



EMPLOYMENT TRIBUNALS

Claimant: Chloe White

Respondent: CBTax Ltd

Heard at: Watford Employment Tribunal
On: 22-25 & 29-30 January 2024

Before: Employment Judge Young
Members: Ms B Robinson
Ms L Thompson

Representation

Claimant: Ms Hitchin (employment consultant)
Respondent: Mr S S Mani-Thompson

JUDGMENT having been sent to the parties on 19 February 2024 and written reasons having been requested on 22 February 2024 in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. The Claimant was employed as a senior administrator from 23 April 2020 for the Respondent a tax advisory limited company. On 30 July 2021, the Claimant contacted ACAS for early conciliation. The ACAS early conciliation certificate was issued on 3 August 2021. The Claimant presented her claim for sex discrimination, age and sexual harassment, victimisation, and wrongful dismissal on 11 August 2021.

The Claims and Issues

2. The Claimant brought claims of direct sex and age discrimination, sexual harassment, harassment related to age, harassment related to sex, harassment related to disability, reasonable adjustments, discrimination arising from disability, victimisation and wrongful dismissal. The issues in the case were agreed as follows:

1. Sexual harassment

Has the Claimant established facts from which the Tribunal could decide, in the absence of any other explanation, that the Respondent subjected the Claimant to conduct which amounted to sexual harassment contrary to s 26(2) EQA?

a. Did the Respondent engage in unwanted conduct of a sexual nature, when as the Claimant alleges;

- i. On or about the first week in May 2021, Steve Oakenfull sent a link regarding a lingerie website to the Claimant which the Claimant alleges was not necessary to send to her and was not related to her role.
- ii. On or about 21st May 2021 the Claimant was collecting mugs for the dishwasher and asked Steve Oakenfull for his, according to the Claimant, he replied 'yes please, what would we do without you', and picked up his mug, but rather than pass it to her, he held it against his chest and asked her 'are you going to take it?', making it difficult for her to reach it. She was made to get very close to him to do so, which was unnecessary and made her feel embarrassed and uncomfortable again.
- iii. Steve Oakenfull would regularly come and stand over the Claimant's desk to ask for help with something and usually referred to her as 'Miss White', as she felt to be in a flirtatious manner with a wink at her as he came over. According to the Claimant, she initially responded with humour. However, as time went on it became more regular and on one occasion, on or about 11th June 2021 he came over and during a discussion about a food order, he called the Claimant 'spicy' whilst winking and she began to feel really awkward.
- iv. On 27th May 2021 Steve Oakenfull had joked to team members that he was excited for an upcoming meeting with a lingerie client, as Aaliyah Shakoor was going to be the only girl involved, and according to the Claimant, this was laughed off by both was excited for an upcoming meeting with a lingerie client, as Aaliyah Shakoor was going to be the only girl involved, and according to the Claimant, this was laughed off by both Stephen Beale and another male manager. Following this, Aaliyah Shakoor told the Claimant in confidence expressing that she was made to feel very uncomfortable by comments made in the meeting, examples of which were that Steve Oakenfull had mentioned to Aaliyah Shakoor that she should 'ask to get some free samples to try' and also said he thought their website was 'great research'. Aaliyah Shakoor is a young Muslim girl, and the Claimant felt upset and awkward on her behalf.

- b. Did any or all of the above incidents constitute unwanted conduct of a sexual nature?
- c. 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 her?
- d. Was it reasonable for the conduct to have that effect (taking into account the Claimant's perception and the other circumstances of the case)?

2. Sex Discrimination

Has the Claimant established facts from which the tribunal could decide, in the absence of any other explanation, that the Respondent subjected the Claimant to conduct which amounted to **direct sex discrimination** contrary to s13 (1) EQA?

- a. Did the Respondent subject the Claimant to the following unfavourable treatment, when, as the Claimant alleges?
- i. Stephen Beale shouted and was abusive to the Claimant during the meeting on 25 June, stating that the Claimant had made 'bitchy comments', was a 'bitchy little girl' she was 'not a lady, just a girl', that the situation was 'fucking stupid', that she needed to 'buck her fucking ideas up', that he wished he could 'show her the door', and when Chris Beale agreed with Stephen Beale that that the Claimant was 'pathetic' and 'just a bitchy little girl', when Chris Beale laughed when the Claimant tried to explain how this was making her feel.
 - ii. When the Claimant explained to Stephen Beale that she had actually gone to Chris Beale for advice on how to deal with the situation in the office, and Stephen Beale replied, 'what makes you think the managing director of this company would care'.
 - iii. When Stephen Beale said, 'how dare you create this childish situation when we pay you so well and offer you great staff benefits'!
 - iv. When she was dismissed

b. Was it less favourable treatment than an actual or hypothetical comparator?

c. If yes was the less favourable treatment because of the Claimant's sex?

3. Harassment related to sex

Has the Claimant established facts from which the tribunal could decide, in the absence of any other explanation, that the Respondent subjected the Claimant to conduct which amounted to **unlawful harassment** contrary to s 26(1) EQA?

a. Did the Respondent engage in unwanted conduct related to sex when, as the Claimant alleges in the meeting on 25 June;

i. Stephen Beale stated that the Claimant was a 'bitchy little girl'

ii. Stephen Beale stated that the Claimant was 'not a lady, just a girl',

iii. Stephen Beale stated that the Claimant was 'just a bitchy little girl'

iv. Stephen Beale said that she had been making 'bitchy' comments

v. Chris Beale agreed with Stephen Beale laughed when the Claimant tried to explain how this was making her feel

b. Did any or all of the above incidents constitute unwanted conduct related to sex?

c. 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 her?

d. Was it reasonable for the conduct to have that effect (taking into account the Claimant's perception and the other circumstances of the case)?

4. Age discrimination

Has the Claimant established facts from which the tribunal could decide, in the absence of any other explanation, that the Respondent subjected the Claimant to conduct which amounted to direct age discrimination contrary to s13 (1) EQA?

a. Did the Respondent subject the Claimant to the following unfavourable treatment when, as she alleges;

i. Stephen Beale stated that the Claimant was a 'bitchy little girl'

ii. Stephen Beale stated that the Claimant was 'not a lady, just a girl'

iii. Stephen Beale stated that the Claimant was 'just a bitchy little girl'

iv. Stephen Beale stating 'we are not in school'

v. Stephen Beale stating 'just a bunch of children'

vi. Stephen Beale said, 'how dare you create this childish situation when we pay you so well and offer you great staff benefits!'

b. Was it less favourable than treatment of either an actual or hypothetical comparator?

c. If yes was the less favourable treatment because of the Claimant's age?

5. Harassment related to age

Has the Claimant established facts from which the tribunal could decide, in the absence of any other explanation, that the Respondent subjected the Claimant to conduct which amounted to unlawful harassment to s 26(1) EQA?

a. Did the Respondent engage in unwanted conduct related to age when, as the Claimant alleges;

i. Stephen Beale stated that the Claimant was a 'bitchy little

ii. Stephen Beale stated that the Claimant was 'not a lady, just a girl'

iii. Stephen Beale stated that the Claimant was 'just a bitchy little girl'

iv. Stephen Beale stating 'we are not in school'

v. Stephen Beale stating 'just a bunch of children'

vi. Stephen Beale said, 'how dare you create this childish situation when we pay you so well and offer you great staff benefits'!

b. Did any or all of the above incidents constitute unwanted conduct related to age?

c. 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 her?

d. Was it reasonable for the conduct to have that effect (taking into account the Claimant's perception and the other circumstances of the case)?

6.Disability

a. Has the Claimant established that she was **disabled** within the definition set out in section 6 of the EQA and during what period was she so disabled?

b. Did the Respondent have knowledge, actual or constructive of the Claimant's disability and if so when? The Claimant says that;

i. She advised the Respondent on 14 April 2021 in a phone call with Chris Beale, that she was feeling overwhelmed and concerned by SC's behaviour and specifically explained to Chris Beale that she suffered with anxiety and was finding it hard to manage the situation between herself and SC

ii. She spoke to Stephen Beale on or around 17 June in person when the Claimant was organising the quiz, to say that SC's behaviour was making her feel anxious

iii. in early April 2021, when she was told about going back into the office after being at home full time for so long, in telephone conversations (on separate occasions), she told Chris Beale and Stephen Beale that she was feeling anxious about going back to the office

iv. She told Matt Beale on 24th June 2021 that she suffered from anxiety, and he confided that he too had suffered from anxiety at her age.

7. Discrimination arising from disability

Has the Claimant established facts from which the tribunal could decide, in the absence of any other explanation, that the Respondent subjected the Claimant to conduct which amounted to discrimination arising from disability under s15 EQA?

a. Did the Respondent treat the Claimant unfavourably when as she alleges;

i. They failed to investigate her complaints about working with SC who made her life difficult and whose behaviour exacerbated her anxiety, and permitted her to continue to work in an isolated section with SC despite her having told them that SC's behaviour made her anxious

ii. Salina Champaneri was able unchecked to ridicule the Claimant at the quiz

iii. She was subjected to shouting and abusive behaviour in the meeting on 25 June, including being called 'too cowardly to deal with the situation', 'too nice', and pathetic

iv. Failing to allow the Claimant's father to attend the hearing on 5 July, Chris Beale having previously affirmed in a phone conversation that he could, to what turned out to be a disciplinary hearing, Claimant no knowledge of this in advance, knowing that the Claimant suffered from anxiety

d. If yes did that treatment arise in consequence of the Claimant's disability?

d. If yes, was the treatment a 'proportionate means of achieving a legitimate aim? Was the treatment proportionate and what was that legitimate aim?

8. Harassment related to disability

Has the Claimant established facts from which the tribunal could decide, in the absence of any other explanation, that the Respondent subjected the Claimant to conduct which amounted to unlawful harassment contrary to s 26(1)?

a. Did the Respondent engage in unwanted conduct related to disability when, as the Claimant alleges;

i. Stephen Beale allegedly called the Claimant 'too cowardly to deal with the situation' and 'too nice

ii. when Stephen Beale called her 'pathetic'

b. Did any or all of the above incidents constitute unwanted conduct related to disability?

c. 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 her?

e. Was it reasonable for the conduct to have that effect (taking into account the Claimant's perception and the other circumstances of the case)?

