EMPLOYMENT TRIBUNALS

Claimant: Ms Sarah Longman

Respondent: HML Holdings plc

Heard at: London South Croydon in public, in person & by CVP

On: 6, 7, 8, 9, 10 (pm in chambers) & 13 March 2023 (in chambers) and 9 & 10 May 2023 (in chambers)

Before: Employment Judge Tsamados
Members: Mr R Singh
Ms B Leverton

Representation

Claimant: Mr M Singh, Counsel
Respondent: Mr R Clement, Counsel

RESERVED JUDGMENT

The unanimous judgment of the Employment Tribunal is as follows:

a) The Claimant's complaints of direct sex discrimination, indirect sex discrimination, harassment related to sex and unfair dismissal are not well-founded and are dismissed;

b) The Claimant is awarded the sum of £1013.37 gross as damages for breach of contract in respect of 3 days of holiday purchased from the Respondent but untaken.

REASONS

Background

1. The Claimant presented a claim form to the Employment Tribunal on 30 November 2020 following a period of Early Conciliation between 1 October and 1 November 2020. This contained complaints of unfair dismissal, sex

discrimination and entitlement to outstanding wages brought against her ex-employer, the Respondent.

2. In its response, received by the Tribunal on 24 December 2020, the Respondent denied the claim in its entirety.

3. A telephone Case Management Discussion was held on 1 June 2021 conducted by Employment Judge ("EJ") Phillips. At that hearing, EJ Phillips clarified the Claimant's complaints and made a number of case management orders, which included the provision of further information of her complaints. Another Case Management Discussion was scheduled for 13 September 2021.

4. The Claimant subsequently provided the further information of her complaints on 2 August 2021.

5. The further Case Management Discussion took place as scheduled and was conducted by EJ Harrington. The EJ concluded that the claim was now sufficiently particularised, set the final hearing for 6-13 March 2023 and made a number of case management orders, including the provision of an amended response by the Respondent and the parties to agree a list of issues.

6. The Respondent subsequently provided its amended response on 8 October 2021 and a list of issues was agreed between the parties.

The issues

7. The agreed list of issues is at pages 771-775 of the bundle of documents. I made it clear that these were the issues which the Tribunal would decide and that we would not depart from them unless there were exceptional circumstances.

8. A copy of the agreed list of issues is appended to this Judgment.

The evidence

9. We were provided with electronic and paper copies of a joint bundle of documents. The electronic version was divided into two volumes, one containing 571 pages and the other almost 3,000 pages. Mr Clement, on behalf of the Respondent, explained that the first volume contained the agreed documents and the second volume contained additional documents that had been provided by the Claimant. His instructing solicitors had asked the Claimant to clarify which of the pages she was intending to rely upon and in the absence of any reply had simply included all of the documents in the second volume. Mr Clement added that the Respondent had incurred costs of around £1000 to produce the paper copies of the volume two documents. I will refer to the first volume as "B1" and the second volume as "B2" followed by the appropriate page number where necessary.

10. We worked from the electronic version of the joint bundle but found this very cumbersome to navigate because additional pages had been inserted between the original page numbers and the page numbers on the documents did not match the electronic page numbers shown within PDF Exchange

Editor. Indeed at various points within the bundle the page numbers started again from number 1 and the variance between the page numbers on the documents and the electronic page numbers within PDF Exchange Editor were impossible to predict. This led to a considerable amount of wasted time when searching for the referenced pages.

11. At the Respondent's behest, we were provided with a separate paper bundle in which the Claimant extracted the relevant documents from the second volume which she intended to rely upon in evidence. This included some pages at the start of the second volume which were originally produced in an unreadable format. The separate paper bundle ran to 11 pages. I will refer to this as "C" followed by the appropriate page number where necessary.

12. We were also provided with electronic and paper copies of the parties' witness statements. After exchange of witness statements, the Claimant had provided an amended version of her witness statement in which she had inserted the page references to the joint bundle. Whilst this had not been provided to the Respondent on the morning of the first day of the hearing it subsequently was.

13. We heard evidence from Richard Scott, Alec Guthrie, Matthew Blanchard and Lesa Downes on behalf of the Respondent by way of written and oral evidence. Ms Downes gave evidence by way of the Cloud Video Platform ("CVP"). We heard evidence from the Claimant and her witness, Tracey Clayton, by way of written oral evidence.

14. We were provided with an opening note from Mr Singh on behalf of the Claimant as well as a cast list and chronology. At the end of the evidence we were provided with written submissions from both Counsel.

Conduct of the hearing

15. The hearing took place initially between 6-13 March 2023. We heard evidence from the parties in person, apart from Ms Downes who gave evidence by CVP. We spent the first day dealing with case management issues and then the rest of the day reading the witness statements and referenced documents. Between 7-9 March we heard evidence from the parties. On the morning of 10 March 2023 we heard submissions from the parties by CVP. We met in chambers in the afternoon of 10 March and again on 13 March 2023 to deliberate. Unfortunately, we had insufficient time to reach a decision and met again on 9-10 May 2023 to conclude our deliberations and to reach this Judgment.

16. At the start of the hearing we could see that the Claimant was very nervous and I did my best to put her at her ease. Mr Singh requested additional breaks as a reasonable adjustment for the Claimant. We had no objection to this. I also explained to the Claimant that the Tribunal proceedings are what is known as an adversarial system, that I appreciated she was facing the people that she worked with who she alleged mistreated her and that I would attempt to keep matters as non-confrontational as possible.

Findings

17. We decided all the findings referred to below on the balance of probability, having considered all of the evidence given by the witnesses during the hearing, together with documents referred to by them. Any failure to mention any specific part of the evidence should not be taken as an indication that we failed to consider it.

18. We have only made those findings of fact necessary to determine the issues. It has not been necessary to determine every fact in dispute where it was not relevant to the issues between the parties.

19. The Claimant was employed by the Respondent as Head of Information Systems from 1 February 2007 until 10 July 2020. She was originally paid £47,000 per annum plus a discretionary bonus. Her salary increased over time and she received yearly bonuses. The Respondent states that this is because her job expanded over time. Whilst this might explain the salary increases it did not explain the continued award of bonuses. We could see from her appraisals conducted by Robert Plumb, who was the Respondent's CEO until the end of 2019, that he very much appreciated her work (although there were concerns about her management skills which we will come onto later in this judgment) and gave her substantial salary increases and bonuses.

20. We were referred to her offer of employment letter and contract of employment at B1 178-88. This refers to policies within an Employee Handbook. However, we were not provided with a copy of this document.

21. The Claimant was referred to various policies during cross examination: the Bullying and Harassment Policy (at B1 450-451), the Equal Opportunities Policy (at B1 452-454) and the Standard of Performance and Conduct at B1 455-460. These were policies which came into existence over the course of her employment.

22. The Claimant was issued with a job description at the start of her employment but we were not provided with a copy of this.

23. The Respondent is a company that provides services in the residential property management and letting sectors. It is the parent company of multiple subsidiaries managed by an Operations and Management Committee ("OMC"). It is based in Croydon and other locations (as set out at paragraph 12 of the Claimant's witness statement).

24. At the time of the events in question we were told that the Respondent had 550-600 employees, that they were 50:50 men and women. We were referred to a headcount of staff as at December 2019 at B1 470U which contains further details of staff employed.

25. The Claimant was employed as the Head of Information Systems. Initially the IT department just consisted of the Claimant but she expanded it over time. By the time of the events we had to consider, the Claimant had 16

employees reporting to her who were divided between the Development Team ("DT") and the Infrastructure and Support Team ("IST").

26. The Claimant went on maternity leave from July 2014 until January 2015.

27. Matt Blanchard started employment with the Respondent on 28 September 2015 as the Infrastructure and Support Manager, reporting directly to the Claimant.

28. From 2016 onwards, the Claimant was working five days a week; three days in the office and two from home. From 23 March 2020, the start of the first national Covid-19 lockdown, the Claimant was working from home. We assume having heard no evidence on it, that this was common to all of the Respondent's employees during the lockdown.

29. The Claimant's primary responsibility was the development of the Respondent's Property Management System: ("PMS"). This was an internally developed client management software package. Clearly some importance was attached to PMS by the Respondent for a number of years although towards the end of the Claimant's employment the Respondent had identified shortcomings in its functioning.

30. At one point the DT was located at premises in Church Road, Croydon and the IST at premises in Park Lane, Croydon. At some point in 2018 the Church Road premises closed and the DT moved to Park Lane. The two Teams were in the same offices but in adjoining rooms separated by what we believe was a partition wall, although at some later point the wall was removed. This meant that bot Teams were in the same room.

31. Whilst the Claimant was the Head of Department, she managed the DT and Mr Blanchard managed the IST which included the IT Support Desk. The Claimant held line management responsibility for Mr Blanchard and represented the Information Systems function at the Respondent's senior management meetings ("OMC").

32. All six members of the IST were male. The DT consisted of the Claimant, Tracey Clayton, the Onbase Integration Specialist, Sharada Thota, Richard Lacey, Senior Business Analysist (who later resigned in April 2019) , two developers based in Russia, Nick Morton, Business Intelligence Developer, Mike Morton, Software Tester (later, First Line Support), Tiago Ganhao, Developer, Joel Sanmoogan, Account Clerk (later, Software Tester and then Business Analyst), Darren Ludgrove and Yassna Rhardoud.

33. Initially, the Claimant reported to Mr Plumb. He retired in December 2019 and Alec Guthrie took over as CEO. Mr Guthrie was previously the Chief Operations Officer for all of the Respondent's companies. It was clear to us that Mr Plumb valued the Claimant and her work highly, although as we will come to, he recognised shortcomings in her management skills. Mr Guthrie appeared to have a more ambivalent view of the Claimant's worth. Richard Scott was appointed as Head of Human Resources on 7 December 2015. The HR department at that time consisted of three people. This appeared to us to be a rather small department for a company of the Respondent's size.

34. Mr Scott was responsible for the Respondent's annual employee engagement survey process, known as the Employee Engagement Survey. This was a group wide process in which employees contributed anonymously.

35. In June 2017, he facilitated an Employee Engagement Survey. Following the survey, he then produced a report of the ratings against various questions for each department. He and Mr Plumb reviewed the results in detail which included the DT and IST (at B1 108-115).

36. It was clear from the results that there was potentially a workplace issue within the DT and so Mr Plumb requested Mr Scott to conduct an HR Site Visit. This consisted of a series of confidential one-to-one interviews with staff members within a particular team to understand verbally what caused the low Employee Engagement Survey scores. The feedback received from staff members interviewed was not to be given to Mr Plumb or the Claimant so as to encourage staff to speak openly and honestly. This visit was conducted by Mr Scott and the Senior HR Business Partner in either late June or early July 2017.

37. We were referred to the report entitled HML Group HR Site Visit – IT Developers dated 25 July 2017 at B1 116-121. The report identified a number of significant failings in and concerns about the leadership of the IT Development Team (at B1 119-120).

