



EMPLOYMENT TRIBUNALS

Claimant: Miss AB

Respondent: GH Ltd

Heard at Leeds by CVP

**On: 20, 21, 22, 23 and 24 May and 6 June
(deliberations) 2024**

Before

**Employment Judge Davies
Mr M Brewer
Mr D Wilks OBE**

Appearances

For the Claimant:

In person

For the Respondent:

Mr G Lomas (HR consultant)

RESERVED JUDGMENT

1. The Claimant's complaints of harassment related to sex or of a sexual nature, apart from the complaint about constructive dismissal, and the complaint of victimisation were not brought within the Tribunal time limit and it is not just and equitable to extend time for bringing them. The Tribunal does not have jurisdiction to hear them and they are dismissed.
2. The Claimant's complaints of harassment related to sex or of a sexual nature in relation to her dismissal and her complaint of unfair (constructive) dismissal are not well-founded and are dismissed.

REASONS

Introduction

1. These were complaints of harassment related to sex or of a sexual nature, victimisation, discriminatory (constructive) dismissal and unfair (constructive) dismissal brought by the Claimant, Ms AB, against her former employer. An anonymity and restricted reporting order were made in respect of the Claimant and the alleged perpetrator (YZ) by EJ James because the claim included an allegation of sexual assault. In order to maintain that anonymity, this Tribunal concluded that it was necessary to use initials to identify the Respondent (GH Ltd) and other people involved in the proceedings.

2. The Respondent was represented by Mr Lomas (HR consultant) and Claimant represented herself. The Claimant has experienced anxiety and depression. The Tribunal offered her regular breaks and encouraged her to request a break if needed. With the Respondent's agreement, the Claimant provided a list of cross-examination questions for YZ to the Tribunal and the Employment Judge put those questions on her behalf.
3. There was an agreed file of documents, and the Tribunal considered those to which the parties drew our attention. The Claimant also made an application late in the day to be permitted to rely on covert recordings of two meetings. She had produced transcripts of the recordings shortly before the hearing. While the Tribunal read into the case on the first day, we gave directions for the Claimant to identify which parts of the transcripts she wanted to rely on, and which of her complaints they were relevant to. The Respondent initially objected to the admission of any part of the transcript. However, eventually, in discussion with the Tribunal, the Respondent agreed that the parts of the transcripts on which the Claimant relied should be admitted in evidence.
4. The Tribunal heard evidence from the Claimant. Mr TP had produced a witness statement on her behalf but he was not called to give evidence. We explained to the Claimant that this would affect the weight that could be given to his evidence.
5. For the Respondent, the Tribunal heard evidence from YZ, Ms LR (Head of HR and Business Administration); Mr JD (Senior Project Officer); Mr BT (Trainee Project Manager); Mr JM (Project Manager); Mr WT (Chief Operating Officer); and Mr CW (Managing Director).

Issues

6. The issues for the Tribunal to decide were identified by EJ James at a preliminary hearing on 15 November 2023. EJ James ordered that if either party considered that what was said in his Case Management Summary or List of Issues was inaccurate or incomplete in any important way, they should inform each other and the Tribunal within 14 days. Nobody did so. The issues for the Tribunal to determine were therefore as follows:

Time limits

- 6.1 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
 - 6.1.1 Was ACAS early conciliation commenced within three months of the act to which the complaint relates?
 - 6.1.2 Further, was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
 - 6.1.3 If not, was there conduct extending over a period?
 - 6.1.4 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
 - 6.1.5 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
 - 6.1.5.1 Why were the complaints not made to the Tribunal in time?
 - 6.1.5.2 In any event, is it just and equitable in all the circumstances to extend time?

Harassment related to sex

- 6.2 Did the Respondent do the following things:
- 6.2.1 Did YZ sexually assault the Claimant on 17 December 2021 at a hotel, following a work-related social event, by undressing her and touching her breasts?
 - 6.2.2 On 10 February 2022, was YZ present in the same meeting as the Claimant regarding a complaint made by the Claimant about the alleged assault?
 - 6.2.3 Having agreed to keep the Claimant and YZ apart at work, did the Respondent instruct them to work in the same field during February/March 2022? Further, was YZ housed in accommodation close to the Claimant's and did he travel in the work van driven by the claimant from the accommodation to the site on two occasions?
 - 6.2.4 Did the Respondent bring YZ over to the same field as the Claimant for a flint scatter search in about February/March 2022?
 - 6.2.5 At a week's training event commencing on 25 July 2022, did the Respondent make no effort to keep the Claimant and YZ apart, for example by placing the Claimant and YZ in the same group twice?
 - 6.2.6 Was the Claimant asked on 21 October 2022 to work on a project from 23 October 2023 which would have required her to pick up YZ from his accommodation and work with him, it having been agreed at a meeting with the Claimant on 5 October 2023 and confirmed in an email that this would not happen?
 - 6.2.7 Was YZ present in the building when the grievance outcome was given to the Claimant on 17 November 2022, despite him being told by Mr CW and/or Mr WT to stay away?
 - 6.2.8 Did the Respondent offer the Claimant mediation with YZ as a resolution to the grievance, even though she had made it clear that she did not want to be in the same room as him?
 - 6.2.9 Did the Respondent constructively dismiss the Claimant due to the above matters (and the alleged acts of victimisation)?
- 6.3 Was it unwanted conduct?
- 6.4 Was the unwanted conduct of a sexual nature (allegation 1 only) or related to sex?
- 6.5 Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
- 6.6 If not, did it have that effect? The Tribunal will take in to account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Victimisation

- 6.7 The Claimant did a protected act when she submitted a formal grievance on 24 October 2022.

6.8 On 21 November 2022 the Respondent invited the Claimant to a meeting regarding allegations of misconduct concerning a colleague, S, with whom she had not worked since April 2022.

6.9 Did it do so because the Claimant did a protected act?

Unfair dismissal

6.10 Did the Respondent subject the Claimant to harassment and/or victimisation as set out above?

6.11 Did that breach the implied term of trust and confidence? The Tribunal will need to decide:

6.11.1 whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent; and

6.11.2 whether it had reasonable and proper cause for doing so.

6.12 Did the Claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the Claimant's resignation.

6.13 Did the Claimant affirm the contract before resigning? The Tribunal will need to decide whether the Claimant's words or actions showed that she chose to keep the contract alive even after the breach.

6.14 If the Claimant was dismissed what was the reason or principal reason for dismissal, i.e. what was the reason for the breach of contract?

6.15 Was it a potentially fair reason?

6.16 If the Claimant was dismissed, did the Respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the Claimant?

Legal principles

7. Claims of harassment and victimisation are governed by the Equality Act 2010. Harassment is dealt with by s 26 and victimisation by s 27 Equality Act 2010. The Equality and Human Rights Commission's Code of Practice on Employment is relevant, and the Tribunal considered its provisions.
8. The burden of proving harassment or victimisation is governed by s 136 Equality Act 2010. There is authoritative guidance about the burden of proof in *Igen Ltd v Wong* [2005] ICR 931. That guidance remains applicable: see *Royal Mail Group Ltd v Efofi* [2021] ICR 1263. In essence, the guidance outlines a two-stage process. First, the complainant must prove facts from which the Tribunal *could* conclude, in the absence of an adequate explanation, that the Respondent had committed an unlawful act of discrimination, harassment or victimisation against the complainant. That means that a reasonable Tribunal could properly so conclude, from all the evidence before it. The second stage, which only applies when the first is satisfied, requires the Respondent to prove that it did not commit the unlawful act. However, as the Supreme Court again made clear in *Efofi*, it

is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish the unlawful act. But they have nothing to offer where the Tribunal is in a position to make positive findings on the evidence one way or the other.

9. There are three elements to the principal definition of sexual harassment: (1) unwanted conduct; (2) that it has the purpose *or* effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her; and (3) that the conduct is related to sex or is of a sexual nature: see *Richmond Pharmacology v Dhaliwal* [2009] IRLR 336. The conduct must be "unwanted", which means "unwelcome" or "uninvited", and it must be unwanted by the employee: see *English v Thomas Sanderson Blinds Ltd* [2009] ICR 543.
10. The question whether conduct is related to a protected characteristic is one of fact for the Tribunal. Being "related to" a protected characteristic is not the same as being "because of" a protected characteristic. The test is a broader one. It is to be determined objectively on the evidence. The intention of the actors – the Claimant's view or the motivation of the perpetrator - may be relevant but it is not determinative. There must be some feature of the factual matrix that can properly lead the Tribunal to the conclusion that the conduct complained of is relevant to the protected characteristic: see *UNITE the Union v Nailard* [2018] EWCA Civ 1203 CA; *Tees, Esk and Wear Valley NHS Foundation Trust v Aslam* [2020] IRLR 495, EAT. A constructive dismissal can be an act of harassment: *Driscoll v & P Global Ltd* [2021] IRLR 891.
11. A person victimises another if he subjects her to detriment because she does a protected act or because the person believes she has done or may do a protected act. A protected act includes making an allegation that somebody has contravened the Equality Act 2010. The protected act need not be the sole or main cause of the detrimental treatment; it must be an effective cause.
12. The time limits for bringing claims of discrimination, harassment and victimisation are governed by s 123 Equality Act 2010. Under s 123(3)(a), conduct extending over a period is treated as being done at the end of the period. A distinction is drawn between a continuing act and an act that has continuing consequences. Where an employer operates a discriminatory regime, rule, practice or principle, such a practice will amount to an act extending over a period.: see *Barclays Bank plc v Kapur* [1991] ICR 208, HL. The concepts of policy, rule, practice, scheme and so on are examples of when an act extends over a period. However, the focus of the inquiry is not on whether there is something which can be characterised as a policy, rule, scheme, regime or practice, but on whether there was an ongoing situation or continuing state of affairs in which the group discriminated against, including the Claimant, was treated less favourably: see *Hendricks v Metropolitan Police Commissioner* [2003] ICR 530, CA.
13. In determining whether there is conduct over a period, the question whether the same or different individuals are involved in each alleged act will be relevant but not conclusive: *Aziz v FDA* [2010] EWCA Civ, 304. If any of the alleged acts relied on in asserting conduct over a period is not established on the facts or is found not to be discriminatory, it cannot form part of conduct over a period: *South West Ambulance Service NHS Foundation Trust v King* EAT 0056/19.