Reasonable Adjustments

Has the Claimant established facts from which the tribunal could decide, in the absence of any other explanation, that the Respondent failed to make reasonable adjustments in respect of any disability of the Claimant?

a. Did the Respondent subject the Claimant to the following PCPs;

- i. leaving the Claimant to work in an isolated fashion with Salina Champaneri despite being told that it made her anxious
- ii. allowing SC to go unchecked to ridicule the Claimant
- iii. insisting that her father could not attend the disciplinary hearing despite her asking that this be permitted, and it being originally agreed.

b. If yes did these incidents put the Claimant at a disadvantage and what was the substantial disadvantage compared to other people in terms of the failure to make reasonable adjustments claim?

c. Did the Respondent fail to take steps to avoid the disadvantage?

d. Could the Respondent have taken steps such as investigating the Claimant's concerns, moving the Claimant away from Salina Champaneri, speaking to Salina Champaneri about her attitude to the Claimant, not subjecting her to aggressive behaviour, allowing her parents to attend the disciplinary hearing.

e. If there was a PCP(s) that placed the Claimant at a substantial disadvantage was it a proportionate means of achieving a legitimate aim?

10. Victimisation

Has the Claimant established facts from which the Tribunal could decide, in the absence of any other explanation, that the Respondent subjected the Claimant to conduct which amounted to **unlawful victimisation** within the meaning of section 27(2) of the EQA?

a. Were the following protected acts by the Claimant?

i. Raising the issues of Steve Oakenfull's and Salina Champaneri's behaviour to the directors in the meeting on 25 June

- ii. Complaining about her treatment by Salina Champaneri when she suffered from anxiety and setting out her other concerns in an appeal letter
- iii. complaining about all acts of discrimination and harassment in her appeal letter

b. Were the following detriments suffered by the Claimant because of the protected acts?

- i. The Claimant's treatment in the meeting on 25 June
- ii. Her dismissal and lack of notice pay
- iii. Stephen Beale stating that he wanted to 'show her the door' during the meeting on 25 June when she raised her complaints
- iv. The Respondent's refusal to investigate any of the discriminatory issues raised in her appeal letter
- v. The Respondent's refusal to hear her appeal stating in writing that it was because she had complained

Wrongful dismissal

The Claimant was entitled by virtue of her contract of employment to three months' notice of termination. It is accepted that she was dismissed without notice.

- a. Was the Claimant's conduct such that it entitled the Respondent to dismiss her without notice?
- b. If not, is the Claimant entitled to 3 months' notice pay? If yes has the Claimant secured other work or mitigated her loss in that regard

The Hearing and Evidence

3. The hearing was in person over a period of 6 days. The hearing was originally listed for 7 days. On day 1, Monday 22 January 2024, Employment Judge Young told the parties that the Employment Tribunal would not sit on Friday. However, on day 4, Thursday 25 January 2024, when Mrs Hitchins was told that her cross examination would be limited to 1 hour on Monday 29 January 2024, she said that she thought that she would have Friday to cross examine. She conceded that she was told that the Employment Tribunal would not sit on Friday. The Respondent asked that Matt Beale give evidence by CVP. The Claimant did not contest this application. The Tribunal agreed to this accommodation. However, on day 5, Monday 29 January 2024, when Matt Beale was due to give evidence we had major technical difficulties. It took from 10:00-12:00 to resolve the issue. We did hear Matt Beale's evidence. After judgment and oral reasons were given on day 6, Tuesday 30 January 2024, the Respondent made a costs application which we determined.

Findings of fact

4. We found that the Claimant's evidence to be inconsistent on occasion and on occasion she made up an answer on the hoof when pressured under cross examination. We found that the Respondent witnesses to be for the most part

witnesses of truth, although there were occasions where we did not accept the evidence of some of the witnesses. We make our findings on a balance of probabilities.

5. The Respondent is a professional tax consultancy. The Claimant's parents run a business called Promail who was a client of the Respondent during 2020-2021. Following the Claimant's parents forwarding the Claimant's CV for review to the Respondent, the Respondent held a phone interview with the Claimant and appointed the Claimant to the role of senior administrator from 23 April 2020 [91]. At that time, the Claimant's duties included using documents at the start of the client engagement journey, managing a database, capturing project information from clients, managing diaries of client facing team members, and uploading documents onto the company platform, ensuring office operations ran smoothly, billing customers and other additional tasks set by the directors and members of the team.
6. When the Claimant started working for the Respondent it was during the covid pandemic. Initially the Claimant's role was fully remote. The Respondent was not in an office at this time. The Claimant was 21 years old at the time she was employed by the Respondent. Most of the Respondent's work force was in or around their 20's early 30's, including the managing director Chris Beale and Project delivery director Stephen Beale who are both 50% owners of the business. Matt Beale a brother of Chris & Stephen Beale was at the time the Claimant was employed the operations director of the Respondent. Steve Oakenfull was a little older than most of the staff and was in his 40's. The Respondent recruited its first full time employee in 2019. The Respondent had approximately 18 members of staff during the time of the Claimant's employment. A few months after the Respondent moved into the office, they recruited Aaliyah Shakoor, who was the same age as the Claimant. Aaliyah Shakoor was recruited as a trainee tax consultant and had never had a full time role before or worked in an office environment.
7. Following return to the office in April 2021, Chris Beale sent an email dated 16 April 2021 [111-112] to the office about measures to be taken on return to the office. In that email, Chris Beale referred to the Claimant as "office manager." The Claimant says this signified a promotion and that following that email, on 26 April 2021 the promotion was confirmed in a meeting. The Claimant was given a £1k pay rise. However, Chris Beale says the reason for calling the Claimant "office manager" was in respect of her duties not her job title nor was it a promotion [CB@6]. Chris Beale's evidence was that everyone got a £1k pay rise to assist with the additional travel cost of attending the office. The Claimant said that she was informed of the promotion in a meeting on 26 April after it had been announced in the email from Chris Beale on 16 April 2021. The Claimant said that the Respondent did not initially disclose this email but only provided a version which did not have the part about the Claimant being office manager. [109]
8. We find that the Claimant's version of events is not credible. We were not persuaded that the Respondent's failure to disclose the email initially in order to hide the Claimant's promotion meant that the Claimant was promoted to office manager. No employer tells all their other staff about an employee's promotion before telling the employee and the Respondent did not do so in this case. Furthermore, the Claimant in a text to Matt Beale on 24 June 2021

when complaining about Salina Champaneri said that she was referred to as office manager not that she was promoted to office manager [248] which would be what you would expect if she believed she had been promoted. We find the Claimant did not receive a promotion as an office manager. If the Claimant had really believed that she was being promoted she would have told her mother at the very least and other people. The Claimant did not give evidence that she told anyone. Mrs White the Claimant's mother did not mention it in her witness statement nor give oral evidence that the Claimant told her that she got a promotion, there was no evidence available to the Tribunal that the Claimant believed that she was being promoted at the time. We find that the Claimant was given office manager duties at the time as now there was an office that everyone was working from and the duties of managing the office fell best within the Claimant's role.

9. The Respondent had an open plan office. The Claimant and another employee Salina Champaneri sat together in a bank of desks, whilst the rest of the office sat further away in another bank of desks. Salina Champaneri was older than the Claimant and in her 30's and was the Respondent's credit controller responsible for pursuing difficult clients who would not pay or delayed payment of the Respondent's invoices. In order to obtain payment, the Respondent needed a letter of authority ('LoA') to be signed. The Claimant was responsible for issuing LoAs. As project delivery director, Stephen Beale worked closely with Salina Champaneri. Salina Champaneri was not the only person to raise issues about the Claimant's work. Mr Shovelin had raised issues with Stephen Beale in December 2020. [SB@5]
10. It was the Claimant's impression that Salina Champaneri and Stephen Beale had a friendly relationship outside work. The Claimant pointed to a text [134] which Salina Champaneri had sent Stephen Beale at 9pm with a gif with someone trying to walk through a large amount of foliage and the text beneath "*today's antics whilst nearly falling and breaking my neck. Excuse my laugh it is awful I know*" and Stephen Beale's response to this gif was "*Haha brilliant*" to demonstrate this. Stephen Beale's evidence was that he did not have anything other than a professional relationship with Salina Champaneri. We find that the gif and text does not demonstrate a friendly relationship outside work. It was just one text. We accept Stephen Beale's evidence on this point. Stephen Beale and Salina Champaneri did not have a particularly friendly relationship outside work but a normal professional relationship.
11. The Claimant said that Salina Champaneri would say negative things about the Claimant to Stephen Beale and the directors of the Respondent. Stephen Beale denied this in oral evidence. Stephen Beale's evidence was that Salina Champaneri's work would be made more difficult because the Claimant was not issuing the LoA as was her duty and Salina Champaneri would discuss this with Stephen Beale. Other than that, Salina Champaneri did not speak about the Claimant to Stephen Beale. We accept Stephen Beale's evidence on this point and reject the Claimant's evidence. The Claimant could not know what Salina Champaneri was discussing with Stephen Beale or the directors unless someone told her, or she overheard. The Claimant did not provide evidence of either of those scenarios.
12. The Claimant said that she found Salina Champaneri personally difficult to work with and that Salina Champaneri would frequently make negative

comments. However, it was surprising that there were so many WhatsApps about what the Claimant spoke about with Aaliyah Shakoor, but we were not shown any examples of the Claimant speaking about her difficulties with Salina Champaneri at any time. Chris Beale and Stephen Beale gave evidence that the impression given by the Claimant and Salina Champaneri was that they were good friends. We find that whatever the truth of the situation, the Claimant gave the impression that she was good friends with Salina Champaneri until the pub quiz incident.

