Case Number: 1402246/2022

EMPLOYMENT TRIBUNALS

Claimant: Ms L A Crabtree

Respondents:
1. **Marc Bandemer**
2. **Integer Wealth Global Ltd**
3. **Critical Mass Technologies Ltd**
4. **Integer Wealth Capital Ltd**

Heard at: Southampton
On: 22, 23, 24 May and 8, 9, 10, 11 (in chambers) August 2023

Before: Employment Judge Dawson, Mr English, Mr Knight

Appearances
For the claimant: Mr Franklin, counsel
For the respondents: Mr van Coller, Attorney in South Africa

JUDGMENT

1. In respect of the claims against the first respondent:

    a. The claims of harassment are well-founded to the extent set out in the Reasons below.

    b. The claims of direct discrimination are well-founded to the extent set out in the Reasons below.

    c. The unauthorised deduction of wages claim succeeds in respect of deduction of pension payments.

    d. The breach of contract claim in respect of notice pay is well-founded.

    e. The claim for holiday pay is well founded.

    f. The other claims are dismissed.

2. The claims against the 2nd, 3rd and 4th respondents are dismissed.

3. The question of remedy is adjourned to 19 and 20 December 2022.

4. Further directions are given in the separate document "Case Management Orders"

REASONS

Introduction

1. By a claim form presented on 30 July 2022, the claimant brings claims of sex discrimination, for non-payment of notice pay, for non-payment of holiday pay, for arrears of pay and for "other payments".

2. In summary, the claims of sex discrimination (including harassment) arise out of the behaviour of the first respondent which, it is alleged, included making a determined and excessive attempt to engage in a romantic relationship with the claimant, making inappropriate comments to and about the claimant and, when it became apparent that the claimant would not be reciprocating his advances, demoting and then dismissing the claimant.

3. The claim was accepted and proceeded against four respondents being

   Marc Bandemer (1)

   Integer Wealth Global Limited (2)

   Integer Wealth Capital Limited (3)

   Critical Mass Technologies Limited (4)

The issues

4. The issues were identified at a hearing before Employment Judge Rayner on 17 November 2022 and are reproduced as an annex to this judgment.

   At the outset of the hearing the parties confirmed that the issues remained as set out in that list except that:

   a. the claimant indicated she was not pursuing a claim in respect of a contractual bonus,

   b. counsel for the claimant drew our attention to the additional issue which had been agreed by the parties namely that an allegation of sex discrimination should be added to the list of issues as follows

      "4.2.16 The Respondents failure to investigate the Claimant's grievance submitted on 16 June 2022.".

c. the claimant submitted that her primary case was that the first respondent was her employer whereas the respondents' case was that the employer was Integer Wealth Global Limited.

5. After the close of evidence but before submissions had been made, counsel for the claimant sought to amend the list of issues so that issue 4.2.15 was amended to include the allegation that "On 23 June 2022, Me De Pass wrote to the claimant stating that her role was terminated" and thereby assert that the claimant was dismissed as an act of discrimination or harassment. In order to advance that argument it was necessary to recall Mr Bandemer to ensure that the case was properly put to him. The respondent objected to that amendment and to the amendment to the List of Issues. For reasons which we gave at the time and which are set out in Annex 2 to this judgment we allowed that application.

Conduct of the Hearing

6. It was directed that the case should be listed for six days and a timetable was given but, regrettably, the case was only listed for three days. The case, therefore, went part heard.

7. The respondents were represented by Mr van Coller, a South African lawyer. In order to accommodate both him and the requirements of the parties, the case was listed on a hybrid basis. Unfortunately, the technology in the Southampton Employment Tribunal is sub-optimal for conducting a hybrid hearing and it was extremely difficult for persons who were attending remotely to hear what was being said due to the inadequacy of the microphones and the acoustics of the room. In those circumstances it was necessary to convert the hearing to a fully remote one. All parties consented to that course of action which was decided upon on the first morning and, therefore, all evidence was heard remotely for the first part of the hearing. During the period between the first and second parts of the hearing, the parties agreed that the second part of the hearing should be conducted in person and the tribunal heard the rest of the case in person.

8. The claimant had wanted to call two witnesses who were situated in Luxembourg and Italy but because permission had not been given by those countries for evidence to be taken from there, that was not possible.

9. On behalf of the claimant we heard from Ms Atilio, the claimant's sister (Ms Brackley) and the claimant herself. Although the claimant had intended to call her daughter, Mr van Coller indicated that he did not wish to cross-examine her. The tribunal explained that, in those circumstances, we would be likely to accept the evidence set out in the daughter's statement and Mr van Coller understood that. The claimant also sought to rely upon the witness statements of the two witnesses who were overseas but we are only able to give those witness statements limited weight given that they have not attended for cross-examination. The respondents called evidence from the Mr Bandemer (the first respondent) and from Mr De Pass.

10. We received two bundles of evidence, one described as a main bundle and a supplemental bundle.

11. After the evidence of Ms Atilio (who gave evidence first), Mr van Coller indicated that he had not understood that the employment tribunal process was that witness statements stood as evidence in chief. Thus, at around 3 pm on the first day, he asked for the tribunal to adjourn, to allow him to read the statement of the claimant and prepare cross-examination before her evidence was called. We agreed to that application. Even with that break, Mr van Coller was able to complete the cross-examination of all of the claimant's witnesses with an hour spare in terms of the timetable set down by Judge Rayner .

12. On the first day, the claimant sought to adduce a further document which the respondent did not object to and therefore that evidence was admitted.

13. At the close of the claimant's case, on the third day, the claimant's counsel requested that the respondent's case should not start then, but at the resumed hearing. The respondent agreed to that and having regard to the overriding objective the tribunal granted the application.

Law

14. Given the large number of issues in this case, and to assist in understanding our decision, we set out general overarching principles of law at this stage. In our Conclusion section, when we need to refer to specific points of law, we introduce the law at that stage.

Identity of the employer

15. In *Autoclenz Ltd v Belcher* [2011] IRLR 820, the Supreme Court held that where there is a dispute as to the genuineness of a written term in an employment contract, the focus of the enquiry must be to discover the actual legal obligations of the parties. All the relevant evidence must be examined including the written term itself, how the parties conducting themselves in practice and their expectations of each other.

Discrimination and Harassment

16. The following are relevant sections from the Equality Act 2010.

> **13 Direct discrimination**
>
> 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.
>
> **26 Harassment**
>
> 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—
>
> a. violating B's dignity, or

b. 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.

5) The relevant protected characteristics are—

…sex;

109 Liability of employers and principals

(1) Anything done by a person (A) in the course of A's employment must be treated as also done by the employer.

(2) Anything done by an agent for a principal, with the authority of the principal, must be treated as also done by the principal.

110 Liability of employees and agents

(1) A person (A) contravenes this section if—

(a) A is an employee or agent,

(b) A does something which, by virtue of section 109(1) or (2), is treated as having been done by A's employer or principal (as the case may be), and

(c) the doing of that thing by A amounts to a contravention of this Act by the employer or principal (as the case may be).

123 Time Limits

(1) [Subject to [sections 140A and 140B],] proceedings on a complaint within section 120 may not be brought after the end of—

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

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

…

(3) For the purposes of this section—

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

136 Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

The Burden of Proof and Drawing of inferences

17. In *Madarassy v Nomura International plc* [2007] IRLR 246, the Court of Appeal held, at paragraphs 56-57,

> "The court in Igen v Wong expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the tribunal could conclude that the respondent 'could have' committed an unlawful act of discrimination. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.
>
> 57 'Could conclude' in s.63A(2) must mean that 'a reasonable tribunal could properly conclude' from all the evidence before it. This would include evidence adduced by the complainant in support of the allegations of sex discrimination, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. It would also include evidence adduced by the respondent contesting the complaint. Subject only to the statutory 'absence of an adequate explanation' at this stage (which I shall discuss later), the tribunal would need to consider all the evidence relevant to the discrimination complaint; for example, evidence as to whether the act complained of occurred at all; evidence as to the actual comparators relied on by the complainant to prove less favourable treatment; evidence as to whether the comparisons being made by the complainant were of like with like as required by s.5(3) of the 1975 Act; and available evidence of the reasons for the differential treatment.

18. In *Hewage v Grampian Health Board* [2012] UKSC 37, the Supreme Court held "Furthermore, as Underhill J pointed out in *Martin v Devonshires Solicitors* [2011] ICR 352 (para 39) it is important not to make too much of the role of the

burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other."

Causation in respect of Direct Discrimination

19. In considering questions of causation, in *Nagarajan* [1999] IRLR 572, the House of Lords held that that if the protected characteristic had a 'significant influence' on the outcome, discrimination would be made out. The crucial question in every case was, 'why the complainant received less favourable treatment … Was it on grounds of race? Or was it for some other reason, for instance, because the complainant was not so well qualified for the job?'

Meaning of Detriment- Direct Discrimination

20. In deciding whether the claimant was treated less favourably we have had regard to the decision in *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11 that, in respect of the definition of detriment,

> "As May LJ put it in De Souza v Automobile Association [1986] ICR 514, 522 g, the court or tribunal must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work.
>
> But once this requirement is satisfied, the only other limitation that can be read into the word is that indicated by Brightman LJ. As he put it in *Ministry of Defence v Jeremiah* [1980] ICR 13, 30, one must take all the circumstances into account. This is a test of materiality. Is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment? An unjustified sense of grievance cannot amount to "detriment": Barclays Bank plc v Kapur (No 2) [1995] IRLR 87. But, contrary to the view that was expressed in Lord Chancellor v Coker [2001] ICR 507 on which the Court of Appeal relied, it is not necessary to demonstrate some physical or economic consequence. (Paragraph 34 to 35).

Meaning of unwanted conduct – Harassment

21. In *Reed v Stedman* [1999] IRLR 299 the Employment Appeal Tribunal considered the case of sexual harassment, although in respect of legislation before a separate strategy section on harassment was codified. The head note to the IRLR is instructive in this case. It summarises the judgment as follows

> The question in each case is whether the alleged victim has been subjected to a detriment, and was it on the grounds of sex. Lack of intent is not a defence.
>
> The essential characteristic of sexual harassment is that it is words or conduct which are unwelcome to the recipient and it is for the recipient

> to decide for themselves what is acceptable to them and what they regard as offensive. …
>
> There may be difficult factual issues to resolve as to whether conduct is unwelcome. Some conduct, if not expressly invited, could properly be described as unwelcome. A woman does not have to make it clear in advance that she does not want to be touched in a sexual manner. At the lower end of the scale, a woman may appear, objectively, to be unduly sensitive to what might otherwise be regarded as unexceptional behaviour. But because it is for each person to define their own levels of acceptance, the question would then be whether by words or conduct she had made it clear that she found such conduct unwelcome. Provided that any reasonable person would understand her to be rejecting the conduct of which she was complaining, continuation of the conduct would, generally, be regarded as harassment.

Application of the Statutory Test- Harassment

22. In *Pemberton v Inwood* [2018] ICR 1291 Court of Appeal gave guidance on applying section 26 Equality Act 2010. It said

> In order to decide whether any conduct falling within sub-paragraph (1)(a) has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of subsection (4)(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of subsection (4)(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also, of course, take into account all the other circumstances—subsection (4)(b). The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment4 created, then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant's dignity or creating an adverse environment for him or her, then it should not be found to have done so.

Wrongful dismissal – Notice Pay

23. In *Clark v Fahrenheit 451 (Communications) Ltd* [2000] All ER (D) 849 it was held that in determining what a reasonable notice period was for a particular employee whose contract does not deal with the question of notice, the tribunal should consider seniority and status within the organisation as well as length of service. The tribunal should not take account of the financial state of the employer.

Unauthorised deduction from wages

24. The Employment Rights Act 1996 contains the following relevant sections

> **13.— Right not to suffer unauthorised deductions.**
>
> (1) An employer shall not make a deduction from wages of a worker

employed by him unless—

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

…

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

(4) …

23.— Complaints to employment tribunals.

(1) A worker may present a complaint to an [employment tribunal] —

(a) that his employer has made a deduction from his wages in contravention of section 13 (including a deduction made in contravention of that section as it applies by virtue of section 18(2)),

…

(2) Subject to subsection (4), an [employment tribunal][2] shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—

(a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or

(b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.

(3) Where a complaint is brought under this section in respect of—

(a) a series of deductions or payments, or

(b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates, the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

…

(4A) An employment tribunal is not (despite subsections (3) and (4)) to consider so much of a complaint brought under this section as relates to a deduction where the date of payment of the wages from which the deduction was made was before the period of two years ending with the date of presentation of the complaint

27.— Meaning of "wages" etc.

(1) In this Part *"wages"* , in relation to a worker, means any sums payable to the worker in connection with his employment, including—

(a) any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise,
(b) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992,
(c) statutory maternity pay under Part XII of that Act,
(ca) [statutory paternity pay][2] under Part 12ZA of that Act,
(cb) statutory adoption pay under Part 12ZB of that Act,
(cc) statutory shared parental pay under Part 12ZC of that Act,
(d) a guarantee payment (under section 28 of this Act),
(e) any payment for time off under Part VI of this Act or section 169 of the Trade Union and Labour Relations (Consolidation) Act 1992 (payment for time off for carrying out trade union duties etc.),
(f) remuneration on suspension on medical grounds under section 64 of this Act and remuneration on suspension on maternity grounds under section 68 of this Act,
(fa) remuneration on ending the supply of an agency worker on maternity grounds under section 68C of this Act,
(g) any sum payable in pursuance of an order for reinstatement or re-engagement under section 113 of this Act,
(h) any sum payable in pursuance of an order for the continuation of a contract of employment under section 130 of this Act or section 164 of the Trade Union and Labour Relations (Consolidation) Act 1992, and
(j) remuneration under a protective award under section 189 of that Act,
…

25. In *Bear Scotland Ltd and ors v Fulton and ors and other cases 2015 ICR 221, EAT*, Mr Justice Langstaff, held that whether there is a 'series' of deductions is a question of fact, requiring a sufficient factual and temporal link between the underpayments. This, he said, meant that there must be a sufficient similarity of subject matter, so that each event is factually linked, and a sufficient frequency of repetition. The case also held that a gap of more than three months broke the series for limitation purposes

Compensation- Discrimination

26. In *Chagger v Abbey National Plc* [2010] IRLR 47 the Court of Appeal held that " In assessing compensation for discriminatory dismissal, it is necessary to ask what would have occurred had there been no unlawful discrimination. If there were a chance that dismissal would have occurred in any event, even had there been no discrimination, then in the normal way that must be factored into the

calculation of loss. The gravity of the alleged discrimination is irrelevant to the question of what would have happened had there been no discrimination" (taken from the head note).

Findings of fact

Credibility

27. *Both the claimant and the first respondent seeks to say that the other's evidence is not credible.*
28. There is some cause to doubt certain statements which were made by the first respondent.

29. At page 338 of the bundle is a list of directors of Integer Wealth Global S.A. directors. That list was created by the first respondent and was sent to the claimant on 4 February 2022. It includes, as a director, Hildayet Ozveren who is a lawyer based in Luxembourg. She wrote an email on 11 June 2022 to the first respondent stating "I am kindly asking you to please remove my details from your website… I still don't understand why I appear there as I was never employed by the firm." The first respondent says that statement is untrue. Although Ms Ozveren has written a statement for the purposes of this hearing she has not attended and therefore the statement can only be given a limited weight.

30. However, on 2 November 2021, the respondent wrote to the claimant that "the debt however kept accumulating which is what is overwhelming at the moment and with little to no income from your efforts this is something Peter, Mike, Tim, John and I struggle with daily…". The first respondent stated in his evidence that the "Tim" being referred to there was Tim Brookers. Mr Brookers also submitted a statement to the tribunal and again did not attend for cross examination. In his statement he states that he resigned from all companies on 18 February 2021. That is consistent with accounts filed at Companies House which corroborate his witness statement. If "Tim" resigned in February 2021, the statement made in November 2021 is difficult to accept.

31. On 15 November 2021 the claimant wrote to the first respondent asking him "who is Sergio?". The first respondent replied "Sergio was our Treasury and compliance chap in 2019 to beginning 2020. He still gets emails on his IWG email account so I use his name and email and then copy him in on his personal email so that he has a record of what is being sent in his name. He is re-joining us once we can afford him again."

32. It was put to the first respondent that he tried to make the companies appear larger to the outside world by making reference to individuals who were no longer involved in the company and send emails from them, even though they no longer are involved in the companies. We find that is the most plausible explanation for the facts we have set out above and find accordingly.