38. In summary, the concerns raised by those interviewed were as follows: there was a chaotic working environment which reacted to events rather than being proactive; the Claimant's absence from the office working from home impacted on the day-to-day leadership that they required; it affected their ability to contact her when required; urgent instructions were often given without her having an understanding of what was going on in the office at any given time; some staff said that they had been looking for alternative employment; there was evidence of the beginning of in-team fighting starting to develop "which (if the allegations are true) does border on breaching our Equal Opportunities Policies"; there were incidents where staff felt matters should have been discussed on a 1:1 basis rather than openly within the team environment.

39. The report concludes with a section headed "Recommendations" (at B1 120):

> *"The team is desperately crying out for clear, consistent and timely direction. In short, they are lacking leadership. This in turn puts the entire team's ability to deliver for the business at risk, due to staff feeling demotivated. There is no way of knowing if it is true that all team members are actively job searching, however, it was a consistent statement which should not be ignored.*
>
> *At this stage the following recommendations are made to enable the management team to develop a comprehensive action plan. These include:*
>
> *<u>Team leadership</u>*
>
> *The natural recommendation would be to renegotiate the flexible working arrangement that Sarah (the Claimant) currently has in place, to allow her to lead the team on site daily. However, this fully acknowledged that personal circumstances suit the current arrangements, but are starting to come at the detriment business.*
>
> *If this arrangement is not addressed any time soon then the recommendation would be:*

- Day today management/leadership of the Developer team to pass to Richard Lacey;
- B1 1espoke leadership development (similar to the Business Heads programme) to be established to support Sarah. This should include:

o Remote Leadership
o 1:1 Coaching

Staff Engagement

Relationships within the team need to be 'reset'. Some form of acknowledgement of the identified problems from the leader to the staff needs to be discussed. B1 1uilding on this, an action plan needs to be developed.

This is going to be extremely tough to do as it essentially requires fundamental changes to the way that all aspects of employee engagement approached. Support from external coaching how to re-engagement the team should be considered.

Overall site rating is in the 'partially meets category'. With further attention paid to consistent and fair communication and line management the morale could slowly return/it has been noted that the attitudes formed within the team and establish deep roots in a short period, but there is still a hunger within staff exemplary service. This will be a long re-billed process in which staff should be constantly re-engaged into the new culture that the management team need to pursue."

40. The Claimant's written evidence is that Mr Plumb verbally discussed some of the feedback without naming anyone (as at paragraph 101d) of her witness statement) but she does not acknowledge being sent the report itself or forwarding it on to her colleagues as we can see from the contemporaneous emails. Mr Scott's evidence is that the report was only shared with Mr Plumb and that his recollection is that it was decided that Mr Plumb would work with the Claimant to try and improve the working situation within the DT.

41. Despite the evidence of Mr Scott and the Claimant, we note that Mr Scott sent a copy of the report to the Claimant by email on 8 August 2017 (at B1 470j). Further, we note that on 4 October 2017 the Claimant emailed the report to Mr Lacey, Mr Blanchard and Ms Clayton for their meeting the following morning (also at B1 470j). However, we were not provided with any clear evidence as to how the matters were taken forward from this point.

42. Early in 2018, the Claimant approached Mr Scott for his support in how to manage difficulties that had arisen between two members of her team, namely Mike Morton and Tiago Ganhao. She described their behaviours to Mr Scott as being "childlike" and "immature" in nature and this was corroborated by other members of her team (at B1 191 & 192). Her own evidence was that the two of them did not get along from the outset. We can see from B1 139-142 that support and advice was given to the Claimant in dealing with the situation. Mr Scott's evidence was that he believed that the situation was defused.

43. Around March 2018, Mr Plumb informed Mr Scott that there were potential problems once again brewing within the DT. He advised Mr Scott that Mr Blanchard had told Mr Guthrie that several staff were actively pursuing alternative employment.

44. This discussion arose at the end of a budget meeting in response to Mr Guthrie asking Mr Blanchard how things were generally within the team. Mr Blanchard's evidence was that he took this opportunity to tell Mr Guthrie that the team in general were feeling very demoralised and undervalued and that

several staff had expressed their displeasure at the lack of management and support afforded. Mr Guthrie's evidence was that Mr Blanchard disclosed that there was unhappiness within the team, that he never saw the Claimant in the office and her team were constantly complaining about the dysfunctional way in which she was leading them. Mr Guthrie's further evidence was that Mr Blanchard described the situation as "chaotic", that the Claimant was very "passive-aggressive" in her style and that several people were actively looking for alternative employment.

45. Mr Plumb requested that Mr Scott interview the DT members and the Claimant's direct reports, which included Mr Blanchard, to understand what was going on within the team. Mr Plumb stated that he was becoming extremely concerned with the continued unrest within a service that was important to the business. He also expressed his concern that despite interventions with the Claimant, she was again the subject of apparent disquiet.

46. Mr Scott undertook interviews with the DT members and Mr Blanchard. He did not interview the Claimant. He published his findings in a report to Mr Plumb on 3 April 2018. Whilst the report sets out direct feedback received from Mr Blanchard it did not identify the individual members of the DT but dealt with this under the heading "General Team Feedback". This document is entitled HML Site Visit Update - IT Developers 3 April 2018 and is at B1 167-170.

47. In a section headed "Conclusions/Recommendations", Mr Scott set out the following (at B1 169-170):

> *"I do not feel that the situation within the IT team can be solved by any form of HR intervention (i.e. training, coaching etc). I do believe that it is time the business to actively pursue radical alternatives. As such my recommendations would be:*
>
> *Recommendation 1 - HML needs to establish a strategy group specifically focused on our IT strategy direction. This group should focus in on core overarching system requirements based on user requirements, business requirements and (most importantly) client/customer requirements. Business needs to set the agenda for IT for a 5, 10 and 15-year plan. Business case should then be drafted outlining how we can get to this strategic goal. This should not be led by IT. It should be led by Operations with IT a contributing participant.*
>
> *Recommendation 2 – Appoint a IT transformation/developer as a non-executive director. An expert who at a senior level can advise, shape and understand the technical landscape.*
>
> *Recommendation 3 - it is Sarah's personality/style and lack of interpersonal communication skills that causes most of issues within the immediate team. We should explore a strategy that leads to managing her out of the business or results in a demotion. Backfilling of this role will depend on strategy that HML adopts in IT. This will drive the sort of individual that we wish to leave the IT section.*
>
> *Recommendation 4 - Richard Lacey should represent IT at the COO's GMC meeting. We must get Richard to work closely with Operations. Operations should be the lead function in all IT development."*

48. On 4 April 2018, Mr Plumb sent an email to the members of the Respondent's Board with regard to a systems organisation discussion to take place at their next meeting. This email is at B1 171-173. In this email he included sections on operational engagement (which included concerns about PMS) and systems leadership (concerns about the Claimant and the DT):

"1. Operational engagement:

For a variety of reasons a number of new systems releases have not had the operational engagement to ensure that their use is fully implemented. Part of this failure is attributable to lack of operational engagement in the design of those systems. A second reason for the failure is the inevitable "chicken and egg" of not having the necessary data on the system to make the software functional (and not having or taking the time to get the data on the system). Thirdly there is the absence of implementation of and training for the changes in process that accompany new software. We have to some extend defaulted to strategies of either relying on the data needing to be imperative to accounting functionality (digitisation of the purchase ledger) or the data being processed into PMS via electronic means (AB's insurance documents) to get the new software utilisation - neither of these default positions are sufficient.

2. Systems leadership:

It has become apparent in the last year two that there is an unhappiness with our systems team that seems to arise through either weak leadership or belief that the direction of our system strategy is not fully embraced by operational management (along the lines outlined in 1 above). Rich Scott conducted a series of interviews with staff last year post the employee engagement survey which set out a series of reasons for unhappiness with the staff. Some of this was put down such areas as : a lack of leadership, a general disgruntlement with one another : poor working conditions. We had hoped that this discontentment would improve with the move to better offices in Park Lane Croydon combined with the setting up of a more comprehensive leadership team through the appointment of Richard Lacey (Business Analyst) and Tracey Clayton (Onbase analyst). While there may have been some modest improvement the levels of unhappiness have continued. Post our systems budget meeting, when the level of disquiet resurfaced, I asked Rich to re-engage with the staff members to establish as best he could the reasons behind this."

49. Within his email, Mr Plumb put forward a number of suggested solutions for the Board to discuss: the setting up of an Operational System steering committee; and a review of systems leadership. Within the latter section (at B1 173) he said as follows:

"I believe I will need to spend some time reviewing our options as to how to make our systems structure work more efficiently. We are aware that Sarah does not have the full support of her team – although generally is seen as likable person - she doesn't have the full complement of leadership skills for an increasingly complex systems environment and what appears to be a dysfunctional group of individuals. While I remain convinced that she knows more about the structure of PMS than any other individual she does not appear to be able to manage a consensus view from the team. We are painfully aware that the investment in a full time systems executive may well be beyond our current means an investigation into what variations of this could be employed would I believe be worthwhile. This might involve the splitting of the department which would have the benefit of reducing her workload but a danger in the potential for splits of direction. We could also look at options for which elements of strategic or managerial oversight could be either worthwhile or affordable. There may also be more that we can ask of Sarah's lieutenants: Mathew, Richard and Tracey. Mathew runs a dependable and fairly well respected IT support group but neither Tracey nor Richard appear yet to have found a way of sharing the burden of leadership with Sarah."

50. Following receipt of Mr Scott's report, Mr Plumb conducted interviews with Mr Blanchard, Mr Lacey, Ms Clayton and the Claimant on 11 April 2018. His memo containing his notes of these interviews is at B1 190-193.

51. Mr Plumb sent this memo to Mr Guthrie, cc Mr Scott on 13 April 2018 with a covering email setting out his interim conclusions on which he sought their views prior to circulating them to the Board (at B1 188-193):

"In the first instance we can conclude that Sarah certainly has a number of limitations in terms of her leadership style. She doesn't have the natural charisma of a leader and I expect her style is too light on praise and encouragement and her questioning of staff comes across as criticism more harshly than it should. That said she is universally liked as a person. She is softly spoken and not the type of person who would lose her temper. In short this is not as issue staff bullying or abuse.

One of the conclusions I draw from these interviews is that we have a number of disruptive and disgruntled members of staff in the IT development department who expose Sarah's and indeed

Richard's weaker leadership skills. That disgruntlement is founded in a number of areas: Firstly a frustration with the nature of the work itself (e.g. the PMS code, the Russian programmers and the lack of business engagement). Secondly there are a few interpersonal issues within the department itself – Vit being a law unto himself, Tiago and Mike openly arguing, Nick's "personal problems" which are not aided by Sarah's leadership skills in fairness to her not created by her. I am disturbed by Matt's role in this. He does of course have more obvious leadership skills and a confident demeanour. He has however allowed himself become the person to whom these disgruntled former fellow employees come to complain. The irritation he has had Sarah (which he displayed to me in a petulant manner) will I am sure, be expressed to these individuals too. This will and provide succour to them however feeble then complaints may be. I found his assertion that Sarah skills were dispensable and the individuals we should were really feel vulnerable to as being John and Ivan naïve. However much I may find this view incorrect and this behaviour immature it does nevertheless illustrate real contempt he has for Sarah.

