them moved on to how the Claimant had been treated by the Respondent. He said that it would be a shame for the Respondent to get a reputation in the market for treating women, particularly those on maternity leave, badly. He said that he was a personal friend of one of the management team in the business that had just invested in the Respondent. Mr Milican said that he did not know what he was talking about and asked Mr Prior to give some details. Mr Prior said that someone had asked his wife how it was going in the garden and he also complained that the Claimant's carry on two projects that they had closed while she was on maternity leave (Stirling Square and Suffolk St) had been taken away from her. He said that the Claimant had no desire to return to the business after the way that she had been treated. He said that they wanted to agree a deal whereby the Claimant could exit the business with accelerated payments on deals which would otherwise involve deferred payments on reaching certain milestones. Mr Millican was prepared to negotiate a settlement agreement. They discussed and agreed terms on which the Claimant would leave, but Mr Millican made it clear that the agreement was subject to approval by the Board.

86 Mr Millican was concerned that the Claimant's husband, who worked for a competitor, knew in some detail about their involvement in a particular transaction and that the Claimant might be the source of his knowledge. On Mr Millican's instruction, Mr Payne asked their technical people to review the Claimant's activity on

the system over the last four to five months to check how often she had logged in and to what files. The information was provided the following day and Mr Payne shared the result with Mr Millican who was satisfied that there was nothing untoward disclosed.

87 On 17 February 2022 Mr MacPherson wrote to the Claimant further to Mr Millican's conversation with her husband the previous week. He said that the Respondent had taken legal advice. He wrote,

> "*Prior to* [the conversation] *our expectation was that you would be returning to work either full time in your existing role or part time in a different role.*
>
> *We understand that you no longer wish to return to the firm and would prefer an immediate exit.*
>
> *Post the conversation last week with Nick Millican, he has relayed the full content of the discussion to the Greycoat LLP members, whose consent is required to vary existing compensation arrangements.*
>
> *Although the potential to accelerate promote payments was discussed, all the members believe that the best variation to the current contractual position that the partnership is in a position to offer is as follows:*
>
> *1 Greycoat Capital will buy your investment interests and their related entitlements in the Vintners, Lime Street, Suffolk, Stirling and Powers Capital LLPs for 2x your invested capital.*
> *a. The total invested capital in these deals is £85,000.*
>
> *2 The contractual provisions of the Greycoat Real Estate LLPA (attached) will continue to apply to your carry entitlement sunder the LLPA i.e.*
> *a. On the basis that you were a Good Leaver you would remain a member of the GRELLP for the purposes of your entitlement to a 4% share of carry in Vintners Place and Lime Street.*
> *b. Clause 10.6 of the GRE LLPA will apply to reduce the percentage share based on how long has elapsed between the date of inception of Vintners Place and Lime Street and your cessation date. Your current entitlement is :*
> *i. 75% of Vintners (20th August 2018)*
> *ii. 50% of Lime Street (19th December 2019)*
> *c. These would be your vested rights.*
>
> *3 You will continue as a Passive Member of GRE in relation to your Vested Rights."*

88 Mr Prior sent Mr Millican an email in which he said that Mr Macpherson's email had completely missed the point and had gone against what they had agreed. He said that it did not address the issue that the Claimant had not received her 4% interest in either the Stirling Square or Suffolk St transactions that had taken place while she was on maternity leave. He said, "*I trust you understand the relevance of this point."* Mr MacPherson responded to that email on 21 February. He said,

> "*1. Anna's entitlements are set out in the partnership agreement dated 23rd*

December 2021, which she signed and was witnessed by you, and which was signed by the other partners. This agreement specifically superseded the previous 2015 partnership agreement.
2. Under the terms of the 2021 document she has no entitlement to a 4% interest in Suffolk or Stirling.
3. However, you may not be aware that the Stirling transaction completed on 23rd December 2021 and the Suffolk transaction on 21st September 2021.
4. Accordingly, even if the 2021 partnership agreement had given her an interest in the Stirling and Suffolk transactions, no rights in either of these transactions would have vested until the first anniversary of their completion in any case."

