# EMPLOYMENT TRIBUNALS

**Claimant: Melinda Boza**

**Respondent: Verizon UK Limited**

**Heard at**: London Central (remotely by CVP)

**On**: **11, 12, 13, 16, 17, 18, 19, 23, 24, 25, 26, 27 October 2023 and deliberation in chambers 16, 17, 18, 19 January 2024**

**Before:** Employment Judge Woodhead

Mr David Clay and Mr Martin Simon

**Representation**

For Claimant: Mr Mark Harris (lay representative of the Claimant), Ms Melinda Boza

For Respondent: Mr Sam Neaman (Counsel), Ms Lucy Snell (In House Counsel), Mr Lewis Jones (note taking)

# JUDGMENT

**On 13 October 2023 the following claims were withdrawn by the Claimant and were therefore dismissed with effect from that date:**

- **whistleblowing detriment (9. in the list of issues)**
- **automatic unfair dismissal (10. in the list of issues)**
- **health and safety detriment claim;**
- **personal injury.**

**During submissions on 27 October 2023 the Claimant withdrew her claim of unlawful deduction of wages in respect of bonus/short term incentive payments (Issue 42 in the List of Issues). This claim under Section 13 of the Employment Rights Act 1996 was therefore dismissed on withdrawal.**

As regards the remaining claims, the unanimous judgment of the Employment Tribunal is as follows:

1. **The complaint of unfair dismissal is not well founded and is dismissed.**

2. **The complaints of direct (race and sex) discrimination are not well-founded and are dismissed.**

3. **The complaints of unfavourable treatment because of something arising in consequence of disability are not well-founded and are dismissed.**

4. **The complaints of failure to make reasonable adjustments for disability are not well-founded and are dismissed.**

5. **The complaints of harassment related to race and sex are not well-founded and are dismissed.**

6. **The complaints of victimisation are not well-founded and are dismissed.**

7. **The Claimant's claim for breach of contract / unlawful deduction from wages (company sick pay) is not well founded and is dismissed.**

# REASONS

## THE ISSUES

1. This claim centres on events surrounding the Respondent's investigation of another former employee of the Respondent, a Mr C Abadir, two interviews with the Claimant undertaken pursuant to that investigation and then a separate investigation and disciplinary process undertaken with the Claimant into allegations against her of harassment and taking unauthorised time off. The Claimant had for a period wanted a relationship with Mr Abadir. The allegations against the Claimant may not have come to light had it not needed to investigate Mr Abadir and look into emails he had sent and received. The disciplinary process with the Claimant took a number of months during which the Claimant raised a large number of grievances. The disciplinary process ultimately led to the Claimant's dismissal by the Respondent.

## THE HEARING

2. This hearing was listed, at a Preliminary Hearing for case management on 13 October 2022, for 15 days between **9 to 27 October 2023** inclusive to deal with liability alone. Owing to Tribunal resources it was not possible to start the hearing until 11 October 2023 or for EJ Woodhead to sit on 20 October 2023 because he needed to conclude the hearing of a case that had been part heard.

3. At the start of the hearing we were provided with:

- A bundle totalling 1208 pages (with a further 8 pages being added during the course of the hearing);

- An agreed chronology;

- An agreed cast list;

- A witness statement from the Claimant totalling 38 pages;

- Witness statements for 11 Respondent witnesses some of whom also had supplemental statements (as envisaged by the orders from the 13 October 2022 preliminary hearing).

- A list of issues which was still being finalised by the parties at the start of the hearing.

4. The written witness evidence totalled 192 pages.

5. The Respondent's witnesses were as follows:

- **Mr Roy Priestley** - Legal Counsel for the Respondent. He undertook the initial ethics investigation meetings with the Claimant (involving an investigation into the actions of Mr C Abadir). Mr Priestley provided a supplemental statement.

- **Ms Jamie Navarro** - Manager in the respondent's US Ethics Team. She was notetaker in the ethics investigation meetings held by Mr Priestley with the Claimant regarding the investigation into Mr C Abadir. Ms Navaro provided a supplemental statement.

- **Ms Ashwinder Sawhney** - a UK HR Business Partner for the Respondent. She undertook the HR investigation and made the decision to recommend that the allegations against the Claimant should be taken forward to a disciplinary hearing. ). Ms Sawhney provided a supplemental statement.

- **Ms Preeti Patel** - HR Business Partner at the Respondent. She was the note taker in the HR investigation meeting with the Claimant and supported with some of the management of the Claimant's sickness absence, some of the arrangements for the disciplinary hearing, and arrangements regarding the Claimant's proposed return to work at the end of her sickness absence.

- **Ms Alexandra Ferrin** - the Respondent's UK HR Lead (she had left the employment of the Respondent). She was involved in arranging the initial HR investigation, and in the Claimant's sickness arrangements. She was also responsible for arranging the disciplinary hearing, the decision to progress this and liaising with the Claimant's medical practitioner regarding her medical report.

- **Ms Amanda Moses** - Manager, Employee Relations for Verizon Corporate Resources Group LLC (part of the Respondent's corporate group). She dealt with the Claimant's first grievance.

- **Ms Deborah Llewellyn** - Employee Relations/EEO Manager for Verizon Corporate Resources Group LLC (part of the Respondent's corporate group). She dealt with the Claimant's third and fourth grievances.

- **Ms Kimberly Porcaro** - Head of Global Employee Relations for Verizon Corporate Resources Group LLC (part of the Respondent's corporate group). She dealt with the Claimant's Second and Fifth grievances.

- **Ms Maria Butterworth** - Associate Director in the Respondent's Network Assurance division. She was the disciplinary officer who made the decision to dismiss the Claimant. Ms Butterworth provided a supplemental statement correcting page references in her original statement and making clear that some emails that she had originally indicated were seen by her as part of the disciplinary process she had not in fact seen until preparation for the Tribunal hearing).

- **Mr Paul Vincent** - Managing Director / Area Vice President for the Respondent. He heard the Claimant's appeals against the outcomes of her various grievances.

- **Mr John Williams** - Marketing Director – EMEA/APAC for the Respondent. The Claimant worked within one of the marketing teams for which he has oversight. He was responsible for the Periphas Program on a global level and reporting its results to the global marketing management team. He was involved in the decisions regarding the Claimant's sick pay and "approved" her dismissal (from an administrative perspective) on the Respondent's PeopleSoft system. He also heard the Claimant's appeal against her dismissal. Mr Williams provided a supplemental statement.

6. A provisional timetable had been agreed at the preliminary hearing on 13 October 2022 and we kept this under review with the parties as the hearing progressed. On the first day of the hearing the Respondent asked for 4 days to cross examine the Claimant giving the Claimant 5 days with the Respondent's witnesses. The Claimant has asked for a 3 / 6 day split in her favour. We considered this and asked the parties to keep to 3.5 days for the Respondent and 5.5 days for the Claimant to cross examine the Respondent's witnesses (four of whom needed to give evidence in the afternoon and being five (or in the case of Ms Moses six) hours behind UK time).

7. Mr Harris later in the hearing complained that we had only discussed a running order, not a timetable for the Respondent's witnesses. We had from the outset encouraged Mr Harris to think about how he would use the time available to him: taking into account the witnesses that needed to give evidence from the USA, the importance of their evidence to the list of issues and the length of time he was likely to need with each person. We encouraged him to liaise with the Respondent's solicitors to ensure the Respondent's witnesses were available when he needed them. From Thursday 19 October 2023 we asked for more precise timetabling of the Respondent's evidence and we kept that under review with the parties each day from that point onwards.

8. We made clear that the Claimant could ask for breaks if she felt she needed them, particularly in light of her disability, but also made clear that anyone could ask for a break if they needed it. We reminded witnesses under oath that they were not permitted to communicate with others about the case during breaks or adjournments while they were giving evidence under oath.

9. We spent 11 and 12 October 2023 reading the witness evidence presented to us and working with the parties as they finalised the list of issues (included

in the Appendix to this judgment). This included the Claimant withdrawing and us dismissing on withdrawal the Claimant's claims of:

- whistleblowing detriment (9. in the list of issues)
- automatic unfair dismissal (10. in the list of issues)
- health and safety detriment claim;
- personal injury.

10. At the start of 13 October 2023 we had to resolve whether Issue 1 included a direct race discrimination claim. We concluded that it had not been pleaded as a direct race claim but allowed an amendment to include it given that it had formed part of the list of issues for some time and did not cause the Respondent evidential problems or prejudice.

11. Before we started to hear evidence we sought to put Mr Harris and the Claimant on an equal footing by explaining the process and in particular by providing guidance on:

- The importance of the list of issues as defining the matters that we would be asked to determine and therefore the focus that the parties should put in cross examination;
- The process of hearing the evidence and cross examination, tribunal questions, re-examination and the need for Mr Harris, when it came to his cross examination of the Respondent's witnesses, to challenge them on things that they say in their witness evidence which are relevant to the List of Issues and which the Claimant disputed. We made clear that, as such, the List of Issues should be a useful tool for Mr Harris to focus his cross examination. He kindly sought, where he was able to, to highlight to us which issue he was focusing on in his cross examination. We did not require this.
- We explained that if a witness is not challenged on the evidence in their witness statement the Tribunal is entitled to accept that evidence (take it at face value) and that if Mr Harris did not challenge a witness on a material point then that could affect the Claimant's ability to establish her case.

12. One of the reasons for hearing the Claimant's evidence first was that it would afford Mr Harris the opportunity to hear Mr Neaman cross examine which might assist Mr Harris in preparing his own questions for the Respondent's witnesses.

13. We heard the Claimant's evidence from mid-morning on Friday 13 October 2023 to lunchtime on Wednesday 18 October 2023. At about 15:25 on Tuesday 17 October 2023 Mr Harris lost his wifi connection and we had to adjourn. On the morning of Wednesday 18 October 2023 he had not been able to reestablish his wifi and had to join the hearing by telephone. He was happy to listen to the final piece of cross examination in that way.

14. During the Claimant's evidence it became apparent that the Claimant, by enlarging the bundle, had been able to read text that had been redacted by the Respondent because it was privileged. The was some discussion of that and we explained to Mr Harris that it he wanted that to be disclosed to the Tribunal then he would need to make an application explaining his grounds and it would need to be considered by another judge (i.e to determine whether the redactions were to conceal privileged text or otherwise). Mr Harris could not speak to the Claimant as she was under oath but it was revisited on the conclusion of her evidence and Mr Harris did not make an application.

15. Over lunch on Wednesday 18 October 2023 Mr Harris took some time to consider whether he had any re-examination (after we had reiterated our guidance to him of the purpose of re-examination). After the lunch break he concluded that he had no re-examination. We had in the meantime concluded that it would not have been appropriate for him to re-examine the Claimant without video connection or to start cross examining the Respondent's witnesses. He did not expect to have his wifi back until that evening but had a plan to attend the Claimant's home or come to the Tribunal if his wifi had not been fixed by the next day. We adjourned for this reason in the early afternoon.

16. On the morning of Wednesday 18 October 2023 the Respondent, pursuant to its ongoing disclosure obligations, sent in two short documents which a witness had forgotten about (memory of their existence was only triggered by hearing cross examination of the Claimant). We allowed the documents in on the basis that the Respondent did not rely on them. Mr Harris did cross examine the Respondent's witnesses on them.

17. We heard the evidence of Mr Pristley on Thursday 19 October 2020. Mr Harris asked if we could interpose the evidence of Ms Navarro with that of Mr Priestley in the afternoon, Ms Navaro being a witness based in the USA. We gave this consideration but concluded that it would not be appropriate given the overlap in her evidence and that of Mr Priestley. Mr Priestley's evidence concluded at just after 16:00. We could not sit on Friday 20 October 2023 and we again guided Mr Harris on how to focus his cross examination (including reminding him that he did not need to get the witness to agree with him – he just had to put the Claimant's position to them) and encouraged him to plan and prioritise his cross examination over the course of the coming three days. We revisited the timetable and reminded him that there were 10 more witnesses to hear from with 4 days left (so we needed to hear from at least two per day).

18. On the morning of Monday 23 October 2023 Mr Harris made an application to adduce new evidence which had not been brought into evidence by the Claimant and on which Mr Neaman had had limited ability to take instructions. We asked Mr Neaman to take more instructions during the day while we heard the evidence of Ms Sawhney. We revisited the Claimant's application after lunch and heard further submissions. We then took time to consider the application to adduce the new documents but did not allow it. We were not persuaded of the relevance of the documents or that they could not have been disclosed by the Claimant during preparation for the hearing.

We also did not consider it to be in the interests of justice to recall the Claimant to adduce the documents into evidence. We heard the evidence of Ms Navarro that afternoon and the revisited the timetable with Mr Harris, who wanted to cross examine Ms Patel, Ms Ferrin and Ms Llewellyn ( in the USA) the following day.

19. On Tuesday 24 October 2023 we heard the evidence of Ms Patel and Ms Ferrin. Mr Harris was still cross examining Ms Ferrin at just before 3pm and indicated that he thought he might need to continue with her into the following day. This proved to be the case but Ms Ferrin was no longer employed by the Respondent and, based on the timetable, was not sure if she could be released by her new employer for more time the next day (in the event her new employer agreed and her evidence concluded on Wednesday 25 October 2023 at 10:51 - earlier than Mr Harris had anticipated).

20. Owing to the fact that Mr Harris had taken longer with the witnesses than originally envisaged by the timetable we had discussed with him we spent from after 16:00 to around 16:50 on Tuesday 24 October 2024 asking Mr Harris for his proposed adjusted timetable and then putting together precise timings based on his request. We said we would guillotine his cross examination if necessary. We had two days left but Ms Ferrin's evidence to conclude and a further six witnesses to hear from (three of whom were in the USA). We gave Mr Harris precise timings and made clear that if he had not finished his questions in those timings we would nonetheless have to move to Tribunal questions and re-examination.

21. Notwithstanding that the timetable we proposed was based on Mr Harris's request, he seemed to complain about the timing. He suggested that we had previously been talking about a running order not a timetable. We did not accept that assertion. He also pointed to the fact that time had been lost when he had no Wi-Fi. We took that into account but had adjusted the timetable accordingly. We made clear that we would continue with Ms Ferrin's evidence in the morning and if Mr Harris wanted to make suggestions about the timetable after her evidence had concluded then we would hear that.

22. On Wednesday 25 October 2023, after Ms Ferrin's evidence Mr Harris complained about the timetable again and that Ms Navaro's evidence had not been interposed with that of Mr Priestley. However, that did not explain the situation we were in with the timetable. We had given clear reasons why we had not thought that appropriate at the time. He agreed we should stick with the timetable proposed by the Tribunal.

23. We then heard the evidence of Ms Butterworth and Ms Porcaro and Mr Harris confirmed that he thought he could also conclude cross examination of Ms Llewellyn that afternoon, which he did. The hearing ran to 16:25 (after we had again revisited the timetable and provided a further explanation of the submissions stage of the hearing).

24. On Thursday 26 October 2023 Mr Harris asked for an adjustment to the timetable to give him more time with Mr Williams which we agreed. We then

heard the evidence of Mr Vincent. The evidence of Mr Williams spanned lunch and at the end of the afternoon we heard the evidence of Ms Moses. That concluded the evidence in the case.

25. Before we adjourned on 26 October 2023 we gave Mr Harris more guidance on submissions and agreed to reconvene at 11am the following morning, Friday 27 October 2023, the last day of the hearing. We agreed:

- Mr Harris would make submissions verbally between 11:00 and 12:30 (he did not want to make written submissions)

- Mr Neaman would talk to written submissions between 13:30 and 15:00.

This was to give Mr Harris more time to read Mr Neaman's written submissions and bundle of authorities which Mr Neaman indicated he would be able to send to Mr Harris on the evening of Thursday 26 October 2023. The timings slipped a little but Mr Harris made his submissions between 11:20 and 14:00 with a break for lunch. Mr Neaman made oral submissions from 14:00 to 15:20 which supplemented those that he had put in writing. Mr Harris had a right of reply on one point which Mr Neaman countered briefly and the hearing concluded at around 15:30. We warned the parties that we might not be able to reconvene to deliberate until the middle of January 2024. Mr Harris said that he had warned the Claimant that she should expect a delay.

## FINDINGS OF FACT

26. We make our key findings of fact in respect of each individual allegation in the analysis and conclusions section below. We make all findings of fact on the balance of probabilities. Not all the matters that the Parties are told us about are recorded in this judgment. That is because we have limited them to points that are relevant to the legal issues.

27. The Claimant worked as a Field Marketing Manager for the Respondent between 13 May 2019 and 4 July 2022 (the date of her summary dismissal by the Respondent).

28. In her role the Claimant worked with a Mr C Abadir who was Managing Client Partner for the Respondent in its sales team. He worked with the Claimant on a project to create new opportunities for the Respondent via one of its marketing vendors, Periphas Limited.

29. In her role the Claimant reported to Ms Lucille Needham (Head of EMEA Strategy, Planning, Digital and Field Marketing). At the time of the Tribunal hearing Ms Needham had left the Respondent's employment. Ms Needham was responsible for the Periphas Program at an EMEA level.

30. In 2021 concerns were raised with the Respondent as to the conduct of Mr Abadir and a Mr M Sweaney (one of Mr Abadir's direct reportees) with respect to the Periphas programme and whether they were acting in the interests of the Respondent. Mr Priestley (a solicitor and in house counsel for the Respondent) was responsible for leading an internal investigation into Mr Abadir (which we call the "**Ethics Investigation**").

31. Periphas Limited was founded by a Mr K Williams and he was the Respondent's primary point of contact at that organisation. Periphas was the Respondent's main contractor (the company with which it had a direct contractual relationship). Periphas subcontracted work to BrandRocket Limited. A Ms O Williams was an employee of BrandRocket but left to set up a new company called Kattapult Limited. Periphas then moved work from its subcontractor BrandRocket to Kattapult. Mr Abadir and Mr Sweeney co-founded a company called ABCNet. There was a suggestion that Mr Abadir was in a relationship with Ms O Williams and had played some part in influencing the change in Periphas' subcontractor.

32. The Ethics Investigation involved Mr Priestley speaking with the Claimant as it was thought that the Claimant might have relevant information, there being emails from her to him that might have suggested that she knew that Mr Abadir was not acting in the Respondent's interests. Mr Priestley spoke to the Claimant on 11 October 2021 (this was before he had spoken to Mr Abadir) and 11 February 2022. It was important to Mr Priestley that the Claimant did not tip-off Mr Abadir as to his investigation after his meeting with the Claimant on 11 October 2021. During much of the period of time between the meetings of 11 October 2021 and 11 February 2022 the Claimant was away from work because of a serious illness of a close family member in Hungary and her own sickness with viral gastroenteritis.

33. Both Mr Abadir and Mr Sweaney resigned from the Respondent's employment on 29 November 2021 and we were told that there was then litigation between the Respondent and Mr Abadir which was settled in 2022.

34. During the course of the Ethics Investigation and his review of correspondence on the Respondent's email system between Mr Abadir and the Claimant, Mr Priestley identified emails that were concerning to him. They raised questions as to the Claimant's conduct towards Mr Abadir (suggesting she wanted a personal relationship with him that he did not want with her) and in respect of the Claimant having taken some unauthorised time off work one afternoon to prepare for a social meeting with Mr Abadir (a meeting that did not, in the event, happen). Mr Priestley passed those emails to the Respondent's HR team on 26 November 2021 (442). There was some delay in progressing an investigation of the emails because of the Claimant's absence and Mr Priestley's need have a further interview (relating to his investigation of Mr Abadir, not the Claimant) which did not take place between the Claimant and Mr Priestley until 11 February 2022 (456 and 457).

35. Ms Sawhney was charged with investigating the issues arising from The Claimant's emails to Mr Abadir and held a meeting with the Claimant on 2 March 2022. On 7 March 2022 the Claimant commenced sick leave. On 9 March 2022 Ms Sawhney completed her investigation report and recommended that allegations against the Claimant be considered at a disciplinary hearing.

36. On 1 April 2022 the Claimant's company sick pay was reduced to 50% of full pay. On 11 April 2022 it was further reduced to statutory sick pay.

37. On 20 April 2022 the Claimant raised a grievance and attended a grievance hearing with Ms Amanda Moses on 29 April 2022. Thereafter all grievance processes and disciplinary processes were conducted in writing – at the Claimant's behest.

38. On 5 May 2022 the Claimant issued her second grievance letter and on 9 May 2022 the Respondent invited her to disciplinary hearing scheduled for 12 May 2022 which did not go ahead on that date. The disciplinary process was paused at this point.

39. The Claimant commenced ACAS Early Conciliation between 8 and 27 May 2022.

40. On 10 May 2022 the Claimant issued her third grievance letter, on 11 May 2022 her fourth and on 12 May 2022 her fifth. On the date of the fifth grievance (12 May 2023) Ms K Porcaro issued her decision on the Claimant's second grievance and fifth grievances (576-577).

41. On 13 May 2022 the Claimant issued her sixth grievance letter (containing further information with regards to her first and third grievances) which had yet to be determined. On 18 May 2022 the Claimant appealed Ms Porcaro's decision on her second and fifth grievances and it included a new grievance against Ms Porcaro herself which the Claimant described as her seventh grievance.

42. On 25 May 2022 Mr J Schmidt (Senior Manager in the Respondent's Employee Relations EMEA department) decided that the Claimant should appeal (if she wished) those grievances where the outcomes had by now been communicated (that is, the second, third, fourth and fifth grievances) without waiting for the outcomes of the first and sixth grievances. The same day, 25 May 2022, Ms D Llewellyn issued her decisions on the Claimant's third and fourth grievances and the Claimant appealed her decisions on 7 June 2022.

43. On 10 June 2022 Ms A Moses gave her decision on the Claimant's first grievance which the Claimant appealed on 15 July 2022.

44. On 13 June 2023 the Respondent restarted the disciplinary process by issuing a disciplinary invite letter, giving the Claimant the option of a virtual meeting or for the process to be conducted in writing. It gave her a deadline to make written submissions of 5pm on 16 June 2022.

45. On 14 June 2023 the Claimant submitted her ninth grievance and the next day, 15 June 2023, the Respondent agreed to deal with the Claimant's disciplinary and grievances sequentially rather than simultaneously. The Respondent extended to 27 June 2022 the time period for the Claimant to send in any written submissions on the disciplinary allegations.

46. The Claimant submitted her first claim on 24 June 2022 against the Respondent and a number of named colleagues, ticking the boxes on the claim form for race, disability and sex discrimination and "other payments".

47. On 17 June 2023 the Claimant submitted a tenth grievance followed by her first Tribunal claim on 24 June 2022.

48. On 27 June 2022 the Claimant responded in writing to the disciplinary allegations. Ms V Hutchinson asked the Claimant questions about her disciplinary submissions on 29 June 2022 which the Claimant responded to the next day. The Claimant, also on 30 June 2022, expressed her intention to return to work on 5 July 2022.

49. On 1 July 2022 Mr P Vincent issued decisions on the appeals of the Claimant against the outcomes of second, third, fourth and fifth grievances.

50. On 4 July 2022 Ms M Butterworth issued her decision on the disciplinary allegations against the Claimant and summarily dismissed the Claimant for gross misconduct. The next day the Claimant confirmed her intention to appeal that decision.