The long-term future of the IT department - as strategy and its leadership will be one of the more heady issues HM has to face in the future. It is not surprising that the young lady I hired 12 years ago to start this department (and wrestle control from a software development company and their Russian programmers) does not have the complete set of skills to run what is knocking on 20 person strong systems team. It is starting to and will require in the future a combination of the type of charismatic leadership skills that can properly engage business' operators as well as the technical know-how to run a systems department. These current issues haven't altered nor necessarily hasten that reality.

We are inevitably drawn back to the debate about our priorities and what we can afford in our current circumstances.

One decision we can take that expect will be universally applauded, and will not have any direct financial impact, is the creation of a systems Counsel in the manner I alluded to earlier. It will go some way towards sense purpose recognition for this team the absence of which ascends underlies the sentiment may have.

As much as I expect we will have to address the leadership of systems at some point I expect her immediate priority have to be to improve what we have. This could take the form of better use of systems leadership team - more delegation to Richard Matt and Tracey and more co-operation between them - however unpalatable that might be to Matt. I appreciate that Matt runs an IT support team well and is generally liked and respected. The last thing I would want is for us to lose him. There is, however, the reality that the skills he has a more generic and universal to the IT sector and therefore replaceable. Sarah's knowledge of the £700K we have invested in PMS is a far more specific and less transferable competence stop I sincerely hope that this does not become stand-off between Sarah and Matt but when it comes to accrued evaluation of their dispense ability or their adherence to our 3rd core value I believe we have no alternative but support Sarah in the circumstances. This may of course become academic after my meeting with her on Tuesday but I thought I share it with at least so that you and I can have an objective discussion about it and speak as one when our conclusions are drawn."

52. On 18 April 2018, Joel Sanmoogan sent an email to Mr Lacey attaching a letter of complaint raising a grievance against the Claimant. This is at B1 204-220. Over 16 pages, Mr Sanmoogan sets out a series of complaints about the Claimant's behaviour towards him.

53. On 26 April 2018, the Respondent's Board meeting took place. We were referred to the Board Meeting Minutes (partially redacted) at B1 225- 229. Mr Guthrie attended the meeting and gave evidence as to what took place with regard to the issues arising from Mr Scott's report and Mr Plumb's email. Following the debate, the Board took immediate decisions to establish a Systems Council, which Mr Guthrie would chair, to explore appointing a new Non-Executive Director ("NED") with a customer innovation IT background. The establishment of the Systems Council was to ensure strategic direction of IT was operationally no longer led by IT. Mr Plumb briefed the Board on the leadership difficulties within the Information Systems team.

54. In addition, Mr Guthrie's evidence was that the detailed debate around the risk of PMS and its continued development began in earnest. We were referred to a document at B1 230-233. Mr Guthrie's further evidence was that, to the best of his knowledge, Mr Lacey had been employed to look at

off-the-shelf solutions and to consider issues around PMS development because it was felt that there were risks in continuing in developing it in-house. Mr Guthrie's evidence is that following this meeting, the Respondent's internal software development strategy was officially under review. The Board commenced exploration solutions in which each member was tasked with reaching potential solutions with the aim of reducing the ever-growing costs, at the same time as delivering improvement to customers.

55. On 2 May 2018, Mr Plumb sent a memo to the Claimant and Mr Guthrie outlining his proposals for the setting up of the Systems Council. This email is at B1 235-237.

56. On 3 May 2018, Mr Plumb sent a memo to the Claimant containing confirmation of his meeting with her that day as to her year end appraisal and KPIs for 2018/2019. This is at B1 238-241. This document acknowledged their past discussions as to the feedback received from members of her team about her management style and went on to set out the steps that the Respondent proposed to improve their circumstances: creation of a Systems Council; people skills coaching; and strategic mentoring. Mr Plumb recognised and appreciated how surprised and upset the Claimant was in learning the unhappiness of some of the junior members of the team and he reiterated his view that she was not seen by him or her peers as an aggressor or bully and it was more a question of her developing her communication and participation skills. It is also clear from Mr Plumb's memo that he did not share Mr Guthrie's view of the shortcomings of PMS but rather saw this as being a user issue albeit he accepted that PMS needed revision. In conclusion, Mr Plumb confirmed that the Claimant's salary was increased to £85,500 per annum and the award of a discretionary bonus of £7,000 (£79,200 and £5,000 in 2016-17 at B2 2998).

57. The Respondent engaged external HR consultants to hear Mr Sanmoogan's grievance given Mr Scott's previous involvement in investigating the IT department following the results of the 2017 Employee Engagement Survey. Their report is at B1 247-255. This indicates that the HR consultants reviewed the relevant documentation and met with Mr Sanmoogan, the Claimant, Mr Lacey, Ms Clayton and Mr Scott.

58. On 10 May 2018, Mr Scott sent an email to the Claimant providing her with a "heads up" as to the findings with regard to Mr Sanmoogan's grievance. This is at B1 242. Mr Plumb sent the Claimant a copy of Mr Scott's grievance report and a grievance outcome letter on 21 May 2018. This is at B1 243-275.

59. Mr Plumb's letter to the Claimant set out in summary those parts of the grievance that had been partially or not upheld (at B1 245):

    a) Humiliation: that you deliberately humiliated Joel in front of his peers and superiors. Partially upheld.

b) Psychological abuse: that your management style has the effect in some instances of placing Joel in a position where failure might be unavoidable. Partially Upheld.

c) Invasion of privacy: that you deliberately accessed Joel's email account to monitor his conversations. Not upheld.

d) Undermining of position: that you had appointed new starters in positions superior to Joel with the intention of undermining his position. Not upheld.

e) Forcing out: that your actions were intended to force Joel out of the organisation. Not upheld.

60. The letter also set out proposed next steps, including externally facilitated mediation for both the Claimant and Mr Sanmoogan, assignment to the Claimant of an external Leadership Coach and following this, and facilitated by the Leadership Coach, identified external training. In closing, Mr Plumb expressed his continuing personal confidence in the Claimant and acknowledged a number of positive actions were being taken that he knew would be beneficial to both the Claimant and the wider IT department.

61. The letter to Mr Sanmoogan containing the outcome of his grievance is also dated 21 May 2018 and is at B1 256-258. This letter set out in summary those parts of his grievance which had been upheld:

a) That Ms Longman sets unrealistic expectations;

b) That priorities are regularly changed;

c) That she apportions blame;

d) Conversely, that she takes credit for other people's success; and

e) Her interpersonal skills can lead to misinterpretation and therefore be construed as being hostile.

62. At the time that Mr Sanmoogan raised his grievance against the Claimant, he sent a survey around to his colleagues in an attempt to gain further evidence to support his case. The Claimant became aware of this from Mr Lacey. Mr Scott found out about this from one of the recipients and immediately contacted Mr Sanmoogan and asked him to remove the survey and advise those he had sent it to that he was mistaken to do this. The Claimant was aware that Mr Sanmoogan was told that his actions were totally unacceptable. The Claimant did not see the survey and was not aware of who it had been sent to or answered it. Mr Scott never saw the survey or any responses and neither did the external HR consultants.

63. Subsequently, the Claimant and Mr Sanmoogan took part in mediation facilitated by an external mediator. We were referred to a series of emails at B1 259-262 and to the resultant mediation agreement at B1 267-271. The Claimant's position is that she was rushed into this process. The only

comment we would make is that the actual agreement frankly does not amount to a great deal.

64. The Claimant was also provided with coaching by an external coach. Her evidence is that that was very much thrust upon her by Mr Scott without any supporting guidance. However, her further evidence is that she did get some guidance from the coaching which would help her enormously in the future. In particular, she states that she remembers explaining to the coach that there was a very laddish culture within the IT department, that she was advised to raise it to get it dealt with but the Claimant said that this would be very difficult given her belief that Mr Scott disliked her. Nevertheless, the Claimant states that she did do as the coach suggested with regard to the issue of instant messaging (which we will come onto).

65. With regard to training and mentoring, the Claimant's evidence is that this never materialised. However, there is no indication that the Claimant pursued the matter or even asked further about it.

66. On 4 July 2019, Mr Plumb sent the Claimant confirmation of her year end appraisal for 2019 (at B2 3002-3004). This again acknowledged the issues within the department. The Claimant was awarded a salary increase to £88,500 per annum and a bonus of £8,000.

67. One of the specific complaints raised by the Claimant as part of her sex discrimination claim is that there was in existence an instance messaging or WhatsApp group used by male members of her department which was used to make derogatory comments about her and from which she was excluded.

68. However, this was more narrowly identified within the agreed list of issues at paragraph 7 d. at B2 772 as:

"Until the Claimant left her employment in July 2020, she was excluded from the WhatsApp group which the majority of her male IT colleagues frequently used in work".

69. There was some confusion as to what sort of online chat this was. This is perhaps surprising given that the Claimant and her witness Ms Clayton were people with IT expertise.

70. Ms Clayton's evidence was that she raised her concerns with the Claimant that members of the IST and DT were partaking in an online chat group in which, from the way they behaved, she believed that they used to make adverse comments about her and the Claimant. Her further evidence was that having brought this to the Claimant's attention she was aware that the Claimant raised this with HR but no action was taken.

71. The Claimant's evidence was that she raised the issue with Mr Scott at a meeting on 12 March 2019 in which she expressly stated that she was worried because all of the IT department males were included and none of the females were and that it could therefore be perceived as exclusionary. Her further evidence is that she told Mr Scott that the IT male members were generally laddish and their behaviour could be rather childish. She further

stated that Mr Scott asked if Mr Blanchard was involved and when she indicated that he was, his initial reaction was "I can't imagine Matt being involved in anything untoward", he said he would look into it piggybacking off Mr Lacey's resignation (see below) by saying that Mr Lacey had mentioned it in his exit interview. Her evidence continued that Mr Scott failed to investigate the matter notwithstanding her reminders to him on several occasions.

72. In her oral evidence, the Claimant stated that she could see greenish coloured pop-up windows on the men's computer screens and believed it to be WhatsApp, this coupled with them saying "I've WhatsApp'ed you" and smirking and laughing. She added that she knew they communicated by WhatsApp. However, she did not know who exactly was in the group.

73. We heard evidence from Mr Blanchard that he was unaware of any private WhatsApp group and that WhatsApp could not be used on computers but was a phone based app.