89 On 21 February Mr Millican instructed the Respondent's technology department to suspend the Claimant's access to her emails and the Respondent's system. At about the same time the Claimant was removed from the Respondent's website.

90 The Claimant and her husband turned down the offer proposed by the Respondent on 21 February 2022. On 24 February Mr MacPherson wrote to Mr Prior that as the Claimant was not interested in accepting the offer, the decision of the Board was that it would be withdrawn and the normal provision of the Greycoat LLP agreement would apply. He also said that they would treat 9 February as being the date that the Claimant gave notice of her intention to retire and all vesting arrangements under the LLP agreement would be calculated with effect from that date. He ended by saying that they needed the Claimant to confirm her intentions directly to them or to confirm that he was entitled to act on her behalf.

91 The Claimant responded on 28 February 2021 that she did not wish to retire from the partnership and that her husband's meeting with Mr Millican should not be regarded as her giving notice under the clauses of the LLP agreement. She said that she had commenced Early Conciliation with ACAS for discrimination.

92 On 8 March 2022 the Respondent's solicitors wrote to the Claimant's solicitors. They said that, as the Claimant was aware, the Respondent had decide to shut of the Claimant's access to her work emails and to suspend her corporate mobile telephone account and that it had taken those actions primarily to protect confidential information. They said that the concern had arisen as a result of the Claimant's husband being aware not only of the Respondent's involvement in a particular transaction (something which was not widely known) but also the extent of his knowledge of the details of the transaction. They then addressed the question of the Claimant's return to work. They said that discussions about that had been going on for some time and the Claimant had been afforded four months after the end of her maternity leave to decide what she wanted to do. They said that the Claimant had two options – either to return to the role she had begore her maternity leave or to return to a different role on a part-time basis. They asked her to communicate her decision by 25 March 2021. If no decision was reached by that date, the Respondent would have no alternative but to assume that the Claimant had no desire to return to active service with the Respondent.

93 The Claimant's solicitors responded on 10 March 2022. They said that the Claimant's husband had become aware of the details of the transaction (which included the identity of the Respondent's funding partner, the approximate price, and the fact that the Respondent, had secured a delayed completion) through his

connections in the market. In respect of return to work, they said,

> "*The two options presented to our client with regards to her return to work remain unsatisfactory.*
>
> *The Partnership has failed to articulate why out client cannot return to her existing role on a part-time basis and why the role must be undertaken from the office 5 days per week with no flexibility. Further, suggestions have been made about our client's ability to undertake her existing role as a result of childcare responsibilities.*
>
> *We reiterate that out client is not resigning from the Partnership. She will remain a passive member until the issues can be resolved.".*

94 On 28 March 2022 the Respondent's solicitors wrote to the Claimant's solicitors that the deadline of 25 March 2022 had expired and that the offers made had lapsed and were no longer capable of acceptance. The Claimant's status as a passive member would continue and that membership would cease as soon as all payments which might become allocated or paid to her under the 20210 LLP agreement had been allocated and paid.

95 At some stage the Respondent cut off the Claimant's access to her work systems from her mobile telephone. That should not have had any effect on her personal use of her mobile telephone.

Conclusions

Jurisdiction

96 The effect of sections 123 and 140B of the Equality Act 2010 is that the Tribunal will not have jurisdiction to consider the complaints about any acts or failures that occurred before 29 November 2021 (in the case of the First Respondent) and before 6 January 2022 (in the case of the Second Respondent) unless the Tribunal finds (i) that the acts that occurred after those dates were acts of unlawful discrimination and (ii) either that the earlier acts and those acts were part of an act extending over a period or we consider that it would be just and equitable to consider the acts that occurred before those dates. The only acts of discrimination alleged against the First Respondent that occurred on or after 29 November 2021 are the contents and effect of the 2021 LLP agreement sent to the Claimant on 30 November 2019, the Claimant not being paid her full earnings and a "true up" of her earnings at the end of December and the acts of victimisation that are alleged to have occurred in February and March 2022. The only acts of discrimination alleged against the Second Respondent after 6 January 2022 are the acts of victimisation in February and March 2022. The majority of the complaints of discrimination are about acts that occurred before those dates. We considered first whether it would be just and equitable to consider them if we concluded that there was no discrimination on or after 29 November 2021. We concluded that it would be just and equitable to consider complaints against the Second Respondent in respect of acts that occurred between 29 November and 5 January 2022 because the Tribunal had to determine those matters against the First Respondent, the decisions were made by the Second Respondent and it would not cause him prejudice if we considered those matters against him as well.