33. Those points were expanded further in the claimant's submissions. The claimant's counsel referred to the fact that Mr Bandemer denied that he had purported to enter into an introducer agreement with any of the Integer companies, despite the written agreement to that effect at page 246 of the

bundle. He also told the tribunal that he had not signed for a bank account on behalf of the claimant using her digital signature despite there being clear evidence that he had done so at page 308 of the bundle.

34. In respect of the credibility of the claimant, at pages 440 and 441 of the bundle are certain photos. The two main photos which have been expanded and placed in the bundle show a photograph of the back of the claimant from her lower back to her feet, in the photograph she is wearing a pair of trousers. The other main photograph shows the claimant's feet. One foot is bare and the other is in a shoe. Again the claimant is wearing trousers and the trouser leg for the foot which is bare shows a pin holding the hem of trousers at about ankle height. The claimant has selected these photographs for the bundle in order to assert that the first respondent was taking inappropriate photographs of her. The first respondent says, in fact, the claimant was having a pair of trousers fitted and he had taken a series of photographs to show her the length of the trousers so that she could make a decision on tailoring. There is, indeed, a series of small images at the bottom of page 440 and 441 which show that the first respondent took a large number of photographs of different angles of the claimant. We have reached the conclusion that the claimant has selected those two photographs to portray the first respondent in the worst light. That does not reflect particularly well on the claimant and demonstrates that, at least in this respect, she is presenting her case in a partial way.

35. We have taken those points into account in reaching all of our findings of fact.

36. Overall, wherever possible we have relied upon the contemporaneous messages and emails as giving the most accurate account of what was happening at the time.

The identity of the claimant's employer

37. There is no dispute that the claimant was an employee, the issue is as to who the employer was.

38. According to records filed at Companies House, accounts were filed for Integer Wealth Global Ltd on 30 June 2021 as "accounts for a dormant company made up to 30 September 2020". The accounts filed stated "for the year ending 30 September 2020 the company was entitled to exemption under section 480 of the Companies Act 2006 relating to dormant companies."

39. In respect of Integer Wealth Capital Ltd, on 28th of March 2022 accounts were filed as a dormant company made up to 30 November 2020. The accounts filed contained the statement "for the year ending 30 November 2020 the company was entitled to exemption under section 480 of the Companies Act 2006 relating to dormant companies."

40. In respect of Critical Mass Technologies Ltd, on 3 July 2020 accounts were filed for a dormant company made up to 28th February 2020 with a similar statement.

41. It was accepted by the first respondent that the companies remained dormant after those accounts were filed.

42. According to the Gov.uk website a company is described as dormant by Companies House if it has had no significant transactions in the financial year. It states “significant transactions don’t include: filing fees paid to Companies House, penalties for late filing of accounts and money paid for shares when the company was incorporated.”

43. When the first respondent was asked about Integer Wealth Capital Ltd, Integer Wealth Global Ltd and Critical Mass Technologies Ltd he stated that all three companies had been dormant throughout the claimant’s employment.

44. At page 138 of the bundle, is a quote which purports to be from Integer Wealth Capital Limited. The quote is for £51,890. It is dated 23 April 2021 and is for professional services. Although the quote carries a VAT number, the first respondent agreed that the VAT number was the number of Integer Wealth Global Ltd although he said that that was acceptable within a group of companies. We have no independent evidence on whether that is an acceptable accounting practice or not and have not needed to resolve that point.

45. The first respondent told us that the monies paid under that quote went into the bank account for Critical Mass Technologies Ltd as the bank accounts for Integer Wealth Global Ltd and Integer Wealth Capital Ltd had been closed because the banks said that those companies had to be regulated. The first respondent was, however, clear that Critical Mass Technologies Ltd was not the claimant’s employer.

46. The first respondent’s account of how the claimant came to be employed is taken from his witness statement as follows:

> 5. After returning to the UK, Louise and I met in an online meeting and she stated that she had just returned from Canada and prior to that that she lived in Asia, in Japan and China where she met her current husband, and that she had returned to the UK with her children and was living with her stepfather in Romsey after her mother had passed away. This was at first presented as a reason for returning to the UK, however the real reason would emerge later in our working relationship.
>
> 6. Then she stated that she had several potential clients who would be interested in what and how we operate.
>
> 7. I then suggested that anything legal under any commission structure had to be under an ‘Introducers Agreement’. With some deliberation we agreed on a commission structure. This was not an employment contact but a commission-based contract only.
>
> 8. Louise began and we engaged into a training period for some approximately three months under this same contract.
>
> 9. It struck me however that on Louise’s cv which she submitted to me, that there is not a single reference of past employment, the reason which would emerge later in our relationship.

> 10. Within the next few months Louise became very familiar with the processes of the business, which is to create bespoke alternative investment funds for corporate clients who have two or more projects which require funding from investments into their newly created investment funds. We also provide the investment into the funds which we create for our clients, providing their projects are scored of investment grade.
>
> …
>
> 20. With the relationship growing and Louise and I producing several successes and overcoming several challenges in the migration from a post Covid environment, to resurfacing to become profitable once again, I asked Louise to come onboard and help us recover the company and develop it into what it is now becoming.
>
> 21. I then offered Louise a permanent position, stating that due to Brexit and the negative impact it had on our operations, due to that all our client's investment funds were being listed on European Stock Exchanges, that she would eventually need to migrate to the new Luxembourg company once it was established.

47. The claimant's purported contract of employment is dated 19 April 2021 and signed by the claimant and the first respondent. It says that it is an agreement between Integer Wealth Capital Limited and the claimant for her services to Integer Wealth Global Ltd as a strategic development executive. It sets out the remuneration package and states that the next level promotion would be to Strategic Development Director. On 1 April 2021 the claimant also purported to enter into an Introducer agreement with Integer Wealth Global Ltd.

48. In respect of payment of the claimant, in an email dated 9 June 2022, the first respondent wrote to the claimant stating that she had never been paid from any Integer Wealth Capital Ltd or Integer Wealth Global Ltd bank account and she was only ever given payments from the Critical Mass Technology account due to the closing of the other bank accounts. The first respondent agreed in cross examination that the claimant was sometimes paid from his own resources.

49. At page 234 of the bundle is a discussion between the claimant and the first respondent about the claimant's salary. The first respondent writes " Girl there is a big difference between wont and cant. I do not have the money otherwise I would have done so. I know how hard and dedicated you work, but I don't have it and dont have anymore money of my own either." No reference is made to any company.

50. The first respondent agreed with counsel for the claimant that no respondent had ever accounted for tax or national insurance in respect of the claimant's employment. He said that he had contacted HMRC and they said there was a year to get it sorted. Instead of paying those sums the money was spent on developing "the company" and those sums still have not been paid to HMRC. The first respondent also agreed that no pension contributions had been made although employee contributions had been deducted from the claimant's salary.

51. The first respondent was asked about the email which appears at page 486 of the bundle dated 12 May 2022. That is an email where the claimant has asked him questions and the first respondent has interposed his answers. In one of his answers he states “primarily the company to which you were originally employed, is actually no longer operational and has been rendered dormant since last November due to IWG moving to Luxembourg.” It was put to the first respondent that was a lie since the company had been dormant since before then. He replied “in registration, not in operation” but no further details were given as to what he meant by that.

52. On 4 February 2021 the first respondent wrote a letter to the claimant on notepaper of “Integer Wealth Global – proudly incorporating Integer Wealth Professional Services, Integer Prime Realty Developments, Critical Mass Technologies Ltd Integer Wealth Finance Ltd”.

53. The letter stated “It gives me great pleasure to have received your application for a member of the board of directors of Integer Wealth Global S.A., Luxembourg. After your valued acceptance and response to my invite to you, I wish to officially welcome you to our board or directors. The board amendments with your details will need to be registered through a legal process in Luxembourg… A process which will take a few weeks to conclude. This process will register you as employed in Luxembourg and you will receive a tax number and other Luxembourg-based benefits… You will receive a formal employment contract, standard to all of our directors and in adherence to your position, which will be completed once you have been registered to the board of directors.”

54. However, the evidence of Mr De Pass was that the claimant never accepted that invitation which is why, ultimately, the employment relationship terminated.

55. The evidence of Mr De Pass is not altogether consistent with the comments of Mr Bandemer inserted into an email from the claimant dated 12 May 2022 which appears at page 486 of the bundle. In that email he wrote “… The conditions of your previous employ as also your current directorship have changed. Primarily the company to which you were originally employed, is actually no longer operational and has been rendered dormant since last year due to IWG moving to Luxembourg… On 31 January 2022 you became a director of the company so that you can assist first-hand in its migration to Europe.” The only company which can be being referred to is Integer Wealth Global S.A (the Luxembourg company), but that statement makes little sense in the context of the letter of 4 February 2021 which makes clear that the claimant would not be a director until a legal process had been concluded and that the claimant would, at some point in the future, receive an employment contract.

56. On 8 June 2022, Mr Bandemer wrote to the claimant stating as follows:

> “Since the various verbal confirmations I gave you over the past several months leading up to the operational suspension of Integer Wealth Capital Ltd United Kingdom, Companies House registration number 11662891, I am hereby notifying you in writing hereby that the company 'Integer Wealth Capital Ltd' has

> ceased its operations in the United Kingdom as at 29 April 2022 with its bank accounts having been closed too, on 12 November 2021 already.
>
> This rendered your position with the company redundant and all contracts including the 'Preliminary Consulting Agreement' of 19 April 2021 and 'Permanent Employment' of appointment as at 06 July 2021, no longer in effect as of the date of the company's suspension at Companies House, UK. The company will be deregistered imminently.
>
> …
>
> Thank you for your service to this company *and I look forward to your fluent migration to the new European based company structures* with the same excellence that you gave to Integer Wealth Capital Ltd (UK)"
>
> P549, emphasis added

57. That letter supports the evidence of Mr De Pass that the claimant's employment never did transfer to the S.A. company, it was always a future event that was anticipated. We find that the claimant's employment did not move to the Luxembourg company in January or February 2023.

58. In deciding who the claimant was employed by we must give significant weight to the documents which were signed by the parties. However we are not able to overlook the fact that in April 2021 Integer Wealth Capital Limited was dormant. It was not trading. If it was not trading, it could not have employed the claimant. Thus the written agreement cannot reflect the reality of the situation. The same point can be made in respect of Integer Wealth Global Ltd.

59. We find, as a fact, that the claimant was not employed by any of the dormant companies; for any of them to employ the claimant they would have had to be active. Unless they were active they could not have entered into a contract with the claimant, they would have had no funds to pay the claimant, they could not have accounted to HMRC for tax and national insurance and they could not have enrolled the claimant in a pension scheme. They could not have given the claimant directions as to how she was to carry out her work and they could not have given the claimant work to do.

60. Given;
    a. the first respondent's account of how the claimant came to be employed which makes no reference to any of the companies,

    b. that the claimant received day-to-day instructions from the first respondent (as we set out below in more detail, although the point was not in dispute)

    c. that it was the first respondent who arranged payment for the claimant, sometimes from his own funds, and

d. that the claimant was not employed by any of the dormant companies,

we find that the contract of employment was, in reality, between the claimant and the first respondent.

The allegations of Sexual Harassment/ Discrimination

61. It was not always easy, during the hearing, to match allegations which were made in the list of issues with specific pieces of evidence or paragraphs of witness statements. We invited, therefore, both parties to link the evidence they were relying upon with the issues contained in the list of issues. The claimant did so in her counsel's skeleton argument and we have relied upon that in analysing the issues and reaching our conclusions.

62. A lot of the evidence in this case comes from WhatsApp messages, Teams chat messages or transcript of Teams conversations. We have copied and pasted many of the relevant messages below. Where we have done so we have not attempted to correct any spelling or grammar deficiencies.

63. The claimant accepted that, initially, the relationship between her and the first respondent was a good one which was friendly with banter. In her evidence she also stated, however, that there was appropriate banter and inappropriate comments. When asked to elaborate she stated "he asked me to call him supreme leader and he called me pretty underling, that was okay" however she told us that she objected (at least inwardly) to being called wife, naughty, girl or comments being made about whips and chains.

64. As an overview of her period of employment, the claimant told us that she was quite friendly with the first respondent until he issued her a written warning[1] and after that she told him that matters couldn't continue because the bounds were getting overstepped and it was too difficult to be friends and also for the first respondent to be her boss. She said that after that there was a period of limited banter until January 2022 and then the banter started up again until her promotion[2]. She said that the first respondent then said he would stop the banter around 17 February 2022 and did so but then it started up again for a couple of weeks and the first respondent started overstepping the boundaries in March and April 2022 and then things fell apart.

65. In his witness statement the first respondent, by way of overview, writes as follows:

> I would humbly describe myself as tactile, caring, engaging and use terms of endearment after the first several engagement with people and to just about everyone I meet. I have a large sense of humour, have failed more than any successes I have had and as all others have had an oversupply of career disappointments in my many years as a businessman.
>
> However, what I have not done and am not, is a sexual predator. I categorically state that I have never touched Louise Crabtree in any

[1] In around September 2021

[2] around February 2022

inappropriate manner, have never made any sexual overtures or made any sexual suggestions to her ever.

66. To properly analyse the situation it is necessary for us to give close consideration to the various messages which were sent between the parties. Having carried out that exercise below, we introduce our findings of fact by noting that the relationship between the claimant and the first respondent was a nuanced one which fluctuated over time. This is not a case where the first respondent was always behaving in a way which the claimant found to be unwanted. To the extent that the claimant says it is, we find that her recollection has been affected by the passage of time and she has looked back at the relationship in the light of subsequent events. There were times when the claimant and the first respondent were close and the claimant enjoyed the first respondent's hospitality as well as the fact that he gave gifts to her children. However, the relationship remained one of employer and employee and there were other times when the relationship between the claimant and the first respondent was strained and the claimant did not appreciate the way the first respondent was addressing her and messaging her. We have found it necessary to analyse this case by considering particular periods of time and the messages in those periods of time. This is not a case where we have been able to find that all of the conduct was wanted or all of the conduct was unwanted; the relationship changed over time.

67. On 24 March 2021, the first respondent emailed the claimant stating "I love your bossiness my dear. It's actually just a brilliant proactive mind in action and a very appreciative person on this side of the phone 😊". The claimant replied "Great good because I know I am speaking my mind and don't ever want you to think I am disrespecting you ! It's all with good intentions. I have a vision where IWG should be and excited to be part of it :-)" (page 100)

68. On 31 May 2021 a Teams meeting took place, the undisputed transcript of which is as follows (MB being the first respondent and LAC being the claimant):

    00.28 MB (after LAC sings), Why did God make you so naughty?

    00.31 LAC (laughs) Oh on that point don't, don't give me too much er flattery again in front of Damon (laughs again), I think Damon thinks, keeps looking and raising his eyebrows every time you say something (laughs again)

    00.45 MB I don't care two rocks about what other people think. I'm way too arrogant for that.

    00.49 LAC (Laughs again. Suddenly stops). Okay let me see…

69. This is the first of a number of statements made by the first respondent which the claimant objects to. In analysing this, and other, similar statements and the claimant's response to them, we have taken account of the fact that the claimant was in a subordinate relationship to the first respondent. She was also a single mother of three children and, obviously, required an income. We accept her evidence that she was doing a job which she loved and did not want to damage her employment prospects. A failure to strenuously object to

comments which she disliked does not, of itself, mean that she welcomed them or that they were wanted. Often people in the position of the claimant will either say nothing, or attempt to raise very gentle objections, sometimes attempting to defuse the situation with humour. The suggestion that if somebody does not immediately and strenuously object to a comment, then any subsequent complaint about that comment is exaggerated, is wrong.

70. As we set out below[3] having reviewed all the evidence we find that these comments related to the claimant's sex. The respondent wanted to have a romantic relationship with the claimant in a way which he would not have done with a man. We will return to the question of whether this comment was unwanted or a detriment to the claimant below when we have reviewed that question in the context of more evidence.

71. On 20 June 2021 the first respondent terminated a relationship with a client because the client had attempted to "hit on" the claimant. The claimant's counsel suggested that this was an example of the first respondent being possessive of the claimant. However even if that is the case and it could be said that this was conduct related to sex (or was of a sexual nature) the claimant's message at page 151 of the bundle that "I appreciate you all protecting me. I haven't [missing word] that before so it's rather new!" suggests that that behaviour was not unwanted. It also suggests that, in the context of a direct discrimination claim, the claimant was not subjected to a detriment. We find accordingly.