74. Mr Scott's evidence was that the Claimant raised concerns about instant messaging at work which either she or he or both of them identified as being through Skype for business, this being the instant messaging system used by all employees but predominantly used by the Claimant's department to communicate. He was clear that the Claimant never mentioned WhatsApp or went into any detail beyond her concern that the members of the department were distracted by messaging each other. His evidence is that whilst he had authority to review all forms of digital data, in order to do so he would need to request it through the IT Service Desk. Given they were the topic for concern, he did not think this to be an appropriate course of action and so he said that he would review and discuss it with Mr Blanchard when he next came to the Croydon office.

75. Mr Blanchard's evidence was that he stopped using WhatsApp at the end of 2020 or in early 2021 due to the fallout from the change in the WhatsApp privacy settings imposed by Facebook. Prior to this he was a member of an IT chat group which was made up by both male and female members of the 2 teams. He said it had 14 participants and was called "IT Dept DR Comms" and it dealt with work-related chat covering such matters as people running late or out on site that day. Mr Blanchard said in oral evidence that he attempted to retrieve the WhatsApp group. However, all he managed to obtain were the details set out in the screenshots at B1 163 and 164. His further evidence was that the only instant messaging services utilised on company systems were Skype for Business up until late 2019 when they switch to Microsoft Teams both of which are fully monitorable.

76. The Claimant clarified in her oral evidence that she believed it was instant messaging rather than WhatsApp.

77. On 14 June 2019, the Claimant sent an email to Mr Scott in which she asked him if he had spoken to Mr Blanchard about "the instant message situation" and if so did he have any feedback for her. Mr Scott's response that same day was that he had not yet managed to chat to Mr Blanchard and that it was

still on his to-do list for when he next saw him. These emails are at B1 316 and referred to at paragraphs 33 & 34 of his witness statement.

78. We were concerned that Mr Scott did not go straight to Mr Blanchard and speak to him but given his evidence as to the unspecific nature of the concerns it would not have the level of immediacy as suggested in the specific terms that the Claimant alleges.

79. We were also concerned as to why the Claimant did not look into the matter or take action herself given that she was the head of department.

80. Mr Lacey resigned in or about April 2019. We were referred to his Exit Interview at B1 300-302. In answer to a question (question 5) as to any other reasons that influenced his decision to leave, Mr Lacey responded as follows (at B1 300):

"First, there's my line manager's passive-aggressive, mocking, sarcastic, demeaning and bullying behaviour to keep me in check, particularly when I challenge the status-quo. Then there's the fact that the role I'm expected to perform is not that of a business analyst at all; mostly I'm expected to be the team babysitter (for the whole team, not just my direct reports) to compensate for my managers absences. Then there's the (lack of) IT strategy and the dependence on out of date and bug-ridden legacy systems, for which there is no desire/plan to replace. Finally, there's the stress of having to work with a dysfunctional team every day who behave like teenagers not adults. All of the above have had a detrimental effect on my mental health."

81. In response to a question as to whether there was anything else the Respondent could have done which would have made him less likely to consider an alternative position, Mr Lacey responded as follows (at B1 301):

"I'm really surprised and disappointed there has been no opportunity to properly discuss the issues identified in my answers to questions 5 and 6. Neither my line manager nor her manager have sought to understand where the root of the problems lies. Discussion of my resignation by line management has amounted only about 10 minutes."

82. Whilst this is clearly an acknowledgement of the issues within the team from both the Claimant and the members of the team we would comment that there is a world of difference between a dysfunctional team behaving like teenagers and what the Claimant alleges.

83. The Claimant also alleges that in April 2018, the WhatsApp, or instant messaging group, as she has subsequently identified it in oral evidence, changed its name to "Who's she gonna slap now?" This forms the second acts of less favourable treatment identified at paragraph 7b of the agreed list of issues at B1 772.

84. In evidence, the Claimant stated that in April 2018 she saw something on Mr Ganhao's screen with the words "Who's she gonna slap now?" She further stated that this was not the screenshot that has been provided by the Respondent at B1 166. Her belief is that the male members of the WhatsApp/instant messaging group changed the name of the group to this. However, she does not know what the group was called before. Her belief is that these words are a reference to her metaphorically slapping Mr Sanmoogan given the contents of his grievance. By this time Mr Sanmoogan was working in a different office.

85. Mr Scott's evidence was that once the Respondent became aware of this allegation as part of the Tribunal claim, he investigated the issue. He could not find anything inappropriate or anything relating to the allegations that the Claimant had made from Mr Ganhao's instant messaging chats during April 2018 (at B1 152-162). He spoke to Mr Ganhao and his response was that the Claimant must have been confused and that he recalled that around this time a viral You Tube video was being shared within the team entitled "How can she slap". We were referred to a screenshot of this video at B1 165-166. Mr Blanchard said in his evidence that he had never heard of a group chat called "Who's she gonna slap now?".

86. On balance of probability, we do not find that such a group existed, be it WhatsApp or instant messaging, as the Claimant has alleged. The Claimant raised concerns of an unspecific nature with Mr Scott at the time. There is insufficient evidence to support her allegation of unfavourable treatment at paragraph 7a of the agreed list of issues. Similarly, there is insufficient evidence to establish that the group, even if it existed, changed its name to "Who's she gonna slap now?" Whilst the video to which Mr Ganhao referred does not appear appropriate viewing at work (from the screenshot we were referred to), this in itself does not provide sufficient evidence to support the Claimant's allegation (at paragraph 7b of the agreed list of issues). Similarly, whilst Mr Scott does not appear to have taken the matter up with Mr Blanchard as he said he would, we formed the view that given the terms in which the matter was raised with him it is not a matter that would have had the level of importance or immediacy that the Claimant's allegations imbue it with. Moreover, as we have already said, we would express surprise that the Claimant, as Head of Department, did not take the matter in hand herself if it was as she alleged.

87. A further allegation of sex discrimination relates to a parking space given to Mr Blanchard. This is at paragraph 7d ii of the agreed list of issues at B1 772. Whilst this is said to be in 2018 it is clear from the contemporaneous documents that it arose in December 2017 (reference the email between the Claimant and Mark Tejada at B1 124-126).

88. The Claimant's evidence was that Mr Ganhao told her that Mr Blanchard was going to be permitted to park on site. Parking spaces were highly sought after given the limited number available. She was rather surprised and raised it with Mr Guthrie. As a work-related benefit and as she was Mr Blanchard's manager, she would have expected this benefit to have at least been mentioned to her. Mr Guthrie and Mr Tejada, (one of the Regional Directors) both denied initially having given Mr Blanchard this privilege. However later on Mr Tejada said "well he's a senior manager it's only right that he parks on site". But the Claimant had two other team managers of the same seniority as Mr Blanchard without such benefits. She raised the matter with Mr Plumb and he agreed it was inappropriate. It was not changed.

89. Mr Blanchard's evidence was that he had previously asked Mr Tejada that if a parking space became free, whether he might be able to use it, and Mr Tejada had said he would. Subsequently one of the allocated spaces was then no longer required, so he started using it. In oral evidence, he further stated that he saw his opportunity in that it was managed by Mr Tejada and

he knew the space was available so he asked. He was asked in cross examination should he not have asked the Claimant first and he said possibly yes.

90. On balance of probability, we found the evidence on this unsatisfactory and that at most it indicated that Mr Blanchard was a bit opportunist and that his use of the parking space was more of a casual arrangement than a formal one.

91. The Claimant also alleges that in late 2019 or early 2020, Mr Tejada said that "you're not really though are you?" when the Claimant pointed out to him that her role was not the Head of Development but was in fact the Head of the IT Department. This is at paragraph 7 d ii of the agreed list of issues at B1 773.

92. In her evidence, she linked this to the parking space allegation. She states that Mr Tejada was presenting some new recruits to the DT in late 2019 or early 2020 and he referred to her as the Head of Development. She corrected him on one occasion, reminding him that she was in fact the Head of the IT Department to which he responded "you're not really though, are you?" She stated in evidence that this comment along with Mr Blanchard being awarded an on-site car parking space without any consultation made her feel that she was being sidelined; excluded. She further stated that it was clear that the senior male leadership, other than Mr Plumb, manifested a preference to work with Mr Blanchard rather than her.

93. On balance of probability, we struggled to link these two matters together. This was particularly so, given our findings that the car park issue was more a casual arrangement than a formal one, that she was the Head of Department and could have insisted on priority if she needed the parking space and that the car parking space issue arose in December 2017 and so was at least two years prior to the comment Mr Tedeja made in either late 2019 or early 2020. Mr Tejada was not called to give evidence and we accept the Claimant's evidence that he made the comment with nothing more to go on. But she is linking events that are two years apart and so it is hard to see how this amounts to direct discrimination.

94. At paragraph 7 e of the agreed list of issues at B1 773, the Claimant alleges that she was excluded from a number of meetings that she should have been invited to between 2018 until her employment ended in July 2020.

95. The first of these are exclusion from meetings relating to the outsourcing of printing and electronic invoicing in 2018.

96. Mr Scott's evidence was that during 2018 he was involved in a mail digitisation project which involved outsourcing of printing and invoice processing. The Claimant was aware of this project as it was discussed at OMC (we were referred to B1 280 in this regard). Whilst one of the members of the project may have reached out to Mr Blanchard in terms of access to the Respondent's infrastructure, neither he nor anyone from IT were included in these meetings (we were referred to B1 312a & 312b in this regard). In oral evidence, Mr Scott stated that Mr Blanchard was not invited to the

meetings and neither was the Claimant and that it would not have been relevant for her to attend because it was simply exploring outsourcing and Mr Blanchard was involved because he had experience of this from his last employment.

97. Mr Blanchard said in evidence that he recalled meetings relating to printing and he was present as the IST were responsible for all the current printers and at the time the Respondent was migrating from Ricoh to HP printers.

98. On balance of probability, we formed the view that he was talking about a different set of meetings to the ones relating to the outsourcing printing and invoice processing. We did not feel there was sufficient evidence here to make a determination.

99. The second of the meetings that the Claimant alleges she was excluded from were the Covid Cobra meetings from March 2020 onwards.

100. In evidence, Mr Guthrie stated that in early March 2020, given the increasing concerns about Covid-19, he decided to establish a crisis management team and tasked Mr Scott to set this up. Mr Scott named it COBRA after the Government's emergency planning committee. It initially consisted of Mr Guthrie, Mr Comely, the Facilities Director, Mr Scott and Mr Blanchard. Mr Blanchard was involved in several of their early meetings as much of the focus was on the Respondent's IT infrastructure. The Claimant was also invited in during the meetings and was also formally invited and attended several later meetings (we were referred to B1 345 & 350 in this regard).

101. In oral evidence, Mr Guthrie added that these were ad hoc meetings dealing with a moving picture and they included whatever was in the media that day about the Covid-19 situation.

102. The third of the meetings that the Claimant alleges she was excluded from were meetings in 2020 at which strategic decisions were being made.