14. As regards extending time, the Tribunal has a wide discretion under s 123(1)(b) to do what it thinks is just and equitable in the circumstances. The onus is on the Claimant to persuade the Tribunal that it is just and equitable to extend time: see *Robertson v Bexley Community Centre* [2003] IRLR 434, CA. This is a question of fact and judgment, to be answered case by case by the Tribunal: see *Chief Constable of Lincolnshire Police v Caston* [2010] IRLR 327, CA.
15. The Tribunal must consider all the relevant factors in deciding whether it is just and equitable to extend time. Those factors will always include (a) the length of and reasons for the delay; and (b) any prejudice arising from the delay, but the Tribunal must take into account all relevant matters: *Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] IRLR 1050 (CA); *Adedeji v University Hospital Birmingham NHS Foundation Trust* [2021] ICR D5 (CA).
16. Complaints of unfair dismissal are governed by the Employment Rights Act 1996. The right not to be unfairly dismissed is found in s 94 Employment Rights Act 1996. Section 95 of that Act defines what is meant by dismissal. This includes what is usually called constructive dismissal, i.e. where the employee terminates the employment contract, with or without notice, in circumstances where she is entitled to so without notice by reason of the employer's conduct.
17. It is well-established (see *Western Excavating (ECC) Ltd v Sharp* [1978] ICR 221) that in considering whether an employee has been constructively dismissed, the issues for a Tribunal are:
 - 69.1 Was there a breach of the contract of employment?
 - 69.2 Was it a fundamental breach going to the root of the contract, i.e. such as to entitle the employee to terminate the contract without notice?
 - 69.3 Did the employee resign in response and without affirming the contract?
18. It is an implied term of the contract of employment that the employer will not, without reasonable cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee: *Malik v BCCI* [1997] IRLR 462. This is a demanding test. The employer must in essence demonstrate objectively by its behaviour that it is abandoning and altogether refusing to perform the contract: see *Frenkel Topping Ltd v King* UKEAT/0106/15/LA at paragraphs 12-15. Individual actions taken by an employer that do not by themselves constitute fundamental breaches of any contractual term may have the cumulative effect of undermining trust and confidence, thereby entitling the employee to resign and claim unfair dismissal. The final act in such a series (or "last straw") need not be of the same character as the earlier acts but it must contribute to the breach of the implied term: see *Omilaju v Waltham Forest BC* [2005] IRLR 35 CA.
19. Once a fundamental breach of the contract by the employer has been established, the Tribunal must ask whether the employee has accepted that breach by treating the contract of employment as being at an end. The employee's resignation must be in response (at least in part) to the breach, which must be an effective cause of it: see *Nottinghamshire County Council v Meikle* [2005] ICR 1, CA; *Wright v North Ayrshire Council* UKEATS/0017/13/BI.

Findings of fact

20. The Respondent is a consultancy providing archaeological and heritage services. It currently employs around 78 staff. The Claimant was employed by the Respondent as an Archaeological Officer from 19 April 2021. The events giving rise to these claims begin with the Respondent's annual Christmas party on 16 December 2021. The Claimant alleges that after the party, YZ sexually assaulted her in the hotel in which they were both staying.
21. Before making findings about that and the events that followed, we begin with some findings about credibility. The Tribunal found that the Claimant's evidence could not always be relied on or taken at face value. For example:
 - 21.1. As noted above, the Claimant had covertly recorded meetings on 17 November 2022 (with Mr WT) and 14 December 2022 (with Mr CW). When the Tribunal was dealing with her application to rely on the recordings, she was asked why she had not told the Respondent that she was recording the meetings. She said that she did not know. She did not trust them to take the notes properly. She wanted it for her own use. She confirmed that in cross-examination. Her attention was then drawn to the fact that the notes of her first meeting with Mr WT, on 4 November 2022, expressly note that she was recording the meeting, with Mr WT's knowledge, and that she would share the recording. She was asked why, if Mr WT had agreed to her recording the first meeting, she recorded the second one secretly. She said that she did not have a good answer. She was then shown notes of messages between her and Mr TP. They exchanged messages on 24 October 2022, during which the Claimant said that she had spoken to her friend at ACAS. She was going to put in a grievance with his help. He had advised her to "let them hang themselves so they'll be forced to pay me a settlement." In a later exchange on 16 November 2022, the Claimant discussed the forthcoming meeting with Mr WT the next day. Mr TP said that, if the meeting went badly, it was "Plan B time and you go seek some representation for a constructive dismissal." On 18 November 2022, after the meeting, the Claimant told Mr TP that she had called in sick that day. She was going to start printing off emails at work on Monday. The Claimant's evidence was, "That did not happen." It was put to the Claimant that the reason she made the covert recording was to further her potential constructive dismissal complaint. She said that it was to have it in case something happened but not to catch anybody out. If that was the case, it was difficult to see why the Claimant did not openly record the meeting, as she had the previous one. The Claimant confirmed her evidence was that she had not started printing off emails at work on Monday 21 November 2023. She was then taken to an email that she had forwarded to her personal email address on 21 November 2022. She asked it if was just that one. She was shown a number of other emails she had forwarded herself. She then said that she did not remember doing it and was angry at the time. She confirmed that she did not remember forwarding these emails to herself. It appeared to the Tribunal that after speaking to her friend at ACAS the Claimant was approaching events with one eye on a potential constructive dismissal complaint. That is why she covertly recorded the meetings and why she forwarded work emails to her personal address. Her evidence that she did not know why she covertly recorded the meetings and could not remember forwarding any emails to herself was not reliable.

- 21.2. The Claimant's evidence about matters of detail gave the impression that she now has a picture in her head of what happened at the time, that does not necessarily match up with the documents. For example, in her witness statement, the Claimant said that she saw the letter sent to her on 21 November 2022 as a direct threat because it stated in the letter that "the outcome could ultimately lead to my dismissal." The letter did not say that; it said that was *not* a disciplinary meeting, although if the company was not satisfied with the Claimant's explanation in relation to complaints made by colleagues, that "may lead to formal disciplinary action." Another example is the Claimant's evidence about the aftermath of the events in December 2021. In her witness statement she said that when she got home, she "stayed in bed for days and cried, but then was forced to get up as I had to move out of [my] flat." In cross-examination, her attention was drawn to the fact that her medical records showed that she had a COVID vaccination two days later and that she had a telephone appointment with a physiotherapist. She agreed. Shortly after the events she told Ms LR that she had cried for two days. A few months later she told Mr WT that she had cried for three days. She now says that she stayed in bed and cried for days. These were points of detail, but they pointed to the fact that the Claimant's perception now is, generally, that matters were more serious and negative at the time than the documents suggest they were.
- 21.3. Even at the time, the Claimant's recounting of what was said or agreed was not always accurate. She now accepts in her witness statement that on 5 October 2022 Ms LR told her that she and YZ would be kept apart where practicable. However, in an email sent just three weeks after the meeting, on 24 October 2022, the Claimant was asserting to Ms LR that their agreement was that she would "not ever be working with" YZ. When asked about that in evidence, the Claimant said that she sent her email early in the morning and was highly anxious. She probably was not being very rational. There may well be an explanation for why the Claimant's account was not accurate, but from the Tribunal's perspective the result is the same – the Claimant's account could not be taken at face value.
- 21.4. The Claimant gave evidence that at the training event in July 2022 she and YZ were put in the same group twice. She was asked in cross-examination what she did about it. She said that she did not report it; she had a panic attack in front of Ms H and Ms C. Her watch started beeping because her heart rate was so high and she left the room. She was asked why she had not reported it to management, and she then said that she had told Ms C, who was senior to the Claimant. The Claimant was asked about what she subsequently said to Mr CW at her grievance appeal meeting about the training event. She told Mr CW that at the training week YZ kept following her and staring at her and people had to stand between them. She said that Ms DL and Ms IV witnessed it. She did not mention in her grievance or grievance appeal that she had had a panic attack in front of Ms H or Ms C, nor that she had reported her concerns to Ms C. The Claimant then gave evidence that "panic attack" was an exaggeration, she was just standing outside the room panicking. Further, she didn't say why she was panicking, just that she was. She was then reminded that she had said earlier that she had reported her concern about YZ being in her training group to Ms C. She then said that when she had given evidence that she reported it to Ms C, she meant that she told her that she was panicking, not that she mentioned YZ. She was asked if it was now her evidence that she did not report the issues with YZ and the training. She said, "I implied ... she knew ... I talked to her on the phone several times about it ...". It appeared to the Tribunal that the Claimant's initial oral evidence about what

happened at the training and what she did about it was an exaggeration. She had elevated panicking and telling Ms C that she was panicking, into having a panic attack and reporting to Ms C that she had issues about YZ at the training. She drew back from that when questioned.