51. The Claimant commenced a new Early Conciliation request between 5 and 7 July 2022.

52. The Claimant did appeal her dismissal on 15 July 2022 and at the same time, as referenced above, she appealed the grievance decision made on 10 June 2022 by Ms Moses on the first grievance.

53. On 3 August 2022, a Mr J Williams (the manager of the Claimant's manager) upheld the Ms Butterworth's decision to dismiss the Claimant. Two days later on 5 August 2022 Mr Vincent gave the Claimant his second decision, this time in respect of the Claimant's appeals against her other grievances, including her appeal against the decision on her first grievance.

54. On 6 August 2022 the Claimant issued her second claim in the Tribunal. In addition to claiming race, disability and sex discrimination and "other payments" again, the Claimant also claimed unfair and wrongful dismissal, as well as holiday pay.

55. The Claimant's claims of unfair dismissal, discrimination arising from disability, failure to make reasonable adjustments for disability, direct race and sex discrimination, harassment related to sex and race and victimisation, unlawful deduction of wages (sick pay) relate to this broad sequence of events but we set out our more detailed findings of fact in this judgment.

56. The Respondent conceded that the Claimant had a disability (anxiety and depression) from 27 April 2023 but not before that date. The Respondent did not concede that it had knowledge of disability at the time this claim is about.

57. The Claimant withdrew her claims against the individual respondents (the Claimant's employer not seeking to rely on the statutory defence).

58. We find that there was no evidence to support the Claimant's suggestion that the Claimant was tainted in the Respondent's eyes by association with

Mr Abadir and what he had done or not done in conflict with the Respondent's interests.

59. We are also very clear in the view that Mr Priestley's role was simply to investigate Mr Abadir and not the Claimant. In the course of his investigation he had legitimate reason to question whether the Claimant had told him the truth at their first interview on 11 October 2021 because what she said ran contrary to what was suggested in the Claimant's emails to Mr Abadir about Mr Abadir's activities in conflict with the Respondent's interests. During the course of his investigation Mr Priestley came across emails from the Claimant to Mr Abadir which he thought might need to be the subject of an HR investigation and he simply handed them over to Ms Ferrin in an email exchange that occurred at the end of November 2021 (page 441A – 442). The pertinent parts of his emails simply said:

> ***23 November 2021***
>
> *I had one meeting with Mel Boza as a witness in this matter. Our focus was the Kattapult investigation rather than Boza's behaviour toward Abadir which was just something I noticed in the email review. Overall I had integrity concerns re Boza's responses in the interview and it appears she met with Abadir immediately before the interview we had with her. My take was her apparent infatuation with Abadir was colouring her approach. We haven't circled back with Boza as I referred the matter to Helen for HR consideration. I have discussed with Lucille Needham and John Williams just to check they are aware and they confirmed they had comments from third parties who had been on calls with Boza and Abadir. Let me dig out and tidy up the interview notes.*
>
> *There are a lot of emails between Mel Boza and Chris Abadir. Do you need pdf versions and if so what issues are you concentrating on in relation to Boza:*
>
> *1 . her complaints to Abadir about the relationship with Olivia Williams (i.e. the Kattapult angle) or*
>
> *2. more generally her approach to Abadir which appears to be based on an infatuation and has impacted the working relationship and has been noticed by third parties who have commented to management. I'll share the folder so you can see what is there and then I'll start converting to pdf as necessary.*
>
> ***26 November 2021***
>
> *Hi Alex,*
>
> *I've converted emails between Mel Boza and Chris Abadir that may be of interest for HR purposes and they're in this folder:*
>
> *I have another folder of emails where Chris Abadir was helping Melinda Boza with the Marketing projects and where she regularly said how grateful she was. Most of those were 2019 and 2020 but*

*some overlapped with the difficulties they appeared to have in their relationship in 2021. Let me know if you need to see those converted.*

*I'm going to check with Steve Helvin whether we should interview Mel Boza again due to integrity concerns arising*

*from the first interview and from some of the dialogue in the emails. You'll see the contrast between the emails and the position she took in the interview. We also have emails where Mel Boza was sharing information with Chris Abaidr that perhaps should not have been shared but we'll check that with John Williams. I'll let you know which way we go. Let me know if you would like to discuss anything in the emails or the context here.*

60. Mr Priestely reached his conclusions on the Claimant from the perspective of the investigation that he was tasked with on 11 February 2022 and his email to Ms Ferrin on that reads as follows:

*Hi Alex,*

*We met with Mel Boza today. My take is there is no Compliance issue to pursue:*

***Knowledge of conflict of interest between Chris Abadir and Olivia Williams***

*I believe Boza that when she challenged Abadir about Olivia Williams and Kattapult in January 2021 she took his word for it. He denied it and she believed him. She had also spoken with Keith Williams at Periphas who had given a plausible explanation of why Olivia Williams had moved to Kattapult. In the numerous personal and work related emails with Abadir after that she didn't refer to a relationship between Olivia Williams and Abadir. There was one email where Boza referred to Keith noticing Abadir's 'thing' and that she was embarrassed but Boza gave a plausible explanation. Bearing in mind her infatuation with Abadir I would have expected Boza to make something of it if she had a concern about Olivia Williams.*

***Preparation for Compliance interview on 11 October 2021***

*We cannot prove that Boza prepared with Abadir for the interview she had with us on October 11th, or after that to help him prepare for his interview. I did not tell Boza in advance what the subject matter was and we had not contacted Abadir at that point. Yes she likely had an idea it related to Abadir and yes he may have got word that an issue had been reported but I get the impression that he likely did not want to engage with Boza at that stage. We asked Boza about the messages she had sent Abadir shortly before the interview on October 11th and she explained one followed a two hour management meeting in the morning and the other was asking whether he was joining a meeting re 3D Modelling and Advanced Social Selling at 12:30. From the emails leading up to this (including those Boza sent to him on Sunday October 10th) it appears that*

*Abadir was not wanting to engage with Boza at this point. It was one way traffic and there was no reference to an investigation or compliance concerns.*

*Overall, it appears that Boza's wholehearted support for Abadir in the interview was simply based on her deep infatuation with him. I had the impression in this meeting that she is still struggling with that issue. Let me know if you would like to discuss the emails we have or anything else before you meet with Boza.*

*Roy*

61. It was Mr Priestley reaching his conclusions which meant that the HR investigation (in respect of the allegations that came out of the emails the Claimant had sent to Mr Abadir) could progress.

**THE LAW**

62. The Equality Act 2010 (EqA) protects employees and applicants for employment from discrimination based on or related to a number of 'protected characteristics' (section 4). These include disability (section 6) race (section 9) and sex (section 11). Race includes colour, nationality and ethnic and national origins.

**Direct Race And Sex Discrimination**

63. Section 39(2) of the Equality Act 2010 prohibits an employer discriminating against one of its employees by dismissing him or by subjecting the employee to a detriment. This includes direct discrimination because of a protected characteristic as defined in section 13.

64. Section 13 of the Equality Act 2010 provides that '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'.

65. Under section 23(1), where a comparison is made, there must be no material difference between the circumstances relating to each case. It is possible to compare with an actual or hypothetical comparator.

66. In order to find discrimination has occurred, there must be some evidential basis on which we can infer that the Claimant's protected characteristic is the cause of the less favourable treatment. We can take into account a number of factors including an examination of circumstantial evidence.

67. We must consider whether the fact that the Claimant had the relevant protected characteristic had a significant (or more than trivial) influence on the mind of the decision maker. The influence can be conscious or unconscious. It need not be the main or sole reason, but must have a significant (i.e. not trivial) influence and so amount to an effective reason for the cause of the treatment.

68. In many direct discrimination cases, it is appropriate for a tribunal to consider, first, whether the Claimant received less favourable treatment than the appropriate comparator and then, secondly, whether the less favourable treatment was because of race. However, in some cases, for example where there is only a hypothetical comparator, these questions cannot be answered without first considering the 'reason why' the Claimant was treated as she was.

69. Section 136 of the Equality Act sets out the relevant burden of proof that must be applied. A two-stage process is followed. Initially it is for the Claimant to prove, on the balance of probabilities, primary facts from which we could conclude, in the absence of an adequate explanation from the Respondent, that the Respondent committed an act of unlawful discrimination.

70. At the second stage, discrimination is presumed to have occurred, unless the Respondent can show otherwise. The standard of proof is again on the balance of probabilities. In order to discharge that burden of proof, the Respondent must adduce cogent evidence that the treatment was in no sense whatsoever because of the Claimant's race. The Respondent does not have to show that its conduct was reasonable or sensible for this purpose, merely that its explanation for acting the way that it did was non-discriminatory.

71. Guidelines on the burden of proof were set out by the Court of Appeal in ***Igen Ltd v Wong [2005] EWCA Civ 142; [2005] IRLR 258*** and we have followed those as well as the direction of the court of appeal in **Madarassy v Nomura International plc [2007] IRLR 246, CA**. The decision of the Court of Appeal in ***Efobi v Royal Mail Group Ltd [2019] ICR 750*** confirms the guidance in these cases applies under the Equality Act 2010.

72. The Court of Appeal in Madarassy, states:

> *'The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that on the balance of probabilities, the Respondent had committed an unlawful act of discrimination.' (56)*

73. It may be appropriate on occasion, for the tribunal to take into account the Respondent's explanation for the alleged discrimination in determining whether the Claimant has established a prima facie case so as to shift the burden of proof. (***Laing v Manchester City Council and others [2006] IRLR 748; Madarassy***) It may also be appropriate for the tribunal to go straight to the second stage, where for example the Respondent assert that it has a non-discriminatory explanation for the alleged discrimination. A Claimant is not prejudiced by such an approach since it effectively assumes in his favour that the burden at the first stage has been discharged (***Efobi v Royal Mail Group Ltd [2019] ICR 750,*** para 13).

74. In addition, there may be times, as noted in the cases of ***Hewage v GHB [2012] ICR 1054*** and ***Martin v Devonshires Solicitors [2011] ICR 352***, where we are in a position to make positive findings on the evidence one way or the other and the burden of proof provisions are not particularly helpful. When we adopt such an approach, it is important that we remind ourselves not to fall into the error of looking only for the principal reason for the treatment, but instead ensure we properly analyse whether discrimination was to any extent an effective cause of the reason for the treatment.

75. Allegations of discrimination should be looked at as a whole and not simply on the basis of a fragmented approach ***Qureshi v London Borough of Newham [1991] IRLR 264, EAT***. We must "see both the wood and the trees": ***Fraser v University of Leicester UKEAT/0155/13*** at paragraph 79. Our focus "must at all times be the question whether or not they can properly and fairly infer… discrimination.": ***Laing v Manchester City Council, EAT at paragraph 75***.

**Discrimination arising from disability - section 15 EqA**

76. *Section 15 EqA* provides: "*(1) A person (A) discriminates against a disabled person (B) if— (a) A treats B unfavourably because of something arising in consequence of B's disability, and (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim. (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability*".

77. As to what constitutes "unfavourable treatment", the Supreme Court in ***Williams v Trustees of Swansea University Pension and Assurance Scheme and anor [2019] ICR 230*** held that it is first necessary to identify the relevant treatment and it must then be considered whether it was unfavourable to the Claimant.

78. The Court said that little was likely to be gained by differentiating unfavourable treatment from analogous concepts such as "detriment" found elsewhere in the Act, referring to a relatively low threshold of disadvantage being needed. One could answer the question by asking whether the Claimant was in as good a position as others.

79. What caused the unfavourable treatment requires consideration of the mind(s) of alleged discriminator(s) and thus that the reason which is said to arise from disability be more than just the context for the unfavourable treatment. There need only be a loose connection between the unfavourable treatment and the alleged reason for it, and it need not be the sole or main cause of the treatment, though the reason must operate on the alleged discriminators' conscious or unconscious thought processes to a significant extent **(*Charlesworth v Dronsfield Engineering UKEAT/0197/16*).**

80. By analogy with ***Igen***, "significant" in this context must mean more than trivial. Whether the reason for the treatment was "something arising in consequence of the Claimant's disability" could describe a range of causal

links and is an objective question, not requiring an examination of the alleged discriminator's thought processes.

81. Simler P in ***Pnaiser v NHS England [2016] IRLR 170, EAT***, at [31], gave the following guidance as to the correct approach to a claim under ***section 15 EqA***:

> '*(a) 'A tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.*
>
> *(b) The tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a s.15 case. The "something" that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.*
>
> *(c) Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant: see* ***Nagarajan v London Regional Transport [1999] IRLR 572****. A discriminatory motive is emphatically not (and never has been) a core consideration before any prima facie case of discrimination arises.*
>
> *(d) The tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is 'something arising in consequence of B's disability'. That expression 'arising in consequence of' could describe a range of causal links. Having regard to the legislative history of s.15 of the Act (described comprehensively by Elisabeth Laing J in Hall), the statutory purpose which appears from the wording of s.15, namely, to provide protection in cases where the consequence or effects of a disability lead to unfavourable treatment, and the availability of a justification defence, the causal link between the something that causes unfavourable treatment and the disability may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability.*
>
> *(e) For example, in* ***Land Registry v Houghton UKEAT/0149/14, [2015] All ER (D) 284 (Feb)*** *a bonus payment was refused by A because B had a warning. The warning was given for absence by a different manager. The absence arose from disability. The tribunal and HHJ Clark in the EAT had no difficulty in concluding that the*

*statutory test was met. However, the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact.*

*(f) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.*

*(g) There is a difference between the two stages – the "because of" stage involving A's explanation for the treatment (and conscious or unconscious reasons for it) and the "something arising in consequence" stage involving consideration of whether (as a matter of fact rather than belief) the "something" was a consequence of the disability.*

*(h) Moreover, the statutory language of s.15(2) makes clear (as Miss Jeram accepts) that the knowledge required is of the disability only, and does not extend to a requirement of knowledge that the "something" leading to the unfavourable treatment is a consequence of the disability. Had this been required the statute would have said so. Moreover, the effect of s.15 would be substantially restricted on Miss Jeram's construction, and there would be little or no difference between a direct disability discrimination claim under s.13 and a discrimination arising from disability claim under s.15.*

*(i) As Langstaff P held in Weerasinghe, it does not matter precisely in which order these questions are addressed. Depending on the facts, a tribunal might ask why A treated the claimant in the unfavourable way alleged in order to answer the question whether it was because of "something arising in consequence of the claimant's disability". Alternatively, it might ask whether the disability has a particular consequence for a claimant that leads to "something" that caused the unfavourable treatment.*"

82. The burden of establishing a proportionate means defence is on the Respondent. When assessing whether the treatment in question was a proportionate means of achieving a legitimate aim, the principle of proportionality requires an objective balance to be struck between the discriminatory effect of the measure and the needs of the undertaking. The more serious the disparate adverse impact, the more cogent must be the justification for it: ***Hardys & Hansons plc v Lax*** **[2005] IRLR 726** per Pill LJ at paragraphs [19]–[34], Thomas LJ at [54]–[55] and Gage LJ at [60]. It is for the employment tribunal to weigh the reasonable needs of the undertaking against the discriminatory effect of the employer's measure and to make its own objective assessment of whether the former outweigh the latter. There is no 'range of reasonable response' test in this context: ***Hardys & Hansons plc v Lax [2005] IRLR 726, CA***.

83. In ***Homer v Chief Constable of West Yorkshire Police [2012] UKSC 15*** it was said, approving Mummery LJ in ***R (Elias) v Secretary of State for Defence [2006] EWCA Civ 1293***, that what is required is: first, a real need

on the part of the Respondent; secondly, that what it did was appropriate – that is rationally connected – to achieving its objectives; and thirdly, that it was no more than was necessary to that end.

84. It is also appropriate to ask whether a lesser measure could have achieved the employer's aim – ***Essop and Naeem v Home Office (UK Border Agency) and Secretary of State for Justice [2017] UKSC 27***.

85. A complaint of discrimination arising from disability will also be defeated if the Respondent can show that at the time of the unfavourable treatment, it did not know and could not reasonably be expected to know that the Claimant was a disabled person.

**Reasonable Adjustments**

86. By section *39 (5) EqA* a duty to make adjustments applies to an employer. By section *21 EqA* a person who fails to comply with a duty on him to make adjustments in respect of a disabled person discriminates against the disabled person.

87. *Section 20(3) EqA* provides that there is a requirement on an employer, where a provision, criterion or practice of the employer puts a disabled person at a substantial disadvantage in relation to a relevant matter, in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

88. The EHRC Code of Practice on Employment (2011) ("**the Code**") provides:

> **At Paragraph 6.24, *that there is no onus on the disabled worker to suggest what adjustments should be made (although it is good practice for employers to ask);***
>
> At paragraph 6.37, *that Access to Work does not diminish or reduce any of the employer's responsibilities under the 2010 Act.*
>
> At paragraph 6.28 the factors which might be taken into account when deciding if a step is a reasonable one to take:
>
> *Whether taking any particular steps would be effective in preventing the substantial disadvantage; The practicability of the step; The financial and other costs of making the adjustment and the extent of any disruption caused; The extent of the employer's financial or other resources; The availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and the type and size of the employer*.

89. It is not necessary to prove that the potential adjustment will remove the disadvantage; if there is a "real prospect" that it will, the adjustment may be reasonable. In ***Romec v Rudham [2007] All ER (D) 206 (Jul)***, EAT: HHJ Peter Clark said that it was unnecessary to be able to give a definitive answer to the question of the extent to which the adjustment would remove the disadvantage. If there was a 'real prospect' of removing the

disadvantage it 'may be reasonable'. In ***Cumbria Probation Board v Collingwood [2008] All ER (D) 04 (Sep)***, EAT: HHJ McMullen said that 'it is not a requirement in a reasonable adjustment case that the claimant prove that the suggestion made will remove the substantial disadvantage'. In ***Leeds Teaching Hospital NHS Trust v Foster UKEAT/0552/10, [2011] EqLR 1075***, the EAT said that, when considering whether an adjustment is reasonable, it is sufficient for a tribunal to find that there would be 'a prospect' of the adjustment removing the disadvantage.

90. Schedule 8 EqA (Work: Reasonable Adjustments) - Part 3 limitations on the duty provides:

> *S. 20. Lack of knowledge of disability, etc*
>
> *(1) A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know— (a) in the case of an applicant or potential applicant, that an interested disabled person is or may be an applicant for the work in question; (b) [in any case referred to in Part 2 of this Schedule], that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement. Under Part 2 and an interested disabled person includes in relation to Employment by A, an employee of A's.*

91. If relied upon, the burden is on the Respondent to prove it did not have the necessary knowledge. The Respondent must show that it did not have actual knowledge of <u>both</u> the disability <u>and</u> the substantial disadvantage and also that it could not be reasonably have been expected to know of <u>both</u> the disability <u>and</u> the substantial disadvantage.

**Harassment (race and sex)**

92. Section 40 of the EqA renders harassment of an employee unlawful.

93. Section 26 EqA 2010 provides: *(1) A person (A) harasses another (B) if- A engages in unwanted conduct related to a relevant protected characteristic, and the conduct has the purpose or effect of - violating B's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for B. (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account— the perception of B; the other circumstances of the case; whether it is reasonable for the conduct to have that effect*.

94. ***Richmond Pharmacology Ltd v. Dhaliwal [2009] IRLR 336*** makes clear that while it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (<u>or indeed comments or conduct related to other protected characteristics</u>), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.

**Victimisation**

95. Section 27 EqA provides: "*(1) A person (A) victimises another person (B) if A subjects B to a detriment because— (a) B does a protected act, or (b) A believes that B has done, or may do, a protected act. (2) Each of the following is a protected act— (a) bringing proceedings under this Act; (b) giving evidence or information in connection with proceedings under this Act; (c) doing any other thing for the purposes of or in connection with this Act; (d) making an allegation (whether or not express) that A or another person has contravened this Act. (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith. (4) This section applies only where the person subjected to a detriment is an individual. (5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule*."

96. The starting point is that there must be a clear allegation amounting to a protected act. Therefore an allegation that something might be discriminatory rather than is actually discriminatory, will not be sufficient ***Chalmers v Airpoint Limited and Others UKEAT/0031/19*.**

97. In addition, if what the issue alleged by Claimant as amounting to a breach of the EqA would not be unlawful under the EqA, then it cannot be a protected act for example see ***Waters v Metropolitan Police Comr [1997] IRLR 589***.

98. The employee must be subjected to a detriment, which has been decided to mean placed at a disadvantage ***Williams v Trustees of Swansea University Pension and Assurance Scheme and anor [2019] ICR 230***. Unfavourable or less favourable treatment arguments are not in accordance with the correct statutory wording of section 27. Detriment is established if treatment is of a kind that a reasonable worker would or might take the view that in all the circumstances it was to their detriment: ***Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337 HL*.** Therefore, for detriment to be proven, it is for the Claimant to show that they were or would have been, in their subjective view, placed at a disadvantage and that it was objectively reasonable for them to have held that view.

99. Detrimental treatment of a Claimant will not be because of a protected act if the detrimental treatment is caused by the way in which the protected act is done or the behaviour of the Claimant whilst communicating the protected act or gathering information for it. For example see ***Woods v Pasab Limited [2012] EWCA Civ 1578*** and ***Martin v Devonshire Solicitors [2011] ICR 352*.**

100. The detriment relied upon by the Claimant, must be linked to the protected act. The same test for causation in direct discrimination, is therefore relevant to victimisation because the statutory wording is the same.

**Unfair dismissal - Employment Rights Act 1996 (Section 98 ERA)**

101. The test for unfair dismissal is set out in section 98 of the Employment Rights Act 1996. Under section 98(1), it is for the employer to show the reason (or, if more than one, the principal reason) for the dismissal, and that it is either a reason falling within subsection (2), e.g. conduct.

102. Under section 98 (4) *'… the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and shall be determined in accordance with equity and the substantial merits of the case*.'

103. Tribunals must consider the reasonableness of the dismissal in accordance with section 98(4). However, tribunals have been given guidance by the EAT in ***British Home Stores v Burchell*** **[1978] IRLR 379**; ***[1980] ICR 303, EAT***. There are three stages:

    (a) did the respondent genuinely believe the claimant was guilty of the alleged misconduct?

    (b) did it hold that belief on reasonable grounds?

    (c) did it carry out a proper and adequate investigation?

104. Tribunals must bear in mind that whereas the burden of proving the reason for dismissal lies on the respondent, the second and third stages of ***Burchell*** are neutral as to burden of proof and the onus is not on the respondent (***Boys and Girls Welfare Society v McDonald*** **[1996] IRLR 129, [1997] ICR 693**).

105. Finally, tribunals must decide whether it was reasonable for the respondents to dismiss the claimant for that reason in all the circumstances of the case. We have also reminded ourselves that the question is whether dismissal was within the band of reasonable responses open to a reasonable employer. It is not for us to substitute our own decision for that of the disciplinary and appeal decision makers, unless there is only one possible outcome from the application of the relevant legal principles to the case (***London Ambulance Service v Small Court of Appeal [2009]***).