13. In or around this time in April 2021, Chris Beale said that he heard the Claimant discussing her contractual holiday entitlement. The Claimant demanded an additional 5 day holiday entitlement [CB@9]. It was Chris Beale's view that to discuss holiday entitlement amounted to a disciplinary matter and warned the Claimant not to discuss it with her colleagues or it could result in disciplinary action. [107]

Claimant's complaint of bullying

14. On 14 April 2021[113] in the evening the Claimant wrote to Chris Beale in a text "*There's been a couple of things today/this week that I wanted to mention to you that have bothered me a little bit. I was really hesitant to mention it but also knew I could come to you about it so have bit the bullet if you have 5 minutes tomorrow, is there any chance we could have a super quick catch up?*" Chris Beale responded that she could call him the following morning and asked if she wanted to go through it that evening. The Claimant said that it was up to him and said it would only take 5 minutes.
15. Chris Beale called the Claimant to discuss the issues that evening. Chris Beale made a file note of the conversation and said in relation to Salina Champaneri, the Claimant raised that she felt Salina talked a lot in the office and she didn't want the Directors to think that she was sat talking all day. Chris Beale responded along the lines that as everyone has worked at home for the past year he expected they would want to talk and readjust. Chris Beale advised the Claimant that Salina Champaneri had only started with the firm a few weeks before and he explained that she was probably trying to get to know people too. Chris Beale explained to the Claimant that as long as she does her work the Respondent did not mind people talking in the office [110]. The Claimant raised some other issues with a junior member of staff Harrison leaving his mug on the kitchen side and that she did not like being told what to do by another member of staff, Ed Masey.
16. The Claimant's version of events in her ET1 was that she had raised her concerns with the Respondent's managing director Chris Beale on 14 April 2021 who told her that everything was fine however matters began to escalate and she became increasingly uncomfortable with her working environment. She would speak to one of the directors and then receive a text from Salina Champaneri saying that she knew that the Claimant had 'gone running' to Stephen Beale which clearly demonstrated a breach of confidence, and the Claimant didn't know who to trust or speak with. The Claimant relied upon her text to her mother on page 141 in which the Claimant mentions that Chris Beale said that "Salina Champaneri was going to be chatty as when she first joined she called him 15 times a day". However, on a fuller version of the same text the Claimant said in relation to speaking to Chris Beale "*felt like a*

friend instead of a boss". [140] The Claimant also says that she told Chris Beale in that phone call that "she suffered with anxiety and was finding it hard to manage the situation between herself and Salina Champaneri." [22]

17. We find there is no record of the Claimant ever saying to the Respondent that Salina Champaneri was difficult to work with. At that stage of the Claimant raising her complaints, Salina Champaneri had only been working for a few weeks. The Claimant does not detail what comments she says that Salina Champaneri made at that stage, nor does she say she told Stephen Beale what negative comments Salina Champaneri made at that stage. We find the Claimant's text is inconsistent with Chris Beale's file note. If the Claimant had told Chris Beale he would have made a note of those comments and there is no record of them at that stage. We note there were no texts from the Claimant to anyone about Salina Champaneri's conduct before June 2021.

Mr Oakenfull's alleged sexual misconduct

18. The Claimant texted Chris Beale when things bothered her [113] but did not mention anything about the alleged sexual harassment by Steve Oakenfull. The Claimant accepted in evidence she did not raise a grievance about Steve Oakenfull before 24 June 2021.

Link to lingerie website

19. On or about the first week in May 2021, Steve Oakenfull sent a link regarding a lingerie website to the Claimant which the Claimant alleges was not necessary to send to her and was not related to her role. The actual text on Teams chat stated "[06/05/2021 17:13] Steve Oakenfull: <https://www.fleurofengland.com/> they'll be fighting over this one !!" The Claimant responded "[06/05/2021 17:26] Chloe White: That's hilarious! Is this a prospect?!" Steve Oakenfull responded "[06/05/2021 17:26] Steve Oakenfull: Yep". The Claimant responded "[06/05/2021 17:27] Chloe White: The boys will love this one!" [227]
20. Aaliyah Shakoor's evidence was that the Claimant would have known that the link to the lingerie website was for a client prospect [AS@22]. The Claimant sent a Teams chat to Aaliyah Shakoor [245] stating that it was "*Yeah that's a new client that Steve signed up! A few weeks back he send me a link to their Website*".
21. We note the Claimant did not say to Steve Oakenfull in her response to him sending her the link that he needed to add the prospects to the sales force system himself as it was not her job.
22. The Claimant's explanation in evidence for why her responses to the link included smiling emojis and "that's hilarious" [227] was her anxiety made her mask her uncomfortableness with mirroring Steve Oakenfull's humour. We considered this explanation not to be credible. The Claimant had never mentioned masking in her list of symptoms in respect of anxiety, it wasn't contained in her witness statement or her claim form and there was no other mention of this mirroring as a defence mechanism in respect of any other scenarios when the Claimant was anxious. Notwithstanding, Steve Oakenfull never used emojis and so there was nothing to mirror. It made little to no

sense to us as when on Teams Chat, no one is under pressure to reply immediately, the Claimant would have had time to respond without pressure or not at all. There would have been no reason to mirror Steve Oakenfull as the Claimant was not being pressured to respond. We find that the Claimant made this explanation up on the hoof and it was inaccurate. We find that Steve Oakenfull sent the Claimant the lingerie link for business reasons.

Mug incident

23. On or about 21 May 2021 the Claimant was collecting mugs for the dishwasher and asked Steve Oakenfull for his. According to the Claimant, he replied 'yes please, what would we do without you', and picked up his mug, but rather than pass it to her, he held it against his chest and asked her 'are you going to take it?', making it difficult for her to reach it. The Claimant said she was made to get very close to him to do so, which was unnecessary and made her feel embarrassed and uncomfortable again. Aaliyah Shakoor said that the Claimant never mentioned the incident to her [AS@20]. We find that on 21 May 2021, Steve Oakenfull did not hold the mug against his chest whilst saying to the Claimant 'yes please, what would we do without you'. We do not consider that there was an occasion on 21 May 2021 where the Claimant asked Steve Oakenfull for his mug at all. We find that this incident is a complete fabrication.

Standing near desk

24. The Claimant said that Steve Oakenfull would regularly come and stand over the Claimant's desk to ask for help with something and usually referred to her as 'Miss White', which she felt to be in a flirtatious manner with a wink at her as he came over. In evidence Steve Oakenfull said that he used the term Mr last name with men as well, but he was not being flirtatious with the Claimant. According to the Claimant, she initially responded with humour, however as time went on it became more regular and on one occasion, on or about 11 June 2021 Steve Oakenfull came over and during a discussion about a food order, he called the Claimant 'spicy' whilst winking and she began to feel really awkward. Aaliyah Shakoor said that she sat with her back to the Claimant, but the Claimant never mentioned the incident to her of Steve Oakenfull winking at her. She says she was there when Steve Oakenfull mentioned spicy, and this was in the context of calling himself "the spicy one". Aaliyah Shakoor was sure that he never called the Claimant "spicy" [AS@20]. Steve Oakenfull's evidence was that he only went over to the Claimant's desk to discuss sales force 4 or 5 times, he did not have much to do with the Claimant as the business was siloed. We find that Steve Oakenfull did not regularly come and stand over the Claimant's desk to ask for help with something.
25. On the day in question, Steven's Oakenfull's evidence was he ordered a spicy chicken wrap from McDonalds and that is the only reference he made to spicy. We do not accept the Claimant's version of events at all. We prefer Steve Oakenfull's version that when he referred to spicy he was referring to his McDonalds order. We find there was nothing untoward with Steve Oakenfull referring to the Claimant as 'Miss White', on a balance of probabilities we did not believe the Claimant when she says that Steve Oakenfull was flirtatious and that he winked at her. The Claimant had a habit of telling her mother about incidents when they occurred, there was no evidence that the Claimant

had ever told her mother that Steve Oakenfull behaved flirtatiously towards her or winked at her. If she had believed this behaviour to be as she described she would have mentioned this to her mother, and this would be part of her mother's evidence. The Claimant's mother did not mention it in her evidence and there were no texts about it in the bundle. We look at the texts after end of May – June 2021. We find the texts appeared professional and there was no indication that the Claimant was uncomfortable with Steve Oakenfull.

Comments that "Aaliyah is the only girl involved"

26. On 27 May 2021 Steve Oakenfull had joked to team members that he was excited for an upcoming meeting with a lingerie client 'flirty', as Aaliyah Shakoor was going to be the only girl involved, and according to the Claimant, this was laughed off by both Steve Oakenfull and Callum Andrews. [244]. Steve Oakenfull was the Respondent's senior business development manager and so it was his role to sign up clients. Aaliyah Shakoor told the Claimant on teams chat that *"we just had the call for that lingerie company and Steve and Callum were so immature about it Steve was talking about how nice the website was for 'research' and he said all that's left for me to do is get some free samples (laughing face emoji twice) why are men so immature smh"*. [244] Following this, the Claimant alleges that Aaliyah Shakoor told the Claimant in confidence expressing that she was made to feel very uncomfortable by comments made in the meeting, examples of which were that Steve Oakenfull had mentioned to Aaliyah Shakoor that she should 'ask to get some free samples to try' and also said he thought their website was 'great research'. Aaliyah Shakoor is a young Muslim girl, and the Claimant felt upset and awkward on her behalf. However, Aaliyah Shakoor's evidence is that *"it's not a deep and meaningful conversation in which we are really expressing any concern or upset. The same when we were talking about our lingerie client, the conversation Chloe and I were having on 7th June after I'd been to a client meeting with Callum, was really Chloe and I teasing our male colleagues, saying they were 'awkward creatures' and 'so red' and 'didn't know how to handle the situation' etc."* [AS@15]
27. It is after this conversation that Aaliyah Shakoor says that *"We knew that Steve probably made a joke comment about samples because he felt awkward himself, not because he was harassing anyone! You can see Chloe says "Haha 100%! I agree, that's why they go like little kids and get all flustered" near the bottom of page 171. Regarding the comment about free samples - you can see that Chloe and I were joking about it and saying that free samples would actually have been 'brilliant' and that we would really have liked some. I did not feel upset or worried about it, and Chloe knew that from our conversations. At the end of the day, Chloe and I made as many silly comments about the lingerie client as Steve did, because we probably all felt a bit awkward discussing lingerie"* [AS@15]. In later Teams chat that day, Aaliyah Shakoor does refer to Steve Oakenfull as "creepy" [169]. We accept Aaliyah Shakoor's explanation that her reference to creepy was her immature humour. Aaliyah Shakoor does not explain what it is that Steve Oakenfull supposedly said that was creepy. The Claimant does not comment at the time about it, which suggests that she didn't think it was serious but joked about getting free samples. We find the Teams chat suggest that the men are not being creepy but are embarrassed, and that is what the Claimant believes [171].

