



EMPLOYMENT TRIBUNALS

Claimant: Miss Emma Nunn

Respondent: G. & M.J. Crouch & Son Limited

Heard at: Leicester Employment Tribunal
On: 6–17 March 2023 and 28 April 2023 deliberations 22 May, 23 June and 19 August 2023.

Before: Employment Judge Broughton
Members Ms Tidd and Ms Dean

Representation

Claimant: Mr Doughty – lay representative

Respondent: Mr Dennis – counsel

RESERVED LIABILITY JUDGEMENT WITH REASONS

- The claims of sexual harassment are not well founded and are dismissed.
- **The claim of direct sex discrimination allegation 6 (g) from the agreed list of issues is well founded and succeeds. The remaining claims of direct discrimination are not well founded and are dismissed.**
- The claims of harassment related to sex are not well founded and are dismissed.
- The claim under section 103A ERA is not well founded and is dismissed.
- The claim under section 47B ERA is not well founded and is dismissed.
- The claim of unfair dismissal is not well founded and is dismissed.
- The case will be listed for a remedy hearing to determine the amount of compensation to be awarded in respect of the one claim of direct sex discrimination which succeeds.

REASONS

Background

1. The claimant presented her claim on the 27 May 2021. It included complaints of unfair dismissal and sex discrimination. The claimant had also ticked box 10.1 of the claim form to indicate a whistleblowing claim (case number 2601266/2021). This followed a period of Acas early conciliation which commenced and ended on 19 May 2021. The original claim form included a statement from the claimant hereafter referred to as the Particulars of Claim, which ran to 25 pages setting out the details of her claim. The Particulars of Claim were uploaded to the Tribunal system but for whatever reason had not been sent to the respondent.
2. The claimant then submitted a further statement to the Employment Tribunal on 10 June 2021 by way of an amendment application to the first claim, hereafter referred to as Amendment Document 1.
3. In its response to the claim, filed on 1 July 2023, the respondent (not having seen the Particulars of Claim) argued that the claimant had failed to provide the required minimum information and/or the claim could not be sensibly responded to and invited the Tribunal to reject the claim.
4. The claimant then submitted a further document on 12 July 2021 by way of further particularisation of the claim hereafter referred to as Amendment Document 2.
5. The claimant submitted a second claim form on 30 July 2021 in response to the respondent's contention that the first claim had not been properly served (case number 2601643/2021). The second claim was accompanied by the original Particulars of Claim and the Amendment Documents 1 and 2.
6. The two claims were consolidated by order of Employment Judge Butler on 9 August 2021 as they appeared to give rise to common or related issues of fact and law.

Preliminary hearing: 31 August 2021

7. There was a preliminary hearing on 31 August 2021 before Employment Judge Butler to determine the issue of whether the first claim was validly served. Employment Judge Butler determined that it had. It was noted that within the first claim the claimant had referred to a disclosure Action Fraud but no further information about whistleblowing.

Preliminary hearing: 19 October 2021

8. At a hearing on 19 October 2021 Employment Judge Ahmed determined that an amendment application made by the claimant was agreed save that the respondent wished to reserve its position on time points. Those additional claims by way of amendment, are identified in the list of agreed issues (see Appendix) with an asterisk.
9. Employment Judge Ahmed set the case down for a further Preliminary Hearing to determine the issue of the claimant's employment status during the period May 2018 to February 2020.

Preliminary hearing 12 May 2022

10. At a preliminary hearing before Employment Judge Ayre, the Tribunal determined that the claimant was an employee of the respondent between May 2018 and February 2020 and there has sufficient service to pursue the complaint of unfair dismissal. Her full

written reasons were set out in a judgment dated 8 June 2022 in which she made findings about the working relationship and in particular the relationship between the claimant and Adam Crouch, the respondent's Managing Director. That decision was not appealed.

Preliminary hearing 18 January 2023

11. At a preliminary hearing before Employment Judge Broughton on 18 January 2023, the claimant had taken legal advice, and confirmed that the alleged protected disclosures she relies upon are disclosures to Action Fraud and the police, however, the claimant informed Employment Judge Broughton that the police and Action Fraud had told her that she could not to disclose the information which she had disclosed to them.
12. Employment Judge Broughton, as set out in her record of that hearing, explained to the claimant that it is for the claimant to prove she made a disclosure and if she does not set out what was said/written, then the Tribunal may not be able to determine that there was a disclosure which meets the test under section 43B Employment Rights Act 1996 (ERA) and 'this would be fatal to those claims'. Mr Doughty expressed the view that the information would come out in cross examination, however, it was explained to the claimant that it would not if the respondent chose not to ask questions about it. Employment Judge Broughton suggested that the claimant may want to take further advice.
13. The respondent confirmed that it was not pursuing any order for disclosure of further information from the claimant in respect of the alleged disclosures.

Preliminary hearing 20 February 2023

14. There was a further preliminary hearing to deal with applications for specific disclosure made by both parties before Employment Judge Welch on 20 February 2023.
15. The claimant had also made an application to strike out the respondent's response on 2 February 2023 (p.219). Employment Judge Welch determined that should the claimant wish to pursue it, a request should be made to the panel at the final hearing.

The Issues

16. The parties reached agreement on the list of issues to be determined by the Tribunal and given the number of issues, those are set out in the Appendix to this judgment.
17. The parties produced an agreed bundle of documents of 1335 pages plus an additional bundle, with further disclosure made throughout the during the hearing including video footage which was viewed by the Tribunal. Applications for leave to adduce further evidence were determined during the hearing and reasons provided orally at each stage.
18. Mr Dennis for the respondent, made an application on the first day for additional specific disclosure from the claimant and complained that the claimant had failed to comply fully with paragraphs 2, 3 and 4 Employment Judge Welch's Orders as set out in her record of the Preliminary Hearing on 20 February 2023. The documents are referred to in 2.1 of Employment Judge Welch's Order, (various text messages and WhatsApp messages). Mr Doughty accepted that the claimant had not in relation to a number of the documents, provided the relevant messages which formed part of the text or WhatsApp trail, asserting that the claimant had not understood exactly what she needed to do. Mr Dennis also complained that the claimant had failed to comply with paragraph 3 of Judge Welch's order to identify, where someone had liked Facebook posts, who the person is. With regards to paragraph 4 of Judge Welch's orders about provision of unredacted copies of documents, the only outstanding document was at page 807. All

these matters were dealt with by orders of the Tribunal and complied with by 4.00pm on the first day of the hearing.

19. The claimant had made an application for specific disclosure but that disclosure had been largely refused. With regards to the Order for the respondent to make disclosure pursuant to paragraph 6 of Employment Judge Welch's Order, it was for the respondent to bring copies of the documents for the panel to consider the claimant's application for these, listed at 6.1 to 6.4. The respondent had brought with it a supplemental bundle including those items for consideration by the Tribunal. Mr Dennis objected to admitting these into evidence on the grounds that they are confidential and not necessary for a fair disposal of the proceedings and it would be disproportionate to order their disclosure.
20. In terms of outstanding call recordings, Mr Doughty failed to identify any specific call recordings which he says the claimant had identified as relevant and necessary for the fair disposal of the proceedings and which had not been disclosed. He then went on to mention that the claimant had not been given her response to a data subject access request however he explained it was "*not so much about the material it's the way the Respondent has behaved*" and although they had said previously they would not disclose private messages between employees they had now done so by way of additional disclosure.

Adjustments

21. Mr Doughty explained that the claimant was very distressed and very upset and required some adjustments to avoid her seeing Adam Crouch. Mr Doughty stated that the claimant had been signed off by the Doctor and is on high medication and extremely anxious. He asked for a screen. Mr Dennis confirmed that Mr Crouch did not feel strongly either way about a screen, however, did not consider that it was necessary in that there is no evidence of any intimidation of the claimant by Mr Crouch.
22. Given that Adam Crouch had not particular objection to a screen, this was accommodated along with breaks as and when required.

Second day of the hearing

23. On the second day of the hearing the claimant had provided the additional information as ordered. Mr Dennis confirmed that the respondent was now content that the claimant had complied with paragraphs 2, 3 and 4 of Employment Judge Welch's Order. The written confirmation that the claimant was ordered to provide had been included within the additional disclosure as a table at page 222.
24. Turning then to the additional disclosure that the respondent had made, pursuant to paragraph 6 of Employment Judge Welch's Order, both Mr Dennis and Mr Doughty confirmed that they would have no objection to the panel continuing to hear the case if it looked at the documents to ascertain whether they were confidential and the Tribunal therefore proceeded to look at the documents in the additional disclosure bundle relevant to the matters set in the list of documents at Item 1(a)(i). The additional bundle included altogether two pdf documents and 56 pro forma invoices with amendments. The respondent had included some examples of proformas where there is a manuscript change to the sums to be invoiced, adding on additional sums for further repairs allegedly identified. Given the voluntary disclosure of a number of unredacted proforma invoices already contained in the main bundle, Mr Dennis informed the Tribunal that the issue was not really about confidentiality but relevance and proportionality.
25. The Respondents had produced a table which was the first document at the start of the supplemental bundle, prepared by Mr Guerriero, the Respondents Financial Director.

Item page numbers 2-16 refer to paragraphs 6.1 of Employment Judge Welch's Orders and page numbers 17-47 to 6.2, page numbers 48-66 to 6.3 and page number 67 onwards to 6.4.

26. There is no dispute that the claimant sent proforma/draft invoices to the claimant with handwritten amendments for her to make, the issue is whether the adjustments were legitimately for work which had been done. Mr Doughty volunteered that the claimant has copies of the documents but they had asked the respondent to disclose copies to check they would disclose the same ones. Mr Doughty confirmed that only 6 to 10 examples need to be included in the bundle. 10 examples were selected by the claimant.

Comparators

27. The claimant had not identified actual comparators in respect of all the allegations of direct discrimination. It was explained by the Tribunal to Mr Doughty that unless an application to amend was made, the comparators would be those identified in the agreed list of issues. No application to include other comparators was made.
28. Mr Doughty then said that they had asked for disclosure of other emails that had been sent by Mr Purkiss about arranging meetings because they would then be able to identify from those emails other occasions when the claimant was required to provide tea when Mr Purkiss attended meetings at the respondent's office, but that those had not been disclosed. Mr Dennis objected to an application being made on the basis that the request for those documents had been part of the specific disclosure requests considered by Employment Judge Welch and refused. It was explained to Mr Doughty that he could have applied for reconsideration or appealed that decision, that said he could repeat the application today and the Tribunal would deal with it. Mr Doughty confirmed that he did not want to cause any further delay and did not wish to do so.

Whistleblowing allegations

29. Mr Doughty confirmed on the second day of the hearing, before the Tribunal started hearing the evidence and were still resolving preliminary matters, that the two disclosures relied upon are the disclosures to Action Fraud to Cambridgeshire Police.
30. Mr Doughty sought to raise other protected disclosures; namely that in October 2020 the claimant made a disclosure that she was unhappy to Mr Crouch involving an insurance claim with NFU, that in a space of two or three days in April she questioned the practice of adding VAT and charges to client (TIP) account and there was a heated exchange between them on 21 April 2021 and on 5 May 2021.
31. Mr Dennis objected to any amendment at this stage and referred to the claimant's witness statement clearly identifying only two alleged protected disclosures (paragraph 154) .
32. The parties were informed that the Tribunal would have to determine, before it could start to hear the evidence, which disclosures were being relied upon by the claimant and determine any application to amend. The claimant was informed that after lunch she would have to put forward her position very clearly and set out the other disclosures which the claimant alleges have been pleaded (identifying where they pleaded), or otherwise make an application to amend.
33. Given the absence of any details in the documents or in the claimant's evidence in chief, about what had been disclosed, the Tribunal explained that it was also going to consider striking out the whistleblowing claims on the grounds the claims have no reasonable prospect of success. The parties were invited to prepare submissions accordingly. Further, the claimant was seeking to rely on a number of subsections under the

Employment Rights Act (ERA) in the terms of the method of disclosure however, in terms of Action Fraud and the Police they were not prescribed bodies and it was therefore not clear which subsection of section 43(c)-43(h) ERA was being relied upon.

34. After the lunch adjournment, when the Tribunal had planned to deal with these issues (including the possible striking out of the whistleblowing claims), the Mr Doughty reported that the claimant was very distressed and could not continue with the hearing that day because she did not want to be in the same room as the respondent's witnesses. In the morning the claimant had presented as very calm and was content for the respondent witnesses to come into the room without the screen in place. The Tribunal proposed that the claimant give her evidence from another room and link it up via CVP, however, Mr Doughty stated that they claimant was having to leave home at 7.30am to arrive at 9.30am, needed to get the children ready for school and it was affecting her mental health and that she was not in a position to proceed with the hearing that day.
35. Mr Doughty explained that he had not been able to take instructions and was not in a position to proceed to make submissions on the merits of the whistleblowing claims that afternoon. Mr Doughty did not inform the Tribunal that the claimant was in a position to provide information about what she alleges she had told the police or Action Fraud, Mr Doughty complained that he was being "*pushed into a corner*" by the Tribunal requiring that information from the claimant .
36. After discussion with the parties, it was agreed that the hearing would proceed via CVP, with all parties attending remotely and the hearing would be adjourned for the afternoon.
37. It was agreed that by 9.00am the following morning the claimant would supply in summary or skeleton form to the respondent, what disclosures it was relying upon and what information it was alleging had been disclosed and clarify its position in terms of the manner of disclosure.

Third day of the hearing

38. The claimant on the morning of the third day of the hearing, produced a document headed "Skeleton Argument- Protected Disclosures". It still did not set out what had been communicated to Action Fraud on 6 May 2021 or the police on 20 May 2021. Mr Doughty continued to maintain that the claimant was in a difficult position because she had been told not to reveal the details of those alleged disclosures, informing the Tribunal; "*I don't feel I can satisfy what you're proposing*".
39. After much discussion and when given a final opportunity to set out its case, Mr Doughty only then informed the Tribunal that the police had actually (it is alleged) informed the claimant on 24 February 2023 that she could reveal details of the alleged disclosure to Action Fraud and the police and therefore the claimant could provide this information after all.
40. There was an adjournment for the claimant to set out what she alleges she disclosed and she did this in a further document headed: "Alleged Further Disclosures – Protected Disclosures " (AFD).
41. There was no sensible or satisfactory explanation for the conduct of the claimant in continuing to refuse to set out what she had disclosed on the pretext that she had been told by the police not to, only then to reveal (when faced with the striking out of her claim for whistleblowing), that actually she had been told back in February 2023 that she could disclose this information. It gave rise to concerns about the manner in which the claimant was conducting these proceedings. Her refusal s to state, until day 3 of the hearing, what

she had disclosed when making the alleged whistleblowing claims, called into serious question the credibility of her evidence on this issue.

42. Mr Doughty confirmed that the claimant was relying on the two disclosures set out in her witness statement, namely the one to Action Fraud on 6 May 2021 and to the police on 20 May 2021 and section 43G ERA.
43. In terms of her credibility more generally during these proceedings, it would also transpire during the course of hearing her evidence, that the claimant had disclosed only extracts from certain WhatsApp messages and in doing so had failed to provide the full context to those communications, and in each case the manner of this type of curated disclosure was unfavourable only to the respondent. This is addressed in the findings section of this judgment but as a consequence the Tribunal did not find the claimant to be in material respects, a credible witness.
44. The Tribunal also had some concerns over the credibility of some of the respondent's witness with regards to specific elements of their evidence which is addressed further in the findings.
45. The claimant was permitted to rely on the further information provided about her alleged disclosures. The Tribunal applied the guidance in *Selkent Bus Co v Moore* EAT 2 May 1996 and considered that the prejudice of allowing or refusing the amendments favoured the claimant and that it was in accordance with the overriding objective to allow the amendments to the claim. The full reasons were given orally at the hearing. The claims were not struck out because based on the alleged disclosures, the Tribunal could not say, taking the claims at their highest, that they had no reasonable prospect of success.
46. The claimant's application to strike out the response was determined and reasons given orally why it was refused. The application was brief and in essence the claimant complained that the respondent had failed to comply with her subject access request. The central part of the application was that although Mr Doughty did not identify any specific documents not disclosed by the respondent, in breach of any tribunal orders, he complained that the claimant had to go 'around the houses' to get the relevant documents. The respondent pointed to the applications dealt with by way of specific disclosure on both sides and complained that the claimant had 'cherry picked' her disclosure and redacted information which should not have been redacted. Essentially the Tribunal did not find that there had been unreasonable conduct by the respondent, requests for disclosure had been made on both side and orders made and that a fair trial remained possible in any event. Full reasons were provided orally.
47. The claimant had not addressed time limits, should that prove to be relevant. She was permitted to submit an additional witness statement with no objection raised by the respondent.

The Evidence

48. The claimant and Mr Mark Doughty, her partner, both gave evidence. The claimant was cross examined. Mr Dennis chose not to cross examine Mr Doughty.
49. The respondent's witnesses included: Mr Adam John Crouch, the respondents Managing Director, Mr Guerriero, Finance Director, Michael Bruce, Procurement Manager (and now Head of Invoicing), Mr Kelly, Operations Manager, Mr David Crouch, former director, Mr Oliver Barton, Business Development Manager, Mr Alan Copley, Administration Assistant, Mr Thomas Graham, Procurement manager, Mrs Louise Guerriero, Accounts Administrator . They all gave evidence and were cross examined.
50. All witnesses swore an oath or gave their evidence under an affirmation.

51. Reference in square brackets are to page numbers in the main bundle with SB denoting a reference to the supplemental bundle.
52. All findings of fact are based on a balance of probabilities. All the evidence has been considered but only that relevant to the determination of the issues is set out in this judgment.

Findings of fact

53. The respondent is a business which provides vehicle recovery services. It is a family run business. Mr David Crouch took over the business in 1974 from his parents and resigned as a director in 2015 . He stepped back to allow his son, Mr Adam John Crouch (Adam Crouch), to take up the role of managing director. Mr David Crouch still works for the business and describes his role as: “*carrying out odd jobs, going out on recoveries and general maintenance.*” None of these facts are in dispute.
54. The claimant was a longstanding family friend of Mr Adam Crouch and his family.
55. The claimant worked for the respondent as an Administrative Assistant for approximately 12 months in 2012. During this earlier period of employment, she was provided with a contract of employment. The claimant resigned in December 2012 to take up a role closer to home.
56. It is notable that the claimant does not complain of any behaviours in the respondent’s workplace, or of its culture or of the conduct of Mr Adam Crouch or indeed of his father or brother, Richard Crouch, during this previous period of employment.
57. After the birth of her second child in December 2017, the claimant and her father visited Mr Adam Crouch and his father, at their offices in Leicester. The respondent required some help with invoicing. The business was expanding and there was a backlog of invoicing work. The claimant agreed to accept a position with the respondent on a self-employed basis.
58. Employment Judge Ayre made findings (preliminary hearing judgment paragraph 14), that the claimant and Adam Crouch were ‘*long standing friends*’ and that they ‘*liked and respected each other*’. That is common between the parties.
59. Employment Judge Ayre made a finding that in March 2019 the claimant became the respondent’s Account Manager and was issued with an ID card which confirmed her title as the Account Manager of Crouch recovery. During this hearing, Adam Crouch disputed that the claimant was the Account Manager however, the respondent did not appeal the decision of Judge Ayre and Adam Crouch explained during this hearing that this was because he respected her decision. This Tribunal find that the claimant was the Account Manager although not a title used day to day.
60. Judge Ayre also made a findings that in June 2019 the clamant informed Adam Crouch that she was too busy and felt overwhelmed by the amount of invoicing work.
61. The claimant did not work fixed hours but could work when and where she wanted.
62. In November 2019 there were discussions about the claimant becoming an employee. Mr Crouch wanted to have more control over her hours and it was agreed that she would become an employee from 6 February 2020 on an annual salary of £60,000. For the reasons set out in detail in her judgment, Employment Judge Ayre determined that the claimant was an employee within the meaning of section 230 (1) of the Employment Rights Act 1996 from an earlier date, in May 2018.

The claimant

63. It is not in dispute that the claimant had known Mr Adam Crouch and his family since she was 18 years of age. She has considerable experience of the vehicle recovery and transport sector having worked in it almost all of her career.
64. The claimant describes how when she left the respondent's employment in 2012, she had left on very good terms. The claimant remained in contact with Mr Adam Crouch after she had left the respondent's employment in 2012, and they would inform each other of significant events in their personal lives.

The role

65. The claimant was responsible for the majority of outbound invoices and reported mainly into the Finance Director, Mr Guerriero but also Adam Crouch.
66. The Tribunal find that while she may not have used the official title of Accounts Manager day to day, this is the role she was performing and later this was acknowledged when Adam Crouch would later send an email to staff on 26 April 2021 (p.625): *"I wanted to confirm that: excluding the accounts within the outsourcing department and the accounts that Amelia deals with, Emma is the Accounts and Invoicing Manager for all accounts of Crouch Recovery"*.
67. Mr Michael Bruce joined the respondent in 2019 as a Procurement Manager. Mr Bruce and his team (which included Thomas Graham) dealt with inbound invoices from subcontractors and supplied information to the claimant and the outbound invoice team to complete the outbound invoices. Both the claimant and Mr Bruce give evidence, which the Tribunal accept, that Mr Bruce was not as seen to be as senior within the business, as the claimant.
68. Mr Bruce would liaise with Peter Thompkins over prices for parts for the vehicles. Amelia Tilson worked in the control room and looked after outbound invoices for RAC and AA and work for the police (using a software system called ELVIS).
69. The claimant accepts that everyone in the outbound invoice team (other than Ms Tilson who also had her own specific accounts) worked on invoices for the same clients (e.g. Zenith, TIP etc). The outbound team prepared the invoices (taking information from a software management system where the work was recorded called Apex) and would load the invoices onto the client portal. The claimant would check them and after the proforma invoices were sent out, deal with any customer queries and on receipt of an order number the claimant would send out the final invoice ('invoice them off').

On 8 February 2020 : contract of employment

70. It is not in dispute that there is no contract of employment signed by the claimant relevant to her employment by the respondent from February 2020. The claimant in her evidence in chief (w/s para 44) complains that she was offered a job at a salary of £60,000 on or around 31 January 2020 and told she would be the third highest paid employee in the company and asked for a contract of employment on 8 February 2020 but was not given one. The claimant complains that male employees had a contract. The claimant had however, been issued with one when she had previously worked for the respondent and she does not allege that other female employees were not given contracts.
71. Adam Crouch gave evidence that the claimant had been supplied with a draft contract to sign but that due to her unrealistic demands (including wanting to be company secretary and having shares) this was never finalised. The claimant denies making

unrealistic demands. There is no evidence that she made such demands at this stage and the Tribunal do not find that this has been proven by the respondent.

72. The claimant would later send an email to Mrs Barbara Crouch (p.427) the mother of Mr Adam Crouch and company secretary of the respondent, complaining of a number of matters. The claimant does not complain in that email about the failure to provide her with a contract of employment and neither does she allege that she had raised this issue with Barbara Crouch at any time previously, despite how close they were.
73. There is a copy of a WhatsApp message from the claimant to Adam Crouch which does not have a date but the claimant alleges (and Adam Crouch does not dispute it) was sent around this time in February 2020. In this message, the claimant is pointing out that Mr Taylor has not provided her with a contract of employment, to which Mr Crouch replies (p. 354); *“Ricky does not do contracts ! U don’t need one, **you are a Crouch** and will always be looked after.”* Tribunal stress
74. The parties have not produced the claimant’s response, if any, to that message. The claimant does not allege that she expressed that she was not content with his response. The claimant has not produced any other message where she repeats her request for a contract after this date. She does not allege that she challenged Mr Crouch over his explanation, only that she asked a colleague for a copy of their employment contract for her own reference (w/s para 45).
75. It is not in dispute that other male employees were provided with contracts of employment. Mr Graham and Mr Copley both confirmed in cross examination that they had been provided with one. Those two had the Tribunal understand, joined immediately as employees rather than started on a self-employed basis.
76. The Tribunal conclude on the evidence, that the claimant was not issued with a contract of employment and that Mr Crouch was not giving reliable testimony about this. There is no document or evidence from any witnesses which corroborates his account which is at odds, not only with the claimant’s oral evidence, but the WhatsApp exchange between them.
77. The Tribunal for reasons which will become clearer below in this judgment, find that the claimant, on a balance of probabilities, was however satisfied with the response from Mr Crouch and for that reason the Tribunal find, did not want to challenge the reasoning behind it. The claimant accepted that the nature of their friendship resulted in what she described as a *‘blurring’* of the nature of their working relationship.
78. The Tribunal have formed the very strong impression, that being considered part of the Crouch family, was very important to her and this continued to be the case, until their ultimate falling out.
79. In her Particulars of Claim, the claimant states as follows; (page 26);
“Adam Crouch and I have had a close friendship initially through his father and my father. As a result, I would often refer to myself as a ‘Crouch’. So much so Mr Adam Crouch would often say this too, His mother and father have often messaged and said they wished I were their daughter in law.”
80. The claimant also describes their working relationship in these terms in the pleadings (page 26 para 3.6 and 3.7):
“in essence, it was a ‘working relationship’ that was wholly and far more defined by written and verbal messages. Typically, but this I mean promises, implied consent, conversations, actions, expressed in favour of personal commitment and close loyalty.

For an example of the close family ties there was a charity event/open day held. I travelled from Cambridge to collect and take Mrs Barbara Crouch to the event, even though her daughter in law Mrs Jennie Crouch and wife of Mr Adam Crouch lives in the same village and quite naturally could have picked up Mrs Barbara Crouch”

81. What became clear to this Tribunal throughout the hearing, is that this was not a purely professional working relationship and that was not only something encouraged by Adam Crouch but was valued and encouraged by the claimant. It was very important to the claimant to be considered to be more than an ordinary employee. The Tribunal also find on balance, that the informality in their working relationship and the friendship they enjoyed, was the reason why Adam Crouch did not consider it necessary to provide her with a contract of employment, in the same way he did with other employees.
82. Much later, as the Tribunal goes on to address in these findings, the claimant formed the view that the strength of her feeling toward this family and her belief about how they felt about her, had been misjudged. The strength of her disappointment, at a very personal level, is palatable. The claimant describes the behaviour toward her, as ‘gaslighting’ (page 17 para 6.45):“*Overall, I felt like I was being gaslighted day to day week to week month to month.*”
83. The Tribunal find that the claimant was herself happy in the main with and indeed encouraged and enjoyed, the nature of their friendship and working relationship. She set out in her Particulars of Claim the ways in which she enjoyed preferential treatment over other staff: “*In the Crouch Recovery main office where I worked Mr Adam Crouch has a private office and shower room, I was the only employee who was given the private code to that office so that I could go use the room in the mornings to do my hair before I started work.*” (page 26 para 3.8).
84. The Tribunal find that the claimant invested not only her loyalty and hard work but emotionally invested herself in this business and this family and that she ultimately felt let down and manipulated. The Tribunal do not find on balance however, that her perception of being let down and manipulated was objectively, a reasonable one and it is probably the case that now on reflection, she may appreciate that.

On 27 February 2020

85. The claimant complains that on 27 February 2020 Adam Crouch, in front of other staff in the office, made the comment: “*here comes the posh **girl** from Cambridge wearing her wax jacket*” and “*here’s **the girl** that does her shopping at Ocado*” (Tribunal stress) when referring to the claimant and that this amounted to harassment related to sex.
86. Mr Adam Crouch denies making these comments but recalls the claimant having a discussion about Waitrose in the office but does not elaborate in his evidence in chief, on what that conversation was about and the claimant denies this. There are no contemporaneous documents recording what was said.
87. The claimant first made this allegation in these proceedings, on 12 July 2021, nearly 18 months after the alleged incident and in her witness statement does not identify who, if anyone, was present and nor does she explain how that comment made her feel or give evidence about how she reacted. She does not allege that she objected or had a quiet work with Mr Adam Crouch, with whom she describes having a trusting and close relationship.
88. It is apparent to this Tribunal, that there were occasions when the claimant was very forthright in her objections when she was not happy about something (which will be addressed later in the findings), therefore the Tribunal take into account that on her own

case she did not raise any objection to these alleged comments at the time or until she raised a claim almost a year and a half later.

89. The burden of proving that the comments were made in the first place, falls to the claimant and on balance the Tribunal do not find that the claimant has established that these comments were made. The Tribunal also find that the comments are not objectively, necessarily objectionable, even if said.

19 March 2020 : 'nickname'

90. The claimant complains that on 19 March 2020 Adam Crouch referred to her, when speaking to a customer, Mike Beech of Biomass, as Emma Royd, a play on the word haemorrhoid; and that Mr Beech as a consequence sent the claimant an email with a salutation "Thank you Emma Royd".

91. The burden of proving these events took place falls to the claimant.

92. Mr Crouch denies in his evidence in chief that he referred to the claimant as such (paragraph 30 w/s). It is not in dispute that on 19 March (p.518) Mr Beech referred to the claimant as "Emma Royd", a play on the word haemorrhoid.

93. The evidence in chief of Mr Adam Crouch is that the claimant gave herself this nickname and he believes this had been given to her at her previous place of work and that she enjoyed having a 'nickname' in the office and she would give other nicknames. Mr Steve Kelly in his evidence in chief states that the claimant gave him the nickname; '*Steve Jelly Belly Kelly from the tele*' which he was not fond of but did not complain about it. He alleges that the claimant called herself 'Emma Royd' and also believes this nickname had been given to her during her time with her previous employer, WFL.

94. In her particulars of claim (page 36) the claimant states;

"...the office culture where I worked with Crouch Recovery could be described as the typical so – called male dominated office banter and sexual innuendos. While I did not always agree with the comments made etc I knew what I was getting myself into working in the industry . Over time I had learnt to accept and or ignore it. More often, I would either plead ignorance or typically walk away if I felt the conversation was going down a path I did not want to hear."

95. The claimant does not say that she made it known that she found comments offensive or unwanted. The Tribunal find that it is more likely than not that the claimant had accepted largely the culture and herself engaged in some of the 'banter' in the office. The claimant herself sent messages to colleague, which contained expletives. She sent to Michael Bruce the following (p.236 SB):

"9. Try saying I'm not sure this can be implemented within the agreed timescales. Instead of: No fucking chance mate. 10. Try saying : It will be tight, but I'll try to schedule it in . instead of: Why the fuck didn't you tell me that yesterday ?... 12 Try saying : excuse me? Instead of : Oi, fuckface [laughing emoji]" ...

96. In cross examination the claimant gave evidence that Mr Adam Crouch gave her the nickname 'Emma Royd' and "*I'm not sure why he did*". She does not allege that it was because of her gender or that it was otherwise, gender related.

97. The claimant first raised this allegation in these proceedings on 12 July 2021, over 16 months after the alleged event.

98. The Tribunal find that the claimant has not proven on a balance of probabilities, that Mr Crouch called her this in front of the client. The claimant describes how she had a good relationship with her main customers and while it is clear that the customer did use this nickname the Tribunal find that it is more likely than not, that the claimant had referred to herself in these terms. In any event, the claimant did not raise any complaint either with the customer or directly with Mr Adam Crouch.

2 March 2020 : Private office

99. The claimant complains that on 2 March 2020, Adam Crouch refused her request for a private office when Mr Robert Taylor, Mr Robert Garner, Mr Ollie Barton, Mr Steve Kelly and Mr Ricky Guerriero each had their own offices.
100. The claimant had since the Covid pandemic, worked mainly from home, only occasionally travelling the 1 hour journey into work. Most of the invoicing work she did was online .In her Particulars of Claim document (p. 31) she explained that from March 2020 until early 2021 she :“ ...*continually worked from home. Even when lockdown was lifted I still stayed at home. I was able to demonstrate I was able to be more productive working from home and naturally be there for my children. It was a win/win considering it was a difficult time.*”
101. It is not in dispute that the claimant did not have her own office. When she did go into the office, (which she accepts in cross examination was only occasionally), she shared an office with the rest of the invoicing team on the first floor. She accepts that she could ask to use a private office, if she needed one and conceded in cross examination she did not ‘need’ a private office but wanted one.
102. The claimant does not identify in her evidence what if any detriment or disadvantage this gave rise to specifically, other than wanting an office sometimes to make calls to customers to deal with queries (which the Tribunal do not find would be confidential discussions which she need to have away from the rest of the invoicing team). She does not allege that the lack of a private office in any way impeded her ability to do her job. However, at least in her mind it was symbolic of her status in the business and appears to have been more to do with an outward acknowledgment of her importance than necessary for the performance of her role;

*“In March and **because of my elevated position** in the company I asked Mr Adam Crouch if I could have a private office. This was because, Mr Rob Taylor, Mr Rob Gardner, Mr Ollie Barton, Mr Steve Kelly and Ricky Guerriero each had their own offices but nothing materialised.” (w/s para 47) Tribunal stress.*

103. This is not presented as a direct discrimination claim but a breach of the implied duty of mutual trust and confidence. This was not a matter which the claimant raised in her later complaint email to Barbara Crouch and she does not identify any document where she raises this as an issue or concern at any point during her employment. Even when Adam Crouch would later ‘beg’ her to rescind her resignation and offer her a company car to return to work, she does not say in those discussions that she wants her own office.
104. The evidence of Adam Crouch is that he was the only member of staff who had his own private office (w/s para 15). Mr Guerriero, the Finance Director previously had one but this was generally shared with members of his own team. He denies that Mr Garner, Mr Taylor, Mr Barton or Mr Kelly had their own offices since 2019 because they did not have enough room. His evidence is that the upstairs on the second floor, where Mr Barton, Mr Taylor and Mr Kelly work, there are 2 main rooms which are the control rooms and which are open plan and shared. The invoicing team are located on the first floor and share that space.

105. Mr Barton amended his statement under oath, to clarify that he had an office 'space' and not his own office.
106. The Tribunal on balance do not find that the claimant has proven that Mr Taylor had his own office or that Mr Garner, Mr Barton or Mr Kelly did.
107. Further, unlike, the named male colleagues, the claimant worked mainly from home. She unlike them, enjoyed the benefit of having the flexibility to work from home and does not allege that she needed a private office when she occasionally came into work, to do her job effectively.
108. The evidence in chief of Adam Crouch which the Tribunal accept, is that the claimant never had her own office and never asked him for one, whether on 2 March 2020 or at any other time, that there was no need for her to have one and there was the ability for anyone to use an office privately if they needed to do so (w/s para14) .
109. The Tribunal find that the claimant was happy to work from home and did not want that arrangement to end. The Tribunal find that the respondent simply did not consider the claimant required her own office and there was insufficient space to accommodate it and while she may have liked one, she never asked for one (possibly because, as with the car situation, this may have given rise to an expectation that she would go into the office more often, which she did not want to do).

5 March 2020: Ford Ranger

110. The claimant alleges that on 5 March 2020, Adam Crouch told her that she could have a new Ford Ranger but later failed to provide one for her, whilst Mr Garner and Ollie Barton were given one. She claims that this was an act of direct discrimination.
111. Mr Crouch denies that he had told the claimant she could have a Ford Ranger either on 5 March 2020 or on any other date.
112. While the claimant is prepared to complain in 2021 about a delay in providing her with a company car, when it is not in dispute she was told she could have one (p. 360) (following her first resignation and the discussions which led her to return to work), she does not assert, and there is no evidence to suggest, that she ever followed up on this alleged promise of a Ford Ranger in March 2020.
113. There is no contemporaneous evidence of this request in March 2020 and of any complaint being raised about it. The claimant in her oral evidence (w/s para 48) does not say she ever complained about it not being provided .
114. A Ford Ranger is a type of pickup truck. The claimant complains that she was not permitted on recoveries, which would be consistent with the evidence of Mr Adam Crouch that in her role, she did not require a pickup vehicle.
115. The claimant complains that she was not provided with a Ford Ranger because of her sex.
116. Oliver Barton, a comparator, was and remains, the Business Development Manager.. Despite on a number of occasions the Judge reminding Mr Doughty of the need to put the claimant's case to the witnesses, he did not challenge Mr Barton's evidence that he had not been given a Ford Ranger.
117. The burden of proof is on the claimant to establish that as a fact Mr Barton was provided with a Ford Ranger, on balance of probabilities the Tribunal find that the claimant has failed to establish that he was. The Tribunal accept the respondent's evidence and find

on balance, that Mr Barton also did not have a Ford Ranger because he also did not go on recoveries.

118. Mr Garner was not called as a witness however, Mr Crouch gave evidence that Mr Garner had a Ford Ranger since 2021 because he went on simple recoveries or took equipment to recovery jobs. The claimant disputes this explanation because she alleges that Mr Garner (who was part of the invoicing team for the outsource department), a was not shown on the Apex system as attending recoveries. However this is a point which she did not raise in her evidence in chief and nor was this put to Adam Crouch in cross examination. However, the claimant accepted that she did not attend recoveries so would not definitively know if he had from time to time been sent to assist with a recovery.
119. The claimant accepted Alan Copley in the invoicing team did not have a company car either.
120. The Tribunal also note what is alleged originally in the Particulars of Claim (p. 31 para 5.0 – 5.4) :

*“In **January 2021** Mr Adam Crouch asked me when I would be returning to the office.*

I advised Mr Adam Crouch that with lockdown still in force and because I did not have a car (our other car was sold during the pandemic as it was not being used) ...

*Mr Adam Crouch said he would get me **a car so I can come to work** but nothing materialised*

*By **April 2021** some 3 months later after repeated requests for a car I was still without a car...” Tribunal stress*
121. The claimant does not allege that she was told she could have a Ford Ranger specifically or told she could have a vehicle in **March 2020** when she was working at home and content it seems to continue to do so.
122. The claimant does not allege that she wanted to return to the office, thus if there had been any discussion about a willingness to provide a car so that she could return to the office, the Tribunal consider that as the claimant considered she worked effectively from home and wanted to be at home for her children, that she would not have wanted to push for a car to be provided at that point to facilitate her return.
123. Much later on 23 April 2021 (p.951) (following her first resignation), Mr Crouch informed the claimant in an email, that she could have a company car. On 30 April 2021 in a WhatsApp message, he refers to a pickup or a golf (p.958); *“You can have what you want – apart from a Ferrari unfortunately ... I was thinking a diesel golf as I think [sic] a good car, open to suggestions or the pickups if you’d use one...”*
124. The claimant asked not for pick-up but for a Ford Tiguan (p.960). The Tribunal find that the claimant did not want a Ford Ranger, she was home based and she did not require a pickup truck . When she was offered one, she did not actually want one. The reason she was offered a car at this stage, the Tribunal find, was because Mr Adam Crouch wanted her to retract her resignation and it was one of a number of incentives offered to her to persuade her to return (page 952):*“...and you’d also have to have a company car – you can even throw stones at it in the garden if too like ! ...”*
125. The burden is on the claimant to show that she was told that she could have a new Ford Ranger in March 2020 and the Tribunal do not find that the evidence supports this allegation.

126. The Tribunal also find that on balance, Mr Ollie Barton was not provided with one and Mr Garner, the Tribunal accept carried out some minor recovery work and carried equipment to other jobs and that this was the reason he was given one but that other members of the Invoicing Team, including Mr Copley, did not have a company car.
127. The Tribunal find that there is nothing on the facts, to indicate that any decision about who would be provided with a Ford Ranger was anything to do with their gender.
128. In terms of whether in any event she suffered any detriment by not being provided with a Ford Ranger specifically (which is how she puts her case), the claimant did not require a pickup truck to do her job and the Tribunal notes that even in 2021 when she was told she could have a car, she did not want a Ford Ranger.

On 12 March 2020 mobile telephone

129. The claimant alleges that Mr Adam Crouch refused her request for a company mobile phone when Mr Taylor, Mr Garner, Ollie Barton, Steve Kelly and Robert Garner each had company mobile phones. The claimant in her evidence in chief (w/s para 49) alleges that she asked for a mobile telephone on one occasion on 12 March 2020 and Mr Crouch refused. She does not allege that she asked again. She does not raise this as a complaint until her Particulars of Claim on 12 July 2021, over 16 months later.
130. Mr Adam Crouch gave unchallenged evidence which the Tribunal accept, that 99% of the invoicing work is done online and by email. In her claim she refers to being able to effectively carry out her role at home (p.31) and does not complain that not having a mobile phone prevented her from doing her role and nor does she complain about incurring any additional expense.
131. There is no contemporaneous evidence of the claimant making any request for a phone.
132. The claimant alleges that this was less favourable treatment on the grounds her sex.
133. Mr Crouch in his evidence in chief (w/s para 20/21) gave evidence that the claimant never asked for a mobile telephone which is why she was not given one. He accepted that Steve Kelly and Robert Garner were both provided with one because they were on call to carry out recoveries. He denied that Mr Taylor, Mr Barton or Mr Guerriero had one.
134. The claimant in cross examination accepted that Mr Kelly was required to attend roadside recoveries and does not dispute that it would be considered necessary for him to have a company mobile telephone. The claimant does not accept that Mr Garner attended recoveries because he was not recorded on the Apex system as a recovery driver or road side technician however, this allegation was not set out in her evidence in chief and was but not put to Mr Crouch in cross examination.
135. Mr Crouch was not challenged in cross examination on his evidence about the mobile telephone issue and who was and was not provided with one.
136. Ricky Guerriero in his evidence in chief (w/s para 36) gave evidence that he used his personal phone for work and he was not challenged on this in cross examination.
137. It was not put to Oliver Barton in cross examination that he was provided with a mobile telephone.
138. Mr Taylor did not attend to give evidence.

139. When it was put to the claimant in cross examination that Mr Taylor, Mr Barton and Mr Gardner had not in fact been given company mobile telephones, her evidence was: *"I'm not to know ..."* . She volunteered that she did not see the phone bills however she gave evidence that she saw Mr Garner give out sim cards and upgrade them but accepted that there was no *"clear evidence"* of them having company mobile telephones.
140. Michael Bruce is not a named comparator. He was employed as Procurement Manager at the time. He manages the network of suppliers and in his evidence in chief (w/s para 33) gave evidence that he did not have a mobile phone until lockdown due to the Covid pandemic when he then needed one but rather than have a physical phone he asked , and was given, a SIM to use in his own mobile telephone.
141. The only person the claimant cross examined about having a company mobile phone was Michael Bruce. Mr Adam Crouch in cross examination gave evidence that he was only aware from Mr Bruce's evidence before this Tribunal that he had a SIM card and asserted that one would have also been provided to the claimant had she asked for one.
142. The Tribunal find that the claimant did not feel disadvantaged by not having a mobile telephone in terms of her ability to do the job, because the vast majority of her work was carried out online, she considered she was working effectively from home and she does not allege that she raised this issue more than once.
143. In any event, the burden of proof is on the claimant to establish that she asked for a mobile telephone and was not provided with one when other male comparators were. The Tribunal find on the facts that the claimant has failed to establish that she asked for a mobile phone and there is no evidence to support a finding that this was related to her gender.
144. Further, in terms of comparators; Mr Garner and Mr Kelly were not in a comparable position, their circumstances were materially different to the claimant's, because they, unlike the claimant, the Tribunal accept on balance, were required to carry out work connected with the roadside recoveries and therefore it was important for them to be contactable.

On 13 March 2020,

145. The claimant alleges that in March 2020 Mr Guerriero suggested to her that they take over running the business temporarily so that Mr Adam Crouch could spend time with his wife who had cancer, but Mr Adam Crouch turned down this offer as he wanted to continue working. She alleges that this was a breach of trust and confidence.
146. It is not in dispute that around December 2019 Mr Adam Crouch's wife was diagnosed with cancer and Mr Adam Crouch was concerned about transmitting the Covid 19 virus to her. However, the evidence of Mr Guerriero was that Mr Adam Crouch had discussions about living in a static caravan to avoid contact with his wife who was shielding but that he never expressed an intention to take time out of the business or otherwise hand over responsibility for running the business. Mr Guerriero recalled the claimant suggesting something along the lines of them taking over the business but he did not take it seriously because in his view, neither he nor the claimant could run the business.
147. Mr Adam Crouch denies ever suggesting that he may hand over the running of the business.
148. The only evidence in support of this suggestion is the claimant's oral evidence, disputed by the respondent's witness. It is not alleged by the claimant that Mr Adam Crouch at any point actually stepped back from the business.

149. On balance, the Tribunal simply do not accept the claimant's account of this alleged conversation but even if there had been such a suggestion made by Mr Guerriero to Mr Adam Crouch (which the Tribunal do not accept), it would have been for Mr Crouch to decide whether he wanted to continue to work and run his own business. The claimant did not explain why a decision by him to continue to run his own business would objectively be said to be calculated, or in the alternative, likely, to seriously damage confidence and trust between the claimant and the respondent. She does not allege that Adam Crouch was not able to carry out his role as Managing Director effectively.

13 March 2020

150. The claimant complains that on 13 March 2020 Adam Crouch sent a message to her referencing "cock"; and consulted the claimant about a sexually explicit message he had received from a Female Colleague. These allegations relate to a partial and undated extract from WhatsApp messages between the claimant and Mr Adam Crouch, disclosed by the claimant, as follows (page 363):

"C: I have to start working at home Ricky said

AC: yeh wish [Female Colleague] would ! Ffs

...

*AC: i think she wants to suck my cock royd... she had already asked me about shaved hairy pussies
i fucking said hairy!! i am fucked*

[This message was deleted.]

C: You responded to her ? Adam that is wrong

AC: i already have!!"

151. Adam Crouch does not dispute that he sent these messages to the claimant. The claimant describes her relationship with Mr Crouch as one of trust, where the lines of their professional working relationship became 'blurred'. The Tribunal consider that on any objective level the conversation as relayed to the claimant was vulgar, offensive and grossly inappropriate for the workplace. The issue, however, is about the impact on the claimant.

152. The claimant did not ignore the message or reply objecting to the fact that Mr Crouch had sent it to her, instead, she advised him that it was wrong to have responded to the Female Colleague, rather than wrong to have sent that message to the claimant.

153. The circumstances of this case are unusual because of the nature of the relationship the claimant had with Adam Crouch. The Tribunal find that the claimant enjoyed acting as a 'confidante' to him. In her evidence in chief she reports (not complains) that (w/s para 33):

*"Mr Adam Crouch would also talk to me in the office or by phone about his relationship with his wife i.e. that they slept in separate bedrooms, his parents view of his marriage, and his very fractious relationship with his brother Mr Richard Crouch. ...He even discussed with me the prenup arrangements prior to his wedding. **All in all the Mr Adam Crouch shared very personal information with me. I was his confidant [sic] and a long standing trusted friend (and employee)...**" Tribunal stress.*

154. If Mr Crouch had overstepped the mark on 13 March 2020 by sharing this information with the claimant, she did not tell him so.

155. In her evidence in chief (w/s para 53/54), the claimant does not allege that she found the messages offensive or degrading but describes her reaction to them as being ‘*dumb-founded*’. She does not allege that she raised any objection to being told about his exchange with the Female Colleague however, as set out later in these findings, she was perfectly prepared to complain about being referred to by Adam Crouch as ‘pretty’ (see below).
156. Later when she resigned and Mr Crouch went to quite unusual lengths to encourage her to retract her resignation, she described his efforts in the following terms in the particulars of claim (page 47)
- “Mr Adam Crouch pressured me into believing I would be protected (**loved**), supported and recompensed for my years of loyalty and contribution...” Tribunal stress*
157. The reference to believing she would be protected and loved is unusual language for an employee to use about their employer’s behaviour toward them.
158. The claimant also referred to their relationship in the pleadings as follows:
- “Mr Adam Crouch did not speak, consult with, or treat any another female employee like he spoke and treated me. The 20 year friendship came with significant consequences. I tolerated his behaviour as best I could..”(page 38) And;*
- “He was not speaking to me like a boss more like a husband disappointed in a wife (me). At one level I **was a trust confidant** [sic] someone to let off steam to, **to disclose inner most secrets** and feelings to and next I was a normal employee...” Tribunal stress*
159. The claimant was a mature woman. She enjoyed the Tribunal find, a closeness with Mr Adam Crouch and she was happy for it to cross the boundaries of a professional working relationship. Over the years the Tribunal find that she engaged willingly in discussions of a private and personal nature with him, believing it seems, that it made them closer and her more valued by him and the business. She described them as having;.. *“a tight, close, trustful and loyal bond”* (p. 26). That is not consistent with her claims of only tolerating his behaviour.
160. The claimant complained about this exchange only in her second application to amend the claim, on 12 July 2021, some 16 months after the messages were sent. She does not allege that she raised any concerns or complaints prior to this.
161. The claimant does not allege that she believes Mr Adam Crouch sent this message with the intention of causing her offence. During cross examination she described the messages as: *“very weird and odd situation to be in and Adam is married also”*. While surprised or shocked even by the messages, the Tribunal do not find that she was upset by them.