106. The range of reasonable responses test (or, to put it another way, the need to apply the objective standards of the reasonable employer) applies as much to the question of whether an investigation into suspected misconduct was reasonable in all the circumstances as it does to other procedural and substantive aspects of the decision to dismiss a person from his employment for a conduct reason. The objective standards of the reasonable employer must be applied to all aspects of the question whether an employee was fairly and reasonably dismissed. (***Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23, CA***)

107. When considering the question of the employer's reasonableness, we must take into account the disciplinary process as a whole, including the appeal stage. (***Taylor v OCS Group Limited*** **[2006] EWCA Civ 702**). The Tribunal must focus on what information and circumstances were present and in the mind of the dismissal and appeal managers at the time they made their decisions (***West Midlands Coop v Tipton [1986]***).

108. In reaching our decision, we must also take into account the ACAS Code on Disciplinary and Grievance Procedures. By virtue of section 207 of the Trade Union and Labour Relations (Consolidation) Act 1992, the Code is admissible in evidence and if any provision of the Code appears to the tribunal to be relevant to any question arising in the proceedings, it shall be taken into account in determining that question. A failure by any person to follow a provision of the Code does not however in itself render him liable to any proceedings.

**Right not to suffer unauthorised deductions – (Section 13 ERA)**

109. Section 13 of the ERA provides for the right not to suffer an unauthorised deduction: "*An employer shall not make a deduction from wages of a worker employed by him unless— the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or the worker has previously signified in writing his agreement or consent to the making of the deduction*."

**Breach of Contract - Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 ("the Order")**

110. Article 2 of the Order provides: "*This Order does not enable proceedings in respect of a contract claim to be brought before an employment tribunal unless—(a) the effective date of termination (as defined in section 55(4) of the 1978 Act) in respect of the contract giving rise to the claim, or (b) where there is no effective date of termination, the last day upon which the employee works in the employment which has terminated, occurs on or after the day on which the Order comes into force*."

111. Article 3: "*Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if—(a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine; (b) the claim is not one to which article 5 applies; and (c) the claim arises or is outstanding on the termination of the employee's employment.*"

*112.* Article 5 provides: "*This article applies to a claim for breach of a contractual term of any of the following descriptions—(a) a term requiring the employer to provide living accommodation for the employee; (b) a term imposing an obligation on the employer or the employee in connection with the provision of living accommodation; (c) a term relating to intellectual property; (d) a term imposing an obligation of confidence; (e) a term which is a covenant in restraint of trade. In this article, "intellectual property"*

*includes copyright, rights in performances, moral rights, design right, registered designs, patents and trade marks."*

## ANALYSIS AND CONCLUSIONS

113. The parties will note that we have structured our decision around the factual issues as detailed in the first part of the list of issues presented to us. We have noted those claims which were withdrawn and have also noted where an issue number was not used (in those cases we have said that the issue has been deliberately omitted).

114. Whilst we have we have structured our analysis and conclusions by issue, we were also careful to look at the evidence 'in the round' to determine whether it suggested that the Claimant had been subjected to the unlawful treatment of which she complains (this is particularly important when it comes to allegations of direct discrimination, victimisation and harassment). Having done so we did not find cause to change our decisions on any issue or issues.

### Issue 1 - Questions posed during the ethics meeting on 21 October 2021

Notes of the First and Second ethics meetings (Issue 3)

115. Notes of the 21 October 2021 meeting and the second ethics meeting held on 11 February 2022 were made by a third party note-taker and witness to the meetings, namely Ms Navarro. We were provided with her notes of the meetings and the version tidied up by Mr Priestley:

- 21 October 2021 meeting – Navarro originals (431-441) and as amended by Mr Priestley) (419-427);

- 11 February 2022 – Navarro originals (457-460) and as amended by Mr Priestley (463-465))

116. We find that those notes are an accurate summary of what was said at the meetings. We do not accept the Claimant's case that Mr Priestley, in "tidying up" the original notes of the interviews involved him cutting out whole sections. Mr Priestley denied this, and the Claimant put forward no evidence to support her assertion. All that Mr Priestley did was correct typographical errors and make other inconsequential changes such as inserting the word "privileged" in the header.

117. The Claimant's representative suggested, in cross examination of Ms Navarro, that the notes might have been generated by AI (this was not part of the Claimant's case or an allegation in her witness statement). This was asserted because of a misspelling of "Twickenham" in two different ways and because the word "pounds" was represented by the acronym "lbs". Ms Navarro, a national of the USA, gave a simple explanation, which we accept, which was that they were her misspellings because:

- she had never heard of "Twickenham";

- her USA keyboard did not have the "£" sign (so she wrote "lbs" instead).

Other comments on the first and second ethics investigation meetings (Issues 1-3)

118. It is clear to us from hearing this claim that the Claimant is someone who has a robust character and who is equipped and able to raise a challenge when she considers that she has been wronged. The Claimant made no complaint about the first and second ethics investigation meetings until she raised her first grievance on 20 April 2021 (508), around 6 months after the first ethics investigation meetings and more than two months after the second. At the end of the first meeting Mr Priestley said: "*Will likely need to meet again and will need to clarify further*." The Claimant replied, "*Completely okay. Don't want you to take anything out of context. Just an emotional stress out. Could have said it differently. Not necessarily the right word*.". We note that her complaint came after the disciplinary investigation meeting held with her by Ms Sawhney on 2 March 2022 (472) and after the disciplinary investigation report was completed on 9 March 2022 (480-483). The fact that the Claimant alleges in her claims that these meetings had such an impact on her, coupled with the factors referenced above and the cogency of the contemporaneous documentary evidence and the witness evidence provided by Mr Priestley and Ms Navarro contribute to our finding that we prefer the Respondent's evidence as to what happened and was said at those two meetings.

119. The number and nature of questions which Mr Priestley asked the Claimant about Mr Abadir's relationships with Ms O Williams in the first ethics investigation meeting were justified and appropriate.

120. There was a dissonance between the Claimant's contemporaneous emails, and how the Claimant then replied to Mr Priestley's questions at the first ethics investigation meeting. Mr Priestley was entitled to explore this with the Claimant and, given the nature of the Claimant's emails to Mr Abadir, he was entitled to explore whether the dissonance might be explained by the nature of the relationship between the Claimant and Mr Abadir.

121. Mr Priestley had, before the second ethics investigation, concluded that there had been no romantic relationship between the Claimant and Mr Abadir because Mr Abadir and others had told him that there was not, albeit the Claimant admitted that she did have an infatuation (or "unrequited romantic interest in", or "feelings for") Mr Abadir.

**Direct race discrimination and harassment related to race**

122. The Claimant claims that at the first ethics interview she was subjected to a line of questioning about where she lived and an alleged 'lavish lifestyle' [166] which she said amounted to direct race discrimination and harassment related to race. She relied on a hypothetical comparator for her direct race discrimination claim.

123. We agree with the Respondent's submissions that the factual basis for this allegation was dependent upon the Claimant's own assumption that Mr Priestley asked this question from the mindset of someone who thought that a Hungarian person ought not to live in Twickenham. We do not accept that this was the reason for Mr Priestley's question. We accept that he asked

the Claimant about her move to Twickenham because he was investigating Mr Abadir, Mr Abadir already lived in Twickenham and the Claimant had moved to an address in Twickenham a short walk from where Mr Abadir lived. We accept that it was one question right at the end of the first ethics interview. Mr Abadir was not asked the question because he had not moved, he already lived there.

124. We accept Mr Priestley's evidence that he did not accuse the Claimant herself of having a "lavish lifestyle" nor did he insinuate that she had a preference for a lavish life.

125. It is clear to us that Mr Priestley would have conducted the interview in the same way had the Claimant been of a different nationality, that his questions did not amount to less favourable treatment and that they were not because of the Claimant's race. Accordingly the Claimant's allegations of direct race discrimination are not well founded.

126. It is also clear that Mr Priestley's interactions with the Claimant at the first ethics interview did not relate to her race and certainly were not conduct that had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. If we are wrong and they did have this effect it was certainly not reasonable for the conduct to have had that effect.

**Harassment related to sex**

127. The Claimant alleges that at the first ethics investigation she was also subjected to harassment related to sex in summary because she says:

- (i) Mr Priestley inferred that she did not get her role through merit but [through] other means;

- (ii) Mr Priestley questioned the Claimant about other sexual relationships between employees

- (iii) Mr Priesley alleged that the Claimant had a romantic/sexual relationship with a colleague

128. As regards the allegation that Mr Priestley inferred that the Claimant did not get her role through merit but through other means, we find that Mr Priestley did not "suggest" that the Claimant did not get her role through merit. Nor did he suggest, as the Claimant alleged, that she got it through being a "call girl" or through "immoral earnings". We agree with the Respondent that this is a serious allegation to raise, particularly given the consequences for a practising solicitor. The conduct complained of did not happen and consequently the Claimant was not subjected to unlawful harassment related to sex on the basis alleged.

129. Regarding the allegation that Mr Priestley questioned the Claimant about other sexual relationships between employees we find that he did not. He asked her about relationships between one particular employee (Mr Abadir) and certain of R's vendors/suppliers – both male and female (for instance Ms O Williams). He did not use the word "sexual" and only used the phrase

"romantic relationship" once. This did not constitute conduct related to sex. We accept the Respondent's submissions that to the extent that Ms O Williams was of a different sex to Mr Abadir and that the relationship was or may have been a romantic one, it was Mr Priestley's job to investigate whether or not there was a relationship between the two. We do not find that this was "unwanted conduct" and, even if it was, it was not conduct that had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. If we are wrong and what Mr Priestley said at the meeting in this regard did have this effect on the Claimant, it was certainly not reasonable for the conduct to have had that effect and the Claimant was not subjected to unlawful harassment related to sex on the basis alleged.

130. We also find that Mr Priestley did not allege that the Claimant had a romantic or sexual relationship with Mr Abadir (or any other colleague). Mr Priestley's investigation was not into the Claimant and we agree with the Respondent that her insistence that it was is puzzling. It is worth noting that the evidence in our view does not show that the Respondent considered that the Claimant was tainted by association with Mr Abadir or that the Respondent then, by reason of that tainting, went on a campaign against the Claimant. The fact that the Claimant's emails to Mr Abadir came to light because of an investigation into him and that her emails then became the focus of a separate HR disciplinary investigation was just the Claimant's misfortune. We accept the Respondent's submission that the only point at which Mr Priestley's investigation turned to look at the Claimant's own conduct related to her conduct in the first ethics interview itself, and was no more than Mr Priestley's understandable concern to satisfy himself that the Claimant genuinely did believe Mr Abadir when he said he was not in a relationship with Ms Williams, and that the Claimant had not spoken to Mr Abadir about the investigation in either of their two meetings on the morning before the First Ethics Interview and that accordingly the Claimant was not "covering" for Mr Abadir, or colluding with him, in respect of the conduct of the investigation.

131. We consider that Mr Priestley was justified in exploring those concerns and did so in a considered and appropriate way and, as referenced above, believed the Claimant. The conduct complained of did not happen and the Claimant was not subjected to conduct that had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant related to sex.

**Issue 2 - Failing to appoint female officer to undertake ethics investigation**

**Direct sex discrimination**

132. The Claimant alleges that it was an act of direct sex discrimination based on an hypothetical comparator for the Respondent not to appoint a female investigator to interview her in the two ethics investigations, because it would have been "less embarrassing and humiliating" for her.

133. If it is not clear from our other findings, the subject matter or content of Mr Priestley's interviews with the Claimant was not "embarrassing" or "humiliating" for the Claimant as a woman. The Claimant was not asked about her relationships, sexual or otherwise. She was asked about whether she knew or suspected that Mr Abadir had a "romantic" involvement with Ms O Williams but we accept the Respondent's submissions that this in no way crossed the boundary to the point where the interviewer had to be changed to a woman and the interview took place in the presence of a female ethics investigator (Ms Navarro).

134. We do not find that the Claimant has shown that she has been less favourably treated than a hypothetical male comparator, in particular taking into account that the comparator must be in materially similar circumstances. We do not agree that if a female suspect was being investigated for ethics conflicts by a female investigator, and that female investigator had to interview a male witness along the same lines and in respect of the same issues as Mr Priestley needed to interview the Claimant, that the Respondent would have changed the investigator to a male one for that interview. The Respondent in any event did not appoint a male investigator (or fail to appoint a female investigator) because the Claimant is a woman.

**Issue 3 - Questions posed during the ethics meeting on 11 February 2022**

**Harassment related to sex**

135. We refer to our findings above in respect of this meeting. The Claimant says that she was subjected to sex related harassment at this second meeting but did not make clear what questions posed amounted to sex related harassment. As the Respondent noted in submissions, the meeting was not long (about half an hour) and not many questions were asked. We accept the Respondent's submissions that it would appear that the Claimant's original complaint is about Mr Preistley asking the Claimant about whether Mr Abadir had a romantic relationship with Ms O Williams. We do not agree that this was conduct related to sex, we do not find that this was "unwanted conduct" and, even if it was, it was not conduct that had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. If we are wrong and what Mr Priestley said at the meeting in this regard did have this effect on the Claimant, it was certainly not reasonable for the conduct to have had that effect and the Claimant was not subjected to unlawful harassment related to sex on the basis alleged.

**Issue 4 - Not offering any adjustments to R's grievance procedures for the grievance meeting with the Claimant on 29 April 2022**

**Failure to make reasonable adjustments**

136. The Claimant brings a claim under section 21 EqA 2010 (a "**Reasonable Adjustments Claim**") in that she says that the Respondent applied the provision, criterion or practice of requiring her to attend a meeting (list of issues p.4). She says that this put her at a substantial disadvantage as a

disabled person suffering from the impairment of depression (she suffered from anxiety but it is depression that she relies upon as her disability). The Claimant says that the Respondent was under a legal duty to:

- hold more than one meeting of shorter lengths;
- organise regular breaks.

137. The meeting was scheduled for 1½ hours (532) from 15:00 UK time to 16:30 UK time and the Claimant accepted the invitation without raising concerns about the length of the meeting. Ms Moses who was chairing the meeting offered to stop the meeting or give C breaks but the Claimant declined those offers. Ms Moses cut the meeting short herself (but not because of anything done or said by the Claimant).

138. We accept the Respondent's submission that the Claimant did not establish that the length of the meeting as scheduled put her at a substantial disadvantage compared to non disabled persons called to the same type of meeting (i.e. to discuss their own grievance) with the same nature of grievance and she adduced no evidence of this.

139. The overrunning of the meeting by 50 minutes to 17:20 (making it a meeting of 2 hours 20 minutes) was not the imposition or application of a PCP. We accept the submission of the Respondent that it was simply that the meeting overran.

140. We accept Ms Moses' evidence that nothing suggested to her that the Claimant was struggling during the meeting, such that she needed to take additional breaks or adjourn the meeting earlier.

141. The Claimant alleged in her witness statement that she became "*increasingly unable fully to participate*", but she does not suggest that this began during the original scheduled time. In any event, we accept that Ms Moses did not notice this and the Claimant did not mention it at the time and in fact refused breaks that Ms Moses offered.

142. Accordingly the Claimant's claim fails because neither the meeting as originally scheduled not as it overran put her at a substantial disadvantage and the overrunning of the meeting was not the imposition of a PCP.

143. However, this element of the Claimant's claim also fails because we find that the Respondent did not and could not reasonably have been expected to know that the Claimant was disabled at this time (27 April 2022) – it was agreed by the Respondent that the Claimant was disabled from 27 April 2022. The Claimant had not previously been off work with stress, anxiety or depression and had, by the time of the meeting, only actually been of work for a few weeks. She had only been diagnosed with depression since 2 April 2022 and the relevant fit note indicated that the problem was work-related. We therefore accept the Respondent's case that there was nothing to suggest that any effect would be likely to be long term at that point.

144. Ms Moses also could not reasonably have been be expected to know that the Claimant was put at a substantial disadvantage. We accept the

Respondent's submission that the point is not whether Ms Moses could reasonably have known that a 2½ hour meeting would put C at a substantial disadvantage, but whether a 1½ hour meeting would and there is no evidence to suggest that Ms Moses should have known that. As we say, the Claimant accepted the meeting without raising concern. The overrunning of the meeting was not the application of a PCP in this case but in any event there was also no evidence that suggests Ms Moses should reasonably have known that anything beyond 1½ hours put the Claimant at a substantial disadvantage.

145. Further, we accept the Respondent's submission that the adjustments that the Claimant says should have been made were made. Breaks were offered by Ms Moses but refused by the Claimant and Ms Moses ended the meeting before all matters had been covered with the aim of holding two shorter meetings. We accept Ms Moses' evidence that the Claimant accepted her invite, sent on 30 April 2022 (544), for the proposed reconvening of the meeting on 3 May 2022 and that Ms Moses had legitimate cause for surprised when she received a further email from the Claimant on 2 May 2022:

- alleging that reasonable adjustments had not been made to the grievance procedure to accommodate her and that this contravened UK law (570).

- making clear that the Claimant did not want to proceed with their rescheduled meeting and wanted instead for her grievance to be dealt with in written form.

146. The Respondent was not under an EqA 2010 duty to make the adjustments alleged and in any event made the adjustments requested.

**Issue 5 - Putting the onus to suggest adjustments onto the Claimant, rather than offering suggested adjustments.**

**Failure to make reasonable adjustments**

147. The Claimant's case is that putting the onus on her to suggest adjustments was itself a breach of the duty to make reasonable adjustments and the PCP relied upon is "*Requiring an employee with a disability to suggest reasonable adjustments*."

148. This claim is misconceived because the PCP is restricted to disabled employees and is not one which puts disabled employees at a substantial disadvantage in comparison to persons who are not disabled.

149. The Claimant brought no alternative claim based on an assertion that the alleged PCP subjected disabled people to less favourable treatment. It was not alleged that the Respondent has a policy of proactively suggesting adjustments to non-disabled employees, but insisting that disabled employees suggest their own adjustments (and there was no evidence that it did).

**Issue 6 - Not extending the timeframe for the Claimant to provide input in writing for her first grievance**

**Discrimination arising from disability**

**Failure to make reasonable adjustments**

150. The Claimant asserts that "not extending the timeframe for the Claimant to provide input in writing for her first grievance" amounted to a breach of the EqA:

- section 15 (discrimination "because of something arising in consequence of disability), (an "**Arising From Claim**"); and

- a breach of section 21 EqA 2010 (a "**Reasonable Adjustments Claim**"). The alleged PCP being "application of a deadline for submitting a grievance.".

151. We accept the Respondent's submission that both claims fail on the facts because Ms Moses did extend the timeframe for the Claimant to provide input in writing. She extended it from end of the day on 6 May 2022 to the end of the day on 11 May 2022. The Claimant then went on to comply with that deadline with some time to spare (580). Further Ms Moses, on 6 May 2022, told the Claimant "*if you feel you need more time please do let me know*" [580].

152. The Arising From Claim in this Issue also fails because:

- The "something arising in consequence of the Claimant's disability" which the Claimant relied upon was her need for more time;

- We find as a matter of fact that the Claimant's need for more time was not the reason for any timeframe Ms Moses gave her (which is the treatment complained of).

153. The Reasonable Adjustments Claim in this Issue also fails because:

- As submitted by the Respondent, provision of written submissions (and its timeframe) was not a PCP – it was the *adjustment* to a PCP sought by the Claimant because she was disabled.

- Provision of written submissions (and its timeframe) did not or would not have put non-disabled persons at an advantage (substantial or otherwise) compared to the Claimant, because it would not have been applied to non-disabled persons in the first place.

154. The Claimant has adduced no evidence to suggest that the original timescale of end of the day on 6 May 2022 would have been any easier for a non-disabled person to achieve than for the Claimant to achieve, still less substantially easier.

155. The adjustment which it is said was not made (extending the timeframe for submission of written answers) <u>was</u> made.

156. To the extent that it is suggested that the Claimant suffered a disadvantage during the short period between her being given the initial timeframe, and that timeframe being extended, we accept the Respondent's submission that this was not a "substantial" disadvantage.

**Issue 7 – deliberately omitted**

**Issue 8 - Scheduling a disciplinary meeting during sickness absence**

157. Whilst we did not identify this at the hearing, the Respondent, in its submissions dealt with this issue as giving rise to alleged victimisation (under EqA section 27). However, the agreed list of issues does not raise this as a victimisation claim. The List of Issues points to it giving rise to a Reasonable Adjustment Claims (which is dealt with in the Respondent's submissions). The List of Issues also records in the first section that Issue 8 gives rise to an Arising From Claim but this appears to be an error because it is not included in the particulars relating to the Arising From Claims.

**Failure to make reasonable adjustments**

158. The PCP relied upon by the Claimant is "requiring the Claimant to attend a disciplinary meeting". We accept the Respondent's submission that this alleged PCP was not applied to the Claimant as she was not "required to attend a meeting". The Claimant was specifically given the option, as a reasonable adjustment, of dealing with the disciplinary process in writing. We quote the relevant parts of the 9 May 2022 disciplinary invite letter sent by Ms Ferrin (609):

> *In accordance with the Company's UK Disciplinary Policy (attached), I am writing to request that you attend a Disciplinary Hearing to be held via video conference on Thursday 12 May 2022 at 9.00am.*
>
> *I understand that due to your ill health you have requested a reasonable adjustment for your follow up grievance hearing and not attend in person but to submit your response in writing. Therefore if you prefer not to attend the disciplinary meeting in person via Google Meet, you can submit your response to the allegations in writing by Friday 13 May 2022 at 5.00pm.*
>
> *[…]*
>
> *<u>Next steps</u>*
>
> *At the hearing you will have a full opportunity to state your case. If you decide to attend the disciplinary hearing in person via Google Meet you are entitled to bring a colleague or trade union representative to the meeting in accordance with the UK Disciplinary Policy. If you wish to bring a companion, please let me know their name as soon as possible, and ideally no later than 24 hours before the hearing. Please also confirm that you have received this letter and, by 5.00pm on Tuesday 10th May 2022 whether you will attend or you will be submitting your written response by the time stated above.*

159. We also accept the Respondent's submission that this claim is also misconceived because, even if the PCP is rewritten to "*requiring the Claimant to deal with a disciplinary process (albeit by way of written submissions) during her sickness absence*", this was also the very adjustment which the Claimant's GP recommended, having been specifically asked what adjustments were required to the disciplinary process, and when the Claimant would be able to attend (73 – the GP's responses to questions posed by Ms Moses).

**Issue 9 – deliberately omitted as withdrawn**

**Issue 10 -The content of the disciplinary allegations letter dated 9 May 2022**

**Harassment related to sex**

160. As recorded above, the Claimant withdrew her automatic unfair dismissal claim and this issue is now limited to an allegation of harassment related to sex.