28. The Claimant said in evidence that Aaliyah Shakoor had mentioned Steve Oakenfull separately to her on 25 June. And in Teams messages that the Respondent will have seen prior to the decision to dismiss, it is blatantly clear that Aaliyah Shakoor had negative views about Steve Oakenfull. She said it was Aaliyah Shakoor who said she was uncomfortable talking about lingerie in front of a man [244]. The Claimant said that Aaliyah Shakoor had told her in a Teams' message on 7 June 2021 that Steve Oakenfull was 'getting a bit too comfortable being cringey now' [242]. 'he really needs to learn the word boundaries coz he is turning into the office creep', 'Ew why is he like this', [237] luckily he's not as creepy as Steve' [241] and on page 244 'Steve was talking about how nice the website was for 'research' and he said all that's left for me to do is get some free samples, why are men so immature'. Aaliyah Shakoor said that when she said these things it was "*It came from a really light-hearted place, in a private conversation between friends. It's something I say to my friends all the time if they say something 'creepy' but in no ways does it mean they actually are a creep, it's just light-hearted banter.*" [AS@15] We find that Aaliyah Shakoor was not upset nor made uncomfortable by Steve Oakenfull. We find that there was no real evidence of Steve Oakenfull actually doing anything to make Aaliyah Shakoor feel uncomfortable.
29. We find that the alleged incident on 27 May 2021 Steve Oakenfull had joked to team members that he was excited for an upcoming meeting with a lingerie client, as Aaliyah Shakoor was going to be the only girl involved, did not happen, We find that Steve Oakenfull was excited for the meeting, but he did not joke about it. We accept Stephen Beale's evidence that when Aaliyah Shakoor and Steve Oakenfull and Stephen Beale were in a meeting, this never happened, there was no request for samples. We do not consider that there was anything untoward with Steve Oakenfull saying, "great research". Aaliyah Shakoor accepted that using the client website for research is what the Respondent uses it for. We find there was no sexual connotation in the use of the words great research in that context.

Staff Quiz

30. In or around early June 2021, the Respondent asked the Claimant and Salina Champaneri to organise something fun that they could all do together. On 22 June 2021, the Respondent had a pub quiz. Initially the Claimant had been asked to arrange the quiz, with Salina Champaneri. The Claimant and Salina Champaneri put together both the questions and answers for the quiz. However, on the day of the quiz, Salina Champaneri joined a team. Aaliyah Shakoor helped the Claimant as quiz master. Aaliyah Shakoor and the Claimant believed it was not appropriate for Salina Champaneri to join a team as she had prior notice of the questions and answers.
31. At the quiz, comments were made to Salina Champaneri by both the Claimant and Aaliyah Shakoor, which the Respondent took to be jokey about Salina Champaneri being a cheat. However, at one point Chris Beale says he saw the Claimant give Salina Champaneri the middle finger by pretending to scratch her nose. Chris Beale perceived that this was also a joke, and everyone was laughing. Matt Beale agreed with Chris Beale about the atmosphere at the time of the quiz. Stephen Beale's evidence was there was banter between Salina Champaneri and Aaliyah Shakoor and the Claimant

about deducting points because Salina Champaneri had already seen the questions. Stephen Beale's impression was that the atmosphere changed when the Claimant gave Salina Champaneri the middle finger. Stephen Beale said that Salina Champaneri got upset and excused herself. Aaliyah Shakoor said that Salina Champaneri got a bit spiteful and made numerous childish comments to her and the Claimant in response to the comments to Salina Champaneri about seeing the answers to the quiz. Stephen Beale said he received a text of apology from the Claimant in respect of what happened at the quiz [219]. Aaliyah Shakoor's evidence was that she thought that everyone probably thought it was a bit of banter because they were all laughing as people thought we were friends. Aaliyah Shakoor said that on the way home, the Claimant seemed annoyed at Salina Champaneri's behaviour not upset or worried. The Claimant said that the situation fed into her anxiety [23/28] she was upset. The Claimant told her mother that she felt that the directors were cross at her on 23 June 2021. [JW@8]. We find that the Claimant was not upset by what happened at the quiz and the remarks from Salina Champaneri but annoyed.

32. Callum Andrews received a call from Mrs Jo White the Claimant's mother, saying that the Claimant was being bullied by Salina Champaneri. Callum Andrews says that he was told by Mrs White that she was upset about the situation with Salina Champaneri after the quiz and that the Claimant was worried she was going to lose her job [Callum Andrews@13]. Callum Andrews says that is why he assured her that there was no danger of her losing her job. [381]
33. The Claimant met with Matt Beale on 24 June 2021. After that meeting the Claimant sent a text [246] where the Claimant mentioned that she had been bullied and disrespected by Salina Champaneri.

Meeting on 24 June

34. There was a meeting on 24 June 2021 at 4pm between Stephen Beale and Chris Beale and the Claimant, Aaliyah Shakoor and Salina Champaneri. Stephen Beale and Chris Beale asked the Claimant, Aaliyah Shakoor and Salina Champaneri what was going on. It was at that point Aaliyah Shakoor said that Salina Champaneri mentioned that the Claimant was saying things about people saying they had body odour or that they were paedophiles. [AS@10] Aaliyah Shakoor said that she had never had any conversations like that and was shocked at what was coming out. Aaliyah Shakoor said that after that initial meeting Salina Champaneri and the Claimant were back to being "buddy buddy". Chris Beale's and Stephen Beale's evidence was there was no mention of paedophile at that point. In her oral evidence Aaliyah Shakoor said that she could not remember what was said at that meeting in respect of Steve Oakenfull. We find that Aaliyah Shakoor was mistaken in her written evidence. All the evidence points to the Claimant having mentioned the allegation that Steve Oakenfull was a paedophile in her meeting on 25 June 2021.

Meeting on 25 June 2021

35. At the meeting on 25 June 2021, the Claimant alleged that Stephen Beale shouted and was abusive to the Claimant during the meeting. [247] Chris Beale's evidence is that the meeting was approximately an hour and that there

is a recording that is transcribed for the first 35 minutes of the meeting, but unfortunately a call came through Chris Beale's laptop that was recording the hearing and Chris Beale was unaware of that the call halted the recording. The Claimant says that it was after the 35 minutes that Stephen Beale shouted at her and abused her and that it is convenient for the Respondent not to have the rest of the recording. The Claimant says that meeting was 2 hours, from 2pm-4pm and relies upon a text she says she sent to Aaliyah Shakoor after the meeting at 16:07 [278]. We find that that there was a call in the middle of the hearing that terminated the recording and that the hearing was not much longer than 1 hour. We had no evidence as to when the hearing actually started. We were not convinced that the text to Aaliyah Shakoor was necessarily sent immediately after the meeting.

36. In the meeting Chris Beale seemed concerned that the Claimant was telling Aaliyah Shakoor that Salina Champaneri was disrespecting her even though there might be a miscommunication [251-252]. In her meeting with the directors, Aaliyah Shakoor had said that the Claimant told her that she was uncomfortable that 'Felix' looked her up and down. However, when the Claimant was asked about that in the meeting on 25 June, the Claimant's response was that Salina Champaneri said that. [253]. Chris Beale responded to the Claimant, "*Okay well, the Steve, the Steve's comments that's we've had is the opposite around saying that yourself and Aaliyah said that he was creepy and a perv about flirty*" [254] In response to that the Claimant said "*I've had no involvement with Steve*" [254].
37. The Respondent believed that it was the Claimant who made the comment about Steve Oakenfull giving off paedophile vibes not Salina Champaneri. [297] The Respondent relied upon the Teams chat messages to Aaliyah Shakoor as evidencing this and the Teams chat are quoted in a file note by Chris Beale after the meeting on 25 June [297]. The Claimant says that she raised issues about Steve Oakenfull's behaviour in the meeting on 25 June 2021. The Claimant says that these matters were raised after the recording stopped. However, in the meeting when asked about making comments about Steve Oakenfull, the Claimant said that "*I've had no involvement with Steve*" [254]. The Claimant also says that the only reason why the issue was raised about Steve Oakenfull saying that Aaliyah Shakoor should ask for free samples was because Salina Champaneri raised it [254]. We find that the Claimant did not raise any issues about Steve Oakenfull herself in the meeting on 25 June 2021. There was no evidence before us that Salina Champaneri had anything to do with the meeting with flirty (the lingerie company) or had a conversation with the Claimant about it.
38. We find there was nothing that the Claimant raised about either Salina Champaneri or herself in the meeting that related to the Equality Act 2010.
39. The Claimant alleged that Stephen Beale stated that the Claimant had made 'bitchy comments'. Stephen Beale said that the Claimant was a 'bitchy little girl'. Stephen Beale said the Claimant was 'not a lady, just a girl'. The Claimant alleged that Stephen Beale repeatedly swore at the Claimant stating, 'that the situation was 'fucking stupid', that the Claimant needed to 'buck her fucking ideas up', that Stephen Beale wished he could 'show her the door'. The Claimant also alleged that Stephen Beale told her that she was "too nice"

[CW@41] to do her job and that Salina Champaneri would be taking control of her role [CW@17].