- 21.5. In his witness statement, Mr JD said that at the training event in July 2022 an intoxicated Claimant tried to physically embrace him, which was unwelcome. She had to be removed from him by another member of a team and sat down at a table, where she wailed, made a scene and her drink was removed from her. She later apologised for her behaviour. The Claimant cross-examined Mr JD about this. She said that this had not happened as he described it. She said that she had got “fairly drunk” on one glass of wine and told Mr JD that he was brilliant and amazing. She had not discussed work with him because she did not discuss work at social events and she had not physically embraced him. She had not had to be removed by a colleague. Mr JD said that there was some truth in the Claimant’s description: she had approached him and had a friendly conversation. However, she was visibly intoxicated. She told him that she loved him (he was clear that this was meant in a friendly way only). The conversation became louder and louder. Another member of staff interjected, took the Claimant’s glass of wine and led her away. It was a fairly big spectacle. The Claimant then said that there was no wailing, but that she would not disagree massively with Mr JD’s account. Mr JD was asked about the suggestion that the Claimant attempted to physically embrace him. He said that he put his hands in his pockets and gestured to someone else, who came and led the Claimant away. He was asked who that was, and he said that it was Ms C. The Claimant then commented, “I do remember that.” Mr JD was then asked what the loud conversation was about and he said that it was about something that had happened in the car park at the Sheffield office. The Claimant then said, “Oh yes that’s right.” It seemed to the Tribunal that from a starting position of broadly disagreeing with Mr JD’s account, when her memory was jogged with specific details the Claimant ended up broadly agreeing with him. The Tribunal also noted that although her initial suggestion was that she had only drunk one glass of wine, the file contained a WhatsApp message the Claimant had sent Mr JD the next day, saying, “Hey, sorry if I was a twat when I was drunk.” The Tribunal also noted that later in the hearing the Claimant made the comment that she had been drinking at the training event in order to get through it. It seemed to the Tribunal wholly implausible that she had only had one glass of wine.
22. These examples of inaccuracy or unreliability in the Claimant’s evidence meant that the Tribunal approached her account with some caution. Inaccuracy or unreliability does not necessarily mean that the Claimant was being deliberately dishonest or lying. Evidence can be inaccurate or unreliable for many reasons, including that the witness has come to believe that events transpired in a way that they did not in fact take place, or that their perception of the events has changed over time. However, it does mean that the Tribunal cannot simply accept what the witness says as an accurate account. In those circumstances, it is important to look carefully at all the evidence. What was said and written at the time may well provide more accurate evidence of what took place.

Facts relating to harassment allegation one

23. That brings us to the events at the start of these claims and the first complaint of harassment. The Respondent’s Christmas party took place on 16 December 2021. The Claimant’s account in her witness statement is that she was very drunk. She has little

memory of getting back to the hotel afterwards. She had to ask for the car to be stopped multiple times for her to be sick. Her next memory is of being at the hotel reception. She had not checked in and she was somewhat aware of not being capable of doing so. She did not remember asking for help from YZ but she may have done so. She did remember that YZ carried her bags for her and found her room. She has recently had EMDR and can now remember more details than she could before. She now remembers that YZ immediately got onto the bed and pulled her to him. She got up and sat on the end of the bed to move away. YZ moved to her, undressed her top half and groped her left breast. She did not encourage him. She did not tell him to stop but she was in no state to consent. She remembers YZ trying to get them to lie down together and still touching her. She must have passed out because she does not remember him leaving. At some point in the morning he came back to the room to collect his shoes, which he had left behind. He asked her if she remembered anything about the night before and she told him yes and not to worry as they were both drunk. He told her not to tell anybody what had happened and she agreed. She went back to sleep. When she left the hotel later on, she gave YZ a lift to the station. As they walked to the car, he apologised for the night before and again the Claimant said not to worry because they were both drunk. YZ smiled. She stopped and repeated, "You were drunk?" to which he replied by shaking his head and saying that he had not been. She was shocked. During the journey YZ repeatedly wanted to return to what had happened. He told her several times that they should keep it between them and she agreed. He apologised for taking things too far.

24. As noted above, the Claimant's evidence in her witness statement was that when she got home she stayed in bed for days and cried, although that does not appear to be entirely accurate.
25. YZ was a colleague doing the same role as the Claimant. They were friends at work. In his witness statement, he said that he and the Claimant were both given a lift back to the hotel after the Christmas party by a colleague. Mr TP was also in the car. Both he and the Claimant were drunk. The Claimant retrieved her bags from behind the reception, because she had not checked in previously. They went up to her room. He thought he might have helped her carry her bags. Whilst in the room they were having a chat. YZ knew that the Claimant had recently been told to leave her flat, and had been unsuccessful with an internal job application. He tried to comfort her. She stepped into his personal space and became both verbally and physically amorous towards him. She placed her hand on his arm and he returned the gesture. His right arm "might have brushed her breast." They were both fully clothed. He did not undo her dress or pull her bra straps down. He then decided that he did not want to be there. He had a partner and did not want to jeopardise this. He did not leave his shoes and did not return the next morning to retrieve them. The next morning, he encountered the Claimant in the lobby and she gave him a lift to a station about 25-30 minutes away. They did not speak about what had happened the previous evening.
26. When he came to give his oral evidence, YZ made a change to his witness statement before confirming its truth. He said that it should not say that he "might have brushed her breast" but that he touched her breast, with her consent.
27. In order to make findings about what happened, Tribunal looked carefully at the documents and evidence from the time, and the other witness evidence. The Claimant told one female colleague, Ms C, that something had happened between her and YZ. The colleague suggested that YZ might like the Claimant. The Claimant and YZ worked

together without any apparent issue throughout January 2022. That included attending a three-day training course together. However, the Claimant's evidence is that she was finding it increasingly difficult and, eventually, on 22 January 2022, she told another work colleague what had happened. She did so in an exchange of WhatsApp messages. In those messages, the Claimant said that she had been black out drunk and that YZ had been completely sober. He had "helped me out of my dress" and "bra too." He had "felt me up." They spoke the next day. She thought they had both been drunk but he seemed pleased telling her he had not been drinking. He apologised for taking it too far. He had also come to her room the next morning and asked if she remembered anything about last night. She thought he was hoping she would not remember.

28. The Claimant next told Mr BT, who was her and YZ's immediate line manager at the time. Mr BT's evidence was that on 28 January 2022 the Claimant told Mr BT that YZ had assaulted her at the Christmas party (the Claimant's evidence, which we accept, is that she did not use the word "assault"). She asked that this did not go further, but wanted to be moved away from YZ. Mr BT separated them. Although the Claimant had asked her to keep it quiet, Mr BT felt that he needed to report it and he discussed it with Mr JN over the weekend. On the Monday, Mr BT moved YZ to a different site, so as to separate them. Mr CW, the Managing Director, came for a routine site visit on the Monday and Mr BT told him of the Claimant's allegations. Mr CW contacted Ms LR (Head of HR) by phone. He told Mr BT to continue to keep YZ and the Claimant separated as far as practicable, and he did so.
29. Ms LR took advice. She visited the site on 7 February 2022 to have a meeting with the Claimant. Her notes included the Claimant telling her that she thought YZ was in the same taxi back to the hotel as her. He brought her stuff up to her hotel room. She could not remember if she asked him to come into the room or not. She could not have told you her name if asked, she was really drunk. YZ was sober. The next morning he came round for his shoes. He asked if she remembered what had happened and she said she did. They both agreed not to talk about it and she went back to bed. She gave YZ a lift to the station later on. As they were walking to the car he said, "Sorry about last night." The Claimant said, "It's ok we were both drunk". He then shook his head and said that he was not drunk. She cried for two days afterwards. The Claimant told Ms LR that on the night YZ, "helped me take my clothes and bra off, and then touched me up." She said that she did not tell him to stop and that she was drunk. She did not remember him leaving. The Claimant told Ms LR that she had since worked with YZ, pretending nothing had happened and they had got on fine. As the weeks went by she could not look at him. She now did not want him anywhere near her. She missed having YZ as a friend. It was that he had said he was sober that was annoying her. The Claimant told Ms LR that she had said it was fine and a drunken thing. When he said he was not drunk things changed entirely. If he was not sober, she would not have given it a second thought. The Claimant said that she did not want to go down the formal route and put a complaint about YZ. She did not want to go the police either.
30. Ms LR then spoke to YZ. Her notes of that meeting record that YZ told her that he knew what this was about. YZ told Ms LR that the Claimant was quite drunk at the party. They got back to the hotel in the same taxi. The Claimant was not able to walk. He helped her check in, collected her bags and helped her to her room. She would not have been able to get in. He could not remember if she asked him to stay or if he just sat down. He knew that the Claimant was not in a good place and he was being a friend. She wanted someone there. It could have gone a lot further. There was touching and they hugged on the bed.

There was “light petting” and then he left. The morning after he asked if the Claimant was ok, apologised for it and made it clear it was a one off and was not something he wanted. She agreed, said that it was unexpected. Somebody (the notes are not clear) said that they were glad it did not go further and he did just leave. YZ said that it was consensual between them both. He did not think it would come up. He thought both had agreed that what had happened was bad but they would put it behind them. If the Claimant wanted to work apart for a bit or he could do anything to help he was more than happy.