72. It is apparent that the relationship between the claimant and the first respondent went beyond the normal type of manager and subordinate relationship. The claimant became friendly with the first respondent's wife as well as with him and on Wednesdays (although probably not every Wednesday, the evidence was not clear) she would go to the first respondent's home for his wife "to do" her nails. Photos of that activity were taken by the first respondent on 14 July 2021 and appear in the bundle at page 160. There are photos of the claimant's hands and toes as well as a photograph of her reclining on a chair with a laptop on her knee smiling at the photographer (pages 160 – 164).

73. On 16 July 2021 the claimant messaged the first respondent asking whether Mr De Pass had "a thing for" her. She said his text messages appeared a little friendly. That was followed by the following exchange with the first respondent on WhatsApp:

> First respondent: – Yes of course he does. You're a gorgeous woman and any red blooded single guy would be fond of you [two emoticons]..but in any case anyone dating, flirting or courting you has to have my approval first, otherwise they're history
>
> Claimant – lol well hope it's not awkward ! OML !

[3] Para 265

> Claimant – My boyfriend is going to be miffed if I get too much attention or comments so behave yourself ! He already gets a bit jealous of you and me as we are always talking !
>
> Page 167

74. We find that this was conduct of a sexual nature and conduct related to the claimant's sex. Again, however, will return to the question of whether it was unwanted or a detriment to the claimant below.

75. On 17 July 2021, the claimant's sister held a birthday party for the claimant. The claimant's case is that the first respondent invited himself to the party along with his wife and Mr De Pass. The first respondent denies that and says he was invited. The claimant says that during the party he pulled her onto his lap which everyone found uncomfortable. The claimant's evidence is supported by the evidence of her sister. The first respondent denies the allegation and Mr De Pass says he did not see any such situation and thought the afternoon was all very pleasant.

76. The evidence of the claimant's sister was given in a realistic fashion. It did not always support the claimant's evidence, for instance whilst the claimant said that she had not invited Mr Bandemer to the party but he had invited himself, her sister stated that as far as she was aware the claimant had invited Mr Bandemer. She gave a clear account of the first respondent starting to get overly friendly with the claimant and trying to pull her onto his lap. She described the claimant being uncomfortable with that action and sort of laughing it off but the first respondent grabbing her and trying to get her to sit on his lap again. She said it was all very very uncomfortable and that the immediate family were uncomfortable.

77. An email dated 10 September 2021 from the claimant to the first respondent contained the statement "… friendly banter which was once acceptable and now suddenly isn't after my conversation with you about the incident at my birthday party." provides some contemporaneous corroboration of there being an incident of some kind(Page 208).

78. Mr Bandemer denies that ever happened.

79. Taking account of all of the above matters we find that on the balance of probabilities it is likely that the first respondent did attempt to pull the claimant onto his knee. We also find that was conduct which related to the claimant's sex and conduct of a sexual nature.

80. Given the evidence of Ms Brackley we also find that the conduct was unwanted. That sort of behaviour in front of the claimant's family at a birthday party would be likely to create a degrading or humiliating environment for the claimant and we find that subjectively it did so and that it was reasonable that it did so.

81. During a work-related conversation on 29 July 2021 on Teams the first respondent sent a message to the claimant as follows (P178)

> NO SITE INSPECTION FOR YOU..!!!! NAUGHTY WING WOMAN.! A formal consular ball in Amsterdam in three weeks, but no site visit.

82. The claimant did not reply to that message although she carried on discussing work-related matters.

83. Although the evidence is not entirely clear it is apparent that from 29 July 2021 there was an ongoing discussion where the claimant was pressing for the first respondent to honour the job description which she had been given originally. The first respondent wrote “I am not discussing this point any further. Please let me know when your phone is on so I can pay the bill”

84. The claimant replied

> This is important to me so maybe we can discuss reviewing my job role in the company and I can do something else that suits me ? Meeting clients and relationship building is a valuable part of what I do and the company? I totally feel devalued and Unheard and you have gone back on what you have said and what you have told me in front of my family and that is hard for me to take. I imagine. You will likely ask me to quit or you will fire me as that is your personality but what can I do ? This is supposed to be a team and right now it feels like this is just your show and I have to do and say as I am told. (p181)

85. We consider that this message is significant to the extent that it shows that the claimant was willing to stand up to the first respondent about things that mattered to her, such as her job description. She was willing to tell him that she felt devalued and unheard, even though she thought she would be asked to quit. She did not, however, at that time, complain of the matters which she now says amount to sexual harassment.

86. There appears to have been a further disagreement on or around 10 August 2021. Again we have not been furnished with a great deal of detail but at 16:07 the first respondent wrote to the claimant as follows

> You seem to have a problem with my authority which is what led to our argument. I have listened to the recording several times and the reasoning and logic is sound. I am somewhat perplexed to the comment you made last week about firing you or asking you to leave, which you said was "in my personality". You need to explain this to me and clarify what you meant by this. There are other things which have become an issue. The one being that if I say someting is the way it is, it will remain as such until I reasses the topic, reasoning and logic behinid the discussion. My way, logic, reasoning and decision stands as I am responsible for the company and its clients. We can discuss these issues later but i have to leave now otherwise i will be late for my next stop. This has always been the same. Nothing to that has changed. Have a great evening

87. The claimant replied in a similarly lengthy message which concluded as follows “This is/was my role and you just overnight changed it for no reason. You have used your authority to shut me down and not hear me and it has made me feel

devalued and unheard. It seems I lost my voice and opinion overnight as well as my role. Anyway I just want a harmonious relationship and to enjoy my job." (Page 184). Again she did not make any reference to concern about those matters which she now states amounted to sexual harassment.

88. On 19 August 2021 the claimant emailed the first respondent stating that "Oli" was not working because she had infected him. The first respondent replied "You do have an infectious personality though and are quite easy to become addicted to too" (page 189).

89. Shortly after that, on the same day, there was a discussion about a meeting between the claimant and the first respondent and the first respondent suggested that it should take place on Tuesday. The claimant replied "or Wednesday so lioni [the first respondent's wife] can do my nails and we can celebrate her birthday lol" (page 188). The claimant told us that she would go to the first respondent's house on Wednesdays because she knew Lioni would be there and she would not have to be alone with the first respondent.

90. Later in the same conversation the first respondent wrote "That may be so, but I don't mind Lioni doing your hands and feet, as you have really gorgeous feet and candy toes, but Mike and Peter have ham slabs for feet and talons for toes and that wont go down well with Lioni or me". The extract of the messages at page 188 of the bundle shows that the claimant replied but not what her reply was to that message.

91. On 26 August 2021, the first respondent became unhappy about something which the claimant had done and wrote an email to the claimant stating "You are pushing the boundaries beyond what I and the executive committee are prepared to tolerate. In the attitude and content of your message below, I will now revert to a first formal letter which you will receive in the following days" (page 190).

92. The claimant replied the next day accepting that her tone in an email may have been more flippant than was intended but stated;

> It is very difficult to communicate with someone who is one day her boss, another day her friend, then I am called very pretty underling and told I am your second wife and then another day I am asked to express my opinion ask questions as I am 'soon to be director'. Even the executive team said we talked like a married couple in the way we spoke to each other and now yesterday it changed suddenly again.
>
> This leads for me to very confused at where I am and going in the company and what I can and can't say and I have expressed several times that I would like to have a meeting with all of you to discuss this. You have told me that my role has not changed yet It has several times and even on Wednesday you were saying as such.
>
> …

> It is hard to work with someone who changes their hat depending on the time and day. You want to remind me that I am to do as am told and that you are the boss and not a friend or colleague or equal and this is why I would like to formally request a meeting with the executive team to discuss my role and position going forward as I find this constant change in your manner towards me unsettling and feel you are treating me as an employee not the future role of director. You ask me to be direct and opinionated one day such as when I joined the director meeting regarding introducer commission this week and then I am told I will receive a formal letter for my attitude and insubordination. I think clarity on this will help me going forward. I have three kids to solely provide so this job is important to me but I need to feel secure and also have a good positive relationship with my boss and the executive team. (p191).

93. We can well understand why the claimant would write like that. Whilst we accept that we have not been given all of the evidence in relation to the message sent by the first respondent on 26 August 2021 the change in tone is stark. However in the context of this claim for harassment we note that the claimant's complaint in this email is not that she was called "very pretty underling" and "second wife" but that the first respondent was being inconsistent. She does not say that the comments were unwanted.

94. The claimant then contacted Mr De Pass by WhatsApp. At that point she appeared to regard him as being on the executive team of the second and third respondent. She wrote that the first respondent had said that the executive team "all went against me and sought to demote or dismiss me is this true?" Mr De Pass replied to say that that was not what had happened and (summarising a lengthy WhatsApp chain) that the team thought she was good at her job and an excellent fit. He said that it appeared that the claimant may be stepping outside of her remit of authority from a business perspective so he advised her to listen and not be going at 100 mph in everything she did. The claimant replied saying that that was good advice and Mr De Pass was right but pointed out that the first respondent was confusing. She said "One minute he is friendly and wants me to express myself. The next he is threatening to send me formal letters for insubordination which is totally unwarranted. You can't ask someone to act like a director and speak up one minute then punish her for it the next. I don't deserve it Mike. My work ethic is stronger than anyone's and I have given so much to this company. I don't have an issue with authority. I have an issue being given a letter for nothing and treated with disrespect. If he gives me a letter then it will break everything down." (Page 198)

95. On 10 September 2021 a more formal email was sent by the first respondent with the subject line "Disciplinary Charge/Notice of reprimand" it invited the claimant to a meeting the following Monday to address issues of insubordination, operating outside of the company by attempting to open a bank account for a person not yet a client and personal travel arrangements made without "cognizance of the company". (Page 205).

96. The claimant replied on the same day responding to each of those allegations. In the course of the letter she wrote:

> It is clear that there needs to be a change in this relationship going forward. You have become very familiar with me which has been uncomfortable at times and has led me to be unable to understand where I am in this company. My role has changed and I am still unclear as to where I fit in this company especially at this point. A frank meeting about me possibly changing roles would be welcome, especially in light that you mentioned five other board members no longer wish me in this position or wish to fire me over these issues above. All disheartening, when you take into account I have brought in GBP53,000k per month revenue and GBP 16,000,000 in commission since I started and have many more clients in the pipeline. I may have challenged ideas which I thought was welcomed but this now seems be seen as insubordinate so I no longer understand my place in this company as an executive.
>
> As you have seen from my emails and messages I have been very careful to email with respectful headings instead of the friendly banter which was once acceptable and now suddenly isn't after my conversation with you about the incident at my birthday party (page 208).

97. This email is evidence that the claimant was capable of objecting to over-familiar behaviour, at least by September 2021, and did so. It should also have put the respondent on notice that comments of a sexual nature or which might be seen as amorous were no longer welcome.

98. As we have already said, the claimant, in the course of cross-examination, stated "up until [the first respondent] issued me with a written warning it was quite friendly and after that I told him that it couldn't continue because the boundaries were getting over-stepped and it was too difficult to be friends and his boss…"

99. Taking all of the above matters into account, we find that generally in the period up to the warning in September the claimant did not object to the way the first respondent behaved towards her and the conduct was not unwanted. Because it was not unwanted, we find that it was not to the claimant's detriment. The exception to that is in respect of the incident at the birthday party where the first respondent's behaviour went too far.

100. On 25 October 2021 the first respondent wrote to the claimant stating "I am not at all surprised that you are answering this message, VBUL person.! I am trying to keep the women away from me in this strip club I am in who are after semi-sexy old dudes who think they have mommy issues (sorry that was supposed to me be 'money') and have a super mid-rift body to flaunt. Uhm, sorry but what was the question again." (Page 211).

101. On 27 October 2021, at 18:56 the first respondent sent a message on Teams chat stating "My darling girl I think you looked absolutely gorgeous as always and you home is wonderful. We are family (unless you annoy me terribly as you do by being naughty) and I think you need a few days rest. I'm thinking of taking us all away for a little wile in winter" (p212).

102. As we set out in more detail below at paragraph 265, these messages were sent, as with others which were similar, because the respondent wanted to have a relationship with the claimant. It was put to the first respondent in cross-examination that he would not have sent a similar message to a man and he agreed with that. We find that this is conduct related to the claimant's sex and make the same finding, without repeating it every time, in relation to all similar messages.

103. At 18:58 on the same day the claimant replied "a break sounds awesome not sure when, am supposed to go to Canada still but hard when have the kids here and now with covid. Just need to find five days to get out there and sort things out. It's not long until Christmas anyway. You say I look great whilst you commented on my roots lol! Another thing to get done! And hoping the house looks in better shape when you come next although still with no decent sofa!"

104. At 19:21 on the same day the first respondent wrote

> Could you please as a matter of some urgency, and if only for me, put a roller blind on the two windows in your study, as I would not want any weirdos lurking in the bushes at night or stalking you at any time as you live by the footpath and everyone can see into the house and see you and there are real weirdos out there much weirder than me, and I am somewhat concerned about that (again, not that I really care at all)

105. The claimant replied, six minutes later, "that is so weird as I sat back down again to work and just thought about the same thing! I have blinds, I am just lazy but will start doing it thanks".

106. The following day there was an exchange between the claimant and the first respondent about business matters, the precise content is not relevant for the purposes of this judgment but at 17:17, in response to an email from the first respondent, the claimant wrote

> This is hard for me and I am NOT being greedy so never say that. But how is it fair the introducer gets more than the work that I put in. It's true without them we would have no deal, but without me there would be no deal to give? I still feel 50:50 is fair. Damon was fine with this and others will be also. The amount they receive will be more than they would get elsewhere because of the size of the funds. AH they do is give the name and chase sometimes but it is me that chases and deals with them more then the introducer.
>
> ….
>
> I know this is early days and yes I know my role will change eventually but until then I want to protect myself as have a lot of beings to take care of and nurture all by myself so this is very very important to me and I work really really hard,
>
> I know you get that and thank you

107. In the meantime, on that day, an exchange had taken place about a photo which the first respondent had taken of the claimant using a light ring. He sent that photo to the claimant and in the body of the email wrote "Remember when you first showed me the light ring and I said that lightens you up.? This is what I was talking about. One of the most beautiful pictures of you yet"

108. The claimant replied stating "oh my sprouts. Stop taking photos without permission and delete!" The first respondent replied "LOL…! I am using this image in the year and company article unless you have a better one".

109. The claimant replied stating "Sexual Harassment. Taking photos of me without permission/consent or knowledge" (page 218).

110. The first respondent contends that this was part of ongoing banter. The claimant denies that and states that she was actually raising an allegation of sexual harassment.

111. The claimant and first respondent continued to have discussions about commission structures and, on 1 November 2021, the claimant sent a firm email to him including the following statements "You have requested, actually ordered me, to send the introducers their agreement even though I felt uncomfortable to send such an introducers agreement since I do not have one yet myself between IWG and the introducers where I am to take a split of fees. I am unsure as to why you took offence or objection to this as you should understand with the situation I am in (and prior situations I have been in), my need to protect myself and simply have something in writing that states that I will receive 1.5% and the introducer 1.75%"…" would be appreciated that you understand how uneasy this makes me feel when I have been working really hard with the introducers to get these deals for IWG." " Could you let me know when I can expect something in the form of agreement that secures my position in this commission structure please with other introducers? My security with this company and your reactions make me feel very uneasy." (Page 231)

112. That email gave rise to a rebuke in reply from the first respondent in the course of which he wrote "your behaviour is unacceptable and has affected me greatly. I have become unsettled in the trust I placing you due to your repeated behaviour in this regard. You swing from friend to aggressor, to hot and cold. I said from the beginning that I prefer to be my colleague's friend rather than their boss."

113. The claimant replied by inserting her text into the email and stated "you asked me to treat you as a friend and then turned on me in an instant with threats of demotion and firing… It affects me deeply to be treated in a friendly manner one minute and then as an insubordinate employee the next. If I disagree with you, I am berated for it. If I'm uncomfortable about something and threatened with letters and demotion and down again you tell me that you can happily remove the introducers… How is this fair or professional in any way?" Later in the same email the claimant wrote "your mood changes constantly and you go from friend to foe in seconds. How can you expect me to trust you and my career with IW to you when you write emails like this to me?" (Page 226).

114. As is obvious, at this point the relationship between the claimant and the first respondent was deteriorating but the claimant was reiterating what she had said only six or seven weeks earlier, namely that she wanted there to be boundaries in place.