161. We have quoted a substantial part of the letter above. It is worthwhile quoting here the remainder of the core content of the letter, insofar as it relates to the allegations against the Claimant (we have taken into account the whole of the letter):

> *The hearing will be heard by Maria Butterworth, Associate Director, Network Assurance with myself from HR also present to ensure that the Disciplinary process is conducted fairly and in line with Company*
>
> *procedure.*
>
> *<u>Allegations</u>*
>
> *The purpose of the hearing is to consider allegations including some which are potentially Gross Misconduct, when considered together and/or separately, against you as summarised below. It is alleged*
>
> *that:*
>
> *1. you repetitively emailed a fellow Verizon employee, [Mr Abadir], who you appear to have had a romantic interest in (that does not appear to have been reciprocated), and that these behaviours took place over a prolonged period of time from approximately January 2021 to October 2021 on company email both during and outside working hours, such that your behaviour could be considered to be either:*
>
> > *a) harassment and therefore as being contrary to our Anti-harassment and Bullying Policy and Code of Conduct (page 9); and/or*
> >
> > *b) disrespectful and/or unprofessional behaviours in the workplace contrary to the Code of Conduct (pages 9 and 12);*

*and/or*

*2. that in doing the above actions, this was not an appropriate use of Verizon's email system which are provided dominantly for work purposes which is contrary to our Code of Conduct (page 22);*

*and/or*

*3. you took 4 hours off during the working day on 4 October 2021 to get your hair and nails done at a beauty salon without prior approval from your line manager contrary to our Vacation Policy.*

*Alleged Company Violations*

*Your alleged conduct, if found to be proven, would be in breach of the Verizon Code of Conduct, Anti-harassment and Bullying policy, UK Vacation Policy and UK Disciplinary Policy.*

*In terms of the UK Disciplinary Policy, your behaviours appear to fall below the standards expected of Verizon's employees and while the Policy is not exhaustive, the following is listed as misconduct:*

*● Unauthorised absence from work;*

*and the following are listed as potential Gross Misconduct Offences:*

*● Serious misuse of our information technology systems (including misuse of developed or licensed software, use of unauthorised software and misuse of email and the internet);*

*● Harassment of, or discrimination against, employees, contractors, clients or members of the public, contrary to our Anti-harassment and Bullying Policy.*

*To the extent that any breach of the Code of Conduct is confirmed, that will also amount to a breach of clause 13 of your contract of employment which requires you to comply with the Code.*

*To enable you to state your case and to provide further details of the allegations, we have included copies of the following:*

*Emails:*

*● 7 January 2021 at 14.43 re. OH MY GOD*

*● 11 January 21 at 13.17 - Olivia Williams*

*● 19 May 2021 re. team meeting*

*● 2 June 2021 at 21.16 - Don't call me ever again*

*● 3 June 2021 at 17.02 - re. Please call me back*

*● 4 June 2021 - at 10.35 re. So are you calling me back?*

● *19 May 2021 at 21:25 - re. Team meeting*

● *8 July 2021 at 13.10 - re. Business case discussion*

● *4 August 2021 at 16.48 re. Are you going to call me back?*

● *5 August 2021 at 7.37 - re. Are you awake?*

● *5 August 2021 at 9.06 - I go for a walk in a few mins, I will be at "our" bench*

● *6 August 2021 at 16.22 - meeting with Keith in Twickenham*

● *11 August 2021 at 13.53 - re are you going to join the discussion on how we create the deck for the upcoming RFP?*

● *26 August 2021 at 8.33 - re. Are you available to talk?*

● *27 August 2021 at 10.59 - re. Could you please give me a call?*

● *27 August 2021 at 18.53 - re. Techtarget priority engine*

● *2 September 2021 at 11.28 - do you have 5 mins to talk later today?*

● *4 September 2021 at 21.43 - I am thinking of you…*

● *5 September 2021 at 11.05 - I don't know if you are free today but maybe we could go for a walk*

● *6 September 2021 at 6.38 - Yesterday*

● *7 September 2021 at 7.26 - so, is that it?*

● *4 October 2021 at 16.57 - re. Just a quick note*

● *5 October 2021 at 7.19 - re. So, how is your friend now?*

● *5 October 2021 at 18.34 - re. Christopher? OK?*

● *8 October 2021 at 20.17 - re. So*

*Other documents:*

● *the Verizon Code of Conduct (May 2021);*

● *the UK Disciplinary Policy (April 2020);*

● *the UK Vacation Policy;*

● *the Anti-harassment and Bullying Policy;*

● *Your contract of employment;*

● *Investigation Meeting Notes (March 2022); and,*

> ● *Your training record*
>
> *Next steps*
>
> *[…]*
>
> *Due to the very serious nature of the allegations, if Gross Misconduct allegations are upheld, the outcome of the hearing could result in disciplinary action being taken against which may include your summary dismissal from the Company, as set out in the UK Disciplinary Policy. However, no decision on the outcome will be taken until the process has been concluded and you have been given an opportunity to respond to these serious allegations.*
>
> *I wanted to take the opportunity to remind you that if you would like the support of the Employee Assistance Program during this time they can be contacted on 0800 243 458.*
>
> *I trust that the above is clear, however, should you have any questions please do not hesitate* to contact me on [EMAIL]

162. The Claimant's claim is that this letter amounted to harassment related to her sex by way of the content of the letter, namely by alleging that the Claimant had:

- a romantic interest in a colleague;
- harassed a fellow colleague;
- taken time off to attend an appointment for beauty treatment.

163. We accept the Respondent's submission that where an employer invites an employee to a disciplinary hearing to face a charge of sexual harassment, it is not appropriate, as a matter of the interpretation of section 27 EqA, to hold that as "conduct" of the employer. Where, as here, an employer has concerns about an employee's conduct, including conduct that amounts to potential harassment of another person, and puts those concerns to an employee in straightforward and polite terms in the furtherance of a legitimate disciplinary process, we do not consider that parliament can have intended that to constitute potentially prohibited conduct under section 27 EqA.

164. We do not consider that the letter constituted conduct "relating to sex". Further, even it is conduct related to sex, it did not on these facts constitute sex related harassment of the Claimant. If it did, as the Respondent submitted, it would be a barrier to an employer charging an employee with sexual harassment without itself unlawfully harassing the suspect.

165. We also do not consider that the letter had the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. We also do not consider it to have been reasonable for the letter to have had any such effect on the Claimant and this claim is not well founded.

**Issue 11 - Pursuing disciplinary process despite no complaint from Christopher Abadir**

166. The Claimant alleged that by pursuing the disciplinary process in circumstances where Mr Abadir had not raised a complaint about the Claimant's conduct was an act of direct sex discrimination. The Claimant cited Mr Abadir as the comparator but this was not logical because there was no evidence that he might have been guilty of the same forms of potential misconduct as the Claimant (sexually harassing a fellow employee, or taking unauthorised time off work).

**Direct sex discrimination**

167. There was no evidence to suggest (and we were not persuaded by the Claimant's argument) that if the Respondent had found evidence of a male employee acting in the way that it appeared that the Claimant had acted then it would not have pursued a disciplinary process against him. In particular the Respondent has a clear policy of "zero tolerance" against harassment, Ms Ferrin was clear in her rebuttal of this allegation and we consider that the Respondent would have treated the Claimant in the same way had she been a man.

**Issue 12 - Investigating the Claimant for sexual harassment but not investigating her grievances against Mr Priestley for the same.**

168. The Claimant claimed that she was treated differently as a Hungarian woman than Mr Priestley as an English, or non-Hungarian, man. We understand that she complains that she was investigated for sexual harassment but Mr Priestley was not.

169. The Respondent did investigate the Claimant's complaints of sexual harassment against Mr Priestley (this was undertaken by Ms Moses who interviewed Mr Priestley (762-769) and Ms Navarro (740-744). The Claimant's case is not well founded for this reason alone.

170. We accept the Respondent's submission that, if there had been any harassment, Ms Navarro would have been an eye witness to it, having been present for the entirety of both meetings. We are clear in our finding that no such harassment took place and that Mr Priestley was blameless.

171. We also do not accept the Claimant's argument that Mr Priestley is a valid comparator because she and he were not in materially the same circumstances. As the Respondent submitted, in the Claimant's case the Respondent had contemporaneous emails that suggested harassment by the Claimant. Conversely the contemporaneous notes taken by Ms Navarro of Mr Priestley's interviews of the Claimant showed no evidence of any harassment of the Claimant. This claim of direct sex discrimination is not well founded.

**Issue 13 - Only giving the Claimant two working days to prepare for disciplinary hearing in her letter of 9 May 2022**

172. Whilst we did not identify this at the hearing, the Respondent, in its submissions dealt with this issue as giving rise to alleged victimisation (under EqA section 27). However, the agreed list of issues does not raise this as a victimisation claim. The List of Issues points to it giving rise to a Reasonable Adjustment Claims and Arising From claims (which are dealt with in the Respondent's submissions).

**Discrimination arising from disability**

173. This claim does not succeed because the "something arising" in consequence of the Claimant's disability that is relied upon by the Claimant is her need for more time. We find that it was not the Claimant's need for more time which led to the Respondent (Ms Ferrin) saying in the letter of 9 May 2022 "*In accordance with the Company's UK Disciplinary Policy (attached), I am writing to request that you attend a Disciplinary Hearing to be held via video conference on Thursday 12 May 2022 at 9.00am. I understand that due to your ill health you have requested a reasonable adjustment for your follow up grievance hearing and not attend in person but to submit your response in writing. Therefore if you prefer not to attend the disciplinary meeting in person via Google Meet, you can submit your response to the allegations in writing by Friday 13 May 2022 at 5.00pm*." The reason for the timescales given was that they accorded with the Respondent's standard (para 30 Ferrin WS).

**Failure to make reasonable adjustments**

174. The PCP relied upon by the Claimant is the Respondent only giving the Claimant two working days to prepare for the disciplinary hearing on 12 May 2022.

175. This claim does not succeed because the Claimant has not shown that the application of this PCP had the effect of putting her at a substantial disadvantage compared to non disabled persons:

- The Claimant did not have to attend and was given the option of responding in writing to the allegations;

- The option of providing written responses, which is the one that the Claimant in fact chose, was the option that she had also asked for in respect of her previous grievance meeting;

- The Claimant has not argued that she would have opted for an in person hearing, rather than her previous choice of making written representations, if the letter had given longer notice.

176. In any event, as the Respondent submitted, the entire disciplinary process (including therefore the timeframe for both the hearing or the written submissions, whichever the Claimant would have chosen) was in fact suspended indefinitely on Thursday 15 May 2022. The imposition of the PCP therefore only lasted three days.

**Issue 14 - Only allowing the Claimant to have a colleague or TU rep as her companion if she chose to attend the disciplinary hearing in person (and not advising her of R's discretion to allow her to be accompanied by someone else)**

**Failure to make reasonable adjustments**

177. The Respondent's Disciplinary Policy (196) provides (our emphasis):

> *Right to be accompanied*
>
> *You may bring a companion to any disciplinary hearing or appeal hearing under this procedure. The companion may be either a trade union representative or a colleague. You must tell us who your chosen companion is, in good time before the hearing.*
>
> *A companion is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so. (If you choose a colleague who is not based in the same location as you, they will need to attend remotely by video link). We may, at our discretion, allow you to bring a companion who is not a colleague or union representative (for example, a member of your family) if this will help overcome a disability, or if you have difficulty understanding English.*

178. As referenced above, the letter inviting the Claimant to the disciplinary hearing said (611):

> *At the hearing you will have a full opportunity to state your case. If you decide to attend the disciplinary hearing in person via Google Meet you are entitled to bring a colleague or trade union representative to the meeting in accordance with the UK Disciplinary Policy. If you wish to bring a companion, please let me know their name as soon as possible, and ideally no later than 24 hours before the hearing. Please also confirm that you have received this letter and, by 5.00pm on Tuesday 10th May 2022 whether you will attend or you will be submitting your written response by the time stated above.*

179. The Respondent accepted in submissions that the disciplinary hearing invitation letter could be open to other interpretations and could have been clearer. It argued that an unclear letter is not the application of a PCP.

180. We find that the Claimant's claim of a failure to make reasonable adjustments is not well founded because:

- the alleged PCP of requiring a companion to only be a colleague or TU rep was not applied to the Claimant. It was sufficiently clear from the letter sent to her coupled with the disciplinary policy that accompanied it that the Claimant could ask to bring a companion (i.e. not someone who is a colleague or a union representative.

- if we are wrong and the PCP was applied to her, the Claimant has not shown that the PCP had the effect of putting her at a substantial disadvantage compared to non-disabled persons because (i) the Claimant did not have to attend and was given the option of responding in writing to the allegations; (ii) the Claimant did not ask to bring a companion or for clarification of the letter (if she felt that it was imposing a more restrictive approach to that set out in the policy which accompanied it).

181. We also accept the Respondent's submission that the issue of a companion, by definition, only applies to a disciplinary *hearing*. The Claimant was never obliged to attend a hearing, was never going to attend one, and in fact chose not to, and so the issue of a companion did not, and would never have, arisen.

**Discrimination arising from disability**

182. The List of Issues records in the first section that Issue 14 gives rise to an Arising From Claim but this appears to be an error because it is not included in the particulars relating to the Arising From Claims. In any event, we accept the Respondent's submission that even if the Claimant was not invited to bring a companion, and even if this constituted "unfavourable treatment", she was not refused a companion *because of* something arising from her disability (whatever that may be - the Claimant did not make this clear).

**Issue 15 and 16 deliberately omitted**

**Issue 17 - Seeking to "rush through" the disciplinary hearing because the Claimant had raised grievances / flagged that reasonable adjustments had not been made to the grievance procedure in breach of the Equality Act 2010**

**Comments on all allegations of victimisation**

183. This is the first of the Claimant's victimisation complaints that we address. We accept the Respondent's general submission in respect of the alleged acts of victimisation in that the Claimant's assertion was that she "felt" or "believed" she was being victimised or punished but did not advance 'evidence' that might support those feelings or beliefs.

184. In contrast the Respondent's witnesses were clear and credible in their direct evidence as to what they did and why and in explaining that they were not influenced to subject the Claimant to any of the alleged detriments by reason of the Claimant's alleged protected acts. Relevant to this is our finding that there was no evidence of a management plot to remove the Claimant from her employment because of her association with Mr Abadir (or for any other underhand reason).

**This particular allegation of victimisation**

185. This particular complaint of victimisation relies upon the following alleged protected acts:

- a) 20.04.2022 Grievance Letter (ET1-1 para49) (508 para 1, 5-10, 12-23)
- b) 2.05.2022 Grievance Letter (ET1-1 para54) (570)
- c) 5.05.2022 Grievance Letter (ET1-1 para60) (594 para 6-7, 10-11, 14-19, 26, 30-34)

186. As was noted by the Respondent in its submissions, this claim is very similar to the matter raised at issue 13 but this time as a victimisation claim. The paragraph in the First Grounds of Complaint that is referenced is 89 which states that: "*Thus, I reasonably believe that [Ms Ferrin] seeking to rush through the disciplinary hearing within 'two working days' was an act of unlawful victimisation by reason that I had done protected acts […]*"

187. We do not accept the Claimant's argument that Ms Ferrin included a timescale of two days in the disciplinary invite letter by reason of the Claimant's earlier grievances. The reason for the timescales given was that they accorded with the Respondent's standard (para 30 Ferrin WS). We also make reference to our other findings on Issue 13 as relevant to this allegation.

**Issue 18 deliberately omitted**

**Issue 19 - Moving the Claimant's sick pay to SSP with effect from 11 April 2022**

188. The Respondent's sick pay provisions are set out in its Absence Policy. They state (246):

> *The payment of salary during periods of absence for sickness or injury will be entirely at the Company's discretion and employees have no contractual right at all to Company Sick Pay. Any discretionary Company Sick Pay will be inclusive of Statutory Sick pay (SSP).*
>
> *[…]*
>
> *Discretionary Company Sick Pay will in any case be exhausted after 26 weeks of absence in a rolling 12 month period. Discretionary Company Sick Pay is not payable to employees in their probation period or subject to any Disciplinary/Performance Improvement procedures*.

189. On 21 March 2022 the Respondent told the Claimant that the Company had decided to exercise its discretion in relation to her discretionary Company Sick Pay and that as such it would reduce to 50% effective 1 April 2022. It was made clear that this was because she was subject to an internal investigation that was part of a disciplinary procedure (492).

190. On 11 April 2022 the Respondent sent the Claimant a further letter which said (amongst other things and making reference to its 21 March 2022 letter and the fact that the Claimant was subject to a disciplinary investigation (494)):

> *It has now been decided that your discretionary Company Sick Pay will reduce further to Statutory Sick Pay effective 11 April 2022 for the remainder of your current sick note.*

**Discrimination arising from disability**

191. The Claimant alleges that the something arising from her disability which led the Respondent to reduce her discretionary sick pay to nil on 11 April 2022 was the Claimant's increased likelihood of absence arising from her disability. The Claimant's claim is not well founded because we find that the reason the Respondent decided not to continue to exercise its discretion to pay her Company Sick Pay was that she was subject to a disciplinary procedure and this was the Respondent's policy. The letter could have been better worded but the reasoning is clear to us. As the Respondent submitted, the fact that the Claimant was the subject of a disciplinary investigation was not "something arising in consequence of" her disability.

**Issue 20 - Setting the extended timeframe for the Claimant to lodge written submissions to the disciplinary allegations to 5pm on a Friday**

192. On 10 May 2022 at 17:21 (in response to an email from the Claimant raising her third grievance and complaining about the amount of time she had been given before the proposed disciplinary hearing scheduled on 9 May 2022 to take place on 12 May 2022), Ms Ferrin sent an email to the Claimant saying (619):

> *I confirm receipt of your 3rd grievance dated 10 May 2022. My colleague, Deborah Llewellyn (cc'd), in the US ER team will be picking this up and will reach out to you separately.*
>
> *I also confirm receipt of your latest fit note and in line with the Absence Policy as you are currently subject to a disciplinary procedure, the Company is continuing to exercise its discretion in relation to the Company Sick Pay scheme and confirm that you will continue to receive statutory sick pay to the end of this fit note.*
>
> *With respect to the disciplinary process, it will proceed, however, given the situation and as you are more comfortable dealing with matters in writing, we will give you more time to respond. Therefore please submit your written response to the allegations by Friday 20 May 2022 at 5.00pm. If you do wish for the matter to be dealt with face to face, please let me know and I will make appropriate arrangements.*

193. The Claimant replied the following day attaching her fourth grievance. Ms Ferring then wrote to her on 12 May 2022 at 16:45 (618-619):

> *Fourth Grievance and Disciplinary Hearing*
>
> *I refer to your letter of 11 May 2022 in which you raise a fourth formal grievance, this time in relation to your sick pay arrangements, and also ask for a deferral of the disciplinary hearing. I am writing to confirm how the business intends to proceed.*

*[…]*

*As regards the disciplinary hearing, it is important that such matters are dealt with promptly, not least in view of the impact the process appears to be having on you. However, we are agreeable to deferring the hearing whilst the company awaits the report from your GP to assess any adjustments required to enable the process to move forward. You are not therefore required to provide a written response to the allegations by Friday 20 May 2022.*

*In the meantime, to ensure that we are considering all potentially reasonable adjustments to support you during the disciplinary process, we would like to add a further question to the request to your GP. That question is: What if any adjustments are recommended to enable the employee to take part in a disciplinary hearing.*

*[…]*

194. The Claimant argued that the Respondent having extending the timeframe to 5pm on 20 May 2022, acted unlawfully because in practice nobody from the Respondent would be reading the submissions at 5pm on a Friday, or over the weekend. It appeared to be Claimant's case that it was therefore unlawful not to have chosen a deadline of the following Monday morning, as it would have made no difference to the Respondent. In cross examination the Claimant complained of worrying over the weekend.

195. We accepted the evidence of Ms Ferrin that the deadline was chosen purely because it was an additional week from the original deadline and, looking at the amount of time that the Claimant had had the disciplinary documents already, the fact that she was not working and would have time to prepare, that she had demonstrated an ability to create complex documents in limited periods of time and bearing in mind that the fact pattern underpinning the allegations were undisputed and uncontroversial, a week was in her view a reasonable extension.

**Discrimination arising from disability**

196. The Claimant asserted that the something arising from her disability as regards this Issue was her need for more time. We find that this claim is not well founded because we find that the reason why Ms Ferrin asked for the Claimant's lodge written submissions to the disciplinary allegations by 5pm on a Friday / 5pm on 20 May 2022 (rather than the following Monday or any later date/time) was because she thought this would be sufficient time and not because the Claimant needed more time.

**Failure to make reasonable adjustments**

197. The same issue is brought as a reasonable adjustment claim alleged PCP being framed as the "application of a deadline for submitting a submissions [sic] for the disciplinary allegations". This claim is not well founded for a number of reasons. Firstly, we accept the Respondent's submissions that the mere application of "a deadline" cannot be a PCP which put the Claimant

at a substantial disadvantage – the Claimant has to show it was this deadline that put her at the disadvantage. Secondly we do not consider that the Claimant was, on the evidence, put at a substantial disadvantage by the application of the deadline of 5pm on Friday 20 May 2022 because:

- As the Respondent noted, this gave her 12 days to present her written submissions and at this time the Claimant was not in work;

- When they were submitted (on 27 June 2022) the Claimant's written submissions were four and a half pages long (885-889) whereas the Claimant had produced significantly longer written submissions in significantly shorter time periods as summarised by the Respondent's closing submissions: The Claimant's second grievance of 5 May 2022 (594-598) was four and a half pages long and produced within one day; her third grievance of 10 May 2022 (623-636) was 14 pages long and produced within one day; her appeal against her second grievance (692-713) was 22 pages long and prepared within 7 days (or 5 working days) and her appeal against her third and fourth grievances (787-818) took 13 days to submit (one day more than the timescale for the disciplinary submissions but at 33 pages it was much longer than the disciplinary submissions).

- Within 48 hours the deadline was suspended and any disadvantage to the Claimant was not substantial (see the email of 12 May 2022 at 16:45 (618-619)).

198. We further accept the Respondent's submission that on the evidence the Respondent did not and could not reasonably have been expected to know that this length of extension would mean that the Claimant was still at a substantial disadvantage.

**Issue 21 - Not extending the standard timeframe for appealing against the grievance decision for the Claimant.**

199. The Claimant complains about Ms Porcaro's failure to extend the standard time limit of 5 working days to appeal her grievance. She brings this as a Reasonable Adjustments Claim complaint and Arising From Claim.

200. Ms Porcaro's email of 12 May 2022 (670-671) said (emphasis added):

> *As this grievance is not upheld, you have the right to appeal. If you wish to exercise your right of appeal, please send your grounds of appeal to me within 5 working days of receipt of this letter, but this timescale can be extended if you require additional time. On receipt of any appeal an appeal manager will be appointed to hear it, and you will be provided with details of how the manager proposes to deal with the appeal process, and you will be given the opportunity to input into such arrangements*.

201. We find that the claim fails on the facts because it is clear from the wording of Ms Porcaro's email that the time limit was 5 working days of receipt of this letter or longer if the Claimant required additional time.

**Discrimination arising from disability**

202. This claim is also not well founded because the five day period was given not because of the Claimant's 'something arising in consequence of her disability (in this case her need for more time) but because it was the standard timeframe given for appeals to be raised. In any event, the Claimant was favourably treated (not unfavourably treated) because Ms Porcaro made it clear that the Claimant could have more time if she needed it.

**Failure to make reasonable adjustments**

203. The Claimant frames the PCP as "application of a deadline for submitting a submissions [sic] for the grievance appeal". This claim is also not well founded because the Claimant has not shown that she was put at a substantial disadvantage in comparison with persons who are not disabled because she was given the option of more time if she needed it (something that would not normally have been offered to employees who are not disabled). As the Respondent submitted, the only disadvantage that a disabled person may have been subjected to, given this wording, is that they may be more likely to need to inform Ms Porcaro of the need for more time. That is not a "substantial" disadvantage and a non-disabled person would not have been given the option in the first place. The Claimant in any event submitted her appeal on 18 May 2022 (670), around two days inside the timeframe given.