31. There is no note of YZ being asked whether or not he was drunk and no note of him saying whether or not he was drunk. Further, there is no note of YZ being asked how it started, nor about the Claimant’s state of undress and no note of him volunteering information about that.
32. Ms LR met jointly with the Claimant and YZ on 10 February 2022. We return to that below. At this stage, we record that it does not appear that either the Claimant or YZ gave a detailed account of what had actually happened following the Christmas party.
33. The next relevant document from the time is the note of a meeting between the Claimant and Mr WT on 4 November 2022. The Claimant had by this time raised a grievance and Mr WT was investigating it. The Claimant told Mr WT that she was extremely drunk. She thought at the time that she had taken a taxi to the hotel but she now knew a colleague had given her a lift. She did not remember the car journey. She did not remember YZ being there. She vaguely remembered getting into the hotel room. She was only guessing but she thought if she had seen YZ she would have asked him to carry her bags or he just offered. She remembered him carrying her bags to her room. She did not remember getting into the room. She remembered being in the room, him helping her out of her clothes by unzipping her dress and taking the top part down and pulling her bra down. He had groped her. She remembered lying down. She did not remember him leaving. She remembered him knocking on the door the next morning and asking if she remembered anything about last night. She said, “Yes, don’t worry about it, we were drunk.” He said, “Let’s not tell anyone.” She went back to bed. Later she gave YZ a lift to the station. They walked to the car. She could not remember what he said but again she said, “Don’t worry we were drunk, just forget it” and he “sort of looked at” her. She said, “You were drunk?” and he just smiled and said “No.” During the journey YZ had said something like, “We should probably talk about what happened” and the Claimant said, “Forget it.” YZ later said, “Sorry if I took things too far.” When she got home, she laid in bed for 3 days and cried a lot. The Claimant told Mr WT that YZ “admitted all of this” to LR and said, “I’m glad I walked away when I did because I could have gone further.” Mr WT asked the Claimant why YZ was helping her get undressed and she said that she did not know. She could not remember asking him, she could not imagine she would. Mr WT asked the Claimant whether she was standing or sitting when she was partially clothed with YZ and she said she thought standing. She said that it was around the side of the bed. She remembered being closer to the window, where her cases were, so they were on the far side of the bed closest to the window, where her bags were. She confirmed that the undressing and physical contact all happened while they were standing there. She remembered lying down and she thought YZ had lain down with her. She did not remember.
34. During the grievance meeting Mr TP was supporting the Claimant. He had in fact been in the car with her. He told Mr WT that one colleague was driving. There were four others in the car – himself, the Claimant, JO and someone else he could not remember. There was one point where they had to pull over because the Claimant thought she was going to be

sick. The Claimant said that she did not remember that. Mr TP was not sure whether YZ was the other person in the car. JO subsequently confirmed that he had not been in that car. Mr WT spoke to the driver of the car. His notes of that conversation include, "might be sick".

35. Ms LR provided a written statement to Mr WT. In that statement she referred to the joint meeting with her, the Claimant and YZ on 10 February 2022. She said that during the meeting the Claimant had said that she was upset by YZ saying the next day that he was not drunk and that this had broken the trust between them. YZ apologised if he made her feel uncomfortable. He was sorry for whatever had happened. He thought it was mutual. He had left as soon as he realised they had overstepped the friendship line. He was drinking at the Christmas party. On top of the alcohol supplied by the company he had drunk some homebrew brought by a colleague. Ms LR volunteered that she had stayed sober and had observed that everyone who had drunk the homebrew was extremely drunk.
36. YZ was invited to a formal investigation meeting. That took place with Mr WT on 14 November 2022. YZ told Mr WT that he had been given a lift back to the hotel after the Christmas party in the car with the Claimant and Mr TP. He could not remember that, and Ms LR had pieced it together for him. He could not remember where anybody was sitting. YZ told Mr WT that he and the Claimant went into the hotel lobby. They had both had a bit too much to drink. He thought he should make sure she got back to her room. She retrieved her bags and they both went to the room. He might have helped her carry the bags; they were big, heavy cases. He let the Claimant into the room and stayed a while chatting. He was standing, he thought he sat on the bed for a short time. They were both tired and had had too much to drink. The Claimant was having a rough time because she had been told to leave her flat and had been unsuccessful with a job application. He tried to comfort her, seated on the sofa. They had a small hug, for comfort. She became more suggestive. YZ said, "Me being drunk and naïve took it to heart, the incident happened, and I realised I wasn't where I wanted to be." Mr WT asked what had made YZ think there was more to the hug. He said that the Claimant started talking in a suggestive way, saying things like, "Would it be so bad?". He touched her once, decided that was not what he was here for and wanted to leave. He said they were both fully dressed. He put his hand on her, touching her breast over clothes. He did not unzip her dress or pull her bra straps down. This was all while standing together. He knew that at some point he sat on the bed but he could not recall exactly. YZ said that he did not knock on the Claimant's door the next morning. She later gave him a lift to the station. YZ said that at the meeting with Ms LR and the Claimant in February they did not need to say it out loud. They both knew. It was never actually said. He said that the phrase "sexual assault" was not used. His description of it to Mr WT was "two drunk people overstepping the line of friendship".
37. During the grievance appeal meeting, the Claimant told Mr CW that the following day YZ said he had not been drunk the night before and smiled. Mr CW questioned YZ. YZ told him that he had been drunk following the Christmas party. He said that he helped the Claimant to her room. They talked but he did not undress her. YZ told Mr CW that the Claimant made suggestions; she wanted more than just an embrace. She was verbally and physically amorous. She said something like, "Don't you find me attractive?"
38. We turn next to the oral evidence given by the Claimant and YZ. The Claimant's evidence in cross-examination included the following:

- 38.1. She did not think that her additional recollection prompted by EMDR changed things significantly at all. She could just see things a bit more clearly now.
 - 38.2. She acknowledged that her witness statement was the first time she had said that YZ immediately got onto the bed and pulled her to him and said that it was “the first time she had remembered that.”
 - 38.3. She said that when she first told the story she thought she was standing up, but she now remembered more clearly that they had walked in and he pulled her onto the bed. He tried to hug her. She walked away and he followed her. He undressed her.
 - 38.4. The Claimant was asked whether she had YZ had chatted in the room. She said they had not. Given her evidence about being drunk and having a patchy recollection, she was asked whether she was saying that she did not remember or whether it did not happen. She said that it did not happen. She was asked how she was able to be so clear about that and she said that she never talked about work when drunk, she knew why YZ was saying that, and it had not popped up in her EMDR. It seemed to the Tribunal that the Claimant was providing reasoning as to why she would not have chatted to YZ, rather than remembering whether or not she did so.
 - 38.5. It was put to the Claimant that, as YZ said, he had tried to comfort her and she had stepped into his space and become physically and verbally amorous towards him. She said she was not upset and would not have needed comforting. She did not remember anything like that happening at all. It was then put to her that she had, as YZ said, put her hand on his arm. She said that she did not remember that. She was not a forward person. She was not an initiator and was not a touchy person. Again, it seemed to the Tribunal that the Claimant was providing reasoning as to why it would not have happened in the way YZ described, rather than recounting whether or not it did. We also noted that those reasons were somewhat inconsistent with how she appears to have presented to Mr JD at the subsequent training event. Mr JD also gave evidence to the Tribunal that he recalled the Christmas party itself. He does not drink alcohol. He noted at the time that the Claimant seemed to be under the influence, behaving loudly and physically amorous with members of the team.
 - 38.6. It was put to the Claimant that she had been fully clothed. She said, “That’s a lie.” The contrast between her evidence about the other parts of YZ’s account and her evidence about this was marked.
39. Turning to YZ’s evidence, it is right to note that the Tribunal found aspects of his evidence lacking in credibility too. Although he corrected it before confirming on oath the accuracy of his witness statement, it is difficult to see how he could have signed a statement that suggested he “might have brushed” the Claimant’s breast when he knew that he had touched it. It appeared to the Tribunal that his evidence sought to minimise what had happened. For example, he suggested that his comment to Ms LR about the Claimant being unable to walk or check in was because she had large suitcases and was wearing heels. That lacked plausibility, particularly since the Claimant did not have the suitcases until after she had checked in. YZ eventually accepted that it was, at least in part, because she was drunk. The Tribunal therefore approached matters on the basis that YZ’s evidence could not be accepted at face value either. His evidence in cross-examination included:

- 39.1. His recollection and belief was that the Claimant was in control of her actions and able to consent.
 - 39.2. He was not sober. He could not remember how much he had drunk. He thought maybe 5 or 6 drinks – beer, some wine with the meal and homebrew after the meal.
 - 39.3. He did not tell the Claimant that he was not drunk.
 - 39.4. He did not take the Claimant out of her dress or remove her bra. She was not in any state of undress and it was a fleeting touch both fully clothed.
 - 39.5. He did not go to the Claimant's room the next morning for his shoes.
 - 39.6. They did chat. As far as he could recall they were standing the whole time the touching took place. He was not trying to get them to lie down together.
 - 39.7. He agreed that he told Ms LR that he was glad he had walked away but not that he could have gone further. When shown Ms LR's notes of their discussion he said that he could not recall if he had said, either to Ms LR or to the Claimant, that he was glad he had not gone further. It was a long time ago.
40. The burden of proof is on the Claimant in the first instance to prove facts from which the Tribunal could conclude, in the absence of an explanation, that she was discriminated against by way of harassment. She must prove those facts on a balance of probabilities. The Tribunal's findings based on all the evidence are as follows:
- 40.1. Both the Claimant and YZ were drunk following the Christmas party. There is no dispute that the Claimant was. However, the Tribunal did not find that the car had to be stopped several times for the Claimant to be sick. That was something said by the Claimant for the first time in her witness statement. In fact, at the time of the grievance meeting with Mr WT she said that she had no recollection when Mr TP said that the car had to be stopped once because she "thought she was going to be sick." That appears to have been the driver's recollection too. The Claimant appears to have adopted and embellished someone else's recollection about her having the car stopped once because she thought she might be sick.
 - 40.2. The Tribunal found that YZ was also drunk. That was the Claimant's understanding at the time of the incident in her hotel room, which happened after they had both been at the same Christmas party event together. She came to the view that YZ was not drunk because of their conversation the next day. We concluded that she must have misunderstood. Her description of what YZ said and did that led her to that conclusion varied over time. In her witness statement she said that when she told him, "Not to worry we were both drunk" he smiled. She asked, "You were drunk?" and he shook his head and said "No." When she told LR, she said that when she told him not to worry they were both drunk that he shook his head and said that he was not drunk. She did not say that he had smiled or that she had questioned whether he was drunk. When she told Mr WT she said that when she told him not to worry they were both drunk YZ "looked at her" and then, when she asked, "You were drunk?" smiled and said, "No." She did not say that he shook his head and said, "No." These variations (whether he looked at her, smiled or shook his head, whether she asked a question or not) suggest that the Claimant does not have a clear recollection of what was said or how. The Tribunal accepted YZ's evidence about drinking beer, wine and homebrew. The party was obviously an event at which a number of people drank heavily. One colleague did bring homebrew. Ms LR noted that those who partook were generally very drunk. Mr CW did not recall that either the Claimant or YZ was particularly drunk but his evidence was that he did see both of them drinking at the party. When YZ was first

asked by Ms LR on 10 February 2022, he said he had been drinking and had drunk homebrew. In his account to Mr WT, YZ made a number of references to things he did not remember. He had evidently thought he had travelled in a taxi until Ms LR told him that he had been given a lift by a colleague. YZ repeatedly told Mr WT that they had both had a bit too much to drink. Weighing all those matters, the Tribunal found that YZ was also drunk. It seemed most likely to the Tribunal that there had been a misunderstanding between two people who were tired, hungover and possibly still under the influence of alcohol. The Claimant may have misinterpreted an embarrassed or weary shake of the head for a denial of being drunk.

- 40.3. YZ helped the Claimant to her hotel room and helped her into the room with her bags. On the balance of probabilities, the incident was initiated in the way YZ describes. They were talking and the Claimant was upset about having to move flat and being unsuccessful in a job application. YZ hugged her. At the Claimant's instigation, this progressed beyond a platonic hug. She both initiated physical contact and suggested that it would not be such a bad idea if something happened between them. Matters progressed as far as YZ unzipping the Claimant's dress and pushing her bra strap down. This was, on the balance of probabilities, at her instigation. YZ then realised that this was not what he wanted and left.
- 40.4. In reaching that view, the Tribunal rejected the Claimant's description, given for the first time in her witness statement, of YZ going into the room, immediately getting onto the bed and pulling her onto him. That had never been said before. We note that the Claimant said that her EMDR had enabled her to access the memory. The Tribunal was provided with no expert evidence about EMDR and memory, or the reliability of something recalled during EMDR two years after the event. We noted that this was not just "filling in a blank" - it was inconsistent with the accounts the Claimant had given previously, in particular her clear and specific description to Mr WT about going round to the far side of the bed with her cases and the incident taking place while they were standing there.
- 40.5. The Tribunal noted that the Claimant told Mr WT that she only vaguely remembered getting into the hotel room and, later, that she did not remember getting into it. The Tribunal did not find the Claimant's oral evidence that she and YZ did not chat and that she did not become physically and verbally amorous towards him convincing. As described above, it seemed to us to be an attempt to provide reasons why that would not have happened rather than a recollection or account of what did happen. We found the reasons themselves unconvincing. On this issue, we preferred YZ's evidence. He has consistently described the incident starting with a chat, and identified the things they were talking about and on balance we found this the more reliable account.
- 40.6. From her very first disclosure to JN, the Claimant has consistently referred to her dress being unzipped and her bra straps pushed down. That seemed to the Tribunal to be a clear and consistent recollection on her part. Her clear and direct answer about this in cross-examination was in contrast with her unconvincing evidence about other features of the incident. YZ was not apparently asked about the Claimant's state of undress until November 2022. He said then and has said since that the Claimant was not undressed at all and that everything happened with both fully clothed. However, on this issue, the Tribunal preferred the Claimant's evidence. Not only was it consistent throughout, but it seemed to the Tribunal to fit better with the events that followed. For example, if, indeed, all that had happened between them was a fleeting touch to the breast, fully clothed, it

seemed to the Tribunal that the discussions on 7 and 10 February 2022 would have been different. YZ's comments and actions seem to the Tribunal to be more consistent with a more significant incident.

- 40.7. However, the Tribunal concluded that it was the Claimant who initiated the removal of her clothing. Each time she referred to being in a state of undress, she said that YZ "helped her out" of her dress and bra. That language was striking. It was not the language of being forcibly undressed, nor of somebody else taking it upon themselves to do so. It is explicitly language about being assisted to do something. We also noted that the Claimant told Mr WT that she did not know why YZ was helping her get undressed. She "could not remember" asking him and "could not imagine" that she would. Again, the Claimant was providing reasons for why she would not have done something, rather than recounting whether or not she did. Given her consistent description of being "helped out of" her dress, the Tribunal found that this is what happened – YZ helped her to unzip her dress. It seemed to the Tribunal that this is, most likely, how the intimate situation arose.
41. In those circumstances, on the evidence before the Tribunal the Claimant did not prove, on the balance of probabilities, that YZ's conduct was unwanted by her, i.e. unwelcome or uninvited. For the reasons we have explained, we concluded that both were drunk, the Claimant initiated some sexual contact, most likely by asking YZ to help her out of her dress, and this progressed as described above until YZ brought it to an end and left. On her own account the Claimant said more than once at the time, "Don't worry we were both drunk." She repeatedly said subsequently that when she thought YZ was also drunk she did not have an issue, it was only when she came to believe that he had been sober that things changed. This is consistent with what happened not being unwanted at the time. The Tribunal has found that YZ was drunk. The Claimant has not proved that what took place was unwanted by her.
42. The Tribunal has not dealt with the question of consent, including capacity to consent, for the purposes of criminal law. That is not the issue we have to decide.

Facts relating to harassment allegation two

43. The Claimant's next complaint relates to the meeting between her, LR and YZ on 10 February 2022. She says that being in the same meeting was harassment related to sex.
44. The meeting arose as follows. We have noted that, despite the Claimant saying that she did not want it to go further, Mr BT reported what she had told him. He told her on 2 February 2022 that he had done so and she said that he had done the right thing and that she was going to speak to Ms LR. We have referred above to that meeting, which took place on 7 February 2022. The Claimant confirmed in cross-examination that Ms LR's notes reflected the general gist of what was said. Those notes record that the Claimant said that if nobody else felt unsafe, this could be brushed under the carpet. She did not want to go down a formal route and put in a complaint about YZ. She did not want to go to the police either. He was just an opportunist. She did not want there to be an atmosphere. She could consider mediation with him, but she could not look at him, he was a monster. She asked to be moved away and now she was happier. She would like to hear YZ say that he was drunk. She would not care if he was lying.
45. Ms LR's evidence to the Tribunal was that the Claimant said she would consider mediation or an informal meeting with YZ. She emailed the Claimant on 9 February 2022, to say that

she was keen to discuss further and put in place a plan to move forward. She said that the Claimant had mentioned that she did not wish to raise a formal complaint, and asked whether that was still the case. She asked, "If you are still comfortable having an open discussion with myself and YZ, I propose to come to site tomorrow afternoon. Would this be ok with you?" The Claimant did not reply to the email. Ms LR called the Claimant and she agreed to have an informal meeting with Ms LR and YZ. It took place on 10 February 2022 in an empty accommodation unit. Ms LR spoke to the Claimant alone in her accommodation before the meeting. They talked through what would happen. Ms LR told her that she did not have to go through the events of the night with YZ. The Claimant was nervous but said that she wanted to hear YZ say he was sorry even if he did not mean it. Ms LR and the Claimant went to the empty accommodation for the meeting together. Ms LR checked with both her and YZ that they still wished to proceed and they both said they did. They had a discussion, which we have referred to above. During that, YZ apologised if he had made the Claimant feel uncomfortable and said that he was sorry for whatever happened that night. He said that he had been drinking at the Christmas party, including the homebrew that had been brought. YZ agreed to stay away from the Claimant to give her space. After the meeting, Ms LR walked the Claimant back to her accommodation. The Claimant shared some information about her private life and previous experiences. The Claimant was not upset and did not raise any issue or concern about the informal meeting. She did not raise any concerns about the meeting or about being in the same room with YZ after that.