115. In that context we must decide whether the messages sent by the first respondent to the claimant in October 2021 were unwelcome. If one considers the messages and the claimant's replies in isolation then it might be argued that there is little evidence that the first respondent's comments were unwelcome. The claimant's replies appear friendly. However, the claimant's replies have to be seen in the overall context. She had made clear in September that such comments would not be welcome and she was in a subordinate role to the respondent. We find that her replies actually show that she was attempting to tread a cautious line between not wanting to offend the first respondent but not wanting to encourage him either. Given what she wrote in September and in November, we find that the comments were unwanted. Given that they were unwanted they would also have been a detriment to the claimant.

116. We must then consider, whether taking account of the claimant's perception, the other circumstances of the case and reasonableness the question of whether the conduct had the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

117. We find that the comments made, in the context of an employment relationship, would have the effect of creating an offensive environment for the claimant. She had asked the first respondent to stop and he had not done so.

118. On 4 November 2022 the claimant wrote a message on Teams chat to the first respondent saying that she needed to talk about commission when he was back. She ended her message "you have given me no heads up and I have no preparations for this."

119. The first respondent replied "yes girl I know…" (Page 228). Even in the context of a friendly familiar relationship, the use of such words from a senior employee to a more junior one is likely to be demeaning for the more junior employee.

120. The word "girl" clearly relates to sex and for any person in the claimant's position, to be referred to as a girl would be likely to create a humiliating or offensive environment and we find that it did so in this case having regard to the claimant's perception, the circumstances of the case and the question of reasonableness.

121. The comments were, we find, unwanted and a detriment to the claimant.

122. Discussions about commissions and payment continued and on 10 November 2021, the claimant wrote stating "Yes I know but you said you won't pay me my salary if I don't get another… it's very stressful to be dealing with this tbh on top of everything else going on…" (Page 234).

123. The first respondent replied to say “Girl there is a big difference between wont and cant. I do not have the money ...

124. Again, for the reasons we have given, we find the term “girl” to be unwanted conduct related to sex which had the proscribed effect.

125. On 13 December 2021 the first respondent wrote the claimant stating “I must say, you looked like the ‘Belle of the Ball, in your pictures on Instagram in that incredibly fetching red dress. Very uber beautiful. Chat later. M [flower emoji]” the claimant replied “thanks yes a great event! Chat later.” The first respondent then sent another message starting “hi girl” (page 267).

126. On 16 December 2021 the first respondent wrote to the claimant stating that she was a weirdo and then added “a super gorgeous one though (flirt for the day)” p268. The claimant replied referring to business matters and ignored the comment.

127. On 17 December 2021 at 23:40 the first respondent sent a photograph to the claimant of her holding a class of wine with the caption “super beautiful”. At 00:01 on 18th December the claimant replied “Ugh” and the first respondent sent a message consisting only of seven heart emojis.

128. On 22 December 2021 the first respondent wrote “Got your pictures. You are so unbelievably beautiful and have the heart to match. I'm so proud of you my beautiful person. No wonder men gravitate to you so easily. Just wish most men weren't so shallow as to ignore your heart and see only your looks. If the ones you sent me are your choice I can only suggest that there is one slightly out of focus which I wouldn't buy but that's up to you. Love all of them though” (page 271).

129. A few moments later the first respondent wrote “… Give me a few minutes as it’s a difficult choice” in the claimant replied “yes I know! That’s why I am struggling!”

130. Around 50 minutes later he sent 3 WhatsApp images to the claimant stating “hi girl here is my choice”. He then sent further message stating “Also, what are you actually doing, working in this industry when you could be a top ranking fashion model.?” (p272).

131. The claimant replied “lol, it would never pay high enough for what I want to earn!”.

132. We are told by the claimant that the first respondent wanted an impromptu Teams meeting to take place on that day and at around 10:18 the claimant was still in her dressing gown. At 10:18 she wrote “give me five mins, need to get out of my dressing gown lol”. The first respondent replied “no don’t. I love your natural look and it’s only me anyway”

133. The first respondent then wrote “I've just paid £150 into your account for stockings that were laddered and hair clips which were lost due to work

recently and in no way does this have anything to do with photos. Just saying, you're welcome"

134. Later on the same day the following exchange took place:

[22/12/2021 1139] Marc Bandemer

Diseased indeed.! Also, is there anything I can get for the kids for Christmas.?

[22/12/2021 11:41] Marc Bandemer

Oh my word, Father Christmas just arrived with another present for you.!! If this continues I am sending them back to the north pole via Amazon.!! This cant go on like this...!

[22/12/2021 11:42] Iouiseuk3

Lmao. Seriously you're just vying for more presents !

135. The claimant confirmed in her evidence that Lmao is text abbreviation for "laughing my ass off".

136. At 11:57 the first respondent wrote to the claimant stating "Sweets are you still there?".

137. Later still on the same day the claimant sent a message stating "yes but I think nicer for you to give them? then they understand where it is coming from and can thank you personally" (page 274) she also wrote "I'm trying to raise humble kids that appreciate so if you can give to them personally it is much better… And very thoughtful of you" (page 275). She then wrote " I think wait until we see you" and the first respondent replied "you come with a package deal and they are as part of my life as what you are".

138. The claimant said in evidence, in respect of that exchange that the first respondent had wanted to give her children money and she did not want to him to give them "that much". She told the first respondent that if he was going to give the money he should give them less money and make clear it was from him and not her. In her witness statement she says that the first respondent's behaviour was intensifying and she was helpless to do anything.

139. On 31 December 2021 the first respondent wrote "My dear Louise… to say, thank you for everything in 2021, the valuable contribution you are making to our business and to me as a person. You are an amazing woman and I am grateful that you are in my life. Have a blessed 2022 and chat on the other side of the new year."

140. The claimant replied "Dear Marc thanks for such a lovely message. Very blessed to have met you and your lovely family this year for so many reasons. It has been quite a journey and am glad and grateful to be taking this journey into next year with you. Wishing you much health happiness and prosperity Lou Yasmine jamie and Mia x"

141. We find that the claimant was pleased that the first respondent was seeking to give gifts to her children at Christmas and, indeed, with the fact that the first respondent was getting presents for her. We think that by the end of the year the relationship between the claimant and the first respondent had improved and we do not think that the comments or gifts towards the end of December were unwanted or a detriment to the claimant.

142. There is an unchallenged transcript of a Teams meeting call on 5 January 2022 in the bundle (page 278) as follows:

> 22:40 MB I know so point taken do not push any further, I have now told you STOP.
>
> 22.48 LAC Small laugh
>
> 22.49 MB You are so naughty you're just like my wife, you know that (laughs)
>
> 22.50 LAC But these things are important.

143. There is also a series of Teams chat messages on that day, including one from the first respondent which reads "Why are you copying me in those emails.? Why, oh why, are you also as naughty.?"

144. On 13 January 2022 the respondent wrote the claimant stating "I have bad news that I am now broke as I have bought you several technology devices which has removed most of the content of my wallet, but then again you are so very worth it…" (Page 280)

145. On 14 January 2022, the first respondent sent the claimant a lengthy message explaining that he had suffered from some bleeding in a restaurant that night. The claimant replied "I am trying to decide through the massive exaggeration how bad this was ! Perhaps before Alix you should check in with the doctor ?"

146. The first respondent replied to the claimant's message stating "You need to get some sleep naughty person and not exaggerate all the time as you say" (page 282).

147. On 15 January 2022 the respondent sent the claimant a picture of some batteries in packaging called "sexy battery" with the message "I also got you "sexy batteries"… For your new "sexy mouse". There is no evidence that the claimant replied to those messages (page 283).

148. On 20 January 2021, the claimant sent a message to the respondent apologising for sounding irritable and saying that she felt overwhelmed for some reason. The first respondent replied with words that we find were intended to be encouraging. Later that day he messaged "Hi girl. Give me a call when you are back please dear. I need to quickly run something by you about the Lux trip"

149. Two hours later he messaged "Please send me a picture your hairdo for approval"

150. Other messages were then exchanged which were largely business based and at 16:48 on that day the first respondent wrote "..and lastly, I have gone this entire day without once telling you how beautiful you are, how absolutely unique, how very very valuable, special and precious you are and how proud I am to have you in my life as a colleague and a friend… And don't forget my picture when you're done with your hair 😊😊". The claimant replied "LOL ok will try" but the evidence in the bundle suggests that the claimant did not, actually, send a photo of her hair. (Page 288).

151. The claimant's evidence in her witness statement is as follows "Around early January 2022 the 1st Respondent told me that I was going on a business trip with him and his wife but later changed it to him and me. By now I felt extremely uncomfortable. He made reference more to us being together personally, that we were in this for the long run and needed to be there for me in all aspects of my life(P286). He asked to see my hair when it was done and send photos for approval(P288). He started to bring me gifts such as flowers even though he knew I had a new partner, Andy. He started to talk about difficulties in his marriage (P289) which made me feel very uncomfortable."

152. Having reviewed the evidence, we find that the nature and intensity of the comments made by the first respondent did increase throughout January. We can well understand that the claimant would find the increasing intensity of messages uncomfortable and we accept that she did so. We find that they were unwanted given the nature of them and it was reasonable, having regard to the claimant's perception and the circumstances of the case, for conduct to create an intimidating and hostile environment for the claimant.

153. On 21 January 2022 a Teams meeting took place between the claimant, the first respondent and the client. In the course of the meeting the following exchange took place:

> 08.02 Client And do you will you move there eventually to Luxembourg? Or you stay back here in UK?
>
> 08.07 MB We will live between there and here. We will buy a house there so that we have somewhere to live for for louise and myself and my and anybody else that is associated with the company that needs to go over for a few days, because every time we go over, we go over essentially for about a week and that's about every three week so it's not, it's not practical to keep going to the hotel type of thing, it's just not practical and also this is why I am planning this year to buy our own jet so we can fly ourselves, I am a pilot and maybe you know, but erm, a small jet so we don't have to go through all the drama of airports all the time, it's just, our time is very critical, we are small bunch of people we punch way way higher than our weight category so our effect is much higher so we have got to be efficient and that's really what it is
>
> 09.16 client Time is money
>
> 09.18 MB Yes yes

154. The claimant says that this is an example of the first respondent humiliating her in meetings in front of clients. We find do not agree with the claimant in that respect. The first respondent was saying to the client no more than that his company was buying a house in Luxembourg were officers and employees of the company could stay when on business. That was not a humiliating comment. It did not relate to the claimant's sex and it was not conduct of a sexual nature.

155. On 26 January 2022 there was a series of WhatsApp message exchanges which show friendly banter taking place. In answer to the first respondent saying he had only slept for about four hours the claimant replied "oh dear but I feel older people fare fine in less sleep :-)"

156. The first respondent told her to "take back those hurtful words" and the claimant replied "nope" with a downward thumb emoji. The first respondent replied "I have never met a more naughtier human ever!!"

157. The reference to "more naughtier human ever" is, in the context of all the other messages sent by the respondent, a comment of a sexual nature. It certainly, in our judgement, relates to the claimant's sex. It is not likely that the first respondent would have sent a similar comment to a man. However, it was a comment made in the context of a situation where the claimant had been teasing the first respondent. In the context of that particular conversation, we do not think that it would be reasonable for the claimant to find that the conduct had the effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. We do not find that the conduct had that effect.

158. Later the same day the first respondent sent a message which is not untypical of the type that he was sending from time to time in which he said "My heart, you work tirelessly and at your own risk for this fledgling company of ours. You work long hours and are committed at all levels and are so very excellent at what and how you perform your function. I could not be more impressed, humbled and honoured to have a person like you at my side and in this company sharing the load. You are truly amazing. You are also so very beautiful and a marvellous human being with a soul that is so easy to love. You are humble and I se it in your tiredness yet you persevere. We could be twins. So don't ever doubt yourself. As you and I sow together, you need to be a bit more patient for things to materialise and for our seed to grow. Harvests never develop in short time periods. You are more than enough" and went on "Lastly, please come to me and tell me when you feeling low or have a heavy heart or if something is bothering you in general. If it's in the middle of the night, even if you can't sleep, message or call and I will even come down to be with you if you need me to. I know you have many family members to share with but in case you want to share anything with me I'm here and it goes no further than you and me too. I am always there for you. X" (page 311)

159. The claimant replied in a message which is truncated in the bundle but so far as it appears is as follows "Just at basketball and so lovely to hear such

kind words from you. I know I need to be patient but it is on me to create the revenue for us and to get to Lux and haven't done it. That's hard to take as don't like failing on any front. I know it will come but the pressure is on us now and mainly me. And what is going on with jamie is really affecting me again because he is…". Jamie is the claimant's son.

160. The first respondent then wrote "I will give some insight to Jamie tomorrow. Sometimes when challenged we are to close to forest to see the trees. You are a wonderful doting mother Another trait I live in you. However for today I am turning in and look forward to tomorrow. Good night my sweetheart. Sleep well and God bless you"

161. The claimant replied "Ok am always open to ideas at this point thank you. Am running his bath then off to bed. Good night:-)" (page 312)

162. We have set out this exchange in full since one of the complaints of the claimant (at least advanced in cross-examination) was that the first respondent was constantly invading her life. To the extent that he did so, it was not always unwelcome. The claimant welcomed the first respondent's views on Jamie.

163. On 27 January 2022 the first respondent wrote stating "girl are you there?" (Page 320)

164. In so far as the first respondent called the claimant "girl", for the reasons we have given we find that that was unwanted conduct, related to sex, which had the effect of creating a hostile environment for the claimant.

165. It is not in dispute that on 3 February 2022 the claimant was promoted to Strategic Development Director. The first respondent acknowledged as much in his email of 2 February 2022 at page 330 of the bundle. There is little contemporaneous documentation in respect of the promotion, there are WhatsApp exchanges about a car (page 331) and as we set out above, on 4 February 2021 the first respondent wrote a letter to the claimant stating "It gives me great pleasure to have received your application for a member of the board of directors of Integer Wealth Global S.A., Luxembourg. After your valued acceptance and response to my invite to you, I wish to officially welcome you to our board or directors". As we have also set out above, we find that the claimant never was appointed to the board of the S.A. company.

166. The sheet which went with that letter, setting out a list of board members, described the claimant as Executive Director- COO Strategic Development (acting CEO). Although the claimant was not appointed to the Luxembourg company, we find that within the UK she started to operate as an Executive Director and COO. The claimant believed that she was doing so for Integer Wealth Capital Ltd, but as we have found, in reality she was working for the first respondent doing that type of role within his business.

167. On the 7th and 10th February 2022 the first respondent messaged the claimant. At 06:16 on the 7th he stated "good morning beautiful [picture of a rose]" (page 342) and at 05:50 on the 10th the messaged "good morning beautiful [love heart emoji]" (page 346).

168. On 7 February 2022 the claimant was in Luxembourg with the first respondent and on the evening of 7th February he messaged the claimant stating “seems you’re asleep. I am leaving the door slightly ajar and will sleep on the floor if you would like to sleep on the right side of the bed to have a better nights rest if that would give you a better day tomorrow. You are my person and I don’t want to compromise either you or me just thinking of our day tomorrow ma'am.”

169. On the same day, in WhatsApp messages, the respondent referred to the claimant as “honey” and “lovey” and stated “I love you back my person. Sleepies tight”

170. We find that those messages, like those sent in January, were unwelcome. The first respondent was effectively inviting the claimant come into his hotel room at night and sleep there. It was conduct which was related to the claimant’s sex. It would have created a degrading, humiliating or offensive environment for the claimant. We make that finding even though we have found that in January the claimant had welcomed the first respondent’s help with Jamie. Being willing to accept the help and insight that the first respondent could give does not mean that the claimant was equally willing to receive those types of messages from the first respondent.

171. On 9 February 2022 the first respondent sent a WhatsApp message to a family friend, Maria. In the course of the message he stated “We cannot wait to see you again and love to both of you and all of Gods richest blessings. All our love, the naughty Louise and the handsome and well behaved Marc 😊 XXX (page 345).

172. The claimant says that this is an example of being humiliated in meetings in front of clients. In fact, the first respondent said in evidence that Maria was not a client but a part of his wider family. The claimant did not make any comment on that message or reply to it and we find that the claimant would not have wanted to be described as “the naughty Louise”. The reference to naughty has a sexual connotation to it and in any event we are satisfied that the first respondent would not have said that in relation to a man. Thus the message was unwanted conduct related to sex and of a sexual nature which had the prescribed effect.