**Issue 22 - The decision to wait until all outcomes from the Claimant's grievances had been received before progressing the appeal.**

204. On 20 May 2022 Mr Schmidt (a Senior Manager Employee Relations EMEA for the Respondent), wrote to the Claimant on receipt of her appeal against Ms Porcaro's grievance outcome on the Claimant's second and fifth grievances (784-785) as follows:

> *Your email of 18th May 2022 and the attached letter has been passed to me to respond to, so I am writing to acknowledge receipt of both and in particular, your letter of 18 May 2022, addressed to Kimberley Porcaro, in which you raise a detailed appeal against the outcome to your grievance of 5 May 2022.*
>
> *The company will arrange for an appeal chair to be appointed, and details will be provided to you in the near future. Given that you have raised a number of other grievances, which are in the process of being concluded, I suggest it would be sensible to wait until you have received all grievance outcomes before progressing with your appeal. If you wish to appeal against the outcomes of your other grievances, depending of course on the findings, then it would make sense to hear all appeals together.*
>
> *If your preference is not to take part in an appeal hearing in person (via a video call) then, by way of a reasonable adjustment, we can conduct the process in writing. While we will continue to consider*

*what reasonable adjustments may be possible, and in the event that we receive any medical information from your GP, we are also open to considering any additional reasonable adjustments which you may wish to put forward to support you in the appeal process.*

*I note that you have asked for certain aspects of your appeal against Ms Porcaro's findings to be dealt with as a separate grievance. However, these are clearly intrinsically linked to your appeal against Ms Porcaro's findings and will therefore be considered as part of the appeal process.*

*Finally, I would ask that in any further communications you refrain from making ad hominem personal comments. You have every right to challenge the findings made by those chairing your grievances, but I note in your appeal letter you have made reference to Ms Porcaro being "inept at doing [her] job", not "competent", and her views being "meaningless and worthless" to cite a number of examples. It is entirely possible to robustly challenge the grievance findings without making personal comments of this nature*.

**Victimisation**

205. The Claimant says that Mr Schmidt's suggestion that, given that the Claimant had raised a number of other grievances which were in the process of being concluded, it would be sensible to wait until she had received all grievance outcomes before progressing with her appeal against Ms Porcaro's decision so that all appeals could be heard together. The Claimant says that this was a detriment to which she was subjected because of the following alleged protected acts:

- e) 11.05.2022 Two Grievance letters (ET1-1 para96) (666 para 3, 5, 9-10)

- f) 13.05.2022 Grievance letter (ET1-1 para120) (675 para 4, 15, 18)

206. This claim is not well founded because:

- Mr Schmidt's suggestion was not a detriment, it was a sensible proposal given the circumstances of the Claimant's multiple grievances.

- Whilst we did not hear evidence from Mr Schmidt we consider it implausible that he made the suggestion because of the grievances. It is clear that he made the suggestion because it was a sensible proposal for managing the situation appropriately - it would make sense to hear the appeals all at once.

- Mr Schmidt was making a suggestion which the Claimant then objected to at length on 23 May 2022 (728) and which then led to Mr Schmidt dropping the proposal and telling the Claimant that he was doing so (783). As the Respondent pointed out in submissions, the issue then evaporated because of the sequence of events.

**Issue 23 and 24 deliberately omitted**

**Issue 25 - Deciding to continue with the disciplinary process once the Claimant's grievance outcomes had been provided, but before any appeals had taken place.**

**Victimisation**

207. The Claimant says that because of the following alleged protected acts the Respondent decided to reconvene the disciplinary process after the Claimant had received outcomes to all her grievances but whilst appeals were still outstanding:

- a) 20.04.2022 Grievance Letter (ET1-1 para49) [pg508 para 1, 5-10, 12-23]
- b) 2.05.2022 Grievance Letter (ET1-1 para54) [pg570]
- c) 5.05.2022 Grievance Letter (ET1-1 para60) [pg594 para 6-7, 10-11, 14-19, 26, 30-34]
- d) 10.05.2022 Grievance Letter (ET1-1 para71) [pg623 para 9-14, 20, 26-30, 35, 63, 67-70, 92, 116]
- e) 11.05.2022 Two Grievance letters (ET1-1 para96) [pg666 para 3, 5, 9-10]
- f) 13.05.2022 Grievance letter (ET1-1 para120) [pg675 para 4, 15, 18]
- g) 18.05.2022 Grievance letter (ET1-1 para121) [pg692 para 50-54, 91-92]
- h) 23.05.2022 Grievance letter (ET1-1 para127) [pg727 para 17]
- i) 7.06.2022 Grievance letter (ET1-1 para146) [pg787 para 114]

208. This claim is not well founded because we find that the actual reason for the Respondent reconvening the disciplinary process was, as Ms Ferrin explained in her witness statement and cross examination:

- The disciplinary process had been paused for a number of weeks pending the conclusion of the Claimant's various grievances;
- The Claimant remained off sick with a work-related stress condition which, reasonably, suggested to her that it would be best to try to conclude the serious disciplinary matter as soon as possible. The disciplinary process itself appeared to be having an adverse impact on the Claimant's health and progressing with the disciplinary would minimise the impact of this.
- Although at that stage she had still heard nothing from Islington Central Medical Centre in relation to the questions that she had raised regarding the Claimant's medical condition, there was no indication when she might get a response and in any event she had seen that the Claimant, in the course of her various grievances and communications, was capable of putting forward detailed and well-structured submissions setting out her views and opinions,

and indeed legal arguments, and preparing and submitting multiple and lengthy grievances in short timescales.

- As such, she formed the reasonable view that the Claimant ought to be fit to participate in the disciplinary process and that it was right to progress it.

- The decision to progress was as much to for the Claimant's benefit as it was to ensure the efficient running of the Respondent's disciplinary process.

**Issue 26 - Not offering further extensions or accommodations to the disciplinary hearing, other than: (i) offering written or virtual participation at the disciplinary hearing; and (ii) extending the time limit for the Claimant's grievance appeals until after the disciplinary hearing.**

**Victimisation**

209. On 15 June 2022 Ms Hutchinson sent the Claimant a letter as follows (emphasis added) (868):

> *Arrangements for Disciplinary Hearing and Appeal Process*
>
> *I refer to your letter of 14 June 2022, and enclosed letter from your GP.*
>
> *I note your request to defer the disciplinary hearing until early July, after you have submitted an ET1 claim form and an appeal against the outcome of your first grievance.*
>
> *The Company has considered your requests and the advice from your GP, and is prepared to make a number of accommodations to enable this process to move forward.*
>
> *The letter from your GP is not entirely accurate, in suggesting that you are expected to appear in a disciplinary meeting. The Company has offered you the option of engaging in that process via written submissions if you do not wish to attend a virtual hearing in person, and our assumption is that this will be your preference.*
>
> *Your GP also asks the Company to consider taking your issues "step by step" and to complete the grievance process before progressing with the disciplinary hearing. The Company had already agreed to defer the disciplinary hearing until after you had been provided with the outcomes to your various grievances, which has now happened.*
>
> *We consider that it is important to progress the disciplinary hearing as soon as possible for the following reasons:*
>
> *● given that the issues are potentially Gross Misconduct, they need to be addressed as soon as reasonably practicable to ensure a fair process. It is now several months since the disciplinary investigation was concluded and the process has already been considerably delayed in view of your health issues and to hear your various grievances;*

*● this process is clearly having an adverse impact on your health and it is therefore important to progress matters to a conclusion to provide you with certainty on your position (whatever the outcome) and to minimise that on-going impact;*

*● the Company has now responded to all of your grievances in writing. The fact that you may be preparing a legal claim to submit to the Employment Tribunal is not a reason to delay this process further.*

*However, in view of your requests and information from your GP, the Company is willing to make further adjustments to the process as follows:*

*● The Company will conduct the Disciplinary Hearing before dealing with your appeal against your primary grievance. We will extend your time to submit your appeal against your primary grievance until after the Disciplinary Hearing has taken place.*

*● We will extend the time to provide any written submissions in respect of the disciplinary allegations until close of business on Monday 27 June 2022.*

*● Alternatively, you also have the option of attending a virtual Disciplinary Hearing on Monday 27 June 2022. Our assumption based on correspondence to date is that your preference will be to respond via written submissions, but if you are willing to take part in a hearing please let me know and I will confirm details.*

*● We will aim to provide an outcome to the disciplinary process by Friday 1 July 2022 but this will depend on whether any further investigations are required.*

*● The time limit for you to submit an appeal against your primary grievance outcome will be extended until Friday 15 July 2022. You can therefore focus on the disciplinary process without also having to prepare your grievance appeal.*

*The Company considers that this is a reasonable approach to take, and given the importance of concluding the disciplinary process we are not willing to offer any further extensions or accommodations.*

*I wanted to take the opportunity to remind you again that if you would like the support of the Employee Assistance Program during this time they can be contacted on 0800 243 458.*

*Finally, I note your desire to raise a further grievance in respect of the arrangements for these procedures. There is a substantial overlap between this and your various other grievances and it would be disproportionate to commence yet another grievance process. You can of course raise any concerns in this regard either as part of the Disciplinary Hearing, or they can be considered as part of the various appeals you have already raised against earlier grievance outcomes.*

> *I trust that the above is clear, however, should you have any questions please do not hesitate to contact me on [EMAIL].*

210. It appears that the Claimant's victimisation complaint focuses on the wording that is underlined above (see First Grounds of Claim paragraphs 166, 169 and 170 (69) and the list of issues) namely the Respondent's decision to:

- Make only those adjustment set out in the correspondence of 15 June 2022;
- Conduct the disciplinary hearing before dealing with the Claimant's appeal against her primary grievance;

211. This particular complaint of victimisation relies upon the following alleged protected acts:

- a) 20.04.2022 Grievance Letter (ET1-1 para49) [pg508 para 1, 5-10, 12-23]
- b) 2.05.2022 Grievance Letter (ET1-1 para54) [pg570]
- c) 5.05.2022 Grievance Letter (ET1-1 para60) [pg594 para 6-7, 10-11, 14-19, 26, 30-34]
- d) 10.05.2022 Grievance Letter (ET1-1 para71) [pg623 para 9-14, 20, 26-30, 35, 63, 67-70, 92, 116]
- e) 11.05.2022 Two Grievance letters (ET1-1 para96) [pg666 para 3, 5, 9-10]
- f) 13.05.2022 Grievance letter (ET1-1 para120) [pg675 para 4, 15, 18]
- g) 18.05.2022 Grievance letter (ET1-1 para121) [pg692 para 50-54, 91-92]
- h) 23.05.2022 Grievance letter (ET1-1 para127) [pg727 para 17]
- i) 7.06.2022 Grievance letter (ET1-1 para146) [pg787 para 114]

212. Whilst we did not hear evidence from Ms Hutchinson, we accept the evidence of Ms Ferrin that the way in which the Respondent said it would progress matters ensured that the Claimant did not have to deal with any steps in the disciplinary and grievance processes simultaneously. It was reasonable in the circumstances and taking into account what the Claimant's GP had said by this point, for the Respondent to decide that the disciplinary process should run its course first (rather than the grievance process being concluded first as was the Claimant's preference).

213. We accept Ms Ferrin's analysis that the disciplinary process could be mapped with certainty whereas the grievance process was far less certain because there was no end to the number of grievances that the Claimant could make and appeal (in the space of about two months she had already brought nine). It was reasonable for Ms Ferrin to conclude that it was in everyone's interests (including the Claimant's), if the two processes could not run concurrently, for the disciplinary process to take precedence. The Claimant then made her written submissions on the disciplinary allegations

in writing on 27 June 2022 and we can see no detriment being caused to the Claimant by the Respondent's adjustments being limited to those in Ms Hutchinson's 15 June 2022 letter.

214. We are satisfied that the Claimant was not subjected to any such alleged detriment because she had done one or more of the alleged protected acts. This was the Respondent's response to the dilemma of how best to manage the situation and it reached a reasonable conclusion that the disciplinary process should completed first.

**Claim Two**

215. The following allegations arise out of the Claimant's second claim to the Tribunal.

**Issue 27 - Claimant's dismissal S.98(4) unfair dismissal**

216. We have to determine the Claimant's 'ordinary' unfair dismissal claim pursuant to Section 98 (4) of the ERA, the Claimant on the first day of the hearing having withdrawn her claims of automatic whistleblowing unfair dismissal (ERA Section103A) and health and safety unfair dismissal (ERA Section 100(1)) and those claims having been dismissed on withdrawal.

217. The disciplinary allegations against the Claimant were recorded in the 9 May 2022 disciplinary invite letter which we have reproduced above. Owing to the fact that they are so central to the issues, we have reproduced the emails which were under consideration by Ms Butterworth as the disciplinary hearing manager in **Appendix 2** to this judgment (there were other emails which we were referred to in the hearing).

218. The Respondent's Code of Conduct (209) includes the following provisions:

> *A respectful, safe and professional workplace.*
>
> *We are committed to a safe, healthy, and professional work environment in which each of us is treated with respect and given the opportunity to achieve performance excellence.*
>
> *A respectful and inclusive workplace*
>
> *As a Verizon employee, you are expected to treat customers, fellow employees, and vendors with respect, dignity, honesty, fairness, and integrity at all times. Not only is this sound business practice, it's also the right thing to do.*
>
> *[…]*
>
> *A professional workplace*
>
> *We are committed to maintaining a professional, productive work environment.*
>
> *Discrimination and harassment*

*We are committed to maintaining a workplace free from illegal discrimination or harassment, including sexual harassment or harassment based on any other legally protected category.*

*We respect and comply with all laws providing equal opportunity to individuals without regard to race, color, religion, age, sex, pregnancy, sexual orientation, gender identity and expression, genetic information, national origin, disability, marital status, citizenship status, veteran status, military service status, and any other protected category under applicable law.*

*Unlawful harassment comes in many forms and includes conduct or language that creates a hostile or offensive work environment. It can be physical, verbal, or visual. For example, sexual harassment may include inappropriate touching, unwelcome romantic advances, lewd gestures, or the display of obscene material. Other forms of harassment may include racist comments, ethnic slurs, religious stereotypes, or homophobic jokes.*

*We do not tolerate such behavior. If you are subjected to or observe unlawful harassment, you should report it to your supervisor (if appropriate), Human Resources, Verizon Ethics, or the Legal Department, and, if you are comfortable doing so, confront the perceived harasser and ask that they stop. Supervisors who become aware of harassment concerns must report the issue.*

219. The Respondent's disciplinary policy (199) includes the following provisions:

*Disciplinary Rules*

*While working for the Company you should at all times maintain professional and responsible standards of conduct. In particular you should observe the terms and conditions of your contract and the Code of Conduct which is available on the Company's intranet, and comply with all company policies.*

*The following are examples of matters that will normally be regarded as misconduct or serious misconduct:*

*[…]*

*e. Unauthorised absence from work;*

*[…]*

*This list is intended as a guide and is not exhaustive.*

*The following are examples of matters that are normally regarded as gross misconduct:*

*[…]*

*s. Harassment of, or discrimination against, employees, contractors, clients or members of the public, contrary to our Anti-harassment and Bullying Policy;*

*[…]*

*w. Serious misuse of our information technology systems (including misuse of developed or licensed software, use of unauthorised software and misuse of e-mail and the internet);*

*[…]*

*This list is intended as a guide and is not exhaustive.*

220. The Respondent's UK Anti Bullying & Harassment (234) policy provides:

*What is harassment?*

*Harassment is unwanted conduct that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading or offensive environment for them. It may be persistent or an isolated incident.*

*Unlawful harassment may be related to unwanted conduct of a sexual nature, or to "protected characteristics" including, among other things, age, sex, sexual orientation, disability, race or religion. There are other protected characteristics in different countries - please check the chart on the final page of this policy for the protected characteristics in your country. However, harassment is unacceptable even if it does not relate to a protected characteristic.*

*The Company also prohibits harassment based on any characteristic in the Code of Conduct, whether or not they are legally prohibited in your country. These are: race, color, religion, age, gender, sexual orientation, gender identity and expression, national origin, disability, marital status, citizenship status, veteran status, and military status.*

*What is Bullying?*

*Bullying can include offensive, intimidating, hurtful, malicious or insulting behaviour. Legitimate, constructive and fair criticism of an employee's performance or behaviour at work is not bullying but overly critical, unfair or abrasive management could constitute bullying.*

Potentially fair reason

221. We must first decide the reason for the Claimant's dismissal. As the Respondent submitted, the reason for an employee's dismissal "*is the set of facts known to, or beliefs held by, the employer, that cause the employer to dismiss the employee*" ***Abernethy v Mott Hay & Anderson [1974] ICR 323***.

222. We accept Ms Butterworth's evidence and find that the reason for the Claimant's dismissal was her alleged conduct as described in the disciplinary allegations which, for ease of reference, we repeat as follows:

> *1. you repetitively emailed a fellow Verizon employee, [Mr Abadir], who you appear to have had a romantic interest in (that does not appear to have been reciprocated), and that these behaviours took place over a prolonged period of time from approximately January 2021 to October 2021 on company email both during and outside working hours, such that your behaviour could be considered to be either:*
>
> > *a) harassment and therefore as being contrary to our Anti-harassment and Bullying Policy and Code of Conduct (page 9); and/or*
> >
> > *b) disrespectful and/or unprofessional behaviours in the workplace contrary to the Code of Conduct (pages 9 and 12);*
>
> *and/or*
>
> *2. that in doing the above actions, this was not an appropriate use of Verizon's email system which are provided dominantly for work purposes which is contrary to our Code of Conduct (page 22); and/or*
>
> *3. you took 4 hours off during the working day on 4 October 2021 to get your hair and nails done at a beauty salon without prior approval from your line manager contrary to our Vacation Policy.*

223. Ms Butterworth was clear and consistent in her evidence and set out her reasons for dismissing the Claimant clearly and with reference to the contemporaneous written documents which were presented to us. Her reasons for dismissal were consistent with the investigation that had been carried out by Ms Sawhney and with the disciplinary charges put to the Claimant for the Claimant's response. We accepted the contents of her witness statement and evidence and that she dismissed the Claimant because of the conduct alleged in the disciplinary allegations.

224. The emails sent by the Claimant which were the focus of Ms Butterworth's decision constituted contemporaneous documentation which the Claimant did not allege had been fabricated. Those emails were undisputedly sent on the Respondent's email system and not only evidenced the alleged harassment of Mr Abadir but also the allegation that the Claimant had taken 4 hours off during the working day on 4 October 2021.

225. Mr Harris in his cross examination of Ms Butterworth suggested that some of the emails did not directly evidence a romantic advance, and one email showed Mr Abadir inviting the Claimant out for a drink (which we address further below). This did not advance the Claimant's case because clearly some of the emails were included as evidence of unauthorised time off, not an unwanted romantic advance.

Fair in all the circumstances of the case

Unfair Dismissal - the BHS v Burchell test

Genuine belief

226. It is clear to us that the Respondent had a genuine belief in the Claimant's misconduct given:

- the nature of the evidence before it in the form of the emails sent by the Claimant (including their timing, content, nature, frequency and the period over which they were sent); and
- that the Claimant admitted sending the emails and admitted her unauthorised absence.

227. It is also clear to us that Ms Butterworth had a genuine belief in the misconduct. We believed the evidence that she gave.

228. Ms Butterworth also had reasonable grounds for her genuine belief in the Claimant's misconduct given the nature of the emails, the Claimant's admission that she had feelings for Mr Abadir (which it is clear from the emails were not reciprocated by him), the fact that the Claimant did not deny sending them and did not deny her unauthorized absence. The Claimant also said in her interview with Ms Sawhney on 2 March 2022 (474): "*Yes, I would think it odd and if I saw the emails it would seem like I am harassing him*". The Claimant seemed to deny that she said this when responding to further questions on her grievance from Ms Moses (558) where she said:

> "What is erroneously written within the HR minutes: "*Yes, I would think it is odd and if I saw the emails it would seem like I am harassing him" → what I actually said was: "Well, I would think it is odd, and not knowing any context, any background, only seeing some words in the emails, I might think I am harassing him but I did not. This is how our communication was because we are both tempered, passionate people, that's why you should look into the entire context and not just pointing out some words*". This does not alter our conclusions based on what we see in the emails.

Reasonable investigation

229. Given the evidence contained in the emails there was a significantly diminished need as regards an investigation. The Respondent nonetheless carried out a full investigation which gave the Claimant an opportunity to comment on examples of the emails which called her conduct into question. Ms Sawhney asked the Claimant whether the Claimant was in a relationship with Mr Abadir. That was a reasonable question because, had she ever been in a romantic relationship with him it would have helped explain the emails to an extent. The Claimant denied that she had ever been in a relationship with Mr Abadir.

230. We consider that in this case the Respondent need not have gone any further. It was not incumbent on the Respondent in carrying out a reasonable investigation to:

- Interview Mr Abadir because his reactions could be seen in the emails themselves, he had left the Respondent in the circumstances we have described and the Claimant told the investigation that Mr Abadir did not want a relationship with her.

- Find other emails or phone logs (as the Respondent submitted, no other emails of phone logs have been disclosed for the purposes of these proceedings which might have come to light if the Respondent had conducted a search at disciplinary investigation stage and the emails that were presented as part of the investigation say what they say). As the Respondent submitted the Claimant remained adamant that she and Mr Abadir were not and never had been in a romantic relationship. There was no reason to try and find emails to show the contrary, or that the emails, despite clearly showing Mr Abadir's attitude to them, had to be checked to see whether they were really unwanted. We doubt that phone records would have given any material insight and it is clear on the face of the emails that Mr Abadir was not responding by phone, at the very least in the vast majority of the instances being looked at by the Respondent. We accept that this is clear from the timing and wording of the emails themselves.

231. The investigation was also not 'cross contaminated', as Mr Harris seem to argue, by discussions between managers. He was not able to point to any particular communication between any particular individuals which rendered the investigation (or indeed the broader disciplinary process) unfair.

232. Ms Butterworth dismissed the Claimant because of the conduct alleged against her and not for any other reason. She did so based on a genuine belief in the Claimant's conduct which she held on reasonable grounds following a reasonable investigation.

<u>Otherwise fair process?</u>

233. We find that the disciplinary process was also fair in its broader nature. We remind ourselves of the sequence of events:

- 13 June 2022 - the Claimant was issued with a disciplinary invite letter, giving her the option of a virtual meeting or for the process to be conducted in writing and if so to provide written submissions by 5pm on 16 June 2022.

- 14 June 2022 - The Claimant issued her ninth grievance letter and submitted a letter from her GP dated 13 June 2022.

- 15 June 2022 - The Respondent agreed to deal with the Claimant's disciplinary and grievance matters sequentially rather than simultaneously. The timeline for the Claimant to submit written submissions in respect of her disciplinary was extended to close of business on 27 June 2022.

- 17 June 2022 - The Claimant issued her tenth grievance letter.