46. The Tribunal saw text messages that the Claimant exchanged with Ms LR on the morning of 10 February 2022, before the meeting. The Claimant messaged Ms LR to ask her what time she would be arriving and whether she would be picking her up from site. She said that she did not want the meeting to happen at her place. Ms LR told her that she would meet her at the accommodation to avoid gossip. The Claimant asked what time she should be there.
47. In her witness statement, the Claimant said that she "reluctantly" agreed to sit down with Ms LR and YZ. She was extremely anxious about the meeting and told Mr BT and Ms LR so. In cross-examination the Claimant was asked about Ms LR's email of 9 February 2022. She said that she had not responded when Ms LR asked if she was still comfortable to have a joint meeting. She said that she had agreed to it but had not said that she was "comfortable." She agreed that there was nothing in her text messages to Ms LR on 10 February 2022 to say that she did not want to have a meeting with YZ present. The Claimant was asked why she said that Ms LR organising the meeting with YZ present was "related to sex." She said that she was told to write that because she was upset. A friend who had a bit of legal knowledge told her to write that it was a point of harassment related to sex. [That was the answer she gave when she was asked the same question about each subsequent complaint of harassment.]
48. The Tribunal noted that in her subsequent grievance meeting with Mr WT the Claimant did not raise any concern about attending the meeting on 10 February 2022 with YZ present. She made repeated reference to the meeting, and she made a number of complaints about the company's handling of the situation with her and YZ, but she did not raise any concern about being present in a room with YZ on 10 February 2022.
49. The Tribunal found that the meeting was not unwanted by the Claimant. She told Ms LR on 7 February 2022 that she would consider mediation or an informal meeting, and that she wanted to hear YZ say that he was drunk and to apologise. She said that she thought

he was a monster too, but that does not negate her indication that she was willing to consider mediation or an informal meeting. She did not raise any objection in response to Ms LR's email on 9 February 2022, nor in her own text messages on the morning of 10 February 2022. She willingly participated in the meeting. It was consistent with her own expressed wishes to hear YZ apologise and say he was drunk. She did not raise any concern afterwards and it did not form any part of her grievance subsequently. It seems to the Tribunal that the Claimant is now looking back and changing her version of events. At the time – based on what she told Ms LR and what she said to Mr WT several months later – an informal meeting to try and clear the air and achieve some closure is exactly what she wanted.

Facts relating to harassment allegation four

50. The next complaint chronologically is allegation four. The Claimant complains that YZ was brought over to her field for a flint scatter search in February or March 2022. It became clear at the hearing that the date of this was 14 February 2022. There was an urgent need to carry out a flint scatter search on the field to which the Claimant was assigned, in order for work on that site to progress. This involves a number of archaeologists walking through the field, identifying, collecting and locating flint. There were not enough personnel with relevant experience in that field, so personnel from the other nearby field had to be brought over to complete the search within the urgent timescale. The nearby field was the field to which YZ had been moved at the end of January. A number of people were brought over from that field, including YZ, to conduct the search on the morning of 14 February 2022.
51. The Claimant's evidence is that she was in the field doing the search at the same time as YZ. She says that Mr BT kept them at opposite ends of the field. She remembers a colleague, Ms H, getting the numbers wrong and that Mr CW was not best pleased. The Claimant was adamant that she was in the field doing the search.
52. Mr BT, Mr CW (who was present and leading the search) and YZ himself all gave evidence that the Claimant was not present in the field. Mr BT says that he put her to work in the cabin instead in the site compound, several hundred metres away from the field. Mr JD was also there. His recollection was that the Claimant was not present.
53. Mr BT said in cross-examination that it was deliberate to keep the Claimant and YZ apart. Mr BT said that he did remember Ms H messing up the numbers, but that he had told the Claimant about that. He said that he was clear in his recollection that they had the Claimant working in the cabin. The things she was talking about did happen, but he had talked to the Claimant about them. Mr CW was insistent in cross-examination that the Claimant had not been involved in the field walking. He said that he ran the exercise and she was not part of it. The Claimant said that she remembered being in the top corner of the field when they had just started and it was discovered that Ms H had labelled the bags incorrectly. Mr CW said that they started the exercise walking up the hill, not from the top downwards. During his evidence YZ mentioned occasions on which he had been in the same place as the Claimant after 10 February 2022. He referred to the flint scatter search. He was asked about that. He said it was a short task, organised by Mr BT and Mr CW. They took measures to keep him and the Claimant apart. She worked in the cabins and he was in the field. It was very controlled. He said that it was not correct that the Claimant was in the field; he recalled her being in the cabin.

54. Each person's evidence was clear and certain, but plainly somebody is not correct. The Tribunal found that, on the balance of probabilities, it was the Claimant who was incorrect. Four people say that she was not in the field. Of course, that is not conclusive – people can collude to give a false account – but the Tribunal did not consider that this had happened in this case. In particular, the Claimant was complimentary about Mr BT, his response to her disclosure and his attempts to separate her from YZ. It would have been surprising if he had failed to take appropriate action at the time and had joined in a conspiracy to cover up an occasion of the Claimant and YZ being in the same field. Given that this happened only two weeks after the Claimant's initial disclosure, and given the clear action taken by Mr BT, and the clear instructions given by Mr CW, the Tribunal concluded that it was more likely that a decision had been taken to have the Claimant working in the cabin that morning. There is an explanation for how she has come by the information about Ms H getting the numbers wrong, which is that Mr BT told her about it at the time. We also took into account our general finding that the Claimant's recollection now is not necessarily an accurate one. We noted that when she raised this issue with Mr WT, the Claimant said that YZ was the one sent over to make up the numbers on the flint scatter; she did not say whether or not she was also in the field.

Facts relating to harassment allegation three

55. There are three parts to allegation three: a complaint that the Respondent instructed the Claimant and YZ to work in the same field for a week in February/March 2022; a complaint that YZ was housed in accommodation close to hers; and a complaint that he travelled in the work van driven by the Claimant on two occasions.
56. The Claimant's evidence is that there was a week during February/March 2022 when she and YZ were allocated to work in the same field. She did not include this in her witness statement, and in cross-examination she said that she did not know when this was. She was working with Mr JD that week. She said that the fields were allocated in a weekly email from Mr JM. Most of those emails were in the Tribunal file. None of them included a week in which the Claimant and YZ were allocated to the same field. The Claimant said in cross-examination that "she did not think she added it" and that she used the emails "to check the accommodation only." Her evidence was that there was one week when YZ came to work in her field. He was on the other side. Mr BT was good and kept them apart. The Claimant said the same in the grievance meeting with Mr WT. Mr BT said in his witness statement that apart from the flint scatter search, there was no occasion on which YZ was brought to work in the Claimant's field. The Claimant did not cross-examine him about this. The Tribunal noted that in January 2023 Mr CW upheld part of the Claimant's grievance appeal, on the basis that there had been a week during that project when the Claimant and YZ had had to work in the same field. However, Mr BT had kept them apart.
57. The Tribunal found on the balance of probabilities that there had been a week during which they had worked in the same field. However, on the Claimant's own account Mr BT was "very good" and kept her and YZ apart in the field. The Tribunal found that having them work separately in the same large field may have been unwanted by the Claimant at the time because she did not want to be in YZ's vicinity. However, the Tribunal found that this was not conduct related to sex. Mr JM was simply allocating two employees to do the work that was required to be done. The fact that the Claimant had informally raised a concern about conduct of a sexual nature involving YZ does not of itself turn a decision about work allocation into conduct related to sex. Mr BT, who was aware of the concern, took care to keep the Claimant and YZ separate in the large field and was "very good"

about it. There was no sense in which the Claimant was being deliberately put in proximity with YZ. On the contrary, care was being taken to keep them apart, on this occasion separated in a large field. Instructing the Claimant to work in the same field as YZ for a week in those circumstances was not conduct that “related to” sex.

58. The general approach to accommodation for personnel working on sites away from home was that the Respondent would book accommodation and allocate operatives to it in an email sent on a weekly basis. For the sites in question in February/March 2022 the Respondent was using two sets of accommodation, each of which comprised a group of cottages/apartments. The Claimant’s complaint is that from February 2022 until she moved to a new role (having obtained a promotion in March 2022) in May 2022, apart from 3 or 4 weeks she and YZ were placed in the same accommodation block (a group of units in stables around a courtyard), though not in the same unit. The documentation from the time shows that in some weeks they were on sites that were a drive apart and in other weeks they were in different units but on the same site. In fact, apart from the final week, the Claimant was given the same, single, accommodation and was (unusually) provided with it 7 days per week rather than 5.
59. Ms LR carried out a number of visits specifically to check on the Claimant, in particular on 28 February, 1 March, 11 March and 16 March 2022. She said that the Claimant did not at any stage raise a concern with her about YZ being placed in the same accommodation block. The Claimant said in cross-examination that she raised concerns with LR about this each time she visited. The Claimant and Ms LR exchanged a few emails during the period. The Claimant did not raise any concern about YZ being in the same accommodation in any of them.
60. There was an occasion on 28 April 2022 when YZ went to the accommodation the Claimant was sharing with two female colleagues, at their invitation, to share their evening meal. The three of them had been regularly eating together in each other’s accommodation when away on site. It was unusual for the Claimant to be sharing with these two colleagues – prior to this occasion she had been given single accommodation. When she realised that YZ was downstairs the Claimant texted Mr BT saying that YZ was in the living room chilling out having a lovely time. Mr BT replied describing YZ in derogatory language and offering to go for a walk with the Claimant. She replied just over an hour later to say that YZ had gone, and that she had got out and called Ms C. This incident obviously upset the Claimant. She did raise concerns about it subsequently. In the event, she started her new role the following week and was not working near YZ after that (save for the occasions referred to below).
61. The Tribunal found that the Claimant and YZ were placed in accommodation in the same block on a number of occasions. However, we accepted Ms LR’s evidence that the Claimant did not raise a concern with her about that at the time. In doing so, we noted that the Claimant was in email contact with Ms LR but did not at any time ask for YZ to be accommodated on a separate site. Nonetheless, the Tribunal found that being in the same block of accommodation as YZ was unwanted by the Claimant, in that it was unwelcome. She ran the risk of seeing him, for example when people were waiting to get in the vehicles in the morning. However, the Tribunal found that by housing YZ in accommodation close to the Claimant’s, the Respondent was simply placing the Claimant and YZ in the available accommodation. They were not in the same unit. For all but one week the Claimant was given her own, single, flat. The Claimant did not raise any concern about this at the time, that might have cast the Respondent’s continued conduct in a

different light. In all the circumstances, placing them in the same accommodation block on some occasions was not related to sex.