173. On 10 February 2022 the first respondent wrote to the claimant saying “I need to know what coat size I must get for you…” And the claimant replied “lol okay I will come over!” (Page 347). Later the same day the claimant wrote “good night Marc really was happy we had that chat today. Just chatting with kids than sleeping X”. In evidence the claimant could not recall what chat she was talking about.

174. In her evidence the claimant stated that she had seen the gift of the coat as being a reward for her for work completed. We do not think that fact that the first respondent bought the coat for the claimant was unwanted conduct. Nor do we think it was a detriment to the claimant. The claimant herself, at page 372 of the bundle wrote “😊 btw I received the Hugo Boss coat and its stunning thank you… Can’t wait to see it on biz trips and to the obs.

175. The next day the respondent wrote to ask what ring size the claimant would wear, the claimant replied “no clue and you’re not buying the any ring unless Lioni [the first respondent’s wife] is picking and she gets one! The gift of bring your work partner is the best gift of all and the company car! That is enough:-£”. The first respondent replied to say that he was having a mock ring made with the company logo on it.

176. In fact the claimant was then presented with a diamond solitaire ring by the respondent which she says was an act of harassment or direct discrimination. The claimant says that she has never worn the ring and it has remained in a cupboard, which the tribunal accepts.

177. On the question of whether this gift was unwanted the tribunal is not unanimous. The tribunal is unanimously of the view that the evidence suggests that, generally, the claimant did not mind receiving gifts from the first respondent and to the extent that the claimant says otherwise we do not accept her evidence. One of the members finds that the presentation of the solitaire ring to the claimant was a gift which was welcome. He notes that she did not resist taking it and has still not returned it to the respondent.

178. The majority of the tribunal take the view that the claimant was seeking to stop the first respondent from buying her a ring as set out in the WhatsApp exchange above. She believed, initially, that the ring was to be brought for romantic purposes and for that reason sought to involve the first respondent’s wife in the process. The majority does not think that there is significant evidence that the claimant changed her mind when she was presented with the solitaire ring. The fact that she did not reject it at the time it was presented to her is more likely, says the majority, to reflect the fact that she would have been reluctant to put her boss in an awkward position if she rejected such a valuable gift. She did not wear the ring.

179. Thus the majority would accept that the presentation of the ring was an act of unwanted conduct related to sex, or of a sexual nature in that it was an attempt to pursue the claimant romantically, and that being presented with such a large gift would create an intimidating environment for the claimant in circumstances where she had told the respondent that she did not want to receive such a gift. The minority thinks that the gift of a ring was not unwelcome or unwanted conduct or a detriment to the claimant.

180. On 11 February 2022 the first respondent sent a WhatsApp message to the claimant stating “One more whisky and a last cigar, a hot shower to make my 'pristine chiselled body super clean the shock of impressive hair' to run my Corsian hair brush through the flowing locks of my own thick, well groomed crop” (page 350). Although the message may have been an attempt at humour, it was also an attempt to pursue the claimant romantically and falls within those categories of message which we have already explained were unwanted and amounted to harassment.

181. Between 12th and 13 February 2022 there is a lengthy set of WhatsApp messages. The first respondent is talking to the claimant about having found a

driving instructor to take on D[4]. He is also talking about giving a car to the claimant which D can use. The claimant's reply is cut off but on 13th February the first respondent wrote "tried to call D but it just rings. Will try and call her again later". The claimant replied "okay sounds good".

182. There is then a discussion about meeting D and Ana later. The claimant stated that she had to do a school run at 3pm and 4pm "as long as you don't mind!" The first respondent wrote "just spoke to her. She is going to be my daughter too soon [followed by 8 the heart emojis]" . He also said that he didn't mind the school run at all. The claimant replied "OK then! Thank you! Did you speak to D? They are back at 4:45…" The first respondent said "yes Lovie did call her and had a little chat and wished her all the best on this her special day which is actually your day to mum" and the claimant replied "thank you so much😊 they are excited about tomorrow's chat!" (Page 354)

183. The first respondent then replied saying "what can I say but that I love my adopted family… Especially the mum" and the claimant replied "Muah thank you! Just at tgi Fridays".

184. We find that the claimant was keen for the first respondent to pay for driving lessons for D and to provide her with a car. She made no attempt to resist that happening and actively encouraged the first respondent to speak to D about it. In that context, and at that time, we do not think that the claimant minded the first respondent saying to her that he loved his adopted family and especially the mum. We do not find that was unwanted conduct, nor was it treatment to her detriment.

185. The first respondent sent the claimant a Valentines card which appears at page 358 in which he wrote "thank you for being in my life… And for what you have become to me. I love you." (Page 359).

186. On 14 February 2022 in the context of what we regard as a friendly exchange, the claimant wrote "you shouldn't be mean to me on Valentines Mr Bandemer!" (p357)

187. The evidence suggests that, at that point, even though the claimant was not romantically attracted to the first respondent, she did not mind receiving the Valentines card and was happy to make reference to Valentine's Day in her WhatsApp messages. We do not find that was unwanted conduct.

188. At the same time the first respondent wanted to offer his wife's cleaning business to D and her friend Ana. The claimant was keen for that to happen and it was agreed that the first respondent would come to her house to tell D and Ana. The claimant says that he did come to her house and said to D that the claimant was like his wife, that he was like the claimant's family and the claimant's daughter was his daughter. The claimant says that she could see D found it weird and they went into the study. Then, the first respondent asked the claimant to sit next to him when D and her friend were behind them. The first respondent touched the claimant's knee and was close to her and when

[4] The use of "D" is pursuant to a rule 51 order made at an earlier case management hearing.

she stood up he went to hug and kiss her. He kissed her on the cheek. The claimant says that as a consequence D "flipped out" at her, said that he was creepy and that he had a wife and that the claimant had a boyfriend. D asked why she was letting him treat her like that and the claimant said that she was doing her best but was sorry and she would talk to him. That version of events is supported by the witness statement of D which was not challenged and therefore we accept that version of events.

189. That behaviour by the first respondent at the claimant's house and in front of her daughter was, we find, unwanted. The claimant had never given any indication that she was interested in physical affection with the first respondent and the behaviour took place in front of her daughter. It was conduct of a sexual nature and was detrimental to the claimant. It created a humiliating atmosphere.

190. A teams meeting then took place on 17 February 22, the transcript of which we have and was not challenged, which shows that the claimant spoke to the first respondent explaining that D was unhappy and stated "God I got it all, I got it all Marc and like, you know, (sigh) I just, just the whole thing for me just got too much. Her making these comments and her saying that you know is he giving me, you know why is he giving me the car why is he giving me the company]? Well it's a company car well are you sure? There's not you know, are his intentions good towards you, umm I don't want, I don't want you, umm, doing anything you don't want to do and I won't take it if this is it, umm, it's just not right and that was her comments. [silence] and then you're telling me about Lioni and things are not going well and that is stressing me out and just the whole thing, I feel like we need boundaries here because we are working together forever, like we are going to be together for a long time and your friendship as well as us working together is really important to me, its like everything affects me as it does you, right" (p362)

191. In that context, and in the course of a lengthy discussion, the claimant made it clear that she wanted clear boundaries to be put into place for their relationship. However, in the course of the conversation she also stated that she knew the first respondent never had bad intentions otherwise she would not be there and that she did not want their friendship to change because they were doing so well (p365-365). She said "I love our meetings together and having my nails done and going, trying to go on meetings while doing it, you know… Having our little ramens together, I love, I love those moments, I love when you came here right and you spend time in the house together. I just don't want anyone to think it's ever, ever anything other than something pure. I think that's that's.." (p365).

192. The transcript of the meeting is lengthy and it is not possible to highlight every part of it. However the claimant particularly relies upon a comment by the first respondent within the meeting that he was very possessive of her and he did not want anyone else to be near her and that he had said to her that when she told him she was dating somebody else it was as if she had hit him in the stomach with a sledgehammer. (page 366).

193. The first respondent, later in the conversation told the claimant that he wouldn't "grab you like I do, or hug you or kiss you or hold your hand like I do in front of anybody else. I will not compromise you and I won't say the things, I'll be very vigilant in front of your children and if I have ever ever ever hurt you or cause you any doubt or pain, I am sorry." The claimant replied that she did not want the first respondent to be hurt either. It appears that at that point the first respondent was crying. (Page 368).

194. We find that although the conversation was less clear than a lawyer might desire, it would have been obvious to the first respondent by the end of that call that he could have no expectation other than a friendship with the claimant and that his behaviour needed to change going forward.

195. On 18 February 2022, however, there was an exchange by Teams in which the claimant said to the first respondent that a vase had broken. The first respondent said that he would get her new vase and she replied "no no it's fine it was a simple glass one not my crystal with the roses in! It's only stuff!" (Page 374).

196. Notwithstanding what the claimant had said to the first respondent, he then presented her with a vase inscribed "Louise the flowers here in will never surpass your beauty." (Page 375).

197. Coming so soon after the conversation on 17 February 2022 we find that buying the claimant such a gift, with such an inscription, was unwanted and related to the claimant's sex. It created an intimidating or offensive environment for the claimant who had to negotiate a situation where the first respondent, who she had told that she wanted to only be friends, had given her a gift which, if she placed it in her house, would be seen by D and was bound to cause D distress. It amounted to harassment.

198. On 19 February 2022 the first respondent wrote the claimant stating "… I'm having a few glasses of wine, so while I can still be sensible I would say… I love you, my person [love heart emoji]"

199. On the same day, talking about his wife, he stated "I really need a break and for her to get her passport so I can get out of this bullshit relationship" (page 379)

200. On 22 February 2022 first respondent wrote to the claimant stating "Just want to say I miss you and love you and am sooo very distressed that you are in the arms of another"(page 394)

201. Those messages were all unwelcome and unwanted. The claimant had made her position very clear. Again they were messages which related to the claimant's sex or were of a sexual nature and they were, reasonably, intimidating and offensive to the claimant since the first respondent was simply ignoring what she had asked him to do.

202. The claimant replied stating that she was in a good place right now and things were going well for her, her children and her partner. She described her

partner as a good man and said that she wanted the first respondent to be happy for her. She stated that her friendship with the first respondent and partnership was important as was her relationship with the first respondent's wife. She said "please be okay with this and let's focus on working well together. OK?" (Page 394)

203. Her position was made very clear.

204. By way of apparent reply on 2 March 2022 the first respondent wrote "… I'm sorry if I make you feel uncomfortable when I keep saying this but I am so very much in love with you… I didn't plan this Louise and cannot seem to switch it off and I'm not sure if I want to… However that is perhaps besides and if not then not the only point. We are a stunning business couple and the envy of many already and if I have to suppress my feelings and emotions for you to feel more at ease in working together, I will". The message goes on " other than that I think I have said enough so enjoy a glass of wine and know there is a super sexy, handsome pilot widow dude who is crazy about you and has your back always… Oh and those "out of this world" sexy feet!! Oh my word!!! " (Page 395).

205. We find this to be a further act of harassment. The first respondent was displaying every intention of ignoring the claimant's requests - which was bound to be humiliating and offensive for her.

206. Around 7 March 2022 the first respondent received a call from somebody purporting to represent someone called Peter Kell.

207. The first respondent's evidence, which we accept because it is consistent with the later WhatsApp messages, was that the caller initially stated that they were a lawyer representing Peter Kell who had a claim against the claimant in Canada. The first respondent's evidence was that the person said that a case was being brought against the claimant which would result in a "garnish" order on her salary and that the claimant had "done it before" in Hong Kong and Japan. The person went on to explain that he was speaking on behalf of Peter Kell who was the claimant's former employer in Canada and had had some sort of romantic relationship with the claimant. The first respondent formed the view that the person he was speaking to was not a lawyer and then the person started swearing about the claimant, saying that she was cheap and that she had stolen from him and was a fraud.

208. The first respondent sent a message to the claimant stating "who is Peter Kell to you?" The claimant replied and referred to him as being her "stalker ex" and then sent two angry WhatsApp messages to the first respondent stating, "I have stood by you the whole time and never once questioned you. And you come at me saying who the fuck am I after what I went through with that man? Leave me alone you heard me." (Page 400).

209. In response the first respondent wrote "we'll just mpwah to you too" and then "who are these men who are saying all these things about you? That you are so cheap? That you are so easy for them?" (Page 400)

210. The claimant replied stating" So much for the man who had my back and would protect me! Your words speak volumes. Best of luck to you" "Leave me alone Marc. Seriously"

211. We find that had similar allegations being made about a male employee to the first respondent, he would have sent a similar WhatsApp message to that man. The first respondent is not somebody who holds back when he has a statement to make or a question to ask and he would have wanted to know what was going on. The message which the claimant complains about -where he asks who are the men saying that she is cheap and easy- was not sent because of the claimant's sex, it was sent because the first respondent wanted to know why he had received a call of the type he did. Moreover it was not conduct of a sexual nature. It was an enquiry into allegations which had been made. It was not an act of harassment.

212. The first respondent did not, however, leave matters there. He then sent a series of messages suggesting that he did not know what was happening and asking if he had done something wrong but then stated "and by the way Morgana. Tou lied."

213. We accept the claimant's case that the reference to Morgana is a reference to Morgana Le Fay, a witch or sorceress connected to Arthur. Having observed the first respondent give evidence and considered the documentation in the bundle, we find that had the first respondent found himself in a similar argument with a man he would have been similarly abusive to the man. Although, in some situations, use of gender specific terms can amount to harassment on the grounds of sex, we find that a similarly offensive term would have been used toward a man and this was not conduct relating to sex or of a sexual nature.

214. On 9 March 2022, the first respondent sent a message to the claimant stating "I did not hurt you peanuts!… Good heavens how many times do I have to tell you, illustrate and prove to you how much I mean it when I say how I feel about you? You are to me just as a wife is to his doting husband… Have a nap and know that you have a man that cares and loves you like no other ever has or will again…" (p407)

215. The claimant replied, "That's a nice message. Okay I am trying. I will bounce back but this has hit me hard knowing he is back. Don't ever doubt me pls again. I won't ever damage this company and never seek to harm anyone." (Page 408).

216. Although the claimant replied stating that the first respondent's message was a nice one, we do not infer from that that the conduct was wanted conduct. The claimant had made clear that she did not want any kind of romantic relationship with the first respondent or contact from him of that type. The first respondent still was not listening. The claimant had to remain mindful of her employment with him and we do not think that the fact that she stated "that's a nice message" takes away from the fact that she had made clear she did not want such comments and the comments were likely to continue (and we find

did continue) to have the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

217. On 12 March 2022 the first respondent sent the claimant a very long WhatsApp message in the course of which he made the following statements:

> I'm so very sorry about this and want you to know that I am working on my emotional disconnect from you really diligently and hope it will work as I don't know any other way.
>
> …
>
> All I know right now is how very much I love you and often just want to resign myself to that and just go with it and let things unfold as they must, but I so fear for my heart and don't know how to protect it especially from you because whether or not you realise it or even accept it, but you have most of my heart already.
>
> …
>
> Andy or no Andy, I consider you as mine, and in any event I told you before that no one will love you like I do"

218. We repeat what we have said, the first respondent knew that these comments were not acceptable to the claimant and in making them he engaged in unwanted conduct related to the claimant's sex which, taking account of the claimant's perception, the other circumstances of the case and reasonableness, had the effect of creating an offensive environment for the claimant.

219. On 13 March 2022 there was a discussion between the claimant and the first respondent about the purchase of a house in Cyprus. The claimant sent a WhatsApp message saying "So is this going to be the company house under IWC Cyprus ? Do we have money to sustain salaries and other expenses like traveling also? When will we have this ? Will take a look Is Lioni looking too ? Can I consult ?! How fun :-)"

220. The respondent replied "No this is our house bought by you and me…"

221. To which the claimant messaged "But how can we repay the loan ? Is it under a company ? If something happened to you what would I do ? We need to think carefully about this. Isn't it better to be under a company name then if something happens to the business or company we are protected and the worse case it would be taken. These things make me nervous especially you wanting to move quickly !"

222. In respect of this exchange, the first respondent gave us no cogent account of why the house would be one brought by him and the claimant. It was not to be a company house, but privately owned and we find that the first respondent was suggesting that it was some sort of love nest. Again, therefore, the first respondent was engaging in unwanted conduct related to the claimant's sex. Again we find that would have had the effect of creating a hostile

atmosphere for the claimant, who did not want to pursue matters with the respondent in that way.