40. We find that Stephen Beale did not say to the Claimant what makes you think the managing director of this company would care,' when the Claimant had gone to Chris Beale for advice on how to deal with the situation in the office. We do not accept that Stephen Beale said that to the Claimant because the Claimant did seek advice from Chris Beale for advice and she said he was like a friend not a boss.[140]
41. The Claimant said that Chris Beale agreed with Stephen Beale that that the Claimant was 'pathetic' and 'just a bitchy little girl'. Chris Beale laughed when the Claimant tried to explain how this was making her feel.
42. We find that Stephen Beale did not make any comments that the Claimant had made 'bitchy comments', and was a 'bitchy little girl' she was 'not a lady, just a girl', that the situation was 'fucking stupid', that she needed to 'buck her fucking ideas up', that he wished he could 'show her the door'. We do not accept the Claimant's evidence that Chris Beale agreed with Stephen Beale that the Claimant was 'pathetic' and 'just a bitchy little girl'. We noted that the Claimant raised the issues of childishness in the meeting first [250-259]. We do not accept the Claimant's evidence that Chris Beale would have laughed about any of the things he was being told. The Claimant is fabricating this version of events. In the meeting the Claimant herself swears referring to "bitchin" and "bullshit" [253]. Stephen Beale then says "*No I think it's actually childish, I think in all honesty people need to buck their ideas up, we are all adults and its getting a little bit frustrating, it really is because at the end of the day, we're all adults we're not in school, but unfortunately we have, we have zero tolerance for this.*" [253] The Claimant and Chris Beale and Stephen Beale are around the same age. We find that the reference to childishness by Stephen Beale is a reference to the situation not the Claimant specifically.
43. The Claimant said that Stephen Beale said, 'how dare you create this childish situation when we pay you so well and offer you great staff benefits!' The Claimant alleged that Stephen Beale said to her 'we are not in school' and that Stephen Beale stated, 'just a bunch of children'. Aaliyah Shakoor was not present for the comments about bitchiness or childishness. But she believed that Stephen Beale or Chris Beale would not direct it at the Claimant. She was not treated that way and she is a woman and the same age. [AS@21] We find that Stephen Beale did not say to the Claimant 'how dare you create this childish situation when we pay you so well and offer you great staff benefits!' We do accept that Stephen Beale said that "we are not in school". We find that this was a reference to the situation not a reference to the Claimant and was a trivial comment.
44. We find that Stephen Beale did not shout at the Claimant or was abusive in any way towards the Claimant during the meeting on 25 June 2021. There was no evidence earlier in the meeting of which we had a transcript of that would suggest that Stephen Beale would behave that way. There was no evidence of abusive behaviour in any of the meetings the Claimant had with the Respondent. Mr Foulk gave evidence that the Claimant did not mention any abusive behaviour by her employers to Mr Foulk who attended the 5 July 2021 meeting, which we would have expected her to have mentioned, as he

was there as a witness at the meeting on 5 July 2021. The text message to the Claimant's mother about the meeting [144] has no date at all. The text message could have been sent at any time. We find it inconceivable that if the Claimant had experienced what she said she experienced she would have gone back to the Respondent and attended any meeting by herself, which she did on 5 July in the first meeting, or that she would have wanted to return to work at all. We find that there was no swearing, abuse or shouting at the Claimant in the meeting on 25 June 2021.

5 July Meeting - Dismissal

45. By text on 4 July 2021 the Claimant was invited to attend a meeting which turned out to be a disciplinary meeting. The Claimant says that it was agreed that her father could attend the meeting with her. The Respondent says that it was never agreed that the Claimant's father could attend the meeting. The Claimant's parents were clients of the Respondent and so there would be issues of conflict and confidentiality in speaking about the Claimant's work with them. [CB@17(iii)]. The meeting was postponed until later that day. The meeting was postponed so that the Claimant could have an independent witness attend the hearing with her.
46. By letter dated 5 July 2021 [301-303] the Claimant was dismissed for "conduct to merit dismissal in its own right" [302]. The reasons for the dismissal were the Claimant's conduct and insubordination and capability. The allegation of calling Steve Oakenfull a paedophile is not specifically mentioned in the Respondent's dismissal letter. Chris Beale said that the paedophile comment was the reference to "malicious rumours" in the first paragraph of the letter titled " your conduct in the business". [301] The letter said when the Claimant was questioned about this in the disciplinary process she could not see it as a wrongful act but instead suggested the victim of bullying should be held accountable. However, Chris Beale admitted it was never put to the Claimant that she was the one who called Steve Oakenfull a paedophile. We find the Claimant did not make any allegations of bullying or abuse by the Directors in respect of the meeting on 25 June 2021.
47. Aaliyah Shakoor was also invited to a disciplinary for comments she made in the messages and taking a long lunch however she was not dismissed. [AS@16] she was issued with a verbal warning.
48. Chris Beale & Stephen Beale's evidence was they made the decision to dismiss the Claimant on 28 June 2021 before 5 July and the predominate reason for the dismissal was their belief that the Claimant called Steve Oakenfull a paedophile. Matt Beale gave evidence that he thought the decision was made before 5 July 2021, but he was not clear when. We find that Matt Beale was not as involved in the decision making and that is why he had little recollection.
49. Chris Beale accepted that the other reasons in the letter for dismissal did not amount to gross misconduct. Chris, Matt & Stephen Beale all gave evidence that the allegation that Steve Oakenfull was a paedophile was malicious. They all agreed that it was devastating to Steve Oakenfull personally and his reputation. We accept Chris, Matt & Stephen Beale's evidence and consider that alleging Steve Oakenfull was a paedophile was sufficiently serious to

amount to gross misconduct as it would have affected Steve Oakenfull's reputation even without him knowing about it. We find that there was potential reputational damage to the Respondent.

50. Chris Beale and Stephen Beale both gave evidence that when they interviewed Salina Champaneri she was adamant that she did not say that Steve Oakenfull was a paedophile. They said that Salina Champaneri admitted to trying to pay for a holiday with the company credit card, which would be more serious for an experienced credit controller to get another job in the financial industry rather than calling someone a paedophile. We accept Chris and Stephen Beale's evidence as consistent and find Salina Champaneri's reaction was sufficient for the Respondent to draw the conclusion that it was the Claimant who said that Steve Oakenfull was a paedophile. We find that the reason for the Claimant's dismissal by the Respondent was because the Claimant had said that Steve Oakenfull was a paedophile.
51. In the Claimant's appeal letter the Claimant says herself that Chris Beale and Stephen Beale started to ask her about the paedophile comment again [334]. The Claimant admitted in her letter that she would not comment on the paedophile statement [335]. The Claimant does not say that Stephen Beale stormed out of the room. This is consistent with what Chris Beale and Stephen Beale said in evidence. We find that it was the Claimant who raised the issue of paedophile first. It appeared to us that the Claimant wanted to get Salina Champaneri into trouble by raising this point. There appeared to be no purpose in raising the issue if the Claimant's position was that she was being bullied by Salina Champaneri. If she was being bullied by Salina Champaneri it would have been sufficient to have raised those issues. We find that as a matter of fact on a balance of probabilities it was the Claimant who was calling Steve Oakenfull a paedophile with no foundation at all.

Appeal

52. The Claimant did not receive the dismissal letter until 20 July 2021 [335]. On 22 July 2021, the Claimant made a request for an appeal against her dismissal. [327]. The Claimant's evidence was that she was not appealing against her dismissal but to get evidence supporting the Respondent's reason for dismissal and more information. The Claimant said that she did not trust the Respondent. In response to the Claimant's request for an appeal, Chris Beale told the Claimant by email dated 26 July 2021, that the appeal would be heard on 29 July 2021 at 1pm. By letter dated 27 July 2021, the Claimant submitted the basis of her appeal against dismissal [330-339]. The Claimant's appeal letter made references to age, disability discrimination and sexual harassment. There were complaints about Salina Champaneri alleged treatment of her causing her anxiety [330]. In the letter the Claimant said that she wanted the meeting on 29 July 2021 adjourned and the matters set out in her appeal letter investigated. Chris Beale gave evidence that before receiving the letter the Respondent started investigating the appeal by speaking to Callum Andrews and Felix. We accept Chris Beale's evidence on this point. We find that the Respondent did not refuse to investigate the Claimant's appeal, there was a lack of opportunity because the Claimant went to ACAS.

53. On receipt of the appeal letter, Chris Beale emailed the Claimant to say that he was cancelling the meeting and seeking legal advice and would be in touch in due course. Chris Beale confirmed in evidence that it was his decision to cancel the appeal meeting. Chris Beale said that the appeal letter was a grievance that the Claimant had never raised as an employee. The Claimant did not comment or pursue the appeal or the discriminatory issues that she raised after hearing of the cancellation. We find that the cancellation was because Chris Beale wanted to seek legal advice and the Respondent did not refuse to investigate the discriminatory issues that the Claimant raised in her appeal, nor did the Respondent refuse to hear the Claimant's appeal.

Is the Claimant disabled?

54. Aaliyah Shakoor said that the Claimant never mentioned her anxiety to her [AS@24]. Chris Beale said that it was never mentioned at all to him [CB@8]. The Claimant gave examples of times during her employment when she says she felt anxious for example when she thought that Salina Champaneri was bad mouthing her to Stephen Beale [see CW@17]. The Claimant's solicitor wrote a letter dated 2 March 2022 [79-81] setting out what impact the Claimant's anxiety had on her. However, the Claimant did not sign this document, and the Claimant does not mention any of these impacts in her own witness statement. The impacts mentioned do not set out the date when the impacts started from. We find that the impacts mentioned in the letter refer to matters that took place from November 2021. The Claimant also relied on a list of symptoms that she says she wrote. Again, this document is not signed by the Claimant. When asked in evidence the Claimant said that these were symptoms she was feeling at the time she wrote the document. The Claimant confirmed that she wrote the document on 2 March 2022 in response to a request from her solicitor.
55. The medical evidence provided of the Claimant's anxiety starts from November 2021 after the Claimant's dismissal and relates to the effect of the dismissal on the Claimant [84]. The Claimant's GP records refers to the Claimant's having experience stress as a result of being fired from her job and that anxiety is an issue "feeling tatt occ shakey" [82]. The Claimant's therapist refers to the Claimant having experienced anxiety for many years [85]. The Claimant's mother confirmed in evidence that the Claimant experienced anxiety as a teenager. There were no further examples given between the Claimant's teenage years and any time before the Claimant's dismissal of anxiety by the therapist. The Claimant's evidence was that she had not sought therapy before her dismissal. There were no medical records provided that detailed any mention of anxiety before the Claimant's dismissal. The Claimant was not prescribed any medication for anxiety at any time. We find that there is no medical evidence that the Claimant experienced anxiety before her dismissal.