14 March 2020

162. On 14 March 2020 Mr Crouch sent the claimant a WhatsApp message telling her not to message him at the weekends because of his wife and to delete messages so that her partner did not see them (p. 349).
163. The claimant in her evidence in chief, denies knowing why he asked her that (w/s para 55). She does not allege in her evidence in chief that she considered these to be related to her sex, rather than the nature of their friendship. In cross examination she stated that she believed he asked her to do this out of concern that the claimant’s own partner may see the messages he had sent to the claimant about the Female Colleague on 13 March 2020.

164. The Tribunal find that what Mr Adam Crouch was worried about was his wife's concerns about the Female Colleague, and that his wife may check his messages and in doing so see his messages about the Female Colleague to the claimant and/or the claimant's partner may see what he had written: "...and don't msg at weekend Jenni funny about [Female Colleague] ! Might be checking phone..." (page 349)
165. Given the private and personal information that the claimant and Mr Crouch shared, the most likely explanation is that he was concerned that something in their messages may upset his wife.
166. It was put to the claimant that there nothing sexual about this exchange, to which she appeared to agree: "*This message now ...yeah Adam's just saying*".
167. Mr Crouch's evidence in chief was that there was nothing sexual about the message and the claimant never suggested to him she was upset by them (w/s page 67 para 27 and 28).The claimant did not object at the time, or at any time prior to issuing these proceedings, 14 months later.
168. In response to a question from the Employment Judge about why she now says she was offended by the messages, the claimant stated; "*A/C could message me but told me not to message him*". In cross examination, Adam Crouch gave evidence that he said sent messages late at night to the claimant because he could see from Apex system when the claimant was logged in and working.
169. As set out further in these findings, the claimant did complain about Richard Crouch when he sent messages that she was upset about and complained to Adam Crouch when she was unhappy about the 'pretty' comment (dealt with later in this judgment) in the context of not being invited to a meeting. She was therefore perfectly prepared to object when she was genuinely upset.
170. The messages were the Tribunal find, sent because of the nature of their relationship . The Tribunal do not find that there is inherently anything offensive or objectionable about being asked not to message him at the weekends. She does not allege that this created any difficulties in carrying out her job. The Tribunal accept that Adam Crouch sent messages to her at weekends because she worked flexibly and he could see when she was working, further, the claimant did not object to him contacting her when she was working at the weekends and does not describe being upset when he did.

On 19 March 2020,

171. The claimant alleges that on 19 March 2020 Mr Adam Crouch said to her: "*how do you feel about being company secretary so I can take my mum off?*"
172. Mr Crouch denies that such a suggestion was ever made and there is no evidence from any other witnesses or in any documents to support the claimant's account. The claimant cannot point to any messages or email where she refers to this conversation taking place. It is not disputed that throughout her employment, Mrs Barbara Crouch continued to act as the company secretary.
173. The burden of proof is on the claimant to establish that this was said and the Tribunal is not satisfied on the evidence that it was.
174. That Mrs Barbara Crouch had little day to day involvement in the business appears to be accepted and that she was unwell during this period, and it may be that given her limited involvement, Mr Crouch may have at some stage considered whether to appoint a new company secretary. However, on balance the Tribunal do not find that such a suggestion was made to the claimant but even if it had, even on the claimant's own

account of that conversation, it was not a firm offer which he later withdrew but an enquiry about whether she would be interested in such a role. On her own evidence she never indicated that she would want the role;

"I replied I would have to consider the office because of the impact on me and the liability and responsibility of such a role." (w/s para 56)

175. The claimant's own case is that she indicated she would need to consider it and she does not allege that she at any point went back to Mr Crouch and asked to be offered the role. The claimant does not explain in her oral evidence why she considered, if indeed she did, that such an offer was intended or likely to breach her trust and confidence in the respondent.
176. The Tribunal consider that what is at the heart of these complaints, is that the claimant felt key to the business and very important to Adam Crouch and his parents and when later Adam Crouch wanted to restructure her work, she felt less important to him and the business and she was deeply upset by those later events. She felt that she had been misled about how important she was to them. The Tribunal find that had those later events not occurred, she would have been very happy to continue working for the respondent and would never have complained about many matters she now raises and which she did not raise at the time.

On 25 and 28 March 2020

177. On 25 March 2020 Mr Richard Crouch sent the claimant the following Facebook message from his personal Facebook account : *"Just asked the wife to put on a nurse's uniform", she said, "why are you feeling horny," I said no "we just need some bread"* (S/B page 27)
178. On the 28 March 2020 Mr Richard Crouch sent her another Facebook message (p. 357):
"if you support the truckers with all the covid deliveries, on Saturday at 10:00am go to your local motorway bridge and get your tits out for the truck drivers."
179. The claimant complains that she received an increase in unwanted attention from Mr Richard Crouch (w/s para 580). She complains that he sent a significant number of sexualised and misogynist messages to her (pages 270 – 336) but relies in the list of issues on three messages.
180. On 28 March 2020 the claimant complained about Richard Crouch to Mr Adam (p. 357). He replied with an emoji face and :*"Speak to Dave Crouch he is head of HR"*. The claimant replied: *"Adam you are in charge now"*.
181. Mr Adam Crouch in his evidence in chief states that his reference to his father being head of HR was said *"tongue in cheek"* because his father was not head of HR and Richard Crouch was no longer working for the company. What it reveals, the Tribunal find, is a flippant attitude towards inappropriate and sexist behaviour by his brother. He did not take the complaints seriously.
182. The Tribunal find that the claimant did not have the same close relationship with Richard Crouch as she did with Adam Crouch and the Tribunal accept that she was not happy about receiving these messages and that they were unwanted, she had made that clear in her message to Mr Adam Crouch.
183. In her pleadings she alleges that she received around 20 plus messages from Richard Crouch and (page 37) that; *"On reflection I do feel these messages were highly inappropriate. I just went along with them rarely engaging in any further comment etc..."*

184. She did not raise the matter any further. She did not raise it with Barbara Crouch, although she would later raise concerns about other matters with her.
185. While the messages are arguably less offensive than the message she received from Adam Crouch regarding his communications with the Female Colleague, the Tribunal find that she found these messages objectionable because of who had sent them.
186. Richard Crouch had been employed by the respondent until 2015. The claimant alleges that he ceased being an employee of the respondent due to his activities outside of work, (which included posting offensive content on social media) and the Adam Crouch wanted to distance him from the business because of the respondent's contracts with the police. Adam Crouch did not seek to deny that Richard Crouch had been carrying out activities non-work related which were potentially damaging to the respondent's reputation although he denied this was the reason why his employment ended.
187. The claimant alleges however that while Richard Crouch formed his own company, (RTC Transport Limited) he remained working for the respondent as a 'disguised employee'. The Tribunal address his status when sending these messages, further below.
188. Although these messages were sent to her personal Facebook account, the claimant did not block Richard Crouch because she alleges that sometimes he sent messages on Facebook about work to her. However, the Tribunal consider that this would not have prevented her from blocking his messages. She could have explained her reasons for doing so to Adam Crouch and insisted that Richard Crouch sent emails about any work matters, copying in Adam Crouch if necessary, to her work email. She did not take those steps.

25 March 2020 message

189. The 25 March Facebook message from Richard Crouch is in the bundle but it is undated (SB page 27). The claimant has disclosed the message in a way that does not allow the Tribunal to see what message came before or after it. Therefore it is not possible to see whether the claimant responded and if so, what she said. The copy of the message in the bundle does not show the time it was sent either.
190. Counsel for the respondent invites the Tribunal to infer that her response to this message was positive, because the claimant tends to conceal messages that do not support her case. Richard Crouch did not give evidence nor disclosed a copy of the message and therefore the respondent cannot assert positively that there was any response.
191. The Tribunal accept that the claimant has failed when disclosing certain messages, to disclose her response where this does not support her case. Examples are set out later in this judgment but include a complaint that Mr Bruce superimposed her face onto a graphic of someone kicking another person under a bus and that Mr Bruce harassed her by sending her a photograph of the contents of her desk. However, the Tribunal also take into account that on 28 March 2020 the claimant emailed Mr Adam Crouch and unusually, on this occasion, complained about the message from Richard Crouch.
192. The Tribunal find on balance, that she had not replied to the message from Richard Crouch and that she was upset at receiving it from him.

28 March 2020 message

193. The 28 March Facebook message at (page 287) was sent to her at from the personal Facebook account of Richard Crouch to her personal account at 8:35pm.

194. The Facebook account which Richard Crouch used to send the messages, it is not in dispute, was not the respondent's own Facebook account.
195. Despite raising these messages with Mr Adam Crouch nothing was done. However, the claimant did not raise a grievance or complain further until she issued her Tribunal claim, 14 months later.
196. Mr Adam Crouch with respect to the 28 March message, alleges in his evidence in chief that the claimant would from time to time suggest 'flashing her boobs' when a customer queried an invoice. This was denied by the claimant. On balance the Tribunal do not find that the evidence supports a finding that on a balance of probabilities, the claimant made such a suggestion.

Vicarious liability

197. The respondent denies it is liable for the conduct of Richard Crouch in sending these messages because he was not employed by the respondent or acting as its agent, or acting in the course of any such employment or with its authority when sending those messages from his personal Facebook account.
198. The claimant alleges that Richard Crouch carried out work for the respondent and Adam Crouch and David Crouch accepted that he did, but that he did this voluntarily to help support the family business from time to time but that he was never paid for it.
199. The claimant believed Richard Crouch was paid for the work he did for the respondent but does not suggest that she has any direct knowledge of the payroll. She alleges that he was shown on LinkedIn (social media professional networking platform) as running the business with Adam Crouch. A screenshot of LinkedIn profile was not disclosed but Adam Crouch did not deny this in his evidence.
200. The claimant alleges that he would appear in the office and provide her with prices for jobs.
201. The claimant produced a copy of screenshot of the Apex system from September 2019 and February 2020 which have the details of a job for a client (p.271/272/273) . She alleges Adam Crouch had said get the price for the job from Richard Crouch as he did the job. There is another document from Richard Crouch to the claimant's private Facebook asking her to ask a colleague in accounts to contact him on his mobile number. It is 9 July 2019 timed at 11:13am . These are the only documents presented to the Tribunal to support her allegation that he worked for the respondent. Richard Crouch did not attend to give evidence however in cross examination Adam Crouch recognised the messages Richard Crouch had sent to the claimant and accepted they were work related. The Tribunal on balance accept the claimant's evidence that they were sent from him to her personal Facebook account.
202. The claimant also produced a number of documents including a page which alleged to be from the respondent's website (p.629) which referred to David and Barbara crouch running the respondent with Adam and Richard Crouch. Adam Crouch did not recognise the webpage which was not dated and asserts that the respondent is not good at updating its website. Adam Crouch accepted that Richard Crouch was seen in an episode of the Television programme 'Trucking Hell' in January 2019 in the respondent's uniform and appearing on behalf of the respondent, albeit it was filmed some time prior to this. There are also photographs of him on the respondent's website in its uniform.
203. There is also an article about the respondent making a customised toy of the respondent's recovery vehicle and refers to Richard Crouch as fully involved in the

business, and is dated June 2020. Adam Crouch had no collection of signing this article off.

204. The respondent produced a business card for Richard Crouch showing that he had a role in a business called 'Crouch Military'. There is a separate company called Crouch Sales Limited, which at this time was called Crouch Military sales Limited (Crouch Sales).
205. The claimant accepted in cross examination that Crouch Sales is a different company to the respondent but alleges there is some cross over. The Tribunal accept from the evidence of David and Adam Crouch, that the respondent on occasion has provided services (namely moving vehicles) for and been paid for those services, by Crouch Sales. The Tribunal accept the undisputed evidence of the respondent that employees of the respondent in the accounts department carry out some accounting work for Crouch Sales, and Mr Guerriero provides some support to that business although it has its own independent auditor.
206. Mr Adam Crouch alleges that Richard Crouch has not been employed by the respondent since 2015 and provided his services from time to time on a goodwill basis, he never received any payment but was covered by the respondent's insurance. According to the evidence of David Crouch, Richard Crouch helped-out in the respondent's yard when he was there working on the lorries he uses for another company, RTC Transport Ltd (p.200-201). The respondent produced a Facebook entry on 1 September 2021, for Crouch Sales Limited providing the email address of Richard Crouch.
207. The claimant's evidence under cross examination is that she did not know whether Richard Crouch was an employee of Crouch Sales and on balance, the Tribunal find that he was.
208. It is submitted by the respondent that in any event, even if Richard Crouch did send the messages on a day he was employed by the respondent or acting as its agent, he did not do so in the course of that employment, or with the respondent's authority.
209. During cross examination the claimant accepted that her Facebook account has nothing to do with the respondent and that Richard Crouch's Facebook account is personal to him and nothing to do with the respondent. The messages the claimant complains about had nothing to do with work.
210. There is no evidence (and the claimant does not allege) that Richard Crouch's personal Facebook page was solely or principally maintained for the purposes of communicating with work colleagues or routinely used for raising work-related matters. While the claimant alleges he would send her messages related to work, and despite the volume of messages generally disclosed, she presented only a few messages from him.
211. There was no evidence that Richard Crouch was on the payroll of the respondent and the claimant does not allege positively, that he was.
212. The claimant does not allege that Richard Crouch was working full time for the respondent as an employee and was vague about how often he carried out work for them and how often he messaged her about work. She does not allege that he was under any contractual obligation to provide services to the respondent.
213. The Tribunal finds that the evidence does not support a finding that Mr Richard Crouch received any payment for the services he provided from time to time for the respondent. It was a family business and the Tribunal find that it is more likely than not that from time to time, he helped out. He continued to be linked to the respondent because it was the family business and quite high profile, but he was not obliged to provide his services to

them. The respondent was not under any obligation to provide him with work, and there was no consideration in the form of wages or other remuneration and he did not negotiate or contract with third parties on their behalf. When he agreed to attend a recovery job no doubt would have been required, (for health and safety reasons and to comply with their insurance conditions) to have worked under the control of the respondent in terms of what he was required to do during the process of recovering the vehicle and where it had to be taken to.

214. The messages were sent from his private Facebook account, at least one was sent outside of working hours and the claimant was unable to confirm the time the other was sent.
215. There is no evidence that on the specific occasions when the messages were sent in March 2020, Richard Crouch was on those dates providing services for the respondent or that those messages were in any way related or sent in connection with the respondent's business.

End of March 2020: Furlough

216. Towards the end of March 2020, the claimant complains that Mr Adam Crouch did not consult her about or give her the option of being furloughed, during the Covid pandemic while "*many staff*" were interviewed/consulted.
217. The claimant claims this was less favourable treatment on the grounds of her sex but does not name an actual male comparator. In her evidence in chief (w/s para 57) she just refers to 'many staff' but does not attempt to identify their gender.
218. It is clear to the Tribunal that the claimant considered that her job was vitally important to the business and she does not allege that the business was less busy during Covid and that it could cope without her during this period.
219. The evidence of Adam Crouch is that he accepts that he did not give the claimant the option of being furloughed because she continued to work from home. He also alleged that early on, before Covid impacted on the respondent, the claimant had commented to him that: "*you better not furlough me*". The claimant denies that she made this comment.
220. On balance the Tribunal prefer the evidence of Adam Crouch. The Tribunal consider that given how the claimant felt about her status and importance to the business and her closeness to Adam Crouch, it is entirely plausible that she would have made some comment to him about her own situation during the furlough consultation process. It is more likely than not that it would have been along those lines. Had she been given the chance to be put on furlough, the Tribunal consider that she would have been offended and hurt by the implication that she was not required: "*I was a senior manager, a close friend, and a very valued trusted colleague, more so I was **integral to how the business was run**. Mr Adam Crouch later acknowledged this when on the 1st May 2021 in a WhatsApp message he referred to me as the 'kingpin in all of this'*" (w/s para 35). Tribunal stress.
221. While the claimant maintains that she was having to home school her children she also states that she considered she worked effectively from home (p.8). She does not actually complain in her evidence in chief that not being consulted or asked whether she wanted to go on furlough put her to any disadvantage. In terms of detriment, she does not identify any, other than as she stated in cross examination, it would have been: "*nice to be asked*".

222. Mr Doughty confirmed to Tribunal that it was not the claimant's case that she asked for furlough or would have wanted if it had been offered only that; "*she would have liked the choice*".
223. The respondent disclosed copies of the furlough agreements signed by staff (p.980-995). On looking at the number of those who are male and female from the furlough agreements disclosed, it was put to her in cross examination that there were only slightly more women than men put on furlough. The claimant under cross examination gave evidence that there were others put on furlough whose agreements were not in the bundle but she only identified more men : Harry Clarke and Jack Brown. There appears to be agreements signed by 9 women in the bundle and 7 men but the two additional men the claimant named would mean that the numbers were the same, in terms of gender split.
224. It was not put to Mr Crouch in cross examination that he did not offer her the choice because she is a woman, despite the reminder to Mr Doughty by the Tribunal, to put the allegations to the witnesses.
225. The Tribunal find that the furlough agreements do not support her case that any decision was gender based and there is no other evidence that not offering her the choice had anything to do with her gender.

On 9 June 2020,

226. The claimant complains that on 9 June 2020 the claimant in a WhatsApp message asked Mr Adam Crouch about changes Mr Guerriero had asked her to make to invoices (all the changes she was asked to make came via Mr Guerriero) for a client called Warrens, and Adam Crouch responded in a WhatsApp message saying:

Claimant: "More warrens invoice changes .We did talk about this"

Adam Crouch: "don't piss me off stay quiet that's what pays for salary!"

Claimant: Adam that's harsh ! Can we speak about this"

(p. 364)

227. The claimant complains that this amounts to sexual harassment but in cross examination accepted there was nothing sexual about the message. She does not explain in her evidence, why she alleges this related to her sex. When the Employment Judge asked the claimant what was sexual about the message, her response was not that it was sexual but "*quite rude*".
228. She went on to say that she did not think that Adam Crouch would have said the same to Mr Kelly but does not refer to any incidents where Mr Kelly raised concerns about work and what reaction he received from Adam Crouch, but put it on the basis that she did not "*think*" that he would speak to him in that way.
229. The claimant did not complain formally until she issued these proceedings, just under a year later but she clearly in her response tells him that she considered his response to be "*harsh*". The Tribunal does not find that there was anything sexual in nature in this message.

On 11 July 2020

230. The claimant complains that the claimant changed her Facebook profile picture, and Mr Guerriero then sent her a copy of that photograph on a WhatsApp message saying: "*you should go on Love Island, this should be your professional picture*"

231. Mr Guerriero gave evidence that the Tribunal found compelling. He presented as a truthful witness and one who admitted to watching and discussing at work the television programme 'Love Island', while clearly finding it rather embarrassing to admit to it. He was also candid in accepting, despite the claimant not producing any witnesses or documents to support her allegation, that this is a comment "*he would have made*" and it was "*in line with one of the things we used to joke about*" (w/s para 34/35)
232. Mr Guerriero however denied that he had sent the claimant a copy of her Facebook profile picture and in cross examination he gave evidence that he and the claimant were good friends and discussed their children and enjoyed talking about Love Island:
- "Love Island, we had in common, we enjoyed talking about it, she'd often send me pictures saying there are the one's she'd use, I'd send her some saying the same, it was a joke; she's actually included the one where Crouch Recovery put a picture of me with spikey hair as a joke ... we'd joke about it was a personal joke between Emma and I but to now find it in a claim and in the ET is absolutely ridiculous, absolute nonsense. I don't see how someone could be offended by something they instigated, it would be her that sent 4/5 messages about Love Island before I responded so the fact it's in here is absolute nonsense."*
233. The claimant denies any conversation with Mr Guerriero about Love island.
234. The claimant despite her close relationship with Adam Crouch, does not allege that she mentioned this incident to Adam Crouch that it upset her or at all.
235. The Tribunal find on balance, that the claimant and Mr Guerriero had a friendly relationship and found his evidence more plausible and compelling than hers. The Tribunal find that they engaged in discussions about Love Island and that he meant this remark as a complement and that the claimant, who did not object at the time to what he had said, took it in that spirit and suggested photographs he could use.
236. The Tribunal when weighing up the evidence in this case generally, take into account that the claimant has shown a propensity in these proceedings to allege the proscribed effects of harassment only in cross examination to fail to substantiate that level of hurt (if any) and to misrepresent the content of certain messages to add weight to her claims.

On 16 July 2020

237. The claimant alleges that she asked (in the open office) about receiving more t-shirts from Adam Crouch for her uniform and she alleges that Oliver Barton replied to the claimant :"*you could be the eye candy to model them.*"
238. Mr Barton accepted he was responsible for the uniforms but denies in his evidence in chief making this comment (w/s para 8). The claimant alleges Mr Guerriero witnessed this incident however he denies in his evidence in chief that he did (w/s para 37).
239. The Tribunal have taken into consideration when weighing up the evidence, that the respondent's witnesses concede that certain comments were made which are not helpful to their case, including Mr Guerriero's admission regarding his discussions with the claimant in connection with the television programme Love Island.
240. The Tribunal also take into consideration that the claimant first raised a complaint about this alleged incident, a year after she says it happened, in her second application to amend the claim. She did not raise it at the time or allege she made any mention of this to Adam Crouch, with whom she asserts she had a close and trusting relationship.

241. The burden of proof is on the claimant to establish this was said and the claimant has not persuaded the Tribunal on the evidence, that it was.
242. In terms of whether the comment was genuinely unwelcome and whether it had the proscribed effect (and objectively it was reasonable for it to have that effect), David Crouch alleges that the claimant would often ask him: *“am I the prettiest employee at Crouch Recovery?”* (w/s para 9). The claimant denies this. On balance the Tribunal do not find that the claimant made these comments to David Crouch.
243. The Tribunal however also take into consideration that the claimant, during a recorded telephone call with Michael Bruce on 30 September 2020 (when it is alleged that Mr Thomas Graham referred to the claimant as the office cougar and MILF: see below), appears to positively respond to being told what Thomas Graham had said. She does not dispute the accuracy of the recording (document 1153) :

MB: “He said where’s Emma from and then obviously, I dunno, looked on Facebook or whatever, and he was like ‘ohhh...like “ohh”

Claimant: (laughing)

MB “He came to me and was like ‘ohhh’

Claimant: “that’s so funny!”

MB: “she’d like that” .

Claimant: “Yeah, Exactly . I’ll be all, erm, I’ll be all shy on Monday” Tribunal stress

244. The Tribunal find that the claimant engaged in office ‘banter’ of this sort, she was use to this type of environment and had become accustomed to it over the years working in this industry. While the Tribunal is not condoning this behaviour or culture, because it is not consistent with a working environment which safeguards the dignity of its staff, the Tribunal has to consider whether the claimant was herself genuinely upset by the comment to the extent that it violated her dignity or had the proscribed effect on her working environment.
245. While the Tribunal accept that the claimant may have tolerated such comments to an extent, the Tribunal are not persuaded that even if this comment had been made by Mr Barton as alleged, this would genuinely have been unwelcome and even if it was, do not find that she would not have regarded it as violating her dignity or of having any the prescribed effects on her working environment.

16 July 2020

246. The list of issues includes an allegation that on 16 July 2020, Oliver Barton gave the claimant her new uniform in Mr Ricky Guerriero’s office, and said to her in front of Mr Guerriero: *“You can get changed in here”*. Both Mr Barton and Mr Guerriero deny that this comment was made. There are no witnesses which support the claimant’s account and no contemporaneous documents.
247. Despite on a number of occasions reminding Mr Doughty to put the allegations to the respondent’s witnesses, (and there were only a couple of allegations to put to Mr Barton which directly related to his behaviour), this allegation was not put to him in cross examination. Mr Doughty expressly declined to do so saying: *“No I’m not pursuing that Judge in the interests of speed and to finish today, I’m not pursuing that” .*
248. The claimant did not mention this incident to Mr Adam Crouch either and only raised this allegation in her second application to amend the claim, a year later.

249. The Tribunal on balance, do not find that the claimant has established that this comment was made.

16 July 2020

250. The claimant also alleges that on 16 July 2020, Oliver Barton referred to the claimant in the office as “*tight nunny*”, a slang term for tight vagina.

251. Mr Barton admits that he called the claimant this and alleges that this was because she was tight fisted i.e. frugal. However, he does not recall when it was said. He alleges that it had no sexual context and goes on (w/s paragraph 11) to allege that the claimant in her role invoiced clients and as Business Relationship Manager the clients would sometimes contact him to negotiate the value of the invoices and when he spoke to the claimant about a discount for them, the claimant was always reluctant and he would call her ‘tight’. The claimant denies it was part of his role to reduce invoices, it was his role to get new business. He alleges the claimant would call herself “Nunny” and he put those words together and that the claimant laughed but it was not intended to be sexual and asserts that the claimant did not appear uncomfortable.

252. The Tribunal asked Mr Barton whether he understood that the word ‘Nunny’ could be used as a slang term for vagina and he denied being aware of this.

253. The Tribunal take into consideration that Mr Barton states that the claimant laughed at being called “tight Nunny”, which would imply some understanding by him, on his own case, that this had an amusing (for him) double meaning. The Tribunal panel unanimously found Mr Barton unconvincing when he denied understanding that this word could be used as sexual slang. The unanimous view of the Tribunal is that he responded without any real conviction to the questions put to him by the Employment Judge.

254. The Tribunal consider that on balance Mr Barton appreciated that this was a slang term for vagina and that when putting it with ‘Nunny’ did so to create a double entendre.

255. The Tribunal however take into consideration that the claimant did not complain about this comment.

256. The claimant does not allege (w/s paragraph 68 (g)) in her evidence in chief that she believes that Mr Barton’s purpose in saying this was to violate her dignity at work or to create the proscribed environment. The Tribunal do not find either that this was his purpose but that he, on balance, considered that it was amusing and believed that she would also find it funny.

257. The claimant did not raise a complaint with Mr Adam Crouch or allege that she objected to the comment made by Mr Barton. She did not the Tribunal find, make Mr Barton aware that she was unhappy with this comment and given she laughed when she was told she was referred to as a ‘MIF’ and office cougar, the Tribunal find on balance, it is more likely than not that she laughed along with it and found it amusing at the time.

In July 2020

258. In July 2020, Mr Kelly messaged the claimant via the company’s internal messaging platform: “*when are you coming in as Adam is missing you*”.

259. Mr Kelly admits that he messaged the claimant saying something to this effect, and that it may have been in July 2020. He alleges that he did not know whether Adam Crouch was missing the claimant or not but said it to encourage her come into the office.

260. The claimant accepted in cross examination that she was still working mainly from home at the time. It was put to her that there was nothing sexual about this message, her evidence was: *“Well I don’t know in what context Adam was missing me. He could say Adam wants to know where you are. But missing you is a term of endearment, well I took it that way.”*
261. The claimant in her evidence in chief (w/s para 68 (h)) states that this was ‘similar’ to a message she received on 4 October 2013 from Mr Jack Brown where he states : *“ where are you, Adam is asking, apparently he wants your car fitting with a tracker”*. The implication being that he wants to know where she is at all times, and not that he genuinely wanted to fit a tracker.
262. The claimant appears to consider that this wanting to know where she was or when she will be in the office, was Adam Crouch missing her presence at a personal level.
263. The Tribunal also take into account the informality of the expression of affection between the claimant and Mr Kelly as evidenced by the following WhatsApp messages she sent to Mr Kelly:
- On 29 April 2020 : “Oh **Kelly belly** you rock [two emoji faces with love hearts]” (page 1048)*
- In December 2020: “ Well done **Kelly belly**. See you next year **love you xxx**” (page 1063)*
- In February 2021: “ **Love you thank you...** [emoji blowing a kiss and laughing emoji] And love you” (page 1049) Tribunal stress*
264. In response to the above message Mr Kelly responded in the same terms, expressing his affection for the claimant .
265. The claimant does not describe in her evidence how this made her feel nor does she allege that Mr Adam Crouch or Mr Kelly in apparently repeating what Adam Crouch had said, had intended to upset her in any way. She appears to take it as an expression of affection. It is clear that she was openly affectionate with Mr Kelly, who reported into her and clearly did not consider it inappropriate to say to her direct report that she ‘loved him’. Although the Tribunal find that this was meant in a platonic way, it is clear that she was comfortable and indeed instigated, this sort of openness of expression of affection with her male colleagues.
266. If she had been told Adam Crouch was missing her, given their closeness, the Tribunal do not find that this would have upset her, but she was more likely to have welcomed it.

On 14 August 2020

267. On 14 August 2020, the claimant was asked by female employee Ms Parr to attend a meeting with Mr Guerriero. It is alleged that within her first week at work Ms Parr had received inappropriate sexual messages from a male colleague Oliver Barton about wanting to have sex with her. Ms Parr resigned and the claimant alleges that Ms Parr was so distressed by the messages from Mr Barton she threatened to take her own life.
268. The claimant attended the meeting and alleges that although Mr Guerriero promised to undertake a thorough investigation there was no further action taken The claimant alleges that Ms Parr followed up with messages to Mr Guerriero and that she called the claimant twice and left voicemail messages.
269. Mr Barton denies sending inappropriate messages in his evidence in chief.

270. In support of her allegations about the culture in the office she alleges that Mrs Louise Guerriero messaged the claimant stating: "*I hear we've attracted another nutcase*". She refers to this incident as being: "*In support of my thoughts around the growing and prevailing culture...*" (w/s para 72)
271. The evidence of Mr Guerriero is that Ms Parr did make an allegation that Mr Barton had sent her inappropriate messages on 14 August 2020 and that he held a meeting with her, and that he had actually asked the claimant to join them. He alleges that Ms Parr decided to resign but that he had told her he still needed to investigate but that she was insistent that she wanted to leave and did so on 14 August 2020.
272. Mr Guerrero alleges that he contacted Ms Parr by text message pressing the need to investigate. Ms Parr asked to speak to Adam Crouch but he was on annual leave and he reiterated the process of the investigation however, she then made no further contact.
273. The respondent has produced in the bundle copies of the following messages from Mr Guerriero, which appear to be addressed according to the name which appears as the contact, to Ms Par and are supportive of Mr Guerriero's evidence (p.466/467/468/470/471)
274. Mr Guerriero asserts that Ms Parr did **not** show him the messages she alleges had been sent by Mr Barton and he had little detail from her over what she alleges was said. However, Mr Guerriero alleges that he spoke to the claimant on 14 August by telephone that evening and was told by the claimant that she had seen the messages and they were just friendly and there was nothing inappropriate. It is alleged that the claimant also sent a message to Mr Bruce confirming the same.
275. Given the lack of information, Ms Parr not wanting to pursue a grievance and the claimant informing then she had seen the actual messages and they were not inappropriate, no further action was taken.
276. There are messages disclosed between the claimant and Mr Bruce which include the following (p. 228) from the claimant: "He said they had both been messaging ! *I saw his [OB's] phone they had both been texting (friendly) **there was nothing dodgy on there !***" Tribunal stress
277. Mr Bruce comments that he did not think Ms Parr would make this up to which the claimant replies; "*Think she is a bit troubled*" (page 228).
278. The claimant disputes this message is authentic. It was suggested that the laughing emoji earlier in the thread (p.227) cannot be genuine because the emoji is tilting to the right and in one message there is no space between the emoji and the last letter. Mr Bruce denied having created these messages. The claimant did not produce any evidence from an IT expert or from google or WhatsApp to support what was being alleged about them not being genuine. The Tribunal take into account that the claimant has shown a willingness to part disclose messages and in doing so the Tribunal find, misrepresent the evidence.
279. There is also a Facebook message exchange disclosed by the respondent, between the claimant and Mrs Guerriero, which show a date of 16 August 2020 (page 365):

Mrs Guerriero : "*I hear we've attracted another nutcase*"

Claimant: "***We do attract them***". Followed by emojis showing exploding heads and then a laughing and a crying emoji. Tribunal stress

280. The claimant denies sending the above “*we do attract them ...*” message. The claimant had previously disclosed a copy of these messages (p.482) but the version she disclosed only includes the comment from Mrs Guerriero about attracting a nutcase, she had not disclosed her response to that comment, but the messages are otherwise identical.
281. Although it had the claimant’s name on the top of the screenshot as the person this message was sent from, she pointed out in evidence that her profile picture on the copy is blank. However, while the claimant alleges these messages were not genuine she did not offer a suggestion about how these messages may have otherwise come about. There was no guidance produced from Facebook to explain when a blank profile picture may be shown or any advice provided from an IT expert.
282. There is an automated message at the end of the Facebook message which states (p.365) : “*You’ve blocked Emma*”. It appears that the message was printed off after Ms Guerriero had blocked the claimant from having access to her Facebook and the Tribunal consider that this may explain why a blank profile picture appears, if the claimant was no longer a Facebook ‘friend’ .
283. On balance, the Tribunal find that the messages disclosed by the respondent were genuine .The Tribunal find that the claimant failed to disclose these messages or in full because they are adverse to her case. Her allegation that the “*we do attract them*” message was not sent from her, is not plausible.
284. The claimant does not allege that she raised concerns about how this matter had been handled with Mr Adam Crouch. She does not set out in her evidence in chief what it is alleged Mr Barton had said which was not appropriate. Ms Parr did not attend as a witness for the claimant.
285. The Tribunal prefer on the evidence, the respondent’s account of this incident and in particular that of Mr Guerriero. Further, the Tribunal do not find that the claimant believed at the time that Mr Barton had behaved inappropriately toward Ms Parr and she was not genuinely upset by what Ms Parr had told her, a person she considered to be : “*troubled*”.

On 8 August 2020

286. On 8 August 2020 the claimant complains that she uploaded a photo to her personal Facebook page of her garden and Mr Guerriero sent her a screenshot of the photo saying: “*can we camp in your garden*”. The claimant does not set out in her evidence in chief why she considered this to amounts to harassment related to sex or why she was upset by it. It is contained in a list of examples of comments she refers to as sexist or misogynistic.
287. The evidence in chief of Mr Guerriero is that he recalls sending a message saying ‘*can we camp in your garden’ or words to that effect*”(*w/s para 38*) . His evidence is that this was part of a continuing theme of a conversation with the claimant which she had started .He alleges that the reference to ‘we’ meant him and his wife and their two children and that he sent this after the claimant had suggested this to him many times because her house was compared to a centre parcs style lodge, it was a cabin built in her parents garden.
288. At the time this message was sent, there were restrictions imposed due to the Covid pandemic. He recalls a telephone conversation which was on loudspeaker with the claimant’s partner present (who was finishing off some steppingstones in the claimant’s garden) and she suggested to Mr Guerriero on that call, that his children could come and play on them. The claimant denies they have stepping stones or she ever invited him to camp in her garden.

289. The Tribunal found Mr Guerriero's oral evidence compelling and it was consistent with his witness statement. The Tribunal prefer the evidence of Mr Guerriero that he sent this message following on from discussions between them. In the list of issues it is accepted by the claimant that he said "we" and the Tribunal accept that when doing so he was, and the claimant knew he was, referring to his wife and children.
290. There is no evidence to support the claimant's account that there was anything inappropriate in these messages. The claimant did not complain at the time. She made this allegation in her second application to amend her claim, just under a year later.

On 24 August 2020

291. The claimant alleges that on the 24 August 2020, she wore a dress to work in the office and as she walked past Mr Adam Crouch he said "*your boobs look massive*".
292. Mr Adam Crouch denies in his evidence in chief making this comment to the claimant (w/s para 42).
293. The claimant in her evidence in chief does not say who if anyone was present and nor does she set out what if anything she said in response. She does not allege that she rebuked Mr Adam Crouch, despite the friendship they had or otherwise raised any complaint about this comment.
294. Mr Doughty refers in his evidence in chief to the claimant sharing with him a significant number of situations of inappropriate behaviour by Mr Adam Crouch or others. He addresses in his statement a text where he alleges Mr Adam Crouch asked the claimant if she loved him because he loved her and questions the subtext of the message. however he does not refer to her complaining to him about such an objectively and obviously sexual and offensive comment as this alleged comment on the 24 August 2020.
295. This allegation was not put to Mr Adam Crouch in cross examination. There is no contemporaneous evidence to support that this was said. The claimant first made this allegation in her second application to amend her claim, just under a year later after the incident.
296. The Tribunal also take into consideration in weighing up the evidence, that the claimant had felt able and did, complain directly to Mr Adam Crouch when he commented that she should attend a meeting because she was 'pretty' but does not allege that she raised with him any upset this comment caused her.
297. The burden of proof is on the claimant to establish that this incident took place. The Tribunal do not find on the evidence that this comment was said to her.

24 August 2020

298. The claimant alleges that on the 24 August 2020 Mr Crouch told the claimant to clean the toilet by saying; "*well you clean them **you are a women.***"_Tribunal stress
299. Mr Crouch denies making this comment. His evidence is that the respondent had cleaners and that if the toilets needed attending to, he would do it. He does not allege that he made the same comment to a man, changing the pronoun.
300. That the respondent has cleaners is not in dispute and there are emails in the bundle between the respondent and the cleaners regarding their invoices which show that they were providing cleaning services in August 2020 (p.997). There are no documents in support of this allegation or witnesses.

301. The claimant did not make a complaint about this alleged comment until almost a year later in her second application to amend her claim.
302. The evidence of Mr Adam Crouch was not challenged in cross examination.
303. On a balance of probabilities, the burden being on the claimant to establish this comment was made, the Tribunal find that the evidence does not support such a finding.

7 September 2020

304. The claimant alleges that on 7 September 2020, Mr Adam Crouch set up a WhatsApp group called "*Steam off Keyboards*" for the claimant and another female colleague Leanne Peat.
305. Mr Crouch does not deny that he set up this group. He asserts however that it included all those dealing with invoices; the claimant, Ms Peat and Steve Kelly and that it was intended to be a light hearted attempt to remind people to get on with their work rather than address any drop off in productivity more formally.
306. The claimant in her evidence in chief does not explain why she considered this related to her sex, other than she appears to allege that it was only sent to her and a female colleague. She denies it was also sent to Mr Kelly. The WhatsApp message in the bundle shows that a group was created but not the recipients. If it was a group, the Tribunal consider that it is more likely than not a group was created because there were more than two recipients.
307. The claimant did not complain about this until her second application to amend her claim, 10 months later. She does not allege that she raised any concerns at the time with Mr Crouch or asked why there were only women in the WhatsApp group. She has not produced a screenshot of the WhatsApp group to support what she says about it only including women.
308. The Tribunal accept, on balance, the evidence of Adam Crouch that this email was intended to 'jolly' along the accounts team and that it included Mr Kelly.

13th September 2020

309. The claimant alleges that on 13 September 2020, following an issue with a client, Manchett's Recovery (another recovery company based in Cambridge), Mr Adam Crouch asked the claimant to: "*to call your boyfriend Sean*", referring to Mr Sean Manchett (the company's owner).
310. Mr Crouch denies making this remark and his evidence on this was not challenged in cross examination.
311. The claimant does not allege that anyone else was present who heard this remark or that she complained to Mr Adam Crouch when he made it, despite how close they were. She had complained directly and promptly when he had made the 'pretty' comment.
312. The claimant did not raise any objection until her second application to amend her claim, 10 months later.
313. The burden of proving this comment was made falls to the claimant, on a balance of probabilities and the Tribunal do not find, on the evidence presented, that this comment was made.

17 September 2020 – birthday Facebook postings

314. The claimant alleges that on the 17 September 2020 she asked Adam Crouch why he did not post female birthdays as much on the respondent's Facebook page and he said "*Jennie would not like it*". A reference to his wife.
315. Adam Crouch denies being asked this question by the claimant. His evidence in chief is that Mr Garner, Mr Barton and Mr Taylor were in charge of the company Facebook account at that time and he had no control over the content but that they posted male and female birthdays (w/s para 46).
316. Within the bundle are copies of birthday posts for female staff (p. 1036/ 1039 and 768).
317. The claimant conceded, in cross examination, that she did not know who was responsible for placing the Facebook posts.
318. This allegation was not put to Adam Crouch in cross examination.
319. There was no evidence produced by the claimant that any female member of staff wanted their birthday put on Facebook and that this was refused, or that she herself wanted her birthday posted and this had not been done. It is of course possible, the Tribunal consider, that some female workers simply did not want their birthdays announced on social media.
320. The claimant first made this allegation in her second application to amend, a year later.
321. The Tribunal find that the claimant has not established on the evidence, and on a balance of probabilities, that this comment was made by Adam Crouch.

24 September 2020

322. The claimant complains that on the 24 September 2020, Mr Adam Crouch patted her on the head in front of other staff and said "*I like to give Emma a little patronising pat on the head because she likes it*".
323. Mr Adam Crouch in his evidence in chief (w/s para 68 (o)) denies this happened and his evidence was not challenged in cross examination.
324. In her evidence in chief the claimant does not identify which other staff were alleged to be present when this occurred. There are no documents to support that this incident took place and the claimant has not provided evidence from any witnesses to support it.
325. Her allegation relates to one incident and she did not complain about this incident until almost 10 months later in her second application to amend her claim.
326. On balance, the Tribunal do not find that the evidence supports this allegation.

25 September 2020

327. The claimant alleges that on 25 September 2020, Kayleigh Linnet told the claimant that Mr Alan Copley had said: "*it's not Crouch Recovery it's CROTCH Recovery*" and *grabbed his crotch in front of her**
328. Mr Copley denies that this happened. He does admit in his evidence in chief that there was an occasion when he produced an invoice misspelt 'Crotch'. He gave evidence under cross examination, that he believes this may have been a mistake made by an agent who sent the report in or if he did it, then it was simply a typing error (w/s para 10).

329. In response to a question from the Tribunal about why he had been able to recall this incident, so long after the event, he gave evidence that ;*“I laughed at the time and I was asked what I was laughing at by Kayleigh and I pointed out the misspelling”*... *“ I read it as crotch”*.
330. Mr Copley was asked by the Tribunal why he had laughed; *“Possibly fact I did the invoice and missed it – possibly mistake on my or suppliers behalf and I missed it – not funny laugh but chuckled to myself that missed it ...”*
331. Mr Copley informed the Tribunal that that; *“working in the business haulage business sometimes the language can be a “bit blue” and the claimant was not offended if a swear word slipped out or things like that and she could swear like the best of us.”*
332. The Tribunal find on balance that the claimant was not offended by swear words par se and probably (taking into account the fact she sent the message which appears at p.236 and obviously found it amusing), swore herself in the workplace.
333. In cross examination it was not put to Mr Copley that he grabbed his crotch despite counsel for the respondent pointing out to Mr Doughty that he had not put that allegation to him . It was put to him that Mr Bruce had told him that as a result of the ‘crotch incident’ that Ms Linnet wanted to move desks away from him but he denied being told that.
334. There is a WhatsApp message from Ms Linnet to the claimant dated 23 September 2020 (page 453):*“Think I’m going to have to speak to Rob Taylor about Alan, he made a **remark** when Michael left about it being crouch Recovery and crotch recovery . Just sick of his **comments** xx”* Tribunal stress.
335. The client did not include a copy of her reply. The above refers to a ‘remark’ having been made and being sick of his ‘comments’, it does not refer to Mr Barton also holding his own crotch.
336. The claimant alleges (w/s para 68 q and r) that Ms Linnet became anxious, she was pregnant and her blood pressure increased because she was stressed as Michel Bruce would not intervene. She also alleges that Mr Bruce became agitated and told the claimant not to get involved because he was Ms Linnet’s manager, that it was not resolved and ultimately Ms Linnet left early on maternity leave.
337. In cross examination Mr Copley gave evidence that Mr Bruce had not spoken to him about this incident and that he was not aware of the allegation until he was asked to produce a witness statement for these proceedings.
338. The evidence of Mr Bruce is that this incident was not reported to him in a formal sense, it was just a conversation which was that the word Crouch had been mispronounced. He gave evidence that Ms Linnet had told him she wanted to move office entirely, but that was not feasible. He understood she wanted to move office because of his remark about ‘crotch’ but had not mentioned that he had grabbed his crotch otherwise Mr Bruce alleges that he would have “done something”. His evidence is that Ms Linnet herself engaged in sexual jokes with Mr Barton and he understood they had resolved this issue between themselves.
339. The Tribunal consider that it is more likely that not that Mr Barton laughed about the misspelling because of the sexual connotation and therefore it is likely that, as he laughed, he also made some comment about this.
340. The Tribunal do not consider that the evidence however supports a finding that Mr Barton also held his crotch. Mr Barton denies this and he was not challenged on this in cross examination. Mr Bruce denies that this was mentioned to him. Ms Linnet has not

attended as a witness but her message to the claimant (p.453) does not refer to him holding his crotch only to the comment he made.

341. On balance, the Tribunal find in the absence of any evidence from Ms Linnet, that she was no longer enjoying sharing an office with Mr Barton because she did not appreciate his humour or language but the Tribunal do not find that she complained that he had held his crotch.
342. The claimant did not raise this as a complaint in terms of its impact on her, until her second application to amend her claim 10 months later. She does not allege that she raised with Mr Bruce that she was offended by what she had been told Mr Barton had said and the Tribunal do not find that she had been.

On 30 September 2020

343. On 30 September 2020 it is alleged that Mr Bruce and Mr Thomas Graham referred to the claimant as the office cougar and MILF (it is common between the parties that MILF is an initialisation for: "Mum I would like to fuck"); and Mr Thomas Graham stated he had looked the claimant up on Facebook.
344. In cross examination the claimant accepted that Mr Bruce did not use those terms himself to describe her: *"No, it was Michael that told me over phone" and "He passed the comments on from Tom and I have seen you and that's what he's calling you"*
345. Mr Graham admits that around the time he joined the respondent in September 2020 he looked the claimant up on Facebook and said to Mr Bruce that the claimant was the "office cougar" and a "MILF". Mr Graham alleges that he and the claimant later laughed about his comments and became friends on social media and had a good working relationship. The claimant in cross examination denied that they became friends on social media or they laughed about it. The respondent did not produce any evidence that they had been social media friends and the Tribunal accept her evidence on balance, that they were not. However, in cross examination she appeared to accept that they had a good working relationship: *" we worked in the same office – yes"*
346. Mr Bruce alleges that the claimant would describe herself in those terms and that she would come into the office and say *:"hello peers it's the office MILF"* (w/s para 5).
347. This was put to the claimant in cross examination and she denied it. However, this allegation by Mr Bruce was not challenged by Mr Doughty in the cross examination of Mr Bruce. Mr Doughty was generally thorough in his cross examination of the witnesses, directing the Tribunal to each issue and addressing each in turn but making a decision at times, as he confirmed to the Tribunal, not to pursue certain allegations.
348. In cross examination Mr Graham gave evidence that: *"Michael fed the information back I presume it was him and when she came into the office for the first time when I met her she said "am I the office cougar or MILF" as a joke and then referred to herself ... whenever Emma came into the office it was referred to by herself that she was the office MILF thereafter. ... I couldn't give you a number but most times she was in it was just a standing joke something Emma would refer to herself as."*
349. The Tribunal find that the allegation that the claimant was not offended and was flattered by the description is further supported by the transcript of the claimant's call with Mr Bruce on 11 September 2020 (p.1159). The claimant accepted that the telephone conversation related to the comments by Mr Graham made about MILF and cougar and accepted in cross examination that when she was told about them by Mr Bruce, she had laughed.