103. In evidence, Mr Guthrie stated that strategic decisions were decided at Board level and as such the Claimant would not be invited as a matter of course. In oral evidence, the Claimant accepted that she had been invited in the past to Board meetings although she added that Mr Scott had been invited to more than her.

104. Whilst this does not form part of the agreed list of issues, we heard evidence as to the Claimant being asked to leave a GDPR meeting held late in 2018 at which Mr Comely, the Respondent's Designated Data Protection Officer, Mr Scott and Mr Blanchard, who was the Deputy Data Protection Officer were present.

105. Mr Blanchard said in evidence that these were twice yearly meetings and that they were chaired by Mr Comely and he and Mr Scott were permanent members. He recalled that the Claimant did attend one meeting to discuss GDPR concerns with PMS. Once the item had been discussed, Mr Comely came to a natural pause and he recalled that it was a bit awkward because they were all expecting the Claimant to leave the meeting. He further

recalled that Mr Scott was the one to break the awkward silence and asked the Claimant to leave as they needed to move on to other matters. However at no time was Mr Scott aggressive towards her, it was just awkward. Mr Scott's evidence corroborated Mr Blanchard's evidence.

106. On balance of probability, we could not see anything untoward in this. Whilst we found it odd that they simply did not ask her to leave straight away it would appear that they were simply embarrassed that she did not immediately leave of her own volition.

107. At paragraph 7 f of the agreed list of issues, the Claimant alleges that from the start of 2020, the Respondent did not involve her in the plans for the future of the department, which she was head of, and the potential for cuts was identified.

108. This is a matter that we will go into in more detail when looking at the events leading to the Claimant's dismissal which the Respondent alleges was by virtue of redundancy. However, we would make the point that given that strategic decisions as to IT had been removed from the Claimant's department, which would include the future of PMS, such matters were more appropriately discussed at Board level. In essence, the distinction is between the Respondent making a business decision and then consulting those members of staff affected by the business decision and the point that the Claimant is raising which is whether it was appropriate for her to have been involved in the discussions that led to the business decision.

109. Much of the Claimant's case centres around the behaviour of the male members of staff both within the DT and the IST. She refers to this variously as "laddish" behaviour, "childish" behaviour and has dubbed them as being "the mates' club". In essence, she is referring to boorish, offensive behaviour of a sexist nature to the exclusion of women.

110. We heard evidence as to a number of matters that the Claimant relied upon:

    a) The office wall that was at some point between the DT and the IST. The allegation is essentially that the male members of IST were in one room behaving in a "laddish" manner to the exclusion of women who could hear them laughing and joking behind the wall. The Claimant at some point in 2017 requested the wall be removed. This required investigation as to whether it was a supporting structure and whether the building landlord's consent was needed. It was removed in 2020 when finally the Respondent had budget approval and the funds to do so.

    b) Mr Scott's visits to the Department. The allegation is that Mr Scott only came to visit the IST and not the DT and specifically not the Claimant. This was denied by Mr Scott and Mr Blanchard. We also note that at this time the Claimant was only in the office 3 days a week;

    c) Ms Clayton gave extensive written evidence as to the behaviour of the male members of her team: that there would be extensive discussions in the morning as to where they were going to go for lunch, from which she was excluded along with Mr Lacey and the Claimant; that they made sexist

comments about working from home when the Claimant was not in the office; when the Claimant raised the issue of all of the team working in the same office, this was instantly shutdown by Mr Blanchard on the basis that the DT liked to work in the quiet whereas his team liked to have music on in the background; that on days when the Claimant was not in the office the behaviour of the male members of both teams except Mr Lacey was very childish and on numerous occasions involved the use of derogatory language, offensive comments about members of staff and in some cases unnecessary comments/jokes about other members of the team; as to the volatility of the relationship between Mr Morton and Mr Ganhao; that members of the DT, more often than not when the Claimant was not in the office or had left for the day, would constantly leave their desks to go to the IST, from which she formed the impression that they were not working; moreover, Mr Blanchard did not appear worried about this; as to members of the IST and some members of the DT partaking in an online chat group (as we have considered above); as to feeling excluded from the IST office because it was generally locked during the day;

d) We also heard evidence as to members of the IST throwing rubber chickens at each other, carrying out childish pranks on each other, firing Nerf guns in the office and as to offensive photographs on the wall of the office;

e) The Claimant also alleges that Mr Blanchard deliberately tapped on the wall between the two offices to annoy her after she had complained about it.

111. Mr Blanchard addressed these various allegations within his written evidence. In essence he refuted that either he or his team behaved in a way that could be described as laddish behaviour. He did accept that on occasions the team could get too loud or would enjoy each other's company, but if the behaviours that the Claimant alleges took place, he would have addressed it and not allowed it to manifest. He added that the Claimant never raised any such concerns to him directly or to his knowledge, to any other senior manager within the company. He became aware that the team were firing Nerf guns in the office but he immediately stamped out what he described as this immature behaviour. We were referred to his email at B1 123 in this regard. With regard to rubber chickens, his evidence was that these were joke Christmas presents purchased among the team which sat on the shelves in their office as a fun decoration. We were referred to the photograph at B1 435 in this regard. With regard to practical jokes, his evidence was that this was something the team did participate in. It was within their own team environment and was never inappropriate. He gave examples as things like unplugging a lead, taking a screenshot and "freezing" that person's computer. He added that on occasions they would have one of the female team members visit them, namely Lesa, and Lesa would also be involved in this. This is a reference to Ms Downes and she does confirm that she took part in such practical jokes in her written evidence. With regard to the tapping, Mr Blanchard explained that he can zone out when working and listening to music, and that he does have an annoying habit of tapping on the table with an object, or with his foot on a table leg, and that this could become

a disturbance. He further explained that his team would regularly point this out to him and that he did recall one occasion when the Claimant asked him to stop and he did so. With regard to allegations of pictures and quotes, he accepted that their office did have nicknames and pictures on the backs of their chairs and that there were also posters/sayings attached to their noticeboard. He referred us to the photograph at B1 435. However, he did not think that any of these things were offensive to either male or female colleagues. He also stated that no complaints were ever raised and the Claimant never mentioned anything in their office to be inappropriate.

112. With regard to Ms Downes' evidence, we would note that she was not working in the IT team any longer in 2017 although she does not accept that a laddish culture existed or that she was treated any less favourably than anyone else because she was a woman. She further stated that she never witnessed any inappropriate behaviour by any member of the IT support team towards any other employee let alone a female employee. She very much echoed Mr Blanchard's evidence that the behaviour that the Claimant complains of was not derogatory and was not offensive to her as a female and simply amounted to minor workplace pranks.

113. We would make the comment that we did find it surprising that the Claimant as Head of Department did not take any action directly to deal with the matters that she alleges were taking place on what appeared to be almost a daily basis or raise the matter with her seniors.

114. On 3 January 2020, Mr Scott emailed the Claimant to notify her that he was commencing the implementation of "Project Juliet (Job Evaluation/Grading)". This was a huge strategic project changing the way in which pay and reward worked. He notified the Claimant that this was going to start with senior management and he requested her Job Description. The Claimant provided this albeit belatedly. We were referred to email correspondence at B1 332-336. Mr Scott said in evidence that this was not requested as part of the later restructure process of which he was unaware at that time.

115. On 22 May 2020, Mr Scott produced a report entitled "Project Arnold". This is at B1 356-364. This was essentially a document providing guidance to the Board to assist in the completion of a business case for a restructure that placed existing roles at risk of redundancy. An explanation of the potential redundancy situation, the numbers and descriptions of those employees affected, the options on alternative employment opportunities available to them, the selection process required and the consultation arrangements and timetable are set out within the report.

116. The report states that a new strategic direction for HML is being developed, entitled "Perform and Transform". In particular (at B1 359):

"A key component of the transform stage is the supporting infrastructure. It has long been known that the current PMS system is not fit for purpose in the new digital age and is thus not fit to deliver on the transform elements of the strategic change. It is thus proposed that all development on this system is 'frozen'. There will be a requirement to continue to maintain/fix bugs in PMS, however, no wholesale development will continue.

As a result of freezing development, a restructure is required within the Infrastructure team. Following this restructure, a period of time will be required to realise return on investment following redundancies

stop once the ROI has passed funding will be diverted into the transform phase. As such this will be a 2 phase restructure plan."

117. The report continues:

"The HML IT team is currently split into 2 distinct teams; infrastructure and developers. The infrastructure team (led by Matthew Blanchard) will not be affected by this restructure…

… All roles linked to PMS/OnBase and its development will be at risk of redundancy. It is established some roles were required to maintain PMS Developer Team roles that will be retained will be established during consultation and in further discussion with the HML Board.

It is envisaged that 5 or 6 FTE will be required to 'maintain' the current systems. One FTE / Software Support Analyst."

118. Under the heading "If a selection process is required, what is the proposed method of selection?" the report states as follows (at B1 363):

"The IT Developer roles are unique in nature, Sarah Longman's role could be pooled with Matthew Blanchard's, however, it is considered to be very different roles/function.

This pool is to be discussed with Sarah during consultation if she feels she could be pooled with mats role. If so we will conduct a competitive selection process. Due to the nature of this role (technical) to be completed by the non-Exec Director – Anand, and a further HML Board Member. The consulting manager (Alec) is not to be involved in any selection process. If HR support as required by the board this will be provided by the either Anthony or Andrea."

119. The timetable indicated that collective consultation would commence on 1 June 2020 followed by individual 1-1's from that date until 12 June 2020 with an outcome being provided to staff on that later date.

120. In the event, the process did not commence until 2 June 2020. On that date Mr Guthrie met with the Claimant to deliver the planning restructure to her in advance of the wider team.

121. We were referred to Mr Guthrie's notes of the various meetings he held with the Claimant during the consultation meetings which are at B1 365-372. From these notes, we observe that the Claimant vaguely refers to there being other issues and wanting to meet with Mr Guthrie outside of the process, that the issue of being pooled with Mr Blanchard is raised and she indicates that she will get back to Mr Guthrie about this but she never does, and we formed the view that she did not really fight for her job or offer any alternative to redundancy and does not take up his offer in the last meeting to chat outside of the process.

122. We note in particular the following documents: 2 June 2020, the redundancy warning letter sent to the Claimant at B1 380-381; 9 June 2020, her individual redundancy consultation meeting letter at B1 406; 12 June 2020, an email to Claimant from Mr Scott as to the provision of assistance in the form of introduction to a specialist in IT recruitment at B1 407; 12 June 2020, her redundancy dismissal letter at B1 408-410 which contains a schedule setting out her entitlement to a statutory redundancy payment in lieu of notice. This letter indicated that her employment would terminate on 10 July 2020 and notified her of the right to appeal the decision.

123. The Claimant does not appeal and indicated in evidence that in effect she saw no point as it was a forgone conclusion.