Knowledge

56. The Claimant said that on 17 June 2021 [22/27] she spoke to Stephen Beale and Chris Beale and explained that Salina Champaneri had made nasty comments over writing the staff quiz and that made her feel anxious. Chris Beale denied that the Claimant told him anything about her anxiety and that he was surprised to hear that the Claimant was disabled due to anxiety. Chris

Beale said that the Claimant presented as confident [CB@8]. The Claimant said that her mother spoke to Callum Andrews about her anxiety, however there is no record of this in the texts from the Claimant's mother on 14 June 2021 [142]. Mrs White's evidence was that she spoke to Callum Andrews about the anxiety the Claimant was experiencing around the situation. The Claimant also said that she told Matt Beale about her anxiety in her call with him on 24 June 2021 [CW@27]. There is no mention of anxiety in this text. [246-248]. Matt Beale's evidence was that the Claimant was upset in their conversation on 24 June 2021, but said that the Claimant had mentioned she had anxiety. Matt Beale said that he took what the Claimant said about her anxiety to be about her worried about her manager being upset with her. He spoke about his lack of confidence as a young man with the Claimant as he believed the Claimant's anxiety was about her lack of confidence. Stephen Beale's evidence was that he was very surprised to read after receiving the Claimant's appeal that she was disabled and suffered from anxiety. He interacted with her daily. The Claimant said that the reason why there was no documented evidence of her anxiety was because she was ashamed, and the Respondent did not ask her for it. We did not find this credible and is an inconsistent position to hold because the Claimant said that she did tell the Respondent about her anxiety. The Claimant said she considered her employer, were more like friends not a boss and we do not accept the Claimant's evidence that she would have been ashamed. We do not accept that she did tell her employer that she had an anxiety condition.

Law

Disability

57. Disability is defined under Section 6 of the Equality Act 2010 ('EqA') as:

"(1) A person (P) has a disability if— (a) P has a physical or mental impairment, and (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities."
58. When deciding at which point in time the Claimant is disabled, the Tribunal is to look at the time of the alleged discriminatory act: Cruickshank v Vaw Motorcast Ltd [2002] I.C.R. 729. 52.
59. It is for the Claimant to prove that she is disabled, that is to show, on the balance of probabilities, that she satisfies all four elements, that is that: a) she has a mental or physical impairment, b) the impairment affects his ability to carry out normal day-to-day activities, c) the adverse condition is substantial, and d) that the adverse condition is long term.
60. In J v DLA Piper UK LLP [2010] ICR 2010 Underhill J (President, as he then was) suggested that although it was still good practice for the Tribunal to state a conclusion separately on the question of impairment, there will generally be no need to actually consider the 'impairment condition' in detail: *"In many or most cases it will be easier (and is entirely legitimate) for the tribunal to ask first whether the Claimant's ability to carry out normal day-to-day activities has been adversely affected on a long- term basis. If it finds that it has been, it will in many or most cases follow as a matter of common-sense inference that the Claimant is suffering from an impairment which has produced that adverse*

effect. If that inference can be drawn, it will be unnecessary for the tribunal to try to resolve the difficult medical issues.” (paragraph 40)

61. The EHRC Code of Practice on Employment, at paragraph 7 of Appendix 1, puts it succinctly *“What it is important to consider is the effect of the impairment, not the cause.”*
62. In Aderemi v London and South Eastern Railway Ltd 2013 ICR 591, EAT, the EAT furnish guidance as to the Tribunal’s role in applying the words of the statute. The EAT state: *“14. It is clear first from the definition in section 6(1)(b) of the Equality Act 2010, that what a Tribunal has to consider is on adverse effect, and that it is an adverse effect not upon his carrying out normal day-to-day activities but upon his ability to do so. Because the effect is adverse, the focus of a Tribunal must necessarily be upon that which a Claimant maintains he cannot do as a result of his physical or mental impairment. Once he has established that there is an effect, that it is adverse, that it is an effect upon his ability, that is to carry out normal day-to-day activities, a Tribunal has then to assess whether that is or is not substantial. Here, however, it has to bear in mind the definition of substantial which is contained in section 212(1) of the Act. It means more than minor or trivial. In other words, the Act itself does not create a spectrum running smoothly from those matters which are clearly of substantial effect to those matters which are clearly trivial but provides for a bifurcation: unless a matter can be classified as within the heading “trivial” or “insubstantial,” it must be treated as substantial. There is therefore little room for any form of sliding scale between one and the other.”*

Unfavourable treatment because of something arising in consequence of disability

63. Section 15 EqA states:

- “(1) A person (A) discriminates against a disabled person (B) if –*
- (a) A treats B unfavourably because of something arising in consequence of B’s disability and*
 - (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.*
- (2) Subsection (1) does not apply if A shows that A did not know and could not have reasonably been expected to know, that B had the disability.”*

64. The correct approach when determining section 15 EqA claims is set out in the EAT decision of Pnaiser v NHS England and others UKEAT/0137/15/LA at paragraph 31.
65. The approach is summarised as follows:
 - a. The Tribunal must identify whether there was unfavourable treatment and by whom – no question of comparison arises;
 - b. The Tribunal must determine the cause of the treatment, which involves examination of conscious or unconscious thought processes. There may be more than one reason but the

“something” must have a significant or more than trivial influence so as to amount to an effective reason for the unfavourable treatment;

- c. Motive is irrelevant when considering the reason for treatment;
- d. The Tribunal must determine whether the reason is “something arising in consequence of disability”; the causal link between the something that causes unfavourable treatment and disability may include more than one link – a question of fact to be assessed robustly;
- e. The more links in the chain between disability and the reason for treatment, the harder it is likely to be able to establish the requisite connection as a matter of fact;
- f. This stage of the causation test involves objective questions and does not depend on thought processes of the alleged discriminator;
- g. Knowledge is required of the disability only, section 15 (2) EQA 2010 does not extend to requirement of knowledge that the “something” leading to unfavourable treatment is a consequence of disability;

66. *In the EAT case of Basildon & Thurrock NHS Foundation Trust v Weerasinghe [2016] ICR 305, Langstaff P, summarises the approach as, “[t]he current statute requires two steps. There are two links in the chain, both of which are causal, though the causative relationship is differently expressed in respect of each of them. The Tribunal has first to focus upon the words “because of something,” and therefore has to identify “something” – and second upon the fact that that “something” must be “something arising in consequence of B’s disability”, which constitutes a second causative (consequential) link. These are two separate stages.”*

Reasonable adjustments

67. The duty to make reasonable adjustments is set out in sections 20 – 21 EqA 2010, and in Schedule 8 (dealing with reasonable adjustments in the workplace).

68. The pertinent parts of Section 20 say: -

“(1) *Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.*

(2) *The duty comprises the following three requirements.*

(3) *The first requirement is a requirement, where a provision, criterion or practice of A’s puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.”* The second and third requirements of section 20 EqA are not relied on this case.

69. Section 21 EqA establishes that a failure to comply with the first requirement is a failure to comply with a duty to make reasonable adjustments.
70. Therefore, the duty does not apply if the employer did not know, and could not reasonably be expected to know that the employee had a disability and was likely to be placed at the disadvantage in question by the PCP (Schedule 8 paragraph 20) (see Wilcox v Birmingham CAB 2011 EqLR 810)
71. In the case of Secretary of State for Work and Pensions (Job Centre Plus) v Higgins [2013] UKEAT/0579/12 the EAT held at paragraphs 29 and 31 of HHJ David Richardson's judgment that the Tribunal should identify (1) the employer's PCP at issue, (2) the identity of the persons who are not disabled in comparison with whom comparison is made, (3) the nature and extent of the substantial disadvantage suffered by the employee, and (4) identify the step or steps which it is reasonable for the employer to have to take and assess the extent to what extent the adjustment would be effective to avoid the disadvantage.
72. The statutory duty is for the Respondent to take such steps as are reasonable, in all the circumstances of the case, for it to have to take in order to avoid the disadvantage. The test of "reasonableness" therefore imports an objective standard (see Smith v Churchills Stairlifts plc [2005] EWCA 1220.)

The Burden of Proof in Discrimination cases

73. Proving and finding discrimination is always difficult because it involves making a finding about a person's state of mind and why she or he has acted in a certain way towards another, in circumstances where she or he may not even be conscious of the underlying reason and will in any event be determined to explain her or his motives or reasons for what she/he has done in a way which does not involve discrimination.
74. The burden of proof is set out at Section 136 EqA. The relevant part of section 136 EqA says: -
- (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..."*
75. It is for the Claimant to prove the primary facts from which a reasonable Tribunal could properly conclude from all the evidence before it, in the absence of any other explanation, that there has been a contravention of the Equality Act. If a Claimant does not prove such facts she will fail – a mere feeling that there has been unlawful discrimination, harassment or victimisation is not enough.
76. Once the Claimant has shown these primary facts then the burden shifts to the Respondent and discrimination is presumed unless the Respondent can

show otherwise. Could conclude means “a reasonable Tribunal could properly conclude from all the evidence.”

77. As set out above, at the first stage the Claimant must prove “a prima facie case.” Each case is fact specific, and it is necessary to have regard to the totality of the evidence when drawing inferences. Once the burden of proof has shifted, it is the second stage and is for the Respondent to show that the relevant protected characteristic played no part whatsoever in its motivation for doing the act complained of.
78. It is, however, not necessary in every case for the Tribunal to specifically identify a two-stage process. There is nothing wrong in principle in the Tribunal focusing on the issue of the reason why. As the Employment Appeal Tribunal pointed out in Laing v Manchester City Council [2006] IRLR 748 “*If the tribunal acts on the principle that the burden of proof may have shifted and has considered the explanation put forward by the employer, then there is no prejudice to the employee whatsoever*”.
79. This approach to the burden of proof has been confirmed by the Court of Appeal in Ayodele v City Link and another [2017] EWCA Civ 1913.