- 24 June 2022 - The Claimant issued her first ET claim.
- 27 June 2022 - The Claimant provided her written submissions for the disciplinary process.
- 28 June 2022 - The fourth fit note sent to Verizon (Mixed anxiety and depression, panic disorder, stress at work).
- 29 June 2022 – Ms Hutchinson raised additional questions to the Claimant regarding her disciplinary submissions of 27 June 2022.
- 30 June 2022 - The Claimant responded to the additional questions raised.
- 30 June 2022 - The Claimant confirmed her intention to return to work on 5 July 2022.
- 1 July 2022 – Mr Vincent issued the appeal outcome to the Claimant's appeals against the outcomes of her second, third, fourth and fifth grievances.
- 4 July 2022 – Ms Butterworth issued the disciplinary outcome, confirming the Claimant was summarily dismissed for gross misconduct.
- 5 July 2022 - The Claimant confirmed her intention to appeal against the decision to dismiss her, saying she had new grievances.
- 15 July 2022 - The Claimant submitted an appeal against the decision to dismiss her and an appeal against the grievance outcome of 10 June 2022 (in relation to her first grievance).
- 3 August 2022 - Mr Williams issued the appeal outcome in relation to the Claimant's disciplinary appeal and upheld her dismissal.

234. Progressing with the disciplinary process having suspended it since May 2022 was fair and reasonable notwithstanding that the Claimant was on sick leave. The Respondent adopted the approach suggested by the Claimant's G.P in response to a number of questions posed to the G.P. (responses in italics):

- When do you envisage that she will be fit enough to attend a disciplinary hearing? Response: "*it would be best to undertake the …. Disciplinary procedures via written form and allow the patient to submit written submissions*" (14.1 at 73);
- What if any adjustments are recommended to enable the employee to take part in a disciplinary hearing? Response: "*To undertake the disciplinary process via written form*".

235. It was fair and reasonable to progress with the disciplinary process taking into account the status and nature of her various grievances (and their ultimate outcomes).

236. We also find that the disciplinary appeal process was fair and reasonable:

- It was not incumbent on Mr Williams to re-hear the case.

- Mr Williams carried out reasonable investigation of the Claimant's grounds of appeal (which included asking for documents and carrying out his own interviews) and took a reasonable view on the appeal taking into account the steps that had been taken prior to the appeal and the documentation already available to him.

- As we have said elsewhere in this judgment, there was no evidence of a management plot to remove the Claimant from her employment because of her association with Mr Abadir (or for any other underhand reason). The reason for her dismissal was the Claimant's conduct as set out in the disciplinary allegations she was asked to answer.

Was dismissal a fair sanction?

237. Ms Butterworth clearly placed greater importance on the allegations of harassment than on the allegations of unauthorised time off work and inappropriate use of the company email. She was right to do so and we agree with the Respondent's submission that those allegations may not have been enough to warrant dismissal but that they were breaches of the code of conduct and/or disciplinary policy, and as such add to, rather than mitigate, Ms Butterworth's findings on the issue of harassment.

238. Ms Butterworth's conclusion on the unauthorised absence allegation was reasonable. This includes her finding that she did not find compelling the Claimant's arguments that the Claimant worked many hours of overtime (whilst that might have been a very good reason for the Claimant's line manager to have agreed to a request from the Claimant, it was not a good, or any, reason not to seek permission in the first place). It did not justify the Claimant taking the time off unilaterally. Whether or not the Claimant was monitoring her emails, the Claimant chose, without authorisation, to not work for half a day. Ms Butterworth then noted that this was given the less serious categorisation of misconduct (not gross misconduct) under the Respondent's disciplinary policy.

239. As regards the allegations of harassment we note the following:

- Ms Butterworth concluded (para 17 of her witness statement) that (i) the Claimant's emails were unwanted conduct that **created a hostile or offensive/intimidating environment** for Mr Abadir (ii) the Respondent's Code of Conduct is very clear that harassment of any nature is unacceptable (iii) the Code of Conduct is very important within the Respondent's group and employees have training on it every year (she found that the Claimant had undergone the training on four occasions).

- The Code of Conduct provides that the Respondent is committed to maintaining a professional, productive work environment. The Claimant's emails to Mr Abadir were clearly highly unprofessional.

- The Code of Conduct appears to set the bar for what constitutes harassment at the level of the definitions of harassment in law given that it uses the terms 'law' and 'unlawful' and replicates terms used in Section 26 of the EqA.

- It is the UK Anti Bullying & Harassment (234) policy which is cross referenced in the examples of gross misconduct in the disciplinary policy (199). Whilst the first paragraph does not use the terms 'law' or 'unlawful' it adopts wording from section 26 EqA. The second paragraph the uses the term 'unlawful harassment' and goes on to use section 26 EqA terms. It goes on to make reference to protected characteristics and then in its last sentence says: "*However, harassment is unacceptable even if it does not relate to a protected characteristic*.". On this basis we have taken it that the Respondent's policy is that for conduct to amount to harassment, even if it does not relate to a protected characteristic under the Equality Act, it must still meet the threshold of having "the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading or offensive environment for them".

240. We accept that it was reasonable to conclude on the evidence she had that the Claimant had subjected Mr Abadir to "unwelcome romantic advances". It is clear that the Claimant sent the emails, that the Claimant was seeking a romantic relationship with Mr Abadir and that this was something that he did not want.

241. We do not consider that the Claimant's conduct was for the purpose of violating Mr Abadir's dignity or creating an intimidating, hostile, degrading or offensive environment for him. However, she admitted and knew that her romantic advances towards him were unwelcome and unreciprocated.

242. It would perhaps be more common for a manager, when trying to decide if unwanted romantic advances had also met the threshold of having the effect of creating this environment for another employee ("the victim"), would have the victim's evidence as to the effect on them. Ms Butterworth did not have that direct evidence and, as we have explained, we do not consider that it was unreasonable for her to make a decision without Mr Abadir being questioned on this. In the circumstances we consider that it was reasonable for her to have made a judgment based on Mr Abadir's responses to the Claimant's emails.

243. Mr Abadir did not make a formal complaint about the Claimant's conduct but (as the EHRC Code of Practice on Employment, unsurprisingly, makes clear) that does not mean that it is not unwanted conduct and does not mean that it does not constitute harassment.

244. The Claimant pointed to the fact that one email shows Mr Abadir inviting the Claimant for a glass of wine. This was clearly a suggestion which the Claimant welcomed. However, he backed out of meeting with the Claimant that evening. We do not consider that this changed the overall complexion of the emails that the Claimant sent to Mr Abadir or his attitude to the Claimant's advances.

245. We accept Ms Butterworth's assessment of the email exchanges between the Claimant and Mr Abadir and what they show about the conduct of the Claimant and its effect on Mr Abadir. She set her assessment out in her witness statement and her responses in cross examination were consistent with it. In summary we consider that she was reasonable to conclude:

- that all aspects of the emails, in terms of both the number, content and timings, were inappropriate to send to a colleague with whom the Claimant had no personal relationship and who, by the Claimant's own admission, did not reciprocate her feelings towards him.

- that the Claimant's conduct was unwelcome had the effect of creating a hostile or offensive/intimidating environment for Mr Abadir (she concluded this from the wording, nature, frequency, timing, and the period over which the Claimant's emails continued as well as from Mr Abadir's own response to the emails).

246. Given the clear stance adopted in its various policies towards harassment we consider that it was reasonable for Ms Butterworth to conclude that the Claimant's conduct towards Mr Abadir constituted gross misconduct.

247. If the Respondent had not concluded that it amounted to harassment, given the standards of conduct clearly expected by the Respondent of its employees, we consider that the Claimant's conduct was so seriously unprofessional as to amount to gross misconduct.

248. Ms Butterworth was then correct not to then jump to the conclusion that dismissal was the appropriate and only sanction she could impose. When deciding what the appropriate disciplinary sanction should be, she was primarily guided by the severity of the allegation of harassment in the workplace and the seriousness with which employers generally, and the Respondent in particular, takes this particular issue. She explained that the Claimant's actions involved a course of conduct amounting to harassment of a colleague over a lengthy period of time, and given the Respondent's (and her own) view that harassment was wholly unacceptable in a workplace context, this meant that dismissal was the most appropriate sanction.

249. Ms Butterworth also considered the mitigation put forward by the Claimant and in our view acted reasonably in concluding that it did not justify a lower sanction:

- Mr Abadir had not complained (victims often do not);

- The Claimant's work-related awards were impressive but provided insuffcient mitigation for her actions.

- Whilst the Claimant may have been receiving hormone replacement therapy this did explain or justify her actions.

250. We took into account:

- That by the time of the dismissal Mr Abadir had left the Respondent so he and the Claimant would not have had to work together.

- That the Claimant had a clean disciplinary record and had been commended for her performance.

- That the Claimant was no doubt unlucky that these matters came to light as a result of the investigation into Mr Abadir and, as the Claimant herself said at the investigation meeting on 3 March 2022 with Ms Sawhney, given the unrequited interest that the Claimant had in Mr Abadir, it was sad for her that she got into the situation she did (480).

- The lack of contrition shown by the Claimant.

251. We concluded that this was a decision that fell within the band of reasonable responses open to an employer acting reasonably. For the reasons that we have explained we find that the Claimant's claim of unfair dismissal is not well founded.

**Issue 28 - Requiring the Claimant to respond to questions regarding her hormone treatment within one day**

252. When submitting her response to the disciplinary allegations on 27 June 2022 the Claimant said (887):

> *1.p During more human circumstances I would have been able to practise more patience, and show more emotional intelligence in my emails, but due to having to meet the constant excessive demands of work (e.g. in 2021 having 800 hours and 14 minutes overtime), which I believe were too much for one person, the constant work stress, exhaustion, fatigue, - which my manager knew about -, the daily 2-3 hours' time sleep, not having proper breaks, often unable to take my lunch breaks or bathroom breaks, even when menstruating, no time to eat for months before late evenings, not talking about the hormonal treatment I went through during that period of time, I could not cope with the disagreements better. Thus, what mitigation (if any) has been given to the effects of my hormonal treatment for the material period?*

253. Hormone treatment had not been mentioned before this by the Claimant. The Respondent, reasonably in our view, asked the Claimant to answer three questions which were sent at 9.18am on 29 June 2022 by Ms Hutchinson (897-898):

> *1. What is the hormone treatment that you have been receiving?*
>
> *2. What period of time have you been receiving the treatment (i.e. from and until when)?*
>
> *3. How do you say that the hormone treatment explains or mitigates the allegations?*

254. The Respondent asked for the Claimant's responses by close of business on 30 June 2022 (two full days later). The Claimant raises this as a Reasonable Adjustments Claim and Arising From Claim.

**Discrimination arising from disability**

255. The Claimant again says that the something arising in consequence of her disability is her need for more time. However, the claim is not well founded because it is clear on the facts as we find them that she did not in fact need more time because the Claimant submitted her responses well before the time by which the Respondent has asked for her responses i.e. by 12:36 on 30 June 2022 (909-910). If the Claimant needed more time to check her answers she could have used the remaining hours to do so. Her answers were in fact short (909):

> *1. What is the hormone treatment that you have been receiving?*
>
> *1.a I have been receiving Mirena Hormone Replacement Therapy during my employment with Verizon.*
>
> *2. What period of time have you been receiving the treatment (i.e. from and until when)?*
>
> *2.a I have been receiving the Hormone Replacement Therapy as part of a polypectomy surgery and treatment of menorrhagia to avoid recurrence of endometrial polyp from the 7th of May 2019 until the 21st of July 2021.*
>
> *3. How do you say that the hormone treatment explains or mitigates the allegations?*
>
> *3.a Please click on the link below. https://jamanetwork.com/journals/jamapsychiatry/fullarticle/2552796*
>
> *3.b Menorrhagia causes brain fog, as does amenia / iron-deficiency. My periods last on average 7 days with heavy flooding. This keeps me awake throughout the night and causes confusion in addition to severe fatigue. For the avoidance of doubt, I am prepared to swear a statement of truth to attest to the fact that because of the substantial adverse effects, which the cumulative effects, which my disabilities have on my day-to-day activities; that I have not been involved in any sexual relationship during the course of my employment either with a workplace colleague or any other individual.*
>
> *3.c The effects of menorrhagia coupled with the Hormone Replacement Therapy have led to mixed emotions, mood swings, frustration, confusion, and feelings.*
>
> *3.d For the avoidance of doubt, my coil was removed on the 21st of July 2021 which led to a hormonal imbalance (as discussed with my gynaecologist) which caused depression, anxiety, and additional mood swings.*

*3.e The Ethics investigatory meetings which took place on the 11th of October 2021 and 11th of February 2022 materially contributed to my anxiety and depression by significantly influencing my anxiety and depression.*

256. The Claimant was not therefore subjected to unfavourable treatment. The treatment was also not because she needed more time (the thing arising in consequence of the disability).

**Failure to make reasonable adjustments**

257. The Claimant says that the deadline for submitting her responses to these questions was a PCP which put her at a disadvantage because she was not provided with enough time to submit and check her answers due to her impairments. The adjustments that she says she should have been afforded are (i) she should have been asked how long she needed and (ii) she should have then been allowed more time.

258. For the reasons we have explained under the Arising From Claim, we do not consider that the Claimant was put at a substantial disadvantage by the deadline and, if she was, she did not need an adjustment because she responded to the questions well within the deadline.

259. It is noteworthy that the Claimant did not challenge the deadline and the Respondent did not know and could not reasonably have be expected to know that the deadline put the Claimant at a substantial disadvantage. By this date the Claimant was a few days away from coming back to work full time, and her sickness certificate was about to expire. Accordingly, she was, if not completely better, nearly better enough to come back to work. There was therefore even less reason to believe that she would not be able to answer these three simple questions in two days.

**Issue 29 - Not extending the timeframe for the Claimant to respond to questions regarding her hormone treatment to take into account her disability.**

**Discrimination arising from disability**

260. For the reasons set out in respect of Issue 28, this claim is not well founded.

**Failure to make reasonable adjustments**

261. For the reasons set out in respect of Issue 28, this claim is not well founded.

**Issue 30 deliberately omitted**

**Issue 31 - Failing to put in place arrangements regarding her return to work and the subsequent deferral of her return to work date**

262. The Claimant claims that Ms Patel failed to put in place arrangements for the Claimant's return to work, and then deferred that return. The Claimant alleges that this was an act of victimisation by Ms Patel.

**Victimisation**

263. This particular complaint of victimisation relies upon all of the alleged protected acts set out in the list of issues in **Appendix 1**.

264. Since her sickness absence commenced on 7 March 2022, the periods covered by the Claimant's GP fit notes, signing her off as unfit to work, had steadily increased (5 weeks (479), 6 weeks (493), 7 weeks (637) - to 27 June 2022. However, on 28 June 2022, the Claimant submitted a fit note for a period of only one week to 3 July 2022 (903). We accept Ms Patel's evidence in this regard and that it came with a sudden indication that the Claimant anticipated that she would be fit to return to work within a week.

265. Ms Patel understandably checked whether the Claimant was planning to come back to work and the Claimant confirmed that she was on 30 June 2022 (902).

266. Ms Patel then understandably asked the Claimant to consent to a UNUM employee rehabilitation process and to complete a risk assessment form. The Claimant queried this on 1 July 2022 and the Claimant's further email on 4 July 2022 was not then reasonable. It included a demand to know what adjustments had been made for her return to work.

267. Ms Patel reasonably pointed out (900) that the Claimant had refused to return the two documents she had sent to the Claimant and reminded the Claimant that the Respondent was still waiting for a GP report (this had originally been requested on 9 May 2022 (605) and the Respondent had followed up with the GP on their request). Ms Patel, in the circumstances reasonably told the Claimant:

> "*To enable the Company to make suitable adjustments for your return to work and in the absence of this medical information, it is unlikely you will be able to return to work tomorrow and your return to work date will need to be deferred until we are in receipt of such medical information. Therefore please refrain from logging on tomorrow and until such time as we can confirm an appropriate return to work for you. In the event that you are not signed off by your GP, we will pay you your normal salary until such time as the return to work process is conducted and subject to engaging fully with the process*."

268. In subsequent correspondence Ms Patel then sought to reassure the Claimant about the UNUM Programme and the risk assessment. We find that Ms Patel was doing her best to help the Claimant and it was the Claimant who was not cooperating. We do not accept the Claimant's assertion that the Respondent failed to put in place arrangements regarding her return to work and do not accept that the Respondent's conduct in this regard or the deferral of the Claimant's return to work date was because of the Claimant's protected acts.

**Issue 32 - Not obtaining medical report from the Claimant's GP**

**Victimisation**

269. In submissions the Respondent pointed out that, notwithstanding that it was included in the list of issues as a victimisation claim, it was not pleaded as such in the second claim form. We have nonetheless dealt with it.

270. In the List of Issue the Claimant relies upon all of the alleged protected acts set out in the list of issues in **Appendix 1** in support of the victimisation.

271. As referred to above, the Respondent (Ms Ferrin) sought a GP report on 9 May 2022 in respect of returning the Claimant to work. It was diligent in chasing for the report (602) and the delay in it being issued was down to the doctor's surgery not issuing the invoice so that the Respondent could pay it and receive the report (601).

272. On 23 June 20232 the Claimant told Ms Ferrin that she understood that the report was ready but had not been released because the invoice had not been paid but Ms Ferrin then quickly made clear that they not received the invoice and asked the Claimant to ask her GP to send it over. The Claimant was not prepared to assist in this way (which makes it all the more surprising that the Claimant, in cross examination, suggested that Ms Ferrin should have travelled to the GP herself) and said the Respondent should ask for the invoice (877) which Ms Ferrin then did on 24 June 2022 (601). Regrettably, but through no fault of the Respondent, the invoice was not then sent to the Respondent by the surgery, who apologised for their delay, until 18 July 2022.

273. The Respondent had been chasing the GP to the extent that in the Claimant's letter of 14 June 2022 (863) she commented "When I consulted my GP yesterday, my GP informed me that she too feels 'harassed' by Verizon, who according to my GP, have repeatedly contacted her to answer the questions regarding my health under the auspices of The Access to Medical Reports Act."

274. The invoice only arrived the date before the Claimant was dismissed and the Respondent reasonably chose not to pay it in the circumstances (and so did not receive the report).

275. The Respondent did what it could reasonably have been expected of it to obtain the GP report. The fact that it was not then obtained was not because of the Claimant's protected acts, it was because of the delay in the GP surgery issuing their invoice (which needed to be paid before the report could be released).

**Reasonable adjustments**

276. Whilst not in the list of issues as a victimisation complaint, it is pleaded under Section 21 EqA as a failure to make reasonable adjustments but no PCP is pleaded. There can be no successful reasonable adjustments complaint because, as we have found, the Respondent did what it could reasonably have been expected to do in trying to obtain a medical report. It was not to

blame for the fact that the GP's invoice arrived so late that there was no benefit to paying it or getting the report.

**Issue 33, 34, 35 deliberately omitted**

**Issue 36 - Dismissing the Claimant because she had done protected acts relating to sex, race and disability discrimination**

**Victimisation**

277. This complaint of victimisation relies upon all of the alleged protected acts set out in the list of issues in **Appendix 1**.

278. The Respondent it its submissions set out a variety of reasons why we should not find in favour of the Claimant on this allegation and we accept those submissions. However, we simply explain that Ms Butterworth was a credible witness who put forward a cogent explanation for her decision to dismiss the Claimant that was consistent with the contemporaneous documents and one which shows clearly that the Respondent did not dismiss the Claimant because she had done any of her protected acts.

**Issue 37 deliberately omitted**

**Issue 38 - Giving the Claimant R's standard five-day timeframe to appeal against the decision to dismiss her**

279. Ms Butterworth's outcome letter said (921):

> *Under the organization's disciplinary procedure you have the right to appeal against this decision. If you wish to appeal, you must write within 5 working days of the receipt of this letter to Victoria Hutchinson, HRBP, stating the grounds for your appeal. Victoria will make arrangements for an appeal hearing to take place.*

**Victimisation**

280. The Respondent's disciplinary policy provided for a five working day appeal timeframe (197). The Claimant was by this point saying she was fit to work and the reason why this time limit was put on the Claimant was because it was the Respondent's policy, it was not because the Claimant had done the protected acts set out in the list of issues in **Appendix 1**.

**Failure to make reasonable adjustments**

281. The Respondent applied its policy to the Claimant but the Claimant has not shown that it put her at a substantial disadvantage. As we say, she was by this point telling the Respondent she was fit to work, she ignored the five day time limit and put her appeal in on 15 July 2022 (969) – a 30 page document - and the Respondent accepted the appeal (1005). This claim is therefore not well founded.

**Discrimination arising from disability**

282. As we have explained, the reason why the Respondent gave a five day time limit was because it was its policy to do so. It was not because of the Claimant's alleged need for more time (the alleged something arising in consequence of disability). This claim is therefore not well founded.

**Issue 39 and 40 deliberately omitted**

**Issue 41 - Underpayment of sick pay**

**Unlawful deduction of wages**

283. We have quoted the Respondent's policy on company sick pay in our findings on Issue 19. Company sick pay is discretionary and not a contractual entitlement. The Respondent was entitled to not pay company sick pay in the circumstances and the Claimant suffered no unlawful deduction from wages.

**Issue 42 - Underpayment of the Claimant's short term incentive bonus**

284. This claim was withdrawn and dismissed on withdrawal.

**Issue 43 - Not properly address the Claimant's grievances or appeal points in the grievance appeal letter.**

**Victimisation**

285. This particular complaint of victimisation relies upon all of the alleged protected acts set out in the list of issues in **Appendix 1**.

286. The Claimant did not explain this allegation in her witness statement and we found persuasive Mr Vincent's explanation in his witness statement as to how he considered the Claimant's appeal.

**Conclusion**

287. For these reasons the Claimant's claims are not well founded and are dismissed.

_____

**Employment Judge Woodhead**

**12 February 2024**

Sent to the parties on:

28 March 2024

...…….....

.....