62. The Respondent has a number of work vehicles and members of staff drive colleagues to and from accommodation and the working sites. The Claimant is one of the people who can drive a staff minibus/van. YZ does not drive at all. The Claimant's complaint to the Tribunal is that on two occasions YZ got into the van she was driving. In her witness statement she said that she had "lost count" of the number of times YZ would, "approach the group I was talking with after work, get in the van I was transporting people in when he did not need to, and even try to shelter in my accommodation from a storm with other members of staff." In cross-examination she said that she had not lost count of the number of times he got in her van. She was reminded that her complaint to the Tribunal was that it happened two times. She said, "Yes, at least." She did not know the dates. YZ said in his witness statement that during this period he always travelled separately to the Claimant. In cross-examination he said that he did not recall sharing a minibus with the Claimant. He was shown what he had said to Mr CW in December 2022. On that occasion he said he recalled three occasions when he had been near the Claimant since 10 February 2022 – the training week (see below), the time he went for dinner with the two female colleagues, and "the time on the minibus." He said of that that he knew he had to keep away, but it was the only bus to get back to the accommodation, so he sat in the back as the Claimant was in the front. His evidence to the Tribunal was that he did not now recall the occasion. The Tribunal also noted that the Claimant told Mr WT that there was "one time" that YZ got into the van she was driving. There was one space and YZ jumped in.
63. The Tribunal found that what was said nearer the time was likely to be more accurate. We noted that both the Claimant and YZ referred to a single occasion on which he had got into her van. We found that this happened once and that it happened because it was the only way for YZ to get back to the accommodation. The Tribunal found that this was unwanted by the Claimant. It was unwelcome because she did not want to be in the same van as YZ. But we did not find that YZ getting into the Claimant's van was conduct that related to sex. Neither the fact that the Claimant had informally raised the concern about YZ that she had, nor the events after the Christmas party themselves, necessarily means that YZ's conduct in getting into the van was related to sex. There had been no formal complaint against YZ. Although she now describes what happened as sexual assault, the Claimant agrees that she did not do so at the time in the discussions in February. Following those discussions, YZ had agreed informally to keep away from the Claimant. On this occasion, YZ deliberately got into the back of the van to be as far away from the Claimant as possible. This happened only once, and it happened because YZ needed to get back to the accommodation. In those circumstances, the Tribunal found that this was not conduct that related to sex.

Facts relating to harassment allegation five

64. The next complaint concerns the company training week in July 2022. As noted above, the Claimant started her new role in Sheffield at the start of May 2022. She did not encounter YZ after that until the training week starting 25 July 2022. That was a company-wide event. The Claimant's complaint is that the Respondent made no effort to keep her and YZ apart at that event, for example placing them in the same group twice.
65. The position all along from February 2022 had been that Ms LR told the Claimant that they would keep her and YZ apart where practicable, but could not guarantee total separation

at all times. The Claimant had been encouraged to make a formal complaint, but did not wish to do so and the Respondent was not willing to put in place more formal separation measures in those circumstances. The training week was known about for many months. The timetable was sent to the Claimant and everybody else on 13 July 2022. It showed that there were a number of all staff training sessions. There were three sessions of one hour each for all Archaeological Officers and trainees. That would include the Claimant and YZ. Those sessions were to take place in large rooms. They would involve around 20 people. There was one afternoon where there were small group sessions in smaller rooms. Mr CW's evidence, which was not challenged, was that in the planning of the event the training officer had ensured that the Claimant and YZ were in separate groups for the small-group training sessions. The Tribunal's understanding is that the Claimant's complaint is about being in the same "medium" sessions for Archaeological Officers and trainees as YZ.

66. We noted that the Claimant did not raise any concerns about being in those sessions with YZ after she received the timetable. She did email Ms LR with concerns about her own travel arrangements.
67. Ms LR only attended the first day of the training course. Mr CW attended the whole event. He said that he spoke to the Claimant during the week. She did not raise any concern with him about being in the same groups as YZ.
68. There was an optional social event on the Thursday evening of the training week. We have referred to that above. It was attended by the Claimant and was the occasion on which she had a drunken conversation with JD, which he had to extricate himself from, and in which she was loudly talking about something that had happened in the car park at the Sheffield office.
69. The Claimant's evidence in cross-examination was that there were two incidents where YZ was in the same room as her and sat 2 seats away. It was at this stage that she was asked what she did about it, and initially said that she did not report it but had a panic attack in front of Ms H and Ms C and left the room. Then she said that she had reported it to Ms C. Eventually she said that she had been panicking, not having a panic attack, and had simply told Ms C that she was panicking. She said that she had also mentioned it to her manager, Mr TP, as general chit chat. Mr TP did not mention this in his witness statement.
70. The Claimant did not raise any issue about the training week with Ms LR or anybody else (apart from by way of chit chat with Mr TP) until 5 October 2022 (see below). On that occasion, she told Ms LR that YZ had sat near her at the first opportunity at the training week, despite being told to keep away. Her complaint was about YZ's conduct, not about shortcomings in the Respondent's handling of the matter. In her meeting with Mr WT, the Claimant said that at the training week YZ was "manoeuvring himself to be close to me". She said that she put her bags down next to a colleague (IV) and YZ sat next to them. So, she moved somewhere else. In her meeting with Mr CW the Claimant said that at the training week she had to keep moving away from YZ. He kept following and staring at her; people had to stand between them. She said that DL and IV had witnessed this. The Claimant told the Tribunal that she had not seen YZ staring at her; this had been reported to her by DL.

71. Mr CW gave evidence that he had planned the groups with the training officer and Ms LR. They had made sure that the Claimant and YZ were not in the same small group. The crossover would be in the larger sessions. YZ was told verbally to keep his distance. Mr Waddington was around and kept his eye in the whole group sessions. They felt that this was controlled, to enable the Claimant to participate fully and to minimise any impact on her.
72. Weighing all the evidence, the Tribunal did not find that the Respondent made no efforts to keep the Claimant and YZ apart. There had been no agreement that they would never encounter each other, and it was not suggested that YZ should have been prevented from attending the training week. The Tribunal accepted that care was taken to ensure that the Claimant and YZ were not in the same small group and that YZ was reminded to keep his distance from the Claimant. The Claimant and YZ would be in the same sessions when they were for all staff, or for all AOs and trainees, but they would be in large rooms, with around 20 people (or the whole staff) present. They were not, for example, in a small group of half a dozen sitting round a small table. This was a controlled environment.
73. In circumstances where the Claimant did not raise any concern in advance, having been provided with a timetable that showed that she and YZ would be in the same AO and trainee sessions, and where she did not raise any concern during the course of the training week and chose to attend the optional social sessions, the Tribunal found that the arrangements for the training week were not unwanted by the Claimant at the time. In any event, we did not find that the arrangements for the training week were conduct that related to sex. Again, there was no sense in which the Claimant was being deliberately put in proximity with YZ. On the contrary, care had taken to keep them apart where possible. The Claimant and YZ were in the same “medium” group because they were both AOs and there was only one group for AOs and trainees, but an assessment had been made given the size of the group and the rooms and the people who would be around that this was a controlled situation. The Claimant did not at that stage want to make a formal complaint, so there were some constraints on the Respondent’s ability to impose restrictions. The Respondent did not “make no effort” to keep the Claimant and YZ apart. To the extent that they were in the same large and medium groups, this was not, in all the circumstances, conduct that related to sex.

Facts relating to harassment allegation six

74. The next complaint relates to events in October 2022. Following the training week in July the Claimant did not raise any concern with Ms LR. She continued to work in her role in Sheffield, apparently without incident. When the Claimant emailed Ms LR about a day’s leave on 1 September 2022, Ms LR suggested that they catch up the following week, as it had been a while since they spoke. The Claimant did not respond. Ms LR heard nothing from the Claimant about the events concerning YZ between April 2022 and October 2022.
75. However, the Claimant evidently continued to be upset and anxious in relation to YZ. She contacted her GP about anxiety in August 2022. It appears that she may have been sharing this with Mr TP in their discussions as well. Matters appear to have come to a head in late September because the Claimant saw an entry in the staff planner that suggested she might be sent to work on a site where she was concerned that YZ might also be placed. She messaged Mr TP about it on 24 and 26 September 2022 and they evidently then spoke about it. Mr TP suggested that the Claimant needed to speak to LR again and this led to a meeting between the Claimant and Ms LR on 5 October 2022.