Age discrimination

80. Under section 4, Equality Act 2010 (“EA 2010”) age is a protected characteristic. Section 5 provides “*In relation to the protected characteristic of age— (1)*
- (a) *a reference to a person who has a particular protected characteristic is a reference to a person of a particular age group;*
- (b) *a reference to persons who share a protected characteristic is a reference to persons of the same age group.*
- (2) *A reference to an age group is a reference to a group of persons defined by reference to age, whether by reference to a particular age or to a range of ages.”*
81. Unlike other forms of direct discrimination, direct discrimination on the grounds of age can be justified. Section 13(2) EA 2010 states “*If the protected characteristic is age, A does not discriminate against B if A can show A’s treatment of B to be a proportionate means of achieving a legitimate aim.*”

Direct discrimination

82. Section 13 EqA sets out the statutory position in respect of claims for direct discrimination because of age, disability or sex.
- “(1) *person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.*
- (2) *If the protected characteristic is age, A does not discriminate against B if A can show A’s treatment of B to be a proportionate means of achieving a legitimate aim.*

(3) *If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.*”

83. The comments of the Court of Appeal in Madarassy v Nomura International plc [2007] EWCA 33, albeit a sex discrimination case under the pre Equality Act 2010, Sex Discrimination Act 1975, are still very much applicable to direct discrimination under the Equality Act 2010. Mummery LJ giving judgment says at paragraph 56, *“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.”*
84. It can be appropriate for a Tribunal to consider in a direct discrimination case, first, whether the Claimant received less favourable treatment than the appropriate comparator and then, secondly, whether the less favourable treatment was because of race. However, in some cases, for example where there is only a hypothetical comparator, these questions cannot be answered without first considering the ‘reason why’ the Claimant was treated as she was. (Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11; [2003] IRLR 285)

Harassment & Sexual Harassment

85. Section 26 EqA sets out the circumstances where a person is both harassed related to a protected characteristic (age, disability & sex) and sexual harassment were the very nature of the harassment is of sexual conduct.

“(1) A person (A) harasses another (B) if—
(a) A engages in unwanted conduct related to a relevant protected characteristic, and
(b) the conduct has the purpose or effect of—
(i) violating B's dignity, or
(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) A also harasses B if—
(a) A engages in unwanted conduct of a sexual nature, and
(b) the conduct has the purpose or effect referred to in subsection (1)(b). ...

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

86. In Richmond Pharmacology v Dhaliwal [2009] ICR 724 the EAT stressed that the Tribunal should identify the three elements that must be satisfied to find an employer liable for harassment: (a) Did the employer engage in unwanted conduct, (b) Did the conduct in question have the purpose or effect of violating the employee’s dignity or creating an adverse environment for

him/her, (c) Was that conduct on the grounds of the employee's protected characteristic?

87. In a case of harassment, a decision of fact must be sensitive to all the circumstances. Context is all-important. The fact the conduct is not directed at the Claimant herself is a relevant consideration, although this does not necessarily prevent conduct amounting to harassment and will not do so in many cases.
88. Richmond Pharmacology v Dhaliwal confirmed that not every comment that is slanted towards a person's protected characteristic constitutes violation of a person's dignity etc. Tribunals must not encourage a culture of hypersensitivity by imposing liability on every unfortunate phrase.
89. Mrs Justice Slade's comments on how a Tribunal should approach the words "related to the protected characteristic" are helpful in the EAT decision of Bakkali v Greater Manchester (South) t/a Stage Coach Manchester [2018] IRLR 906, [2018] ICR 1481 (EAT). She says, whilst it is difficult to think of circumstances in which unwanted conduct on grounds of or because of a relevant protected characteristic would not be related to that protected characteristic of a Claimant – "related to" such a characteristic includes a wider category of conduct and as such requires a broader enquiry when making a decision. (See paragraph 31 (Slade J presiding))
90. Tribunals must not devalue the significance of the meaning of the words used in the statute (i.e., intimidating, hostile, degrading etc.). They are an important control to prevent trivial acts causing minor upset being caught in the concept of harassment. Being upset is far from attracting the epithets required to constitute harassment. It is not enough for an individual to feel uncomfortable to be said to have had their dignity violated or the necessary environment created. (Grant v Land Registry [2011] IRLR 748).
91. In considering the word 'unwanted', the EAT have said in Reed and anor v Stedman [1999] IRLR 299, EAT that it is essentially the same as 'unwelcome' or 'uninvited' and refers to conduct that is unwanted by the Claimant. The question should be on the whole assessed subjectively, i.e., from the employee's point of view. Conduct that is regarded as offensive or obviously violates a Claimant's dignity will automatically be regarded as unwanted.
92. Considering whether there has been harassment includes both a subjective and objective element. Underhill J in Pemberton v Inwood [2018] EWCA Civ 564 summarised the position as follows: "*In order to decide whether any conduct falling within sub-paragraph (1)(a) of section 26 EqA has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section 4(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section 4(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also take into account all the other circumstances (subsection 4(b))*"
93. Section 212(1) EqA says "*detriment does not, subject to subsection (5) include conduct which amounts to harassment.*"

94. Section 212 EqA means that an action that is complained of must be either direct discrimination or harassment, but it cannot be both. It must be one or the other. This is because the definition of detriment excludes conduct which amounts to harassment.

Victimisation

95. Section 27 EqA sets out as follows:

“(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

- i. B does a protected act, or*
- ii. A believes that B has done, or may do, a protected act.*

(2) Each of the following is a protected act—

- iii. bringing proceedings under this Act;*
- iv. giving evidence or information in connection with proceedings under this Act;*
- v. doing any other thing for the purposes of or in connection with this Act;*
- vi. making an allegation (whether or not express) that A or another person has contravened this Act.*

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

96. Section 39 (4) applies to employers and states:

*“An employer (A) must not victimise against an employee of (A)’s (B)
(d) by subjecting B to any other detriment.”*

97. The issue of causation is fundamental to proving victimisation. In the seminal case of *Nagarajan v London Regional Transport [1999] ICR 877, HL*: The House of Lords ruled that victimisation will be made out, even if the discriminator did not consciously realise that he or she was prejudiced against the complainant because the latter had done a protected act.

98. Lord Nicholls put it like this in *Nagarajan* *“Save in obvious cases, answering the crucial question will call for some consideration of the mental processes of the alleged discriminator. Treatment, favourable or unfavourable, is a consequence which follows from a decision. Direct evidence of a decision to discriminate on [protected] grounds will seldom be forthcoming. Usually the grounds of the decision will have to be deduced, or inferred, from the surrounding circumstances.”*

99. The Equality and Human Rights Commission Code of Practice on Employment 2011 (the “Code”) explains that at paragraph 9.11- 9.12.

“9.11 Victimisation does not require a comparator. The worker need only show that they have experienced a detriment because they have done a protected act or because the employer believes (rightly or wrongly) that they have done or intend to do a protected act.

9.12 There is no time limit within which victimisation must occur after a person has done a protected act. However, a complainant will need to show a link between the detriment and the protected act.”

100. Ministry of Defence v Jeremiah [1979] IRLR 436, [1980] ICR 13, (CA): established that a detriment exists 'if a reasonable worker would take the view that the treatment was to his detriment'.
101. Notwithstanding, Lord Neuberger in the House of Lords in Derbyshire and ors v St Helens Metropolitan Borough Council and ors [2007] ICR 841 noted "*An alleged victim cannot establish "detriment" merely by showing that she had suffered mental distress: before she could succeed, it would have to be objectively reasonable in all the circumstances.*" (see paragraph 68, page 863).
102. Cornelius v University College of Swansea [1987] IRLR 141 is a case under the old provisions of victimisation in the Sex Discrimination Act 1975. The question on appeal to the Court of Appeal was whether the Tribunal's finding of no victimisation could stand where the Tribunal found that the decision maker was influenced by the existence of a claim brought by the Claimant to refuse to continue the Claimant's grievance process. Bingham LJ giving judgment concluded at paragraph 33: "*There is no reason whatever to suppose that the decisions of the registrar and his senior assistant on the applicant's requests for a transfer and a hearing under the grievance procedure were influenced in any way by the facts that the appellant had brought proceedings or that those proceedings were under the Act. The existence of proceedings plainly did influence their decisions. No doubt, like most experienced administrators, they recognised the risk of acting in a way which might embarrass the handling or be inconsistent with the outcome of current proceedings. They accordingly wished to defer action until the proceedings were over. But that had ... nothing whatever to do with the appellant's conduct in bringing proceedings under the Act...*"
103. The House of Lords in Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48 [2001] 1 WLR 1947 approved Cornelius, saying that "*Employers, acting honestly and reasonably, ought to be able to take steps to preserve their position in pending discrimination proceedings without laying themselves open to a charge of victimisation.*"
104. Deer v University of Oxford [2015] ICR 1213 concerned a victimisation claim on the grounds of having previously brought proceedings the Claimant was refused a reference. Elias LJ said at paragraph 26 "*In fact it seems to me- as it did to Underhill LJ as he said when granting permission to appeal- that, although the concepts of less favourable treatment and detriment are distinct, there will be very few, if any, cases where less favourable treatment will be meted out and yet it will not result in a detriment. This is because being subject to an act of discrimination which causes, or is reasonably likely to cause, distress or upset will reasonably be perceived as a detriment by the person subject to the discrimination even if there are no other adverse consequences*". The Court of Appeal concluded that the conduct of internal procedures can amount to a detriment even if proper conduct would not have altered the outcome.

Wrongful dismissal

105. Shaw v B and W Group Ltd EAT 0583/11 - A court or tribunal must be satisfied, on the balance of probabilities, that there was an *actual* repudiation of the contract by the employee. It is not enough for an employer to prove that it had a reasonable belief that the employee was guilty of gross misconduct.
106. The essential question was whether in that case, Mr Shaw was actually in breach of contract to the extent that his conduct might be regarded as repudiatory, not whether the employer — reasonably or otherwise — believed that he was. While the tribunal had been aware of the different concepts of wrongful dismissal and unfair dismissal, it appeared to have conflated them.

Submissions

107. Both parties submitted written submissions. The Respondent made short oral submissions that the evidence considered by the Respondent is on a balance of probabilities and that the reason why the Respondent dismissed the Claimant was for a number of disparate reasons not for accumulative reasons. The Claimant responded to these submissions that the reasons put forward by the Respondent did not reach the balance of probabilities standard of proof. We considered both the parties written and oral submissions in coming to our decision.