124. We also note that Mr Scott sent the Claimant a number of job vacancies during the consultation and notice period. These are at B1 415-418. Even on a cursory read, these do not appear to be jobs that the Claimant would have been likely to consider.

Submissions

125. Both Counsel provided us with written submissions which they spoke to orally. We do not propose to set out the submissions within our judgment unless we specifically need to refer to them. However, we can assure both parties that we have taken them fully into account in reaching our findings and conclusions.

Essential law

126. Section 13 of the Equality Act 2010:

"(1) 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."

127. Section 19 of the Equality Act 2010:

"(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.
(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—
(a) A applies, or would apply, it to persons with whom B does not share the characteristic,
(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
(c) it puts, or would put, B at that disadvantage, and
(d) A cannot show it to be a proportionate means of achieving a legitimate aim."

128. Section 26 of the Equality Act 2010:

"(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…

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
(a) the perception of B;
(b) the other circumstances of the case;
(c) whether it is reasonable for the conduct to have that effect."

129. Section 98 of the Employment Rights Act 1996:

"(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—
(a) the reason (or, if more than one, the principal reason) for the dismissal, and
(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it—
(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
(b) relates to the conduct of the employee,
(c) is that the employee was redundant, or

(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(3) In subsection (2)(a)—
(a) "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and
(b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

(4) [In any other case where] the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—
(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
(b) shall be determined in accordance with equity and the substantial merits of the case."

Conclusions

Jurisdiction

130. Paragraphs 5 and 6 of the agreed list of issues at B1 772 asked us to consider whether we have jurisdiction to determine the Claimant's complaints under the Equality Act 2010. This requires us to consider a number of matters: were each of the complaints presented to the Tribunal within the requisite time limits; if any of them were not, do they form part of a continuing act; or would it be just and equitable for us to extend time so as to allow us jurisdiction to determine those complaints?

131. Time limits in which to present complaints to the Employment Tribunal are governed by section 123 of the Equality Act 2010. Given the date that the claim form was presented (30 November 2018) and the dates of early conciliation (1 October to 1 November 2018), any complaint about something that happened before 2 July 2020 is potentially out of time.

132. However, an act of discrimination which *"extends over a period"* shall be treated as done at the end of that period under section 123(3) of the Equality Act 2010.

133. In some situations, discrimination continues over a period of time, sometimes up to the date of leaving employment. If so the time limit in which to present a Claim Form to the Employment Tribunal runs from the end of that period. The common, although technically inaccurate, name for this is 'continuing discrimination'.

134. In Hendricks v Commissioner of Police of the Metropolis [2003] IRLR 96, the Court of Appeal held that a worker need not be restricted to proving a discriminatory policy, rule, regime or practice, if s/he could show that a sequence of individual incidents were evidence of a 'continuing discriminatory state of affairs'.

135. We were grateful to Mr Clement for his submissions as to jurisdiction which are at paragraphs 36 to 42. His position is that there is no continuing course of conduct but in any case it could not have continued until 2 July 2020 for a number of reasons: the Claimant was no longer in the office due to the national Covid-19 lockdown which officially began on 23 March 2020; from 2

June 2020, Mr Guthrie placed her and her team on paid leave until 12 June 2020; and all of her redundancy consultation meetings were conducted via Microsoft Teams.

136. He submits that the last alleged act of each of the complaints is as follows:

    a) Direct discrimination – 12 June 2020
    b) Harassment – 23 March 2020
    c) Indirect discrimination – 5 June 2020 (the date on which Mr Guthrie mentioned that pooled position would be 5 days in the office.

137. We agree with his submissions save for the following. Whilst dismissal does not at first glance appear to be pleaded as an act of direct discrimination within paragraph 7 of the agreed list of issues, it is put that way at paragraph 1 in respect of the complaint of unfair dismissal. However, dismissal does not form part of the complaints of indirect sex discrimination or harassment related to sex. The Claimant was advised of her dismissal on 12 June 2020 to take effect after a period of garden leave on 10 July 2020.

138. Mr Singh submitted in relation to the reason for dismissal, the allegations of laddish culture and undermining the Claimant are inextricably linked to her dismissal and so amounted to an ongoing state of affairs. We were not completely convinced by this argument given the date on which the Claimant ceased to be in the office and then on paid leave.

139. On the evidence before us and the submissions we heard, it is therefore not possible to reach the obvious conclusion that any of the conduct complained of formed part of a continuing course of conduct which continued to at least 2 July 2020. However, we did form the view that it is possible in respect of the Claimant's allegation of unfair selection for redundancy (which is pleaded as part of her direct discrimination complaint) that this alleged discriminatory state of affairs continued until her dismissal on 12 June 2020 which was finally effective from 10 July 2020.

140. An Employment Tribunal may allow an Equality Act complaint outside the time limit if it is just and equitable to do so. This is a wider and therefore more commonly granted discretion than for unfair dismissal complaints which is based on whether it was reasonably practicable to present the complaint in time. The exercise of our discretion in respect of Equality Act complaints is a process of weighing up the reasons for and against extending time and setting out the rationale. Case law has suggested that a Tribunal ought to consider the checklist under section 33 of The Limitation Act 1980, suitably modified for tribunal cases.

141. The factors under the Limitation Act (as modified) are these:

    a) the length of, and reasons for, the worker's delay;

    b) the extent to which the strength of the evidence of either party might be affected by the delay;

    c) the employer's conduct after the cause of action arose, including his/her

response to requests by the worker for information or documents to ascertain the relevant facts;

d) the extent to which the worker acted promptly and reasonably once s/he knew whether or not s/he had a legal case;

e) the steps taken by the worker to get expert advice and the nature of the advice s/he received. A mistake by the worker's legal adviser should not be held against the worker and appears to be a valid excuse.

142. However, we are not limited to these matters but should consider all significant facts, which almost always will include the length of and the reasons for the delay.

143. We should also consider whether the employer is prejudiced by the lateness, ie whether the employer was already aware of the allegation and so not caught by surprise, and whether any harm is done to the employer or to the chances of a fair hearing by the element of lateness.

144. We were grateful to Mr Singh for his submissions (at paragraph 32 of his written submissions), and took these into account. However, it is fair to say that the Claimant's evidence as to why she waited until she did to bring her claim was limited and whilst she alluded to her mental state at the time, we had no evidence in support of this.

145. In the end we formed the view that given the significance of these matters to both parties, it was only fair to go on and reach conclusions on the substantive complaints notwithstanding the time issues but only in as far as it was appropriate to do so.

Burden of Proof

146. Under section 136 of the Equality Act 2010, if there are facts from which an Employment Tribunal could decide, in the absence of any other explanation, that a person has contravened the provision concerned, the tribunal must hold that the contravention occurred, unless that person can show that he or she did not contravene the provision. We have taken account of the guidelines set out by the Court of Appeal in Igen Ltd v Wong [2005] EWCA Civ 142; [2005] IRLR 258 regarding the burden of proof.

147. We have also taken into account Madarassy v Nomura International plc [2007] IRLR 246, CA which found that the mere fact of a difference in protected characteristic and a difference in treatment will not be enough to shift the burden of proof. There needs to be *"something more"*. There has to be enough evidence from which a reasonable tribunal could conclude, if unexplained, that discrimination has (not could) occurred.

148. In Qureshi v (1) Victoria University of Manchester (2) Brazie [2001] ICR 863, the Employment Appeal Tribunal stated that a Tribunal should find the primary facts about all the incidents and then look at the totality of those facts, including the Respondent's explanations, in order to decide whether to infer the acts complained of were because of the protected characteristic. To

adopt a fragmented approach "would inevitably have the effect of diminishing any eloquence that the cumulative effect of the primary facts might have" as to whether actions were because of the protected characteristic.

149. We have also taken into account the guidance from the, then, House of Lords, in Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285 HL. The House of Lords considered the classic Tribunal approach to discrimination cases, which is to first assess whether there has been less favourable treatment, and if so, consider if the treatment was on grounds of the relevant prohibited conduct and stated that it may be more convenient in some cases to treat both questions together, or to look at the reason why issue before the less favourable treatment issue.

150. We have considered the evidence that was put before us and have reached findings of fact as indicated having looked at the matters individually and then gone back and looked at the matters in their totality, drawing inferences from the primary facts if we felt it appropriate to do so.

Direct discrimination

151. Under section 13 of the Equality Act 2010, it is unlawful to treat a worker less favourably because of a protected characteristic, in this case sex, by reference to an actual or hypothetical comparator in the same or similar circumstances.

152. The complaints of direct sex discrimination are set out at paragraph 7 and 8 of the agreed list of issues at B1 772-773.

153. Paragraph 7 sets out a series of allegations of less favourable treatment and cross-references to the Claimant's Amended Further and Better Particulars of Claim at paragraphs 66 (a)-(g) (at B1 50).

154. Dealing first with the allegation of less favourable treatment at paragraph 7 a, as we have indicated above we did not find that such a group existed be it WhatsApp or instant messaging. The Claimant raised concerns of an unspecific nature with Mr Scott at the time. There is insufficient evidence to support the existence of such a group and we would add that neither the Claimant nor Ms Clayton saw specific messages on their male colleagues' screens, they were not able to provide any examples of such messages or to identify with any particularity any evidence of receiving the messages. Whilst they may genuinely have believed that such a group existed, there was insufficient evidence for us to form the view on balance of probability that such a group existed, from which the Claimant was excluded.

155. With regard to the allegation at paragraph 7 b, as we have indicated above we did not find on balance of probability that the group existed or that it changed its name to "who's she gonna slap now?" Indeed the Claimant was unable to tell us what the group was previously called and whilst she may have seen something on Mr Ganhao's screen it is somewhat of an assumption to conclude that this related to a messaging group and represented the name of it. As we have also indicated, whilst it does appear

that the video that Mr Ganhao admits viewing at work was not appropriate viewing, that in itself does not provide sufficient evidence to support this allegation.

156. With regard to the allegation at paragraph 7 c, as we have indicated above we did not find that the Claimant raised issues of a laddish and exclusionary culture but we found that Mr Scott indicated that he would take action to investigate what in effect was a concern from the Claimant that male members of staff were spending too much time instant messaging each other. Whilst he did not take the matter up with Mr Blanchard as he said he would, we formed the view that given the terms in which the matters were raised with him, this was not a matter that would have had the level of importance or immediacy that the Claimant's allegations imbued it with? it with. As we also indicated, we would express surprise that the claimant as Head of Department did not take the matter in hand herself if it was as she alleged.