350. The claimant did not raise any complaint about this incident at any time prior to these proceedings.
351. In terms of the act of looking her up on Facebook, this is accepted by Mr Graham but the claimant did not give evidence to explain why this of itself amounts to harassment when she is in control of what she chooses to place on Facebook and she can restrict who has access to her account.
352. The Tribunal find that the this incident took place but that the claimant was not upset by it or offended, found it amusing and laughed about it with both Mr Bruce and Mr Graham.

30 September 2020

353. On 30 September 2020 it is alleged that Mr Bruce took an image of the claimant's face from her Facebook account and superimposed it onto a graphic of someone throwing another person under a bus, then sent this image to the claimant.
354. It is not disputed that Mr Bruce sent this image to her. His evidence is that he and the claimant always spoke on a friendly and supportive basis and shared lots of jokes and shared a longstanding joke that the claimant would throw him and Mr Kelly 'under the bus' in terms of technical work, by referring it to them for a resolution.
355. The claimant disclosed the message Mr Bruce had sent to her as part of her general disclosure for these proceedings, but not her reply (p. 434).
356. The WhatsApp message disclosed by Mr Bruce (p.1066) reads as follows :

Claimant "***This is the best thing I have ever seen!***" [followed by a laughing crying emoji]

Michael Bruce : "*send it each and every time you throw me or Kelly Belly under – it'll soften the blow! [laughing crying emoji]*

Claimant: "***it is brill [emoji blowing a kiss]*** Tribunal stress

357. The claimant alleges that the visual image was sent by text and she only kept the image saved on her phone. She denies the document at page1066 is an exchange of messages with her . The Tribunal find that it is more likely, given her conduct in relation to other messages (and the findings of the Tribunal, addressed later in this judgment, about the reasons for the delay in informing the Tribunal about what she alleges she disclosed to Action Fraud and the police) that the claimant deliberately attempted to conceal from the Tribunal her response to this message.
358. There was some protracted cross examination, with the claimant expressing concern about the authenticity of the document at page 1066, referring to its late disclosure (after the claimant had been told by the respondent's solicitor that the respondent would not disclose messages between employees for data protection reasons). However, under cross examination she ultimately stated: "*I am not saying its falsified... I do not have the messages*" and if they were presented as genuine messages then she agreed she had sent them and gave evidence that:
- Respondent's Counsel: so you were not offended at the time, you thought they were "brill"*
- Claimant: I can see that "*
359. The claimant then sent the same message from Mr Bruce which she alleges now she was offended by, on to Mr Kelly:

Claimant: Michael made this for me [laughing crying emoji]

Steve Kelly: "That's perfect"

Claimant: [emoji thumbs up and laughing crying emoji] (p.1067).

360. The Tribunal find that this message and image sent from Mr Bruce was not unwanted conduct. The Tribunal find that the claimant enjoyed this exchange with Mr Bruce who she had a friendly relationship with and she welcomed the message, she enjoyed the humour and she shared the image with Mr Kelly.

October 2020

361. It is alleged that in October 2020, Mr Adam Crouch told the claimant that he was thinking of recruiting for a new Operations Director role but that she could not apply.
362. Mr Adam Crouch admits this (w/s para 53). His explanation is that the claimant was not suitably qualified as the role required solid mechanical experience and for the person to be based full time in the control room and had nothing to do with her gender. Mr Adam Crouch alleges that he discussed it with the claimant and she was fine about it.
363. The claimant complains that this was harassment related to her sex. She alleges that he said the same to another female colleague, Amelia Tilson after the claimant had left .She relies on a text or WhatsApp's message Ms Tilson (p.435) where she stated: "*So I've just found out they are advertising for an operations director !!!!!WTF*"
364. The evidence of Mr Adam Crouch under cross examination was that he did interview Amelia Tilson but she lacked solid mechanical knowledge.
365. The job description for this role was created in June 2021, after the claim had resigned but she accepted it was the same role she was referring to (p.1217). The job description includes: "*Mechanical Skills to City and Guilds or equivalent standards*",
366. The general job summary states (p.1216):"*This is a senior leadership role reporting into the Managing director and will take responsibility for the overall performance of the existing operation, including supplier management, devising, and delivering a strategy in line with business needs*".
- 25** The areas of accountability are stated to include: "*Direct and oversee all operational staff to ensure that they are correctly trained and motivated to carry out their responsibilities to the required standard.*"(p.1216) and "*CPC Holder & understanding of O' Licence Compliance.*"
367. In cross examination she gave evidence that she would have returned to work in the office full time for this role. In a recorded call with Mr Kelly on 28 July 2020 (p.1192), a few months prior to this, the claimant states:

Claimant: Yeah , but I'm not. I'm not emotionally ready yet to come back(laughing)..

Claimant "No, because I think if I make this journey back like you've done once you do it, then you are back for good. That's what I don't like"...

Claimant: " I don't know, I feel like I'm just of in my own little lockdown"

368. The claimant also accepted in cross examination that she did not have experience of overseeing the operational staff. She also accepted she was not fully CPC qualified (certificate of professional competence in road haulage) and she gave evidence that someone has to be CPCP qualified to be a transport manager and she was not. She

has completed 2 parts of the exam but not the final part. The claimant also accepted that she did not have Mechanical Skills to City and Guilds

369. The evidence of Adam Crouch is that :*“When discussed Emma appeared to be fine about this”* (ibid). This is because she knew she lacked the knowledge, skills and experience required for the role.
370. It is not in dispute that no one was recruited for this role until after the claimant had resigned.
371. The Tribunal on the evidence, find on a balance of probabilities, that the reason the claimant was not considered for the role was because Mr Adam Crouch did not consider she had the necessary skills and it had nothing to do with her sex. Further, the Tribunal find on the evidence that (there being no evidence to rebut it), that Adam Crouch did interview Ms Tilson but did not consider she had the requisite skills either . The Tribunal also find on balance, that Adam Crouch had discussed this role with the claimant and it is likely that she had appreciated that she did not have the skills and that she was still not willing to return full time to the office and hence was content with the decision in any event. There are no documents where she raised any complaints.

23 October 2020

372. It is alleged that on 23 October 2020, when the claimant was in the office and Adam Crouch was sat next to her, he reached out touched and stroked her thigh.
373. Mr Adam Crouch denies touching or stroking her thigh and that the first time he was aware of this allegation was in these proceedings.
374. The Tribunal take into account that Mr Adam Crouch had displayed in his messages with the Female Colleague a willingness to engage in sexual and inappropriate behaviour unsuitable for the workplace with a junior employee. However, exchanging sexual messages is not the same as placing hands on a person.
375. This allegation was not pursued in the cross examination of Mr Crouch. It was not put to him what the claimant’s reaction is alleged to have been and indeed she does not address this in her evidence. There is no contemporaneous evidence of this taking place, no message from the claimant commenting on this and nor does she allege she mentioned this to any colleagues.
376. The claimant first made this allegation in her second application to amend her claim about 9 months after the alleged event.
377. In her evidence in chief she referred to this happening on one occasion on 23 October 2020 but as respondent’s counsel pointed out in his submissions, in the earlier list of claims document dated 12 July 2021, she *“better clarifies and particularises what is already pleaded”* when she alleged(p.75) that :*“On **some occasions**, the Claimant and Adam Crouch would have to sit together to work on invoices . On **occasions** when they were doing so, Mr Crouch would sometimes reach out and **touch** her thigh.”* Tribunal stress
378. She had not alleged stroking but touching and had alleged there were other occasions. In cross examination, the claimant accepted that her evidence in chief was different to what was said had alleged in that July document but did not proffer an explanation.
379. The claimant alleged that she told Mr Doughty it had happened however, although this is the only alleged incident of Adam Crouch physically touching the claimant, Mr Doughty

fails to mention in his evidence in chief, being made aware of this incident by the claimant.

380. Further in her first set of particulars of claim she describes how (p.26):“*Mr Adam Crouch and I had a tight, close, trustful and loyal bond.*” The Tribunal find it difficult to reconcile this description (after the event) of their relationship as trustful when she alleges non-consensual touching of a sexual nature in the workplace.
381. The claimant does not in her claim and she did not in cross examination, explain what her reaction had been to this touching.
382. On balance, the Tribunal do not accept the claimant’s account that this happened.

On 7 December 2020

383. On 7 December 2020, it is alleged that Mr Bruce sent the claimant a picture message of her desk and the contents of her drawers being emptied, saying he was going to give her desk to a new member of his team.
384. Mr Bruce’s account as set out in his evidence in chief, is that he telephoned the claimant to ask whether she minded if another member of staff could use her desk as the claimant was still predominantly working from home and when she was in the office she rarely used her desk and she told him she did not mind but asked him to photograph everything from her drawers so that she could tell him what to keep.
385. The claimant under cross examination could not recall their conversation. The claimant had disclosed only a picture of her desk with all her property on top of it but with no text (p.433).
386. The respondent disclosed the full message (p1214-5). This exchange is consistent with the account of Mr Bruce. Underneath the photograph of her drawers it reads:

Mr Bruce “from your drawers need any of it ?

*Claimant “**Lol.** The discs I think are to do with the open day for Dave c best keep those .Can you keep that f c book on the top. Ta” Tribunal stress.*

387. The claimant did not dispute the authenticity of these messages and accepted she did not object in the messages to her desk being used. Her evidence is that she did not know which member of staff was using her desk but she used it after this when she went into the office.
388. That exchange also includes a message from the claimant to Mr Bruce a few days later, on 11 December 2020 (p.1215)::

Claimant “Just popped out are you ok xx” Tribunal stress

389. When the Employment Judge asked the claimant about the kisses she put on the end of this message and about their working relationship, her evidence was:

“I got on well with Mr Bruce at the start when he joined, we got on well, I thought he was my friend. When I stayed at home for longer after lockdown I felt it was out of sight out of mind and he became the new me...”

390. When asked by the Employment Judge during cross examination whether the claimant considered she and Mr Bruce to be friends at that stage (in December 2020),she replied,
“Yes I would- yes”

391. The claimant did not explain why asking if another member of staff could use her desk was related to her sex.
392. The Tribunal find on the evidence, that Mr Bruce checked with the claimant if she was content for a colleague to use her desk because she was working mainly from home and she did not object but merely asked him and he obliged, to empty her drawer and send her a photograph of its contents. The Tribunal find that this request had nothing to do with her sex and she was asked and had no objection.

20 December 2020

393. On 20 December 2020, it is alleged that Adam Crouch sent the claimant a WhatsApp message saying: “**keep your mouth shut no one else is getting one**”, (Tribunal stress) with reference to a food hamper he had given to her. Although contained in the list of issues, the claimant did not advance any evidence on this issue. She did not mention this in her evidence in chief.
394. Mr Adam Crouch in his evidence in chief accepts that he sent a message with words to that effect although he has not retained a copy of it. His evidence which the Tribunal accept, is that the respondent buys hampers for clients and there was one left over, the claimant asked for it and he reluctantly agreed she could have it but asked her to not let the rest of the team know. He denies that there was anything sexual in the message.
395. While this language (‘keep your mouth shut’) appears rude, the Tribunal find on balance that within this industry and within the respondent’s business, this was unlikely to be unusual and that he was making it clear that, as she was getting preferential treatment, he did not want her to let the other staff know.
396. It was not put to Adam Crouch in cross examination that there was anything sexual about this gift, which the Tribunal accept, the claimant had requested from him.

January 2021

397. The claimant complains that In January 2021, Mr Crouch refused her request to attend a recovery job as other staff had done.
398. Adam crouch denies that the claimant asked to do this (w/s para 56). Further, his evidence is that this was not part of her job and going on recovery work was extremely dangerous, standing next to a motorway with cars travelling up to 70 mph was risky and she was not trained to go on recovery work which would make the situation even more dangerous. Mr Adam Crouch denies that anyone in the invoicing team, to his knowledge, had attended a recovery job.
399. Although in the list of issue, the claimant did not advance any evidence about this allegation in her evidence in chief.
400. In cross examination, the claimant accepted that she was not trained to attend recoveries.
401. The claimant has not in the list of issues, identified who else she alleges was allowed to attend recovery jobs who did not have the appropriate training. She does not allege that this was less favourable treatment because of her sex but advances this as a breach of mutual trust and confidence. It was not however part of her job to attend recovery jobs and the Tribunal find that she was busy with her work in accounts and this was vitally important work to the respondent. They had staff specifically employed to attend recovery jobs.

402. The claimant was extremely busy in her job and thus even had she made such a request, if Mr Adam Crouch did not consider that it was necessary for her to attend a recovery to perform her role (and she does not allege that it was) to refuse this and require her to concentrate on her job, would the Tribunal find have been a reasonable instruction.
403. The claimant was familiar with this industry, she had worked in this industry for over 20 years ,this was not an industry she did not understand.
404. In her Particulars of Claim (page 28 para 4.17/4.22) the claimant sets out how demanding her role was and how important to the business;

“There were times during the pandemic when I expressed to Adam Crouch that I felt overwhelmed and that we needed to find a way to take the pressure out of the system ...”

“ when I left in May 2021, the business was undertaking around 300 – 600 ins per day and invoicing around £3m per month. I solely invoiced around 95% of all the jobs (along with many other activities...”

405. The Tribunal find on the evidence, that the claimant did not ask to attend recovery jobs, she was not trained to do so, it was not her role and it would have been dangerous for her to do so.

28 April 2020 – 18 February 2021

406. It is alleged that on 28 April 2020, 7 September 2020, 29 September 2020, 25 November 2020 and 18 February 2021, Adam Crouch asked the claimant, rather than a male colleague, to make tea/coffee for a visitor. On the 29 September 2020 he sent her a WhatsApp message saying, *“Tea for my office. for me and 1 with sugar”*
407. The claimant alleges (w/s para 68 (s)) that she never saw or heard Mr Adam Crouch ask a male colleague to make tea of coffee. The WhatsApp message she relies on (p.361) reads:

Adam Crouch : “ Tea for my office, for me and 1 with sugar”

Claimant: “upstairs?”

408. This WhatsApp message is undated but Mr Adam Crouch does not dispute that it may have been sent on the 29 September 2020 and admits that he did “on occasion” ask the claimant to make a tea for himself and a client (w./s para 48). However, his evidence is that he did not just ask the claimant and the usual practice is that whoever answers the door to the client asks for the drinks orders. The claimant in cross examination did not refute this as such but gave evidence that: *“sometimes people went into the control room so you wouldn’t know they had come in”* .
409. The claimant went on in cross examination to deny that whoever let the customer in would offer them a drink but then gave evidence that Adam Crouch: *“may say an important person is coming in, **can someone** offer then a drink and take them to the boardroom”*. Tribunal stress
410. She does not allege that Mr Crouch always asked a female member of staff to do it, or directed this question to anyone in particular. She also accepted under cross examination that as she was in the office only occasionally, she would not know if he asked male colleagues to make drinks.
411. The evidence of Oliver Barton (w/s para 6) is that everyone at the respondent ‘pitches in’ and he has made tea for colleagues and clients on a regular basis and saw it as part

and parcel of a friendly environment. He was not challenged on his evidence in cross examination. The claimant did not dispute that this may be correct but accepted she would not know as his office was on a different floor to hers.

412. Mr Crouch alleges that he had asked male colleagues and gave an example of asking Head of Legal Rob Taylor to get him a drink. There is a WhatsApp message (p.999) attaching a photograph dated 31 August 2021 (after the claimant had left the business) showing a polystyrene cup and a packaged waffle with the message apparently sent to Adam Crouch : “Coffee outside your door . Plus some waffles”
413. The evidence from Louise Guerriero is that the claimant enjoyed her job, wanted very much to be part of the team and be involved and would often make tea or coffee.
414. The Tribunal find on the evidence that Mr Adam Crouch would ask the claimant on occasion to make tea for him and a client but this was not related to her sex and that he also asked male colleagues, including Oliver Barton or asked generally “for someone” to make drinks.
415. The evidence does not support a finding that it was only the claimant who was asked when she was present. The claimant does not allege that she refused or raised a complaint about this at any time.
416. The office environment was the Tribunal find, evidently an informal and relaxed one, where staff were on good terms generally, and the claimant, the Tribunal find, enjoyed that environment, contributed to it and encouraged it. Hence for example her emails to colleagues with kisses and emojis and the use of ‘nicknames’ such as Kelly Belly. Chipping in and making tea and coffee would the Tribunal consider, be seen as being part of the team and others would have been asked to do it, not only the claimant.

February-March 2021

417. In February-March 2021 *It is alleged that -*
 - (i) *Mr A Crouch and Mr Guerriero did not invite the claimant to attend customer meetings to which she would have been invited previously (including one with VMS and another with Enterprise); and*
 - (ii) *Instead, Mr Guerriero asked her to perform mundane follow-up tasks such as providing copies of invoices to customers*
418. Although in the list of issues, the claimant did not advance any evidence in support of this allegation about meetings in February and March 2021 in her evidence in chief. She also does not identify an actual male comparator or explain why she considered that it was on the grounds of her sex if she had been invited to meetings previously.
419. In her witness statement however, she stated that were two occasions in **April 2021** when Mr Crouch and Mr Guerriero did not invite her to attend key customer meetings which typically, up until that moment in time, she would have been invited to e.g. VMS and Enterprise. She complains that she was **now** being given more mundane tasks to do such as providing copies of invoices to customers and being treated fundamentally differently and Mr Guerriero had become less friendly. However, she alleges (w/s para 84) that by March 2021 she had raised numerous concerns with Adam Crouch and challenged what she felt were unethical accounting practices with Mr Guerriero and that (para 86): “As a result, in April 2021 matters took a turn for the worse. I was aware that key customer (Zenith) was coming into the office for an account review with Mr Adam Crouch” and complains she found out from another employee about the meeting. She

goes on to give the examples in **April 2021** of not being invited to meetings with VMS and enterprise.

420. The claimant is clearly alleging that she was not invited to meetings in April 2021 with VMS and Enterprise as she had been before, because of concerns she had raised and not because of her sex.
421. The evidence of Mr Adam Crouch is that neither he nor Mr Guerriero attended meetings with VMS or enterprise in February and March 2021 and he was not challenged on this in cross examination, or his evidence that the meetings were operational and not about invoicing and her attendance would not normally be required (w/s para 57 and 58) . The Tribunal take into account that the claimant would normally not be in the office, she would normally be working from home.
422. Mr Guerriero in his evidence in chief (w/s para 50) also denies any meetings with VMS or Enterprise in February or March 2021 but that in an event it was not part of her role to meet clients or attend any outward facing meetings. And that even in his position he has only attended no more than 8 client meetings in 8 years and no one in the invoicing team attended meetings because it was not necessary. He also gave undisputed evidence, that he asked the client to send copy invoices as this was part of her role and he would ask anyone who sent an invoice to a customer to re-send it if it resolved a query from the customer.
423. The Tribunal find on the evidence, that the claimant has not established that there were meetings in **February and March 2021**, further that if she was not invited to meetings in April 2021, there is no evidence that this was because of her sex.
424. The claimant's evidence in chief clearly indicates that she believes any alleged change in behaviour, including not inviting her to meetings with clients, was because of concerns she alleges she raised, and not because of her sex.
425. The Tribunal also find that the claimant has not established that she was asked to do mundane jobs that were not part of her role or that this had anything to do with her job, again she clearly indicated in her evidence in chief that any change in behaviour toward her from April was due to alleged issues she raised, not because of her sex.

27 February 2021

426. On the 27 February 2021 the claimant complains that Ricard Crouch sent her a message stating; *"I did not realise you were married! I thought you were living in sin"*.
427. This message appears at (p.302). The claimant accepted in cross examination that it was sent to her at 8:30pm from the personal Facebook account of Richard Crouch (who was still a Facebook friend of hers) to her personal Facebook account. It was forwarded by the claimant to Mr Doughty on Monday 27 February 2021 (p. 303). The claimant does not comment on how she feels about it to Mr Doughty in that message, but the act of sending it to him implies that she considered it unusual.
428. The claimant did not complain to Mr Adam Crouch, however, the Tribunal take into consideration that she had raised Mr Richard Crouch's behaviour with Adam Crouch before and he had not taken the complaints seriously. The Tribunal therefore do not consider that the failure to report this incident to him therefore is evidence that the claimant was comfortable with the message.
429. The claimant had not blocked Mr Richard Crouch from accessing her private Facebook account and seeing the pictures she posted and she does not allege she did so after

this message was sent. The claimant does not allege that on this day or around this time, Mr Richard Crouch was carrying out work for the respondent.

430. The was not a message in any way connected to the respondent's business.

31 March 2021

431. On 31 March 2021, the claimant confirmed in a WhatsApp message that for the month of March they had billed £3m of invoices. The allegation is that Mr Adam Crouch replied in WhatsApp message saying "*book afternoon tea for us to celebrate*" (p.365).

432. It is not denied by Adam Crouch that this message was sent (p.365) but alleges that the invitation was meant for the team and not just directed at the claimant.

433. This is another allegation that the claimant has made in these proceedings where she extracted part of a chain of messages and disclosed only an extract, giving an unfair and bias picture. The claimant had when confirming whether there were other relevant documents as part of the specific disclosure exercise (p.359) confirmed that she had not replied to this message. The Tribunal find that however, she had replied but not disclosed it.

434. The claimant under cross examination, when shown her response as disclosed by the respondent, accepted she had replied with either a thumbs up emoji or a love heart emoji.

435. This allegation was not put to Adam Crouch in cross examination.

436. During cross examination, the claimant accepted that she had been happy to receive the messages. She did not, in cross examination assert that the message was unwelcome, quite the opposite.

8 April 2021

437. It is alleged by the claimant that on **8 April 2021**, with reference to a meeting with a customer (Zenith), Adam Crouch sent a WhatsApp message to the claimant saying "*oh yeah you should come as David Rider is attending and he likes pretty women*". When the claimant queried this message he replied in a WhatsApp message, "ok babes."

438. Mr Rider did not give evidence before this Tribunal and the Tribunal makes no finding on whether or not Mr Rider had ever made any comment to Mr Adam Crouch or indeed anyone else, about liking pretty women. It was not necessary to hear his evidence, to determine the allegation against Mr Adam Crouch and his conduct.

439. A copy of the exchange is in the bundle (p. 344):

Claimant: " Is there a Zenith meeting soon ???

Adam Crouch : oh yeah you should come as David Rider is attending "" he likes pretty women

Claimant: Gavin's boss? Adam I should be needed there as I look after Zenith! I am not coming If just for pretty face

Adam Crouch: calm down Royder! Ok babes xx"

Not being invited to the meeting

440. The claimant was not invited to the meeting with Mr Rider. Mr Adam Crouch gives evidence that it was not necessary for her to attend.
441. The claimant accepted in cross examination that customer meetings at the respondent were rare and she maintains that she was invited to 'some' meetings. Her evidence was that Enterprise and TIP had meetings about invoicing although she accepts Adam Crouch probably had a lot of others with them about operational issues which she would not need to attend. She gave evidence under cross examination that she attended on Zoom remotely or in the office when they involved invoicing.
442. The claimant under cross examination alleged that Zenith had been coming in for an account review meeting and that she should have been invited straightaway.
443. The claimant does not identify an actual comparator and nor does she explain in her evidence why (given her evidence is that she had attended other meetings about invoicing) not being invited to this meeting had anything to do with her sex on this occasion.
444. Mr Adam Crouch accepts that the claimant was annoyed at not being invited, he alleges it was a meeting about operational matters and not to do with invoices but the meeting in any event did not take place.
445. There is a document (p.812) email dated 22 April 2021 which states:
- “ In terms of the meeting with Zenith*
- Rob Garner was in the meeting as Dan from CVFS attended and Dani was in the meeting because Gavin asked someone to come in to make notes because at the “11th hour Dave (Gavin’s boss) advised that he could not make it. I also know Adam would have liked you in the meeting, especially if Gavin’s boss had of [sic] been there.”*
446. Dani is a reference to Danielle, a female colleague who attended as notetaker.
447. The Tribunal find that it is more likely than not that this email relates to the same Zenith meeting which the claimant is complaining about because it was about a meeting in April with Zenith, with Mr Garner in attendance and Gavin’s boss due to attend.
448. Adam Crouch says he was not there and he may not have been as “Gavin’s boss”, David Rider, did not attend either. However, the Tribunal find there certainly appears to have been a Zenith meeting which it was accepted in this email, the respondent would have liked the claimant to attend .
449. The Tribunal find on a balance of probabilities, that Adam Crouch did not invite the claimant to this meeting initially and that she had a reasonable expectation that she would have been asked.
450. The claimant’s own evidence however, is that attitudes changed toward her during this period, not due to her sex, but due to her raising concerns and complaints including (para 87) and that the normal practice was to invite her. On her own case, the claimant does not allege that the reason was her sex.

Comments – pretty women and ok babes

451. Adam Crouch gave evidence that he sent the reply in the terms which he did because of the type of dialogue he and the claimant had.
452. Mr Adam Crouch also gave evidence that if he said he equivalent to a man he would not be insulted to be called handsome. However, what is important is context and his

evidence is not that he used such terms to male employees but that he did with the claimant because of the type of dialogue they had.

453. In her letter of 23 April 2021 (p. 902) to Adam Crouch and Mr Guerriero (p.904) the claimant describes how she felt as follows: *“When I queried this Adam invited to the meeting because I am pretty! Is that all I get recognised for that I am attractive??? If Zenith were coming in, I should also have been consulted and or at least told straight away. I answer 50 plus queries for Zenith daily.”*
454. In cross examination counsel put it to the claimant that she was not annoyed about being called pretty, only about not being invited to the meeting, to which she replied: *“he should have said you should come because you look after Zenith”*. Counsel submits that in this exchange, the claimant did not dispute that she was not annoyed about being called pretty. The Tribunal find that she did not agree that she was not upset about the ‘pretty women’ comment in the context of that being given as the reason why she should attend.
455. While the claimant and Adam Crouch were clearly on very friendly and informal terms, this exchange was about work and it was clear that the claimant was upset. Mr Adam Crouch accepted his response was tongue in cheek i.e. he was being flippant with her deliberately.
456. Mr Crouch responds to her when she makes it known she is annoyed with : *“ok babes”*.
457. In cross examination the claimant conceded that she also used that expression *“babes”* towards male employees and there was nothing gender specific about it (pages: 1035 main bundle/ page 282/283 S/B). However, Mr Adam Crouch was not being affectionate, he was being sarcastic and teasing her when she was clearly upset by his comment.
458. The Tribunal find that the “pretty face” comment would not have been said to a man, or an equivalent comment made about a male colleague’s physical attractiveness as a reason for being invited to a work meeting. While they were on good times, it should have been obvious to him that such a comment would be unwelcome. It was not flattering the claimant, it was reducing her value to the business in that context, and what she would contribute to the meeting. The Tribunal accept the impact the claimant alleges this comment had, it was demeaning of her role and she complained to Adam Crouch about it, which was an unusual step for her to take. His response was, to demean her further. ‘Babes’ in this context was not affectionate, it was making fun of her reaction and the impact his first comment had.

19 April 2021: meeting

- 26 The claimant alleges that on 19 April 2021, Mr Guerriero, Mr Bruce and Adam Crouch had a meeting in the morning to discuss the reorganisation of the accounts team without the claimant being present. As a result an agreement was reached between the 3 men whereby they decided to give the claimant’s role to Mr Bruce. In the afternoon Mr Guerriero then sent the claimant an email attaching a PDF showing without warning and consultation, the accounts reorganised and that her role and status as account manager had unilaterally and fundamentally changed and Mr Bruce had been allocated several of her accounts to manage. The invoicing team did not have allocated clients, that was the position the respondent wanted to introduce.
459. This the Tribunal consider, is what is really at the heart of the whole claim and why the claimant resigned.
460. The Tribunal find that the claimant felt that she was being replaced by Mr Bruce or at least, she was becoming less relevant or indispensable to the business. She felt, in her

words, he was becoming the “new me” . Because she was working from home, she felt “out of sight, out of mind”, she felt more vulnerable.

461. The claimant’s reaction to these events has to be considered in the context of just how emotionally invested in this business and the Crouch family, the claimant was.
462. Being seen as vital to the business, a ‘kingpin’ and a fellow ‘Crouch’ was clearly incredibly important to the claimant such that when she felt that she was not as integral and ‘loved’ by them as she had been led to believe she was, she refers in her Particulars of Claim to feeling ‘gaslighted’.
463. The claimant in her evidence in chief describes how the business had grown since she had joined:...“*over the 3 years from 2018 to 2021 , the business revenue increased from around 31.2 m to £3m a month as reflected in their accounts at Companies house “ (w/s para18)*
464. In terms of the claimant’s workload she describes this in her 23 April 2021 letter to Adam Crouch and Ricky Guerriero (p.902):
- “Now two years later with 40 + accounts , the business has more or less doubled from when I first joined. Crouch is turning over £3m a month with 600 jobs a day. In terms of those jobs that are invoiced out this is done by Amelia and around 90 % of them by myself. Notwithstanding , during the pandemic when half the work force was furloughed, I had added pressure for me to carry on. Last Monday we were just 3 weeks behind with invoices for a £3m business ! **For the last two years I have more or less worked every day, including weekends** (my choice I know)....” Tribunal stress*
465. It is not in dispute that the business had grown significantly and that the claimant had a significant workload. The Tribunal accept that prompt invoicing and payment was considered to be essential to the ongoing success of the business.
466. The claimant has no direct knowledge of what was discussed during that meeting in the office on 19 April, because she was not present.
467. The evidence in chief of Mr Guerriero (w/s para 56- 58) is that he and Adam Crouch were aware the Invoicing Team needed a restructure, the team were going on to the Apex system and selecting which jobs to invoice, they were ‘cherry picking’ the work they wanted to do and the Operations Manager Ms Tilson, was leaving her work in the Control Room to assist with the leftover invoices. It needed more structure.
468. Mr Guerriero’s evidence is that he discussed with Mr Adam Crouch these issues briefly on 18 April 2021 and agreed to catch up the next day (w/s para 54). The next day, which was the 19 April, his evidence is that the two of them then discussed a proposal to allocate accounts between team members. Both Mr Guerriero and Mr Adam Crouch described this as an informal conversation in his office, that lasted less than 10 minutes. Mr Guerriero states that Mr Bruce “*popped his head into the room at some point and we told him what we were thinking and that we were going to see if Emma could come into the office to take her input on things*” . Mr Bruce recalls being called into a meeting. Those who were present give consistent evidence in terms of this being a short, informal discussion where nothing was finally decided. The claimant under cross examination accepted this; “*Yes, Michael popped his head in, I was not involved and should have been.*”
469. The Tribunal accept the evidence of Mr Guerriero and Mr Adam Crouch that the two of them then put a quick spreadsheet together with some of the key accounts and a proposed allocation to various team members (w/s para 56). The Tribunal accept that this was meant to be a discussion document.

470. The evidence in chief of Adam Crouch is that by April 2021 those responsible for inbound and outbound invoicing were the claimant and Mr Bruce and 7 others and that in early April 2021 he was conscious that there was a 'bottle neck' in invoices being sent out and he had the brief discussion with Mr Guerriero on 19 April 2021 about allocating customer accounts to each member of the Invoicing Team for 3 reasons; to allow Ms Tilson to focus on her core role as Operations Manager, to spread the accounts between members to reduce the burden and to make all members of the team aware of who was the lead team member for each account (w/s para 66 – 72) .
471. Mr Guerriero messaged the claimant just after 9 am on 19 April 2021 (p.615) to let her know Adam Crouch had called a meeting about spreading the invoicing accounts and asked whether she wanted to come into the office or for this to take place by phone, she opted for the phone.
472. The claimant's own evidence in chief is that: "...*He clearly and unequivocally stated that my job and or role were not being discussed and or to be impacted in anyway. At the end of the call, he and I agreed to have a telephone call in two days' time on the Wednesday 21st April 2021 and in closing the call he acknowledged that we would discuss everything in more detail later in the week.*" (w/s para 92)
473. The Tribunal accept on balance, that they agreed to speak as a group that Wednesday.
474. At 14:24 Mr Guerriero then emailed the claimant attaching the PDF proposal. (p.908-9).
475. This PDF shows the claimant, Mr Bruce and Mr Kelly and other members of the team named under the heading: "*Building Jobs/Invoice*". The claimant is shown as having 6 clients, 2 are allocated to Mr Bruce and the rest to other 7 members of the team.
476. The claimant complains that she was 'horrified' at what she saw because 50 – 60% percent of her accounts were under the name of Mr Bruce and that this was a 'well thought through presentation'. It was the Tribunal find a fairly basic document setting out members of the team and names of clients/accounts and who it was proposed to allocate them to. She also complains that whereas she had been head of invoicing, now Mr Bruce was appearing as at the same level of seniority as her in the diagram. In effect the Tribunal finds, it appeared that the role of leading the outbound invoicing team was to be shared amongst both the claimant and Mr Bruce. The claimant disputes and on balance the Tribunal accept her evidence, that Mr Bruce helped with outbound invoices at that time, he would provide information about the parts which were under warranty or obtain and provide prices for parts to help build the outbound invoices, but he did not prepare those invoices and send them out. As the Procurement Manager, he was procuring the services bought in from subcontractors. This would have meant a change to his role, taking on responsibility for some accounts and outbound invoices.
477. The claimant complains that they had "100%" bypassed her and that "*even more damning was the fact they then gave my work to Mr Michael Bruce*" (w/s para 97). The claimant complains that she had said to Mr Guerriero that if they were so concerned about her workload they could have brought Ms Kerrie Round back from furlough instead they had given the work to a male colleague who had never worked in invoicing. The Tribunal consider that her main concern was not therefore allocating some accounts to another colleague, but the fact that some were to be allocated to Mr Bruce who it appeared, was going to then be at the same or similar level of seniority to her and this made her feel insecure about her position.
478. During cross examination the claimant accepted that each of those members of the team allocated accounts in the PDF document (save for Mark) were already involved in building outbound invoices for the same clients, including Mr Bruce and Mr Kelly, whom

she asked to help build the more complex or technical invoices (save for Amelia Tilson, who had her own client account).

479. The Tribunal attempted to obtain clarity from the claimant about what exactly she found objectionable about the proposal, in light of what she had said about the growth of the business and her workload, this appeared to be a way to reduce the pressure she was working under. She was salaried not hourly paid and there was no mention of any change to her pay and nor does she allege this was a concern for her. The claimant clarified that she did not object to this proposal as such, her only objection was that she was not involved in creating the PDF and having a say in which clients she was allocated:

Employment Judge : What was your main objection?

Claimant : I don't understand the arrows etc. what they were planning you can look at it and say okay this makes sense everyone has their own accounts but Ricky, Adam and Michael planned this and I was the one person that knows and I should've been involved and consulted in putting this forward. It's easy to move customer names around but there's things involved in these customers it's not as straightforward. I would've just liked to be involved in any discussion about my job"...

Employment Judge: So the principle you did not object to although perhaps you would put different accounts with different people, is that a fair summary?

Claimant: Yes that's it." Tribunal stress

480. In his cross examination of Mr Adam Crouch, Mr Doughty referred to what happened as "just a big misunderstanding".
481. The claimant does not assert that she would have wanted someone else to work on the Warrens account.
482. The Tribunal find that Mr Guerriero had prepared the PDF himself and that it was only a proposal at this stage and he had intended to discuss it with her on Wednesday.
483. There was no suggestion of any change to her remuneration and the Tribunal accept, and the claimant does not dispute this, that there was a sound business reason for this type of restructure.
484. Mr Guerriero did on balance the Tribunal accept, assure her that her job would not change however that is not how she perceived the impact because it would involve some changes to the work she would undertake in terms of concentrating on certain client accounts and not be involved in others in circumstances where she had built good relationship with those clients..
485. The Tribunal do not find that the claimant was not included in the initial discussion because she is female but because she was working from home and not physically present in the office. She was however contacted promptly after their brief discussion on 19 April and asked to come in to discuss the proposal or discuss it by telephone. This is not an indirect discrimination complaint, but a complaint that she was treated less favourably because of her gender. The Tribunal find that had she been in the office on balance, she would have been spoken to at the same time as Mr Bruce. Further, Mr Bruce was the Tribunal find on balance, allocated accounts because of his seniority within the business and not because of his gender.
486. The claimant was upset but the Tribunal consider that this was largely due to her feeling insecure about her position in the company because she was still working mainly

remotely and she felt less visible to the business. Mr Adam Crouch underestimated the impact on the claimant of being presenting with the draft proposal. While the Tribunal accept (and the claimant in principle accepts this) it was a sensible move to restructure the invoicing team, the claimant had an enormous emotional investment in the company and while this would relieve her of some work, she felt that it made her less indispensable and she would no longer be in a more senior position to Mr Bruce. The Tribunal find that Mr Bruce was not however giving the claimant's role to Mr Bruce, but he was taking on some of her work.

Follow up Events

487. The claimant complains that 2 hours after the meeting on **19 April 2021** with Mr Guerriero, Mr Adam Crouch and Mr Bruce, Mr Adam Crouch sent the claimant an email about one of her key customers (Knights of Old, hereafter referred to as 'Knights') copying in Mr Bruce (p.623). It is a brief email giving details for the work done, necessary to prepare an outbound invoice for them. She complains there was no need to copy in Mr Bruce because she had always dealt with invoices to Knights and she therefore saw this as putting in place the restructure without having discussed it with her first.
488. She alleges Mr Adam Crouch told her it was a mistake. The PDF showing the proposed restructure, allocates Knights to Mr Bruce. Under cross examination Adam Crouch when asked why he had done this: *"I don't know, for me it was about getting an order out , not unusual, sent to the claimant and copied in Michael, there was no reason for that."* Adam Crouch goes on to say that he would not have remembered who was to be allocated Knights in the PDF document. Adam Crouch alleged he was not aware whether or not a colleague of Mr Bruce had also sent an invoice to one of the client's the claimant would normally send invoices to. The respondent did not present any previous emails where Adam Crouch had copied Mr Bruce into emails he sent to the claimant information required for outbound invoices.
489. The Tribunal accept the claimant's evidence on balance, that Adam Crouch would not usually email both her and Mr Bruce about the customers she looked after with this sort of job information.
490. The claimant alleges that when she looked at the accounts computer system she saw Ms Amy Simons had submitted an invoice for one of her accounts and until then only she had the authority to submit invoices or approve to submit them. She messaged Amy Gibson who informed her that Mr Bruce had told her she could submit invoices. While in cross examination Adam Crouch did not accept that the claimant was the only one with the 'authority' to submit or approve invoices, he did not give evidence that it was not the usual practice for this to be done by the claimant .The Tribunal find that this had been how the outbound Invoicing Team had operated up to that point, with the claimant at the helm, approving and submitting invoices..
491. The claimant alleges that staff were becoming confused and that Miss Nibloe told her that Mr Bruce was undermining her in conversations with staff.
492. There is an email from the claimant to Mr Guerriero (p. 621/622);

Claimant *"..Michael has confirmed how it is now and how it came about and Adam has followed the new process of sending Knights to Michael A meeting will clear the air"*

Mr Guerrero; *" Michael wouldn't say anything about you Emma, we can't control how it has been portrayed nor what people have said to you but I assure you we haven't said anything to anyone, only myself, Adam , Dave and Barbara know the full extent of the situation..."*

493. The claimant alleges she sent an email proposing a meeting on the Wednesday and that Mr Bruce replied saying he would not attend a meeting without an agenda. The claimant alleges that Mr Adam Crouch sent her a message direct (w/s para 103) stating: “ *we are not having an agenda I will sort that fucking twat!*”. Adam Crouch denies this and the message was not produced and on balance the Tribunal do not find that such a message was sent.
494. The claimant alleges that in the evening of 19 April, Miss Noble called her to let her know that she had been called into a meeting with Mr Bruce and Mr Guerriero where she was told to stop working on the work the claimant allocated to her and to follow the instructions and direction of Mr Bruce. Ms Noble told her in a separate conversation that Mr Bruce had gathered his team together and told him he was now in charge of several of the claimant’s accounts, that the change was his idea and he had now assembled the “dream team” doing invoices and “ things will be done his way going forward”. Mr Bruce denies saying these things but did not positively assert that meeting had not taken place, but that he could not recall one. Mr Guerriero was not asked about this meeting in cross examination.
495. On balance, the Tribunal find that it is more likely than not, that steps were being taken to follow the new structure before this had been discussed with the claimant. The Tribunal take into account the message from Adam Crouch about the Knights invoice copying in Mr Bruce and the message which Mr Adam Crouch would later send to the claimant (see below) admitting that he had undermined her, for which he apologised and agreed to issue an email to staff to address any confusion. While his evidence is that he only said what he thought she wanted to hear in this message, the Tribunal do not find it plausible that a Managing Director would have gone to such lengths in describing his behaviour and apologising for it, unless he genuinely felt that he had reason to regret how the process had been managed. The confusion he refers to about staff, the Tribunal find is supportive of the claimant’s evidence that staff were reporting back to her that Mr Bruce was undermining. On balance the Tribunal accept that it is more likely than not, that Mr Bruce had been communicating with staff about the new structure and more likely than not, had spoken in enthusiastic terms about how he was going to do things going forward.

First Resignation

496. On Monday evening of **19 April 2021**, the claimant resigned. She alleges that she felt humiliated and undermined.
497. It is common between the parties that the claimant did not attend work on 20 April 2021.
498. There is an email from the claimant dated 21 April 2021 to Adam Crouch and Mr Guerriero dated 21 April timed at 9:26am (p.954/955) headed ‘ My resignation’ and she alleges (w/s para 106) that she stated how she had been humiliated and undermined with the ‘Dream Team’ quote and alleges that Ms Nobloe later told her that Mr Bruce had said to his team ‘someone in here has a big mouth talking about the dream team’ and that the fact this was fed back to Mr Bruce evidences their collusion.
499. The email of the 21 April in the bundle (p. 954) includes the following explanation for her resignation:

“I am still not over the events of Monday...

I can’t believe that after all I have done for Crouch you thought it would be ok to speak to Michael about me and my accounts.

*...I felt totally humiliated and undermined by the conversation with Michael after the PDF was sent owe me ... where he said on more than once occasion. 'we' decided this and WE want people to have goals and We will decide when people can invoice off Apex... THIS WAS MY JOB not Michaels and this should have been MY decision. **I should not of been put in a position where I was asked to look at a PDF showing my work load split without any warning...**" Tribunal stress*

500. There is no mention in this resignation email of the alleged comment Mr Bruce of putting together a 'Dream Team'. On balance the Tribunal do not find that the claimant has proven that this specific comment was made by Mr Bruce although the Tribunal find on balance, that he mentioned to staff the restructure.

Call between Adam Crouch and Claimant 21 April 2021

501. Mr Adam Crouch contacted the claimant on 21 April and told her that the respondent would not progress with the proposal to redistribute the accounts and encouraged her not to leave.
502. The claimant alleges that this conversation became very heated and she described how angry and embarrassed she felt and how compromised with Warrens, NFU, the VAT and handling fees (see below). She alleges the call was on loudspeaker so that Mr Doughty could hear.
503. Mr Doughty however does not confirm in his evidence in chief that she had raised these other matters of VAT, NFU, handling fees or Warrens in this conversation (w/s para 22). The extent of what he says he heard is:

"They had a very frank and open discussion, It was an emotionally charged call. The Claimant was very frank and direct, and she called out Mr Adam Crouch' s behaviour in no uncertain terms".

504. Mr Adam Crouch denies that the claimant mentioned anything about VAT, Warrens, handling fees or NFU.
505. Further (see below) the claimant on the 23 April 2021 set out in a 2 page email the reasons why she resigned, she refers to this telephone conversation and her account at this stage, 2 days later is (p.903):

*"It was a heated exchange, At one stage Adam said he would sack Michael. I said I did not want that to happen, However **at the end of the call, my confidence was somewhat restored because I was left in no uncertain terms and a very clear expectation that Adam would not only sort things with Michael but that he would be clearly and directly ensure Michael and his team fully understands my role, my authority within the accounts and my status in the company.** That I am the account manager and Michael and his team should always take my direction in such matters when it comes it invoicing accounts." Tribunal stress*

506. Nowhere does the claimant raise any concern whatsoever in this lengthy email about Warrens, VAT, Handling fees or NFU. On balance the Tribunal prefer the evidence of Adam Crouch that the claimant did not mention these alleged issues.
507. The claimant alleges that in this telephone conversation Adam Crouch repeatedly asked her to return to work and not to resign and admitted the organisational changes were all his fault and offered her money saying "*name your price*", offered her a car and offered to dismiss Mr Bruce. The claimant alleges that Adam Crouch said he would meet with Mr Bruce and Mr Guerriero the next day (22 April) to agree a way forward and "*reset events*" (w/s para 1140). The Tribunal accept on balance, given his later behaviour, that

Adam Crouch said all of those things other than it does not find on balance, that the claimant has established that Adam Crouch had gone so far as to offer to dismiss Mr Bruce.

22 April 2021

508. The claimant alleges that on the morning of **23 April 2021** she was called by Adam Crouch on loudspeaker with Steve Kelly and Mr Guerriero present and it was explained to her that there had been a meeting earlier that morning with Mr Bruce and that he had been told that he was not doing the 'new job' that had been discussed on Monday and that *"we have put him (Mr Michael Bruce) back in his box"*. (w/s para 115). She alleges she was told David Crouch had been in the meeting. Adam Crouch alleges (w/s para 80) that the claimant had contacted him afterwards to ask whether he had really met with Mr Bruce and he confirmed that he had.
509. Mr Adam Crouch states that this call took place on **22 April 2021**. That it was the 22 April (not the 23 April) is consistent with the evidence of Mr Bruce that he was told on the 22 April by Adam Crouch that the proposal would not be put in place and the transcript of a call on 22 April (p.1202) where Mr Bruce repeats this to the claimant. It is also consistent with the evidence of Steve Kelly and Mr Guerriero.
510. Adam Crouch alleges that a meeting did take place and Mr Bruce was in that meeting (w/s para 79) and that he had called the claimant to tell her but could not recall using the expression putting Mr Bruce *"back in his box"*. Mr Guerriero's evidence is that Adam Crouch had not told the claimant Mr Bruce had been in a meeting or had said he had been put back in his box but Adam Crouch had told Mr Bruce they would not be proceeding with the proposal.
511. Mr Bruce gives evidence (p.22) that he had a chat with Mr Adam Crouch on 22 April who told him that the proposal was not going ahead. He does not mention a meeting with others present. This is confirmed by an exchange of WhatsApp messages between the claimant and Mr Bruce which appears to be on the same day as the alleged meeting Adam Crouch had with him (p. 226):
- Claimant..” *Adam said he had a meeting with you and Dave this am...*”
- Mr Bruce: “ *so we had that idea we mentioned on Monday, Adam, mentioned today we may not roll with it. No big deal, was just an idea anyway* “. Tribunal stress
512. The claimant alleges she contacted Mr Bruce to clear the air and asked if he had spoken to Adam Crouch *"about me and my role"* and that he denied that he had met with him (p.624).
513. The claimant alleges that Adam Crouch later admitted David Crouch was not at the meeting but when she asked Mr Kelly he said that David Crouch had been present. She alleges that she spoke to Adam Crouch later and told him she did not trust Adam Crouch or Mr Bruce. The claimant felt that she was being told different things about the meeting by different people. The claimant alleges that on 27 April 2021, Adam Crouch told her that Mr Kelly had been lying to her when he said that David Crouch had attended a meeting with him and Mr Guerriero that morning. Adam Crouch denies this (w/s para 99), he alleges that he simply told her that the proposal to distribute accounts was not going ahead and she returned to work the next day.
514. The Tribunal find on balance, that a meeting had taken place with Adam Crouch and Mr Guerriero, others may have been present and discussed the proposed restructure but on balance the Tribunal find Mr Bruce was not present at that meeting but that it is more

likely on the evidence, that Adam Crouch had spoken to him face to face that day and told him the proposed restructure was not going ahead.