223. On 13 March 2022, the first respondent wrote to the claimant stating "Girl, some of the messages I or we send cannot wait until you decide to look at your phone. Sometimes I and perhaps others need a more responsive answer. It is why I want to buy you an Apple Watch." (Page 425).

224. For the reasons we have given, we find the use of the term "Girl" to be an act of harassment. However, we do not find that the suggestion that the first respondent would buy the claimant an Apple watch to be an act of harassment or an act of direct discrimination. We accept the first respondent's explanation that the purchase of an Apple watch was no different to buying the claimant other business tools such as a laptop computer. It is evident from the WhatsApp exchange that the first respondent was frustrated with the claimant for not replying to emails sufficiently quickly. Buying an Apple watch was a solution to that problem and was business related. It was not related to the claimant's sex, or because she was a woman or conduct of a sexual nature.

225. During a Teams meeting on 16 March 2022, the first respondent said to the claimant "I wanna flipping eat you. You're so gorgeous when your hair is like weird." (Page 439). This comment did amount to sexual harassment, it was unwanted conduct of a sexual nature which creating a humiliating or offensive environment for the claimant.

226. As we have said above, at pages 440 and 441 of the bundle are certain photos. The claimant has selected these photographs for the bundle in order to assert that the first respondent was taking her to the tailors inappropriately and taking inappropriate photographs of her. The first respondent says, in fact, the claimant was having a pair of trousers fitted and he had taken a series of photographs to show her the length of the trousers so that she could make a decision on tailoring. There is a series of small images at the bottom of page 440 and 441 which show that the first respondent took a large number of photographs of different angles of the claimant. We find there to be nothing sinister in respect of these photographs. The conduct did not relate to the claimant's sex and was not unwanted.

227. A teams meeting took place on 23 March 2022, the transcript of which reveals that there was an argument about whether the claimant should be required to go and see the first respondent when he was sick. In the course of the transcript of that meeting is the following exchange:

02.08 MB I'm not sick. I was sick yesterday, I'm not sick today. And I knew that yesterday.
02.13 LAC You shouldn't expect me to come when you're sick and say I'm the boss, I'm the boss therefore you're not listening to my instructions even if you're sick. That's not right.
02.21 MB OK
02.21 LAC Who does that?! Who says that?
02.22 MB At the end of the day, this day is now, from our side. So It's not gonna happen. But if I say to you I'm fine that mean's I'm fine

02.30 LAC No it's not gonna happen.It's not right for you to pull the boss card on me and say..
02.33 MB I AM the fucking boss. Louise I am the boss and you are NOT yet my partner
02.35 LAC If I'm sick and I tell you to come to my house and get sick not good
02.28 MB You are NOT yet my partner. Understand this you are NOT yet my partner.
02.42 LAC I don't wanna be your partner if you're going to treat me like this. You don't treat anybody like this. You don't treat anyone like this.
02.48 MB I will always be the boss. You will not be at my side as an equal. I will always be your boss
02.51 LAC I don't need to be your partner if you're going to treat me like this. Ok? I don't.

(Page 446)

228. The extract gives an insight into the working relationship between the claimant and the first respondent at that time.

229. On 28 March 2022 the first respondent sent a Teams message to the claimant stating.

> Girl, I am your boss. I am the owner of you and the commander of you too. I am commanding you an instruction to go and nap for 45 minutes and to do it now. Do not disobey my direct commanding order slash instruction.!! The Noss of all bosses.! (page 447)

230. In respect of the reference to "girl" we repeat our earlier findings. In reference to the statement that the first respondent was the owner of the claimant, we are satisfied that the first respondent would have made a similar remark to a man who was subordinate to him. Having observed the claimant give evidence, we find him to be a somewhat forceful individual who expects to get his own way. In the context of what was, in reality, a reasonably friendly instruction to take a break, we find that this comment was not related to sex.

231. At page 450 of the bundle is a Teams messages extract. On 31 March 2022 the claimant writes "Jamie was also bragging about getting the computer from you to his friend. Marc for the win!" This is further evidence of the fact that the claimant was happy for her and her family to receive gifts from the first respondent.

232. The claimant went on to refer to sky diving and saying that the children could not sky dive until they were 16 years old and they were gutted.

233. The first respondent wrote "I dont want any of you but cant help myself when it comes to your/our family. Uuurgh...why do you all creep into my heart like that.??"

234. The claimant replied "😊 it's because your kind! And mushy".

235. The first respondent then says that he has another plan to go indoor sky diving at Basingstoke. The claimant replies “oh that’s a great idea! All the kids would like that but how much is it?” Later the first respondent suggests that everyone goes indoor skydiving and she replies “how fun. I would like to do that!”.

236. The claimant’s suggestion that this is an example of how she was unhappy with the first respondent buying gifts for her or her family is not credible and we reject it. This was not unwanted conduct.

237. There is a further example of gifts being wanted at page 460 where the first respondent has given a watch to Jamie for his basketball achievement. The claimant replies “he is so excited about it!”.

238. We must also make findings as to the evidence of the claimant’s housekeeper, Ms Atilo, who gave evidence that on 12 April 2022, when attending for an interview at the claimant’s house, Mr Bandemer said he loved the claimant’s children and they were like his own. She says that she saw Mr Bandemer go and hug the claimant and she looked uncomfortable and froze. She says that the first respondent hugged her for a long while and she looked embarrassed and tried to pull away. Having heard from Ms Atilio and noting that this is the kind of behaviour the respondent has exhibited on other occasions, we accept her evidence and find that the conduct was of a sexual nature and related to sex and reasonably created a hostile and intimidating atmosphere for the claimant.

239. On 22 April 2022 the claimant wrote to the first respondent stating “yes I know and like that meeting with the Brazil minister I am frustrated at my feeble body. I am too young for this crap. I feel positive that we will get a funding next week by the way.”

240. The first respondent replied “yes agreed, about your feeble but awesome little body though [laughing emoji, love heart emoji]” (page 469)

241. We find that comment was harassment. The claimant did not want comments of that nature, they related to her sex and objectively and subjectively created a degrading environment for her.

242. The claimant complains that in May the first respondent became much more hostile towards her. After the message which the first respondent sent on 22 April 2022 there are no further messages of that sort. It is apparent that by 11 May 2022 there are ongoing frustrations between the claimant and the first respondent in relation to business (see page 477). There is also a Teams exchange which has become particularly formal at page 480 of the bundle. There was undoubtedly a change of atmosphere.

243. At the same time the first respondent was focusing on setting up its business in Luxembourg. The Integer Wealth Global S.A. company had been set up with the involvement of Ms Ozveren. On 17 May 2022 she had written to the first respondent stating

> Great to see that you will be back to Luxembourg in a few weeks. We can then arrange a meeting with Linklaters if you would like to come in as a new client here.
>
> Re the directorship, I am afraid I cannot hold that position. As we never changed the board composition of integer Wealth Global S.A. to include me and the other additional directors, no paperwork will be required (as I was never officially appointed). However, you might ask Etienne to prepare the shareholders' resolutions of Integer Wealth Global S.A. to appoint the additional directors, once confirmed. For the moment you are the only director officially appointed (page 484).

244. The first respondent told us and it was not seriously challenged, that he had made a decision to move the business from the UK to Luxembourg as a result of Brexit. That was the reason for setting up the company and the reason for talking about buying a house in Luxembourg. It was not suggested (and we would not find) that business decision had anything to do with the claimant or her sex. We accept the first respondent's evidence in this respect.

245. At around that time, discussions started taking place between the claimant and the first respondent and Mr De Pass about her contractual arrangements. On 12 May 2022 she wrote talking about the fact that she had been given two contracts, that there had been issues with her remuneration and that the first respondent had told that her contract had been null and void for some time. She raised a number of complaints about the way she had been spoken to.

246. By email of 18 May 2022, the first respondent said to the claimant that she was a valued and appreciated member of the team and that everyone needed each other to achieve the transition of the company from the UK to Europe (page 486).

247. However, at page 493 of the bundle is a message which was sent in May 2022 from the first respondent to the claimant stating "you and I will no longer be travelling together, and neither will your relationship with me continue as it was before."

248. We were given no explanation for that statement.

249. On 21 May 2022 a message was sent to the claimant stating "Portugal Frankfurt and Cyprus are no longer part of your function under your new sales director role as that applies to the new Strategic Development Person, Helen when she joins us." (Page 499)

250. The claimant raised concerns on 24th May 2022, including that she had been excluded from all communication between Mr De Pass, the first respondent, Peter and the European regulator. On 25 May 2022 the first respondent told her that he was no longer dealing with that or any human resource issues and Mr De Pass had taken them over. Whilst that may be right, we accept the evidence given to us by Mr De Pass that he did what he was instructed to by the first respondent.

251. On 26 May 2022, there was an exchange between the claimant and the first respondent in connection with some difficulties arranging a business call. The first respondent stated in a message “The second worst thing you can do to me is disrespect me. The first worst thing you can do to me is not realise that you did the first thing. After each, there is no coming back”

252. The claimant replied “So these are the consequences you spoke of? Changing my title, reducing my commission and excluding me from meetings and avoiding to communicate with me anymore? What have I done to disrespect you?” (p513).

253. On 31 May 2022, a draft employment contract was sent to the claimant in respect of her employment with the SA company (page 516). The claimant was to be appointed as a director of global sales or sales director. The claimant’s remuneration of E8680 was somewhat less than had been anticipated when the claimant was promoted to the COO role. On 6 June 2022 the claimant wrote to the first respondent and others stating that the contract would be a serious demotion (page 539). We accept that this contract amounted to a demotion for the claimant. Although it was not imposed as a demotion, in the sense that the claimant could take or leave the offer, as we explain more fully below we find that had the claimant not complained about the harassment which she had been subjected to, she would have been offered a job on the same terms as the one she was currently doing.

254. Discussions continued but there was no change to the claimant’s future role and on 9 June 2022 the first respondent wrote to the claimant enclosing two letters that terminated “our current agreement and your employment contract, as also the termination of the introducers agreement. You are still a part of the Integer Wealth Global S.A company through the invitation as a director which you accepted end of January.” (Page 548).

255. The accompanying letter from Integer Wealth Capital stated that it had ceased operations and the claimant was redundant, the letter from Integer Wealth Global Ltd said that company had ceased operations. The company had, it said, ceased operations in April 2022, it was unclear when the purported redundancy was to take effect (Page 549-50)

256. On 17 June 2022 Mr De Pass wrote to the claimant stating “the promotion to Strategic Development Director was made to the UK business entity which is now dormant”.

257. By an undated letter the claimant then replied at some length but in essence stated that if her employment with the English companies was continuing she gave three months’ notice, the reason for her resignation being that she regarded her contract of employment as having been breached by the first respondent’s behaviour (including harassment) and further stating that in respect of her appointment as a member of the board of directors of the S.A company she resigned. The latter was not necessary since she had never, in fact, been appointed. (p558)

258. On 23 June 2022 Mr De Pass acknowledged that the claimant would not be joining the Luxembourg company and stated that in relation to her offer of working a notice period of three months, that was invalid as she was not under any contract with the IWG operational companies.

259. The first respondent was asked about the reasons for demoting the claimant from the strategic operational role to which she was appointed in February 2022 to a sales role in May 2022. The first respondent replied that the claimant did not understand the concept of business in the way that it normally worked. He said that he and others had decided that the claimant was not suitable for the role and that she had said that she wanted to be in sales. He said that she had asked not to be taken out of sales and therefore he told her that he would make her a sales director. He said that he had considered training her and that that was one of the reasons buying the house in Cyprus.

260. We found that reasoning to be unpersuasive and did not accept it. The first respondent had a clear idea of the claimant's capabilities when she was promoted to the role in February 2022 and there is no evidence that the first respondent ever raised any serious concerns with the claimant about her abilities while she was doing the role. There was no explanation given to the claimant as to why she was being demoted and it was simply presented to her as a fait accompli. We think it is much more likely, and we find, that eventually the first respondent did realise that the claimant was not going to be receptive to his advances and at that point became hostile towards her. That is reflected in the WhatsApp message at page 493 of the bundle which is inexplicable otherwise.

261. Thus we find that the decision to offer the claimant a role as a sales director within the S.A. company was because she had rejected the first respondent's unwanted conduct. The offer of that role rather than a COO role would have had the effect of creating a hostile or offensive atmosphere for the claimant and was to her detriment.

262. Given our findings as to who employed the claimant, it is apparent that when it was being made clear to the claimant that there was no role in the UK for her, she was being dismissed by the first respondent. Although the circumstances were confused, the letter of 23 June 2023 was the clearest direct statement that the claimant was immediately being dismissed from her UK based employment, although that dismissal was in the context of foreshortening the notice which the claimant had herself given in respect of it. However the reason for that dismissal, we find, was that the UK operation was ceasing to exist and work was to be performed, in the future, by the S.A. company. That was nothing to do with the claimant's sex or her rejection of the first respondent's advances it was because the claimant had declined the Luxembourg role and there was no longer a UK role available.

263. However, the claimant should have been allowed to work her notice period. Given the claimant seniority we find that a reasonable period of notice in this case would have been three months.

264. The next question is whether the claimant would have taken the job with the S.A company if she had been offered a role as COO. Submissions were left on the basis that questions under *Chagger* would be dealt with at the remedy hearing. However we note that in the claim form the claimant stated "the new job role offered to me would have also required my principal place of work to be in Luxembourg, which development would also have been completely impracticable and unacceptable for me" (page 25 – 26).

265. It was put to the first respondent in the course of his evidence that he would not have sent messages of the type he sent to the claimant to a man. Although there was some prevarication on the part of the first respondent in his answers, when it was put to him that he would not refer to a man as "honey" he agreed and when it was put to him that he would not say "love you back" and sleepies tight" he also agreed. He agreed that he was heterosexual. We are satisfied, on the balance of probabilities, that the behaviour of the respondent was inextricably linked to the fact that the claimant was a woman. Not only because the behaviour reflects the fact that the respondent was a heterosexual man who was romantically attracted to the claimant but also because of the gender specific language used on a large number of occasions such as "girl", "honey" "wife" and "naughty". We have included the word naughty because, in its context, we do not think that the respondent would have written in a similar way to a man. We also think, on the balance of probabilities, that the respondent would not have described a man as beautiful and, for instance, sent him a vase saying that the flowers in the vase would never surpass his beauty.

266. The claimant, by way of amendment to the list of issues asserts that the fact that her grievance of 16 June 2023 was not investigated was an act of harassment. Mr De Pass denied that, saying that he did not investigate the grievance because the claimant raised her grievance after she had decided not to stay with the respondents and he did not believe there was a need to investigate that grievance in those circumstances. It seems likely that the grievance of 16 June 2023 is the undated letter which appears at page 558. That letter is consistent with Mr De Pass' view that the claimant had decided not to stay with the respondents and we accept his evidence that he therefore decided not to investigate it. There is no evidence that he was motivated by the claimant's sex or that he was even aware that she had rejected the first respondent's advances or that he would have treated a man differently.

267. In respect of the other heads of claim, the parties agree that the claimant had not used up all the holiday entitlement she had at the point where the employment relationship terminated. That claim therefore succeeds and will be quantified at the remedy hearing.

268. The first respondent also accepts that deductions made from the claimant's wages in respect of pension payments were not paid to the pension provider and deductions made in respect of tax and National Insurance were not forwarded to HMRC.

269. The claimant states in her witness statement (which was unchallenged) "As can be seen from my payslips(P572-575) deductions were made from my salary in respect of pension contributions, PAYE and National Insurance.

However, I understand that these amounts have never been paid to the relevant tax authorities or pension company. Without passing the money to the relevant authorities, this cannot have been the reason for the deduction and as such, the deduction of those sums from my salary was unlawful" We accept that evidence.

270. The respondents never made any contribution to the claimant's pension fund and it is unclear if one was ever opened. Given the time for which the deductions went on, we conclude that the respondents did not have any intention to making payments to a pension fund in respect of the sums deducted from the claimant's wages, or at least of they did, it was an ill-defined intention that payments would be made at some point in the future, but for now the deductions would be used to fund the business as set out in paragraph 49 above.

Conclusions

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

Employment status and/or identity of the Respondents

272. The claimant's employer was the first respondent and it is not disputed that the relationship which existed was one of employer and employee. For the purposes of this case it has not been necessary to consider any issue arising out of the claimant's role as "introducer" and neither party addressed us on it.