Analysis/ Conclusions

Sexual harassment

108. We considered that the allegations that the Claimant made against Steve Oakenfull were very serious and we were very concerned that on a number of occasions the Claimant was given an opportunity to withdraw her claims of sexual harassment against Steve Oakenfull, but she did not take that opportunity. The Claimant had referred to a number of texts in the bundle of incidents that happened at work that she would write her mother about immediately after the incidents happened. There was no evidence that the Claimant had ever told her mother that Steve Oakenfull behaved flirtatiously towards her. The Claimant's mother did not mention it in her evidence and there were no texts about it in the bundle. It appeared inconceivable to us that the Claimant would have told her mother about those incidents but not mentioned to her mother that Steve Oakenfull made her feel uncomfortable. As our findings demonstrate we simply did not believe the Claimant at all in relation to her claims of sexual harassment. Not only did we not believe the Claimant, but we also considered that she had fabricated the entirety of the claims against Steve Oakenfull and without foundation. It was notable to us that Aaliyah Shakoor continued to work for the Respondent when she was told by the Claimant about her allegations against Steve Oakenfull and she did not believe the Claimant. Neither did the Claimant complain about any incidents before the termination of her employment. We simply do not believe that the Claimant would not have raised the issue when she complained about bullying in respect of Salina Champaneri.
109. Unwanted conduct of a sexual nature is a necessary component of determining whether the Claimant had been subjected to sexual harassment. We considered whether any of the matters that the Claimant alleges under issue 1(a) of her claim had a sexual nature. We determined that they did not.

110. In respect of issue 1(a) (i) we found that Steve Oakenfull did send the Claimant a link regarding a lingerie website [227]. The Claimant's Teams chat demonstrated that the Claimant knew and acknowledged that it was in relation to business prospects. She said in her response to the link "is it a prospect". This said to us that it was in her mind that the link was work related, otherwise she would have asked, why Steve Oakenfull was sending her the link without making any suggestion at all. There was nothing about the link that meant in that context it was of a sexual nature.
111. In respect of issue 1(a) (iv) there was nothing that Steve Oakenfull did that would fall within the realm of unwanted conduct of a sexual nature towards the Claimant. Even if the matters that the Claimant complains of in 1(a)(iv) the Claimant was not there when they were alleged to have occurred, they could not have been unwanted conduct because it was not conduct in respect of the Claimant at all. We have found that issues 1 (a) (ii) & (iii) did not happen at all.
112. In any event we do not consider that it was objectively reasonable that the conduct that we found to have taken place to have the effect of violating the Claimant's dignity's or create an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant (taking into account the Claimant's perception and the other circumstances of the case). The Claimant's claim for sexual harassment is unfounded and the Claimant's claim is dismissed.

Sex Discrimination

113. We have made no findings on which we can draw any inferences that the Respondent discriminated against the Claimant on the grounds of her sex. In relation to the comments under issues 2(a) (i), (ii) & (iii) we found that those comments were not made. The Claimant in Ms Hitchen's submissions sought to rely upon Steve Oakenfull as a comparator in relation to her complaining to the Respondent about Steve Oakenfull's behaviour in respect of her dismissal. Steve Oakenfull was not an appropriate comparator as he did not make a complaint about anything that we were told about, the Claimant has not alleged that she was called a paedophile or something equivalent. Steve Oakenfull was in a completely different role in the business, which was siloed, compared to the Claimant who would have contact with most of the staff and Steve Oakenfull was significantly older than the Claimant. Ms Hitchen's also mentioned Felix although we knew nothing about him. We conclude that there were significant material differences between the Claimant and Steve Oakenfull and Felix was not an appropriate comparator as we knew nothing about him. The Respondent were choosing between whether the Claimant or Salina Champaneri said the paedophile comment. At no point has the Claimant suggested that the Respondent would not have dismissed Salina Champaneri for the same comments. The reason the Claimant was dismissed was because the Respondent believed the Claimant said the comment. We therefore conclude that the Claimant's claim for sexual discrimination is unfounded, and the Claimant's claim is dismissed.

Age discrimination

114. There were no findings from which we could draw inferences that the Claimant was discriminated against because of her age. We found that the Claimant

and Chris Beale and Stephen Beale are around the same age, there would have been no reason to treat the Claimant differently to anyone else. We found that the Respondent did not call the Claimant little girl or refer to her childishness. The only comment that we found of the Respondent referring to childishness was the Respondent was referring to the situation not the Claimant. We therefore conclude that the Claimant's claim under issues 4(a) (i) –(vi) for age discrimination is unfounded, and the Claimant's claim is dismissed.

Harassment related to age

115. We did not find that any of the Respondent's employees or directors said any of the comments that the Claimant said amounted to harassment related to the Claimant's age save one comment. We did find that the comment "we are not in school" was said. However, the reference to we are not in school was a reference to the situation and not the Claimant and so we do not consider it was related to the Claimant's age. Furthermore, we consider that the comment was trivial and did not amount to a violation of the Claimant's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. On that basis the Claimant's claims for harassment related to age are unfounded and the Claimant's claims fail.

Harassment related to sex

116. We did not find that the Respondent said any of the comments that the Claimant said amounted to harassment related to the Claimant's sex. On that basis the Claimant's claims for harassment related to sex are unfounded and the Claimant's claims fail.

Disability discrimination/harassment

117. We considered the definition of disability under section 6 EqA. We find that the Claimant did not have a disability. There was no evidence that during any period before the cancellation of the Claimant's appeal on 26 July 2021 that the Claimant had a mental impairment of anxiety. We didn't even have any medical evidence to support that the Claimant had anxiety in respect of her teenage years. There was no evidence of any substantial adverse effect on the Claimant's ability to carry out her day to day activities before her dismissal. There is no evidence that the Claimant had an impairment at the relevant time let alone that effects of the impairment were long term. As we have found that the Claimant did not have a disability all the Claimant's claims for reasonable adjustments, harassment related to disability, direct discrimination on the grounds of disability and discrimination in consequence of something arising from her disability are unfounded and are dismissed.

Victimisation

118. We consider that there was no reference in the Claimant's texts on 24 June 2021 to the Equality Act 2010. The Respondent accepted that the Claimant's letter of appeal dated 26 July 2021 was a protected act. We consider that it falls within the definition of a protected act under section 27(2)(d) EqA. The matters raised in issue 10(a) (ii) are set out in the appeal letter and do not form a separate protected act. It follows that the detriments that the Claimant relies

upon that took place prior to the only protected act cannot be detriments resulting from the only valid protected act. Thus issue 10 (b) (i) Claimant's treatment in the meeting on 25 June, issue 10 (b) (ii) her dismissal and lack of notice pay, issue 10 (b) (iii) Stephen Beale stating that he wanted to 'show her the door' during the meeting on 25 June, cannot have been caused by the Claimant's protected act.

119. However, considering the remaining 2 detriments, we conclude that as the Respondent did not refuse to investigate the discriminatory issues in the Claimant's appeal then it was not a detriment. The Claimant did not pursue the appeal and seemed content to leave the matter to the Employment Tribunal. In respect of the alleged detriment that the Respondent refused to hear the Claimant appeal. We found that the Respondent had already started to investigate the appeal. It was the Claimant who wanted an adjournment, and the Respondent was entitled to pause the appeal to take legal advice. That did not amount to a refusal to hear the Claimant's appeal and therefore as not a detriment. The Claimant's claim for victimisation is unfounded and is dismissed.

Wrongful dismissal

120. We have considered the law, and we consider that as the tribunal we must make our judgment as to whether there has been an actual repudiatory breach. The case of Shaw v B and W Group Ltd EAT 0583/11 makes it clear that the reasonable belief of the employer is not the test. We conclude that as the Claimant did say that Steve Oakenfull was a paedophile, this amounted to gross misconduct. The Claimant accepted that in her submissions that if the Claimant had said this, it was gross misconduct. We did not make findings in relation to the other reasons for dismissal as we only needed to be satisfied on a balance of probabilities that there was an actual repudiation. We agreed that what the Claimant had done amounted to malicious rumour and that was sufficiently serious to cause detriment to Steve Oakenfull's reputation even without him knowing and there was potential of reputational damage to the Respondent as well and that the Respondent terminated the contract of employment because of this. We consider that the Claimant's conduct amounted to gross misconduct. The Claimant was not wrongfully dismissed. The Claimant's claim for notice pay is unfounded and the Claim is dismissed.

Costs

121. After oral reasons were given, the Respondent made an application for costs. The application was made on 2 grounds, that is the claim had no reasonable prospect of success; and that the complaints were vexatious and ought not to have been brought. The Claimant had been informed that the Respondent would be making an application for costs. The Respondent's application was made under rule 76(1) (b) Employment Tribunal Rules of Procedure 2013. The Respondent said that all the complaints of sexual harassment were vexatious, and the various findings were that the Claimant had fabricated the allegations, and she was lacking in credibility. The Respondent accepted that the wrongful dismissal was a legitimate case, but this could have been heard in 2 -3 days, whilst the hearing was in fact 6 days and so the Respondent had incurred significantly more costs as a result.

122. The Respondent did not provide a schedule of costs but said that the costs were over £50,000. If the case was half as long then the cost would have been half of £50,000. The Respondent's submission was there was no reasonable prospects of success given the claims were fabricated and the Claimant had sought legal advice. This was a further reason to make a costs order. The Respondent said that it was fair and just and reasonable for the Claimant to pay a portion of the Respondent's costs- 50-60% of costs was suggested.
123. The Claimant's submissions were there that there was no notice of the actual costs as there was no schedule of costs. All that the Claimant knew was that costs were a multiple of £10K. The Tribunal should not make a costs order in that region. The Claimant submitted that costs were the exception rather than the rule. The Claimant was not vexatious, but the Claimant genuinely believed her claims, The Respondent behaved disruptively. It was not right to say there were no reasonable prospects. The parties spent time debating the issues. The parties spent most of the week arguing about wrongful dismissal, all the claims were worthy of debate.
124. The Tribunal considered that costs are the exception not the rule. We reminded ourselves, that costs are compensatory and not punitive. We considered all the matters raised by the parties. We considered the factors that the Claimant was represented and did take legal advice, however we considered that this was not an open and shut case, the issues in the case did need to be tested and the Tribunal had to decide who they believed. This is particularly pertinent in sexual harassment claims where often it is one person's word against the other. The Respondent's behaviour regarding disclosure may have added to their own costs, but in any event we do not think that the Claimant's behaviour reaches the threshold under rule 76. We exercised our discretion not to award costs. The Respondent's costs application fails.

Employment Judge Young

Dated 11 March 2024

REASONS SENT TO THE PARTIES ON

.....28 March 2024.....

FOR THE TRIBUNAL OFFICE

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Case No: 3314235/2021

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