515. The Tribunal do not find on balance that the words “*back in his box*” were used, that is not supported by the evidence of Adam Crouch, Mr Guerriero or Mr Kelly, those who the Tribunal find were present at the meeting . The Tribunal do not accept, on balance, the claimant has established she was told this but she was told, in no uncertain terms that the proposed restructure was not going ahead and Mr Bruce had confirmed to her that this was also what he had been told.

19/22 April 2021

516. The claimant alleges that at some stage she had a telephone conversation with Mr Bruce, that he had called her on this mobile and she asked to be taken off loudspeaker but he did not do so. She alleges a colleague, Mr Tompkins then contacted her to see if she was alright.
517. In her evidence in chief it appears that this call actually took place on 22 April 2021.
518. Mr Bruce in his evidence in chief states that the call was on the 22 April (w/s para 23). He alleges that he spoke to her about the proposal which had been intended to help her but was not being moved forward, he said she said she would speak to him later as she did not want to speak on speakerphone but had not asked him to take her off speakerphone.
519. The complaint is not merely that she was on speakerphone but he **refused** to take her off it when she asked him to .
520. There is however a record of the transcript of the call (p.1201). The claimant does not dispute its accuracy. The call is recorded as taking place on 22 April at 14:27 and it does not support her complaint that she asked not be taken off loudspeaker and he refused:

Claimant: Am I on loudspeaker?

Mr Bruce: No. Well you are with me, yeah

Claimant: what and Ricky?

Mr Bruce: No, Ricky's not here.

Claimant: Alright ,I'll ring you later then, I, I don't want to do it on the line, with, on loudspeaker

Mr Bruce: Oh, alright , there's no one with me, but OK, that's fine, alright...”

521. While Mr Bruce does not the Tribunal find, respond by offering to turn off the loudspeaker, the claimant does not ask him to and he does not therefore refuse, which is the allegation.
522. Further, the claimant does not complain about his tone during this case and the dialogue appears amicable:

Mr Bruce: “ ...The Thing I know is we had that idea Monday that we thought was a good business thing and they tell me that they asked you if you wanted to see it, and then they anit heard from you since, and that was that. And then today Adam mentioned that you're probably not going to do that, and I said fair dos.”

523. While the claimant alleges she was contacted by a colleague afterwards, there is no statement from that colleague and it was not put to Mr Bruce in cross examination that Mr Tompkins was present. The Tribunal do not find on balance, that the claimant was contacted by Mr Tompkins or if she was, it was not in connection with this call.
524. The claimant then refers to Mr Guerriero having sent her an email on **22 April 2021** copying in Barbara Crouch, this appears in the bundle and was sent at 6:14pm explaining why they had made the proposal to restructure the accounts and informing her that Adam Crouch would have wanted her to attend the CVFS meeting especially if Gavin's boss had attended and (p. 812):

"Emma, we know how much you do for the company and its greatly appreciated .That said we do wish we could reduce the pressure on you as we are fully aware of the pressure you are under but no changes would ever be made to your role without your prior approval and the PDF on Monday..."

I know you have said you would like to hand in your resignation however please can you reconsider given what I have said above..."

22 April 2021 home video – sexual harassment

525. It is not in dispute that on 22 April 2021 Adam Crouch sent the claimant a home video he had made of his new office set up at his home. The Tribunal was provided with and viewed that short video footage.
526. The claimant complains that to send it to her was an act of sexual harassment because referring to the comment he makes the comment at the start of the video: *"I am sending you this because Jennie [his wife] does not get me, but you do"*
527. Adam Crouch in his evidence in chief, alleges that he sent the video of his new home office to Steve Kelly and Mr Guerriero also. He does not allege he made the same or similar comments to them. His commentary in the video is directed specifically at the claimant, he refers to her by name. Adam Crouch denies any intention to harass the claimant but alleges that felt that the claimant would appreciate how 'sad' it was, from her father's time in a senior post at WFL.
528. Mr Kelly or Mr Guerriero do not comment in their evidence in chief on being sent a video of his home office however, Adam Crouch was not challenged on this part of his evidence, in cross examination and the Tribunal therefore find on balance, he also sent a video to them but did not make the same comment.
529. The claimant complains that she was still upset about recent events and in that context it appears, she was upset about Adam Crouch sending her videos of his home office which he had spent thousands of pounds equipping and she refers to this as *'narcissistic behaviour'*
530. The implication of the allegation appears to the Tribunal to be, that the alleged complaint that his wife does not understand him is a means of encouraging a personal intimacy, it is difficult to see otherwise what the alleged sexual nature of the allegation is. Exhibiting insensitive or allegedly narcissistic behaviour, is not of itself behaviour of a sexual nature.
531. The Tribunal have listened to the audio recording of the footage and what Adam Crouch is clearly heard to say is consistent with what is set out in his evidence in chief (para 84) and not what is alleged by the claimant. The relevant extract is as follows: *" ...Jennie is not too pleased... Just thought I'd share this with you because you out of anyone will probably get the sadness or your dad definitely will. I love it, absolutely love it..."*

532. The video shows a wall of CCTV cameras and Adam Crouch is clearly excited by the new equipment he has installed which gives him greater visibility over the operation of the business. The 'sadness' in this context is clearly him poking fun at himself and using it in the vernacular to mean behaviour which is 'lame' or may be considered dull. He does not directly compare, in the terms the claimant suggests, his wife's general ability to understand him with the claimant's ability to do so. He is talking specifically about an ability to appreciate why he enjoys having such oversight of the business. He also refers to the claimant's father, and given his experience in the industry, his ability to appreciate it. The claimant does not dispute the transcript of the footage as set out in Mr Adam Crouch's evidence in chief which is not consistent with the words the claimant alleges were used.
533. Either, the Tribunal consider, the claimant is deliberately misrepresenting what was said or she interpreted it in a way which the Tribunal consider objectively, it was not reasonable for her to do. Quite why she read more than the Tribunal find was intended or could reasonably be read into his words, is perhaps reflective of a complexity to their relationship.

TIP incident

534. The claimant alleges in her witness statement (paragraph 125 page 34) that on 23 April 2021 she queried an invoice with Adam Crouch for a customer called TIP. She alleges that she pointed out that the customer was being charged too much (a handling charge and VAT on a statutory fee) and was told by Adam crouch to charge £4,500 but to take the handling fee off but continue to charge the VAT. She did this and an order number was provided by the customer and Adam Crouch replied; "*Thank you, I'm shocked they never queried that that ?*" (p.606). The customer was paying a statutory fee of £4,500 for recovery of a vehicle (S/B p.203) and objected to paying a 10% handling fee because; "*we do a lot of business with Crouch*". The customer was not alleging that it was not payable but rather negotiating the removal of it because of the amount of work they give to the business. Adam Crouch agreed to waive it. However, she appeared to be alleging that his response about them not querying it was either about the VAT being applied to the statutory fee or that they were being charged £4,500 statutory fee for a trailer when the unit had already been collected and a separate £4,500 levied, when it should have been one statutory fee to cover both.
535. The allegation was not put to Adam Couch in cross examination however, for the reasons set out below the Tribunal do not find on balance that the respondent was acting improperly or unlawfully in adding VAT to statutory fees or handling charges where they had paid them on behalf of a client. While the comment from Adam Crouch may imply that the client had reason to query the invoice, it may equally be expressing surprise given their attempt to negotiate a reduction in the bill, that they did not query another element of it. The evidence does not support a finding that the respondent was acting unlawfully, the claimant does not assert that in this message, express any concern and she appears to have processed the invoice.

23 April 2021

536. The claimant alleges that 22 April 2021, she had emailed Adam Crouch, Mrs Barbara Crouch and Mr Guerriero on 21 April 2021 raising a grievance about the allegations in list of issues 6(g) and (h) above, Adam Crouch telephoned the claimant and expressed his annoyance that the claimant had told his mother about the "*pretty*" comment (para 6(g) above) .
537. It transpired during the hearing that the claimant was referring to two separate emails, both sent on **23 April 2021**.

538. The email the claimant had sent to Adam Crouch and Mr Guerriero on 23 April 2021 (p.902) refers to having had a telephone call that morning with Adam Crouch and wanting to explain her reasons for resigning. It appears to be a response to the email from Mr Guerriero copied into Barbara Crouch on 22 April (p. 812) as it expressly states; “*I see you have copied Barbara in...*” . The 23 April email timed at 12: 09 mentions the pretty woman comment (p.904). This email is not copied to Barbara Crouch but she does state at the foot of the page ; “*(Copy not yet sent to Barbara)*”. Which the Tribunal find, would imply to a reader that she intends to send it to Barbara Crouch.
539. The email is not headed as a grievance or ask that her complaints are treated as a grievance but sets out her reasons for resigning. It includes the following comments;
- “I loved Crouch’s more than you all will ever know.” And:*
- Up until Monday 19th April 10: am my job was perfect...*”
540. The claimant also sets out her account of the chronology of events, from the call initially with Mr Guerriero when she alleges he told her the restructure was only concerned with Amelia’s accounts and not the claimants but on seeing the PDF realised her accounts had been allocated to employees in Mr Bruce’ team. She refers to being told by Mr Guerriero, when she spoke to him about the PDF document, that the PDF was intended to get her opinion and if she did not like it, it would not be actioned but this was not true because Mr Bruce had messaged her to say he is now responsible for some of : “(my) accounts”. She mentions that Adam Crouch and Mr Guerriero had arranged to have flowers delivered to her house and apologised but that when she logged on 22 April she assumed Mr Bruce had been spoken to but she saw he was still doing her accounts e.g. Zenith and that his team were submitting incorrect costings because he had told them they could . She complains that Adam Crouch had said he had met with Mr Bruce, Mr Guerriero and Mr Kelly and David Crouch and told them the claimant was back doing her accounts but she alleges Mr Bruce denies knowledge of such a meeting and after the alleged meeting had told his team he was now invoicing Knights and that he will not be following the invoicing process set up by her.
541. She goes on to assert that Mr Bruce had called her later on 22 April to tell her they were ‘no longer rolling’ with the proposed restructure and it is no ‘big deal’. She called him to speak to him and he put her call on loudspeaker with all staff members listening to him saying that it’s no big deal, “*at which point I came to the sad conclusion my job was untenable...*” (p.904) .
542. It transpired that the email to Barbara Crouch when disclosed during the hearing, sent on 23 April timed at 15:23, had been amended before she had sent it and she had removed any reference to the “*pretty*” comment (SB/ 427) .
543. The claimant alleges that Mr Crouch called her not long after she had sent the email to Barbara Crouch to complain that he had told Barbara Crouch about the pretty women comment and said ; “*I did not expect you to tell my mother*”. She alleges that Mr Crouch said he would go and get Mr Bruce because he wanted to speak to her but that she then felt broken and said “*I can’t do this anymore*” and put the down (w/s para 127 page 37).
544. Mr Crouch denies any comment to the claimant about her informing his mother about the ‘pretty women’ comment.
545. The Tribunal find that the claimant has failed to prove that Mr Crouch expressed any annoyance that she had told his mother about the ‘*pretty women*’ comment. There is no evidence that the claimant had in fact told his mother about the comment.

546. The claimant alleges she had copied Barbara Crouch into the email on 23 April 2021 and that Adam Crouch called her not long after sending it, implying that he had been aware from his mother, that the claimant had told her about the 'pretty women' comment. However, the email to his mother as disclosed late during the hearing, was amended by the claimant she accepted in cross examination, to remove this comment, something the claimant did not explain in her evidence in chief.
547. The Tribunal do not find the claimant credible in her account of this incident and find that on the evidence she has not established that Mr Adam Crouch expressed any annoyance or that there was in fact any discussion or comment from Mr Adam Crouch about her mentioning the 'pretty women' comment to his mother.

23 April 2021

548. The claimant complains that on the 23 April 2021, the claimant messaged Mr Guerriero that she felt ill because of the way she had been treated and he replied by text message.
549. She complains that his response showed a lack of compassion. But the messages at (p.1068) when read in full do not, the Tribunal find, show a lack of compassion:

Claimant: "Please don't contact me. I feel ill with this.

Mr Guerriero: " I thought you had told Adam it was sorted and you was coming back, we was just about to send the email you asked for. But if that's what you want, no problem."

Claimant: "You have made me ill Ricky".

*Mr Guerriero :"**I understand you're upset and may say things in anger but please don't accuse me of making you ill Emma**".*

Claimant: "That is a brutal text to send Ricky. It tells me what you think of me" Tribunal stress

550. What Mr Guerriero actually said however was not what is set out in the claimant's evidence in chief. His response acknowledges the claimant is upset and his response is not as direct or dismissive of her feelings as she alleges, in that he uses the words "please" to appeal to her.
551. The claimant was clearly feeling vulnerable but her concerns were taken on board and the restructure was not implemented. In cross examination when it was put to her that there was nothing 'brutal' about the response in these messages, she appeared to accept that on reflection, there was not: *"Maybe now 2 years on you think differently but heated conversation before that. That picture not telling the correct story. At the time that's how I felt."*
552. It is unclear to this Tribunal why the claimant complains that this message had anything to do with her sex and she fails to explain it in her evidence. There is no evidence that anything about this exchange was in any way related to sex.
553. The claimant alleges that she was excluded from the initial discussions about restructuring the accounts department because of her sex, the Tribunal find no evidence of that. The claimant worked from home and the Tribunal find, that had she been in the office she would have been involved in the initial discussion hence the prompt call to her afterwards.

23 April 2021

554. The claimant alleges that after the exchange of messages with Mr Guerriero she was so upset she was not answering calls or texts from Adam Crouch and that Adam Crouch then called her father, Chris Nunn (w/s para 129). She alleges that Adam Crouch told her father he had made a terrible mistake, that he would do anything to get her back and that he “loved” the claimant.
555. The claimant is allegedly relying on what her father told her however, there is no witness statement from her father. She also does not set out what if anything her father had allegedly said in response, given Mr Adam Crouch is married and the claimant lives with her partner, Mr Doughty.
556. The evidence of Mr Crouch (w/s para 88) is that he did speak to the claimant’s father on 23 April because he wanted him to encourage the claimant to return to work and said that he loved working with her, not that he loved her.
557. The Tribunal find that the claimant has failed to establish on the evidence, that Adam Crouch told her father during this call that he loved her. If he had, she did not raise this with him and was prepared to retract her resignation and return working for him after he is alleged to have said this. The Tribunal find on balance, this comment in any event, would not have been unwelcome or upset her.

23 April 2021

558. The claimant alleges that Adam Crouch emailed the claimant saying she could have a company car but she complains that she had to make four further requests the last being on 4 May 2021.
559. It is not in dispute that to encourage her to withdraw her resignation, Adam Crouch offered her a company car. Adam Crouch sent her an email on **23 April 2021** (p.951). It was a highly unusual email in the extent to which he is prepared to almost plead for her to withdraw her resignation :

“ You and I are in a situation at the moment that is clearly causing you a lot of upset and I truly never intended that.

*The whole situation that started on Monday, shouldn’t have ended like this. I am, as Managing Director and 100% shareholder of the business – accountable for this- I have no one else to blame. You are not at fault ! **I rushed in and got it wrong** – as per. **Who’d have thought it – Adam Crouch like a bull at a gate...***

I know its quite clear that I’ve undermined you on the invoicing.

*What I haven’t said to you, but should of, is that its one of the areas of the business I know is in safe hands, **You’re my right hand woman** in that front simply put ; I Trust you and I know you have the best intentions for Crouch Recovery and myself...*

The last thing I want to do is upset you or make you ill

*However, I do need to make some changes (e.g. Getting Amelia to do less invoicing so she can concentrate on control). **I guess I just went about them in the wrong way...***

Oh ...and you’d also have to have a company car- you can even throw stones at it in the garden if you like! ...”

560. In cross examination Mr Adam Crouch gave evidence that he did not believe he had undermined the claimant but he said what he thought she needed to hear because he wanted her to return to the business. However, the Tribunal as set out above, do not

finding that explanation plausible. The claimant accepted in cross examination that this email had helped to “*patch things up*”.

24 April – ‘belter comment’

561. On the 24 April 2021, David Crouch sent the claimant a message: “*Whatever happens it will not affect our friendship; I always thought you were a belter the first time I saw you*” (p.268).
562. The full message was: “*Morning. Sorry missed your call, was on injections duty COVID, I have heard what’s going on Emma. Whatever happens it will not effect our friendship hopefully, I always thought you were a belter the first time I saw you at WFL, I did not ring because I did not know if you were on your own, ring me when convenient, if I don’t answer I will ring back. X*”
563. In her Details of Claim, (p.36-37) the claimant states: “*Mr David Crouch used to message me on Facebook with messages like: “I always thought you were a belter”. We used to get on very well. His comments in the main were harmless but also not an employee v employer relationship. He was in many ways a father figure to me. And he too has subsequently blocked me and now has nothing to do with me and that is after 20 years of friendship.*”
564. During cross examination the claimant gave evidence that: “*His comments in the main were harmless that was just an example I did not say this comment is harmless. ... I just took it as strange. ... I’ve not spoken to him since I thought maybe I deserved a chat. It just did not seem maybe genuine.*”
565. The claimant the Tribunal find, was not upset by the message from David Crouch, she saw such comments as indicative of his affection for her and the closeness of her relationship with him and the Crouch family. What the Tribunal find she was really upset about was that after she left the business, he ceased contact with her and blocked her on Facebook.
566. Mr David Crouch denied in cross examination that he had intended anything sexual by the reference to ‘belter’. In his evidence in chief he states (w/s para 14): “*I state that she was a “belter the first time I saw you at WFL” as my first impression was that she was efficient and great at her job*”
567. In cross examination David Crouch gave evidence that “*...I remember saying to Roy what a belter you’ve got there because she just seemed good at her job in fact an all-round good egg.*”
568. In cross examination and in response to it being put to him that a belter can be used to describe a girl as beautiful and sexy, he replied that he had: “*...I wouldn’t refer to Emma in any way shape or form in that text. My meaning of belter was an all round good egg that’s what I meant*”. He went on to say he would reach out to Mr Guerriero or Mr Kelly if they resigned and may describe them in those terms: “*Yes I think I would anything I think is good – nice lorry that’s a belter, decent person, a belter, yes I would.*”
569. The claimant alleges that she spoke to Adam Crouch on 26 April, and discussed his Friday email. She does not allege that she raised any concern about the email from his father on 24 April. She considered things were a little more amicable and they concluded it would be best to put the incident behind them and move on. She asked for an email to be sent to the whole team to explain the events and misunderstanding and clarify her role, Adam Crouch asked her to draft it and she did . The claimant alleges (which is not disputed) that she informed Adam Crouch that sending this email would make her feel “*feel better*”. That email was sent, as she requested, on 26 April (p.625):

"I am aware that over the last week there may have been some confusion in relation to the customer accounts (i.e. who is responsible for each account what processes should be followed etc)

I wanted to confirm that : excluding the accounts within the outsourcing department and the accounts that Amelia deals with, Emma is the Accounts and Invoicing Manager for all accounts of Crouch Recovery.

As a result Emma has my full authority to follow and deploy the account management principles, processes and rate cards that she and I have developed over the last 3 years"

26 April 2021 – like his wife comment

570. The claimant alleges (w/s para 133) that on 26 April 2021, Mr David Crouch called the claimant and said that Adam Crouch spoke to her like she was his wife. David Crouch denies this in his evidence in chief (w/s para 15). He cannot even recall the conversation and gives evidence that he did not believe his son spoke to the claimant like his wife.
571. On balance, the Tribunal do not find that the claimant has established on the evidence that this comment was made. There is no reference to this by the claimant in any documents until she presented her claim. She does not allege that she complained about this comment either to David Crouch, when he is alleged to have made it, or later to Adam Crouch. Mr Doughty does not mention the claimant specifically telling him about this comment, in his evidence in chief.
572. The Tribunal found that Mr David Crouch gave evidence in a straight forward manner, and preferred his evidence. Further, had he said it, the Tribunal find, that the claimant would not at the time, have been upset by it or considered it unwelcome.

26 April 2021- picture message

573. Adam Crouch sent the claimant a picture message of his father at a desk saying ; *"our new head of accounts"* and *" don't let anyone right our relationship again xxxxxx"*
574. It is not in dispute that this message was sent. Adam Crouch admits in his evidence in chief, sending it as a joke, because it was amusing seeing his father at a desk rather than doing something practical outside (w/s para 95). He was also trying to stop the claimant from leaving the business.
575. The claimant in cross examination said: *"It was a nice message to get if it was genuine yeah it was nice"* .
576. There are kisses on the message, however, the claimant not only put kisses on the end of her messages to Adam Crouch (p. 956 – 957) , she also put them on other messages to other male work colleagues. An example is a message to Mr Guerriero 10 December 2020 at (p. 1033) . The claimant was not upset but it the Tribunal find, and it was not unwelcome.

April – May 2021

577. The claimant complains that she was told she could have a company car but she had to make four further requests for it.
578. On 29 April 2021 (p.956) the claimant sent Adam Crouch a message (p.956 – 957)

Claimant : *"If you want me back full time can you get me car please. I have to be in the office to control it."*

Adam Crouch: "Yes whatever you need. It does work though. Look at today we have had a good day haven't we ? x"

Claimant: "This is not about you or me x .

This is about Michael.

I just want to make it clear that I am not upset with you or crouch. I have moved on. I am doing the job you have asked me to do. Michael has not spoken at all. Need to clear air"

Adam Crouch : "OK agreed pop in at some point x " Tribunal stress

579. There is then a further exchange of messages on **30 April 2021** (p.958) when the claimant asks what has happened about the car and Adam Crouch replies:

"I was waiting for you to come in tbh. You can have what you want – apart from a Ferrari obviously... I spoke to VW about a car for Jennie last month...I was thinking a diesel golf ...open to suggestions or the pickups if you'd use one .Let me know and confirm address and il [sic] drop it off."

580. The claimant replies asking what the budget is for the car and is told it is £25,000. She does not reply and confirm the car that she wants until 5:35pm on **4 May 2021**. She does not ask for a pick-up but a VW Tiguan . Adam Crouch replies at 9.35pm to say he will "get onto it."

581. The Claimant resigned again the very next day.

582. In cross examination she accepted that she had she did not tell him what car she wanted until 4 May: "*I sent him the option of a car, yes* ".

583. The Tribunal find that there was no real delay in the provision of a car by the respondent. The claimant took 4 days to confirm the type of vehicle she wanted and the resigned the day after doing so.

On 27 April 2021 – daughter in law

584. The claimant complains (w/s para 108) that on 20 April 2021, Mrs Barbara Crouch messaged her to say that Adam Crouch was going to see her and David Crouch to try and help him sort things out with the claimant. The claimant the following day replied and said "*can we have a chat*". The claimant complains that her reply was very curt and she said she was "*busy out with friends*". Adam Crouch told the claimant his mother was annoyed with him for messing up and that she was unwell in bed but would not want her to know that. The claimant felt she was "*at odds*" with her (para 110).

585. On 27 April 2021 Adam Crouch sent her a WhatsApp message asking if she was invoicing, she replied that she was and was a bit upset about his mother to which he replied; "*you know how she feels about you are the daughter in law she has never had ,but do not repeat that to Jennie I will lose my house and dave too ...*" (p.345).

586. On 27 April 2021, the claimant rescinded her earlier resignation and returned to work.

587. In terms of the purpose of sending the message to her, the claimant during cross examination, did not allege the intention was to violate her dignity or have any of the proscribed effects, but the claimant stated: "*I think he was trying to distract me away from his mum, trying to pacify. Different hearing it from him or Barbara. That's how I took it. Maybe saying what I wanted to hear.*" She does not allege that it upset her to hear it and indeed, given her own comments about doing things for Barbara Crouch which her

own daughter in law could have done (p.26), the Tribunal consider that she would have welcomed this comment from Adam Crouch.

27 April 2021

588. The claimant complains that on 27 April 2021 at 21:32, Adam Crouch sent her a WhatsApp screenshot of a conversation between him and a DVSA examiner about a live TIP job and that he had previously told her that he would never make the same request of Mr Bruce because it was out of hours (w/s para 122). Adam Crouch admits in his evidence in chief that he had sent it (w/s para 97). His evidence is that the claimant worked different hours, she did not work a regular 9 to 5 which suited her and he thought she would pick it up the next time she logged on and it was an account she liked to work on. He admits he would not have sent it to Mr Bruce because his hours were more 9 to 5 and it was not an account he dealt with.
589. The claimant's own evidence in chief sets out how she organised her working time and that Adam Crouch was not the only one to send her work out of office hours. She does not allege that she refused to do the work or complained about, quite the contrary she was clearly dedicated to her job and the Tribunal find, that she was willing to be flexible in this way because she wanted to be integral to the business and continue to work from home: *"There were also many times that I had to take control room calls 'out of hours' i.e. at home. This was because the recovery jobs that I had started earlier in the day could then be processed and completed/ closed off on the company systems. Likewise, the control room staff would often email me or call out of hours usually in the evenings for help or steer with some of the major accounts : (w/s para 27) .*
590. In cross examination she accepted she often worked later in the evenings or early in the mornings. The Tribunal find that Adam Crouch sent this work to her because she was reliable and worked flexible hours and she was happy to for him to do so.

On 1 May 2021 – 'kingpin' comment

591. The claimant complains that Mr Adam Crouch messaged the claimant saying you can work wherever you want to, *"I genuinely just want you to be happy and we move forward you're the kingpin in all of this."*
592. This exchange took place on 30 April 2021 and followed on from the conversation about the company car she may want (p.958). The claimant in cross examination accepted that it was a positive message to receive at the time. She does not allege it was intended to upset her, did upset her or was unwelcome in any way.

On 1 May 2021-

593. The claimant complains that the claimant still felt unsupported after the way the restructuring of the Invoicing Team had been deal with and so asked Mr Adam Crouch in a WhatsApp message if he would support her and he reassured her that he would: (p.17/18 SB):

Claimant: "Should I stop [pulling Michael and his team up on mistakes...if nothing will change

Adam Crouch: " Yes, why wouldn't u, Its about Crouch not anything else..."

Claimant: " If Michael is horrible to me will you have my back"

Aam Crouch : "You know I will. You shouldn't have to ask x."

Claimant: " Thank you "

594. The claimant accepted in cross examination that this was a reassuring message to receive and she was grateful to have received it, hence replying by thanking him. The Tribunal find that she was not upset but it, but reassured by it.

On 5 May 2021, Mr Bruce sent emails querying the claimant's work copying in Mr Adam Crouch. The claimant did not feel supported (or the kingpin) as previously stated by Mr A Crouch and this was the last straw for her.

595. On 5 May 2021 the claimant was working from home. She was copied into emails sent from Michael Bruce copying in Adam Crouch and Mr Guerriero, she believed him to be undermining and questioning her work and that his tone was aggressive and blaming.

596. She alleges that she spoke to Adam Crouch and told him that she could not work in such an environment and either she was his right hand woman and he *"manages Mr Michael Bruce (as he had previously stated) and he will support me, or I will have to resign"* (w/s para 127).

597. She also alleges that in that same conversation she stated to Adam Crouch that she did not feel protected, supported or cared for. She alleges she highlighted the TIP incident and how he spoke to her and mentioned that she was being sent the Warren proformas to change again from Mr Guerriero and: *"now with Mr Michael Bruce acting this way it was my last straw."*

598. She alleges she offered her resignation for the second time (w/s para 128) and that Mr Adam Crouch did not respond, he ended the call and then blocked her and then a few minutes later received notification that her work emails had been cut off and 45 minutes later received her P45 from Mr Guerriero.

599. The background to this email from Michael Bruce, is that the claimant sent an email to Ms Harding on 30 April regarding a query from a client, Zenith. The query was: *"please check cost of oil and -resubmit as this vehicle only takes 8 litres – costs seem high"* (p.211 SB)

600. On **4 May** the claimant chased Ms Harding for a response and now copied in Mr Bruce: *"Any news ref Zenith query below? Zenith chasing me now"* (p.210/SB).

601. The claimant emailed again: *"I have asked Paul to look at this for me now as Zenith have chased again"*. The claimant now copied in Adam Crouch. She did not telephone Mr Bruce. The claimant was referring to Paul Tomkins, a parts supervisor .

602. Adam Crouch then replied copying in the claimant and Mr Bruce (SB/209): *"Maybe I can answer? Who chased from Zenith?"*. The claimant replied to Adam Crouch on 4 May 2021: *"Paul has done it. Chris maguire from Zenith"*

603. Mr Bruce then sent an email on **5 May 2021**, to the claimant copying in Adam Crouch, Mr Graham and Mr Guerriero (SB/208)

"Morning Emma

The vehicle does indeed hold 8 litres. We were charging £12,26 per litre for 0w/30 engine oil which is less than most garages/ suppliers charge as would have been purchased for this job/vehicle not stocked in bulk tanks. However, I can see this has been adjusted by reducing the cost by Paul. Not sure I agree with reducing to remain credible with customer.

Please can I request that all queries are sent to either myself or Tom not my admin team, they do not have the experience to deal with queries and it is not their role, Tom or I will be able to respond to any query you send in a timely manner.

I see that this is still on CV Link as a query, I understand Chris Maguire has been chasing you – do you need me to respond on CV Link?”

604. The evidence in chief of Mr Bruce is that he had seen the price for oil had been reduced by Paul Tomkins when this query had been raised with him which Mr Bruce did not agree with because the respondent were already cheaper than most garages and suppliers. Himself and Tom Graham have the experience to deal with these types of queries hence he asked for them to be sent on to them.
605. Mr Bruce denies questioning the claimant’s work but simply asked her to direct any queries to him or Tom and ended by offering to help her resolve the issue with the client. His evidence which the Tribunal accept, is that the claimant would ask him to respond if the query was technical (hence the throwing under the bus joke between them) and hence he offered to respond to the client to assist.
606. The claimant clearly read something into that message which she felt undermined her position. She complains that Mr Bruce copied in Adam Crouch however, she had herself copied Adam Crouch into her email. Mr Guerriero makes no comment about the query.
607. At 10:21 am the claimant wrote to Adam Crouch (p.964):*“You begged me to come back. You said Michael and Ricky will not be awkward. I don’t need his hassle and crap emails. Make your choice, I don’t need this x”*
608. Mr Adam Crouch gives evidence that he had no idea what emails she was referred to and this is consistent with his reply at 10:22am: *“what emails? x”*
609. The claimant replies: *“Adam I never wanted to come back. Your email said Michael and Ricky will not be awkward . They are. I don’t like **their tone**. You said in your email this is 100 not my fault. **Either Michael goes or I will. It is quite simple”** (p.964). Tribunal stress*
610. In this message the claimant is giving Adam Crouch an ultimatum, that unless he dismisses Mr Bruce, she will resign again. She does not explain in her evidence, why she alleges that Mr Guerriero was being awkward when he had simply been copied into this email about pricing. She refers to his ‘tone’ but he had not commented.
611. Adam Crouch replies to the ultimatum: *“I can’t do that quickly, Can you give me some time?”* (p.965) . The claimant increases the pressure on Adam Crouch and behaving the Tribunal consider, in a wholly unreasonable manner toward not only Mr Crouch but Mr Bruce: *“No Adam I cant”*
612. Adam Crouch tells the claimant he would have to follow a process, she then refers to other staff being dismissed within a week and tells him that he must dismiss Mr Bruce by Friday (p.966). That means dismissing Mr Bruce with 2 days notice. (The 5 May is a Wednesday).
613. Adam Crouch asks the claimant to go into the office for a meeting, but she refuses. He explains he cannot make someone redundant over a WhatsApp messages to which she replies at 11:53 am (p.968):
- “No one communicated with me when Michael took my job . Don’t know say I have to come in ! Its one rule for me and one rule for Michael, Don’t worry **I resign today**. Please let’s leave it at that . No calls emails etc”)” Tribunal stress*

614. The Tribunal consider that the claimant was behaving utterly unreasonably, demanding in effect summary dismissal of Mr Bruce for sending an email she believed undermined her position in some way. Her behaviour was irrational the Tribunal find. The claimant was leveraging how important she believed she was to the business and Adam Crouch to remove someone she saw as a threat to her position as the 'kingpin'. She gave no thought it would appear, to the financial impact of her ultimatum on Mr Bruce and his family.
615. The claimant accepts she resigned by WhatsApp at 11:53 (p. 968) and she accepts she gave an ultimatum.
616. She accepted in response to a question from the Employment Judge, that the email from Mr Bruce was not actually rude .
617. On the face of the email Mr Bruce sent, his message is courteous and helpful. He has copied in Adam Crouch after she had copied in Adam Crouch and he had become involved in the dialogue. He copied in the Finance Director but had raised an issue about pricing (not something the claimant was responsible for) and Mr Guerriero made no comment .
618. In answer to a question from the Employment Judge, when trying to understand the reaction of the claimant to this innocuous looking email, the claimant explained that she was upset because it was two weeks after the PDF had been sent to her and he had copied in others but on reflecting on the messages now, she gave evidence that:
- "Two years on, would I have reacted differently? Possibly..."*
619. The claimant in cross examination said that she had felt 'out of it' and undermined. She explained that Mr Bruce would have picked up the phone to her before to address these queries however, she had not picked up the phone to him, she had sent an email making Adam Crouch aware that the client was chasing without first contacting Mr Bruce to ensure he was aware of her earlier query .
620. The claimant alleges that she spoke with Adam Crouch on the telephone on 5 May 2021.
621. Adam Crouch denies any conversation and the Tribunal accept that his account is consistent with the exchange of WhatsApp messages which give no indication of a telephone call in between .

Conversation

622. The claimant alleges that she spoke to Adam Crouch at around 12:30 pm and it was during that conversation that she offered her resignation however, that does not appear to make sense because she had resigned in a WhatsApp message at 11:53 and stated : *"No call,s emails etc"*.
623. The Tribunal consider that the claimant was being unreasonable. She was harbouring a grudge toward Michael Bruce who she saw as a threat to her role. She was senior to him and felt that he may become as she put it, the new 'me'. She feared that working remotely he may become more important to the business and replace her in time. She would not have resigned had Adam Crouch dismissed Mr Bruce however, the Tribunal find that he had done nothing in sending that email which warranted that response.
624. The Tribunal consider that because Adam Crouch had gone to such efforts to persuade the claimant to withdraw her resignation before, she expected him to agree to her demands and in doing so remove a colleague who she feared may prove to be become as important to the business as she was.

625. The Tribunal consider that the claimant did not really want to resign, and the decision by Adam Crouch to accept her decision, both shocked her and angered her.
626. Adam Crouch replies: “*Emma, I’m speechless and disappointed, But, clearly I have to respect and expect [sic] your decision, Would you consider handover at all please ?*” (p.968)
627. Thus was not the Tribunal find, the reaction she had expected. Although her anger had been directed at Mr Bruce, the response from Adam Crouch to accept her resignation led her to direct her anger and hurt toward him and the business more generally and she refused to help with a handover (p.969), simply responding when asked to do a handover: “*No*”.
628. The claimant complains that her access was then blocked to the Apex system and when Adam Crouch asked her what she wanted them to tell customers she replied: “*And as you have now blocked all emails and apex. I am calling the customers I want to tell them the truth*” (p.969)
629. The claimant complains that the act of sending her P45 was callous and premeditated and that she broke down (w/s para 131) in front of her children. Her father contacted Adam Crouch to say how shocked he was in the way she had been treated. Adam Crouch denied knowing that Mr Guerriero had already sent her P45.
630. On 6 May Mr Kelly sent the claimant a text message to check if he could come and collect the company computers but she did not reply. When he called, her father took the call and advised him not to come.

Invoices : alleged fraud

631. The claimant complains that between May 2018 and 4 May 2021, the respondent forced her to engage in fraudulent practices, specifically: manually changing invoices to higher prices; making up fictitious repairs; adding VAT to non-VAT items or statutory fees; and adding a 10% handling charge to items that were a fixed charge as per Home Office advice. She refers to advice from FMG (P.340) and AVRO President who states that his view is that VAT cannot be charged (p.353) However, what those bodes were not provided with, was the respondent’s explanation about when they charge VAT.
632. It was put to Mr Guerriero that the claimant held a reasonable belief when challenging whether VAT was applied correctly, that it was not being applied lawfully. However Mr Guerriero’s evidence is that with her accounting accreditation, she should have understood the VAT Situation.
633. The claimant complaint of being forced to be involved in fraudulent practices with invoicing from May 2018 and 4 May 2021 would cover the period when she had worked on a self-employed basis from May 2018 to February 2020 and then when she agreed to become an employee. Therefore despite allegedly this fraudulent behaviour over this extended period, she agreed to work for the respondent as an employee and she does not explain in what way she was ‘forced’.
634. The Tribunal find that the claimant however, resigned in April 2021, not because of these alleged fraudulent practices but because she was upset about the restructuring of the invoice team. She does not allege that she asked for Warrens to be allocated to Mr Bruce as part of the restructure, she was upset about clients being taken away from her. She returned, not she alleges because of any assurances about any change in alleged fraudulent practices, but because Adam Crouch agreed not to proceed with the restructure, ‘begged’ her to stay and even offered her a company car. That is not the Tribunal find, consistent with her alleged concerns about being ‘forced’ for 3 years to

engage in alleged fraud. She issued an ultimatum to Adam Crouch, not an ultimatum to stop engaging in or involving her, in alleged fraud, but to dismiss Mr Bruce who she saw as a threat to her position in the business. Those are not the actions of someone, the Tribunal find, who has been forced for 3 years to take part in fraudulent practices.

635. In terms of the way invoices are produced; the respondent uses a software system called Apex into which information is inputted about the jobs they have carried out and from which proforma (draft) invoices for the services it has provided, are generated.
636. Adam Crouch gave evidence that sometimes the proforma invoices are not correct. Warrens, is one of their customers. It is not in dispute that Adam Crouch met monthly with Warrens' Fleet Manager, Ian Purkiss, to discuss the proformas and that following those meetings the claimant was required to amend the invoices which had been written on by hand showing the amendments agreed, by Mr Crouch or Mr Purkiss.
637. It was the claimant's job to check the invoices and send them out to the customers. She complains that she was 'forced' to change the invoices to higher prices and include fictitious repairs and alleges, it would seem, that there was some conspiracy between Adam Crouch and Mr Purkiss to inflate the invoices, although she does not explain what alleged benefit she believed it gave Mr Purkiss.

(i) manually changing invoices to higher prices and (ii) making up fictitious repairs

638. The respondent produced a number of invoices for Warrens during these proceedings which showed manuscript amendments and changes which increased the amount to be invoiced. The claimant selected 10 invoices which she sought to rely upon as establishing this alleged unlawful practice which she was 'forced' to be involved with (p.381 – 390 S/B)
639. It is apparent that the sums were increased following adjustments which were requested by Mr Crouch. It is not disputed that this followed on from meetings with Mr Purkiss. The adjustments are in many cases fairly substantial; the addition of £400 (p.382) and £4,500 (p.386).
640. The claimant relied principally in her evidence on one invoice (p.598 /SB 386). The proforma dated 4 September includes the following information: "*Location: "Montague Road near Hoffman Food. Symptom : "punctured diesel tank"*"
641. The proforma and includes 4 items including a call out fee of £45 and recovery fee of £937.75. The sums are crossed out manually and the following noted: "*4,500.00 ... SEE AC"*. The claimant alleges that changes were made fraudulently in that the invoice was altered from a recovery from an industrial estate to a roadside recovery off the M25 which meant the recovery fees changed from a standard recovery to a Road Traffic Collision and the price changed to a £4,500 statutory fee.
642. She alleges that if the recovery was off the M25 the police would be involved and a contractor for the London area would be called. Her evidence is that the call originally informing them of the location would be from the client itself, from Warrens. If the location had been reported incorrectly as Montague Road and this was later corrected, the Apex system would be updated so they knew where to send the recovery vehicle, but no changes were made.
643. She also alleges in her evidence in chief (w/s para 78) that she amended the proforma and sent it to Mr Purkiss to ask for an order number and that he replied; "*Adam sent to me, should be NFU?*". NFU is Warrens' insurer. Mr Adam Crouch replied to her and Mr Purkiss in an email stating "*do it now*" (p.594/595/598/599/600/603). It was apparent to

the Tribunal that given the food hamper example, Adam Crouch had a direct and brusque manner of communicating instructions at times.

644. The claimant alleges that she challenged Mr Crouch and stated that it was unethical and improper. Adam Crouch denies that she raised this concern with him. The claimant's own evidence on this point was not consistent. In her evidence in chief (para 78) her evidence reads as if she had challenged Mr Crouch **after** he had sent the "do it now" email and she had processed the amended invoice: "*This was then processed as [sic] a fraudulent insurance claim. I challenged Mr Adam Crouch and stated this was unethical and improper*".
645. Her oral evidence in cross examination however, was that **before** she carried out the changes she complained to Mr Crouch about it: "***Before I did it I said this is insurance fraud and he sent an email back saying "do it now". Tribunal stress***
646. The impression the Tribunal formed from her oral evidence under cross examination was that she was attempting to excuse her apparent complicit behaviour because of the tone and content of the "do it now" instruction, implying some degree of coercion or 'force' by Mr Crouch and a justification for her own involvement. However, that is at odds with her evidence in chief which indicates that the 'do it now' email was sent after she had processed the invoice with the amendments. When seeking to clarify her evidence, in response to a question from the Tribunal, she gave evidence that she had raised her concerns about fraud but changed the invoice anyway **because** of the "do it now" email.
647. When this contradiction was pointed out to her in cross examination, and that there is no email from her raising concerns, she explained it on the basis that; "*Well I did query it with Adam and he did say do it now. ... I told Adam on the telephone. He sent an email saying, "do it now"*".
648. It was not clear to the Tribunal why if she had called Mr Crouch, he would then need to send an email if she had spoken to him about alleged fraud on the telephone and why he would not have given that direction in that telephone conversation. When this was put to the claimant to explain (Adam Crouch denying there was any telephone call), she then gave evidence that she had actually spoken to Mr Crouch on the telephone **after** he had sent the "do it now" email about her concerns; "*Email from Ian Purkiss. Adam replied "do it now". I spoke to Adam on the phone and said you want me to change this from Warrens to NFU and he said yes*".
649. The claimant accepted that her evidence had changed.
650. The Tribunal find that her evidence had changed in a material respect, given that her claim is that she was 'forced' to engage in fraudulent practices. The Tribunal consider that this was another aspect of her evidence where which she did not present as a credible witness.
651. Further, she alleges in her evidence in chief that she mentioned the words 'insurance fraud' to Adam Crouch. She alleges in her evidence in chief that she said changing the invoices was 'unethical and improper', not that she alleged it was unlawful or criminal. Further, despite alleging that she stated the conduct was unethical and improper, the claimant does not comment on what Adam Crouch said in response.
652. The Tribunal do not find it plausible that when faced with such an allegation, Mr Crouch had remained silent however, the claimant makes no mention of what his response was other than he confirmed she should change it when she asked.

653. Apex provides an audit trail for a job. The evidence of Adam Crouch is that if something is added to it, it cannot be altered. The history cannot be removed. There was no history on the Apex log for this incident showing an accident on M25..
654. Adam Crouch in his supplemental evidence, gave evidence that the vehicle was recovered from the M25 so the statutory fee of £4,500 was payable. The respondent sent the recommended charge to the insurance company, it is a set fee no matter how long is spent on the recovery . He accepted that the recovery location is different between the proforma, namely Montague road, (p.207) and the final invoice (p.196) which was the M25 blocking road. Adam Crouch gave evidence that it was a foreign driver which may account for the confusion, he may have given the location as the ultimate location for dropping off his delivery but that in any event, the location point of recovery is not relevant to the fee. They have agreed fees which they can charge with insurance companies if it is a breakdown situation . He gave evidence, not disputed and accepted by the Tribunal, that in 2018 the insurance industry, in order to regulate the statutory charge system, set out criteria which have to meet and if the criteria are met the charge is payable, regardless of how long the recovery actually takes. His evidence is also that an industrial estate would be classed as 'off road' and would actually attract a higher fee of £6,000 fee.
655. The Secretary of State under the Road Traffic Regulation Act 1984 makes provision for the removal of vehicles including those which have broken down illegally, obstructively or dangerously parked, or abandoned or broken down. The respondent produced from the government website an extract from The Removal Storage and Disposal of Vehicles (Prescribed Sums and Charges) Regulations 2008 which supports the evidence of Adam Crouch. It provides that the recovery fee for a vehicle exceeding 18 tonnes **on the road** but either not upright or substantially damaged or both, is £4500 (laden). The fee for a laden vehicle of 18 tonnes which is not upright or substantially damaged which is **off road**, is higher, at £6000 (p.352)
656. The evidence of Adam Crouch that the vehicle was substantially damaged was not challenged in cross examination, only that the location was different on the invoices. The claimant's allegation that the invoices were falsified for financial gain, does not appear to be borne out by the fees set out in the Regulations.
657. It was put to Adam Crouch that Mr Doughy had been on a website for FMG which is part of the Highways Agency which records incidents on the M25 and that FMG had no record of a vehicle breaking down on the M25 on that date. The evidence of Adam Crouch which was not challenged and which the Tribunal accept, is that FMG are the appointed National Vehicle Recovery Manager for National Highways, they are not part of the Highways Agency. FMG is a private business who contact a number of contractors on their panel, such as the respondent, to carry out recovery work for the Highways Agency but he disputes that they would have a record of the respondent collecting this vehicle. He gave evidence that if there is a collision on the road, the Highways Agency liaise with FMG about arranging collection and enforce the statutory removal fee only if the vehicle is not being removed in time.
658. A police chat with Essex police disclosed by the claimant appeared to confirm that there had been no accident that they were aware of on that day (p.420 -425). The evidence of Adam Crouch was that the police may not have been involved.
659. The corrections on the invoice, it is not disputed were agreed with Mr Purkiss who was employed in a senior position by the customer.

660. Adam Crouch gave evidence that the claimant had never before her resignation, raised any issue about applying VAT to statutory charges or the changes to Warrens' invoices as being unethical.
661. The burden of proof rests with the claimant, and the Tribunal are not satisfied on the evidence that the invoice was changed improperly, the location was changed on the invoice but there is a plausible innocent explanation for it and the Tribunal is satisfied on the evidence that it would have made no difference to the fee claimed.
662. The claimant did send a WhatsApp message to Adam Crouch which is in the bundle but undated but shows that there had been some discussion about the issues with the Warren invoices previously (p.364)

Claimant: "can you call me please"

Adam Crouch: "what's up"

Claimant: "More warrens invoice changes .We did talk about this"

Adam Crouch "Don't piss me off stay quiet. That's what pays your salary !"