97 The earlier complaints fall broadly into the following four categories:

(a) Complaints of direct sex discrimination about Mr Millican involving the Claimant in December 2018/January 2019 in his personal relationship with a junior member of staff;

(b) A complaint of direct sex discrimination/sexual harassment against Mr Millican in respect of his conduct on 11 November 2019;

(c) Complaints of direct sex/maternity discrimination about comments made by Messrs MacPherson and Bunnis in September 2020 and January 2021;

(d) Complaints of direct sex/maternity discrimination about Mr Millican's proposals in August 2021 about the Claimant's work and earnings when she returned from maternity leave.

98 The earliest of those complaints are three years out of time. The only complaint in the second category is over two years out of time. It did not feature in the original claim and was added as an amendment in August 2022, by which time it was two and a half years out of time. The third category of complaints are between 16 months and one year out of time and the last category about five months out of time The delays in this case are considerable. The Claimant had all the relevant information to bring complaints about these acts when they occurred, and could have done so had she wished to do so. We have found that the Claimant sent many messages, mainly to Mr Forde and her husband, complaining about what she perceived to be unfairness at work. Almost all of them related to her remuneration and that of other partners. She did not send them messages complaining about the acts set out at paragraph 97(a) and (c) above. The only message related to (b) was the message to her husband at paragraph 34 (above). The Claimant did not send any message to anyone about that incident after that and it did not feature in her original claim form. The Claimant complained about the matters at paragraph 97(d) to her sister. The Claimant's evidence was that she did not complain about these matters at the time because she was fearful of the impact that doing so would have had on her career. We have found that the Claimant was not slow to challenge and confront Mr Millican when she believed that she was being treated unfairly in respect of her remuneration. She said that she had to pick her battles. That was her choice. We concluded that the Claimant did not complain about these matters at the time either because she did not believe them to be acts of sex or maternity discrimination at the time or because she decided that it was not worth pursuing claims in respect of them. The Claimant is an intelligent and articulate woman. She had the resources to seek and obtain legal advice and she did so in January 2021. She then waited another one year before she started the Tribunal process by contacting ACAS.

99 Most of the earlier complaints relate to things that were said between individuals in informal conversations or situations. They do not relate to discussions or decisions that were recorded in letters, emails or minutes of meetings. With the best will in the world it is difficult for people to remember many years after the event precisely what was said and the context in which it was said, or to retrieve any information that they might have had at the time that might have been relevant. We have been assisted in making some findings on some of the issues by the large numbers of messages that the Claimant exchanged with various individuals. The Respondents have been

prejudiced in defending allegations relating to what people said between eight months and over three years before the presentation of the claim. There is also an inherent prejudice to the Respondents in having to defend claims that are presented long after the time limits have expired. We considered the majority of the claims to have little merit. It will be clear from our findings of fact that we have found that some of the conduct of which the Claimant complained did not occur as alleged by her. We will set out below briefly what our conclusions would have been on the individual complaints if we had considered that we had jurisdiction to consider the claims. For all the reasons given above we considered that it would not be just and equitable to consider the complaints about acts that occurred before 29 November 2021if we found that there was no discrimination after that date.

The complaints

100 We considered first the complaints of maternity/direct sex discrimination set out at paragraph 2.1(6) – (8) above and the complaints of victimisation. Other than the complaint at paragraph 2.1(6) above, they are the complaints about acts that occurred on or after 29 November 2021. We have considered the complaint at 2.(6) with these complaints because it is closely linked to the complaint at 2.1(7). In considering these complaints, we have not looked at them in isolation but in the context of the findings that we have made on the earlier complaints. In reaching our conclusions on these complaints we have considered all the evidence and findings of fact.