Time limits

273. In respect of issue 2, we have found that the act of offering the claimant a contract which amounted to a demotion on 31 May 2022 was an act of sexual harassment. It is apparent from what we have set out above that the first respondent was responsible for a continuing state of affairs in which the claimant, as a woman, was subjected to harassment. Thus we find that the offer on 31 May 2022 formed a continuing act with the earlier acts of harassment and discrimination that we have found proved and, therefore, claims in respect of those acts are in time.

274. It was not suggested by the respondent (and would not be the case) that the wrongful dismissal claim is out of time.

275. In respect of the holiday pay claim, that arises on termination and so was presented in time.

276. In respect of the unauthorised deductions from wages claim, there was a series of deductions in respect of pension payments which ended at the date of dismissal and, therefore, the claim was in time. It was not suggested that there were any breaks of more than 3 months in respect of the deductions.

Notice Pay

277. We have concluded that the claimant was entitled to 3 months' notice of termination of her contract of employment. She sought to resign and give three months' notice but the first respondent, acting through Mike De Pass refused to allow that to happen. There was, therefore, a summary dismissal at the

outset of the notice period in circumstances where the claimant was not in repudiatory breach of contract.

278. The claimant was entitled to work for three months' notice and in summarily dismissing her, the first respondent was in breach of contract and caused a loss to the claimant of three months' pay.

279. Even if the first respondent had been intending to make the claimant redundant, the claimant would still have been entitled to notice pay.

280. Thus the claimant's claim, in this respect, succeeds.

Direct Sex Discrimination- Preliminary

281. In respect of the claims of direct discrimination, applying section 212 Equality Act 2010 we note that "detriment" does not include conduct which amounts to harassment.

282. Therefore, we address the question of harassment before we address the question of direct discrimination.

Harassment related to Sex

Findings on the Factual Allegations

283. We must firstly reach conclusions on whether the respondent did those things set out in paragraphs 4.2.1-14 of the list of issues.

284. 4.2.1 – As we have set out above, we find that from May 2021 the first respondent did make an increasing number of romantic approaches towards the claimant in attempts to persuade her to enter into a sexual relationship with him, which included the suggestion of purchasing a home in Cyprus for use by them in a romantic way.

285. 4.2.2 – We have not found that the first respondent expressly said to the claimant that he would say and do what he wanted when she asked him to stop personal comments. There may have been some comments which the claimant may have remembered in those terms and it is obvious from our findings set out above that the first respondent did not stop when he was asked to (or at least if he did stop he only stopped for a short period of time). This specific factual allegation has not been proved however.

286. 4.2.3- At times the first respondent's advances to the claimant were more intense than others. We have identified the period of January 2022 up to around Valentine's Day as being a particularly intensive period.

287. 4.2.4- We are not satisfied that the claimant suffered extreme stress as a result of the first respondent's behaviour. The relationship between the claimant and the first respondent was a nuanced one. However, in essence, we have found that although the claimant, generally, did not object to receiving gifts for her or her children and she often enjoyed the first respondent's friendship, she did not welcome the first respondent seeking to take matters further than being friends and did not welcome sexual advances from him. The first

respondent's behaviour did worsen in February 2022, including while in Luxembourg.

288. 4.2.6- The first respondent did embarrass the claimant by grabbing her and subjecting her to inappropriate touching, including in front of family and friends. He did so at her birthday party in July 2021, when he visited her home when her daughter was present around Valentine's Day in 2022 and when he visited her home on 12 April 2022.

289. 4.2.7- We do not find that the first respondent humiliated the claimant in key meetings, including in front of clients, we have not heard any evidence which satisfies us of that.

290. 4.2.8- In respect of this allegation the claimant relies upon pages 218 and 272 of the bundle[5]. The first respondent did take a photo of the claimant during a meeting on 28 October 2021 (page 218) and we accept that he did not have the claimant's permission to do so. We accept that was unwanted given the response by the claimant. In respect of page 272, it appears that the first respondent made a choice from three WhatsApp images which had been sent to him and sent them to the claimant asking why she was working in that industry when she could be a top ranking fashion model. The claimant's response did not suggest that she was unhappy with the message which had been sent. The first respondent denied that the selection of three WhatsApp images was inappropriate and said that the claimant had sent him images for him to say which he thought were the better ones. That explanation appears to be borne out by the exchange at the bottom of page 271. Thus we do not find that those images were taken without the claimant's consent.

291. 4.2.9- We do not find that, against the claimant's better judgement, she had to accept a range of gifts from the first respondent. The only gifts which we have found were unwelcome were the solitaire ring (by a majority) and the vase. We find that the claimant was generally pleased to receive gifts.

292. 4.2.10- The first respondent did call the claimant his second wife and we find did so in front of her children, company agents and colleagues. He also told her daughter that she was his daughter.

293. 4.2.11- The phrase "bombarding" is imprecise and unhelpful. However we accept that a large number of unwanted messages were sent by the first respondent to the claimant outside of business hours telling her that he loved her but also referring to her as "girl" and "naughty girl". We have not been taken to any evidence of the claimant being called "brat".

294. 4.2.12.1- The first respondent did write to the claimant in respect of her partner, who was called Andy, stating "Andy or no Andy, I consider you as mine and in any event I told you before that no one will love you like I do"

295. 4.2.12.2- In respect of the trip to the tailors, which is where the claimant's skeleton argument says page 440 was taken, whilst there is no doubt that the

[5] paragraph 43 of her counsel's skeleton argument

first respondent was present and took photographs, the way the allegation is phrased as "he took her to his tailors…" implies that there was something about the trip which was against the claimants will. We do not accept that the visit was one which the claimant was unhappy with, nor do we find that she was unhappy with photographs being taken.

296. 4.2.12.3- The first respondent did suggest that the claimant and he should buy a house together in Cyprus.

297. 4.2.12.4-We were not taken to any message to the effect that the first respondent would physically wrestle the claimant, nor does her witness statement deal with such a point and therefore we are not satisfied that this allegation is accurate.

298. 4.2.12.5- The first respondent did offer to buy equipment for the claimant but, as we have said, the claimant was happy with that.

299. 4.2.12.6-Although the first respondent did, on one occasion, say to the claimant that he was her owner we do not find that was related to her sex.

300. 4.2.12.7- In respect of this allegation, the claimant's counsel's skeleton argument suggests that the evidence in support of it is at page 466 which, the argument says, was actually on 22 April 2022. Page 466 actually refers to events on 21 April 2022 but does not reveal that the respondent told the claimant expressly to do as she was told. The exchange is a long one which starts at page 463. The first respondent is critical of the claimant for delegating "upwards"; in the course of the exchange the first respondent says that he is trying not to give the claimant work that day as she is not well but asked her not to sit in bed and delegate upward to him. The claimant asks why he is "so crappy" with her and then repeats that question. There is then a frank exchange of views and ultimately the first respondent states "sorry I yelled at you. I am in a huge argument at the moment with our IT team and you just got caught in the crossfire". We can see no reference to the claimant doing as she is told.

301. 4.2.12.8 and 4.2.13- It is asserted that the first respondent ignored the claimant for two weeks and then began communicating with the claimant again on 17 May at which point his manner was markedly cold and formal. The evidence in the bundle shows an exchange on 22 April 2022 and then one on 4 May 2022. One 4 May 2022 the email does contain a lot of work material but closes "with the right foot, well that's reserved for pouring wine and stirring tea. Hope you're not too busy". It is not accurate to say that either the claimant was ignored for two weeks or that when communication began again it was markedly cold and formal.

302. However, it is right to say that from then on the correspondence does become formal. The change in tone is stark and the first respondent sent the messages we have referred to above around the middle of May. Thus we do find that it is accurate to say that from around the middle of May 2022 the first respondent's manner became more cold and formal.

303. 4.2.14- It is correct that the first respondent wrote the claimant stating that they would no longer be travelling together. We did not really hear evidence as to whether the claimant had been excluded from important meetings including the client, introducers etc. but given what the claimant says in her email of 24 May 2022 (that she had been excluded from all communication between Mr De Pass, the first respondent and the European regulator), the failure of the respondent to reply to that email and the other correspondence from around the time, we find that it is more likely than not that she was excluded.

Unwanted

304. The next issue (5.2) requires us to consider whether those things which happened were unwanted conduct. In accordance with what we have set out earlier, the behaviour encapsulated in the following paragraphs of the list of issues was unwanted- 4.2.1, 4.2.3, 4.2.4, 4.2.6, 4.2.8 (in part), 4.2.9 insofar as it related to the solitaire ring and vase, 4.2.10, 4.2.11, 4.2.12.1, 4.2.12.3, 4.2.12.6, 4.2.12.8 (in part) 4.2.13 (in part) and 4.2.14.

305. In respect of issue 4.2.12.7, the precise allegation has not been proved, but for the purposes of clarity we accept that the general exchange encapsulated in 4.2.12.7 would have been unwanted by the claimant.

Related to Sex etc

306. We must then consider whether the conduct which was unwanted related to either sex or it was conduct of a sexual nature.

307. The conduct contained within paragraph 4.2.12.7 of the list of issues was not to do with the claimant's sex, it was because she was an employee who was annoying the first respondent. We are satisfied that any employee would have been treated in the same way. Likewise, as we have already said, the conduct referred to in paragraph 4.2.12.6 of the list of issues was not about the claimant's sex but about her employee status.

308. The conduct contained within paragraphs 4.2.1, 4.2.3, 4.2.4, 4.2.6, 4.2.8, 4.2.9 insofar as it related to the solitaire ring and vase, 4.2.10, 4.2.11, 4.2.12.1, 4.2.12.3,and 4.2.12.8 was conduct related to the fact that the first respondent wanted to have a relationship with the claimant. Not all of the messages could be said to be conduct of a sexual nature, but all of them related to the claimant's sex.

309. The position in relation to the allegations contained within paragraphs 4.2.13 and 4.2.14 is that it was conduct because the claimant had rejected the respondent's advances. Those advances were either of a sexual nature or related to sex and, therefore, the treatment amounted to harassment.

Proscribed Effect

310. We have set out above that at times the behaviour would have had the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. In the context of this relationship, we find that at times the conduct was more unwelcome than others.

311. Thus, to the extent set out this claim succeeds. The claim succeeds against the first respondent both because he was the claimant's employer and because he was the person who was carrying out the harassment. Even if we had found that a different legal entity was the employer of the claimant, the first respondent would still have been liable to the claimant under section 110 Equality Act 2010.

312. Thus the following acts amounted to harassment: The conduct contained within the list of issues at paragraphs 4.2.1, 4.2.3, 4.2.4, 4.2.6, 4.2.8, 4.2.9 insofar as it related to the solitaire ring and vase, 4.2.10, 4.2.11, 4.2.12.1, 4.2.12.3,and 4.2.12.8

Direct Sex Discrimination

313. In this section we only analyse those acts which are alleged to have amounted to a detriment but did not amount to an act of harassment. They are the allegations in issues 4.2.2, 4.2.7, 4.2.8 (in part) 4.2.9 (in part), 4.2.12.2, 4.12.2.4, 4.2.12.5, 4.2.12.6, 4.2.12.7, 4.2.12.8 (in part), 4.2.15 and 4.2.16.

314. In respect of those issues where, in part, we have found that they were not acts of harassment, that is because we have not found that part was proved. Thus, the allegations cannot be acts of detriment. Thus allegations 4.2.8, 4.2.9 and 4.2.12.8 did not amount to direct discrimination.

315. Likewise we have not found allegations 4.2.2, 4.2.7, 4.2.9, 4.2.12.4 and 4.2.12.7 to be proved. Therefore they cannot amount to acts of detriment.

316. In respect of issue 4.2.9, the giving of the solitaire ring and vase amounted to harassment. Given that the claimant wanted the other gifts which given to her, the giving of those gifts did not amount to a detriment.

317. In respect of issue for 4.2.12.2, to the extent which it was proved, given that the first respondent was assisting the claimant to see what her suit looked like and the claimant welcomed that help, the actions of the first respondent were not a detriment to the claimant.

318. Likewise in respect of issue 4.2.12.5, because the gifts and equipment were welcome, the giving of them did not amount to detriment.

319. In respect of issue 4.2.12.6, it follows from our findings set out above that a male employee in the same position as the claimant would have been treated in the same way. Thus the claimant has not been treated less favourably than a man would have been.

320. In respect of issue 4.2.12.7, we have found that although the first respondent did not say that the claimant should do as she was told, there was a conversation which claimant was not happy about. For the purposes of clarity, however, we find that a male employee who had found themselves in the same position as the claimant would have been spoken to as the claimant was. Thus she was not treated less favourably than a man in the same position.

321. We have found that in respect of issue 4.2.16, there is no evidence from which we could conclude that a man in the same position as the claimant would have been treated differently. We accept that the reason for not investigating the grievance was simply because Mr De Pass thought there was no need to as the claimant had decided to leave.

322. It is then necessary to consider issue 4.2.15. That was not alleged to amount to harassment but was alleged to amount to direct discrimination..

323. The way this issue is written in the list of issues is something of a gloss on the Particulars Of Claim. The particulars of claim state as follows:

> 11…On 31st May 2022 I was presented with an offer of new employment with Integer Wealth Global SA (Luxembourg) which role would have involved me dealing only with sales but not strategic development affairs and which carried a vastly reduced salary level and benefits package. The offer given to me represented a substantial demotion in terms of pay and status. The new job role offered to me would also have required my principal place of work to be in Luxembourg, which development would also have been completely impracticable and unacceptable for me.
>
> 12. Marc Bandemer then sent me two emails dated 8th June 2022 communicating that my employment roles of: i) Strategic Development Director, and ii) Introducer (two separate contacts of employment), were being terminated by reason of redundancy with the effective date of termination being "…the date of the companies (i.e. respectively integer Wealth Capital Limited and Integer Wealth Global Limited) suspension at Companies House, UK." No periods of notice were given to me.
>
> 13. I contend that the treatment towards me by Marc Bandemer constituted unlawful, less favourable treatment of me following a lengthy campaign of sexual harassment on his part from early 2021 onwards and that then, as punishment for me rejecting his advances, he demoted me from my Chief Operating Officer and Strategic Development roles without any meaningful discussions or explanations at any stage. He then expelled me from Integer Wealth by dismissing me, allegedly on the grounds of redundancy, whilst making to me an offer of re-employment on substantially inferior terms. It was on 10th June that I learnt that he was in the process of appointing a new employee called Helen to be in charge of Integer Wealth's Strategic Development functions.

324. We consider it is necessary for us to address the somewhat broader allegation which is contained within the particulars of claim and, in particular, the assertion that the offer of new employment on 31 May 2022 represented a substantial demotion as punishment for the claimant rejecting the first respondent's advances. In accordance with our findings above, the particulars of claim set out an accurate account of what happened.

325. We accept the claimant's case that the demotion was because the claimant had refused the first respondent's advances.

326. The offer of a demoted role was a clear detriment to the claimant.

327. The difficult issue is how we address the question of whether a man in the same position as the claimant would have been treated in the same way. In reality, the situation would never have arisen. The first respondent would not have been making romantic advances to a man. He would not have been writing to a man in the way that he wrote to the claimant. We have considered whether we should construct a hypothetical comparator based on an assumption that the first respondent was gay and pursuing a man. That would, however, not only add an air of unreality to the issue but would, we think, fail to take sufficient account of the decision in *Preddy v Bull* [2013] 1 WLR 3741.

328. In *Preddy*, Baroness Hale summarised the decision in *James v Eastleigh* [1990] 2 AC 751 as being that where there is an exact correspondence between a criterion and a protected characteristic of sex there will be direct discrimination. She referred to the opinion of Advocate General Jacobs in *Schnorbus v Land Hessen* (Case C-79/99) [2000] ECR I-10997 that "the discrimination is direct where the difference in treatment is based on a criterion which is either explicitly that of sex or necessarily linked to a characteristic indissociable from sex".

329. In this case the difference in treatment of the claimant (that is to say the offer with the Luxembourg company which amounted to a demotion) is based on a characteristic indissociable from sex, namely that the first respondent wanted to have a romantic relationship with the claimant. The first respondent simply would not have wanted to have a romantic relationship with a man and would not have written to a man in the same terms.

330. Thus, we find, this was an act of direct discrimination. For the reasons we have given in respect of harassment, the first respondent is liable to the claimant in this respect and that would be the case even if we had found a different legal entity was the claimant's employer.