157. Paragraph 7 d sets out a series of allegations of less favourable treatment with regard to a number of matters.

158. Dealing with the first of these at sub-paragraph i. The Claimant alleges that she was not properly informed or consulted in April 2018 about the suggestion that 4 members of the DT had to be stopped from walking out, which was reported by Mr Blanchard to Mr Guthrie rather than to her. We have set out our findings with regard to this matter above. We conclude that what Mr Blanchard said arose from an impromptu discussion at the end of a meeting and was dealt with through the site visit update. It should have been raised with the Claimant by Mr Blanchard, given that she was his line manager. But as Mr Blanchard said in evidence he was told this in confidence and he did not want to break that confidence and those issues were then dealt with by Mr Guthrie, HR and Mr Plumb. On balance of probability we accept this explanation.

159. With regard to sub-paragraph ii. The Claimant alleges that she was not properly informed or consulted in 2018 (but in fact it arose in December 2017) about the decision to offer Mr Blanchard a parking space on-site. As we indicated in our findings, we found the evidence on this matter unsatisfactory and that the most that was indicated was that Mr Blanchard was a little opportunist and that his use of the parking space was more a casual arrangement than a formal one. In the circumstances, it did not appear to us that there was any need for the claimant to be properly informed or consulted.

160. With regard to sub-paragraph iii. This relates to the comment by Mr Tejada in late 2019 or early 2020 "You're not really though, are you?" As we indicated in our findings we struggled to see the link between this comment two years later, and the parking space allegation which the Claimant took umbrage to and/or regarded as being excluded.

161. Turning then to paragraph 7 e. This sets out a number of allegations of less favourable treatment relating to exclusion from various meetings. As we have indicated in our findings: with regard to i) there was some confusion as to what meetings the Claimant was referring to and that Mr Blanchard's

evidence of attending meetings regarding printing appeared on balance of probability to refer to a different set of meetings and with regard to the meetings that the Claimant was referring to there was insufficient evidence to indicate that she was excluded from meetings which she should have been invited to; with regard to ii) we accepted Mr Guthrie's evidence that these were ad hoc meetings dealing with the fluid situation at that time of Covid-19 which it was not necessary or appropriate for the Claimant to attend but in any event, the Claimant had been invited to several such meetings as had Mr Blanchard; with regard to iii) meetings in 2020 at which strategic decisions were being made, we accepted Mr Guthrie's evidence that strategic decisions were made at Board level and that the Claimant would not be invited to these as a matter of course.

162. Turning then to the allegation of less favourable treatment at paragraph 7 f, that from the start of 2020 the Respondent did not involve the Claimant in the plans for the future of the department, which she was head of, when the potential for cuts was identified. We have dealt with this in more detail with regard to our findings in relation to the complaints of unfair dismissal. However, for the purposes of this claim, whilst the Claimant was not involved in the plans for the future of her department, this was in the sense that the Respondent had already determined that strategic decisions relating to IT work had been removed from consideration by the Claimant's department and this included the future of PMS. These matters were being discussed at Board level where a business decision was made to restructure the Claimant's department. The Claimant was then involved once the decision had been made and she was consulted in respect of her own potential redundancy.

163. Turning then to the allegation of less favourable treatment at paragraph 7 g. As we indicate below when considering the complaints of unfair dismissal, we did not find for the purposes of section 98(4) of the Employment Rights Act 1996 that the Claimant was unfairly selected for redundancy. In terms of the sex discrimination complaints, whilst there were historic matters relating to the Claimant's management style and the behaviour of members of her department, the need to restructure her department emanated from strategic decisions as to the future of the Respondent's IT development and in particular the decision to dispense with PMS. The Claimant was selected on the basis that the Respondent wished to retain the expertise within the IST and in particular Mr Blanchard. However, the Project Arnold report recognised that there was a possible case for pooling his role with that of the Claimant in selecting one or other of them for redundancy. This possibility was put to the Claimant by Mr Guthrie during the consultation process, she indicated that she would try to revert to him the following day but failed to do so and did not raise the matter again.

164. We gave considerable thought to the previous complaints about the Claimant's management style and Mr Scott's recommendations, in essence to a) get the Claimant back in the office, b) appoint an NED and c) if that was not possible in the near future to manage her out of the business or demote her (at B1 170) and the extent to which this was indicative of there being

something more to her selection for redundancy than meets the eye. However, this was a report dated 3 April 2018, almost 2 years before Project Arnold and the proposed restructuring. It arose from concerns about her personality/management style and lack of interpersonal communication skills, which even her ally, Mr Plumb, acknowledged. In the meantime, Mr Plumb had left and Mr Guthrie took over as CEO in December 2019, the Respondent had placed strategic IT decisions outside of the IT department, its faith in PMS had dwindled, the Claimant along with other senior managers had provided job descriptions in January 2020, the onset of the Covid-19 pandemic materialised from March 2020 onwards, which had a considerable impact on businesses generally, Mr Guthrie announced that no bonuses were to be paid due to Covid in March 2020 and in April 2020 he announced the new digital transformation.

165. Paragraph 8 asks us to consider whether the less favourable treatment set out in paragraph 7 (the list of issues actually refers to paragraph 6 but this is clearly a mistake) was because of the Claimant's sex (the Claimant was born female and identifies as female). The Claimant relies upon a hypothetical comparator male Head of IT or other department.

166. We did not find paragraph 7 a to c made out.

167. With regard to paragraph 7 d i, there is nothing to indicate that the less favourable treatment complained of was because of the Claimant's sex.

168. With regard to paragraph 7 d ii, we did not find this made out.

169. With regard to paragraph 7 d iii, whilst we accepted that the comment was made, we did not accept the link between this and the allegation regarding the car park space (which in any event we did not find made out) or the conclusion that the Claimant drew from the words.

170. With regard to paragraph 7 e. We did not find the allegations relating to each of the meetings made out.

171. With regard to paragraph 7 f. Whilst the Claimant was not involved in the plans for the future of the department, which she was the head of when the potential for cuts was identified, we have set out the reasons why above and we do not believe these amount to an indication for the basis on which it is appropriate to infer that this was because of her sex.

172. With regard to paragraph 7 g. We had no reason to doubt the genuineness of the strategic decision taken to restructure the IT department and even with the concerns about the Claimant's management style and the dysfunctional behaviour of the majority of males within her department, there was nothing that it was appropriate to take from this and to infer that the decision to select her for redundancy was because of her sex.

173. Dealing then with the dismissal itself, which at paragraph 1 of the list of issues is said to be an act of sex discrimination. For much the same reasons above we find that the Claimant was dismissed because of the strategic decision to discontinue development of PMS, that the Claimant was identified as at risk of redundancy, the Respondent wishing to retain the more specialist skills

and experience of Mr Blanchard. Nevertheless, the Respondent recognised that there was a case to be made to pool the Claimant with Mr Blanchard and if she was interested in doing so to conduct a competitive recruitment process. However, the Claimant did not revert to the Respondent on the matter and so the Respondent concluded that her position was redundant. Whilst the Respondent indicated that the position would need to be working 5 days in the office, Mr Guthrie indicated in evidence, which we accepted, that the proposal was at a tentative stage and had the Claimant expressed an interest in being pooled, it may have been open for discussion.

174. We therefore conclude that the complaints of direct sex discrimination are not well-founded and are dismissed.

Indirect sex discrimination

175. Indirect discrimination is defined in section 19 of the Equality Act 2010. In essence indirect discrimination occurs where there is apparently equal treatment of all workers, but the effect of certain requirements and practices imposed by the employer puts workers with a certain protected characteristic at a particular disadvantage. If the Claimant is able to show that indirect discrimination has occurred, then a defence is available. If the employer can prove that requirements and practices imposed are justifiable then the treatment complained of will not be unlawful.

176. Paragraphs 9-13 of the agreed list of issues set out the Claimant's case. The Claimant alleges that the Respondent applied to her a provision, criterion or practice ("PCP") of requiring any employee who filled the role of Infrastructure Manager to be in the office 5 days a week and in Croydon.

177. The Claimant's position regarding this matter is set out at paragraphs 210-211 of her witness statement. In oral evidence, Mr Guthrie denied that he said this to put a stop to her applying for the role and he said that had the Claimant applied it was a matter that was open for discussion

178. Mr Guthrie denied that he stipulated the need to work 5 days in the office to stop the Claimant from being interested in the role and said had she indicated that she was then it would have been open for discussion. He used the phrase "if we had gone into a discussion about it then I may have been educated otherwise".

179. In his written submissions, Mr Singh averred that the PCP was not a one-off PCP because it continued to apply to the Claimant once it was raised and presumably applied to all staff. The disadvantage caused to the Claimant and to women generally was the impact that having to attend the office in person would have on their childcare responsibilities. Whilst he submitted that Mr Guthrie admitted he was not educated on this point and relied upon it as an admission that this rigid PCP was not justified, this is not the note that we took of Mr Guthrie's evidence on the point. We did not interpret it this way.

180. Mr Clement dealt with this matter in oral submissions. He averred that the PCP did not apply to the Claimant because it never got that far. The Claimant gave no indication that she was interested in being pooled with Mr Blanchard.

In any event, the matter arose on 5 June 2020 and never went any further and so the complaint is out of time.

181. We came to the conclusion that Mr Clement was correct in his submission that the PCP was never applied to the Claimant and in any event she never came back on being pooled or not, but given that it arose on 5 June 2020 and the decision to dismiss the claimant was made on 12 June 2020 with no further indication from her as to her interest, the complaint is clearly out of time.

182. In any event, we were not convinced by Mr Singh's assertion that the disadvantage was obvious (in effect relying on what is called childcare disparity) given that there was no further discussion as to the extent of the requirement to be in the office 5 days a week in Croydon or even identification or discussion of the hours of work required in the office.

183. We therefore conclude that the complaint of indirect sex discrimination is not well-founded and is dismissed.

Harassment related to sex

184. Harassment is defined under section 26 of the Equality Act 2010. A person "A" harasses another "B", if "A" engages in unwanted conduct related to a protected characteristic, which has the purpose or effect of violating the dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for B. In deciding whether the unwanted conduct has such purpose or effect, the Tribunal must consider the perception of B, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

185. We took into account that where the conduct complained of does not have that purpose, i.e. where it is unintentional in that sense, it is not necessarily unlawful just because the worker feels his dignity is violated etc. We also took into account, as required, the other circumstances of the case and whether it is reasonable for the conduct to have that effect, as well as the perception of the worker bringing the complaint. The starting point is whether the worker did in fact feel that his dignity was violated or that there was an adverse environment as defined in the section and that it is only unlawful if it was reasonable for the worker to have that feeling or perception. But not forgetting that nevertheless the very fact that the worker genuinely had that feeling should be kept firmly in mind (Richmond Pharmacology v Dhaliwal [2009] ICR 724).