Issue 2.1(6) – Maternity/sex discrimination

101 The Claimant's complaints are about what Mr Millican said to her in the two telephone calls on 23 and 24 August 2021. In considering those conversations, it is important to see what led up to them. By May 2021 the Claimant had been on maternity leave for 9 months. She had not given the Respondents notice of when she intended to return to work. Mr Millican spoke to the Claimant on 22 May and she indicated that she wanted to take her full 12 months' maternity leave. Mr Millican had no problem with that (his comment was that it was "*fair enough"* and the Claimant stated that he was "*cool"* with her taking her full leave). In early July the Respondent started restructuring the business, which involved the partners working in different "silos" and receiving shares of the profits of the silos in which they worked. There was confusion on the part of both the Claimant and Mr Millican as to when they next spoke about the Claimant returning to work. It is one of the inevitable consequences of dealing with claims that were not presented in time. We found that a telephone conversation took place sometime in July in which the Claimant did not give a fixed date when she would return to work and also said that she would want some flexibility which would involve reduced hours. Following that conversation, Mr Millican prepared the spreadsheet which showed the different silos in which the partners would work and the Claimant was placed in Residential. The consequence of that would be that from the date when the Claimant was placed in that silo she would be entitled to a profit share of that silo and would not be entitled to any profit share from Office, including for projects that had started when the Claimant worked in Office. The same applied to Mr Gartshore who was to be moved from Office to Special Situations. There was then a conversation on 4 August when the Claimant said that she wanted to return to work part-time and Mr Millican said that he would look into it and revert to her. He did so on 23 and 24 August.

102 We have set out at paragraphs 64-67 (above) what was said in those conversations. The proposal to move the Claimant to the Residential silo was made in order to accommodate the Claimant's desire to return to work on a part-time basis. Under the new structure the move to a different silo had the consequence that the Claimant would lose any entitlement to profit shares in the Office silo. That applied not only to the Claimant but to anyone who moved to a different silo. It applied to Mr Gartshore and the Claimant was told that. The Claimant was not compelled to move to Residential or placed there against her will. She was given the option, if she wanted it, to return to her old role in the Office silo. However, that role could not accommodate part-time working and she would have to work full-time. The discussion was not about where the Claimant would do the work but about the requirement to work full-time in that role. We concluded that, in all the circumstances, the Respondent did not treat the Claimant unfavourably by giving her those two options. It tried to accommodate her desire to work part-time. It may well be that she did not find either option very attractive – she did not want to work full time but she did not want to lose the financial advantages of being in the Office silo. That does not mean that it amounted to unfavourable treatment.

103 In case we are wrong in that conclusion, we also considered whether the Respondents gave her those two options because she was exercising or had exercised her right to maternity leave. As the Claimant's entitlement was contractual rather than statutory (because she was not an employee) it may be that her claim falls under section 13 rather than section 18, The issue, however, remains the same (because the proposition set out in **Webb v EMO Air Cargo (U.K.) Ltd (No.2) 1995 1WLR 1454** applies – see paragraph 5 above). In considering that issue, we thought it important to look at the Respondents' attitude toward women partners taking maternity leave. We noted that in the partnership agreement the Respondents gave women partners the same rights as employees to take 12 months' maternity leave and to receive their normal shares of the profits during maternity leave. That was something that they did not have to do and showed a positive attitude towards maternity leave. That was also indicated by what the Claimant said about Mr Millican's views about her taking maternity leave (paragraph 32 above), the Respondents' reactions to the Claimant announcing her pregnancy (paragraph 40 above) and Mr Millican's attitude to the Claimant taking her full 12 months' maternity leave. We also bore in mind what could be seen as negative attitudes - at the Board meeting before the start of the Claimant's maternity leave there were discussions about her being offered a termination deal on the basis that she might not want to make contributions while she was on maternity leave and might not want to return to work at the end of the maternity leave. It is noteworthy, however, that after reflection that matter was not pursued. We also accept that there was some frustration on the part of Mr Bunnis that the Claimant did not want to return to work earlier at a time when the business was struggling.