331. We must then consider the additional point within this issue (as permitted by us upon the claimant's application towards the end of the hearing) that the email on 23 June 2022 amounted to an express dismissal. Although we have found that it did, it was not because of the claimant's sex but because there was no longer to be a UK based operation. A man who had refused to move to Luxembourg would have been treated in the same way.

332. For the purposes of clarity, and the despite wording in her witness statement, the claimant did not present or pursue a claim that she had been constructively dismissed by the respondents from her employment in the UK and that was an act of sex discrimination. Had she done so, compensation would, in any event, have had to reflect the fact that her employment would have ended in any event for the reasons we have given.

333. Thus the only allegation of direct discrimination that succeeds is 4.2.15.

Holiday Pay

334. It is not in dispute that the claimant was entitled to sums in respect of holiday entitlement which had accrued but which had not been taken at the date of the termination of employment. In those circumstances this claim succeeds against the first respondent as the claimant's employer and will be quantified at the remedy hearing.

Unauthorised Deductions

335. The claimant's skeleton argument, in this section, only deals with the question of notice and the rate at which the claimant should be paid for that notice. However in his submissions, counsel also asserted that the claimant was entitled to succeed in a claim in respect of deductions which were made from the claimant's wages for employee pension contributions, tax and national insurance.

336. Neither counsel provided any authority on whether such sums were recoverable, the claimant treating it as obvious that they were and also relying upon paragraph 29 of the case management order made on 17 November 2022. However, although that paragraph expresses a view of the judge conducting the hearing, counsel for the claimant accepts that it was not a determination of the points so that the point is not res judicata.

337. The tribunal has been unable to find any clear authority on this point. In *Somerset County Council v Chambers* UKEAT/0417/12/KN, it was held that the failure of an employer to make employer contributions in respect of a pension did not amount to a deduction from wages but that is a different situation to the one here.

338. Therefore it is necessary to consider the position from first principles.

339. As we have already set out, the Employment Rights Act 1996 defines wages as being any sum payable to the worker in connection with his employment.

340. Pursuant to section 13(1) Employment Rights Act 1996, where a deduction is authorised by virtue of a statutory provision, the employer may make a deduction from wages. Deductions in respect of tax and National Insurance are authorised.

341. In the Court of Appeal in *Delaney v Staples* 1991 WL 837893 Nicholls LJ stated "…the subsection is concerned with a comparison between the amount paid on an occasion with the amount which ought to have been paid on that occasion. I do not think this presents any problem. If on his "pay day" , when an employee is due to be paid, a worker receives less wages than he should have done, the deficiency is to be regarded as a deduction for the purposes of the Act."

342. Where sums have been deducted for tax and national insurance, the employee does not, on her pay day, receive less wages than she should have done. She receives exactly the right amount of wages.

343. The question, then, is whether, if the employer then fails to pay those sums which have been deducted to the government, that then confers on the employee the right to bring a claim for unauthorised deduction of wages. We can see nothing in the statute that so provides and there is no logical reason for it. The government, by HMRC, has its own means of pursuing payment against a recalcitrant employer. If the claimant was entitled to bring a claim in respect of those sums then she would recover a windfall unless there was an obligation on her, then, to account to HMRC for the sums recovered. It was not suggested to us that any such scheme exists.

344. Thus, we do not find that the deduction of sums in relation to tax and National Insurance, even if they were not paid to HMRC, means that the claimant suffered an unauthorised deduction from wages.

345. The position is somewhat different in respect of deductions for pensions. In respect of deductions made in respect of employee contributions, if the claimant was entitled to recover those from the first respondent then she would be able to pay them to a fund for her benefit. She would not receive a windfall since she is then simply placed in the position that she would have been had her employer done what it ought to have done.

346. Moreover, the analysis of the Employment Rights Act 1996 is somewhat different. An employee is not obliged to be in a pension scheme. An employee could opt out. Thus a deduction from wages in respect of employee pension contributions can only be made if the employee agrees to be in the pension scheme and agrees for those deductions to be made (even in the case of auto enrolment). It is implicit in an agreement that an employer may make deductions from salary in respect of pensions, that the employer will pay that deduction to a fund for the employee's benefit (and do so directly, without using the deductions to support the employer's business for a while). If an employer is not acting in that way then there is no authorisation for it to deduct the sums from the claimant's wages.

347. We find that insofar as the first respondent deducted sums from the claimant's salary for the purpose of paying them into a pension fund, but did not do so, the deduction was made contrary to section 13 Employment Rights Act 1996.

348. Issue 7.2 of the list of issues refers to deductions from wages during particular periods. That point was not pursued by the claimant's counsel in submissions and is not dealt with in his skeleton argument. Beyond saying that payments were late on occasions, the claimant's witness statement does not appear to deal with this point. The schedule of loss which appears at page 579 of the bundle in respect of "Unlawful deductions from Wages" states "described as being PAYE , tax and National Insurance deductions and pension contributions". Thus it appears that the claim is limited to those sums and, in any event, we are not satisfied that any further sums are due to the claimant.

Breach of contract (Extension of Jurisdiction Order 1994)

349. At the outset of the hearing the claimant's counsel confirmed that this claim was not being pursued in the employment tribunal. To the extent necessary it is dismissed upon withdrawal.

Overall conclusions

350. The way our findings of fact have fallen and the way in which the list of issues has been presented is such that it is not possible to give a pithy conclusion over a few sentences. The claimant has been subjected to sexual harassment and direct discrimination but not in every respect in which she contends. The claimant has also not been paid notice pay to which she was entitled and has been subject to unauthorised deduction from wages insofar as pension contributions were not paid by the first respondent to a pension fund. The claimant was not paid holiday pay to which she was entitled.

351. How those findings sound in compensation will be for determination at another hearing.

Employment Judge Dawson
Date: 1 September 2023

Judgment sent to the Parties: 21 September 2023

FOR THE TRIBUNAL OFFICE

Notes

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

APPENDIX 1 LIST OF ISSUES

1. Employment status and/or identity of the Respondent(s)

1.1 Who was the claimant's employer?

1.2 Was the Claimant an employee of the Respondent within the meaning of section 230 of the Employment Rights Act 1996 in respect of all the work she did, or only part of it? In particular, on 1st April 2021 when the Claimant entered respectively into an "Introducing" commission payment agreement with Integer Wealth Global Limited and an employment agreement with Integer Wealth Capital Limited, was the claimant an employee and if so of which entity? The claimant will say that both of those organisations had already ceased trading and neither of them had a functioning bank account.

1.3 Was the claimant an employee when she was working as an introducer?

1.4 Was the Claimant an employee of the Respondent within the meaning of section 83 of the Equality Act 2010?

1.5 Was the Claimant a worker of the Respondent within the meaning of section 230 of the Employment Rights Act 1996?

2. Time limits

2.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about any act or omission which took place more than three months before that date (allowing for any extension under the early conciliation provisions) is potentially out of time, so that the tribunal may not have jurisdiction.

2.2 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

2.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act or omission to which the complaint relates?

2.2.2 If not, was there conduct extending over a period?

2.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

2.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

2.2.4.1 Why were the complaints not made to the Tribunal in time?

2.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

2.3 Were the unfair dismissal and/or unauthorised deductions complaint made within the time limit in section 111 / 23 of the Employment Rights Act 1996? The Tribunal will decide:

2.3.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the effective date of termination / date of payment of the wages from which the deduction was made?

2.3.2 [UNAUTHORISED DEDUCTIONS] If not, was there a series of deductions and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?

2.3.3 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

2.3.4 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

3. **Wrongful dismissal; notice pay**

3.1 What was the Claimant's notice period? The claimant suggests this was a minimum of three months and up to six months

3.2 Was the Claimant paid for that notice period?

3.3 If not, was the Claimant guilty of gross misconduct or did she do something so serious that the Respondent was entitled to dismiss without notice?

4. **Direct sex discrimination (Equality Act 2010 section 13)**

4.1 The Claimant is a woman.

4.2 Did the Respondent, by Marc Bandemer do the following things:

4.2.1 From May 2021 onwards make an increasing number of romantic approaches towards the claimant in attempts to persuade her to enter into a sexual relationship with him and to set up home with him

4.2.2 As early as 31st May 2021 when the claimant asked him to stop his personal comments and demonstrations of flattery towards did he reply that he would say and do what he wanted;

4.2.3 Did is advances towards the claimant intensify with him frequently claiming that she was his….;

4.2.4 During and Following a business trip to Luxembourg between 6th and 11th February 2022, did his behaviour towards the claimant worsen causing the claimant extreme stress

4.2.5 Did MB do the following:

4.2.6 Embarrass the claimant by grabbing her and subjecting her to inappropriate touching including in front of family and friends; 4.2.7 • Humiliating her in key meetings including in front of clients; 4.2.8 • Without her knowledge or permission taking screenshots of her during Teams video meetings, later sending the claimant copies of those photographs and his related comments;

4.2.9 Insisting that, against her better judgement, she had to accept a range of gifts from him. He pressurised her to do her this on the basis that they were necessary in the best interests of the business.

4.2.10 Telling her children, Company agents and colleagues that she was "…his second wife" and telling her children that he feel like a father towards them.

4.2.11 Bombarding the claimant with many unwanted email and WhatsApp messages outside of business hours and late into the evening, telling her that he loved her, whilst at the same time describing her in condescending and derogatory terms such as "girl", "naughty girl" and "brat"

4.2.12 Marc Bandemer messaged her constantly during March, April and early May 2022 with numerous communications. Events during this period included the following:

4.2.12.1 12th March he wrote to "Andy or no Andy, I consider you as mine and in any event I told you before that no one will love you like I do".

4.2.12.2 17th March he took her to his tailors and took pictures of her whilst I was having a business suit fitted.

4.2.12.3 18th March he suggested they buy a home together with Cyprus.

4.2.12.4 4th April when the claimant was ill in bed with Norovirus he said he would come and make sure she was in bed and that he would "in person and physically wrestle me" to make sure she stayed there.

4.2.12.5 7th April he offered to buy equipment for

the claimant and her children, the claimant told him to stop offering and buying gifts.

4.2.12.6 26th April he told her he was her "owner".

4.2.12.7 6th May after had an argument about a minor situation regarding a client during which he told the claimant to do as she was told.

4.2.12.8 He then ignored the claimant for two weeks

4.2.13 On 17th May he began communicating with the claimant again but his manner towards her had changed markedly, being cold and formal.

4.2.14 He wrote to her on 18th May "You and I will no longer be travelling together and neither will your relationship with me continue as it was before". After that, he ignored the claimant and excluded her from important meetings, including with clients, Introducers, the European Regulator, and on 1st June 2022 with the Investment Director of the credit rating agency, Standard & Poors

4.2.15 On 8th June 2022 Marc Bandemer sent two emails to the claimant stating that her employment roles of: i) Strategic Development Director, and ii) Introducer (two separate contacts of employment), were being terminated by reason of redundancy with the effective date of termination being "…the date of the companies (i.e. respectively integer Wealth Capital Limited and Integer Wealth Global Limited) suspension at Companies House, UK." No periods of notice were given to the claimant.

4.3 Was that less favourable treatment? The Tribunal will have to decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and those of the Claimant. If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated. The Claimant has not named anyone in particular who she says was treated better than she was and therefore relies upon a hypothetical comparator.

4.4 If so, was it because of sex?

4.5 Is the Respondent able to prove a reason for the treatment occurred for a non-discriminatory reason not connected to sex?

5. **Harassment related to sex (Equality Act 2010 s. 26)**

5.1 Did the Respondent do any of the things set out in paragraph 4.2.1-14 above ?

5.2 If so, was that unwanted conduct?

5.3 Did it relate to the Claimant's protected characteristic, namely sex ?

Subsection (2)

5.4 Alternatively was it of a sexual nature?

5.5 Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

5.6 If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Subsection (3)

5.7 Was the unwanted conduct of a sexual nature or sex?

5.8 Did the conduct have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

5.9 Did the Respondent treat the Claimant less favourably because the claimant rejected or submitted to the conduct?

6. **Holiday Pay (Working Time Regulations 1998)**

6.1 Did the Respondent fail to pay the Claimant for annual leave the claimant had accrued but not taken when their employment ended? The claimant alleges that she is owed 16 days

7. **Unauthorised deductions (Part II of the Employment Rights Act 1996)**

7.1 Did the Respondent make unauthorised deductions from the Claimant's wages in respect of

7.1.1 Employee pension contributions

7.1.2 PAYE tax contributions

7.1.3 National insurance contributions

and if so how much was deducted?

And

7.2 Further were the wages paid to the Claimant during the periods

7.2.1 1 October to 6 December 2021

7.2.2 1 May and 3 May 2022

7.2.3 From 1 February 2-22 following the claimant's promotion to Integer wealth capital limited strategic Development Director less than the wages she should have been paid?

7.3 Was any deduction required or authorised by statute?

7.4 Was any deduction required or authorised by a written term of the contract?

7.5 Did the Claimant have a copy of the contract or written notice of the contract term before the deduction was made?

7.6 Did the Claimant agree in writing to the deduction before it was made?

7.7 How much is the Claimant owed?

8. **Breach of Contract (Extension of Jurisdiction Order 1994)**

8.1 Did this claim arise or was it outstanding when the Claimant's employment ended?

8.2 Did the Respondent do the following:

8.2.1 Fail to pay the claimant a contractual bonus

8.3 Was that a breach of contract?

8.4 How much should the claimant be awarded as damages?

APPENDIX 2- DECISION ON APPLICATION TO AMEND THE LIST OF ISSUES

(This is a record of the reasons which were given ex tempore)

1. At the stage of the hearing when the evidence has closed and submissions are about to start the claimant has made an application to amend the list of issues so that paragraph 4.2.15 is changed to include that on 23 June 2022 Mr De Pass wrote to the claimant stating that her role was terminated.

2. The circumstances in which that application comes to be made are that the claimant's case as the Tribunal understood it to be from paragraph 4.2.15 of the list of issues- namely that two emails were sent to the claimant amounting to an express dismissal because she would not acquiesce in the harassment that she was being subjected to or because she was a woman- had not been put to Mr Bandemer by the end of his cross examination. The Tribunal therefore raised with Mr Franklin whether that case was being put and he said that his case was not that there was an express dismissal on the grounds of sex or because of a refusal to acquiesce to the first respondent's advances.

3. The case proceeded on that basis. The evidence closed around 3pm on 9 August with a view to submissions being heard at 9.30am on 10 August. Overnight and having considered the matter further, Mr Franklin amended a skeleton argument which he had already submitted and sought to assert that there was a constructive discrimination claim. That was discussed with the parties and on reflection it was Mr Franklin's case that in fact the claim which he wishes to advance on behalf of the claimant was not of constructive dismissal but one which is not currently recorded in paragraph 4.2.15 of the list of issues but is he says contained in the claimant's witness statement at paragraph 72.

4. The claim which Mr Franklin seeks to advance is that she purported to resign as per page 561 of the bundle but that the respondents refused to accept her resignation and instead terminated the contract as per page 562 of the bundle being the letter from Mr Du Pass dated 23 June 2022. He says that was an act of direct discrimination.

5. In his evidence Mr De Pass gave that the letters he wrote, he wrote because he was told to by Mr Bandemer.

6. The application if allowed would require Mr Bandemer to be recalled so that the it can be put to him that the reason Mr De Pass wrote the letter of 23 June 2022, was because of the claimant's sex or because she did not acquiesce in sexual harassment.

7. Mr van Coller objects to that application. He says that the claimant is simply trying to fill gaps in her case, she has had ample opportunity to deal with this and take it up in cross examination and that the move is opportunistic. He says if the amendment is allowed it creates a whole different set of circumstances and he objects to Mr Bandemer having to take the stand once again.

8. Applying the overriding objective in this case, we take account of the fact that the claimant's claim is properly set out in her witness statement. Mr van Coller has had the opportunity to cross examine the claimant on paragraph 72 of her witness statement and in that sense there is not "a whole different set of circumstances being created", this is not new information.

9. We take account of the fact that Mr Bandemer gave his evidence last and we have not started hearing submissions yet and, therefore, if further questions have to be asked of Mr Bandemer then little has changed since he gace his evidence.

10. We also take account of the fact that Mr Van Coller has not pointed to any real prejudice that his client will suffer as a result of a change to the list of issues. We are simply bringing the list of issues into line with the witness statement and it was not suggested on behalf of the respondent that there would be any need for the claimant to apply to amend her claim form.

11. In those circumstances and weighing all of those matters, it seems to us that applying the overriding objective, we should allow the list of issues to be amended and Mr Bandemer to be recalled so that that point, only, can be explored.