186. We were also guided by ECHR Employment Statutory Code of Practice at paragraph 7.18:

"In deciding whether conduct had that effect, each of the following must be taken into account:

a) The perception of the worker; that is, did they regard it as violating their dignity or creating an intimidating (etc) environment for them. This part of the test is a subjective question and depends on how the worker regards the treatment.

b) The other circumstances of the case; circumstances that may be relevant and therefore need to be taken into account can include the personal circumstances of the worker experiencing the conduct;

for example, the worker's health, including mental health; mental capacity; cultural norms; or previous experience of harassment; and also the environment in which the conduct takes place.

c) Whether it is reasonable for the conduct to have that effect; this is an objective test. A tribunal is unlikely to find unwanted conduct has the effect, for example, of offending a worker if the tribunal considers the worker to be hypersensitive and that another person subjected to the same conduct would not have been offended."

187. The Claimant's allegations of harassment related to sex are set out in paragraph 14 of the list of issues at B1 774.

188. With regard to sub-paragraphs a to c these are identical to those pleaded at paragraph 7 a to c in respect of direct discrimination and we have already determined that these allegations were not made out.

189. With regard to paragraph d, the matters that the Claimant relies upon as laddish behaviour were not put to the Respondent in those terms or at all at the time but only during these proceedings.

190. But in any event this allegation must be out of time because the Claimant was only in the office up to on or about 23 March 2020 and there is no indication that this behaviour as alleged continued beyond that date.

191. We therefore conclude that the complaints of harassment related to sex are not well-founded and are dismissed.

Unfair dismissal

192. This is set out at paragraphs 1 to 4 of the agreed list of issues. The Claimant's case is primarily that her dismissal was an act of sex discrimination. We have already indicated that we do not accept this. The Respondent's position is that the Claimant was dismissed for a potentially fair reason, namely redundancy. Paragraph 2 of the list of issues then sets out the Claimant's challenges to the fairness of a dismissal by virtue of redundancy and paragraph 3 asks us to consider whether in all the circumstances the Claimant's dismissal was fair or unfair.

193. Section 98 of the Employment Rights Act 1996 sets out how an Employment Tribunal should decide whether a dismissal is fair or unfair. There are two basic stages. Firstly, the employer must show what was the reason, or if more than one, the principal reason, for the dismissal. The reason must be one of the four potentially fair reasons set out in section 98(2) or some other substantial reason of a kind such as to justify dismissal. Secondly, the Employment Tribunal must then decide in accordance with section 98(4) whether it was fair to dismiss the employee for that reason.

194. Redundancy is a potentially fair reason for redundancy. Redundancy has a specific meaning ascribed to it within section 139 of the Employment Rights Act 1996. In broad terms, there are three main redundancy situations: closure of the business as a whole; closure of the particular workplace where the employee was employed; and reduction in the size of the workforce. The case before us potentially falls within the latter of these under section 139(1)(b).

195. A dismissal is by reason of redundancy if it is "wholly or mainly attributable" to a number of factors. This includes at section 139(1)(b) where the fact that the requirements of that business for employees to carry out work of a particular kind or for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.

196. We are satisfied that the Respondent decided in April 2020 that it no longer wanted to develop or use in the medium term its PMS software (and OnBase) because it was in essence, not fit for purpose. The work of the particular kind that diminished or would cease was the need for a head of department who predominantly worked on the developer side and headed up the developer team.

197. We therefore conclude that the Respondent has shown that the potentially fair reason for dismissal is redundancy.

198. We then have to consider the test of reasonableness under section 98(4) of the Employment Rights Act 1996.

199. In particular, we also have to consider those matters which might render a dismissal for redundancy unfair as identified by the Employment Appeal Tribunal in *Williams v Compair Maxam Ltd* [1982] IRLR 83, EAT, as approved by *Robinson v Carrickfergus Borough Council* [1983] IRLR 122, NICA. These can be summarised as follows:

    a) That there was no genuine redundancy situation;

    b) That the employer failed to consult;

    c) The employee was unfairly selected; or

    d) That the employer failed to offer alternative employment.

200. We accept that these are not principles of law but rather standards of behaviour which may alter over time in accordance with the prevailing understanding of what constitutes good industrial relations practice (one obvious point being that they now often have to be applied to establishments with no trade union recognition).

201. In Polkey, the House of Lords expressly adverted to the relevant procedures required in a redundancy dismissal in the following terms:

> *"… in the case of redundancy, the employer will normally not act reasonably unless he warns and consults any employees affected or their representatives, adopts a fair decision which to select for redundancy and takes such steps as may be reasonable to minimise a redundancy by redeployment within his own organisation."*

202. These factors are replicated within paragraph 2 of the agreed list of issues.

Genuine redundancy

203. It is not open to an employee to challenge whether the employer acted reasonably in creating the redundancy situation and equally the Tribunal cannot investigate the commercial and economic reasons which prompted the situation or look into the rights and wrongs of the employer's decision (James W Cook & Co (Wivenhoe) Ltd v Tipper and others [1990] IRLR 386, CA; Moon v Homeworthy Furniture (Northern) Ltd [1976] IRLR 298, EAT.) However, the Tribunal is entitled to investigate whether the redundancy situation is in fact genuine (James W Cook & Co (Wivenhoe) Ltd v Tipper and others [1990] IRLR 386, CA.)

204. We were satisfied from the evidence before us that the Respondent came to a business decision to restructure its IT operations and that as a consequence redundancies were identified within the DT including the Claimant's position as head of department.

205. Whilst the Claimant believes that her redundancy was an act of sex discrimination for the reasons given above we did not reach this conclusion.

Failure to consult

206. An employer should give as much warning as possible of impending redundancies to enable any recognised trade union and affected employees to consider possible alternative solutions and if necessary, find alternative employment (Williams v Compare Maxam Ltd [1982] IRLR 83, EAT).

207. Consultation is very important in redundancy situations and can take many forms. At one end of the spectrum it involves collective discussions and meetings with a recognised trade union; at the other end it will entail discussions with individual employees who are likely to be made redundant. Failure to consult individually may well make a dismissal unfair, although compensation may be limited if consultation would not have made any difference to the outcome.

208. The difficulty for the Claimant is perhaps that she confuses the need to consult over the business decision with the need to consult over the effect of the business decision on her, namely her potential redundancy. This is understandable given her role but not when one takes into account the previous removal of strategic decisions on IT from the IT department and the move away from PMS.

209. Once the decision was made and communicated, the Respondent embarked upon collective and then individual consultation. There were a series of meetings held over a short period of time but nevertheless it is a consultation process and not unreasonable. The Claimant did not really enter into consultation or offer tangible alternatives to redundancy, although we perhaps can understand why. She was offered the chance to be pooled with Mr Blanchard and whilst she asked about 5 days in the office she does not really challenge this and the notes of the meeting indicate that she moves onto discussion of mundane matters. It does come across that she has given up. That, however, does not make the process unreasonable.

Selection

210. An employer must choose a fair pool from which to select the redundant employees. This is very much a matter for the employer and there is much flexibility in deciding on a pool, provided the employer has applied its mind to it and acts from genuine motives (Thomas & Betts Manufacturing Ltd v Harding [1980] IRLR 255, CA). Once a reasonable pool is chosen, the employer can choose any reasonable selection criteria, provided these can be objectively measured and are of course not discriminatory in law. Having chosen fair selection criteria, the employer must apply these fairly and objectively.

211. The Respondent took the view that the Claimant's position was aligned to the DT rather than taking the view that she should have been separately considered as the head of department. However, the Project Arnold report did identify the possibility of her being pooled with Mr Blanchard and then the two of them going through a selection process. Pooling was communicated to the Claimant by Mr Guthrie during the consultation process. She said she would revert to him but did not do so. It is arguable that the prospect was not made attractive when Mr Guthrie said it required attending work 5 days in the office. However, he said in evidence he would have considered the matter further had the Claimant got back to him but she did not. We do not find this unreasonable and we do not believe that it was reasonable to expect the Respondent to have got back to the Claimant regarding pooling when she did not respond as indicated. Indeed, the Claimant attended a further consultation meeting on 12 June and did not raise the matter and further she did not appeal, although we acknowledge her reason for not doing so.

Alternative Employment

212. An employer must at least look for alternative employment and should offer any suitable available vacancies. The employer's duty is not limited to offering similar positions or positions in the same workplace and it should consider the availability of any vacancies with associated employers. When offering alternative employment, the employer must give sufficient detail of the vacancy and allow (unless the job functions are obvious) a trial period. Failure to do so could make a dismissal unfair (Elliott v Richard Stump Ltd [1987] IRLR 215, EAT.) It is up to the employee whether to accept the alternative employment, which might even involve demotion or a reduction in pay (Avonmouth Construction Co v Shipway [1979] IRLR 14, EAT.) Employers should consult about possibilities and not make assumptions about what jobs an employee would find acceptable. It can of course affect the employee's chances of succeeding in a claim of unfair dismissal if s/he unreasonably refuses a suitable alternative offer of employment or the amount of compensation awarded if they do win. It is also worth stressing, that one of the main purposes of consultation is to consider other employment as an alternative to dismissal.

213. During the consultation process the Claimant did not really offer much by the way of alternatives to redundancy.

214. The Respondent provided her with notification of vacancies albeit they did not appear to us to be suitable. The matter was not really explored in evidence. To the extent that we were made aware of the consideration of alternative employment we find that the Respondent acted reasonably.

215. The Respondent followed a fair although perhaps perfunctory procedure. However, this does not make the procedure unreasonable.

216. Whilst the Respondent viewed the Claimant as not being a good manager and having poor people skills and whilst the team was dysfunctional, the Claimant did not control or address their behaviour or even characterise it as discriminatory at the time. However, she was not dismissed for those reasons. As we have stated there is insufficient evidence of her sex being the reason why she was dismissed.

217. We therefore find that the Claimant was fairly dismissed.

Breach of contract / wages claim

218. The Claimant also brought a complaint of entitlement to outstanding but accrued annual leave. It was unclear whether this was a complaint of damages for breach of contract arising or outstanding on termination of employment under the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994 or a complaint of unauthorised deduction from wages contrary to section 13 of the Employment Rights Act 1996.

219. At the start of the hearing, the Respondent admitted that it owed the Claimant the sum of £1013.37 gross in respect of 3 days that she purchased as holiday that she had not taken on termination of her employment.

220. In an email sent by the Claimant's solicitors to the Employment Tribunal on 13 March 2023, copied to the Respondent's solicitors, it was indicated that the Claimant was not claiming any further sums in respect of her entitlement to holiday or contractual pay and invited judgment on the admitted sum. There was no further response from the Respondent's solicitors.

221. Given that it appeared that this entitlement was one arising under the Claimant's contract of employment rather than her statutory entitlement under the Working Time Regulations 1995, we decided it was appropriate to treat the complaint as one of damages for breach of contract complaint under the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994 and we award the Claimant the sum of £1013.37 payable by the Respondent.

Appendix: Agreed List of Issues

Employment Judge Tsamados
Date: 16 June 2023

Public access to Employment Tribunal Judgments
All judgments and written reasons for the judgments are published online shortly after a copy has been sent to the Claimant(s) and Respondent(s) in a case. They can be found at: www.gov.uk/employment-tribunal-decisions.