For the Tribunals Office

**Appendix 1**

**List of Issues**

## Claims: 2204186 & Ors/2022 and 2205748 & Ors/2022

## Miss M. Boza -v- Verizon UK Limited

## Final agreed amended table of issues for full hearing

## To replace the table currently at pages 161-165 of the Hearing Bundle

| Issue | Claim | Paragraph in grounds of claim | FACTUAL ALLEGATION | LEGAL CLAIM |
|---|---|---|---|---|
| 1 | First | 27-30 | Questions posed during the ethics meeting on 21 October 2021 | 1. Harassment related to sex<br>2. Harassment related to race<br>3. Direct race discrimination |
| 2 | First | 35 | Failing to appoint female officer to undertake ethics investigation | 1. Direct sex discrimination |

| | | | | |
|---|---|---|---|---|
| 3 | First | 38 | Questions posed during the ethics meeting on 11 February 2022 | 1. Harassment related to sex |
| 4 | First | 52 | Not offering any adjustments to R's grievance procedures for the grievance meeting with the Claimant on 29 April 2022 | 1. Failure to make reasonable adjustments |
| 5 | First | 58 | Putting the onus to suggest adjustments onto the Claimant, rather than offering suggested adjustments. | 1. Failure to make reasonable adjustments |
| 6 | First | 59 | Not extending the timeframe for the Claimant to provide input in writing for her first grievance | 1. Discrimination arising from disability<br>2. Failure to make reasonable adjustments |
| 8 | First | 69 | Scheduling a disciplinary meeting during sickness absence | 1. Discrimination arising from disability<br>2. Failure to make reasonable adjustments |
| 10 | First | 73 | The content of the disciplinary allegations letter dated 9 May 2022 | 1. Harassment related to sex |
| 11 | First | 74 | Pursuing disciplinary process despite no complaint from Christopher Abadir | 1. Direct sex discrimination |
| 12 | First | 75 | Investigating the Claimant for sexual harassment but not investigating her grievances against Mr Priestley for the same. | 1. Direct sex discrimination |
| 13 | First | 77,79,93 | Only giving the Claimant two working days to prepare for disciplinary hearing in her letter of 9 May 2022 | 1. Discrimination arising from disability<br>2. Failure to make reasonable adjustments |

| | | | | |
|---|---|---|---|---|
| 14 | First | 81 | Only allowing the Claimant to have a colleague or TU rep as her companion if she chose to attend the disciplinary hearing in person (and not advising her of R's discretion to allow her to be accompanied by someone else) | 1. Discrimination arising from disability<br>2. Failure to make reasonable adjustments |
| 17 | First | 89 | Seeking to "rush through" the disciplinary hearing because the Claimant had raised grievances / flagged that reasonable adjustments had not been made to the grievance procedure in breach of the Equality Act 2010 | 1. Victimisation |
| 19 | First | 97 | Moving the Claimant's sick pay to SSP with effect from 11 April 2022 | 1. Discrimination arising from disability |
| 20 | First | 99-101 | Setting the extended timeframe for the Claimant to lodge written submissions to the disciplinary allegations to 5pm on a Friday | 1. Discrimination arising from disability<br>2. Failure to make reasonable adjustments |
| 21 | First | 116 | Not extending the standard timeframe for appealing against the grievance decision for the Claimant. | 1. Discrimination arising from disability<br>2. Failure to make reasonable adjustments |
| 22 | First | 128-129 | The decision to wait until all outcomes from the Claimant's grievances had been received before progressing the appeal. | 1. Victimisation |
| 25 | First | 155-156 | Deciding to continue with the disciplinary process once the Claimant's grievance outcomes had been provided, but before any appeals had taken place. | 1. Victimisation |
| 26 | First | 166 | Not offering further extensions or accommodations to the disciplinary hearing, other than: (i) offering written | 1. Victimisation |

| | | | | |
|---|---|---|---|---|
| | | | or virtual participation at the disciplinary hearing; and (ii) extending the time limit for the Claimant's grievance appeals until after the disciplinary hearing. | |
| | | **2nd Claim** | | |
| 27 | Second | 2.6 | Claimant's dismissal | 1. S.98(4) unfair dismissal |
| 28 | Second | 12 | Requiring the Claimant to respond to questions regarding her hormone treatment within one day | 1. Discrimination arising from disability<br>2. Failure to make reasonable adjustments |
| 29 | Second | 13 | Not extending the timeframe for the Claimant to respond to questions regarding her hormone treatment to take into account her disability. | 1. Discrimination arising from disability<br>2. Failure to make reasonable adjustments |
| 31 | Second | 22 | Failing to put in place arrangements regarding her return to work and the subsequent deferral of her return to work date | 1. Victimisation |
| 32 | Second | 25 | Not obtaining medical report from the Claimant's GP | 1. Victimisation |
| 36 | Second | 33 | Dismissing the Claimant because she had done protected acts relating to sex race and disability discrimination | 1. Victimisation |
| 38 | Second | 35 | Giving the Claimant R's standard five-day timeframe to appeal against the decision to dismiss her | 1. Victimisation<br>2. Failure to make reasonable adjustments<br>3. Discrimination arising from disability |
| 41 | Second | 55 | Underpayment of sick pay | 1. Unlawful deduction of wages |

| | | | | |
|---|---|---|---|---|
| 42 | Second | 55 | Underpayment of the Claimant's short term incentive bonus | 1. Unlawful deduction of wages |
| 43 | Second | 58 | Not properly address the Claimant's grievances or appeal points in the grievance appeal letter. | 1. Victimisation |

**Claims: 2204186 & Ors/2022 and 2205748 & Ors/2022**

**Miss M. Boza -v- Verizon UK Limited**

**Agreed replacement pages for original pp.166-186 in hearing bundle**

**ISSUES**

**1. Disability**

1. Did the Respondent know (or ought reasonably to have known) about the Claimant's disability at the point of each act/omission complained of?

**2. Direct discrimination (sex, race)**

In each case -:

2. Did the act/omission complained of ("the Treatment") occur?
3. Who is the Claimant's comparator?
4. If the Treatment occurred, did the Treatment constitute less favourable treatment than the comparator?
5. If so was the Treatment because of the Claimant's
    a. Sex?
    b. Race?

| ISSUE | PARA | DATE | RACE<br><br>FACTUAL ALLEGATION | Comparator |
|---|---|---|---|---|
| 1 | | 11.02.2022 | Line of questioning by Mr Priestly concerning<br>i. Where the claimant lived<br>ii. Lavish lifestyle | Hypothetical |

| ISSUE | PARAGRAPH IN GROUNDS OF CLAIM | DATE | SEX<br><br>FACTUAL ALLEGATION | Comparator |
|---|---|---|---|---|
| 2 | 35 | 11.10.2021 | Failing to appoint female officer to undertake ethics investigation | Hypothetical |

| ISSUE | PARAGRAPH IN GROUNDS OF CLAIM | DATE | SEX<br><br>FACTUAL ALLEGATION | Comparator |
|---|---|---|---|---|
| 11 | 74 | 20.04.2022 | Pursuing disciplinary process despite no complaint from Christopher Abadir | Mr Abadir |
| 12 | 75 | 20.04.2022 | Investigating the Claimant for sexual harassment but not investigating her grievances against Mr Priestley for the same. | Mr Priestly |

**3. Discrimination arising from disability**

In each case:

6. Did the Respondent subject the Claimant to "unfavourable treatment"?
7. If so was that unfavourable treatment because of something arising in consequence of the Claimant's disability (and what was that thing)?
8. If she was disabled on any Relevant Date
    a. Did the Respondent know that she was disabled?
    b. If the Respondent did not know, could it/they reasonably be expected to know?
9. If the answer to either 13(a) or 13(b) above is "yes", was the treatment justified within the meaning of EqA s.15(1)(b)?

| Issue | PARA | DATE | WHO | FACTUAL ALLEGATION<br><br>UNFAVOURABLE TREATMENT | ARISING FROM |
|---|---|---|---|---|---|
| 6 | 58-59 | 4.05.2022 | Ms Moses | Not extending the timeframe for the Claimant to provide input in writing for her first grievance | Said to arise from the claimant's need for more time |
| 13 | 77,79,93 | 9.05.2022 | Ms Ferrin | Only giving the Claimant two working days to prepare for disciplinary hearing in her letter of 9 May 2022 | Said to arise from the claimant's need for more time |
| 19 | 97 | 21.03.2022 | Ms Ferrin | Moving the Claimant's sick pay to SSP with effect from 11 April 2022 | Said to arise from the claimant's increased likelihood of absence arising from her disability |
| 20 | 99-101 | 10.05.2022 | Ms Ferrin | Setting the extended timeframe for the Claimant to lodge written submissions to the disciplinary allegations to 5pm on a Friday | Said to arise from the claimant's need for more time |
| 21 | 116 | 12.05.2022 | Ms Porcaro | Not extending the standard timeframe for appealing against the grievance decision for the Claimant. | Said to arise from the claimant's need for more time |
| | **2nd Claim** | | | | |
| 28 | 12 | 29.06.2022 | Ms Hutchinson | Requiring the Claimant to respond to questions regarding her hormone treatment within one day | Said to arise from the claimant's need for more time |
| 29 | 13 | 29.06.2022 | Ms Hutchinson | Not extending the timeframe for the Claimant to respond to questions regarding her hormone treatment to take into account her disability. | Said to arise from the claimant's need for more time |

| Issue | PARA | DATE | WHO | FACTUAL ALLEGATION<br><br>UNFAVOURABLE TREATMENT | ARISING FROM |
|---|---|---|---|---|---|
| 38 | 35-38 | 4.07.2022 | Ms Hutchinson | Letter of dismissal only giving the Claimant R's standard five-day timeframe to appeal against the decision to dismiss her | Said to arise from the claimant's need for more time |

**4. Failure to make reasonable adjustments**

In each case:

10. What provision, criterion or practice (PCP) does the Claimant rely upon for her allegation?

11. Did the First Respondent apply that PCP?

12. If so, did the application of that PCP put the Claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled within the meaning of EqA s.20(3)?

13. If so, what adjustment(s) does the Claimant allege the Respondent should have taken but did not take?

14. Would the making of the adjustment(s) have avoided the disadvantage?

15. If so, was it reasonable to have made the adjustment(s)?

| ISSUE | PARA | FACTUAL ALLEGATION |
|---|---|---|
| 4 | 52 | Not offering any adjustments to R's grievance procedures for the grievance meeting with the Claimant on 29 April 2022<br><br>**PCP** |

| ISSUE | PARA | FACTUAL ALLEGATION |
|---|---|---|
| | | Requiring C to attend a grievance meeting<br><br>**Disadvantage**<br><br>The meeting lasted 2.5hrs and C became fatigued and unable to fully participate in the meeting<br><br>**Reasonable Adjustment**<br><br>i. Hold more than one meeting of shorter lengths<br>ii. Organise regular breaks |
| 5 | 58<br><br>64 | On 4.05.2022 putting the onus to suggest adjustments onto the Claimant, rather than offering suggested adjustments on<br><br>**PCP**<br><br>Requiring an employee with a disability to suggest reasonable adjustments<br><br>**Disadvantage**<br><br>C would not have the knowledge to understand what adjustments should be made and therefore may suggest inappropriate adjustments which could exacerbate her impairments.<br><br>**Reasonable Adjustment**<br><br>Seek advice to make appropriate reasonable adjustments<br><br>i. Send C to an Occupational Health provider |

| ISSUE | PARA | FACTUAL ALLEGATION |
|---|---|---|
| | | ii. Make meetings shorter<br>iii. Have meetings held in writing |
| 6 | 59 | 4.05.2022 Not extending the timeframe for the Claimant to provide input in writing for her first grievance<br><br>**PCP**<br><br>Application of a deadline for submitting a grievance<br><br>**Disadvantage**<br><br>The claimant was not provided enough time to submit and check a comprehensive grievance due to her impairments<br><br>**Reasonable Adjustment**<br><br>i. Ask C how long she would need<br>ii. Allow more time |
| 8 | 69 | 9.05.2022 Scheduling a disciplinary meeting during sickness absence<br><br>**PCP**<br><br>Requiring C to attend a disciplinary meeting<br><br>**Disadvantage** |

| ISSUE | PARA | FACTUAL ALLEGATION |
|---|---|---|
| | | C was not well enough to attend a disciplinary hearing where she was under threat of dismissal<br><br>**Reasonable Adjustment**<br><br>i. The fitness of C to attend a threatening meeting should be assessed<br>ii. C could not fully participate in the hearing |
| 13 | 77,79, 93 | Only giving the Claimant two working days to prepare for disciplinary hearing in her letter of 9 May 2022<br><br>**PCP**<br><br>Application of a deadline for attending and preparing for a for disciplinary hearing<br><br>**Disadvantage**<br><br>The claimant was not provided enough time to submit and check her preparation for the disciplinary hearing due to her impairments<br><br>**Reasonable Adjustment**<br><br>i. Ask C how long she would need<br>ii. Allow more time |

| ISSUE | PARA | FACTUAL ALLEGATION |
|---|---|---|
| 14 | 81 | 9.05.2022 Only allowing the Claimant to have a colleague or TU rep as her companion if she chose to attend the disciplinary hearing in person (and not advising her of R1's discretion to allow her to be accompanied by someone else)<br><br>**PCP**<br><br>Requiring a companion to only be a colleague or TU rep<br><br>**Disadvantage**<br><br>Onset of anxiety can lead to panic attacks where the attendance of a friend can offset these affects<br><br>**Reasonable Adjustment**<br><br>Allow a friend to attend as a companion |
| 20 | 99-101 | 10.05.2022 Setting the extended timeframe for the Claimant to lodge written submissions to the disciplinary allegations to 5pm on a Friday<br><br>PCP<br><br>Application of a deadline for submitting a submissions for the disciplinary allegations<br><br>**Disadvantage**<br><br>The claimant was not provided enough time to submit and check her written submissions against the disciplinary allegations due to her impairments |

| ISSUE | PARA | FACTUAL ALLEGATION |
|---|---|---|
| | | **Reasonable Adjustment**<br><br>i. Ask C how long she would need<br>ii. Allow more time |
| 21 | 116 | 12.05.2022 Not extending the standard timeframe for appealing against the grievance decision for the Claimant.<br><br>**PCP**<br><br>Application of a deadline for submitting a submissions for the grievance appeal<br><br>**Disadvantage**<br><br>The claimant was not provided enough time to submit and check a comprehensive appeal due to her impairments<br><br>**Reasonable Adjustment**<br><br>i. Ask C how long she would need<br>ii. Allow more time |
| | **2nd Claim** | |

| ISSUE | PARA | FACTUAL ALLEGATION |
|---|---|---|
| 28 | 12 (2nd) | 29.06.2022 Requiring the Claimant to respond to questions regarding her hormone treatment within one day<br><br>**PCP**<br><br>Application of a deadline for submitting answers to questions<br><br>**Disadvantage**<br><br>The claimant was not provided enough time to submit and check answers to questions due to her impairments<br><br>**Reasonable Adjustment**<br><br>i. Ask C how long she would need<br>ii. Allow more time |
| 29 | 13 (2nd) | 29.06.2022 Not extending the timeframe for the Claimant to respond to questions regarding her hormone treatment to take into account her disability.<br><br>**PCP**<br><br>Application of a deadline for submitting answers to questions |

| ISSUE | PARA | FACTUAL ALLEGATION |
|---|---|---|
| | | **Disadvantage**<br><br>The claimant was not provided enough time to submit and check answers to questions due to her impairments<br><br>**Reasonable Adjustment**<br><br>i. Ask C how long she would need<br>ii. Allow more time |
| 38 | 35 (2nd) | 4.07.2022 Giving the Claimant R's standard five-day timeframe to appeal against the decision to dismiss her<br><br>**PCP**<br><br>Application of a deadline for submitting an appeal against her dismissal<br><br>**Disadvantage**<br><br>The claimant was not provided enough time to submit and check her appeal against her dismissal due to her impairments<br><br>**Reasonable Adjustment**<br><br>i. Ask C how long she would need to submit her grievance<br>ii. Allow more time |

**5a.**

**Harassment (relating to race)**

In each case:

16. Did the Respondent engage in the conduct complained of?

17. If so, was the conduct related to the Claimant's race?

18. If so, was that conduct "unwanted" within the meaning of EqA s.26(1)(a)

    a. If so, did the conduct have the purpose or effect of

        i. violating the Claimant's dignity?

        ii. creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

19. If so, was it reasonable for the conduct to have that effect?

| | PARA | DATE | RACE<br><br>UNWANTED CONDUCT | WHO |
|---|---|---|---|---|
| 1 | 27-30 | 21.10.2021 | Questions posed during the ethics meeting relating to<br>i. C's home address and her capacity to live in Twickenham referring to a lavish style | Mr Priestly |

**5b. Harassment (relating to sex)**

In each case:

20. Did the Respondent engage in the conduct complained of?

21. If so, was the conduct related to the Claimant's sex?

22. If so, was that conduct "unwanted" within the meaning of EqA s.26(1)(a)

    a. If so, did the conduct have the purpose or effect of

        i. violating the Claimant's dignity?

        ii. creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

23. If so, was it reasonable for the conduct to have that effect?

| | PARA | DATE | SEX<br><br>UNWANTED CONDUCT | WHO |
|---|---|---|---|---|
| 1 | 27-30 | 21.10.2021 | Questions repeatedly posed during the ethics meeting<br><br>i. Inferring C did not get her role through merit but other means<br>ii. Questioning C about other sexual relationships between employees<br>iii. Alleging C had a romantic/sexual relationship with a fellow colleague | Mr Priestly |
| 3 | 38 | 11.02.2022 | Questions posed during the ethics meeting on 11 February 2022 | Mr Priestly |

| | PARA | DATE | SEX<br><br>UNWANTED CONDUCT | WHO |
|---|---|---|---|---|
| 10 | 73 | 9.05.2022 | The content of the disciplinary allegations letter dated 9 May 2022<br><br>i. Alleging C had a romantic interest in a colleague<br>ii. Harassed a fellow colleague<br>iii. Took time off to attend appointment for beauty treatment | Ms Ferrin |

**6. Victimisation**

In each case:

24. Did the Respondent subject the Claimant to a "detriment" and what was that detriment?

25. Was the reason for the detriment that the Claimant had done (or the Respondent believed that she had done or may do) a protected act?

Protected Acts

a) 20.04.2022 Grievance Letter (ET1-1 para49) [pg508 para 1, 5-10, 12-23]
b) 2.05.2022 Grievance Letter (ET1-1 para54) [pg570]
c) 5.05.2022 Grievance Letter (ET1-1 para60) [pg594 para 6-7, 10-11, 14-19, 26, 30-34]
d) 10.05.2022 Grievance Letter (ET1-1 para71) [pg623 para 9-14, 20, 26-30, 35, 63, 67-70, 92, 116]
e) 11.05.2022 Two Grievance letters (ET1-1 para96) [pg666 para 3, 5, 9-10]
f) 13.05.2022 Grievance letter (ET1-1 para120) [pg675 para 4, 15, 18]
g) 18.05.2022 Grievance letter (ET1-1 para121) [pg692 para 50-54, 91-92]
h) 23.05.2022 Grievance letter (ET1-1 para127) [pg727 para 17]
i) 7.06.2022 Grievance letter (ET1-1 para146) [pg787 para 114]

j) 14.06.2022 Grievance letter (ET1-1 para158) [pg863 para 5-6, 17]
k) 17.06.2022 Grievance letter (ET1-1 para165) [pg872 para 13, 16, 27, 29]

| Issue | PARA | DATE | DETRIMENT | PROTECTED ACT | WHO |
|---|---|---|---|---|---|
| 17 | 89 | 9.05.2022 | Seeking to "rush through" the disciplinary hearing because the Claimant had raised grievances / flagged that reasonable adjustments had not been made to the grievance procedure in breach of the Equality Act 2010 | a, b, c | Ms Ferrin |
| 22 | 127-129 | 20.05.2022 | The decision to wait until all outcomes from the Claimant's grievances had been received before progressing the appeal. | e-f | Mr Schmidt |
| 25 | 155-170 | 13.06.2022 | Deciding to continue with the disciplinary process once the Claimant's grievance outcomes had been provided, but before any appeals had taken place. | a-i | Ms Ferrin |
| 26 | 161-166<br>170 | 15.06.2022 | Not offering further extensions or accommodations to the disciplinary hearing, other than: (i) offering written or virtual participation at the disciplinary hearing; and (ii) extending the time limit for the Claimant's grievance appeals until after the disciplinary hearing. | a-i | Ms Hutchinson |
| | **2nd Claim** | | | | |
| 31 | 22 (2nd) | 4.07.2022 | Failing to put in place arrangements regarding her return to work and the subsequent deferral of the Claimant's return to work date. | a-k | Ms Patel |

| Issue | PARA | DATE | DETRIMENT | PROTECTED ACT | WHO |
|---|---|---|---|---|---|
| | | | | | |
| 32 | 25 (2nd) | 4.07.2022 | Not obtaining the medical report from Claimant's GP | a-k | Ms Ferrin |
| 36 | 33 (2nd) | 4.07.2022 | Dismissing the Claimant because she had done protected acts relating to sex, race and disability discrimination | a-k | Ms Patel |
| 43 | 57-58 (2nd) | 5.08.2022 | Not properly addressing the Claimant's grievances or appeal points in the grievance appeal letter. | a-k | Mr Vincent |

**7. Unfair Dismissal pursuant to ERA s.98**

26. Was the Claimant's dismissal for one of the five potentially fair reasons for dismissal under section 98(1) and (2), Employment Rights Act 1996? The Respondent submits the reason was conduct.

27. Did the Respondent act reasonably in treating that reason as a sufficient reason for dismissal?

28. Did the Respondent follow a fair procedure?

**8. Unlawful deduction from wages/breach of contract: sick pay and bonus**

29. Is the Claimant owed sick pay by the Respondent?

30. Is the Claimant owed pay under the terms of her short-term incentive / bonus plan by the Respondent?

**Quantum**

**[Not an issue at this hearing which is liability only with judgment reserved. Issues relating to quantum to be dealt with as case management issues at a further PH in respect of any claim on which the Claimant succeeds on liability]**

# Appendix 2

**Email chain 7 January 2021 at 14.43 subject: OH MY GOD [254]**

**14:38**

**Claimant to Abadir**

Hi Chris,

I was just informed that Olivia Williams left BrandRocket, set up a new company under the name of

Kattapult, and all of the Verizon UK Business under Periphas is planned to be shift to her new business?

Is this what you were involved in?

Kind regards,

Melinda

**14:41**

**Abadir to Claimant**

Melinda,

No

Many thanks

**14:43**

**Claimant to Abadir**

I can't believe that you have planned this!!!! I can't believe what you have done again!!!! You were flirting with this woman in the restaurant when I was on a meeting and you shifted the entire business to her?

**Email chain 11 January 21– [256]**

**Subject: Olivia Williams**

**13:17**

**Claimant to Abadir**

Subject: Olivia Williams

Chris,

Also, you told me last week, if you need to choose professionally between Olivia or me, you are going to choose Olivia.

I will remember this my entire life. Thank you for that.

Kind regards,

Melinda

**2 June 2021 [265]**

**21:16**

**Claimant to Abadir**

Email subject (no content in body of message): Don't call me ever again

**3 JUNE 2021 [268]**

**Email Chain with subject: Please call me back (top of chain 268)**

**16:31**

**Claimant to Abadir: subject: Please call me back**

Nothing in the body of the email

**16:32**

**Abadir to Claimant**

I am on calls until 7pm

**16:33**

**Claimant to Abadir**:

Ok, then I see you in front of your house at 7:00pm

**16:33**

**Abadir to Claimant**

No you will not

**16:35**

**Claimant to Abadir**

Yes, I will because we need to talk. I am tired of talking on a phone. Please be ready by 7:00pm. This is the minimum you can do for me after making me wait for 2 months

**16:35**

**Abadir to Claimant**

No

**16:36**

**Claimant to Abadir**

So, when you say that you come here I have to get ready immediately when I ask you you just simple dont care? Where is the reciprocity? Again, this is very one sided when I need to talk that does not matter or you have something to hide?

**16:38**

**Claimant to Abadir**

Be ready for 7:00pm. We eat something somewhere and talk.

**16:39**

**Claimant to Abadir**

Ok?

**16:44**

**Claimant to Abadir**

Could you please answer back as I don't want to wait entire evening? My time is precious

**16:45**

**Abadir to Claimant**

I will call after my calls are completed

**16:47**

**Abadir to Claimant**

no

**16:47**

**Claimant to Abadir**

why?

**16:48**

**Abadir to Claimant**

I have no desire to

**16:50**

**Abadir to Claimant**

I have 0 desire to

**16:50**,

**Claimant to Abadir**

So, you cannot give 30 minutes quality time from your time?

**16:54**

**Claimant to Abadir**

Oh, I understand why because of your girlfriend...