Claimant: " Adam that's harsh ! can we speak about this "

663. The Tribunal consider that the words "*stay quiet*" tend to indicate a desire to stop someone 'rocking the boat' however, the Tribunal take into account the manner with which Adam Crouch sometimes communicated. Mr Adam Crouch gave evidence that this conversation was because the claimant had been complaining of the amount of work involved in making all the amendments to the proformas. Her evidence under cross examination is not that she mentioned fraud or anything improper but: "*I was complaining about changes, the inflation of the invoices.*" And "*I didn't want to work on Warrens anymore.*" However, she would later have the chance to transfer some accounts to Mr Bruce (as part of a proposed restructure) but did not use this opportunity to suggest a transfer of the Warrens account or require this as part of the negotiation around the withdrawal of her resignation..
664. Despite her alleged concerns, the claimant confirmed in response to a question from the Tribunal that at the time that she did not take any steps to verify the changes and check whether or not her alleged concerns were valid. She also accepted that she did not attend recoveries and therefore has no direct knowledge of what had happened during each recovery.
665. There is evidence to suggest that there were other invoices were amendments were made. There is a transcript of a call between the claimant and Paul Tompkin on 25 February 2021:
- "claimant: Listen. On 28726 we've charged the £82 lamp. Have we now got to charge for another lamp?"*
- Mr Tompkin: Yes. Because there were two lamps.*
- claimant: Oh no **that's fine**. That threw me. That's fine."* (p.286) Tribunal stress
666. That items may be innocently missed off invoices and invoices had to be amended, is supported by an email the claimant sent an email of 23 April 2021 to Adam Crouch and Mr Guerriero where she says: "*... I conservatively add to our invoices (monthly) around £20,000 of missed items because they have been priced up incorrectly. This includes me adding recoveries instead of service vans, skates, winching and diagnostics.*" (p.903)

667. The evidence of Mr Adam Crouch in respect of increases in sales invoices generally for Warren is that Mr Purkiss was ‘technically savvy’ and would point out work that had been done and that Mr Purkiss was under pressure to keep vehicles on the road, he would sometimes condense 3 call outs into 1 invoice and identify other work that had had noted had been carried out.
668. The Tribunal take into account that the invoices disclosed which have been amended have all been increased, however ,the changes were, it is not disputed, made with the agreement of Mr Purkiss acting on behalf of the client.
669. Adam Crouch was only cross examined about the 4 September 2020 NFU invoice.
670. Mr Guerriero gave undisputed evidence, which the Tribunal accept, (w/s para 27) that the Culina Group who own Warrens, carried out a 3 week investigation following allegations made by the claimant involving Mr Purkiss after her employment ended. There was no evidence presented by the claimant, in rebuttal, that this investigation did not take place. The evidence of Mr Guerriero which on balance the Tribunal accept, is that this investigation did not result in any action and that Mr Purkiss remains employed by Warrens.
671. Further, Mr Guerriero gave unchallenged evidence (w/s para 26) that Leicestershire Police carried out a check, both on site and a desktop investigation, on 15 June 2022 in relation to the statutory fees charged by the respondent, as part of an Economic Crime Unit Investigation (following complaints by the claimant) and confirmed that they found no wrongdoing. That this was their findings is confirmed in an email dated 22 November 2022 (p.1135-1136)
- 27** The undisputed evidence of Mr Guerriero is that Mr Doughty complained to the Institute of Chartered Accountants of England and Wales, being Mr Guerriero’s governing body, in relation to allegations of amending Warren’s invoices and no action was taken (w/s para 28).
672. While the Tribunal take into account that the invoices produced do not show a reduction in the amounts charged, the Tribunal is not satisfied on the evidence presented to it, that the claimant has established on a balance of probabilities that invoices were fraudulently changed by the respondent.
673. The Tribunal also find that the claimant has not shown on a balance of probabilities, that she had raised any concerns with Adam Crouch about the Warrens invoices other than expressing some frustration at the work generated by the need to amend the invoices. That she had expressed concern about fraud and was forced to commit unlawful acts, is not consistent with how ‘gushing’ she was about the job even when she had resigned. In terms of the surrounding circumstances the Tribunal take into consideration, that the claimant enjoyed her working relationship with the respondent and in particular with Mr Adam Crouch. Further, if she was ‘forced’ to engage in fraudulent practices that would appear to be inconsistent with a relationship she appears to have valued and considered to be a trusting friendship.
674. The Tribunal certainly do not find that the claimant was forced to do anything she was not fully prepared to do.
675. However, the Tribunal also do **not** find on a balance of probabilities, that there is sufficient evidence to find that what the respondent was doing by amending these invoices was improper.
676. The Tribunal do not find that the respondent had committed fraud or that the claimant complained of fraud, believed there to be fraud or in any event, she was not ‘ forced’ as

she alleges to take part in any conduct even if she considered it to be improper. The Tribunal find that the claimant has failed to show that there the practice of amending or correcting proforma invoices was fraudulent or that the respondent made up fictitious repairs.

(iii) adding VAT to non-VAT items or statutory fees and adding a 10% handling charge to items that were a fixed charge as per Home Office advice

677. These allegations relate the practice of adding VAT and handling charges to some statutory fees. The statutory fees are prescribed for certain recoveries by the Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges) Regulations 2008: (S/B 352) .
678. Mr Guerriero explained in some detail in his evidence in chief, how the respondent added a 10% handling charge when they paid the statutory fee on a customer's behalf and recharged the statutory fee to the client. In cross examination the claimant accepted that the respondent added a handling fee by agreement with certain customers .
679. This 10% handling charge was added to compensate the respondent for the risk of the customer defaulting on the statutory fee, and the cost of credit (sometimes up to 90 days). The handling charges are clearly shown on the invoices (p.600).
680. There were occasions when the respondent waived the handling charge as a goodwill gesture for long-standing customers (SB/203).
681. It was unclear to this Tribunal why the claimant considered this to be fraud. If the respondent paid a fee on behalf of a client it was taking a risk the client may default and if the client was prepared for its own administrative purposes, to have an arrangement where the respondent paid the fee and invoiced them at a later date, it is unclear why she alleges this was improper. The claimant appears to suggest that other companies in the industry do not charge a fee, that may be correct but that does not make the practice fraudulent.
682. The claimant does not allege that she took any steps during her employment to check with any organisation, whether this practice was unlawful and nor does the Tribunal find, is there any evidence that she raised concerns about it.
683. Mr Guerriero accepted that the statutory fee could be added to the customer's invoice as a disbursement attracting no VAT however, his evidence which the Tribunal accepts, is that the respondent will add VAT at the customer's request for their own "accountancy convenience", because their systems reject invoices without VAT. He does not keep a list of which customers require this but he knows who they are.
684. During his oral evidence, Mr Guerriero also explained that adding VAT is preferable from the respondent's perspective because it removes the risk that HMRC might deem those charges to be VAT-able on any assessment.
685. The VAT is clearly shown as a separate line on the invoice: (p600).The Tribunal find therefore that on balance, the VAT is paid with the customer's knowledge and agreement, and it makes no difference to the respondent because they offset the VAT paid to the respondent when they account to HMRC for VAT. Likewise the respondent does not benefit financially from this arrangement: it simply pays the VAT received to HMRC.
686. The respondent has disclosed an email trail which starts with a colleague Ms Booth asking about VAT on MOT fees and whether there is a VAT where there is a recharge. The claimant replies there are no VAT on fees with a sad face emoji. Mr Guerriero who

is copied in replies to explain they should be charged because the respondent is not the MOT provider and the only way to “zero rate it and not charge vat” is to refer to it as a disbursement but that it is better to charge VAT. The claimant does not dispute this in the email or allege this similar practice is improper but replies on 14 October 2020 (S/B p.345):“*What Ricky said [smiling emoji face]*”

687. This would appear consistent with Mr Guerriero’s evidence that the claimant did not really understand the VAT process.
688. In cross examination, when explaining MOT fees, the claimant accepted it could be added as disbursement or VAT and; “*yes why clarified it with Ricky, being done by multiple people, some adding MOT vat and some adding as disbursement...*” . The claimant accepted in cross examination that VAT could be added because the respondent was acting as a service provider because they were arranging the MOTs for the vehicles for clients but not carrying out the actual MOT. The Tribunal accept counsels’ submission that this chimed with what Mr Guerriero was saying in his evidence that with handling charges they are similarly charging for a service.

Adding VAT to non-VAT items or statutory fees

689. The allegation relates to the respondent adding VAT to some statutory fees. The claimant alleges adding VAT was fraudulent because statutory fees are outside the scope of VAT.
690. Mr Guerriero gives evidence that FMG, distribute the recovery work to their network of contractors including the respondent.. The respondent collect the statutory fees and pay them to FMG weekly. FMG raise a ‘self- bill invoice for all the jobs for that month consisting solely of statutory fees that the respondent retain after FMG’s commission has been deducted. FMG deduct their commission and apply VAT at 20% to the invoice. (p.1123).It is FMG that adds the VAT to that portion of the statutory fees that the respondent is entitled to retain (w/s para 17 and 18). This is, he asserts in line with government guidance provided by the claimant (p. 610):
- “The contractor may be entitled to retain some or all of the fees they have collected. Where this occurs the retained amount represents consideration for a supply of recovery services by the contractor to the police and is liable to VAT at the standard rate”.*
691. There is an invoice produced from FMG (p.1123) referred to as a self-bill, showing work carried out on behalf of the Highways England for which VAT is added.
692. Mr Guerriero gives evidence that with respect to the police; the respondent collects the statutory fees and they are held on account until the end of the month when the police then raise a self-bill to the respondent to transfer the statutory charges to the police and for the police pay the respondent. (p.1119). The police, not the respondent then apply 20% to the payment for the respondent’s service .This is evidenced by an invoice from Leicester police dated 9 December 2020 (p.1119) which shows VAT not charged on statutory charges but the payment by the police for services relating to the removal of the vehicles attracting statutory charges.
693. Steve Kelly who worked with the claimant in the accounts department accepted in his evidence that he had not understand the way the VAT system worked (w/s para 79)
694. There is in the bundle (p.1132) an email from Mr Guerriero to HMRC n 16 July 2019 setting out how and when they apply VAT charges. HMRC reply on 29 July 2019 (p.1129) and later on 18 September 2021 (p.1130) with no indication that there is a concern about the way VAT is applied in these situations.

695. The claimant has not established on the evidence that the respondent was carrying out any fraudulent activities. If she believed they were, this is more likely due to her lack of understanding.

Protected Disclosures

First Alleged Disclosure: 6 May 2020 – Action Fraud

696. The claimant alleges that she made two protected disclosures.
697. The claimant, in the skeleton argument document produced during this hearing, alleges she made 2 protected disclosures and sets out the time line as follows in respect of the first to Action Fraud;

“On the 6 May 2021, after her resignation the Respondent sent an employee Mr Steve Kelly to collect the work computers from her home. Mr Kelly attempted to contact the Claimant and yet was unable to do so. Mr Kelly spoke to the claimants father who advised Mr Kelly not to come.

8 [sic] As a result of the Respondent sending Mr Kelly to her home, she also sort legal direction and in particular the Claimant was advised to speak with action Fraud.

9. The Claimant then spoke to Action Fraud .She then submitted a ‘ disclosure’ . In doing so she was given a reference number. She was also told to take care and to be vigilant and not to disclose the specific nature of her call to anyone. ...

10. Later than same day the Claimants partner Mr Doughty acting on the Claimants behalf (in light of the Mr Kelly incident) emailed Mr Adam Crouch and Mr Guerriero to advise them that the Claimant had been in contact with Action Fraud and that they had advised the Claimant to store the computers away from her home...”

698. The amendment to the claimant, allowed on the third day of this hearing, set out in the document “Alleged Further Disclosures – Protected Disclosures” alleges that the claimant spoke to Adam Crouch on the phone on 5 May 2021 at around 12: 30pm and said:

*“I do not feel protected supported or cared as you had promised me you would. I no longer feel I can do my job because of things you are asking me to do and how you are speaking to me. You said the Warrens changes would stop , I am just getting more proforma’s to change from Ricky and now Mr Michael Bruce is undermining and questioning me I don’t feel I can support you anymore **I know I am not a chartered accountant like Ricky but I am AAT qualified , I know right from wrong Adam we have been friends for a long time but this can’t go on and I am going to report you to whoever needs to know.**” Tribunal stress*

Disclosure to Adam Crouch 5 May 2021

699. The claimant alleges that after the telephone Call with Adam Crouch on 5 May 2021 he ended the call abruptly and at 1pm her access to the Apex system was blocked and her email account and password changed and her P45 sent to her by 15:13pm.
700. The above account as set out in the amendment to the claim, is not consistent with what is in her witness statement (p.128). In her witness statement (dated 20 February 2023), she makes no reference to telling Adam Crouch she was going to report him or making any reference to her qualifications. She alleges she referred to the TIP incident and how he had spoken to her and she was being sent Warren proformas to change.

701. The evidence of Adam Crouch is that there was no telephone conversation on 5 May 2021, only the WhatsApp messages. He accepts that at or around 1pm on 5 May, her access to the network was disconnected. He gave evidence that did not take this action when she had resigned before on 21 April 2021 but he now felt that the situation had dragged on long enough, he had made enough of an effort to sort things out with her and she had refused to do a handover. He took it as being clear she would not work with them again. Mr Guerriero sent her P45 at about 3:15pm that afternoon' although Adam Crouch alleges he was not aware of that at the time, however he accepts he disconnected her access so there appears to the Tribunal to be no reason for him to falsely allege that he was not aware that the Finance Director had sent out her P45.
702. The WhatsApp messages around her resignation on 5 May 2021 make no reference to a telephone call. The WhatsApp messages on 6 May 2021 are also not consistent with what she alleges she had threatened to do on 5 May. Adam Crouch wrote to her on the 6 May 2021 and his message, the Tribunal find is placatory, not angry (.p.971 at 11:06am): *"I never knew they sent out P45. Your Dad told me that ! I wouldn't never have even thought of that tbh. I don't want you to leave and I and I want you to come and seem me. Why wouldn't you just come and see me..."*
703. Her response is: *"If Ricky sent the p45 without the MD actioning it then for a chartered accountant I don't understand his ethics like keeping a record of warrens (4500 TRc and other Po changes made by Ian) and emailing them over to me as PDF records showing all of Ian's uplifted changes. Strange the things he does that you don't know about [emoji with a finger to its lips " (p.971)*
704. Adam Crouch accepts that he felt she was implying from this email with the 'shush' emoji, that something unusual was going on with the Warrens invoices.
705. On 5 May 2021 the claimant sent a WhatsApp message to Mr Kelly timed at 12:46(p.1211): *"Will still speak to you in future Kelly belly if you want to. Just so sad xxxx"*
706. On 5 May 2021 at 2:43pm the claimant sent an email confirming that the computers were ready to be collected (p.1071).
707. On 6 May 2021 Mr Guerriero at 1:57 om acknowledged the email (p.1071).
708. Later that day Adam Crouch sent Steve Kelly to collect the claimant's computer from her home, he alleges in his evidence that they wanted the computers back because they contained sensitive information for the police and Highways Agency.
709. Mr Kelly sent a WhatsApp message to the claimant (p.1211) to arrange to collect the computers but her father told him not to. A WhatsApp screenshot shows that the claimant then blocked Mr Kelly as a contact on 7 May 2021.
710. The claimant alleges that she was too upset to speak to Mr Kelly (p.134 w/s). She does not allege that she decided not to hand the computers over because she was concerned about information being concealed. The Tribunal find that at this point, she did not want to see Mr Kelly and was too upset to deal with handing over the computers.
711. The claimant alleges that she then took legal advice and was advised to submit a claim, make a protected disclosure and make a subject access request (para 135 page 42 w/s). She then refers to contacting Action Fraud. She does not allege that she had been given advice at this stage, that she had already made a protected disclosure to Adam Crouch already on 5 May 2021.

Alleged Protected Disclosure to Action Fraud – 6 May 2021

712. The first alleged protected disclosure is on 6 May 2021, after she had resigned from her employment. She claims that she spoke to Action Fraud on 6 May 2020 at **15:24pm** and said the following:

"I have left a company I worked for in Leicester yesterday, I believe there is Fraud involved with their company accounts and I told their MD yesterday that I was going to report it. But this is a big step for me because I have known the MD and his family for 20 years and I am unsure of what I need to do."

*The Action Fraud representative said "is the a criminal offence?" and I replied "yes I believe so." The Representative then said "**If you are prepared to give me the company details I can then log this as a report.**" I said, "**I need time to think about it before I give the company name.**"*

*I then called back at **15.34pm** and said to a different agent "I have just spoken to a colleague of yours that I believe my ex company is committing fraud and I now would like to make a formal report."*

*After I provided the name and address of the company the Representative asked for my name address and email. **She then asked me to explain the fraud and I said "there are two parts (1) adding VAT on statutory fees to Police and Highways charges as they have a contract with Leicestershire police and FMG Highways and (2) inflating for a customer called Warrens, they are manually adding prices so for example a simple recovery at £300 gets changed to RTC for £4,500. And the company have sent an employee to get the computers back and I am worried they will get the computers and delete the evidence."***

*The Representative then said "My advice is to store them (computers) off site in case they send someone to collect them. This call is confidential please do not share what we have discussed, **and I will give you a reference number** and I will email this to you too for you records." Tribunal stress*

713. There is a document which appears to be a computer generated response (p.697) which states: "Report complete. Your report has been submitted. You will receive confirmation to your registered email." It then provides a crime reference number .
714. The Tribunal accept on the balance of probabilities, that the claimant and her partner contacted Action Fraud however, what concerns the Tribunal is the claimant's account of what they said to them.
715. In cross examination the claimant stated that she spoke to them on 6 May on the telephone, they took her email and said they would email a crime reference number and she gave evidence that :"*you can go online, so you have an account and you can go in and see what is on line, what has been reported.*"
716. The claimant alleges she set up an account with Action Fraud but when the Employment Judge asked about being able to see in her account what she had reported, she appeared to back track, stating: "*No, just my name and address and telephone number*".
717. The claimant did not disclose a copy of what was on her Action Fraud account but the Tribunal do not find it plausible that the account would only record her contact details and not what had been recorded. The confirmation email from Action Fraud does not confirm what if any information, was disclosed at that stage.
718. The claimant did not produce any confirmation from the police or Action Fraud about what was disclosed to Action Fraud on 6 May. Given Mr Doughty had informed the Tribunal on 7 March 2023 that he was not able to deal with the strike out application of

the whistleblowing claims because he was unable to get instructions from the claimant (because she was so upset), it was not explained to the Tribunal how she was able to provide such a detailed account of what she had told Action Fraud almost 2 years after the event. She did not produce any written record which she had made at the time of contacting Action Fraud or any phone recording, which she had been able to refer to in order to recall accurately what she had said.

719. The Tribunal find that the claimant was angry at the way her resignation had been accepted so promptly and the refusal by Adam Crouch to meet her demands for the immediate dismissal of Mr Bruce. However, the Tribunal find that the claimant harboured residual hopes of reconciling or remaining on good terms with Adam Crouch and the Crouch family, hence why she was so upset when members of the Crouch family later 'blocked' her as a Facebook friend on their personal Facebook accounts. That members of the Crouch family did not want to retain a friendship with her is not consistent with someone prepared to accuse members of their family, of criminal activities.
720. The claimant's refusal to disclose what she now alleges she told Action Fraud also makes no sense in light of the fact that she makes pretty much the same allegations in her witness statement against them. She raises the allegation about VAT on statutory fees and handling charges and that she changed the Warrens invoices inappropriately (w/s paras 78/79/808182). Nothing she now alleges she said to Action Fraud is not contained in her witness statement which makes the reason she gives for not disclosing what she said to Action Fraud, even less credible.
721. There is also a transcript of a chat log on 20 May with Cambridgeshire Police (which is the second disclosure):

"This is a company that has a show on TV etc

So very public

Operator: when you say you logged the claim in detail, have you logged any claims and if so where to ?

Claimant: I have registered my details etc with action fraud and have a crime reference number but this is a massive step for me to provide all the details etc ...":Tribunal stress "...Tribunal stress

722. What this later chat log with the police suggests is that the claimant provided only her **own details** to Action Fraud and then received the crime reference number but at that stage she was still not prepared to provide the company's actual details or details of the allegations. The respondent is not referred to by name, only as the 'company'.
723. The Tribunal take into account that there is a police report (p.693 – 695) created after the police had been contacted by the respondent to recover their computer from the claimant. The first entry is 27 May 2021 and refers to attending the claimant's property and retrieving the equipment and to consider arrest for theft if the claimant refuses to and over the equipment or states they no longer have it. There is a follow up entry on 2 June , which includes the following :

*"5 June 2021 : **Mark and Emma need to raise the fraud** so this can be investigated "*

And;

*"17 June 2021 : "**suspect was advised to inform HMRC in relation to the allegation of VAT fraud as there was no record of this being done**" (p.694) Tribunal stress*

Tribunal stress

724. There is also an email from the police to Mr Doughty on 5 June 2021 (p.699): *“The next steps for you and Emma will be **to discuss how much you would like to disclose** and have investigated. ...If it is just the fraud that you wish to report as you said on the phone the call taker will refer you to Action Fraud...”* Tribunal stress.
725. Those documents support a finding that until the police had become involved in recovering the computer, the claimant, while she had registered her details with Action Fraud, the Tribunal find that she had not been prepared to provide details of the alleged fraud or indeed the name of the respondent. She was not prepared to completely burn her bridges with the Crouch family at this stage. The Tribunal find that this is the most likely explanation for what is recorded in the above documents and for her continued unwillingness (until she faced the prospect of the dismissal of the whistleblowing claims) to disclose what alleged information she had provided to Action Fraud.

6 May 2021 email

726. Mr Doughty sent an email to Adam Crouch on 6 May 2021 timed at 16:48 which read:
- “In light of the events over the last 48 hours, **Action Fraud have advised Emma that under no circumstances should she return the computers to you.** Instead (and preferably) they should be stored securely away from the property, which we have now done. You are of course more than welcome to contact Action Fraud to verify this advice.*
- Please cease contacting Emma and or her parents. That includes texting, emailing and mobile calling. I will be acting and representing Emma on all matters going forward”* (p.1072)
727. The letter did not include a signed authority from the claimant. It did not set out what the claimant now alleges she had disclosed to Action Fraud. It did not include the crime reference number.
728. Mr Guerriero gave evidence that he contacted Action Fraud and the advisor confirmed that under no circumstances would Action Fraud have suggested what was being alleged about retaining the company property and that after speaking with her supervisor, they were advised to report the matter to Cambridgeshire Police.
729. The respondent had produced an audio transcript of the call to Action Fraud (p.1207 – 1210). Within this recording Mr Guerriero states that they do not know what has been reported, and is unable to provide a crime reference number. The Tribunal accept that this was correct. The Tribunal accept on balance, that the transcript is a genuine transcript of this call and that Mr Guerriero was advised to contact the police.

Subject access request and Bloomfields letter of 19 May 2021

730. Mr Doughty sent an email to Adam Crouch on 8 May 2021 and made a subject access request on behalf of the claimant (p.722). It was a two page letter asking for all documents and correspondence where the claimant is the data subject and included: *“Post-it notes, Data Sheets, Apex, Text messages and messages to customers “ or similar or other records”...* It was not limited to any specific period of time.
731. The letter did not include written authorisation from the claimant for her partner to request this information and for it to be sent direct to him. Mr Doughty did not explain the reason for requesting the information.

19 May 2021 letter

732. The respondent's solicitors wrote to the claimant on 19 May 2021 (p.1083).
733. The claimant complains that she was belittled in this letter because she was told she had a habit of resigning, ridiculed for thinking she had employment rights, was told not to contact the respondent's customers and accused of causing mischief, threatened with an injunctive order, instructed to return the computers by 4pm on Friday 21 May 2021 or she would be reported for theft and Mr Doughty was told not to contact the company directors but make direct contact with Bloomfields.
734. It is common between the parties that this letter was sent in response to a letter of 12 May from the claimant's then solicitors, Wilkinson and Butler, which neither party has sought to admit into evidence because it was sent without prejudice.

Warned her not to contact the respondent's customers, accusing her of "causing mischief", threatening an injunctive order

735. The evidence of Mr Adam Crouch (w/s para 123) is that a representative from Manchetts, one of their clients, had called him to ask who Emma was, they had received a subject access request from her and they wanted to talk about invoicing. A contact at Zenith, another client also contacted Mr Adam Crouch to tell him that the claimant had been calling him and messaging him including occasion at 4.45am in the morning and requesting to speak to him.
736. It is accepted that Broomfield's' letter warned the claimant not to contact the respondent's customers, accused her of causing mischief and threatened an injunction:
- "Since your client has resigned **and in breach of confidentiality** we understand that your client has taken steps to contact our client's customers. It is not entirely clear on what basis the contact has been made however it can only be assumed that it is to cause harm and mischief to our client's business. We therefore require an undertaking from your client that no further contact will be made with our client's customers. Without such an undertaking our client would have no alternative but to seek injunctive relief against your client."* Tribunal stress
737. The Tribunal consider that the decision to threaten injunctive relief was no doubt as a result of the contact the claimant had made with these clients, but that it is more likely than not that this was to some degree, more than trivially influenced by the combination of the email Mr Doughty had sent to Adam Crouch on 6 May 2021 informing him that she had been in contact with Action Fraud and refusing to return their computer which was probably why they considered that she was intent on causing 'mischief'.
738. The Tribunal accept that a threat of injunctive relief is more likely than not to have caused the claimant some distress. It is not clear what she was accused of doing which was in breach of confidentiality. She had not been provided with a contract of employment and therefore it is not clear, if she had not breached an express confidentiality term, in what respect it was being alleged she had breached an implied term. Further, she appears not to have been disclosing secret information but contacting customers about their own invoices. There was therefore, the Tribunal find given how vague the allegation is and the absence of any express contractual term, probably little, if any, real prospect of injunctive relief being granted or sought.

Rebuked and belittled her accusing her of not making a disclosure to Action Fraud

739. The claimant alleges that this letter *"rebuke[ed] and belittle[ed] her accusing her of not making a disclosure to Action Fraud"*.

740. The letter states (p.1085): *“Subsequently, our client then received an email from your client’s partner, Mark Doughty advising that the laptop and computer had been handed to a secure third party in accordance with advice of Action Fraud. Immediately upon receipt of this email our client contacted Action Fraud who advised that not only had they no record of any conversation with your client or his partner they also confirmed they would not, in such circumstances, give such advice.”*
741. The Tribunal have found that Mr Guerriero had contacted Action Fraud and accept the transcript of what had been said which included the operator stating (p.1210) :*“... there’s no way that we’d advise someone to keep their computer away from the erm property and not to send it back to you, it sounds like its been completely made up ...so what she’s advised [the supervisor] is that you cant make a report us because this is classed as theft which is a police matter and so what you’d need to do is call 101 ... and then log this as a theft...”*
742. The claimant complains that Broomfield’s informed the her that she would be arrested if she did not return the computers by 4pm Friday.
743. The list of issues identifies this as the 21 May 2021, however the Tribunal understands that this relates to be the same letter of the 19 May 2021 in which Broomfields state (p.1085); *“In the circumstances please be advised that our client considers the refusal to return the company property to be theft. If the items are not returned by 4pm on 21 May 221 our client will have no alternative **but to contact the local law enforcement.**”* Tribunal stress
744. The threat was therefore made, in that letter, to contact the local law enforcement, not that she ‘would be’ arrested .
745. Mr Adam Crouch gave evidence that under cross examination that they needed to retrieve the computers: *“I just wanted ... to make clear if there was any wrongdoing with those computers getting in the wrong hands we’d gone down the appropriate channels to make sure that couldn’t happen.”*

Second alleged protected disclosure : 20 May 2021

746. The claimant contacted Cambridgeshire Police via a webchat on 20 May 2021. The claimant alleges this was her second protected disclosure. She alleges that she was told she had a lawful reason to withhold the return of the computers. (p 691).
747. The claimant relies solely on the chat-log at (SB p.174). She typed the emails but they appear as sent from Mr Doughty because she used his computer:
- “I resigned **from my company** on the grounds of constructive dismissal.”*
- Operator *“OK what have the company said in return of the laptop?”*
- I said “they are threatening to police around and charge me with theft. **This is a company** with a show on TV so very public.”*
- Operator *“When you say you haven’t logged the claim in detail have you logged any claim and if so where to?”*
- I said “I **have registered my details with Action Fraud** and have a crime reference number and this is a **massive step** for me to provide all the details etc they have already staff to my house to collect and based on Action Frauds advice to move (the computers) off site we stooped [sic]them coming.”*

Operator “I have had to approach a supervisory on this matter. You have stated you are withholding the laptop as you believe **it provides evidence of fraud you have reported**. This a lawful reason to withhold property. **However, they have the right to report you for theft if that is their belief. However, when the matter is investigated if you claims provides based then no further action will be taken.**”

I said “OK I will hold on to them then”

748. The Tribunal find that the only thing the claimant reported at this stage to Action Fraud was that she believed there had been accounting fraud, no further details were given and nor did she even identify the company.

21 May 2021 email

749. On 21 May 2021 at 14:16, Mr Doughty emailed Broomfield’s solicitors attaching a letter marked “without prejudice”. This email referred to the 19 May letter from Broomfield’s. It set out complains about her potential employment claims of discrimination and lack of consultation around the restructuring of the accounts.
750. Mr Doughty responded to the allegation that no complaint had been made to Action Fraud, not by revealing what she now alleges had been said to them, but:

“Action Fraud.

A quick internet search would show that Action Fraud would not disclose any information about a confidential claim. ...

*Nevertheless, I can confirm that Ms. Emma Nunn **has a claim reference number from Action Fraud**” . Tribunal stress*

751. Mr Doughty then referred to the computers and what had been said on the Chat log with the police on 20 May:

“ Return of The Computers.

Ms. Emma Nunn will not be returning the two computers.

Under the direction and explicit advice of Cambridgeshire Police, Ms. Emma Nunn has been advised of the following:

*“Because you (Emma Nunn) are holding on to the computers for the purposes of **reporting various and serious matters of fraud**, this is a lawful reason to withhold the property (from your ex-employer). However, **they have the right to report you for theft if that is what they believe**.” (SB p.393) Tribunal stress*

752. Mr Doughty made the following comments on behalf of the claimant:“...there has been a monumental breakdown of what was a long standing close personal and family relationship that spanned over 20 years.

More so it is unquestionably clear ...that Mr Adam Crouch and Ms Emma Nunn did not have never had a normal and/or typical employee v employer relationship... it was a very close unboundaried [sic] personal relationship with unique way of working. ...

In essence the relationship broke down due to a cataclysmic decision to change Ms Emma Nunn’s role that was made by Mr Adam Crouch ...”

26 May 2021

753. The email from Mr Doughty of the 21 May 2021 informed the respondent that Action Fraud had informed the claimant that the respondent could report them for theft if that is what they thought the claimant had done, which is consistent with what Mr Guerriero had been told. Mr Guerriero gives evidence that he then made an online report to the police on 26 May 2021. The emails from the police (p.1332 – 1335). confirm that on the 26 May the respondent reported the **theft** of the computers.
754. Shortly afterwards Mr Guerriero spoke to the investigating officer, Sean O'Hare, with Adam Crouch and Mr Taylor on speakerphone. The evidence of Mr Crouch (w/s para 119) is that they called the police and told them that the respondent was a police contractor and there was likely to be sensitive information on the computers and they did not belong to the claimant but did not mention theft. Mr Guerriero's evidence is consistent with the police emails in that he states he told the police what Action Fraud had told the respondent to report, namely that it was theft. The Tribunal find that the respondent did mention on this call, theft of the computers.
755. The police report (p.693) includes an entry on 27 May 2021 that the 'suspect' was refusing to return computer equipment and had left her employment. It does not record any further information provided by the respondent.

Public Interest

756. The claimant in response to a question from the Judge, gave evidence that she *believed* her disclosures were made in the public interest because of the contracts the respondent held with the police and she felt the public would have an interest because they had been awarded these prestigious contracts.

Malpractice

757. In answer to a question from the Judge, the claimant in terms of what malpractice she says she disclosed, gave evidence that she did not know what legal obligation had been breached and in terms of what was actively operating on her mind at the time of the disclosure: "*It was just the criminal aspect.*"

1 June 2021 : police arrest

758. The claimant was arrested at her home on 1 June 2021. The Tribunal have seen the video footage Mr Doughty took of the arrest which was in front of her young children . The Tribunal accept that the claimant was extremely distressed at being arrested. The claimant gave evidence under cross examination that: "*they said if you had them over I won't have to arrest you and I said you'll have to arrest me because I want them to go back through the correct channels.*" She could it seems however, have avoided being arrested by handing over the computers and explaining what her concerns were.
759. When Mr Doughty explained that disclosures had been made to the police and Action Fraud the claimant was released from arrest.
760. The claimant complains that the behaviour of the police was unlawful: "*Because of the false arrest, my partner submitted an immediate formal complaint to Cambridgeshire Police. The complaint was escalated to the Professional Standards Department...*" (w/s para 152).

Response to subject access request

761. The respondent replied to the claimant's subject access request in that letter of the 28 May 2021 (p.SB 237). The undisputed evidence of the claimant is that this was received on Tuesday 1 June 2021.

762. It stated that the respondent had sought legal advice and advice from the ICO. It requested a signed authorisation from the claimant and a copy of her ID to verify her signature. It stated that an initial search against its email system alone returns approximately 200GB of data, which it stated (and this was not challenged in cross examination) approximately 2,500,000 emails. The unchallenged evidence of Adam Crouch which the Tribunal on balance accept, is that the respondent calculated that it would take 200 staff members 3 months to deal with the provision of the data requested (w/s para 118). The respondent in its response, explained that the one of the requested search terms of 'Emma' appears in every email to and from the business since her tenure and appears in emails unrelated to her and thus the respondent would have to conduct a manual review . Mr Adam Crouch also gave evidence which the Tribunal on balance accept, that the advice from the ICO was to request signed authorisation from the claimant an a copy of her photo ID (w/s para 117).
763. The claimant alleges (w/s para 147) that Broomfield's had confirmed 2 weeks before , presumably in the letter of the 19 My 2021, that they agreed to provide the data. That is not the Tribunal find correct, they had agreed to: "*deal with this request in accordance with the current GDPR regulations*".(p.1085)
764. The respondent quoted from the ICO website (and the claimant does not despite that is accurately quotes the guidance) and requested that the claimant specify the processing activities the request relates to and suggested narrower search terms and argued that given the size of the organisation, the request was manifestly excessive.

3 June 2021

765. On 3 June 2021 at 16:57, Mr Doughty emailed Adam Crouch, Mr Guerriero and Barbara Crouch, the three company directors attaching another letter marked "without prejudice", which included: "*... I now need to request a copy of your 'Whistleblowing' policy. As you are aware Miss Emma Nunn has already raised issues relating to fraud within the company, specifically in our email letter dated 6th May 2021 and then acknowledged by your solicitor on the 19th May 2021.*" (SB/400)
766. Mr Doughty's email of the 6 May, is not relied upon as a protected disclosure. However, his email did not set out any details of any alleged fraud either.
767. In this letter Mr Doughty now asked for the company policies:
- " It would not be very prudent to have sight of ALL your policies and procedures that are mentioned in the Crouch Recovery employment contract (including the GDPR and Whistleblowing policies requested) . I would be incredibly grateful if you could send all these policy documents by email by no later than **5pm on Friday 4 June 2021.**"* Tribunal stress
768. Mr Adam Crouch asserts (w/s para 120/121) that the respondent did not disclose the whistleblowing policy because there was no signed authority from the claimant. The whistleblowing policy produced (p.1073) is dated 1 April 2020. The metadata for the document t(p.347) shows it was created on 8 June 2021, i.e. a few days after it had been requested and neither it nor the GDPR policy was referred to in the handbook. Adam Crouch had no explanation and gave evidence he would not know when it was created, it would be a matter for HR, namely Robert Taylor and Ameilia Tilson. Mr Doughty asserted in his cross examination that the documents had been created after the request for them had been made. However, that is not the allegation, the complaint is the delay in providing them. Not having any policies in place would explain any delay.
769. In cross examination Adam Crouch when asked if there was any reason why the policy had not been provided when the claimant first asked for it, replied simply; " no".

770. On 8 June 2021, Broomfield's replied stating they held a copy of the respondent's Whistleblowing Policy, and this would be provided once the respondent had received the claimant's signed authority for Mr Doughty to request this information on her behalf (p.717). The respondent provided a copy of the policy, one year later, on 8 July 2022 after Mr Doughty had sent evidence that he was authorised to request information on her behalf (p. 1073/1074). To request a signed authority in the circumstances, the Tribunal considered, was unnecessary and the Tribunal find that it is more likely than not, that the respondent was being unhelpful because by this stage the claimant had started ACAS early conciliation and issued a Tribunal claim.

5 June 2021

771. .On 5 June, Mr Doughty sent a letter marked "without prejudice", which included:

*"When Miss Emma Nunn contacted Action Fraud, (as per my email 6th May 2021), the **disclosure that she had made to Action Fraud fell under the Public Interest Disclosure Act 1998**. This disclosure is a protected disclosure by law. As a result, she has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by her (ex) employer done on the grounds that she has made a protected disclosure. And she is to present a complaint to an employment tribunal if she does suffer any detriment because of making a protected disclosure."*...

Furthermore, the police have once more confirmed today that Miss Emma Nunn had done the right thing in retaining the property as you had a reasonable excuse as this contains evidence of a Fraud."(SB/403)

772. Mr Doughty went on to explain that he had agreed to hand over the computers to the police to be put into protected storage but Mr Doughty still did not provide details of the alleged disclosure to Action Fraud (no doubt because, the Tribunal find, the claimant had not provided any details to Action Fraud: see p.**Error! Reference source not found.** above).
773. The Tribunal find on the evidence that none of the respondent's directors or employees knew what the claimant alleges she disclosed to the police or to Action Fraud until she disclosed it during the third day of these Tribunal proceedings. Nor had she said anything in the correspondence she had sent before this, to the respondent, indicating anything other than she had made an allegation of fraud.

Reference

774. The claimant complains that on or shortly after 22 June 2021, Adam Crouch provided only a very basic reference in terms of dates and job title in response to a request from a recruitment company through which the claimant had applied for a new role. The evidence of Adam Crouch is that he received an email from Ms Waters, requesting a reference for the claimant (p.1086) which he passed to Rob Taylor and on 22 June 2021 he provided a reference. This relates to the reference at (p.1091) and it is basic:

" It is company policy inly to confirm the dates of employment and department worked in within the organisation. This should not be taken as a comment on the competence or character of the subject of the reference". It then confirmed the dates of employment.

775. The Tribunal accept on a balance of probabilities, that Mr Crouch passed this request to Mr Taylor who prepared it and the claimant does not allege that he specifically was motivated by the alleged disclosures. It is more likely than not, the Tribunal find, that Mr Adam Crouch had some input into the reference. Further, given how close they had

been it is likely that the issues about the computer and the allegations of fraud influenced more than trivially the decision to provide only a basic reference and that Adam Crouch would have otherwise provided a fuller, personal reference.

Being Blocked

776. The claimant alleges that between 8 and 20 May 2021: Barbara Crouch blocked the claimant on WhatsApp on 8 May; Louise Guerriero blocked/ unfriended her on WhatsApp, Facebook and Instagram on 12 May; Mr Guerriero blocked/ unfriended the claimant on WhatsApp, Facebook and Instagram on 12 May; Steve Kelly blocked/ unfriended the claimant on WhatsApp, Facebook and Instagram on 13 May; and David Crouch blocked/ unfriended the claimant on Facebook on 20 May.
777. While counsel for the respondent alleges that each of these individuals has explained why they did so in their statements (and David Crouch explains why his wife Barbara Crouch did so), none of them did so because of any alleged disclosure.
778. Mr Kelly (w/s para 19) admits he was aware of a report to Action Fraud but not the specifics and decided to distance himself but denies it was because of anything said to the police or Action Fraud. However, he had wanted to remain in contact after the claimant resigned. He does not explain in his evidence in chief why he now wanted to distance himself. He only blocked the claimant on 7 May 2021, the day after the 6 May 2021 email from Mr Doughty to the respondent.
779. David Crouch states his wife blocked his account for him (w/s para 17) because they did not want the claimant to know what they were doing but denies it had anything to do with complaints to the police and Action Fraud.
780. Mr Guerriero stated it was his personal Facebook account and he was upset that she had accused him of making her ill but also referred to the accusations set out in a without prejudice letter from the claimant dated 12 May 2021, which had not been disclosed.
781. Mrs Guerriero under cross examination gave evidence she blocked her because of how she had spoken to her husband and accepted that she had blocked her 'soon after' the 12 May 2021.
782. The Tribunal do not find the explanations plausible and infer from the chronology of events and taking into account the long 20 year friendship the claimant had enjoyed with the Crouch family in particular, that the reason was at least materially influenced by the claimant alleging that she had contacted Action Fraud and refusing to return their property.
783. The claimant however does not allege that any of them were acting in the course of their employment when they blocked or "unfriended" the claimant from those personal social media accounts.

Bad mouthing

784. The claimant alleges that on or before dates in June/July 2021, Adam Crouch bad-mouthed the claimant to: (i) Mr Manchett of Manchett Recovery on 19 June 2021; Dan Ratcliffe of Ratcliffe Recovery on 20 June ; and Dan Hills of H&A Recovery on 21 June 2021.
785. Adam Crouch denies bad mouthing the claimant (w/s para 130).
786. The claimant does not put forward evidence to support the accusations. She referred to having a 'belief' because Mr Manchett blocked her on WhatsApp and LinkedIn (p.499)

,Mr Ratcliffe declined her request for a job and unfriended her on Facebook (p. 531) and Mr Hills unfriended her on Facebook and did not reply to messages about job vacancies.

787. The Tribunal consider that it appears implausible that after so many years in the industry, contacts which the claimant had maintained, had over the course of a couple of months, simply ceased contact with her. The Tribunal consider it more likely than not, that this had something to do with the situation with the respondent.
788. The claimant had herself however been in contact with Manchett and it is not clear what she had said about the respondent to them. The claimant also complains that the 'bad mouthing' was by Adam Crouch, however there is no direct evidence to link him with the decision by these individuals to cease contact with her. It may have been that they learned either through the claimant in the case of Manchetts or others, that she had refused to return company property or made allegations of fraud.
- 27** There is no evidence that it was Adam Crouch who had said things unfavourable about the claimant or indeed what it is he is alleged to have said. The Tribunal accept on balance the claimant's evidence about the conduct of these companies, but do not find that she has established on a balance of probabilities, that it was Adam Crouch who had been 'bad mouthing' her.

Eddies reference

789. The claimant alleges that on the 5 July 2021, Adam Crouch failed to provide a reference for the claimant in response to a request from a company called Eddies.
790. The evidence of Adam Crouch was that he never received a reference request from Eddies and that he has searched his emails and cannot locate any request (w/s para131). The claimant has not produced any evidence from Eddies or a copy of any request which was sent. The claimant does not allege that she wrote to the respondent at the time to enquire why a reference had not been provided or check they had received the request.
791. The burden is on the claimant to prove that the request was made and not provided, she has failed to satisfy that burden of proof.

Submissions

792. The submissions of the parties have been fully considered. The written submissions of the respondent ran to 86 pages and the claimant's 43 pages and additionally parties made oral submissions. Those have been addressed as part of the findings and conclusions but are not repeated in this judgment.
- 28** The legal authorities the Tribunal were referred to by the respondent were:
793. *Omilaju v Waltham Forest LBC (No 2)* [2005] I.C.R., *Jesudason v Alder Hey Children's NHS Foundation Trust* [2020] ICR 1226, *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337, *Warby v Wunda Group Plc* [2012] Eq LR 536, *Efobi v Royal Mail Group Ltd* [2021] ICR 1263, *Commissioner of Police of the Metropolis v Osinaike* UK/EAT/0373/09, *Thomas Sanderson Blinds Ltd V English* UK/EAT/0316/610/JO, *Reed V Stedman* [1999] IRLR 299, *Land Registry v Grant* [2011] ICR 1390, *Pemberton v Inwood* [2018] ICR 1291, *Heathrow Express Operating Co Ltd* [2022] IRLR 558, *Richmond Pharmacology Ltd V Dhaliwal* [2009] IRLR 724, *Evans v Xactly Corporation Ltd (UKEATPA/0128/18/LA)*, *Forbes V LHR Airport Ltd* [2019] ICR, *Manchester NHS Trust v Fecitt* [2012] ICR 372, *International Petroleum Ltd v Osipov (UKEAT/0058/17/DA)*, *South London & Maudsley NHS Trust v Dathu* [2008] IRLR 350

794. *Bungay v Saini* EAT 0331/10, *Veolia Environmental services v Gumbs* UK/EAT/0487/12, *Minto v Wernick Event Hire Ltd* ET/2340643/09, *Majrowski v Guyd and St Thomas NHS Trust* HL 12 Jul 2006, *Cast v Croydon College* [1998] IRLR 318, *Southern Cross Healthcare v Owolabi* UK/EAT/0056/11, *Hendricks v Metropolitan Police Commissioner* [2002] EWCA 1686, *Lyfar v Brighton and Sussex University Hospitals Trust* [2006] EWCA Civ 1548, *Chesterton Global v Nurmohamd* [2017] EWCA Civ 979, *Dr N Malik v Cenkos securities Plc* UKEAT/.0100/17/RN, *Malik v Bank of Credit* [1998] AC 20.

Legal Principles

Constructive unfair dismissal claim

795. The starting point is the statutory provisions pursuant to which a claim for constructive unfair dismissal may be brought. Section 95 of the Employment Rights Act 1996 provides :“(1) For the purposes of this Part an employee is dismissed by his employer if (and subject to subsection (2) . . ., only if)— (c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.”
796. The approach to constructive dismissal is set out by Lord Denning in **Western Excavating (ECC) Ltd v Sharp 119781 1 All ER 713, 119781 QB 761, 119781 2 WLR 344, CA**, and the Tribunal have reminded itself of that approach:
797. The guidance around a breach of the implied term of trust and confidence is set out in **Malik v. Bank of Credit; Mahmud v. Bank of Credit (19987 AC 20; 1199713 All ER 1; 119971 IRLR 462; 1199713 WLR 95; 119977 ICR 606** where Lord Steyn held that an employer shall not: “...without reasonable and proper cause, conduct itself in a manner calculated (or) likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.”
798. In **Lewis v Motorworld Garages Ltd 119867 ICR 157**, Glidewell LJ pointed out that (at p 169 F-G) that the last action of the employer which leads to the employee leaving need not itself be a breach of contract.
799. In **Omilaju v Waltham Forest London BC 1200511 All ER 75** Dyson LJ gave the following guidance at paragraph 21: “If the final straw is not capable of contributing to a series of earlier acts which cumulatively amount to a breach of the implied term of trust and confidence, there is no need to examine the earlier history to see whether the alleged final straw does in fact have that effect. Suppose that an employer has committed a series of acts which amount to a breach of the implied term of trust and confidence, but the employee does not resign his employment. Instead, he soldiers on and affirms the contract. He cannot subsequently rely on these acts to justify a constructive dismissal unless he can point to a later act which enables him to do so. If the later act on which he seeks to rely is **entirely innocuous**, it is not necessary to examine the earlier conduct in order to determine that the later act does not permit the employee to invoke the final straw principle.” Tribunal stress.
800. If a final straw is entirely innocuous, this does not mean that all previous conduct by the **employer** is irrelevant: **Mr C Williams v The Governing Body of Alderman Davies Church in Wales Primary School UKEAT/0108/19.HHJ** Auerbach:
"so long as there has been conduct which amounts to a fundamental breach, [the breach has not been affirmed], and the employee does resign at least partly in response to it,

constructive dismissal is made out. That is so, even if other, more recent, conduct has also contributed to the decision to resign."

801. **Mr C Williams v The Governing Body of Alderman Davies Church in Wales Primary School:** The conduct amounting to a repudiatory breach does not have to be the only reason for resignation, or even the main reason, so long as it materially contributed to, or influenced, the decision to resign.

Harassment related to sex or of a sexual nature

802. The starting point is the statutory provision under section 26(1) EqA 2010 provides that:

"(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.

803. **Thomas Sanderson Blinds Ltd v English EAT 0316/10** : *unwanted conduct* means conduct that is unwanted *by the employee*. Whether conduct is 'unwanted' should largely be assessed from the employee's point of view.

804. In **Reed and anor v Stedman 1999 IRLR 299, EAT**, the EAT noted that certain conduct, if not expressly invited, can properly be described as unwelcome. Conduct that is by any **standards** offensive or obviously violates a claimant's dignity will automatically be regarded as unwanted.

805. The **EHRC** Employment Code gives an example at paragraph 7.8.

806. If the **claimant** has made it clear, through words or conduct, that she personally has no objection to the conduct, that conduct will not be unwanted: **Mbuyi v Newpark Childcare (Shepherds Bush) Ltd ET Case No.3300656/14**.

807. **Grogan v Clayton Projects Ltd t/a Petre Dental and anor ET Case No.2400630/14**: For a **period** there was no suggestion that the claimant objected to his jokes, and she responded in extremely familiar terms and with coarse language.