104 The Claimant was offered the two options when she was on maternity leave and in the context of her returning to work after maternity leave. However, the issue that we had to determine was whether the Respondents offered her those two options because the Claimant had taken maternity leave. The first option was to return to her existing role. The Respondents' view was that part-time working could not be accommodated in that role and explained that to the Claimant. We have not accepted the Claimant's evidence which was that she was prepared to work full-time but wanted to work some of it remotely. The Respondents did not require Claimant to return to that role full-time because she had taken maternity leave. If the Claimant

had not taken maternity leave and had asked to work part-time in that role, the Respondents' reaction would have been the same. The Respondents gave her the option of working in the Residential silo because part-time working could be accommodated in that role. The consequence of the Claimant working in that silo would be that she would lose her entitlement to any share of the profits in the Office silo. The Claimant was in the same position as Mr Gartshore as far as that was concerned. As the Claimant made it clear that she was very unhappy about that, Mr Millican made an exception in her case and allowed her to retain her share in the profits of Vintner's Place and Lime Street. She was treated more favourably than others in that she was entitled to shares of profits in two silos. For all the above reasons, we concluded that in the telephone calls on 23 and 24 August the Respondents did not treat the Claimant unfavourably because she was on maternity leave or had exercised her right to maternity leave. They did not discriminate against her under either section 18(4) or section 13 of the Equality Act 2010.

Issue 2.1(7) – Maternity/sex discrimination

105 It was not in dispute that the Claimant was designated a "passive member" in the 2021 LLP agreement sent to her on 30 November 2021 and that that had the following consequences – she continued to be entitled to returns under co-investment agreement, she retained a certain percentage of the share in profits that had already vested, she remained a member of the LLP until all such amounts were paid, her voting percentage was reduced from 4% to 0.5% and she had nil LLP Percentage time, nil priority profit shares and nil monthly drawings. The Respondents treated the Claimant unfavourably by designating her a "passive member", She was the only existing member of the LLP who designated a "passive member" and she had exercised her right to maternity leave. The Claimant's case was that she was on extended maternity leave when she was designated a "passive member."

106 We then considered whether the Claimant was designated a "passive member" because she was exercising or had exercised her right to maternity leave. The Claimant had a contractual right to twelve months' maternity leave. That contractual right came to an end on 30 September 2021. What we have said at paragraph 103 (above) about the Respondents' attitude towards maternity leave applies equally to this complaint. In considering this issue, it is important to look at what happened in the months preceding the drafting of the agreement. The arrival of a new investor in early 2021 led to the restructuring of the Respondent and the need to draw up a new partnership agreement. The Claimant's maternity leave was due to end on 30 September 2021. At the end of August Mr Millican presented the Claimant with the two options available to her – return to her old role full-time or do a different role part-time. By the end of September the Claimant had not got back to Mr Millican with her decision. He arranged to meet her on 29 September 2021. At that meeting the Claimant made it clear that she was not interested in either option and asked whether she could get involved in other areas of the business and Mr Millican said that he would give it some thought. The options if nothing else came up were also discussed – they were that the Claimant could resign or her maternity leave could be extended as unpaid leave or her partnership could be paused. "Unpaid" leave in the context of a partner would mean that the Claimant would not get a share of any profits that vested while she was on unpaid leave. They met again on 26 October 2021. As there were no other possibilities and the Claimant did not want to accept either of the options that had been offered to her, the only options available were for her to resign or the partnership to be paused. The Claimant did not want to resign. The natural

consequence of that was that the partnership was paused (which was the same as her being on a period of unpaid leave for an indefinite period). It was agreed that she would not be doing any work for the partnership and that she would not be receiving any pay (i.e. share of profits that vested while she was not working). There was no agreement that that was for a limited fixed period. Mr Millican did not agree that the Claimant could have an additional period of maternity leave for an indefinite period. There was no point in doing so. All the options had been considered and discussed by that date. The Claimant was not on maternity leave at that time.