**16:57**

**Abadir to Claimant**

Nothing to do with anyone else

**17:00,**

**Claimant to Abadir**

Yes, it does. That's the reason why we did not meet up in the last 2 months.

**17:01**

**Abadir to Claimant**

Nope

**17:02**

**Claimant to Abadir**

It does and I made my final decision on this. Give me a call today if you want to know because this is final now.

**Email Chain with subject: Can you give me a call please? [277]**

**10:24**

**Claimant to Abadir**

**Email with subject: Can you give me a call please?**

Email body had no content

**10:24**

**Abadir to Claimant**

About ?

**10:25**

**Claimant to Abadir**

I have a personal question

We accepted the Claimant's evidence that this was a call to ask if Mr Abadir could help the Claimant view the flat and she was at the last stage of buying.

**10:33 Claimant to Abadir**

Thank you for your help!

**10:35**

**Claimant to Abadir**

This situation clearly showed me that I was right regarding you!

**8 July 2021**

**Email subject: Business case discussion [287]**

**12:30**

**Abadir to Claimant**

Bella - Please invite Melinda to the call - she has secured some marketing agency time too--

**12:45**

**Claimant to Abadir**

Oh my God ... again?

**12:51**

**Claimant to Abadir**

This is never going to change!!!

**12:52**

**Abadir to Claimant**

She is the PA - stop this madness

**12:54**

**Claimant to Abadir**

It is better if I don't write down my opinion about this again!!!

**12:56**

**Abadir to Claimant**

You want to be a part of what I am doing or not - if you do this needs to stop - i have never met Bella

**12:58**

**Claimant to Abadir**

Not yet but I am sure her mobile number you already have! I am so done with all this, and it is a pattern constantly!

**13:01**

**Abadir to Claimant**

Ridiculous

**13:02**

**Claimant to Abadir**

What I saw again, yes, it is ridiculous and very sad!

**13:03**

**Abadir to Claimant**

Do I need to call John ?

**13:07**

**Claimant to Abadir**

Call him, I will tell him that this is a pattern of yours every time! First with Charlotte Nicholls from

Checkpoint, then Charlotte Shone, Netskope and now Isabella Jackson (who is already just Bella for you, which means Pretty in latin). John will love this story!

**13:08**

**Abadir to Claimant**

I have left him a voicemail and he is calling me in 30 mins

**13:10**

**Claimant to Abadir**

Ok. Tell him the other 2 Charlotte as well and also don't forget to mention what has happened with Olivia as well in the restaurant when I was there

**4 August 2021**

**Email subject: Are you going to call me back? [321]**

**15:26**

**Claimant to Abadir**

Subject (nothing in body): Are you going to call me back?

**15:26**

**Abadir to Claimant**

I am busy

**15:27**

**Claimant to Abadir**

Oh, are you with one of your friends?

**15:29**

**Claimant to Abadir**

I don’t know the answer but are you calling me back later when you are free?

**15:31**

**Abadir to Claimant**

Once I am done with HSBC, Glanbia, ABO, Escalations and a marketing call followed by an MSA call, perhaps

**16:48**

**Claimant to Abadir**

Okay 🌸

**5 August 2021**

**Email chain subject: Are you awake? [330]**

**05:17**

**Claimant to Abadir subject: Are you awake?**

Nothing in the body of the email

**06:18**

**Abadir to Claimant**

Yes

**06:39**

**Claimant to Abadir**

Do you want to go for a quick walk?

**06:56**

**Abadir to Claimant**

No

**06:57**

**Claimant to Abadir**

Ok

**07:26**

**Claimant to Abadir**

Then can we talk over the phone?

**07:28**

**Abadir to Claimant**

We are all good

**07:32**

**Claimant to Abadir**

If you allow me, I would like to talk to you please because I heard you and I gave a lot of thoughts for what you said and we can do this better together really...

**07:33**

**Abadir to Claimant**

Melinda - All is fine

**07:37**

**Claimant to Abadir**

I know I made a mistake and I would like to kindly ask for a chance to correct my mistake if you allow me please.

**Email chain: I go for a walk in a few mins, I will be at "our" bench [334]**

**09:06**

**Claimant to Abadir**

Subject (no email content): I go for a walk in a few minutes, I will be at "our bench" at the river if you change your mind

**6 August 2021**

**Email Subject: meeting with Keith in Twickenham [336]**

**15:01**

**Claimant to Abadir**

Hi Chris,

Keith and I are going to meet up in person in Twickenham on Monday. He will drive here.

Would you like to join us?

**15:02**

**Abadir to Claimant**

What's the meeting about ?

**15:03**

**Claimant to Abadir**

We are going to talk about the Periphas program and it is a catch-up as we did not see him for more than a year now

**15:05**

**Abadir to Claimant**

But what is the agenda ?

**15:06**

**Claimant to Abadir**

Catch-up? What is the agenda when you go out with your team for a drink?

**15:08**

**Abadir to Claimant**

I am pretty busy - if I have time I will pop in but the programme is going well and if we need to discuss something specific we will have a call

**15:10**

**Claimant to Abadir**

I think building the business relationship is equally important and Keith has some new ideas that he is currently working on that we are going to discuss.

Anyway, we discussed we are not going to any pub, I am going to talk to Carmelo if he can give me a table in Sorrento

**15:10**

**Abadir to Claimant**

Of course

**15:47**

**Claimant to Abadir**

It is nothing wrong to break the "pub monotony" sometimes and change it to a magic little "treasure box" which is charming and lifts our mood up from the same daily routine 🙈

**15:48**

**Abadir to Claimant**

Enjoy

**15:49**

**Claimant to Abadir**

The invite is for you too. We will wait for you there as well. I hope we are not doing a pub vs Sorrento box match from this :D

**15:52**

**Claimant to Abadir**

Let's try something different please this time. We have been in pubs 10+ times in a row ... Please ....

**15:55**

**Claimant to Abadir**

but if you really don't want to go to Sorrento, then I am open you suggest something else which is not a pub and not Sorrento then either - and then we found a common ground too

So?

**15:57**

**Abadir to Claimant**

I have no need to attend the meeting - as far as I am aware this is a general chit chat - the next waves of the programme are being prepped and we will have a collective call to agree - the governance is in place and funding is in place until 2022. No need for a social chat and I have little time

**16:00**

**Claimant to Abadir**

Chris, this is a good opportunity that you and Keith put aside anything which you are not comfortable with, and the same is with you and I and we start from fresh. Could you please put a little effort into this as both of us try to put effort into this? But we need you as well to put an effort from your side I am open your suggestions where you want to go to

**16:02**

**Abadir to Claimant**

I am not sure what you are referring to In regards Keith. The programme is going well. Everything else is superfluous

**16:21**

**Claimant to Abadir**

It really would make a big difference if Silverback opens his big golden heart and comes over for a few minutes ... Keith is still sensitive about the "discussion" you had the other day. I know you have a big heart and you are full of kindness, so please let's use this opportunity to reconnect the

three of us. I know all of us care about each other, so let's show it to each other, it does not cost anything to be nice but still has a huge positive impact. I know Silverback is not happy with the little purple dragon but they are still one team, and the little purple dragon feels really sorry about making Silverback disappointed the other day ...

So, tell me is there a place that you fancy to go to?

**16:22**

**Abadir to Claimant**

What discussion

11 August 2021

**Email subject: re are you going to join the discussion on how we create the deck for the upcoming RFP? [348]**

**13:30**

**Claimant to Abadir**

Subject: re are you going to join the discussion on how we create the deck for the upcoming RFP?

[Content of email includes an appointment]

**13:32**

**Abadir to Claimant**

I can not today - I am doing something else around the ISV SI layer

**13:33**

**Claimant to Abadir**

and you cannot reschedule it? you asked for this call and we 11 pple accepted it

**13:33**

**Abadir to Claimant**

No I didn't - This is Adrian Hite's call

**13:41**

**Claimant to Abadir**

This is not what my question was. I was asking if you can reschedule your call so you attend Adrian and my call as we have 11 acceptances

**13:42**

**Abadir to Claimant**

No - I am in face to face discussions - This was originally Ade's call

**13:43**

**Claimant to Abadir**

So, you are not going to join future calls either?

**13:45**

**Claimant to Abadir**

Also, you booked your calendar from 9:00am to midnight? Is this such a long meeting until midnight?

**13:46**

**Abadir to Claimant:**

It is booked until mid-day tomorrow actually

**13:47**

**Claimant to Abadir**

Interesting ... I thought you have time meetings for only 1 hour max or 12 minutes one. I did not know you have time for meetings entire night until next day

**13:48**

**Abadir to Claimant**

It is for a day and a half with 5 male colleagues - Again - Not sure what relevance that has though ?

**13:49**

**Claimant to Abadir**

Aha ... sure ... I am not interested in this story

**13:50**

**Abadir to Claimant**

Melinda - What relevance is this sorry ?

**13:51**

**Claimant to Abadir**

You perfectly know what I am talking about. I hope you enjoy the evening ...

**13:52**

**Abadir to Claimant**

Melinda - I do not know and agan, I am unsure of the insinuation and just as importantly, why it is relevant to you ?

**13:53**

**Claimant to Abadir**

It is not an insinuation and as I said, I am not interested. I need to focus on my conference call. Have a nice day

**25 August 2021**

**Email subject: Are you available to talk? [359]**

**17:07**

**Claimant to Abadir**

Subject (no content in body of email): Are you available to talk?

**17:08**

**Abadir to Claimant**

About ?

**17:08**

**Claimant to Abadir**

Periphas training

**17:09**

**Abadir to Claimant**

About what exactly ? We have multiple calls about this in the diary of the coming weeks

**17:10**

**Claimant to Abadir**

Are you giving me a call?

**17:14**

**Claimant to Abadir**

?

**17:58**

**Claimant to Abadir**

Things with you never change!

**26 August 2021**

**04:38**

**Claimant to Abadir**

The yesterday discussion explained quite a lot of things .... why I am not surprised ...

**08:33**

**Claimant to Abadir**

You let the cat out of the bag with regards to the Periphas training program discussion yesterday ... at least now I understand a few things which I kept noticing ...

**27 August 2021**

**Email Subject: Could you please give me a call? [382]**

**10:12**

**Claimant to Abadir**

Subject (not content in body): Could you please give me a call?

**10:13**

**Abadir to Claimant**

About ?

**10:14**

**Claimant to Abadir**

About the current situation and your threatens - I want to discuss them

**10:15**

**Abadir to Claimant**

Call me

**10:34**

**Claimant to Abadir**

Please give me a call back as I want to set up some rules between us

**10:35**

**Claimant to Abadir**

Could you please give me a call back?

**10:37**

**Claimant to Abadir**

Please give me a call back as I want to set up some rules

**10:39**

**Claimant to Abadir**

I know you blocked me - could you please give me a call? Because this is not normal and you don't show respect to me at all and I want to discuss this because it really bothers me

**10:40**

**Claimant to Abadir**

I want to have a 100% professional business relationship with you but at the moment you don't behave accordingly with me which I want to discuss, so we can achieve that because I cannot work with this stress every single day

**10:42**

**Claimant to Abadir**

Fine! Then I resign. I had enough. I am not going to work with anyone like this every single day that you put me through!

**10:59**

**Claimant to Abadir**

By the way it is ridiculous you go to the pubs with every possible reason but when there is a problem you can't face it and discuss it in person as adults - this is the same situation with Keith. You prefer to hide behind a phone call, rather than face the situation and sort out the conflict, instead you create a bigger and deeper one every single time

Also, when you said silence speaks louder than anything - I don't think it justifies your behaviour. You hurt the other person and it is rude behaviour when someone talks to you and you ignore the other person

Just, as when you meet up with me and you turn after every single woman, meantime I am talking to you like I would not be there and you answer to me you are a man - I am sorry but this does not justify that behaviour either that you literally look over me to turn after every single women every single time in my presence - no men behaved me like this either - it gives the impression to me as I would not be valued at all just as the ghosting behaviour

I don't think I deserve any of this behaviour and as you want I am not going to meet up with you anymore as I don't want to go through of this behaviour every time. You think it is acceptable, but it is not. I raised these so many times, and you never ever hear me and you never ever show me respect of hearing me what bothers me, you exactly the same way the next time as well

As for my birthday, I always prepared for your birthday every single time, I always surprised you with cakes, gifts, little cards and I find it super rude that you did not even bother until the day today to say to me happy birthday. My birthday was 5 weeks ago. I don't deserve this either!

**Email subject: Techtarget priority engine [378]**

**11:30**

**Claimant to Abadir**

Chris,

Holly would like to attend the TechTarget lunch.

Will you cover her travel and hotel expenses?

Kind regards.

Melinda

**11:31**

**Abadir to Claimant**

Where is the meeting ? Why would there need to be a hotel for a lunch ?

**11:33**

**Claimant to Abadir**

Chris,

My understanding is Holly lives several hours from London and you always cover her T&E. I won't be able to cover her costs or is she going to stay over at someone?

Kind regards,

Melinda

**11:34**

**Abadir to Claimant**

I do not know why she would need to stay for a lunch - Yes - it is a commute and I would expect her to combine with customer meetings - Obviously her T&E request would come via me

**11:41**

**Claimant to Abadir**

Chris,

OMG! Did you just suggest to Holly to stay over in London?

" Holly - Will need to be around customer meetings which I am sure you will secure"

**11:46**

**Claimant to Abadir**

You are just hinting at her things to stay over in London. This is unbelievable!

She says: " If it's only a lunch I am able to travel back on the same day via train."

Now, she says after your email:

"Forgot to add - I will tie the lunch in with a customer meeting - once the date is confirmed it will give me a great opportunity to tie 2 birds with one."

**18:53**

**Claimant to Abadir**

Now, you organised that Holly stays over in London with an excuse ... Are you going to organise that she stays over in Twickenham again as well as in the past you did several times?

**2 September 2021**

**Email subject: do you have 5 mins to talk later today? [387]**

**11:13**

**Claimant to Abadir**

Subject (no text in body of email): Do you have a 5 minutes to talk later today?

**11:14**

**Abadir and Claimant**

About ?

**11:15**

**Claimant to Abadir**

About how to be colleagues - because if we want to achieve this, we need to make some changes, otherwise we don't create the right foundation for that

**11:16**

**Abadir to Claimant**

I don't think we need to - I will support you as you want

**11:19**

**Claimant to Abadir**

We need to because:

- colleagues don't block each other

- they answer the phone calls to each other

- they accept calendar invites to each other

- they involve each other in projects

- they don't go behind of their back of each other

- they share important business information to help each other

- they don't ignore each other

In the case of the above points none of these are true at the moment.

The only think is true at the moment that you don't have any information about me and my personal life what is happening with me in the last 2 months, otherwise we don't act as colleagues

**11:23**

**Abadir to Claimant**

I share everything required to do our jobs

**11:23**

**Claimant to Abadir**

But what about the other points?

**11:28**

**Abadir to Claimant**

As those points don't come true, your behaviour comes across more like you have feelings for me but you try to exclude me from your life to make sure you do not get hurt.

So, I don't know... either is that the case but you need to be honest with me then or if I am wrong then act A to Z as colleagues without having those points I raised earlier because at the moment I really don't know what to think anymore and it is not a nice feeling either way for me

**4 September 2021 [392]**

**Email subject: I am thinking of you…**

**21:43**

**Claimant to Abadir**

Subject: I am thinking of you ...

I am sorry for upsetting you and allowing my fears to drive my silly thoughts ... I hope one day you will be open to letting me try to make it up to you ... I am thinking of you .

5 September 2021 [393]

**Email subject: I don’t know if you are free today but maybe we could go for a walk**

**11:05**

**Claimant to Abadir**

Subject (no text in body of email): I don’t know if you are free today but maybe we could go for a walk

**6 September 2021**

**Email subject: Yesterday [396]**

**06:38**

**Claimant to Abadir**

Subject: Yesterday

Yesterday evening I was talking to several hours to British men who were between 63 and 80 years old and I realised what our arguments were about in the last 2 years, why I had this woman topic all the time on the table and my fears about them.

The problem was always between you and me that I felt the lack of commitment from your end towards me.

Lack of commitment towards me as a woman, lack of commitment in quality time, lack of commitment of a relationship, lack of commitment of future (stating always you will never want children in your life, you never want to get married, you don't want a relationship, stating in front of me you like physically other women) and so on, lack of commitment for those short time that you spent with me and you turned after other women and lack of commitment on follow up after seeing me every time.

That's why I felt constantly this insecurity because I know there is no commitment there from your end, that's why we had arguments all the time, and when once you agreed to meet up, I chickened out many times because I still felt there were no commitments (no plans, timing and reserved places to go) and it made me feel uncertain. I did not want to hurt again, because I was terrified what if you will be flaky again and I will end up stood up again and again...

Saying yes to go out without knowing where to, it is not a plan or keep repeating the same places million times without being able to choose it is not a joy.

These elder people said to me commitment is a decision from the man's side, either it is there and then something can be developed but if there is no commitment from his side, nothing is going to grow.

Some of these men were pretty good with commitment since the beginning of their 20's and some of them realised the importance of this later stage but all of them learnt that without commitment it is not possible to build any foundation, commitment put their life to the right direction and help to build happiness.

I think you are right, it is no point from my end to keep trying anything as although I said many sillinesses, I made mistakes but I was always "in" and I should have felt the strong commitment from your end and it was never there. I always felt since the beginning that you are with half leg "out" but never 100% "in" with me together. Keith mentioned to me on Friday that you told him before his vacation that you will distance yourself from the Periphas project because it is working. It really hit me because it showed me lack of commitment too. It is like having a baby and say it to the mother that you walk away from your child because it is growing.

Going back to the elder people from yesterday, they said to me that to take a relationship to the next level it took them 1-2 months in each cases to move together, even ask the hands of their wife's hands who they brought along because they wanted to commit and put themselves there and work on things. In our case we don't have improvements in anything after 2,5 years which took these elder people 1-2 months ... After talking to these elder people and look back at my behaviour, no wonder why I felt constantly sad, insecure and have not felt appreciated. I don't want to feel myself anymore this way and playing the waitie Katie.

I realised the arguments we had are nothing else but fears and without commitment it is impossible to build anything in this life.

All your words about the foundation was just masking the fact of lack of commitment.I think it would have helped if we could have talked about commitment more upfront since the beginning and on a very open and honest way.

What it is clear for me if the foundation would have been there and the arguments would have disappeared and everything could have fell into its place without forcing it.

I can commit from my side but I can't force someone to commit to anything if he did not decide it on its own to do that. I have never felt jealousy or had not even 1% of these arguments with anyone in my life because I felt safe with those people, with their commitment and I felt loved rather than a business transaction and source for budgets as most of the time I felt like.

The reality is that our problems won't change with talking less or stating we are colleagues only from now on, or not talking anymore at the weekends. In the surface it will look like that there is an improvement but deeper than that the problem always be the same lack of commitment and we can cover it with anything we want it with to, the problem will always be there deep in the root.

Anyway, this is just an observation that I learnt yesterday and I am not planning to bring up anymore women topic in this life now I managed to articulate what was my issue all this time.

As for the silent treatment, I don't feel that's the right way to improving our communication but I respect your decision.

**7 September 2021**

**Email subject: so, is that it? [398]**

**11:26**

**Claimant to Abadir**

Subject: So, is that it?

Now, the Periphas program is rolled out ...

I served my purpose and I am not needed anymore? Was that all of my role in your life like an object?

**4 October 2021 [399]**

**Email subject: Just a quick note**

**09:56**

**Claimant to Abadir**

Subject: Just a quick note

Good morning,

Just a quick note. I cancelled the Prospecting project with Craig and Ali as you requested.

Kind regards,

Melinda

**10:01**

**Abadir to Claimant**

Would you like a glass of wine this evening

**10:04**

**Claimant to Abadir**

I would love to ... what time and where would you like to meet?

**10:06**

**Claimant to Abadir**

Or you choose where

**10:07**

**Claimant to Abadir**

The Royal Oak is fine. I will be there at 6:15.

**16:22**

**Abadir to Claimant**

Let's take a raincheck - The weather is awful and I just want to stay at home

**16:52**

**Claimant to Abadir**

There is a new restaurant opened in your building, called The Crane Tap ... maybe we could just have a drink there ...?

**16:53**

**Abadir to Claimant**

My friend has just lost their job so need to look after him now - Happened in the past 15 mins

**16:54**

**Claimant to Abadir**

Oh ... okay ...

**16:57**

**Claimant to Abadir**

I went to do my hair, nails and I was at the beauty specialist preparing for 4 hours but it is okay... let's postpone it for a more convenient time.

**Email chain with subject: So, how is your friend now? [407]**

**22:22**

**Claimant to Abadir**

Subject (with not content in the body): **So, how is your friend now?**

**22:38**

**Claimant to Abadir**

I was thinking how you could conciliate me …

I thought perhaps we could do next time something else apart from pubs/restaurants, for example to take together a few singing classes from a professional teacher and learn an easy duet together - I think it would be fun, and something different …

What do you think?

**23:28**

**Abadir to Claimant**

What am I apologising for ? This is exactly what I spoke about

**5 October 2021**

**04:26**

**Claimant to Abadir**

Well, if I am a high value women in your eyes and you are keen to see me - would you cancel on me? I would go to see you even if it has been a hurricane outside …

**06:59**

**Claimant to Abadir**

With other words… if we check the situation from my side - I put a lot of energy, 4,5 hours and £150 yesterday in the nothing - because the outcome was nothing for me and you flaked on me one hour before our meet-up and this is not something I want in my life and then you say you have nothing to apologise for which is ridiculous.

Bernadett was right. She asked me: “Meli, when will you admit to yourself that you can’t teach a blind person seeing colours in life? Whatever you do, he will never appreciate it”

I think she is right and it is time for me to move on.

If I really want to see someone, nothing will stop me seeing that person, and definitely not the rain which happens in this country every day! As for your friend, it is a nice gesture you were there for him but it did not mean that I should have to be thrown away because of him as a bag of potatoes. I would have never done that to you for any of my friends.

**07:19**

**Claimant to Abadir**

By the way the other difference is between us that yesterday I was supposed to have a video call with a girlfriend of mine who booked the 7:00pm evening timeslot in my personal calendar 4 days ago. She is starting a new financial advisor role for Spain from Budapest and she asked if I can practise with her as she does not feel confident herself enough.

I rescheduled her because of our meet-up but you did not do the same for me … we don't have the same priority level towards each other at all and now I feel bad that I did this to her for this behaviour you did towards me.

**Subject: Re: Christopher ?? OK ... [404]**

**16:03**

**Abadir to Claimant** – blank email without Subject

**16:40**

**Claimant to Abadir**

?

**16:42**

**Abadir to Claimant**

I am now Christopher again ... OK

**16:52**

**Claimant to Abadir**

Only until you don't take me out for drinks :P

**17:29**

**Claimant to Abadir**

So?

**Claimant to Abadir**

**18:34**

So, shall we meet at the Crane Tap this evening to play pool and have a drink?

**8 October 2021**

**Email subject: So [417]**

**19:17**

**Claimant to Abadir**

Do you fancy to have a drink later this evening perhaps when the rugby match is over?--

**20:17**

**Claimant to Abadir**

I am at Tsaretta Spice "cocktail bar" if you change your mind 🙂