808. Conduct that is clearly not objected to will not be 'unwanted' even if most people would find the conduct in question unacceptable to the extent that it could be regarded as inherently unwanted: **English v Thomas Sanderson Blinds Ltd 2009 ICR 543, CA**

809. However, the fact that the conduct has been going on for a long time with no apparent **objection** does not necessarily mean that the claimant accepts or condones it: **Munchkins Restaurant Ltd and anor v Karmazyn and ors EAT 0359/09**.

Related to sex

810. In ***Bakkali v Greater Manchester Buses (South) Ltd*** [2018] I.C.R. 1481 Slade J held that: 31. ... Conduct can be “related to” a relevant characteristic even if it is not “because of” that characteristic.... A tribunal will determine the complaint on the material before it including evidence of the context in which the conduct complained of took place.”

Effect

811. The test has both subjective and objective elements to it. Even if, viewed objectively, the conduct could reasonably be considered to violate a claimant’s dignity, it will not do so if the **claimant’s** subsequent actions demonstrate that he or she did not personally consider it to do so: ***Thomas Sanderson Blinds Ltd v English*** EAT 0315/10 the EAT
812. In ***Richmond Pharmacology v Dhaliwal*** 2009 ICR 724, EAT, Mr Justice Underhill, then **President** of the EAT, said: “Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended’ and certain one-off acts might violate an employee’s dignity but would not be sufficient by themselves to create a degrading environment for the employee”.
813. The **meaning** of the term ‘environment’ was considered in ***Pemberton v Inwood*** 2017 ICR 929, EAT.
814. ***Weeks v Newham College of Further Education*** EAT 0630/11. Mr Justice Langstaff, then **President** of the EAT “21. ...An environment is a state of affairs. It may be created by an incident, but the effects are of longer duration..”.

Of a sexual nature

815. The following examples of sexual harassment are given in the EHRC Employment Code: unwelcome sexual advances, touching, sexual assault, sexual jokes, displaying **pornographic** photographs or drawings, or sending emails containing material of a sexual nature (see para 7.13).
816. The **EHRC** technical guidance emphasises that, while the conduct must be sexual in nature to fall within S.26(2), it does not need to be sexually motivated.

Direct discrimination

817. Section 13 of the EqA provides that: (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.
818. An employer may be liable for harassment under section 26 EqA where it failed to safeguard the employee from harassment by a third party, and this failure itself was **related** to the relevant protected characteristic : ***Macdonald v Ministry of Defence and another case*** 2003 ICR 937, HL and ***Tesfagiorgis v Aspinalls Club t/a Crown London Aspinalls and ors*** ET Case No.2202256/20

Employee status

819. Mr Justice MacKenna in ***Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance*** 1968 1 All ER 433, QBD: ‘A contract of service exists if these three conditions are fulfilled. (i) The servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the **performance** of some service for his master. (ii) He agrees, expressly or impliedly, that in the performance of that service he will be subject to the other’s control in a sufficient degree to make that other master. (iii) The other provisions of the contract are consistent with its being a contract of service.’

820. **Revenue and Customs Commissioners v Atholl House Productions Ltd 2022 EWCA Civ 501, CA**, mutuality of obligation and the right of control are necessary pre-conditions to a finding that a contract is one of employment.
821. Following the *Ready Mixed Concrete* decision, the courts have established that there is an 'irreducible minimum' without which it will be all but impossible for a contract of service to exist which entails three elements: control, personal performance, and mutuality of obligation.

In the course of employment?

822. According to the Equality and Human Rights Commission's Statutory Code of Practice on **Employment** (2011) ('the EHRC Employment Code'), 'the phrase "in the course of employment" has a wide meaning: it includes acts in the workplace and may also extend to circumstances outside such as work-related social functions or business trips abroad.
823. The test is whether the employee's wrongful acts were so closely connected with his or her employment that it would be fair and just to hold the employer vicariously liable.: **Waters v Commissioner of Police of the Metropolis 1997 ICR 1073, CA**.
824. Similarly, in **HM Prison Service and ors v Davis EAT 1294/98** The incident of **harassment** had only the 'most slender of connections' with work and had not occurred in the course of employment.
825. In **Forbes v LHR Airport Ltd 2019 ICR 1558, EAT**, Mr Justice Choudhury, then President of the EAT, observed that it may be very difficult to ascertain whether there is a **sufficient** nexus between an activity carried out on a personal social media account and a person's employment. If that account is used for purposes relating to work, then there might be a sufficient connection with work to render an act done on that account as being done in the course of employment. If the link with work is tangential or more tenuous, then it might well be open to a tribunal to conclude otherwise. The EAT did not think it possible or even desirable to lay down any hard and fast guidance as to when such conduct should incur employer liability, especially as the extent to which social media platforms are used continues to increase.
826. **Mohamud v Wm Morrison Supermarkets plc 2016 ICR 485, SC**, the Supreme Court stated that when applying the 'close connection' test, it is necessary to ask the following two **questions**: what was the nature of the job or 'field of activities' entrusted by the employer to the employee? was there sufficient connection between that job and the wrongful conduct to make it right, as a matter of social justice, for the employer to be held liable?

Liability of principals for agents

827. Section 109(2) of the Equality Act 2010 (EqA) makes a principal liable for **discriminatory** acts committed by an agent while acting under the principal's authority. It provides that '*anything done by an agent for a principal, with the authority of the principal, must be treated as also done by the principal*'.
828. It does not matter whether that thing is done with the principal's knowledge or **approval** S.109(3).
829. The 'reasonable steps' defence under S.109(4) only applies to the liability of employers for acts carried out by their employees.
830. In **Ministry of Defence v Kemeih 2014 ICR 625, CA** Lord Justice Elias (giving the leading judgment) referred to *Yearwood v Commissioner of Police of the Metropolis and*

anor and other cases 2004 ICR 1660, EAT, where the EAT held that the terms ‘agent’ and ‘principal’ are common law concepts and Parliament must therefore have intended to transpose the common law concept of agency into the discrimination legislation.

831. **Unite the Union v Nailard 2017 ICR 121, EAT**, the EAT observed that, in determining whether there is an agency relationship, regard must be had to what, if anything, the putative agent was authorised to do.

Agents

832. **Yearwood v Commissioner of Police of the Metropolis and anor and other cases 2004 ICR 1660, EAT**; ““(1) Agency is the fiduciary relationship which exists between two persons, one of whom expressly or impliedly consents that the other should act on his behalf so as to affect his relations with third parties, and the other of whom similarly consents so to act or so acts. ...”

Acting with the authority of the Principal?

833. **Unite the Union v Nailard 2019 ICR 28, CA**, Lord Justice Underhill endorsed the formulation that ‘the principal will be liable wherever the agent discriminates in the course of carrying out the functions he is authorised to do’.
834. The test of authority is whether the discriminator was exercising authority conferred by the principal and not whether the principal had in fact authorised the discriminator to discriminate: **Bungay and anor v Saini and ors EAT 0331/10**

Protected disclosures

835. Section 43B ERA defines a protected disclosure as :

(1) In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

- (a) that a criminal offence has been committed, is being committed or is likely to be committed,*
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,*
- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,*
- (d) that the health or safety of any individual has been, is being or is likely to be endangered,*
- (e) that the environment has been, is being or is likely to be damaged, or*
- (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.*

Disclosure of information

836. The disclosure must be of *information*. This requires for conveying of facts rather than the mere making of allegations: **Cavendish Munro Professional Risks Management Ltd v Geduld [2010] ICR 325 EAT**.

Reasonable belief

837. Section 43B (1) requires that, in order for any disclosure to qualify for protection, the disclosure must, in the ‘*reasonable belief*’ of the worker: be made in the public interest, and tends to show one or more of the types of malpractice set out in (a) to (f) has been is being or is likely to take place.
838. **Babula v Waltham Forest College [2007] EWCA Civ 174, [2007] ICR 1026 (1)** *The definition has both a subjective and an objective element: ...The subjective element is that the worker must believe that the information disclosed tends to show one of the six*

matters listed in sub-section (1). The objective element is that that belief must be reasonable. (2) A belief may be reasonable even if it is wrong...

Public Interest

839. The worker must have a reasonable belief that the disclosure is in the public interest but that does not have to be the worker's predominant motive for making the disclosures; see Lord Justice Underhill's comments **Chesterton Global Ltd. v Nurmohamed [2018] ICR 731 CA** at paragraphs 27 to 30." *...while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it...*"

840. When considering the public interest the Court of Appeal in Chesterton made the following observations of Lord Justice Underhill;

*35. It is in my view clear that the question whether a disclosure is in the public interest depends on the **character of the interest served** by it rather than simply on the numbers of people sharing that interest. ...*

Reasonable belief in the wrongdoing

841. As the EAT put it in **Soh v Imperial College of Science, Technology and Medicine EAT 0350/14**, there is a distinction between saying, 'I believe X is true' and 'I believe that this information tends to show X is true'. The EAT observed as long as the worker reasonably believes that the information tends to show a state of affairs identified in S.43B(1), the disclosure will be a qualifying disclosure for the purposes of that provision even if the information does not in the end stand up to scrutiny.

842. When considering whether a worker has a reasonable belief, tribunals should take into account the worker's personality and individual circumstances: **Korashi v Abertawe Bro Morgannwg University Local Health Board 2012 IRLR 4, EAT..**

Criminal offence

843. Lord Justice Morris's in **Ellis v Home Office 1953 2 QB 135, CA**, commented on the public interest in justice being seen to be done.

Detriment

844. Section 47B of the ERA provides that: *(1)A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.*

Detrimental Treatment

845. **Ministry of Defence v Jeremiah 1980 ICR 13, CA**, Lord Justice Brandon said that 'detriment' meant simply 'putting under a disadvantage'.

846. House of Lords in **Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337, HL**. Lord Justice Brightman stated that a detriment 'exists if a reasonable worker would or might take the view that [the action of the employer was in all the circumstances to his detriment]'. It is not necessary for there to be physical or economic consequences to the employer's act or inaction for it to amount to a detriment.

Causation

847. In order for liability under S.47B to be established, the worker must show that the detriment arises from the act or deliberate failure to act by the employer: **Abertawe Bro Morgannwg University Health Board v Ferguson 2013 ICR 1108, EAT.**

848. In **Bullimore v Potheary Witham Weld and anor (No.2) 2011 IRLR 18, EAT**, “Questions of remoteness – “cause in law” – are judged by different criteria, such as whether the consequences in question were “direct” or “natural” or foreseeable, though no single criterion is determinative in all cases. The ultimate question is how far, in the circumstances of the particular case, the responsibility of the tortfeasor ought fairly to extend.”

Burden of Proof

849. Section 48(2) of the Act provides: (2) *On a complaint under subsection (1), (1ZA), (1A) or (1B) it is for the employer to show the ground on which any act, or deliberate failure to act, was done.*

850. **Court of Appeal in NHS Manchester v Fecitt [2012] IRLR 64**, the tribunal must determine whether the protected disclosure in question materially influenced (in the sense of being more than a trivial influence) the employer’s treatment.

Knowledge of protected disclosure

851. **Malik v Cenkos Securities plc EAT 0100/17** Mr Justice Choudhury considered that it was impermissible to import the knowledge and motivation of another party to the decision-maker for the purpose of establishing liability under S.47B.

Judicial proceedings immunity

852. In **Darker v Chief Constable of West Midlands Police 2001 1 AC 435, HL**, the House of Lords confirmed that immunity extends not only to the actual evidence of the witness in the witness box but also to the preparation of witness statements, even if the trial never takes place.

853. It applies to Tribunal proceedings: **Heath v Commissioner of Police of the Metropolis 2005 ICR 329, CA.**

854. The respondent in its submission relies upon : **South London & Maudsley NHS Trust v Dathl [2008] IRLR 350** where Judge McMullen QC referred to the restatement of the law by **Devlin J in Lincoln v Daniels [1962] 1 QB 237 AT 258**; Devlin LJ concluded at 263: *“I have come to the conclusion that the privilege that covers proceedings in a court of justice ought not to be extended to matters outside those proceedings except where it is strictly necessary to do so in order to protect those who are to participate in the proceedings from a flank attack. It is true that it is not absolutely necessary for a witness to give a proof, but it is practically necessary for him to do so, as it is practically necessary for a litigant to engage a solicitor. The sense of Lord Halsbury’s speech is that the extension of the privilege to proofs and precognition is practically necessary for the administration of justice; without it, in his view, no witness could be called. I do not think that the same degree of necessity can be said to attach to the functions of the Bar Council in relation to the Inns of Court. It is a convenience to the public to have a central body to deal with, but that is as high as it can be put. In my judgment the defence of absolute privilege fails.”* Tribunal stress

Conclusions and analysis

Constructive Unfair Dismissal

Between 2018 to 4 May 2021, the respondent forced the claimant to engage in the fraudulent practice of (i) Manually changing invoices to higher prices and (ii) making up fictitious repairs

855. As set out in its findings of fact, the Tribunal have not found that the claimant was between May 2018 and 4 May 2021, forced by the respondent to engage in fraudulent practices, specifically manually changing invoices to higher prices or making up fictitious repair. Further, even if she had concerns that something improper may be taking place, the Tribunal certainly do not find that the claimant was forced to do anything she was not fully prepared to do.
856. She resigned not because of any concern over the invoices, but the Tribunal conclude that she resigned because she felt that she may become less important to the respondent because of Michael Bruce and the refusal of Adam Crouch to dismiss him.
857. The Tribunal conclude that being required to amend invoices as alleged, did not cause or contribute to a breach of the implied term.

Adding VAT to non-VAT items or statutory fees

858. As set out in its findings of fact, the Tribunal do not find that adding a handling fee to invoices was a fraudulent act or that the claimant believed it to be at the time, and if she did she was mistaken but the Tribunal conclude that she was not unduly concerned by the practice. She had been preparing invoices for 3 years with no complaint and this was not the Tribunal conclude, a reason for her decision to resign.
859. The Tribunal conclude, that this did not cause or contribute to a breach of the implied term.

On 8 February 2020, Mr Adam Crouch (“Mr A Crouch”) did not provide the claimant with a contract of employment in response to her request of the same day

860. As set out in the findings, the claimant asked for a contract of employment, over a year before her contract ended and one was not provided. The Tribunal find however, that the claimant was content to continue to work for the respondent without one.
861. In the particular circumstances, the Tribunal find that objectively this did not breach or contribute to a breach of trust and confidence between the parties. The claimant trusted the respondent to treat her differently to other staff, she considered that the relationship was as much a friendship as a working relationship and this ‘blurring’ of the relationship was the reason the Tribunal find, behind the response she received from Mr Adam Crouch rather than any intention to damage or undermine their relationship, nor was it in the circumstances likely to .
862. The Tribunal conclude that the respondent's conduct on not providing the contract in February 2020 could not, in the rather unusual circumstances of this case, objectively be said to be calculated, or in the alternative, likely, to seriously damage confidence and trust between the claimant and the respondent. The Tribunal conclude that in any event, that conduct played no part in her decision to resign.

On 2 March 2020, Mr A Crouch refused C’s request for a private office when Mr Rob Taylor, Mr Rob Garner, Mr Ollie Barton, Mr Steve Kelly and Mr Ricky Guerriero each had their own offices (LoC/13(g));

863. The claimant primarily worked from home and enjoyed the flexibility this gave her. The Tribunal conclude that the reason she was not given an office, (in terms of whether this was intended to have the effect of breaching trust and confidence) was not because of

her gender, but because it was not deemed necessary for her to carry out her role as set out in its findings of fact.

864. The Tribunal find on balance, that the claimant did not however complain about not having an office but in any event, she did not require one. The Tribunal conclude that not having her own office cannot in the circumstances, objectively be said to be calculated, or in the alternative, likely, to seriously damage confidence and trust between the claimant and the respondent.
865. Further, the claimant raised no complaint about not having an office of her own and this had always been the situation and the Tribunal conclude that any alleged request on 2 March 2020 for an office, played no part in her decision to resign in May 2021.
866. This incident the Tribunal conclude that not cause or contribute to a breach of the implied term.

On 13 March 2020, Mr Guerriero suggested to the claimant that they take over running the business temporarily so that Mr A Crouch could spend time with his wife, but Mr A Crouch turned down this offer as he wanted to continue working:

867. The Tribunal has reached a finding that no such suggestion was made or rejected. This simply did not take place.
868. As set out in its findings of fact, the Tribunal conclude that not stepping back and allowing her to run the company, cannot in the circumstances, objectively be said to be calculated, or in the alternative, likely, to seriously damage confidence and trust between the claimant and the respondent.
869. This incident the Tribunal conclude did not cause or contribute to a breach of the implied term.

On 19 March 2020, Mr A Crouch said to C “how do you feel about being company secretary so I can take my mum off?”

870. The Tribunal as set out in its findings of fact, have found that this comment was not made and even if it was, the claimant had not indicated she would want the role and does not allege that it was actually formally offered to her or that she expressed a firm interest in it.
871. The Tribunal conclude that any comment to the claimant about how she would feel about being company secretary, in circumstances where no alleged firm offer was made and she does not allege she said she wanted the role, cannot in the circumstances, objectively be said to be calculated, or in the alternative, likely, to seriously damage confidence and trust between the claimant and the respondent and nor did it form part of her reason for resigning over one year later.
872. This incident the Tribunal conclude did not cause or contribute to a breach of the implied term.

In January 2021, Mr A Crouch refused C’s request to attend a recovery job as other staff had done (LoC/13(c));

873. The Tribunal conclude that this request was not made on the evidence as set out in the findings of fact but even if it had and had been refused, the Tribunal conclude that it is not objectively conduct calculated or likely to destroy or seriously damage the relationship of trust and confidence.

874. Further, Adam Crouch had reasonable and proper cause to require the claimant to focus on the job she was contractually required to do and for which she was paid, which was important to the successful operation of the business.

875. This alleged incident the Tribunal conclude did not cause or contribute to a breach of the implied term.

On 19 April 2021, Mr Guerriero, Mr Bruce and Mr A Crouch had a meeting in the morning to discuss the reorganisation of the accounts team without the claimant present. As a result an agreement was reached between the 3 men whereby they decided to give the claimant's role to Mr Bruce.

In the afternoon Mr Guerriero then sent the claimant an email attaching a PDF showing without warning and consultation the accounts reorganised and that her role and status as account manager had unilaterally and fundamentally changed and Mr Bruce had been allocated several of her accounts to manage.

876. The Tribunal have found that the respondent had a sound business reason for seeking to restructure the invoicing system and in principle, the claimant accepts she had no objection to it. Her objection was to the proposed clients she would be allocated. The proposal was not to give her job to Mr Bruce as set out above in the findings of fact and she was not excluded from that initial chat in the office, because of her gender. It would have meant quite a significant change to her job however, in that she would no longer be responsible for a significant number of key clients that she had built relationships with.

877. The respondent had however, a reasonable and proper cause for the proposed restructure (which they did implement after she had resigned).

878. Looked at objectively, the Tribunal conclude that there was nothing about the proposal itself that amounted to conduct by the respondent, which was calculated or likely (objectively) to destroy or seriously damage the relationship of confidence and trust between employer and employee.

879. However, what then happened, was despite being assured that it was a proposal subject to consultation, the respondent began to implement it within the invoicing team. Adam Crouch sent Mr Bruce an email relating to Knights, which had been an account the claimant had always dealt with and as set out in the findings of fact, Michael Bruce began to give instructions to the invoicing team in line with the proposed restructure.

26 Adam Crouch stated to the claimant, that he had rushed in like a *"bull at a gate"*, went around it in the wrong way and undermined her. The Tribunal find that rushing in as he had and Mr Bruce starting to instruct the invoicing team on the new structure, without the promised consultation taking place with the claimant, was conduct which in the circumstances, objectively can be said, while not calculated to, was likely, to seriously damage trust and confidence between the claimant and the respondent, and that it did so.

Harassment related to sex

880. There is no evidence that this proposal was in any way related to sex. The proposal was made for genuine and legitimate business reasons and Mr Bruce, was to be allocated some of the key accounts, not on grounds of gender but because of his experience and role within the business.

881. The Tribunal conclude that this was unwelcome conduct and that objectively it was not reasonable for this proposal to have any of the proscribed effects. However, the steps

that were then taken, without consulting the claimant to implement it as set out in the findings of fact, the Tribunal accept had the effect (albeit not the purpose) of causing her significant upset and she felt undermined and humiliated until Adam Crouch reassured her that the proposal would not proceed and apologised in the 23 April 2021 email. The Tribunal conclude the effect was to create a humiliating working environment for her, in circumstances where staff were feeding back to her that she was being undermined.

882. However, regardless of the effect, these steps the Tribunal find were not related to her sex. The Tribunal conclude that Adam Crouch saw the sense in the proposal and was rushing ahead with it for that purpose and Mr Bruce followed his example in taking step steps to inform his team.

Direct discrimination

883. The Tribunal conclude that the claimant was treated differently from Mr Bruce, albeit she does not identify him as a male comparator, in that he was involved to a limited extent in the initial discussion before the PDF was produced. However, his circumstances were materially different circumstances to the claimant's, in that he worked at the office and therefore was on hand to have an initial chat about the proposal.
884. Mr Guerriero called and offered the claimant an opportunity to discuss the proposal. In any event, the Tribunal conclude that the decision to have an initial chat with Mr Bruce and send out the proposal in a PDF, was not in any way on the grounds of the claimant's sex. It was a business change Adam Crouch felt was required, the claimant was home working and she would have been in the initial discussion had she been in the office.
885. Ultimately because of the strength of her feelings, the proposal was abandoned.
886. There is no evidence that the informal meeting between Mr Couch, Mr Bruce and Mr Guerrero was in any way related to sex or on the grounds of her sex, and nor is it accepted that while it remained a proposal, it violated her dignity at work or had the proscribed effect on her working environment and that it was objectively reasonable for it to have that effect.
887. It was the conduct of Adam Crouch and Michael Bruce in particular the Tribunal find, and attempts to start to implement the proposal which upset her however, this was not the Tribunal conclude because of her sex but because this was a proposal which seemed a sensible way to proceed, which the claimant herself conceded..
888. The complaint of direct discrimination and harassment related to sex is not well founded and is dismissed.

On 23 April 2021, Mr A Crouch called the claimant from Mr Guerriero's office with Mr Kelly and Mr Guerriero on loudspeaker. He stated that they had Mr Bruce in a meeting that same morning to say that he is now not doing the new job that was discussed with him (on Monday). Furthermore, Mr A Crouch stated that "we have put him (Mr Bruce) back in his box"

889. This conversation took place on **22 April 2021**. The claimant was spoken to and told that Mr Bruce had been told that the proposal was not going ahead. Mr Bruce as set out in the findings of fact, had not been called into the meeting with all the others attendees present but he had been told that the proposal would not be implemented which is what the claimant wanted.
890. It is unclear why the claimant takes issue with being told Mr Bruce had been 'put back in his box', which is what it seems she wanted but in any event it is not accepted this was said or she was told this.

891. The Tribunal conclude that objectively the alleged conduct cannot be said objectively to be calculated, or in the alternative, likely, to seriously damage confidence and trust between the claimant and the respondent. Mr Bruce had been spoken to and that was confirmed to her by Mr Bruce himself.
892. After this incident the claimant decided to withdrawn her resignation and remain employed by the respondent.
893. This incident the Tribunal conclude could not and did not, cause or contribute to a breach of the implied term.

On 19 April 2021, Mr Bruce called claimant's mobile from The respondents office, the claimant asked to be taken off loudspeaker but Mr Bruce did not do so :

894. The Tribunal as set out in its findings, have found that the call took place on **22 April**, not the 19 April and that the claimant did not ask to be taken off the loudspeaker and that Mr Bruce did not therefore refuse.
895. The Tribunal conclude that such conduct objectively cannot be said to be calculated, or in the alternative, likely, to seriously damage confidence and trust between the claimant and the respondent. The claimant specifically complains about a refusal to take the call off loudspeaker and this did not occur.
896. This incident the Tribunal conclude did not, not cause or contribute to a breach of the implied term.

On 23 April 2021, Mr Adam Crouch called the claimant's father Mr Chris Nunn and told him that he "loved" the claimant.

897. The Tribunal, as set out in its findings of fact, has found that this was not said and accept that what he had said, on the evidence, is that he loved working with her.
898. In any event, even if said, the Tribunal conclude that such conduct objectively cannot be said to be calculated, or in the alternative, likely, to seriously damage confidence and trust between the claimant and the respondent given the claimant even after this incident, would describe their relationship as close. As set out in the findings of fact, the Tribunal conclude that this comment even if said, would have upset her.
899. This incident the Tribunal conclude, could not and did not, cause or contribute to a breach of the implied term.

On 23 April 2021, Mr Adam Crouch emailed the claimant saying she could have a company car. However, the claimant then had to make four further requests the last being on 4 May 2021:

900. The Tribunal conclude for reasons set out in its findings of fact, that there was no delay in dealing with her request for a car.
901. The Tribunal conclude that this did not, cause or contribute to any breach of the implied duty of mutual trust and confidence.

On 23 April 2021, Mr A Crouch emailed the claimant saying it was 100% his fault, that he undermined her; the claimant is his "right-hand woman"; Mr Bruce and Mr Guerriero would never be able to do her job; and he would jump off a motorway bridge if the claimant did not go back.

902. The words Adam Crouch used as set out in the findings of facts, were not quite as alleged by the claimant. However, he did take responsibility for the way the way he had tried to introduce the restructuring of the invoicing team proposal .
903. Whether Adam Crouch actually believed what he had said or not, the claimant accepted that what he had said had helped to patch things up, she was the Tribunal conclude pleased by what he had said and this helped her decide to return to work. It was not a reason for resigning, it was a reason way she decided to continue to work with the respondent. She also informed him a few days later on 29 April 2021 that she was no longer upset with him or the respondent but felt she needed to clear the air with Michael Bruce (p.956-957)
904. The Tribunal conclude that this did not, cause or contribute to any breach of the implied duty of mutual trust and confidence.

On 27 April 2021, Mr Adam Crouch acknowledged to the claimant that Mr Kelly was lying to her when he said that Mr Dave Crouch had attended a meeting with him, Mr Adam Crouch and Mr Guerriero that morning:

905. As set out in the findings of fact, on balance the Tribunal do not find that Adam Crouch made this comment but even if he had, the Tribunal do not consider that telling her this, objectively could have or did cause or contribute to a breach of the implied term. The claimant had resigned and then claimant returned to work after this was said, on the 28 April.

On 1 May 2021, Mr A Crouch messaged C saying you can work wherever you want to, "I genuinely just want you to be happy and we move forward you're the kingpin in all of this"

906. This was a message sent during the period when the claimant had decided to return to work and Adam Crouch was stressing how important she was to the business. As set out in the findings of fact, she accepted it as a positive message.
907. The Tribunal conclude that this objectively could not, and did not, cause or contribute to any breach of the implied duty of mutual trust and confidence.

On 1 May 2021, C still felt unsupported and so asked Mr A Crouch in a WhatsApp message, "if Mr Michael Bruce is horrible to me will you have my back?" Mr A Crouch replied in a WhatsApp message, "You know I will you shouldn't have to ask x"

908. The claimant accepted that this was a reassuring message and that she was grateful for it and indeed had thanked Adam Crouch for the message.
909. The Tribunal conclude that this objectively could not and did not, cause or contribute to any breach of the implied duty of mutual trust and confidence.

Affirmation of the contract

910. The claimant elected to withdraw her resignation and return to work on 27 April 2021.
911. The Tribunal consider that the way in which the proposed restructure began to be implemented without consultation with her as promised, was capable objectively and did in the circumstances, breach the implied duty of mutual trust and confidence. There was reasonable and proper cause for the planned proposal but not the way the respondent began to take steps to implement it without proper consultation.
912. Mr Adam Crouch admitted in his 23 April 2021 email to the claimant, that he had undermined her position and rushed in like a bull at a gate. Although he gives evidence

that he only said this to placate her, the Tribunal do not accept that explanation as plausible.

913. However, the claimant then negotiated the terms on which she would continue to work. The claimant was assured that the proposal was not going to be implemented (which it was not until she resigned again later). She obtained assurances about how valued she was. An email was sent to staff reinforcing her position and confirming her status as Accounts Manager. She had been offered and agreed to have a company car. The Tribunal find that she deliberately and knowingly considered her position and elected to affirm her contract of employment, withdrawing her resignation and in doing so waived what the Tribunal find was objectively and she considered reasonably to be, a breach of trust and confidence.

The last straw

On 5 May 2021, Mr Bruce sent emails querying claimant's work copying in Mr A Crouch. The claimant did not feel supported (or the kingpin) as previously stated by Mr A Crouch and this was the last straw for her.

914. The Court of Appeal in *Kaur v Leeds Teaching Hospitals NHS Trust 2019 ICR 1, CA*, held that, if the last straw incident is part of a course of conduct that cumulatively amounts to a breach of the implied term of trust and confidence, it does not matter that the employee had affirmed the contract by continuing to work after previous incidents which formed part of the same course of conduct. The effect of the last straw is to revive the employee's right to resign.
915. The claimant alleges that the most recent act on the part of the respondent which she says caused her to resign is the email from Mr Bruce on 5 May 2021. This triggered her resignation. She resigned promptly after it and thus the Tribunal conclude, had not waived the breach and affirmed the contract.
916. The issue is whether that act by itself was a repudiatory breach of contract or if not, was it nevertheless capable of contributing to the earlier acts which cumulatively amount to a breach of the implied term of trust and confidence or was it entirely innocuous and did the claimant resign in response (or partly in response) to that breach.
917. The Tribunal find that the email which Mr Bruce had sent was a perfectly reasonable one. The Tribunal do not find that the tone was aggressive and blaming, quite the opposite, it was calm and offering a constructive way forward to resolve an issue. If the claimant saw some criticism in that message then she was being hypersensitive.
918. Further, on reflection she accepted that the email he sent was not rude as she alleged and that perhaps she would have reacted differently now then she did at the time.
919. While Mr Bruce copied in Adam Crouch, the claimant had copied in Adam Crouch prior to this and he had become involved in finding a resolution to that query. While she complains that Mr Bruce would normally call her to resolve an issue, she had not called him on this occasion but messaged him instead.
920. The claimant was no doubt still feeling aggrieved toward Mr Bruce but she had agreed to move forward, withdrew her resignation and in doing so affirmed her contract of employment. She claims this was the last straw however the Tribunal find that the emails he sent, for reasons set out in the findings of fact, were innocuous, they were not likely to give offence.
921. The claimant complains that Adam Crouch did not support her and yet she refused to sit down and meet with him to explain what she was upset about. Her reaction which

was to issue a totally unreasonable ultimatum to have Mr Bruce dismissed within 48 hours for sending a harmless email, was irrational and unreasonable. While she complained at the time also about Mr Guerriero, any complaint about him was not included in the list of issues as part of the conduct giving rise to this alleged final straw.

922. The claimant resigned but the Tribunal conclude that she had not expected her resignation to be accepted but no doubt thought, after the lengths Adam Crouch had gone to before to persuade her to return, (what she described as 'begging') that he would do the same again and that she would be able to leverage the removal of Mr Bruce who she saw as a threat to her position as the 'Kingpin' to the business. It however, did not work out that way and the ultimatum backfired.

Was any such breach an effective cause of claimant's resignation without notice on 5 May 2021?

923. The Tribunal conclude that the alleged last straw was an excuse for the claimant to seek the removal of Mr Bruce. The claimant denies that she resigned because Adam Crouch refused to dismiss Mr Bruce rather than because of the alleged conduct of Mr Bruce in sending the email of 5 May and the lack of support from Adam Crouch.
924. The Tribunal conclude that what led the claimant to resign was the refusal to sack Mr Bruce, she would have remained happily in the respondent's employment had he been dismissed promptly at her insistence. She does not allege that the refusal to dismiss Mr Bruce was itself a breach of the implied term, no doubt because she now recognises that this ultimatum was unreasonable. The Tribunal accept however that the email Mr Bruce had sent on 5 May 2021, formed part of her reason for resigning and was an effective cause of it.
925. The respondent counsel submits that the issue about the reason for the respondent's conduct is not relevant because the claimant was not constructively dismissed and thus made no submissions on this point. It had pleaded a potentially fair reason namely capability and/or some other substantial reason.
926. The Tribunal conclude that the claimant was not constructively dismissed, there was no final straw which repudiated the contract of employment and revived the previous breach of the implied term. The act on which she seeks to rely is entirely innocuous and does not permit the employee to invoke the final straw principle.
927. The claim of constructive unfair dismissal is not well founded and is dismissed.

Direct sex discrimination

928. **6(a) On 5 March 2020, AC told C that she could have a new Ford Ranger, but later failed to provide one for her, whilst Mr Garner and OB were given such a car***
929. The claimant has failed to prove on a balance of probabilities, that Mr Crouch told her in March 2020, that the claimant could have a Ford Ranger or that Mr Barton was provided with one. Mr Garner was provide with a Ford ranger but his circumstances were materially different from the claimants and thus he is not a suitable comparator.
930. A suitable comparator would be someone who held a role which did not require him to attended roadside recoveries or take equipment to them and who worked primarily from home. The Tribunal do not find that in those circumstances, taking into account that Mr Berton did not have a Ford Ranger or anyone else in the invoice department, that any difference in treatment was because of sex.

931. This did not in any event, constitute a detriment. The Tribunal accept counsel for the respondent's submissions that looked at objectively, the claimant did not feel materially disadvantaged, because she never raised this issue again. It was Mr Crouch who next raised the possibility of her having a company car on 23 April 2021, when he was trying to persuade her to withdraw her "first" resignation. Alternatively, if she did feel disadvantaged, this was an unjustified sense of grievance because she did not require a Ford Ranger to carry out her role; The claimant worked primarily from home and when she has the chance to choose a vehicle, she does not select a Ford Ranger. Her complaint is not just about a company vehicle, it is that she was not given the same vehicle as alleged male comparators.

932. This complaint of direct discrimination is not well founded and is dismissed.

On 12 March 2020, AC refused C's request for a company mobile phone when Mr Taylor, Mr Garner, OB, SK and RG each had company mobile phones*

933. The Tribunal conclude for reasons set out in its findings of fact, that the claimant was not given a mobile telephone because she did not ask for one and because it was not considered necessary for her to have one.

934. For the reasons set out in details in its findings of fact, the Tribunal conclude there was no less favourable treatment on the grounds of sex.

935. This complaint of direct discrimination is not well founded and is dismissed.

In March 2020, AC did not consult C about nor give her the option of being furloughed due to Covid

936. The claimant did not identify any actual comparator. In terms of a hypothetical comparator, that would be someone who was working from home and for whom there was still work to do. The Tribunal conclude that such a person would not have been offered furlough and indeed that would be contrary to the purposes of the furlough scheme.

937. The Tribunal conclude for the reasons set out in its findings, that the claimant was not offered furlough because she had important work the respondent needed to be done and Adam Crouch did not consult further with her because she had indicated she was not interested in being put on furlough in any event. There is no evidence that the claimant was not consulted or given this option because of her sex.

938. The Tribunal find that not offering her furlough did not constitute a detriment. The claimant did not feel materially disadvantaged because even in these proceedings she did not allege she would have wanted furlough but would have liked to be asked. However, the Tribunal find that she never objected at the time and in fact told Mr Crouch not to furlough her.

939. Alternatively, if she did feel disadvantaged, this was an unjustified sense of grievance. The Tribunal accept the respondent's submissions that no reasonable employee could object to not being given the option of furlough, where this meant they were not permitted to work and only entitled to up to 80% of their salary, and they would not have agreed in any event.

940. This complaint of direct discrimination is not well founded and is dismissed.

On 24 August 2020 Mr Crouch told the claimant to clean the toilets by saying; " well you clean them you are a women."

941. For the reasons set out in its findings of fact the Tribunal conclude that this comment was not made.

942. This complaint of direct discrimination is not well founded and is dismissed.

On 28.4.20, 7.9.20, 29.9.20, 25.11.20 and 18.2.21, AC asked C (rather than a male colleague) to make tea/coffee for a visitor, on 29.9.20 by sending her a WhatsApp message saying, "Tea for my office. for me and 1 with sugar"

943. This allegation is advanced as a claim of direct discrimination or harassment related to sex.

944. As set out in its findings the Tribunal do not find that the claimant was treated differently to male staff. The Tribunal find that there was no less favourable treatment on the grounds of her sex and further, that making tea for a client when she was the Tribunal find, content to do so and saw it as part and parcel of working as a team was not something she considered to be a detriment and nor objectively in those circumstances was it.

945. The Tribunal have not found that the claimant was subject to unwanted conduct. The claimant offered on occasion to make tea and when she was asked, was content to assist in this way.

946. Further, the Tribunal find that when she was asked, this was not related to her sex and in any event, do not find that it had or was intended to have the proscribed effect and not was it objectively reasonable in the circumstances, where she saw it as part and parcel of being collegiate, to consider that it was.

947. This complaint of direct discrimination is not well founded and is dismissed.

In February-March 2021:

(i) Mr A Crouch and Mr Guerriero did not invite C to attend customer meetings to which she would have been invited previously (including one with VMS and another with Enterprise); and

(ii) Instead, Mr Guerriero asked her to perform mundane follow-up tasks such as providing copies of invoices to customers*

948. Counsel for the respondent submits that as the claimant did not advance any evidence in support of this allegation and this allegation was not put to the relevant witnesses, the allegation should be dismissed. The claimant in her witness statement refers not to meetings in February and March 2021 but only to meetings in April 2021.

949. As set out in its findings the Tribunal do not find that there were clients meetings she was not invited to in February and March 2021. Further, the reason the claimant was not invited was not because of her sex. Her own case is that the alleged change in behaviour from April 2021, to include not asking her to attend meetings, was not because of her sex but because of alleged complaints she had begun to raise.

950. The claimant has not established that the treatment as alleged (not being inviting to meeting in February and March 2021), did take place.

951. Further, the claimant was asked to do mundane jobs which were part of her role including sending copy invoices, but this had nothing to do with her sex. It was not less favourable treatment. The claimant has not identified any male comparator in invoicing who was not required to carry out similar mundane jobs such as sending copy invoices.

Further, there is no evidence from which to infer that a male hypothetical comparator, namely someone in her position in invoicing, would not be asked to carry out the same jobs to resolve a client query.

952. This complaint of direct discrimination is not well founded and is dismissed.

On 8 April 2021, with reference to a meeting with a customer (Zenith), AC sent a WhatsApp message to C saying, “oh yeah you should come as David Rider is attending and he likes pretty women”. When the claimant queried this message he replied in a WhatsApp message, “ok babes”

953. The Tribunal has addressed its conclusions with respect to this allegation as a direct discrimination claim below, in the sexual harassment section and does not repeat it here to avoid repetition. The Tribunal concludes that this conduct **did** amount to direct sex discrimination.

954. This claim is well founded and as the claim was issued in time. This complaint succeeds.

On 19 April 2021, Mr Guerriero, Mr Bruce and Mr A Crouch had a meeting in the morning to discuss the reorganisation of the accounts team without the claimant present. As a result an agreement was reached between the 3 men whereby they decided to give C’s role to Mr Bruce. In the afternoon Mr Guerriero then sent claimant an email attaching a PDF showing without warning and consultation the accounts reorganised and that her role and status as account manager had unilaterally and fundamentally changed and Mr Bruce had been allocated several of her accounts to manage

955. The Tribunal have set out its conclusions on this allegation in the section in its conclusions dealing with constructive unfair dismissal and to avoid duplication will not repeat its conclusions here. As set out in its findings of fact, the Tribunal conclude that the alleged conduct was not on the grounds of the claimant’s sex.

956. This allegation of direct discrimination is not well founded and is dismissed.

On 22 April 2021, after C had emailed AC, Mrs Crouch and RG on [23] April 2021 raising a grievance about the allegations in paras 6(g) and (h) above, AC telephoned C and expressed his annoyance that C had told his mother about the “pretty” comment (para 6(g) above)

957. The Tribunal has set out its conclusions on this issue, in the section on constructive unfair dismissal above and its findings of fact and to avoid duplication will not repeat those here. It concludes however that this alleged comment by Adam Crouch was not made.

958. In any event, the claimant does not seek to argue that an actual male comparator who raised a complaint with his mother about his behaviour was treated differently or seeks to argue they would have been and thus does not assert that she was treated less favourably than an actual or hypothetical male comparator would have been.

959. Such a complaint may give rise to a victimisation claim (had she established the case on its facts), but the claimant has not presented her case in those terms.

960. The claim of direct discrimination is not well founded and is struck out.

Sexual harassment – unwanted conduct of a sexual nature

On 13 March 2020: AC sent a message to C referencing “cock”; and AC consulted C about a message he had received from a Female Colleague where she had asked him

if he liked “pussies shaved or hairy”. C advised him not to reply and he responded, “I already have”*

961. On balance, while objectively offensive language was used in the message, and it was sexually explicitly in content, unusually the Tribunal find that in the circumstances of this case, for the reasons set out in its findings of fact, it was not unwanted conduct from the claimant’s subjective point of view, taking into account external factors, namely the relationship the claimant had with Mr Adam Crouch.
962. While the Tribunal accept that objectively the messages from Mr Crouch were offensive, the Tribunal have to consider subjectively whether it had the purpose or having the effect as set out in section 26 (1) (b) EqA.
963. In the circumstances of this case and for the reasons set out in the findings of fact, the Tribunal conclude that the messages while they may have surprised or even shocked the claimant, she did not regard the conduct as violating her dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her .
964. The claimant continued the Tribunal have found, to engage in and enjoy being his ‘confidant’ and discussing personal and private matters with him. Thus the Tribunal conclude that in terms of the claimant’s perception of the conduct, it did not have the prescribed effect. The Tribunal also conclude on the evidence, given the nature of their confidences and friendship, that Mr Crouch did not intend for it to have the proscribed effect.
965. This complaint of sexual harassment is not well founded and is struck out.

14 March 2020 Mr crouch send claimant WhatsApp message saying not to message him at the weekend because of his wife.

966. For the reasons set out in its findings fact, the Tribunal conclude that Adam Crouch was concerned about his wife seeing their messages, but this was not of itself a sexual message. The claimant’s evidence is that she was upset because he contacted her late at night but did not want her to contact him.
967. The Tribunal conclude that the claimant had a close friendship with Mr Adam Crouch and she did not object to him contacting her at night, only that he did not want her to reciprocate however, she did not express to him her alleged objection to this message and given their relationship, the Tribunal conclude that it would not have been obvious to him that this message was unwanted or unwelcome.
968. The claimant does not identify what it is about this message which was of a sexual nature and objectively it is not.
969. Further, the Tribunal do not conclude that the messages from Mr Crouch intended to have the proscribed effects and nor did they, nor does the claimant allege this was his intention. For the reasons set out in its findings of fact, subjectively the message did not have the effect on the claimant as set out in section 26 (1) (b) EqA.
970. This complaint of sexual harassment is not well founded and is struck out.

On 25 March 2020, Mr Richard Crouch sent the claimant a Facebook message saying, “I have just asked the wife to put on a nurse’s uniform”, she said, “why are you feeling horny,” I said no “we just need some bread”

971. The Tribunal conclude that the conduct was unwanted. It is not alleged by the respondent that the claimant had the sort of relationship with Richard Crouch that she

enjoyed with Adam Crouch. The Tribunal conclude that it was not necessary for her to say that she objected to the message for it to be unwanted. Such messages as these would plainly and objectively, potentially violate a person's dignity.

972. The Tribunal accept that this message was of a sexual nature and conclude, that the claimant was genuinely upset by it. Taking into account the other circumstances of the case, namely the claimant's feelings toward Richard Crouch, the Tribunal conclude that it was reasonable for the message to have that effect.
973. In terms of the purpose of sending the message, Richard Crouch did not give any evidence however, the Tribunal consider that taking into account that he did not have the sort of close relationship the claimant had with Adam Crouch, and taking into account how overtly sexist and sexual the message was, the Tribunal consider that in the absence of any evidence from him, that on a balance of probabilities, it was sent with the intention of violating her dignity but in any event, conclude that it had that effect and that it was reasonable for the conduct to have that effect.
974. In terms of the respondent's liability for the conduct of Richard Crouch however, the Tribunal conclude, that the evidence does not support a finding that Richard Crouch was an employee of the respondent at the material time. As set out in its findings of fact, there was no obligation to provide work or for him to accept it, he occasionally helped out as a goodwill gesture to support his brother. There was a degree of control when he carried out the work but otherwise there was no arrangement consistent with it being a contract of service.
975. The Tribunal conclude that Richard Crouch provided unpaid services and the Tribunal conclude that when being sent on a recovery job, he was acting with the respondent's authority in its relationship with third parties, whether the owner of the vehicle or the contractor for whom the respondent was providing a service. To put on a uniform and appear in advertisements (whether social media or otherwise) or a television programme, the Tribunal consider does not of itself amount to being given authority to act on behalf of the respondent to effect its legal relationship with third parties and act as an agent.
976. Therefore while acting in the capacity as an agent while on recovery jobs from time to time or providing information about jobs to the invoicing team, there is no evidence that he was acting in the capacity of an agent when he sent any of the messages complained about. All the messages were sent from his personal Facebook account and where the time can be ascertained, they were sent outside of working hours.
977. The Tribunal conclude on the evidence as set out in its findings of fact, that there is nothing linking the sending of these messages with the respondent's business. The content was not work related. Section 109 (1) and (2) EqA are not therefore engaged.
978. While the Tribunal finds that this message was sexual in nature and did violate the claimant's dignity, the respondent is not liable for this conduct or indeed, the conduct of Richard Crouch in sending any of the messages the claimant complains about. The claimant could have blocked him on Facebook and if the respondent had any issue with her doing that, this may have provided grounds to complain about the respondent's conduct towards her.
979. This complaint of sexual harassment is therefore not well founded and is struck out.

On 28 March 2020, Mr Richard Crouch sent C a Facebook message saying, "if you support the truckers with all the covid deliveries, on Saturday at 10:00am go to your local motorway bridge and get your tits out for the truck drivers"*

980. The Tribunal accept that this message was unwanted for the same reasons set out in relation to the 25 March message. The Tribunal conclude that the message was overtly sexual in nature.
981. The Tribunal also conclude that the claimant was upset by the messages and on balance she regarded the message as having the effect of violating her dignity.
982. In terms of the purpose of sending them, for the same reason as set out above, the Tribunal consider Richard Crouch had the proscribed purpose in sending it and had the proscribed effect.
983. However, for the same reasons as set out above, in relation to the message on 25 March, the Tribunal conclude that on the evidence, Richard Crouch was not employed by the respondent and he was not acting in the capacity of an agent at the time he sent them. He was not acting in the course of his employment or at the time with the authority of the respondent when sending them. Section 109 (1) and (2) EqA are not therefore engaged and the respondent is not liable for this conduct.
984. This complaint of sexual harassment is not well founded and is struck out.

Also on 28 March 2020, C messaged AC about the sexual context of messages she was receiving from RC, and AC replied in a text message saying “speak to Dave Crouch he is Head of HR”

985. This allegation relates specifically to Adam Crouch’s message, “*Speak to Dave Crouch he is head of HR*”. The Tribunal accept that the message, which in effect dismissed and trivialised her feelings, was unwanted. She had made it clear that the messages from Richard Crouch were unwanted by her and asked Mr Adam Crouch to deal with it.
986. An employer is not liable for the acts of other third parties unless under section 26 EqA it failed to safeguard the employee from harassment by a third party and this failure itself was *related* to the claimant’s sex and had itself the purpose or proscribed effect.
987. Mr Adam Crouch did not take her complaints seriously. Indeed he accepts his reference to David Crouch as Head of HR was “tongue in cheek”. He brushed off the complaints and the claimant’s evidence is that: “*it was humiliating, not to be taken seriously*”. She does not explain why she alleges that this response was of itself sexual in nature. It was flippant but not sexual.
988. The claimant does not allege that Mr Adam Crouch failed to act because she was a woman (which in any event would be direct discrimination) and otherwise that Adam Crouch reacted this way for reasons related to her sex. She does not allege that had she been a man who had seen this message and complained about it, Mr Adam Crouch would have taken her complaints more seriously. She puts it on the basis that : “*I very much doubt Mr Adam Crouch would like these type of messages being sent to his mother, wife or his daughter*” (w/s para 60). Thus it could not be established that the failure to act was related to her sex.
989. The Tribunal conclude therefore that the respondent is not liable for the messages Mr Richard Crouch sent.
990. This complaint of sexual harassment is not well founded and is dismissed.