107 The situation when the new LLP agreement was drafted was that there was no indication of whether the Claimant would return to work and, if so, when, and it was not known in which silo she would work if and when she returned to work. Hence, she could not be placed in any particular silo at that time. Under the new structure partners would receive a share of the profit of the silo in which they were placed and worked. If she was not placed in any silo she could not receive the profits of any silo. It had been agreed that she would not be doing any work for the partnership and would not be paid (i.e. have any entitlement to any shares in projects that started while she was not working). The Claimant was the only partner in that position. It was an unusual position. The schedules in the 2021 LLP agreement that showed the Claimant as having nil LLP Time Percentage, nil priority profits shares and nil monthly drawings and not being in any of the silos were an accurate reflection of the position at that time. Mr Millican believed and was advised, rightly or wrongly, that the most appropriate designation for the Claimant was that of "passive member" and that her voting percentage should be reduced. The negative effect of the "passive member" status was that it reduced the Claimant's entitlement to shares that had already vested as the percentage she would receive would depend on the lapse of time between the inception of the project and the date she acquired the passive member status. It also meant that she would not meet the one year vesting date for those which had not vested already. However, if the Claimant was not in any of the silos, arguably she would not have an entitlement to the share of any profits. It also had the effect that her membership would end once she had received all the payments due to her.

108 The Claimant's reaction to the LLP Agreement indicated to us that she understood why she had been designated a "passive member" and did not consider it to be maternity/sex discrimination. Between 30 November and 17 December she did not complain to anyone about having been designated a "passive member", she did not question or challenge it, she did not say that it was unfair or maternity or sex discrimination. She did not raise it at the meeting with the solicitor on 6 December 2021. She had a choice as to whether she signed the Agreement and she signed it on 17 December. She did not complain to anyone about it after signing it. We have seen that the Claimant was not slow to complain or to confront and challenge Mr Millican about matters that she considered important. There was no document in the bundle about her complaining about her status in December 2021 or January 2022.

109 We concluded that the Claimant was designated a passive member because her partnership had been paused as a result of her choosing not to return to work at the end of her maternity leave because she did not want to return to her old role (which required full-time working) or accept a new role that accommodated her desire to work part-time. In those circumstances Mr Millican believed that that under the terms of the agreement "passive member" was the best way to describe her status. She was not designated a "passive member" because she had taken maternity leave from

1 October 2020 to 30 September 2021. She was not on maternity leave in November 2021. In those circumstances the Respondents did not discriminate against her under either section 18(4) or section 13 of the Equality Act 2010 on the grounds that she had been or was on maternity leave. To the extent that the claim was also pursued as a complaint of direct sex discrimination unconnected with pregnancy/maternity, there was no evidence that a man in comparable circumstances would have been treated any differently.

Issue 2.1(8) Maternity/sex discrimination

110 In paragraph 47 of her particulars of complaint it was said that the Claimant "*was not paid her earnings in full and she was not paid a "true up" of earnings promised by Mr Millican by Christmas 2021."* The Claimant's complaint, in essence, is that she was not paid net drawings of £22,500 for the period 1 October 2021 – 31 December 2021. She is the only partner who was not paid that. She was not paid that because it had been agreed that she would not be doing any work and that she would not be receiving any pay. The Claimant had agreed that with Mr Millican. The non-payment of that figure at the end of December 2021 had nothing to do with the fact that she had taken her contractual maternity leave between 1 October 2020 and 30 September 2021. She had been paid throughout that period. She and the other partners had been paid notwithstanding that the business had been making a loss and did not have the funds to pay them. Mt Millican had paid the sums to them as a loan against funds that they might receive in the future. We have found that the Claimant was not on extended maternity leave at the end of December. Even if had been on extended maternity leave she (a) had no statutory or contractual entitlement to pay for any maternity leave beyond a period of twelve months and (b) had agreed with Mr Millican that any extended leave or absence from work would be unpaid. She was not paid because she had chosen not to work during that period and had agreed that she would not be paid. Not paying her for that reason would not fall within section 18(4) of the Equality Act 2010 (because that is limited to the exercise of a statutory right to ordinary and additional maternity leave). Nor would it amount to direct sex discrimination under section13. As Underhill LJ said in **Geldart** (see paragraph 5 above),

> "*It is plainly not sex discrimination not to pay a female employee who is absent on maternity leave more than the maternity pay which she is entitled during the prescribed period, nor, if she remains absence beyond that period, not to pay her at all."*

The Respondents did not discriminate against the Claimant under either section 18(4) or section 13 of the Equality Act by not paying her monthly drawings for the period 1 October -31 December 2021.

Issue 2.4 Victimisation

111 It was not in dispute that on 21 February 2022 Mr Millican instructed the Respondent's IT services provider to suspend the Claimant's access to her emails and the Respondent's systems and that about the same time the Claimant was removed from the Respondent's website. At around the same time or shortly thereafter the Claimant's access to work systems on her mobile phone was also cut off. It was also not in dispute that on 9 February 2022 the Claimant's husband had had a conversation with Mr Millican in which he alleged that the Respondents had

discriminated against the Claimant because she had been on maternity leave, made it clear that the Claimant did not want to return to work and that he wanted to negotiate a termination settlement and discussed in some detail a transaction in which the Respondent had been involved. It would have been obvious to the Respondents at that stage that the Claimant might well bring a claim of discrimination. The conversation of 9 February 2022 amounted to a protected act under section 27 of the Equality Act 2010. Mr Prior's email of 17 February implicitly repeated the allegation of maternity discrimination made on 9 February 2022.

112 Mr Prior's knowledge of the Respondent's involvement in a particular transaction, and the extent of that knowledge, caused Mr Millican to have concerns about the Claimant divulging confidential information to her husband who worked for a competitor. Hence, he asked the technical people to review her activity over a period of a four or five months. That investigation concluded within a day and did not reveal anything untoward.

113 Further events occurred between 17 and 21 February 2022. On 17 February Mr MacPherson informed the Claimant's husband that the Board had not approved the settlement agreement he had discussed and made a different offer. Mr Prior responded on the same day to Mr Millican that Mr MacPherson had missed the point and not addressed the issue of the Claimant not receiving her interest in acquisitions that had taken place while she was on maternity leave. Between 17 and 21 February there must have been discussions between Mr Millican and the Board about his response. On 21 February Mr Millican gave instructions to suspend the Claimant's access to her emails and systems and Mr MacPherson responded to the point raised by Mr Prior and asked him to confirm whether the Claimant accepted the offer made on 17 February 2022. Mr Prior spoke to Mr MacPherson on the same day and turned down the offer.

114 It was clear to the Respondents on 9 February that the Claimant was making allegations of maternity discrimination and might bring a claim to that effect. They did not suspend her access to her emails or its systems at that time. They had concerns about her divulging confidential information and looked into that but did not find any evidence that she had done so. Mr Prior's email of 17 February confirmed what the Respondents had known since 9 February. It did not add anything new. However, it became clear from the communication between 17 and 21 February 2921 that the Claimant and the Respondents were not going to be able to reach a mutually acceptable solution to the dispute between them. It was also clear the Claimant was not going to return to work, she was no longer actively involved in the business and stood to gain nothing from it, and that she was married to someone who worked for a competitor. In those circumstances, the Respondents were concerned about her having access to its systems and confidential information. We concluded that the Respondents suspended her access to her emails and their systems because they had serious concerns about her having access to confidential information in the above circumstances.

115 As we have found that none of the complaints of discrimination about acts or failures to act after 29 November 2021 are well-founded, for reasons we have set out above (paragraphs 96-99) the Tribunal does not have jurisdiction to consider those complaints. However, in case we are wrong in that conclusion, we set out briefly what we would have concluded in respect of those complaints.