On 9 June 2020, C in a WhatsApp message asked AC about changes RG had asked her to make to invoices. AC sent her a WhatsApp message saying, “to stay quiet.... that’s what pays your salary”.

991. The Tribunal conclude for the reasons set out in its findings that the conduct was unwanted . The claimant in her response to the messages informed Mr Adam Crouch that it was “harsh!”. The claimant however does not allege that there was anything sexual in the message and objectively it is not.
992. The claimant alleged that she did not ‘think’ he would have responded in the same way to Mr Kelly, however she did not provide any examples where others male employees had raised similar concerns and received a different response and in any event, she has not pursued this complaint as a direct discrimination claim but of a claim of sexual harassment.
993. The Tribunal conclude that the conduct was unwanted but was not of a sexual nature.
994. The Tribunal take into account the culture which the claimant had worked in for many years and do not find that she regarded it as violating her dignity, or create an intimidating, hostile, degrading, humiliating or offensive environment and nor does the Tribunal find that this was the purpose. The claimant described the conduct as no more than “*quite rude*”.
995. In any event, the Tribunal do not find that the conduct was of a sexual nature and the claim must therefore fail.
996. This complaint of sexual harassment is not well founded and is struck out.

On 11 July 2020, C changed her Facebook profile picture, RG then sent her a copy of the photo on WhatsApp saying “you should go on Love Island, this should be your professional picture”*

997. In deciding whether from the claimant’s subjective point of view the conduct was unwelcome or unwanted, the Tribunal have taken into accounts a number of factors to decide whether it accepts that subjectively it was unwanted as alleged and conclude that it was not. She had engaged the Tribunal find in discussions about Love Island with Mr Guerriero and did not raise any objection when he made this comment . It was not conduct which would obviously violate a person’s dignity.
998. Had the claimant not had a friendship with Mr Guerriero and engaged in these sorts of discussions, then the Tribunal may be persuaded that this was unwelcome despite her not raising any concern. The claimant does not allege she either informed Mr Guerriero that she objected to his comment or raised it with Adam Crouch, although she had raised her objection to the messages she received from Richard Crouch.
999. Although counsel submits that In any event, there was nothing sexual about a reference to a televised dating show, the Tribunal on balance do not accept those submissions. The comment was about her profile essentially being attractive or sexy enough to be on what is a quite sexualised television programme.
1000. In any event, the Tribunal do not find that the message had the purpose of or effect of violating the claimant’s dignity, or created an intimidating, hostile, degrading, humiliating or offensive environment for her. Looked at objectively, the Tribunal conclude that the message is not capable of having that effect in the circumstances of their friendship and discussions about this programme and subjectively, it did not have that effect on the their claimant.
1001. This complaint of sexual harassment is not well founded and is struck out.

On 16 July 2020, the claimant asked (in the open office) about receiving more t-shirts from AC for her uniform. Oliver Barton (male colleague) replied to C “you could be the eye candy to model them”*

1002. The burden of proof is on the claimant to establish this was said and the claimant has not persuaded the Tribunal on the evidence, that it was said for the reasons sets out in the findings of fact.

1003. In any event, the Tribunal find that the claimant engaged in this type of office banter, she was use to this type of environment and had become accustomed to it over the years working in this industry. She was not upset by these sorts of comments. While she may have tolerated it to an extent, the Tribunal are not persuaded that even the comment been made as alleged, this would genuinely have been unwelcome and even if it was, she would not have regarded it as violating her dignity or of having any of the other prescribed effects.

1004. Despite counsel for the respondent’s submission that, there was nothing sexual about this alleged remark because modelling is not sexual nor is being “eye candy”. The alleged comment the Tribunal find is sexual in nature, it implies that the claimant is physically attractive and has clear sexual connotations about her sexual attractiveness.

1005. For the reasons set out in its findings of fact, the Tribunal do not find that in even if this comment had been said, it is a comment which the claimant genuinely felt upset by to the extent that it violated her dignity, or created an intimidating, hostile, degrading, humiliating or offensive environment for her, or was intended to have that effect.

1006. This complaint of sexual harassment is not well founded and is struck out.

On 16 July 2020, Mr Barton gave the claimant the new uniform in Mr Ricky Guerriero’s office, and said to the claimant in front of Mr Guerriero “You can get changed in here”*

1007. Counsel for the respondent submits that this allegation should be dismissed on the grounds alone that the claimant elected not to pursue his allegation in cross examination although not actually withdrawn.

1008. On the evidence the Tribunal conclude for the reasons sets out in its findings of fact, that this comment on balance was not made. The findings do not support the claimant’s allegations taking into consideration the decision not to challenge the evidence of Mr Barton when given the opportunity to do so in cross examination.

1009. This complaint of sexual harassment is not well founded and is struck out.

On 16 July 2020, OB referred to the claimant in the office as “tight nunny”, a slang term for tight vagina.

1010. The Tribunal conclude that Mr Barton made a comment which was expressly sexual in nature. This was a particularly sexual and vulgar comment.

1011. However, while objectively the Tribunal consider such a comment to be capable of causing offence to the point of violating someone dignity at work, given how sexually explicit it is, nonetheless in terms of the claimant’s perception of it and whether she felt violated or whether this created the proscribed environment, the Tribunal taking into account Mr Barton’s position (he was not in a senior role to her) and the environment generally within which the claimant worked, the Tribunal conclude that the comment did not have the proscribed effect.

1012. The Tribunal accept that the claimant was upset by the Facebook messages from Mr Richard Crouch, he was not someone she worked alongside and clearly was not someone she held in much regard and when he sent sexually suggestive messages, she raised these with Mr Adam Crouch, despite the fact that it was his brother she was complaining about. She was therefore capable of expressing her views when she was genuinely upset. She did so on other occasions, including when a comment was made by Mr Adam Crouch about attending a meeting because she was 'pretty' and when she felt overlooked at work.

1013. The Tribunal do not approve of such vulgar comments, they are inappropriate for the workplace and it would be objectively reasonable for someone, woman or a man, to find that sort of comment a violation of their dignity. However, the Tribunal do not conclude that it had that effect on the claimant and in the circumstances, the Tribunal also do not find that this was the intended purpose either.

1014. Counsel for the respondent submits that the claimant has revealed through other allegations she has made in these proceedings, that she has a tendency to invent allegations out of incidents she understood to be harmless at the time.

1015. The Tribunal do conclude that the claimant did not object to a number of comments but has included them in this claim to add weight to it. While she may on reflection consider that the work environment was inappropriate, the Tribunal conclude that was not offended by most of the alleged comments and behaviours and indeed was a participant to a degree in this culture.

1016. This complaint of sexual harassment is not well founded and is struck out.

In July 2020, Mr Kelly messaged C via the company's internal messaging platform saying, "when are you coming in as Adam is missing you"

29 Mr Kelly does not deny that he messaged the claimant on the internal messaging platform saying something to this effect, and that it may have been in July 2020.

1017. The Tribunal do not consider that this comment of itself is sexual in nature. Mr Kelly may not have made the comment that Adam Crouch was missing a person who was male but telling someone that they are missed is not the Tribunal find, sexual in nature. It may imply some personal affection but not necessarily of a sexual nature.

1018. The Tribunal take into consideration the nature of the friendship between the claimant and Mr Adam Crouch, a friendship the Tribunal conclude she valued, she encouraged and she wanted to maintain. Even after leaving the respondent's employment, she was upset as the Tribunal will address in due course in this judgment, when members of the Crouch family ceased contact with her.

1019. The Tribunal do not consider that this message was unwanted conduct and in any event, do not accept that its purpose or its effect was to violate her dignity at work or have the proscribed effect on her working environment. The Tribunal conclude that the claimant would have welcomed this comment and appreciated it, seeing it as an endorsement of her value to the business and of her friendship with Mr Adam Crouch.

1020. This complaint of sexual harassment is not well founded and is struck out.

On 14 August 2020, C was asked by female employee Ms D Parr to attend a meeting with RG. Within her first week at work Ms D Parr had received inappropriate sexual messages from a male colleague OB about wanting to have sex with her

1021. The Tribunal conclude that the claimant failed to prove she believed that Mr Barton had sent inappropriate messages to Ms Parr as set out in its findings of fact.

1022. Even if the messages had been sent and were sexual in nature, the Tribunal conclude that they did not violate the claimant's dignity or have the proscribed effect on her working environment.

1023. In any event, the Tribunal do not accept the claimant's account of events and further do not find that the incident had the proscribed effect on the claimant or had that purpose.

1024. This complaint of sexual harassment is not well founded and is struck out.

On 24 August 2020, the claimant wore a dress to work in the office. As she walked past Mr Adam Crouch he said "your boobs look massive"*

1025. The comment is obviously sexual and subjectively it would be reasonable for it to undermine someone's dignity at work however, The Tribunal, as set out in its findings of fact, conclude that this comment was not made.

1026. This complaint of sexual harassment is not well founded and is struck out.

9(p) On 25 September 2020, Kayleigh Linnet told C that Mr Copley had said, "it's not Crouch Recovery it's CROTCH Recovery" and grabbed his crotch in front of her*

1027. The Tribunal have found that Mr Barton did not hold his crotch but did laugh about the misspelling of Crouch to crotch and was likely to have highlighted this to Ms Linnet believing it to be amusing because of the sexual connotation.

1028. The Tribunal do not find that the remark of itself subjectively, would reasonably violate the claimant's dignity. In cross examination it was put to Mr Bruce that it may have embarrassed the claimant 'a little', not that she felt violated.

1029. The Tribunal find that the comment did not have the proscribed effect on the claimant. This comment was not directed at the claimant, she was not present, she was being told about what happened second hand and she did not make any complaint until her second application to amend her claim 10 months later.

1030. This complaint of sexual harassment is not well founded and is struck out.

On 30 September 2020: (q) Mr Bruce and Mr T Graham referred to Claimant as the office cougar and MILF (meaning, "Mum I would like to fuck"); and (r) Mr T Graham stated he had looked Claimant up on Facebook

1031. In terms of the act of looking at the claimant's social media profile on Facebook, the Tribunal concludes that although Mr Barton did so, not only does the claimant accept that this of itself is not harassment, the Tribunal consider that the claimant chose to put her profile on this social media platform and she could restrict access to it.

1032. The terms MILF and Cougar are clearly sexual in nature however, the Tribunal conclude that they were not unwanted. As set out in the findings of fact, the finding that the claimant referred to herself on occasion in those terms and was amused by it.

1033. The Tribunal conclude the comments were not unwanted and further and in any event, they were not intended to have the proscribed effects and did not have the proscribed effect on the claimant.

1034. This complaint of sexual harassment is not well founded and is struck out.

On 23 October 2020, when the claimant was in the office and AC was sat next to her, he reached out touched and stroked her thigh*

1035. Counsel for the respondent submits that the Tribunal should find that the claimant has failed to prove Adam Crouch behaved in this way, and/or that it would be unfair to make such a finding. He denies doing so and this was not challenged in cross examination and for this reason alone, this claim should be dismissed.

1036. As set out in the findings of fact, the Tribunal do not find that this incident took place. If it had it would of course have been sexual in nature.

1037. This complaint of sexual harassment is not well founded and is struck out.

On 20 December 2020, AC sent C a WhatsApp message saying, “keep your mouth shut no one else is getting one” (with reference to a hamper R had given her)

1038. The claimant did not advance any evidence on this issue, she did not seek to explain why she considered it to be sexual. The Tribunal conclude that there was nothing objectively sexual in the message to the claimant. The claimant had asked for the hamper and it was given to her. In terms of the message, while it may have been objectively brusque and impolite, and the way it was written may not have been welcome, the Tribunal do not conclude that it was intended to or had the proscribed effect.

1039. When Mr Adam Crouch had written in terms which the claimant considered unacceptable and hurt her feelings, she had shown that she was quite prepared to tell him .

1040. This complaint of sexual harassment is not well founded and is struck out.

On 27 February 2021, RC sent C a Facebook message “I did not realise you were married I thought you were living in sin”*

1041. Respondent’s counsel submits that there was nothing sexual in this message. The Tribunal do not accept those submissions. The Tribunal consider that the expression ‘living in sin’ refers to someone having a cohabiting and sexual relationship outside of marriage. The term ‘in sin’ referring to a judgment about the morality of the situation.

1042. The Tribunal consider that the expression is sexual, it is about immoral sexual activity.

1043. Counsel for the respondent also submits that there is no evidence that it was unwanted. While the Tribunal accept that the claimant did not prevent Richard Crouch from sending her messages on Facebook by blocking him, and she was able to do so, it was only the Facebook messages from Richard Crouch that the claimant complained about at the time. The claimant did not have the sort of relationship she had with her male colleagues and on balance the Tribunal conclude that his message was not welcome or wanted.

1044. However, while the Tribunal has concluded that the message was not sent in the course of employment or in his capacity as an agency, the Tribunal on balance (taking into account the earlier messages), do not find that the effect of this message was such that it had the proscribed effect in any event. The claimant did not in her message to Mr Doughty express feelings akin to the proscribed effects, indeed she merely informs him who has sent the message. While the message was sexual in nature, the Tribunal take judicial notice of the fact that such a phrase is in its modern vernacular, it is not considered necessarily to be offensive or a serious comment on the morality of living together outside of marriage.

1045. It was an inappropriate comment for the workplace. However, for reason address above, the respondent was not liable for the making of this comment. Section 109 (1) and (2) EqA are not engaged.

1046. This complaint of sexual harassment is not well founded and is struck out.

On 31 March 2021, C confirmed in a WhatsApp message that for the month of March they had billed £3m of invoices. Mr A Crouch replied in WhatsApp message saying “book afternoon tea for us to celebrate”

1047. The Tribunal conclude that this message was not sexual in nature. It was a suggestion that they celebrate and an expression of gratitude.

1048. Even if reasonably interpreted by the claimant as only an invitation to her, the Tribunal conclude, the Tribunal do not conclude that objectively it was reasonable for it to be seen as sexual in nature.

1049. The Tribunal find the message was in fact welcome, hence her reply, as set out in the findings of fact, which was a thumbs up or heart emoji.

1050. The message was welcome and the Tribunal conclude that it did not have the proscribed effect or purpose.

1051. This complaint of sexual harassment is not well founded and is struck out.

On 8 April 2021, with reference to a meeting with a customer (Zenith), AC sent a WhatsApp message to C saying, “oh yeah you should come as David Rider is attending and he likes pretty women”. When C queried this message he replied in a WhatsApp message, “ok babes”

1052. The Tribunal have found that the claimant was not invited to this meeting and she had a reasonable expectation of being invited. However, she had been invited according to her own evidence to other meetings hence the expectation she held of being invited to this. This does not support her contention that she was not invited to this particular meeting for reasons related to sex or on the grounds of her sex. She does not rely on a direct male comparator.

1053. The claimant’s own evidence is that attitudes changed toward her around this time not because of anything related to her sex, but because she alleged she was raising concerns.

1054. The Tribunal conclude that there was nothing sexual about the fact the claimant was not invited to the meeting and it was not on the grounds of her sex.

1055. In terms of sexual harassment, the Tribunal do not find Adam Crouch had the purpose in not inviting her to have the proscribed effect, rather he had not applied his mind sufficiently to it hence agreeing that she should attend albeit flippantly. The Tribunal also do not find that it of itself, as a one off occasion where she was overlooked that it violated her dignity at work or of itself created the proscribed environment, albeit the Tribunal accept that she was genuinely upset by this, coming also at a time when was she feeling increasingly vulnerable in her role.

27 The complaint of sexual harassment and direct discrimination in respect of not being invited to the meeting is not well founded and is struck out.

Pretty woman comment

1056. The Tribunal conclude that the reference to 'pretty' is sexual in nature. It is about her physical attractiveness and in this context, her physical attractiveness to the opposite sex, a customer David Rider. The implication is that Mr Rider finds her sexually attractive and would for that reason get some pleasure at looking at her in the meeting and/or interacting with her.
1057. The comment was sexual in nature and was said because of her sex, that she is a woman. Mr Crouch does not allege he had ever treated a man in the same way, commented on his physical attractiveness and that he should attend a meeting because a female client thinks that he is handsome.
1058. Counsel for the respondent submits that this remark did not constitute a detriment to the claimant, because she did not feel disadvantaged by it at all. On the contrary, she welcomed the inference that she was pretty. This chimes with David Crouch's evidence that she asked him, "*am I the prettiest employee at Crouch Recovery?*" and C's jovial reaction when told that Mr Graham had seen her photograph on Facebook, and implied that she was attractive: Issue 9(q) below;
1059. Counsel argues that she only objected to not being invited in the first place.
1060. While the Tribunal consider that had the comment been made by Adam Crouch in a different context, the claimant may well have been flattered by it given the nature of their relationship. However, in this context, where she felt she was being diminished in terms of her importance to the business and her concerns were being dealt with flippantly, the Tribunal conclude that in this context she was genuinely and reasonably, aggrieved at both not being invited and being told that she should come not because of her work but because the male client considered her attractive.
1061. The Tribunal accept that the claimant was upset and that it was objectively reasonable for her to be upset at this remark.
1062. In terms of the follow up "*ok babes*", it was a term which the claimant herself used to male colleagues. However, in this context, it was used flippantly and the Tribunal consider that Mr Adam Crouch was deliberately making fun of her obvious hurt feelings. Counsel argues that it is not gender specific and there is nothing sexual about the word, however in the context the Tribunal does not accept that submission.
1063. While "*babes*" it is not gender specific in that men and women may use the term about members of the opposite sex they find attractive, the Tribunal find that in the context of an adult man addressing a woman, it is sexual in nature. It is used as slang in common vernacular to mean a person who is sexually attractive; "*she is a babe*". Adam Crouch used it in a patronising manner and the Tribunal find that in that context, where he was further poking fun at her and demeaning her, it was being used in a sexual way. The Tribunal consider that a man is unlikely to use the term to patronise another man.
1064. The comments were patronising and deliberately so. In this context the reference to 'pretty women' and 'babes' was unwanted. She may have used the term 'babes' herself before, but in this context it was not being used in an affectionate way but in a patronising manner and was unwanted.
1065. Adam Crouch was the Tribunal conclude, no doubt because of their friendship, being provocative. The Tribunal conclude he knew his comments would cause a reaction and that it would upset her. The Tribunal do not find that Mr Crouch intended to upset her to the point of violating her dignity or having the proscribed effect on her working environment. However, in terms of how she felt, the Tribunal accept she felt upset and offended and that it made her feel more insecure about her position in the business however the Tribunal do not find that the comments in this message were such that

subjectively they had the effect of violating her dignity at work or creating the prescribed environment, taking into account the nature of her relationship with Mr Adam Crouch.

1066. The comments offended the claimant, but the Tribunal do not consider, in the circumstances of this case, that her dignity was **violated**, which requires effects which are serious and marked.

1067. The Tribunal take into account that just over a week later, the claimant states in her letter setting out her complaints (p.903) :

"Up until Monday 19th April 10:00am [i.e. about one week after this incident] my job was perfect." And

I think Crouch Recovery is amazing, I think what Adam has achieved is incredible. I wanted to be part of the journey; I was a true Crouch".

1068. The events leading her to resign are set out in this letter and numbered 1 to 26 and essentially relate to the restructuring issue. Nowhere within that list of 26 points does she complain about alleged harassment or discriminatory comments. She goes on to make reference to the pretty comment further on, not as a reason for resigning but as an example of feeling 'kicked in the teeth'. She does not refer to being called 'babes' specifically.

1069. The Tribunal concludes that the comments 'pretty women' and 'babes' in this context were sexual in nature and unwelcome. However, the Tribunal conclude that while she was upset by the comment they did not have the proscribed effects.

Direct discrimination

1070. S.212(1) EqA provides that the concept of 'detriment' **does not** include conduct that amounts to harassment.

1071. Detriment under section 39 (2)(d) EqA is described in the EHRC Employment Code as :*"...anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage."*

1072. Looked at objectively, counsel for the respondent argues that any sense of grievance that the claimant had about this was unjustified, because it was not necessary for her to attend the meeting. The Tribunal do not accept this argument. It may not have been strictly necessary for her to attend, however, she had a reasonable expectation that she would be invited because it was a customer she dealt with regularly.

1073. With respect to the comments, the Tribunal consider that a reasonable worker might take the view that to be invited to a work meeting which they had a reasonable expectation of being invited to (and which they reasonably considered is important to the role they perform or the relationship they have with the client), mainly or in part because of their physical attractiveness, rather than because of their role within the business, is a disadvantage. He then failed to take on board her upset with the "ok babes" response. It is not necessary to show physical or economic consequences: **Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 3.37**

1074. The Tribunal conclude that the reason the claimant was not invited to the meeting was not because of her sex, but the comments 'pretty women' and 'babes' (in this context) were used because of her sex. Adam Crouch would not have dismissed her concerns in the way he did, but for her sex. He was flippant because of the relationship they had but he used those specific terms because of her sex. She was upset and felt diminished

professionally by his comments and the Tribunal consider that it was reasonable for her to feel that way.

1075. The complaint of sexual harassment is not well founded and is struck out however, **the complaint of direct discrimination is well founded and succeeds.**

On 22 April 2021, Adam Crouch sent the claimant a video via WhatsApp of his new home office. At the start of the video he said, "I am sending you this because Jennie [his wife] does not get me, but you do"*

1076. As set out in the findings of fact, Adam Crouch did send a video on 22 April 2021 but he did not say what is alleged by the claimant. As set out in its findings of fact, Tribunal do not find that the video or what he said in the commentary, was unwanted. Further, even if she considered it insensitive when she was still upset about recent events around the proposed restructuring of the accounts department, there was nothing sexual about the video or the message.

1077. The Tribunal conclude that this conduct did not have the purpose or any of the proscribed effects and it was not objectively reasonable for it to have the proscribed effects.

1078. The complaint of sexual harassment is not well founded and is struck out.

On 22 (23) April 2021, AC telephoned C and expressed his annoyance that she had told his mother about the "pretty face" comment in a grievance on 22 April 2021

1079. As set out in the Tribunal's findings, the claimant has not proven that Mr Crouch made any comment to her about her disclosing the 'pretty comment' to Barbara Crouch, which in fact she did not disclose.

1080. Such a comment would have been unwelcome if said but nonetheless, the alleged conduct itself was not of itself sexual in nature and the claimant does not explain why she alleges it was.

1081. The complaint of sexual harassment is not well founded and is struck out.

On 24 April 2021, David Crouch sent the claimant a text message saying, "Whatever happens it will not affect our friendship; I always thought you were a belter the first time I saw you"

1082. The Tribunal conclude that this message, including the reference to the claimant being a belter, even if she interpreted it as a comment on how attractive she was, it was not unwanted by the claimant.

1083. The claimant refers to receiving similar messages like this from David Crouch before and yet goes on to describe him as in many ways as a father figure and having been friends for 20 years. She does not allege that she ever told him that such comments were unwanted and they are not comments which the Tribunal conclude are to be regarded as inherently unwelcome.

1084. The Tribunal conclude that what the claimant was genuinely upset about and led her to complain about this comment, was his decision to defriend her on Facebook after she resigned.

1085. In cross examination, Mr Doughty put it to David Crouch that the expression 'belter' as a possible alternative meaning, accepting that there are two possible ways in which the term may be used. It can be used to refer to something outstanding and on balance the Tribunal conclude that this is what David Crouch meant, that she was outstanding in her

job. The claimant does not allege that he referred to women generally or other women in this way and did not challenge his evidence in cross examination that he would use the same term to describe a lorry he thought was outstanding.

1086. The Tribunal conclude that it was not intended to be and not overtly sexual in nature.

1087. Further and in any event, this message did not have the proscribed purpose or effect. The claimant was not upset by it and the Tribunal conclude it was not unwelcome at the time.

1088. The complaint of sexual harassment is not well founded and is struck out.

On 26 April 2021, David Crouch called the claimant and said he knew Adam Crouch spoke to her like she was his “wife”

1089. The Tribunal have found that this comment was not made for the reasons set out in its findings of fact. In any event, the claimant did not describe why she considered this comment to be sexual in nature. It may be arguable that to suggest a man is communicating in a way which is consistent with him being in a romantic relationship with a woman, is sexual in nature however, that is not the claimant’s explanation.

1090. The Tribunal have found however that even if this comment had been said, it was not unwelcome. The claimant enjoyed having a close relationship with Adam Crouch and being seen by the Crouch family as being part of that family, even suggesting that she was prepared to support Barbara Crouch in a way that the wife of Adam Crouch was not. The Tribunal consider that she would have welcomed this sort of comparison.

1091. In any event, the Tribunal concluded that even if said, it would not have been with the intention of having the proscribed effect and it would not have had that effect on the claimant.

1092. The complaint of sexual harassment is not well founded and is struck out.

Also on 26 April 2021, Adam Crouch sent claimant a picture message of his father at a desk saying, “our new head of accounts” and “don’t let anyone ruin our relationship again xxxxxxxxxxxxxxxx”

1093. The Tribunal conclude that the messages was not unwanted. The claimant described it as a nice message to get, in cross examination, if it was genuine. The Tribunal conclude that what upset the claimant was that later events would make her feel that such expressions were not genuine.

1094. The Tribunal conclude that the message was not sexual. The presence of the kisses, the claimant does not allege indicate any sexual intention. The claimant regularly put kisses on messages to him and to other male work colleagues, it was clearly seen as an expression of a close working relationship. As for the reference to relationship, they did have a friendship and a relationship which was closer than a normal working relationship and the claimant valued that. It was not a sexual message.

1095. The Tribunal conclude that the purpose behind the message was to amuse the claimant with the picture of her father and in doing so, build back their bond and friendship and it did not have the proscribed purpose not the proscribed effect.

1096. The complaint of sexual harassment is not well founded and is struck out.

On [27] April 2021, AC sent C a WhatsApp message referring to his mother “you are the daughter in law she never had but do not repeat that to Jennie as I will lose my house”

1097. The Tribunal conclude that the claimant was upset and concerned that she had fallen out of favour with Barbara Crouch and this message was not unwanted. There was also nothing the Tribunal conclude, sexual about this message. It was about how much Barbara Crouch thought about the claimant, which the claimant herself has acknowledged.

1098. The claimant does not allege that the purpose was to have any of the proscribed effects and does not allege that it has such an affect on her.

1099. The Tribunal consider that what upset her, was not this message at the time it was sent, but later acts which she felt on reflection, were not consistent with these assurances of the affection felt towards her by this family, hence her allegations of 'gaslighting;'.

1100. The complaint of sexual harassment is not well founded and is struck out.

Harassment related to sex

On 27 February 2020, AC said, in front of other staff in R's offices, "here comes the posh girl from Cambridge wearing her wax jacket" and "here's the girl that does her shopping at Ocado" when referring to C*

1101. The Tribunal has made a finding that these comments were not made.

1102. Counsel for the respondent submits that even if made, there is no evidence that they were unwanted. They are not inherently objectionable. Nor did the claimant object at the time. The Tribunal agrees with those submissions.

1103. The Tribunal concludes that the alleged comments, are about a perception that to live in Cambridge or to shop at Waitrose is to be 'posh', that said the comment makes specific and express reference to her gender and therefore the Tribunal accept that the comments 'relate' to her sex in a broad sense but are not derogatory about her sex.

1104. The Tribunal conclude that even if that had been said, they did not have not have the purpose or effect of violating her dignity, or creating an *intimidating*, hostile, degrading, humiliating or offensive environment for her. The comments imply that the claimant is posh or has 'posh' (i.e. sophisticated) tastes, rather than comment directly about anything unfavourable about her gender. Further, the Tribunal conclude that the claimant did not consider the comments to have the pleaded effect.

1105. This complaint of harassment related to sex is not well founded and is dismissed.

On 19 March 2020: Adam Crouch referred to the claimant to a customer Mike Beech of Biomass as Emma Royd, a play on haemorrhoid;* and Mr Beech sent the claimant an email with a salutation "Thank you Emma Royd* : b and c

1106. As set out in the findings, Mr Adam Crouch did not give the claimant this nickname in front of a customer. It is more likely that the claimant had referred to herself in these terms. However, there is no evidence this was related to sex.

1107. The claimant does not positively assert that she believed that this related to her sex and both men and women may have haemorrhoids, it is not therefore a gender specific condition and nor does the claimant allege that it is. It is not alleged to be a direct discrimination claim and that had she been a man this name would not have been used. In a sense the nickname is no more related to sex than the alleged 'jelly belly' nickname she gave to Mr Kelly because of his size. A nickname such as 'jelly belly' may be direct discrimination if a person would not have given a woman the same sort of unflattering nickname.

1108. Adam Crouch did refer to the claimant as Royder when asking her to book them afternoon tea (p.365) and she does not object when this is used on this occasion for example.

1109. The Tribunal conclude that the claimant has not established on the evidence that this incident took place however, even if it had, the Tribunal would not find that it was unwanted. She did not complain about the customer using this name at any time prior to issuing her tribunal claim.

1110. Further and in any event, this did not have had the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. The claimant did not complain about the use of the name and she did raise complaints when she was unhappy, including about messages she felt to be related to sex from Adam Crouch or Richard Crouch.

1111. Mike Beech, the customer sent the salutation. The respondent is not liable for harassment from a third party unless their failure to act for example to protect the employee, is itself an act of harassment related to sex and she does not allege that.

1112. This complaint of harassment related to sex is not well founded and is dismissed.

On 17 September 2020, the claimant asked Adam Crouch why he did not post female birthdays as much on respondent's Facebook page and he said "Jennie would not like it"*

1113. The Tribunal have found that this remark was not made by Adam Crouch. However, despite counsel's submission that such a comment is not related to sex, the Tribunal consider that not treating women equally in the workplace because another woman would not welcome them having the attention (which is the implication), is related to the gender of those women.

1114. If the comment had been made, the Tribunal accept that it would not have been a welcome response or explanation.

1115. The Tribunal conclude, even if made, it would not have had the intention to violate the claimant's dignity or create the proscribed environment or have had the proscribed effect on the claimant, who never raised this as an issue until almost a year later, after she had left despite being fully prepared to raise matters she was upset about and does not complain that she wanted to have her birthday posted and this was refused.

1116. This complaint of harassment related to sex is not well founded and is dismissed.

On 8 August 2020, C uploaded a photo to her personal Facebook page, RG sent her a screenshot of the photo saying "can we camp in your garden"

1117. The Tribunal conclude that for the reasons as set out in the findings of fact, the messages about Mr Guerriero campaign in her garden were not unwanted. The messages were part of a theme between them where the claimant made friendly comments about his family being welcome to visit her garden and he responding.

1118. The Tribunal do not conclude that this comment was in any way related to the claimant's sex. The Tribunal find that Mr Guerriero's comment was entirely innocuous and he was referring to his wife and children and the Tribunal conclude that the claimant knew this and has it seems attempted to present something she knew to be innocent into something she alleges to be harassment.

1119. The Tribunal conclude for the reasons set out in its finding that Mr Guerriero did not intend this message to have the prescribed effects and nor did it have the proscribed effect..

1120. This complaint of harassment related to sex is not well founded and is dismissed.

On 7 September 2020, AC set up a WhatsApp group called “Steam off Keyboards” for C and another female colleague Leanne Peat*

1121. The Tribunal find that this group was set up and included Mr Kelly as well as the claimant and Ms Peat . That it was not related to sex but a light touch way to get staff focussing on their work.

1122. The claimant does not explain how this affected her but even if it was an unwanted reminder to focus on work, the Tribunal do not find that it was intended to violate her dignity at work or have the proscribed effect on her working environment, it did not have that effect and it would not be reasonable for it to.

1123. This complaint of harassment related to sex is not well founded and is dismissed.

On 13 September 2020, following an issue with Manchette’s Recovery (another recovery company based in Cambridge), AC asked C “to call your boyfriend Sean”, referring to Mr Sean Manchette (the company’s owner)*

1124. The Tribunal have found for the reasons set out in its findings of fact, that this comment was not made. Counsel for the respondent submits that, even if the Tribunal finds Adam Crouch did make this remark, it was not related to sex. It would relate to the claimant having a close relationship with Mr Manchette, rather than her gender. The Tribunal is not persuaded by this submission. The comment is specifically about Mr Manchett being her ‘boyfriend’ which clearly implies some romantic interest and would not have been said but for her gender.

1125. However, while this comment may not have been welcome, the Tribunal take into account all the circumstances, and do not find that given the close relationship between Mr Crouch and the claimant and the way they communicated with each other, that this would have been intended to have the proscribed effect and nor does the Tribunal find it had such an effect. The claimant was use to office banter and had not been upset the Tribunal find when colleagues had commented or implied, that they considered her attractive and she made no complaint about this comment.

1126. This complaint of harassment related to sex is not well founded and is dismissed.

On 24 September 2020, Mr A Crouch patted the claimant on the head in front of other staff and said “I like to give Emma a little patronising pat on the head because she likes it”

1127. The Tribunal, as set out in its finding of fact, have found that the evidence does not support a finding that this incident took place.

1128. Counsel submits that even if it had happened, there is no evidence that it was related to sex. The Tribunal do not agree with those submissions. It is inherently patronising behaviour and it may well be argued that Mr Adam Crouch would not have treated her in this manner way had she been a man.

1129. This complaint of harassment related to sex is not well founded and is dismissed.

On 30 September 2020, MB took an image of C's face from Facebook and superimposed it onto a graphic of someone throwing another person under a bus, then sent this image to her*

1130. The Tribunal for reasons set out in its findings, have found that this incident happened but that the claimant enjoyed the humour, even sharing the message with Mr Kelly.

1131. It was not in any event related to her sex, but to how she worked in terms of referring work to Mr Burke and Mr Kelly. This was not unwanted by the claimant, and nor did it have the proscribed purpose or effect. It was part of a running joke between the claimant and Mr Bruce which she actively took part in and encouraged.

1132. This complaint of harassment related to sex is not well founded and is dismissed

In October 2020, AC told C that he was thinking of recruiting for a new Operations Director role but that she could not apply*

1133. For the reasons set out in its findings of fact, the Tribunal conclude that the decision not to consider the claimant had nothing to do with her sex but it was because she was not qualified to do the role. The Tribunal also conclude that the claimant was content with the decision because she did not want to return to work in the office, it suited her to continue to work from home.

1134. This complaint of harassment related to sex is not well founded and is dismissed.

On 7 December 2020, MB sent C a picture message of her desk and the contents of her drawers being emptied, saying he was going to give her desk to a new member of his team*

1135. The respondent counsel submits that this is another example of an allegation by the claimant where she is by relying on a single message from a longer exchange, where the full exchange, as disclosed by the respondent, reveals there was nothing objectionable about it. The Tribunal accept on balance that this is indeed the case. The claimant has produced some messages out of context and built a narrative at times, to support her claim which is not accurate and prejudicial to the respondent.

1136. The request that was made, for a colleague (female) to utilise her desk while she worked from home was a reasonable one to make and the claimant had no objection to it. Mr Bruce emptied her desk at her request thus this was not unwanted and it certainly did not have the prescribed purpose of effect.

1137. This is another example of evidence produced by the claimant which underlines her credibility as a witness.

1138. This complaint of harassment related to sex is not well founded and is dismiss.

On 23 April 2021, the claimant messaged Mr Guerriero that she felt ill because of the way she had been treated and he replied by text message: "don't accuse me of making you ill"*

1139. The Tribunal conclude that there is no evidence that anything about this exchange was in any way related to sex. The claimant also the Tribunal conclude, misrepresented what was said. The Tribunal have not found he was dismissive or unsympathetic.

1140. While the manner of his response may have been unwanted, it did not and reasonably could not have had the proscribed effect on the claimant and the Tribunal have found, that this was not the intended purpose.

1141. This complaint of harassment related to sex is not well founded and is dismissed.

On 27 April 2021 at 21:32, Adam Crouch sent the claimant via WhatsApp a screenshot of the conversation between the respondent and a DVSA Examiner about a live TIP Job. He had previously told her that he would never make the same request of Michael Bruce because it was out of hours*

1142. For the reasons set out in its findings, the Tribunal concludes that Adam Crouch and other staff in the control room sent the claimant messages about jobs out of office hours not for any reason related to her sex, but because of her role in accounts and because she worked more flexibly and she was trusted to deal with the issues.

1143. The Tribunal concludes that the requests and messages for the reasons set out in its findings of fact, were not unwanted and the Tribunal concludes they did not have the purpose or the proscribed effects. The claimant was happy to deal with these messages.

1144. This complaint of harassment related to sex is not well founded and is dismissed.

Protected disclosures

First Alleged Protected Disclosure on 6 May 2020 – Action Fraud

Was this a disclosure of information ?

1145. The claimant did not speak to Adam Crouch on the telephone on 5 May 2021. He was still on the morning of the 6 May attempting to be on friendly terms with her.

1146. For the reasons set out in its findings of fact, the Tribunal does not find on a balance of probabilities, that the claimant disclosed to Action Fraud what she now alleges she reported on 6 May 2021.

1147. While the Tribunal accepts she mentioned the word 'fraud', the Tribunal does not accept she provided any of the detail now alleged. She provided only her own personal details and did not even name the respondent.

1148. Counsel for the respondent submits that the claimant did not make any disclosure of information with sufficient factual content to be capable of tending to show a criminal offence had been committed, even if she had disclosed what she now alleges she disclosed. She only made a bare and wholly unparticularised assertion of fraud.

1149. The Tribunal does not accept those submissions. The Tribunal concludes that had the claimant said what she alleges she had said to Action Fraud on the 6 May 2021, she would have given sufficient details to amount to a disclosure of information.

1150. However, the Tribunal has **not** found that she said anything to Action Fraud on 6 May 2021 other than to make an unspecified allegation of fraud. After how close she had been to the Crouch family and in particular Adam Crouch, she was not yet prepared to burn her bridges with the family, it was a '*massive step*' for her to take to do so and she was not, the Tribunal concludes, reconciled to taking that step at this stage.

1151. The claimant was not, the Tribunal finds, motivated by concern that the respondent may be acting unlawfully and against the public interest. While her motive is not relevant directly to whether the disclosure qualified as a protected disclosure, it does help the Tribunal to understand why she remained reluctant to disclose any details to Action Fraud in that, what was motivating her was something emotional and personal, a sense of being let down and cast aside and not about ensuring justice was done. It was the

complexity of her emotions at play which meant that she was hesitating over what she wanted to do.

1152. The mere allegation of fraud of itself, is merely an accusation. It is not a disclosure of information. It is not a disclosure of facts: **Cavendish Munro Professional Risks Management Ltd v Geduld 2010 ICR 325 EAT.**

1153. The Tribunal do not therefore find the claimant made a disclosure of information on 6 May 2021. That means her claims under section 47B ERA in connection with this alleged disclosure, must fail. However, the Tribunal has gone on to deal with the other legal aspects to the claim.

Did the claimant reasonably believe that information tended to show:

- (i) that a criminal offence had been committed, was being committed or was likely to be committed; or**
- (ii) that a person had failed, was failing or was likely to fail to comply with any legal obligation to which he is subject?**

1154. Based on its findings the Tribunal conclude that the claimant did not reasonably believe that the information which she disclosed to Action Fraud on 6 May 2021, tended to show that a criminal offence had been, or was being or was likely to be committed or that the respondent was failing to comply with a legal obligation. The claimant clarified that she did not have on mind a breach of a legal obligation when making the alleged disclosures.

1155. The Tribunal conclude that the claimant knew that the information she had disclosed was not sufficient to tend to show such malpractice which the Tribunal conclude, is why she withheld providing further details or even naming the respondent, out of continuing loyalty and affection for the Crouch family. While she was angry and felt let down, she had not yet made the decision to provide sufficient information to tend to show such malpractice because it was a “ massive step” for her to do so. Further, it would not have been reasonable for her to have held such a belief given what little information she had provided.

1156. Counsel submits that the claimant did not believe that the respondent was committing a criminal offence by adding VAT on statutory fees to Police and Highways charges or manually changing prices for Warrens because if she did hold those beliefs, she would have objected to adding VAT to statutory fees or correcting Warrens invoices during her employment.

1157. Alternatively, if the claimant did hold those beliefs then it was unreasonable of her to do so. There is nothing remotely fraudulent or criminal about adding VAT on statutory fees at the customer’s request and with their agreement and the claimant did not have any reasonable grounds to believe that the respondent and Warrens were conspiring together to invent fictitious repairs. The claimant has never explained why Warrens would agree to pay for work that was not carried out.

1158. The Tribunal consider that the claimant had her doubts about the changes made to the Warrens invoices hence her email on the 6 May 2021 to Adam Crouch (p.971). However, she did not raise in this email, any similar concern over the VAT added to statutory fees or the handling fees.

1159. The Tribunal accept that the claimant did not understand the VAT system well and there is evidence that she checked the VAT on MOT fees with Mr Guerriero and was content with his explanation.

1160. While other companies she knew did not include a handling charge, while she may have thought this was 'sharp' practice (the Tribunal do not find that it was), that is not the same as a reasonable belief that it amounts to a criminal act.
1161. The claimant was experienced in this industry and she had the means to find out, through for example contacting HMRC, whether there was anything improper about adding VAT to statutory fees but she does not allege she took any such steps in 3 years.
1162. The Tribunal conclude that given her experience and her AAT accounting qualification, even if she did not understand properly the VAT position, she had the knowledge to take steps to find out whether what was being done was improper but she chose not to do so. That either indicates she did not care if she was involved in unlawful activities or she genuinely did not believe she was. Her allegation that she was forced, is simply untenable. The Tribunal conclude that what is most likely, is that she did not believe that the respondent was acting fraudulently.
1163. The Tribunal conclude however, that regardless of what she believed the claimant did not hold a reasonable belief that what she had actually disclosed to Action Fraud, tended to show any criminal malpractice and this the Tribunal conclude, is further demonstrated by her reluctance to disclose what she had said to Action Fraud during these tribunal proceedings. The claimant the Tribunal conclude, appreciated that disclosing to the Tribunal the extent of the details she provided to Action Fraud, would be fatal to her case.
1164. In terms of the Warren invoices, the Tribunal accept she had a genuine suspicion that there was something improper with all the changes. She could have taken some steps to check whether the work had actually been carried out as per the amendments, (by checking with the staff for example who attended the recoveries what work had been done) but she accepts she never did. The Tribunal concludes that she did not have a reasonable belief, only a mere suspicion that a criminal offence had been committed but in any event, the Tribunal conclude that she did was not prepared to provide information to Action Fraud which in her belief, may tend to show such malpractice.

Did the claimant believe that disclosure was made in the public interest?

1165. The Tribunal conclude that the claimant probably did believe that disclosing fraudulent practice was generally in the public interest and more so in this case where it involved public contracts: **Ellis v Home Office 1963 QB 135 CA** . While this was not her predominant motive in making it, the Tribunal accept she considered to disclose such malpractice was in principle in the public interest: **Chesterton Global Ltd V Nurmohamed**.

Was it made in accordance with s. 43G ERA 1996?

Worker reasonably believes that the information disclosed and any allegation are substantially true

1166. The Tribunal will address this briefly, given its findings that there was no disclosure which qualified as a protected disclosure.
1167. The Tribunal conclude that the claimant on a balance of probabilities, probably suspicion that the respondent was doing something improper with the changes to the Warrens invoices, the Tribunal is not convinced that she believed these to be substantially true. Hence why she continued to work on them for 3 years and at no time asked to transfer these to someone else and use the restructure as an opportunity to at least transfer this account. She held a suspicion, but nothing more.

1168. The Tribunal also conclude that she did not genuinely and reasonable believe that the respondent was committing fraud in how it applied VAT or handling fees. She had an understanding of VAT and must have appreciated that there would be no financial benefit to the respondent in applying VAT.

1169. The Tribunal conclude that the requirement of section (3G (1)(b) are not met.

He does not make the disclosure for personal gain

1170. Counsel submits that the Tribunal should find that, if the claimant made the disclosure at all, she did so for personal gain contrary to subsection (c). That would explain why she only did so after her employment terminated, when she was contemplating bringing claims against the respondent.

1171. The Tribunal does not accept the claimant's allegations that she was forced to carry out these practices. She was not. The Tribunal find she complained about the volume of work involved in Warrens and that on the 6 May 2021 first raised suspicions about the invoicing with the 'shush' emoji while not explicitly alleging any wrongdoing.

1172. The claimant had worked on a self-employed basis and been happy to move to an employment situation despite these practices.

1173. When the claimant resigned, she alleges it was in part because of these improper practices, the Tribunal find that this is not the case, nothing changed and yet she was content to return. She negotiated the provision of a new car however, she did not seek to agree as part of the terms of her returning, that she did not handle the Warrens account. If she had genuine concerns, the Tribunal conclude that she would have addressed them at the latest, at this stage.

1174. The Tribunal conclude that the claimant was upset about the way her resignation was handled and she had in mind when making these alleged disclosures, bringing a claim against the respondent. The claimant has shown a capacity to cynically use past events which she was not upset about at the time, to bolster her claim.

1175. The Tribunal conclude that the claimant did make the disclosure for personal gain, her motivation was the Tribunal find to give weight to her claim of constructive unfair dismissal, to support her allegation that she was forced to carry out unlawful activities and left in part because of that.

1176. Her explanation that she had not made disclosures before because she felt under some pressure or force, does not stand up to the mildest scrutiny. She was fully prepared to engage in these practices until she felt ill used by the respondent.

1177. The Tribunal conclude that she did make the disclosures for personal gain contrary to section 43g (1)(c).

That the at the time he makes the disclosure, the worker reasonable believes that he will be subject to a detriment by his employer if he makes a disclosure to his employer or in accordance with section 43F: Section 43G (2)(a)

1178. The claimant does not allege that she considered she would be subject to a detriment if she disclosed the information on 6 May 2021 to the respondent rather than Action Fraud. She was no longer employed by the respondent at this time, she was not serving her notice and her evidence (not accepted) is that she had made similar allegations on 5 May 2021 to Adam Crouch.

1179. The Tribunal do not therefore find that the reason she contacted Action Fraud was because she was concerned about being subject to a detriment if she made a disclosure to the respondent because her evidence, which is not accepted, is that she had done so.

1180. She had also on 6 May 2023, raised suspicions about the Warren invoices, which again does not suggest that she was concerned about being subject to any detriment if she made the disclosure to the respondent.

1181. The claimant has not therefore satisfied the requirements of section 43 G (2)(a).

That in a case where no person is prescribed for the purposes of section 43F in relation to the relevant failure, the worker reasonably believes that it is highly likely that evidence relating to the relevant failure will be concealed or destroyed if he makes the disclosure to his employer. Section 43 G (2)(b)

1182. A person is prescribed for the purposes of s.43F in relation to the alleged criminal offences. The prescribed persons are set out in the Schedule to the Public Interest Disclosure (Prescribed Persons) Order 2014 and includes:

1183. "Commissioners for Her Majesty's Revenue and Customs" who are prescribed in relation to: "Matters relating to the functions of the Commissioners for Her Majesty's Revenue and Customs as set out in the Commissioners for Revenue and Customs Act 2005, including (a) the administration of the UK's taxes, including ... VAT and (d) criminal investigations."

1184. The "Director of the Serious Fraud Office", prescribed in relation to: "*Matters relating to— (a) serious or complex fraud within the meaning of section 1(3) of the Criminal Justice Act 1987 ...*". S. 1(3) of the 1987 Act provides: "*The Director may investigate any suspected offence which appears to him on reasonable grounds to involve serious or complex fraud*"

1185. The Financial Reporting Council Limited and its Conduct Committee", are prescribed in relation to: "Matters relating to— ... (e) compliance with the requirements of legislation relating to accounting and reporting; (f) the investigation of, and enforcement action in relation to, conduct of members of the accountancy and actuarial professions in matters which raise or appear to raise important issues affecting the public interest ..."