Out of time complaints

Complaints 2.1(1) and (2) -sex discrimination

116 There was no dispute that the Claimant was actively involved in the relationship between Mr Millican and CH and that she spoke to both of them and supported and advised both of them. The only issue was whether it was something that she was instructed or made to do against her will by Mr Millican, or it was something that she engaged in willingly and voluntarily. All the evidence indicated that it was the latter. Generally she did not respond to requests for advice and support but offered them unsolicited (see paragraphs 24-26 above). On occasion, such as on 13 January 2019, Mr Millican sought her support. She provide that support – her evidence was that she was happy to help because she thought that it would promote her career and her husband's view was that it would be an opportunity for her to gain more power with him. We have also found that the Claimant was able to confront and challenge Mr Millican when she felt that she was being treated differently as a woman partner (see paragraph 39 above). If Mr Millican had sought to involve her in his relationship with CH against her wishes, she could and would have made her objections clear to him. We have not found that Mr Millican instructed the Claimant to persuade CH to resign. He said to the Claimant that he thought that it would be very difficult for CH and not in her best interests to continue working there but added, "*I don't know that I have it in me to push her out.".* The Claimant's response was that she understood and agreed and added, "*She knows my thoughts and I will stay consistent to my recommendations to move onwards to other things."* (paragraph 28 above). It appears from that that the Claimant's view was that it would not be in CH's best interests to stay and that she should move on to other things.

117 It was not in dispute that Mr Millican asked the Claimant to call a clinic and pretend to be pregnant and ask about a termination procedure, that the Claimant did so and that he listened to the conversation which took place on speakerphone. The issue was whether she was "instructed" to do it, in the sense that she was told that it was something that she had to do or it was something that she did willingly. Again, all the evidence indicates that it was the latter. The Claimant was not a reluctant participant in the whole affair relating to CH's pregnancy. She offered to contact her medical friend and an obstetrician that her friend knew to ask questions. Mr Millican would not have known about them unless she had told him about them. She made it very clear that she shared Mr Millican's scepticism about the termination. She told Mr Millican that the obstetrician had suggested calling the clinic (paragraph 30 above).She did not have to convey that information to him. At no stage did the Claimant say to Mr Millican that she did not want to call the clinic. If she had objected to it, she could and would have told him that. There was no evidence of her sending messages to anyone complaining about it. All the evidence indicated that this was something which the Claimant did voluntarily and willingly.

118 In respect of both of these complaints we would have concluded that the Claimant had not been subjected to any detriment and that she had not been treated less favourably than any man had been or would have been.

Issue 2.1(3) and 2.3 – direct sex discrimination/harassment

119 We have found that on 11 November 2019, when sitting in a pub, Mr Millican put his hand on the Claimant's knee and leant towards her and said something along the

lines that he had wondered whether somethings could have happened between them (paragraph 34). We did not find that he tried to kiss her. We would have concluded that that was unwanted conduct of a sexual nature. We would then have had to consider whether it had the purpose or effect of violating the Claimant's dignity or creating a an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. We would have concluded that it did not have that purpose. In considering whether it had that effect we would have taken into account the following – the messages the Claimant sent her husband (asking him to come and save her at 5.27 followed by messages a few minutes later that everything was alright), the fact that the Claimant remained in the pub for almost an hour after the incident, four days later the Claimant was in the same pub with Mr Millican (paragraph 38), the Claimant did not complain about it to anyone, there was no evidence of it having any impact on the Claimant's working environment or her working relationship with Mr Milican, it did not feature in the Claimant's aide-memoire of 18 February 2022 and it did not feature in the Claimant's original claim form (paragraph 37 above). In light of all the above, we would have concluded that it did not have the prescribed effect on the Claimant.

Issue 2.1(4) – maternity/sex discrimination

120 We have found that on 10 September 2019 Mr MacPherson suggested to the Claimant the possibility of her taking a sabbatical at the end of her maternity leave as it was likely that business would not have picked up by then and it would be a quiet time. He did not say to her that it would be a good idea as the Respondent was seeking to save costs. We would have concluded that he did not treat the Claimant treat unfavourably or subject her to a detriment by making that remark. It was part of a general conversation about taking sabbaticals. He did not suggest it because she was exercising her contractual right to take maternity leave.

Issue 2.1(5) – maternity/sex discrimination

120 Mr Bunnis' comment made in either a voicemail or at the start of a telephone call was a perfectly innocuous ice-breaker. It did not amount to unfavourable treatment or a detriment. It had nothing to do with the fact that Claimant was on maternity leave and had nothing to do with gardening leave.

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Employment Judge - Grewal

Date: 24th May 2023

JUDGMENT & REASONS SENT TO THE PARTIES ON

.24/05/2023

FOR THE TRIBUNAL OFFICE