1186. The "National Crime Agency", prescribed in relation to: "*Matters relating to— (a) corrupt individuals or companies offering or receiving bribes to secure a benefit for themselves or others*".

1187. The "Secretary of State for Business, Energy and Industrial Strategy", prescribed in relation to: "*Fraud, and other misconduct, in relation to companies*".

1188. There were therefore a prescribed persons to whom she could have made the disclosures and therefore section 43 G(2)(b) is not satisfied.

(b) that, in a case where no person is prescribed for the purposes of section 43F in relation to the relevant failure, the worker reasonably believes that it is likely that evidence relating to the relevant failure will be concealed or destroyed if he makes a disclosure to his employer"

1189. In any event, the Tribunal is not convinced that as of 6 May the claimant made this disclosure because she considered that the respondent may destroy evidence, because her evidence is that she had raised this and threatened to report this on 5 May 2023, to

Adam Crouch. She would not have done this if she was concerned about the respondent destroying evidence.

That the worker has previously made a disclosure of substantially the same information (i) to his employer or (ii) in accordance with section 43F: Section 43G (2)(c)

1190. As set out in its findings, the Tribunal do not find that the claimant previously made a disclosure of substantially the same information, namely an allegation of fraud about VAT on statutory fees and fraud in connection with the Warren invoices. She had on 6 May 2021 raised the email about the Warren invoices, implying something improper practice but she did not mention criminal activity expressly and made no mention of VAT fraud.

Further, the final condition in subs. (1)(e) is that all the circumstances of the case, it was not reasonable of C to make the alleged disclosure to Action Fraud:

1191. In all the circumstances of the case, even if one of the conditions section 43G (a) to (c) were met, it must still be reasonable for the worker to make the disclosure having regard to the factors in section 43G(3).

1192. The Tribunal consider that the claimant had not made disclosures to her employer previously however, Adam Crouch was the owner of the business, a family business and he was directly involved in the alleged inflating of the invoices and he was aware of the way the business handled statutory charges. Therefore it may have been reasonable to consider that raising a disclosure with him would not be productive, however that is not her case, her case is she did raise it and nothing was done.

1193. However, there were prescribed bodies she could have raised her concerns with and the claimant had the means and did avail herself of legal advice. The claimant could have also raised her alleged concerns, at any time in the last 3 years, with HMRC, but she did not do so.

1194. The claimant did not make a protected disclosure on 6 May 2021. For completeness the Tribunal has gone on to briefly address allegations of knowledge and detriments briefly.

Second alleged protected disclosure : 20 May 2021 – Cambridgeshire Police

Was this a disclosure of information ?

1195. The Tribunal conclude that the claimant had not given any details of what she considered to be fraud to amount to a disclosure of any facts. The disclosure was not a disclosure of information, it amounted again to no more than a mere bare allegation of fraud.

1196. The Tribunal do not therefore find the claimant that a disclosure of information on 20 May 2021 to the police and therefore any detriment under section 47B ERA connected to this disclosure cannot succeed..

Did the claimant reasonably believe that information tended to show:

- (i) that a criminal offence had been committed, was being committed or was likely to be committed; or
- (ii) that a person had failed, was failing or was likely to fail to comply with any legal obligation to which he is subject?

1197. Based on its findings, the Tribunal do not find that the information which had been disclosed on 20 May 2021, (via the police chat log) tended to show that a criminal

offence had been committed or that the respondent was failing to comply with a legal obligation.

1198. For the same reasons as set out in respect of the first protected disclosure, the claimant did not provide information to the police that tended to show in her reasonable belief, such malpractice. She was not prepared as the 20 May 2021 either, to take that step.
1199. The claimant did not the Tribunal conclude, believe that she had provided information that tended to show that the respondent had committed or was committing or was likely to commit a criminal offence and given the scant information she provided, which was still not more than a bare allegation, it would not have been reasonable for her to believe otherwise.
1200. The Tribunal conclude for the same reasons as set out above in relation to the first alleged protected disclosure, that the claimant did on balance have a reasonable belief that disclosing criminal activities was in the public interest, the disclosure was not disclosed in compliance with the requirements of section 43G ERA.
1201. Additionally, the Tribunal do conclude that the reason she contacted the police on 20 May 2021, was not because she was concerned about being subject to a detriment if she disclosed the information to the respondent (because her evidence which is not accepted, so that she had already done so), what she was doing was checking whether she could hold lawfully on to the computers.
1202. Finally, in all the circumstances of the case, it was not reasonable for the claimant to make the disclosure having regard to the factors in section 43G(3). The claimant had taken some legal advice about making protected disclosures so she should have been aware of who the relevant prescribed bodies were.
1203. The second disclosure was not a protected disclosure either within the meaning of section 43B ERA.

Knowledge

1204. The claimant must have been subjected to the alleged detriments on the ground that she had made a protected disclosure.
1205. The Tribunal conclude that the respondent did not have any knowledge of what the claimant alleged she disclosed to Action Fraud or the police, until the third day of these tribunal proceedings. Being told she had made a protected disclosure is not the same as having knowledge of the disclosure which has been made.
1206. The Tribunal accept the submissions of the respondent that the only knowledge the respondent had of the claimant's contact with Action Fraud prior to 21 May 2021, was what had been stated by Mr Doughty in his 6 May 2021 email which only consisted of alleged advice from Action Fraud not to return the computers.
1207. Mr Adam Crouch may have suspected, in light of the 'shush' email from the claimant, that she may have said something to Action Fraud about the Warren invoices but he had no more than a mere suspicion and he did not at this stage have actual knowledge that any disclosure of any information had been made or even an allegation raised.
1208. On 21 May 2021 the respondent was aware from Mr Doughty's email that the claimant had reported fraud and had a crime reference number and been told she could retain the computers to report fraud. This email still did no more than imply that the claimant had made a bare allegation of fraud. It did not provide the respondent with knowledge of a protected disclosure having been made.

1209. In the 3 June 2021 and 5 June 2021 letters from Mr Doughty (he only referred to the claimant having raised issues relating to fraud with Action Fraud on 6 May), still did not convey any details. The Tribunal accept the respondents' submission that the respondent could not know that the claimant **had made** a protected disclosure; only that she claimed to have done so.
1210. The respondent did not have knowledge that the claimant had made a disclosure of information which tended to show that a criminal offence has been committed, was being committed or was likely to be committed or a breach of a legal obligation and the Tribunal conclude that she had not made such a protected disclosure as alleged to Action Fraud on 6 May or to the police on 20 May 2021.
1211. The claims brought under section 47B ERA cannot therefore succeed but nonetheless the Tribunal have gone on to address briefly the alleged detriments.

Detriments

On or shortly after 8 May 2021, AC failed to respond to C's Data Subject Access Request of that date.

1212. The guidance on the ICO website, as quoted by the respondent when in dealing with the request from the claimant made on her behalf by Mr Doughty provides that where a subject access request is made by a third party, the employer may ask for written authorisation from the data subject. It also provides that an organisation can refuse to comply with the subject access request if they think it is 'manifestly unfounded or excessive'. There is no set definition of what is manifestly excessive or unfounded but may include a request that has been made with no clear purpose.
1213. The ICO provide that an organisation normally has to respond to the request within one month and terms of requiring ID, it provides: "*that you must be reasonable and proportionate about what you ask for.*"
1214. The Tribunal consider that the request made by Mr Doughty, was so broad and without limitation in time, covering everything from the "Apex" software system (which the claimant had worked on for several years) to searches for Post it Notes, that, especially as there was no explanation of the purpose behind the request, it would be reasonable for the respondent to consider it to have been manifestly excessive. The claimant would later refine her request, which itself indicates an acceptance that what she had asked for in this initial letter, was indeed excessive.
1215. The request for ID to verify the claimant's signature, may be considered disproportionate given that the respondent knew Mr Doughty, however the Tribunal accept on balance that the respondent was acting on the advice it received from the ICO.
1216. The complaint is that Mr Crouch did not respond to the claimant's request shortly on or after the 8 May 2021. The respondent replied by letter dated 28 May 2021. Counsel submits that the respondent did not provide the requested information because it was so excessive and there is no evidence that any of these actions was any way influenced by claimant's alleged disclosures.
1217. The claimant did not make a protected disclosure on 6 May 2021 and therefore any claim that any detrimental treatment was influenced by that alleged 6 May disclosure, cannot fall within the protection of section 47B ERA. If the 6 May 2021 disclosure had been a qualified as a protected disclosure, the Tribunal conclude that the respondent reasonably took legal advice on the request submitted and responded within the recommended one month, by the 28 May 2021. The Tribunal consider that the claimant was not subject to a detriment by the respondent not replying shortly sooner, given the

extensive scope of the request, the lack of explanation for it and the lack of authorisation from the claimant. The respondent raised concerns which were legitimate.

1218. There is no evidence that the same sort of request would have been dealt with any differently had the alleged protected disclosure not been made. Legal advice is more likely to have been sought because the claimant had by this stage indicated employment tribunal claims and by 19 May started the ACAS process. In any event, the Tribunal conclude that a *reasonable* worker would not have taken the view that the actions of the respondent were in the circumstances, to his detriment: **Shamoon v Chief Constable of the Royal Ulster Constabulary 2003**. A reasonable worker would accept that it was reasonable for the respondent to seek advice on its legal obligations in light of a third party request and to request a more proportionate request.

1219. The claimant does not identify what disadvantage she was placed at by not receiving the response at an earlier stage. The allegation is not framed as a failure to provide the data requested but the failure to respond on or shortly after it was made.

1220. The complaint under section 47B ERA is not well founded.

On 19 May 2021, Adam Crouch (via the respondent's solicitors, Broomfield's) wrote to the claimant warning her not to contact the respondent's customers, accusing her of "causing mischief", threatening an injunctive order and rebuking and belittling her accusing her of not making a disclosure to Action Fraud

a) warning her not to contact the respondent's customers, accusing her of "causing mischief", threatening an injunctive order

1221. It is submitted by the respondent that there is no evidence these statements were made because of the alleged disclosure to Action Fraud on 6 May 2021 but because the claimant had contacted the respondent's customers.

1222. The Tribunal as set out in its findings of fact, consider that the threat of injunctive relief, was probably influenced by what the claimant had said in the email of the 6 May 2021 about contacting Action Fraud and why the respondent formed the view that her contact with their customers was mischievous, hence why they threatened injunctive relief knowing, more likely than not, that there was no real prospect of obtaining it.

1223. The Tribunal find that the upset this threat caused, was a detriment. If she had been acting in breach of any obligation of confidentiality than it would be difficult to see how it could be a detriment for the respondent to take reasonable action in relation to a breach. The more likely it is that there was merit in any allegation of a breach, the more likely that the actual breach rather than any alleged protected disclosure, was the sole reason.

1224. The claimant however had not made a protected disclosure on 6 May 2021 to Action Fraud and by this stage the respondent was not aware in any event, of what she now alleges she had disclosed to them, therefore while this claimant may have had some merit, the claimant cannot succeed in a section 47B ERA claim in the circumstances.

b) rebuking and belittling her accusing her of not making a disclosure to Action Fraud

1225. The Tribunal conclude that the letter did not objectively rebuke the claimant or belittle her. It set out their client's position and what they had been told by Action Fraud. It was factual and made no personal comments about the claimant. The Tribunal conclude that in those circumstances, a reasonable worker would not consider that setting out their honest and factual understanding of the situation, would amount to a detriment or disadvantage.

1226. The Tribunal however have concluded that the claimant did not make a protected disclosure to Action Fraud and by this stage the respondent was not aware of what she now alleges she had disclosed to them. The section 47B ERA therefore cannot succeed in any event.

Judicial Immunity

1227. The respondent additionally submits that, the claimant cannot pursue a claim in respect of the contents of this letter, because it is covered by judicial proceedings immunity. It cites the case of **South London & Maudsley NHS Trust v Datshi [2008] IRLR 350**.

1228. Employment Tribunal proceedings are judicial proceedings, based upon the statement of the law in **Heath v Commissioner of Police for the Metropolis [2005] IRLR 270**.

1229. It is submitted that Broomfield's letter was sent in the course of legal proceedings, albeit they were only in contemplation at the time, the immunity still applies falls into Delvin LJ's first category as set out in *Datshi*.

1230. However, counsel for the respondent in his submissions did not include reference to what Devlin LJ concluded at 263: "*I have come to the conclusion that the privilege that covers proceedings in a court of justice **ought not to be extended to matters outside those proceedings except where it is strictly necessary to do so in order to protect those who are to participate in the proceedings from a flank attack.***" Tribunal stress

1231. Employment Tribunal proceedings may have been considered to be likely at this stage and the respondent was, in this letter, addressing a variety of matters and setting out its position. The letter was not created however as part of the tribunal proceedings and the Tribunal does not accept that it falls within the type of document where it is strictly necessary to apply privilege to it, to protect those who are to participate in proceedings, nor does counsel for the respondent seek to argue in submissions that it was 'necessary'.

1232. The complaint under section 47B ERA is not well founded.

On [19] May 2021, Broomfield's informed the claimant that she would be arrested if she did not return the computers by 4pm Friday.

1233. The allegation that Broomfields threatened that the claimant would be arrested if she did not return the computer is not well founded. No such threat was made. Whether the claimant was arrested or not would be a matter for the police. What the respondent threatened to do was contact the police.

1234. Counsel for the respondent submits that the warning that Broomfield's gave did not constitute a detriment because the claimant had retained the respondent's computers without any lawful justification, she had not sought to justify doing so by providing details of any alleged fraud, or explain why she believed the computers to be relevant and it was imperative to the respondent that it took steps to retrieve the computers.

1235. In those circumstances, the Tribunal conclude that no reasonable employee in the claimant's position would consider the warning in Broomfield's letter to be to their detriment. If she considered she had lawful cause to retain the computers, it would place her at no disadvantage.

1236. Further, the Tribunal conclude that there is no evidence that Broomfield's gave that warning because of anything the claimant had said to Action Fraud on 6 May 2021, rather than because she was refusing to hand over the computers and the respondent had been advised by Action Fraud to report it as theft.

1237. The Tribunal accept that the respondent had good reason to want their computers back. They were operating on the understanding that she had not actually made any disclosure to Action Fraud and was unreasonably refusing to return their equipment.

1238. For the same reasons as set out above, counsel's submission that the claim is precluded because the letter is privileged pursuant to the doctrine of judicial proceedings immunity, is not well founded.

1239. The section 47B ERA claim is however, not well founded. The claimant had not made a protected disclosure and the respondent had no knowledge of what she now alleges was said to Action Fraud in any event.

On or before 1 June 2021, Adam Crouch provided misleading information to Cambridgeshire Police that led to the claimant's arrest at 21.00 hrs that day

1240. The Tribunal accept that the claimant was extremely distressed by the arrest and that this was a detriment to which she was subject.

1241. However, the Tribunal do not accept that the arrest was a detriment which the respondent subjected her to. It was the police. The claimant submitted a complaint against the police because she alleges her arrest was unlawful.

1242. Mr Guerriero had contacted Action Fraud (p.1208) the operator had advised that withholding the computers would be "*classed as theft which is a police matter*". He was advised to call 101 and "*log this as a theft*" (p.1210). They did so and explained that there was likely to be sensitive information on the computers because they hold police contracts, which was correct.

1243. The Tribunal find that what was said to the police was factual.

1244. The Tribunal do not find that the respondent gave the police misleading information.

1245. The Tribunal do not find that the decision to contact the police was influenced by the alleged disclosure which they did not have knowledge about (and in any event no protected disclosure had been made).

1246. The Tribunal consider that the respondent had waited a number of weeks and done what Action Fraud had advised and not having been told of any investigation or reason not to recover their computers, it was reasonable action to take. The claimant had made it clear she would not return them voluntarily. This may have been more appropriately dealt with as a civil matter, however Action Fraud had given the respondent advice and the Tribunal conclude that, it was not within the respondent's control how the police dealt with the matter.

1247. Further, the claimant was arrested only when she was not prepared to hand over the computers to the police and released when she agreed to release them into the protective custody of the police. Her conduct in initially refusing to hand over the computers was not the Tribunal consider reasonable.

1248. The claimant complains that this was a false arrest and complains about the conduct of the police. The Tribunal find that the actions of the police in arresting the claimant, on the claimant's own case, were not a foreseeable consequence of the respondent reporting the situation to them. Their actions, if a false arrest amount to a *nous actus interveniens*, breaking the chain of causation: *Bullimore v Potheary Witham Weld and anor* (No.2) 2011 IRLE 18 EAT. If not an unlawful arrest, then the claimant is responsible for the decision to arrest her, by refusing to initially cooperate with them.

1249. The claimant however did not make a protected disclosure on the 6 May 2021 and the respondent in any event had no knowledge of the disclosure she now alleges she made..

On or shortly after 3 June 2021, Adam Crouch failed to send the claimant the respondent's Whistleblowing Policy in response to her request of that date

1250. It is difficult to understand what detriment this conduct by the respondent put the claimant to, because she does not allege that she wanted to make a disclosure to the respondent. The claimant does not identify the disadvantage this caused.

1251. The burden of proof is on the claimant to prove not only that she made a protected disclosure but there was detriment.

1252. If the claimant had wanted to make a disclosure to the respondent on the 3 June 2021, this would undermine the reasonableness of her decision to make an external disclosure to a non-prescribed body, which she alleges she made prior to the 3 June 2021. That is not however, how she puts her case.

1253. The Tribunal therefore do not find that this give rise to any detriment in the circumstances.

1254. However, as the claimant did not make any protected disclosures and the respondent did not have knowledge of the alleged protected disclosures this complaint is not well founded and does not succeed in any event.

On or shortly after 22 June 2021, AC provided only a very basic reference in terms of dates and job title in response to a request from a recruitment company through which C had applied for a new role

1255. The reference was provided by Mr Taylor, not Mr Crouch . It is a basic reference. A reasonable worker could consider the provision of a basic reference as opposed to a fuller more positive one, is a disadvantage.

1256. As set out in its findings of fact, the Tribunal do not find it plausible that a basic reference was provided simply because this was company policy.

1257. The Tribunal conclude that it is more likely than not, taking into account the findings of fact with regards to their relationship in the past, that Adam Crouch was not prepared to provide a fuller reference for a number of reasons, and one of those which had more than a trivial influence, were the bare allegations of fraud.

1258. However, the Tribunal have found that the claimant did not make protected disclosures and the respondent had no knowledge of what the alleged protected disclosures were.

1259. The complaint under section 47B ERA is not well therefore founded in any event.

Between 8 and 20 May 2021: (g) BC blocked C on WhatsApp (8 May); (h) LG blocked/unfriended C on WhatsApp, Facebook and Instagram (12 May); (i) RG blocked/unfriended C on WhatsApp, Facebook and Instagram (12 May); (j) SK blocked/unfriended C on WhatsApp, Facebook and Instagram (13 May); and (k) DC blocked/unfriended C on Facebook (20 May)

1260. These allegations relate to the relevant employee's personal and private social media accounts. Pursuant to section 47B (1A) ERA a worker has the right not to be subjected to any act carried out by another worker *in the course of that other workers employment*.

1261. The claimant does not allege that the WhatsApp or Facebook or Instagram accounts were the respondents' or that those individuals were acting in the course of their employment when they blocked or "unfriended" her. These complaints are not well founded even though the Tribunal accept the actions were in all likelihood influenced more than materially, by the claimant alleging that she had contacted Action Fraud and was refusing to return company equipment.

1262. In any event, the claimant has not established that she made the protected disclosures and that the respondent had the requisite knowledge.

1263. The complaint under section 47B ERA is not well founded.

On or before dates in June/ July 2021, Adam Crouch bad-mouthed C to: (l) Mr Manchett of Manchett Recovery (19 June); (m) Dan Ratcliffe of Ratcliffe Recovery (20 June); and (n) Dan Hills of H&A Recovery (21 June)

1264. As set out in its findings of fact, the claimant has not established on a balance or probabilities, that Adam Crouch 'bad mouthed' her to these people. She alleges that a number of people who worked for the respondent, were upset by what she alleges to be disclosures about fraud against the respondent and thus it is possible that any of those individuals she names, may have made some adverse comment. This allegation of bad mouthing however is specifically about the conduct of Adam Crouch, without any evidence to implicate him personally.

1265. In any event the claimant has not established that she made protected disclosures and that the respondent had the requisite knowledge at the material time.

1266. The complaint under section 47B ERA is not well founded.

On 5 July 2021, Adam Crouch failed to provide a reference for claimant in response to a request from Eddies

1267. As set out in its findings of fact, the claimant has failed to establish that a reference request was received by the respondent. Further, the claimant has not established that she made the protected disclosures and that the respondent had the requisite knowledge at the material time of what she now alleges she disclosed.

1268. The complaints under section 47B ERA are not well founded and are dismissed in their entirety.

Summary

1269. The claims in their entirety, other than the allegation of direct discrimination with respect to **issue 6(g)**, are not well founded and are dismissed.

1270. The case will be set down for a remedy hearing to determine compensation with respect to the one complaint of direct discrimination which is well founded and succeeds.

1271. Following the written judgment being sent to the parties, the Respondent applied for an anonymity order under Rule 50 in respect of Mr Rider. For reasons set out separately, that was refused. The Tribunal determined however, that it was in the interests of justice to amend the judgment to include a disclaimer which is now added.

1272. The Tribunal however, of its own volition decided to make a Rule 50 order in respect of the Female Colleague to remove her identity from the judgment placed on the register. It was determined that given the nature of the alleged overt and sexually explicit exchange between the Female Colleague and Mr Adam Crouch, and as that individual was not a witness or party and it was not necessary to determine whether such an

exchange did in fact take place between her and Mr Adam Crouch to determine the issues around the conduct of Adam Crouch toward the Claimant. On balance this minor derogation from the principle of open justice was deemed justified.

1273. The judgment had originally, when sent to the parties, been headed judgment on remedy, this was a clerical error. It is a judgment on liability. On re-reading the judgment, when adding the disclaimer, a few further minor clerical errors were identified and those have been rectified under Rule 69.

Disclaimer

1274. It is important to make it clear, that the allegation relating to Mr Rider was concerned only with the comment made by Mr Adam Crouch to the Claimant, there was no finding as to whether or not Mr Rider had ever made a comment about 'liking pretty women' to Mr Adam Crouch or indeed anyone else. The Tribunal was only concerned with the conduct of Mr Adam Crouch in making that remark to the Claimant in giving his apparent reason for why she should attend a particular meeting. Mr Rider did not attend the hearing himself to give evidence because was not necessary to hear his account of whether or not he had himself ever made such a comment, in order to determine the issues in this case against the Respondent.

Employment Judge Broughton

Date: 22 November 2023

JUDGMENT SENT TO THE PARTIES ON

....05 December 2024.....

AND ENTERED IN THE REGISTER ON

Public access to employment tribunal decisions

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

Appendix 1: Agreed List of issues

- References:
- (1) C's original Details of Claim headed, "Statement of Miss Emma Nunn" – [DoC/para number] **[MB/24-48]**
 - (2) C's 1st application to amend headed, "Amended Claim – Additional Statement of Miss Emma Nunn" – [AC/para number] **[MB/49-56]**
 - (3) C's 2nd application to amend headed, "List of Claims" – [LOC/para number] **[MB/68-81]**

Constructive Unfair Dismissal

- c) *Did R breach the implied term that it would not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee ("**the Implied Term**")? C relies on the following allegations:*
 - a. *Between May 2018 and 4 May 2021, R forced C to engage in fraudulent practices, specifically:*
 - (i) *manually changing invoices to higher prices;*
 - (ii) *making up fictitious repairs;*
 - (iii) *adding VAT to non-VAT items or statutory fees; and*

- (iv) adding a 10% handling charge to items that were a fixed charge as per Home Office advice (LoC/14);
- b. On 8 February 2020, Mr Adam Crouch (“**Mr A Crouch**”) did not provide C with a contract of employment in response to her request of the same day (LoC/13(d));
- c. On 2 March 2020, Mr A Crouch refused C’s request for a private office when Mr Rob Taylor, Mr Rob Garner, Mr Ollie Barton, Mr Steve Kelly and Mr Ricky Guerriero each had their own offices (LoC/13(g));
- d. On 13 March 2020, Mr Guerriero suggested to C that they take over running the business temporarily so that Mr A Crouch could spend time with his wife, but Mr A Crouch turned down this offer as he wanted to continue working (LoC/13(a));
- e. On 19 March 2020, Mr A Crouch said to C “how do you feel about being company secretary so I can take my mum off?” (DoC/4.23);
- f. In January 2021, Mr A Crouch refused C’s request to attend a recovery job as other staff had done (LoC/13(c));
- g. On 19 April 2021, Mr Guerriero, Mr Bruce and Mr A Crouch had a meeting in the morning to discuss the reorganisation of the accounts team without C present. As a result an agreement was reached between the 3 men whereby they decided to give C’s role to Mr Bruce. In the afternoon Mr Guerriero then sent C an email attaching a PDF showing without warning and consultation the accounts reorganised and that her role and status as account manager had unilaterally and fundamentally changed and Mr Bruce had been allocated several of her accounts to manage (DoC/5.11-5.17, LoC/13(e));
- h. On 19 April 2021, Mr Bruce called C’s mobile from R’s office, C asked to be taken off loudspeaker but Mr Bruce did not do so (LoC/13(h));
- i. On 23 April 2021, Mr A Crouch called C from Mr Guerriero’s office with Mr Kelly and Mr Guerriero on loudspeaker. He stated that they had Mr Bruce in a meeting that same morning to say that he is now not doing the new job that was discussed with him (on Monday). Furthermore, Mr A Crouch stated that “we have put him (Mr Bruce) back in his box” (DoC/6.62);
- j. On 23 April 2021, Mr A Crouch called C’s father Mr Chris Nunn and told him that he “loved” C (LoC/13(i));
- k. On 23 April 2021, Mr A Crouch emailed C saying she could have a company car. However, C then had to make four further requests the last being on 4 May 2021 (LoC/13(k));
- l. On 23 April 2021, Mr A Crouch emailed C saying it was 100% his fault, that he undermined her; C is his “right-hand woman”; Mr Bruce and Mr Guerriero would never be able to do her job; and he would jump off a motorway bridge if C did not go back (DoC/6.76):
- m. On 27 April 2021, Mr A Crouch acknowledged to C that Mr Kelly was lying to her when he said that Mr Dave Crouch had attended a meeting with him, Mr A Crouch and Mr Guerriero that morning (DoC/6.80);
- n. On 1 May 2021, Mr A Crouch messaged C saying you can work wherever you want to, “I genuinely just want you to be happy and we move forward you’re the kingpin in all of this” (LoC/13(j));
- o. On 1 May 2021, C still felt unsupported and so asked Mr A Crouch in a WhatsApp message, “if Mr Michael Bruce is horrible to me will you have my back?” Mr A Crouch replied in a WhatsApp message, “You know I will you shouldn’t have to ask x” (LoC/13(l));
- p. On 5 May 2021, Mr Bruce sent emails querying C’s work copying in Mr A Crouch (DoC/6.87). C did not feel supported (or the kingpin) as previously stated by Mr A Crouch and this was the last straw for her.

- d) *If so, did C affirm her contract of employment and/or waive her right to resign in response to any such breach?*
- e) *If not, was any such breach an effective cause of C's resignation without notice on 5 May 2021?*
- f) *If so, and C was therefore constructively dismissed, was her dismissal fair or unfair? In particular:*
 - a. *Did R have a potentially fair reason for the conduct that constituted a breach of the Implied Term and caused C to resign? R will rely on capability and/or some other substantial reason;*
 - b. *If so, was that conduct reasonable or unreasonable?*

EqA Claims – limitation

- g) *In respect of: (i) C's claims in her original Claim Form that relate to acts or failures alleged to have occurred prior to 20 February 2021 (C having notified ACAS on 19 May 2021); and (ii) C's new claims in her "List of Claims" dated 12 July 2021 (C having been granted permission to add those claims by way of amendment, subject to time issues, on 19 October 2021):¹*
 - a. *Did any of those acts or failures to act form part of a continuing course of conduct that ended on or after 20 February 2021?*
 - b. *If not, would it be just and equitable to extend time?*

Direct Sex Discrimination

- h) *Did the following alleged incidents occur:*
 - a. *On 5 March 2020, Mr A Crouch told C that she could have a new Ford Ranger, but later failed to provide one for her, whilst Mr Garner and Mr Barton were given such a car (LoC/20(c));**
 - b. *On 12 March 2020, Mr A Crouch refused C's request for a company mobile phone when Mr Taylor, Mr Garner, Mr Barton, Mr Kelly and Mr Guerriero each had company mobile phones (LoC/20(a));**
 - c. *In March 2020, Mr A Crouch did not consult C about nor give her the option of being furloughed due to Covid (LoC/20(e));**
 - d. *On 24 August 2020, Mr A Crouch told C to clean the toilets by saying "well you can clean them you are a woman" (LoC/20(f));**
 - e. *On 28.4.20, 7.9.20, 29.9.20, 25.11.20 and 18.2.21, Mr A Crouch asked C (rather than a male colleague) to make tea/coffee for a visitor, on 29.9.20 by sending her a WhatsApp message saying, "Tea for my office. for me and 1 with sugar" (LoC/20(b));**
 - f. *In February-March 2021:*
 - (i) *Mr A Crouch and Mr Guerriero did not invite C to attend customer meetings to which she would have been invited previously (including one with VMS and another with Enterprise); and*
 - (ii) *Instead, Mr Guerriero asked her to perform mundane follow-up tasks such as providing copies of invoices to customers (LoC/20(g));**
 - g. *On 8 April 2021, with reference to a meeting with a customer (Zenith), Mr A Crouch sent a WhatsApp message to C saying, "oh yeah you should come as David Rider is attending*

¹ In the lists below, these new claims are marked with an asterisk.

and he likes pretty women". When C queried this message he replied in a WhatsApp message, "ok babes" (DoC/6.36-7);

- h. On 19 April 2021, Mr Guerriero, Mr Bruce and Mr A Crouch had a meeting in the morning to discuss the reorganisation of the accounts team without C present. As a result an agreement was reached between the 3 men whereby they decided to give C's role to Mr Bruce. In the afternoon Mr Guerriero then sent C an email attaching a PDF showing without warning and consultation the accounts reorganised and that her role and status as account manager had unilaterally and fundamentally changed and Mr Bruce had been allocated several of her accounts to manage (DoC/5.11-5.17);
 - i. On 22 April 2021, after C had emailed Mr A Crouch, Barbara Crouch and Mr Guerriero on 21 April 2021 raising a grievance about the allegations in paras (g) and (h) above, Mr A Crouch telephoned C and expressed his annoyance that C had told his mother about the "pretty" comment (para (g) above) (DoC/6.43).
- i) If so, in respect of any such incident:
- a. Was it done by: (i) an employee of R's in the course of their employment by R; or (ii) an agent of R's acting with R's authority? See R's further particulars at MB/198-199.
 - b. Did it constitute a detriment to C?
 - c. Did R thereby treat C less favourably than it treats or would treat others because of her sex?
- j) If so, in respect of para h)h, did R thereby discriminate against C because of her sex by constructively dismissing her (LoC/21)?* (This para h)h also forms part of C's claim for constructive dismissal above: see para c)g).

Sexual Harassment

- k) Did the following alleged incidents occur:
- a. On 13 March 2020, Mr A Crouch sent a message to C referencing "cock" (DoC/6.13);
 - b. On 13 March 2020, Mr A Crouch consulted C about a message he had received from a Female Colleague where she had asked him if he liked "pussies shaved or hairy". C advised him not to reply and he responded, "I already have" (LoC/28(b));*
 - c. On 14 March 2020, Mr A Crouch sent C a WhatsApp message saying not to message him at the weekend because of his wife (DoC/6.29);
 - d. On 14 March 2020, Mr A Crouch sent C a WhatsApp message telling her to delete messages so that her partner did not see them (DoC/6.41);
 - e. On 25 March 2020, Mr Richard Crouch sent C a Facebook message saying, "I have just asked the wife to put on a nurse's uniform", she said, "why are you feeling horny," I said no "we just need some bread" (LoC/27(b));*
 - f. On 28 March 2020, Mr Richard Crouch sent C a Facebook message saying, "if you support the truckers with all the covid deliveries, on Saturday at 10:00am go to your local motorway bridge and get your tits out for the truck drivers" (LoC/27(c));*
 - g. Also on 28 March 2020, C messaged Mr A Crouch about the sexual context of messages she was receiving from Mr Richard Crouch (his brother), and Mr A Crouch replied in a text message saying "speak to Dave Crouch he is Head of HR" (DoC/6.21);
 - h. On 9 June 2020, C in a Whatsapp message asked Mr A Crouch about changes Mr Guerriero had asked her to make to invoices. Mr A Crouch sent her a WhatsApp message saying, "to stay quiet.... that's what pays your salary" (DoC/6.38);

- i. On 11 July 2020, C changed her Facebook profile picture, Mr Ricky Guerriero then sent her a copy of the photo on WhatsApp saying “you should go on Love Island, this should be your professional picture” (LoC/29(f));*
- j. On 16 July 2020, C asked (in the open office) about receiving more t-shirts from Mr A Crouch for her uniform. Mr Ollie Barton (male colleague) replied to C “you could be the eye candy to model them” (LoC/29(g));*
- k. Also on 16 July 2020, Mr Barton then gave C the new uniform in Mr Ricky Guerriero’s office, and said to C in front of Mr Guerriero “You can get changed in here” (LoC/29(h));*
- l. Also on 16 July 2020, Mr Barton referred to C in the office as “tight nunny”, a slang term for tight vagina (DoC/6.13);
- m. In July 2020, Mr Kelly messaged C via the company’s internal messaging platform saying, “when are you coming in as Adam is missing you” (LoC/29(i));*
- n. On 14 August 2020, C was asked by female employee Ms D Parr to attend a meeting with Mr Guerriero. Within her first week at work Ms D Parr had received inappropriate sexual messages from a male colleague Mr Barton about wanting to have sex with her (DoC/6.3-6.5);
- o. On 24 August 2020, C wore a dress to work in the office. As she walked past Mr A Crouch he said “your boobs look massive” (LoC/28(l));*
- p. On 25 September 2020, Kayleigh Linnett told C that Mr Copley had said, “it’s not Crouch Recovery it’s CROTCH Recovery” and grabbed his crotch in front of her (LoC/30(a));*
- q. On 30 September 2020, Mr Bruce and Mr T Graham referred to C as the office cougar and MILF (meaning, “Mum I would like to fuck”) (DoC/6.13);
- r. On 30 September 2020, Mr T Graham stated he had looked C up on Facebook (LoC/29(j));
- s. On 23 October 2020, when C was in the office and Mr A Crouch was sat next to her, he reached out touched and stroked her thigh (LoC/28(e));*
- t. On 20 December 2020, Mr A Crouch sent C a WhatsApp message saying, “keep your mouth shut no one else is getting one” (with reference to a hamper R had given her) (DoC/6.30);
- u. On 27 February 2021, Mr Richard Crouch sent C a Facebook message “I did not realise you were married I thought you were living in sin” (LoC/29(k));*
- v. On 31 March 2021, C confirmed in a WhatsApp message that for the month of March they had billed £3m of invoices. Mr A Crouch replied in WhatsApp message saying “book afternoon tea for us to celebrate” (DoC/6.40);
- w. On 8 April 2021, with reference to a meeting with a customer (Zenith), Mr A Crouch sent a WhatsApp message to C saying, “oh yeah you should come as David Rider is attending and he likes pretty women”. When C queried this message he replied in a WhatsApp message, “ok babes” (DoC/6.36-7);
- x. On 22 April 2021, Mr A Crouch sent C a WhatsApp message referring to his mother “you are the daughter in law she never had but do not repeat that to Jennie as I will lose my house” (DoC/6.44);
- y. On 22 April 2021, Mr A Crouch sent C a video via WhatsApp of his new home office. At the start of the video he said, “I am sending you this because Jennie [his wife] does not get me, but you do” (LoC/28(o));*
- z. On 23 April 2021, Mr A Crouch telephoned C and expressed his annoyance that she had told his mother about the “pretty face” comment (para (u) above) (DoC/6.43);

- aa. On 24 April 2021, Mr David Crouch (Mr A Crouch's father) sent C a text message saying, "Whatever happens it will not affect our friendship; I always thought you were a belter the first time I saw you" (DoC/6.15);
 - bb. On 26 April 2021, Mr David Crouch called C and said he knew Mr A Crouch spoke to her like she was his wife (LoC/28(p));*
 - cc. Also on 26 April 2021, Mr A Crouch sent C a picture message of his father at a desk saying, "our new head of accounts" and "don't let anyone ruin our relationship again xxxxxxxxxxxxxxxx" (LoC/28(q)).*
- l) If so, in respect of any such incident:
- a. Was it done by: (i) an employee of R's in the course of their employment by R; or (ii) an agent of R's acting with R's authority? See R's further particulars at MB/198-199.
 - b. Was that conduct unwanted?
 - c. Was that conduct of a sexual nature?
 - d. Did that conduct have the purpose of:
 - (i) violating C's dignity; or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for C?
- m) Did R thereby harass C "in relation to employment by" R for the purposes of s. 40 EqA 2010?

Harassment related to sex

- n) Did the following alleged incidents occur:
- a. On 27 February 2020, Mr A Crouch said, in front of other staff in R's offices, "here comes the posh girl from Cambridge wearing her wax jacket" and "here's the girl that does her shopping at Ocado" when referring to C (LoC/32(d));*
 - b. On 19 March 2020, Mr A Crouch referred to C to a customer Mike Beech of Biomax as Emma Royd, a play on haemorrhoid (LoC/32(g));*
 - c. On 19 March 2020, Mr Mike Beech sent C an email with a salutation "Thank you Emma Royd"" (LoC/32(g));*
 - d. On 17 September 2020, C asked Mr A Crouch why he did not post female birthdays as much on R's Facebook page and he said "Jennie would not like it" (LoC/32(a));*
 - e. On 8 August 2020, C uploaded a photo to her personal Facebook page, Mr Ricky Guerriero sent her a screenshot of the photo saying "can we camp in your garden" (LoC/32(f));*
 - f. On 7 September 2020, Mr A Crouch set up a WhatsApp group called "Steam off Keyboards" for C and another female colleague Leanne Peat (LoC/32(m));*
 - g. On 13 September 2020, following an issue with Manchett's Recovery (another recovery company based in Cambridge), Mr A Crouch asked C "to call your boyfriend Sean", referring to Mr Sean Manchett (the company's owner) (LoC/32(e));*
 - h. On 24 September 2020, Mr A Crouch patted C on the head in front of other staff and said "I like to give Emma a little patronising pat on the head because she likes it" (LoC/32(c));*
 - i. On 28.4.20, 7.9.20, 29.9.20, 25.11.20 and 18.2.21, Mr A Crouch asked C to make tea/coffee for a visitor, on 29.9.20 by sending her a WhatsApp message saying, "Tea for my office. for me and 1 with sugar". Mr A Crouch did not ask a male colleague to do these tasks (LoC/32(b));*

- j. *On 30 September 2020, Mr Bruce took an image of C's face from Facebook and superimposed it onto a graphic of someone throwing another person under a bus, then sent this image to her (LoC/32(l));**
 - k. *In October 2020, Mr A Crouch told C that he was thinking of recruiting for a new Operations Director role but that she could not apply (LoC/32(k));**
 - l. *On 7 December 2020, Mr Bruce sent C a picture message of her desk and the contents of her drawers being emptied, saying he was going to give her desk to a new member of his team (LoC/32(n));**
 - m. *On 19 April 2021, Mr Ricky Guerriero without warning and consultation emailed C a PDF document showing her role had unilaterally and fundamentally changed and that Mr Bruce had been allocated several of her accounts to manage (LoC/33);*
 - n. *On 23 April 2021, C messaged Mr Guerriero that she felt ill because of the way she had been treated and he replied by text message: "don't accuse me of making you ill" (LoC/32(o));**
 - o. *On 27 April 2021 at 21:32, Mr A Crouch sent C via WhatsApp a screenshot of the conversation between R and a DVSA Examiner about a live TIP Job. He had previously told her that he would never make the same request of Mr Bruce because it was out of hours (LoC/32(i)).**
- o) *If so, in respect of any such incident:*
- a. *Was it done by: (i) an employee of R's in the course of their employment by R; or (ii) an agent of R's acting with R's authority? See R's further particulars at MB/198-199.*
 - b. *Was that conduct unwanted?*
 - c. *Was that conduct related to sex?*
 - d. *Did that conduct have the purpose of:*
 - (i) *violating C's dignity; or*
 - (ii) *creating an intimidating, hostile, degrading, humiliating or offensive environment for C?*
- p) *Did R thereby harass C "in relation to employment by" R for the purposes of s. 40 EqA 2010?*

Protected disclosures

- q) *Did C make the following alleged disclosures:*
- a. *On 6 May 2020, C claims she had the following conversations with Action Fraud:*

"at 15.24pm the following: "I have left a company I worked for in Leicester yesterday, I believe there is Fraud involved with their company accounts and I told their MD yesterday that I was going to report it. But this is a big step for me because I have known the MD and his family for 20 years and I am unsure of what I need to do"

The Action Fraud representative said "is the a criminal offence?" and I replied "yes I believe so." The Representative then said "If you are prepared to give me the company details I can then log this for for as a report." I said, "I need time to think about it before I give the company name."

I then called back at 15.34pm and said to a different agent "I have just spoken to a colleague of yours that I believe me ex company us committing fraud and I now would like to make a formal report."

After I provided the name and address of the company the Representative asked for my name address and email. She then asked me to explain the fraud and I said "there are two parts (1) adding VAT on statutory fees to Police and Highways charges as the have a contract with Leicestershire police and FMG Highways and (2) inflating for a customer called Warrens, they are manually adding prices so for example a simple recovery at £300 gets changed to RTC for £4,500. And the company have sent an employee to get the computers back and I am worried they will get the computers and delete the evidence."

The Representative then said "My advice is to store them (computers) off site in case they send someone to collect them. This call is confidential please do not share what we have discussed, and I will give you a reference number and I will email this to you too for your records."

- b. On 20 May 2020, C claims she had the following exchange with Cambridgeshire Police:

"the Claimant went on line to Cambridgeshire Police and completed a chat log. The Chat is detailed below "I resigned from my company on the grounds of constructive dismissal."

Operator "OK what have the company said in return of the laptop?"

I said "they are threatening to police around and charge me with theft. This is a company with a show on TV so very public."

Operator "When you say you haven't logged the claim in detail have you logged any claim and if so where to?"

I said "I have registered my details with Action Fraud and have a crime reference number and this is a massive step for me to provide all the details etc they have already staff to my house to collect and based on Action Frauds advice to move (the computes) off site we stooped them coming."

Operator "I have had to approach a supervisory on this matter. You have stated you are withholding the laptop as you believe it provides evidence of fraud you have reported. This a lawful reason tom withhold property. However, they have the right to report you for theft if that is their belief. However, when the matter is investigated if you claims provides based then no further action will be take."

I said "OK I will hold on to them then"

- r) If so, did this constitute a qualifying disclosure? In particular, in respect of each such disclosure:
- a. Was this a disclosure of information?
 - b. Did C believe that information tended to show:
 - (i) that a criminal offence had been committed, was being committed or was likely to be committed; or
 - (ii) that a person had failed, was failing or was likely to fail to comply with any legal obligation to which he is subject?
 - c. If so, was that belief reasonable?
 - d. Did C believe that disclosure was made in the public interest?
 - e. If so, was that belief reasonable?
- s) If so, did this constitute a protected disclosure? In particular, was it made in accordance with s. 43G ERA 1996?

Whistleblowing detriment

- t) *Did the following alleged incidents occur:*
- a. *On or shortly after 8 May 2021, Mr A Crouch failed to respond to C's Data Subject Access Request of that date (LoC/39(c));*
 - b. *On or before 1 June 2021, Mr A Crouch provided misleading information to Cambridgeshire Police that led to C's arrest at 21.00 hrs that day (LoC/39(a));*
 - c. *On or shortly after 3 June 2021, Mr A Crouch failed to send C R's Whistleblowing Policy in response to her request of that date (LoC/39(b));*
 - d. *On 19 May 2021, Mr A Crouch (via R's solicitors, Broomfields) wrote to C warning her not to contact R's customers, accusing her of "causing mischief", threatening an injunctive order and rebuking and belittling her accusing her of not making a disclosure to Action Fraud (LoC/39(d));*
 - e. *On 21 May 2021, Broomfields informed C that she would be arrested if she did not return the computers by 4pm Friday (AS/p. 5, para 3);*
 - f. *On or shortly after 22 June 2021, Mr A Crouch provided only a very basic reference in terms of dates and job title in response to a request from a recruitment company through which C had applied for a new role (LoC/40(a));*
 - g. *On 8 May 2021, Mrs B Crouch blocked C on WhatsApp (LoC/40(b));*
 - h. *On 12 May 2021, Louise Guerriero blocked/ unfriended C on WhatsApp, Facebook and Instagram (LoC/40(b));*
 - i. *On 12 May 2021, Mr Guerriero blocked/ unfriended C on WhatsApp, Facebook and Instagram (LoC/40(b));*
 - j. *On 13 May 2021, Mr Kelly blocked/ unfriended C on WhatsApp, Facebook and Instagram (LoC/40(b));*
 - k. *On 20 May 2021, Mr D Crouch blocked/ unfriended C on Facebook (LoC/40(c));*
 - l. *On or before 19 June 2021, Mr A Crouch bad-mouthed C to Mr Manchett of Manchett Recovery, causing him to block her on WhatsApp and LinkedIn (LoC/40(d)(i));*
 - m. *On or before 20 June 2021, Mr A Crouch bad-mouthed C to Dan Ratcliffe of Ratcliffe Recovery, causing him to decline her request for a job and unfriend her on Facebook (LoC/40(d)(ii));*
 - n. *On or before 21 June 2021, Mr A Crouch bad-mouthed C to Dan Hills of H&A Recovery, causing him to unfriend her on Facebook and not reply to her messages about job vacancies (LoC/40(d)(iv));*
 - o. *On 5 July 2021, Mr A Crouch failed to provide a reference for C in response to a request from Eddies (LoC/40(e)).*
- u) *If so, in respect of any such incident (all of which are alleged to have occurred after C's employment terminated on 5 May 2021):*
- a. *Did that act or deliberate failure to act arise out of and/or was it sufficiently closely connected with C's employment by R to fall within the scope of s. 47B(1) ERA 1996?*
 - b. *Was it done by: (i) an employee of R's in the course of their employment by R; or (ii) an agent of R's acting with R's authority? See R's further particulars at MB/198-199.*

- c. *Did that act or deliberate failure to act constitute a detriment to C?*
 - d. *Was that act or deliberate failure to act done on the ground that C made one or both of the above disclosures?*
- v) *Further, in respect of paras (d) and/or (e), does the Tribunal have jurisdiction to determine that complaint, or is it covered by judicial proceedings immunity?*

Remedy

- w) *If any of C's claims is upheld:*
- a. *Would it be just and equitable for C to be awarded any compensation?*
 - b. *Has C acted reasonably in seeking to mitigate her loss?*
 - c. *Should C be awarded compensation for injury to feelings? If so, in what amount?*
 - d. *Should any compensation be reduced:*
 - (i) *for contributory fault; and/or*
 - (ii) *to reflect a chance C would have resigned or been treated in the same way in the absence of any breach of contract, discrimination, harassment or whistleblowing detriment?*
 - e. *Did C fail to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures by failing to raise a grievance during her employment? If so, should any compensation be reduced?*
 - f. *Was any protected disclosure made in good faith? If not, should any compensation for protected disclosure detriment be reduced?*