76. The general thrust of the meeting was that the Claimant was still feeling terrible about the incident with YZ. She could not progress from it and did not feel safe. The occasion when he had eaten dinner in her accommodation in April and his presence at the training week had caused her problems. She now wanted a guarantee that YZ would not be near her. Ms LR reiterated that the company had taken legal advice and that it would not take formal action against YZ without that being the outcome of a formal complaint. The Claimant explained that her anxiety was about being put on a site with YZ. She felt overwhelmed and unsettled. She currently did not want to work on a site away from home. The Claimant repeatedly asked for a guarantee that she would not have to be near YZ and Ms LR repeatedly told her that no guarantee could be given. They had done their best. It had been rare that their paths had crossed. Ms LR followed up with an email. She sent the Claimant details of counselling funded by the Respondent. She had throughout these events repeatedly encouraged the Claimant to seek counselling and provided her with information about it. Ms LR confirmed that she would speak to Mr JM about assigning the Claimant only home-based field work and communicating any changes to her working pattern in advance. The company would continue to consider her circumstances when assigning work that might require any interaction between her and "other employees".
77. The Claimant now accepts that at the meeting there was no promise to keep her and YZ apart. The agreement was that the Respondent would carry on keeping them apart as far as practicable, as it had been doing ever since the Claimant had reported her concerns.
78. A few weeks later the Respondent needed somebody to work on a project in Staffordshire because a colleague had become unavailable. Mr JM asked the Claimant if she would be prepared to work on the project and she agreed. On Friday 21 October 2022 at 16:34hrs Mr JM sent the weekly email with the plan for the following week's work on the project. It was clear to the Claimant that YZ was working on the project. The Claimant messaged Mr TP at 18:28 hours to say that YZ was working on the project and to ask what she should do. She messaged him again a few minutes later to say that she had spoken to JM. He had told her that there were two sites, and he would keep them apart.
79. Mr JM's evidence to the Tribunal was that he had been made aware by Ms LR and Mr CW of the need to keep the Claimant and YZ apart. He had assigned them two completely separate sites and had provided separate and private accommodation for the Claimant. His evidence in his witness statement was that he discussed the arrangements for keeping the Claimant and YZ apart when he first spoke to her about working on the project, before sending the email on 21 October 2022. That cannot be right, because the Claimant's message to Mr TP makes clear that this was the first she knew about YZ being on the project. It seemed to the Tribunal more likely that Mr JM discussed the arrangements for keeping them apart with the Claimant when she called him on the Friday evening. He told her that there were two sites a few miles apart and that she would be provided with separate, single accommodation.
80. It is the Claimant's case that Mr JM had not been told that he needed to keep her and YZ apart, contrary to what Ms LR had said. She said in cross-examination that when she told him on the phone that there was somebody she could not work with he asked her who. She told him and he said that he would speak to LR and, if that was the case, keep them separate. In his cross-examination, Mr JM said that CW had said in management meetings, without giving details, that the Claimant and YZ were to be kept separate where practicable. It had been mentioned a handful of times. Ms LR had told him by phone. He

knew about it. Mr CW said in cross-examination that clear instructions had been given to Mr JM. On balance, the Tribunal preferred Mr JM's evidence that he had been told of the need to keep the Claimant and YZ apart where practicable. That was supported by Mr CW and Ms LR.

81. However, the arrangements for keeping the Claimant and YZ separate were certainly not made explicit in Mr JM's email and he had not discussed them in advance with the Claimant before she telephoned him on the Friday evening. It may be that, as she subsequently alleged in an email, the Claimant told Mr JM that she had been promised she would *never* have to work with YZ, rather than that they would be kept separate where practicable. That might be what he said he was going to discuss with LR. Or it may be that, under pressure of work and having to deal with a last-minute change of personnel, Mr JM overlooked the need to keep the Claimant and YZ apart where practicable. Once the Claimant raised it with him, Mr JM gave her assurances that they would be working on separate sites.
82. The Claimant was allocated to the single accommodation, which had previously been assigned to someone else. On Saturday 22 October 2022, the Claimant and Mr JM realised that accommodation had not been booked for Sunday night. In his own time, Mr JM arranged alternative accommodation for her. He messaged her to tell her that he had booked her a B&B one street away from everyone for one night because he did not want her to be in the same accommodation as YZ. She replied to say thank you, much appreciated.
83. On the Saturday evening, the Claimant messaged Mr JM again because Mr WC, the Assistant Project Manager in charge of transport, had sent a message at 16:25hrs to the team asking the Claimant to pick up YZ and others from their accommodation on Monday morning. Her messages said that Mr WC had told her to pick YZ up and take him to the site. She had called Mr WC. He had told her that the two sites were merging on Wednesday. She said that she could not be around YZ. Mr JM replied to say that he would dig into the site logistics tomorrow (the next working day). In the meantime, they were on separate sites and that was that. She replied to say that this was extremely upsetting for her. He said that they would work through this together tomorrow. He said that he had completely overlooked getting to the site in the morning, "For the rest of the week he will travel separately to you but let me look into tomorrow's options." The claimant replied, "He's not travelling with me at all" then, "He can walk." Mr JM replied, "Text AG ... ask if he'll travel via [the accommodation] in the morning ...". The Claimant replied:
- "YZ can sort himself out."
- "I agreed to go to Stafford even though I'm having extreme anxiety due to what YZ has done, and I agreed because I didn't want to let anyone down and I knew you're struggling to get staff. I even agreed to go knowing he's going to be there. But this is all really unacceptable."
- "I feel sick."
- "And I don't even know where I'm staying tonight."
- "I realise you weren't aware, but [Ms LR] assured me we wouldn't work together and I assumed something had been put in place."
- "Clearly it wasn't as you had no idea."
- "I feel really let down."

84. This series of messages was sent to Mr JM on Sunday evening. He replied to say that he would discuss this with Ms LR the next day. If she told him they were not to work together, then they would not. The Claimant and YZ would be kept on separate sites and IF the sites were combined, he would switch her out. Mr JM told the Tribunal that Mr WC did not know about the issue because they had kept it on a need-to-know basis. Immediately after this, Mr JM told YZ that he would have to arrange a pick up with AG for the Monday morning. YZ did not do so. When the Claimant went to collect the other staff from their accommodation, YZ was present at the accommodation. He made his way to the site via public transport. The Claimant worked on the project for two weeks, YZ for one. They were on separate sites 6 or 7 miles apart and in different accommodation and transport throughout.
85. At 6am on Monday 24 October 2022 the Claimant emailed Ms LR. She said that they had agreed that she would not be working away and “would not ever be working with” YZ. She assumed something had been put in place to ensure that would never happen. Mr JM had called her on Friday to ask her to work in Stafford. He said he would put her in accommodation on her own. She agreed as he seemed to be struggling to get people there. When she saw the staff planner she saw that YZ was also at the site and her anxiety surged. She called Mr JM and he had no idea they were not supposed to be put on the same site, but assured her there were two sites and they would be separated. She set out the events that had transpired over the weekend. She said that Mr JM was “clearly expecting her to still pick up YZ on Monday.” She told him she would not be doing that. He then told her “To arrange YZ’s pick up myself.” She felt physically sick and in an extreme state of anxiety and she said that YZ could sort himself out. The Claimant said that she had been in the hotel all night. She felt sick with anxiety, unsafe and utterly disappointed. She would not agree to work away again and did not feel at all comfortable.
86. Ms LR replied at 8:30am, to say that she was in meetings all day but would call the Claimant later. She asked the Claimant to refer back to her follow up email, pointing out that she had only said that they would consider the Claimant’s circumstances and that she had told her they could *not* promise that she would never be on site with YZ. She said that the company had to meet its clients’ needs and the work was where the work was. As discussed, no formal complaint had been made therefore no formal action could be taken as an outcome. Any refusal to complete work would be dealt with. The Claimant replied at 9.50 on 24 October 2022 to say that she had no choice but to make a formal complaint.
87. The Tribunal therefore found that only some elements of this factual allegation were made out. The Claimant was not asked to work on a project that would have *required* her to pick YZ up and work with him. She was asked to work on a project on which he was also working, but where there were two separate sites 6 or 7 miles apart, and more than one driver. Further, it had *not* been agreed on 5 October 2022 or confirmed in an email that the Claimant would never have to work with YZ. On the contrary, she had been told again that this could not be guaranteed. However, she had been told that the company would continue to keep them separate where practicable and that she would not be required to do field work away from home. She was then requested to do so. This was clearly a request, not a requirement, and the Claimant agreed to it. The Claimant was, initially, asked to pick YZ up from the accommodation.
88. Clearly, this was a last-minute swap of personnel, taking place at the very end of the working week. There were shortcomings in the arrangements. The single accommodation had not been required by the original proposed occupant for Sunday evening, and was

therefore not booked for Sunday. Mr JM originally overlooked that, but addressed it in his own time on the Saturday when he realised. Mr JM did not address the transport arrangements. Mr WC was not aware of the issue. The Tribunal did not think that it was an accurate characterisation of Mr JM's initial message to say that he was expecting the Claimant to collect YZ on the Monday. He was clearly providing the immediate reassurance that for the remainder of the week it would not be a problem, but indicating that he needed to look into the options for the next day. The Tribunal agreed that this seemed to be leaving open the possibility that the Claimant might be asked to collect YZ, but it was also clear that Mr JM was still exploring options. In his subsequent message, he was not asking the Claimant to contact YZ, he was asking her to contact AG. It seemed to the Tribunal that this could have been handled better. It was understandable that the Respondent was keeping the situation between the Claimant and YZ on a need-to-know basis, and that Mr WC was not told about it. But Mr JM could have anticipated the transport issues, and he could have simply told the Claimant that he would sort it out as soon as she raised the issue with him. The Tribunal was, however, also conscious that this was all taking place over a weekend. The exchange about transport arrangements was on Sunday evening when Mr JM was home with his family.

89. It was clear from the Claimant's messages and her email to Ms LR that asking the Claimant to work away on the Stafford project, the initial request/instruction from Mr WC to transport YZ, and Mr JM's text messages in response about the travel arrangements for Monday, were unwanted by the Claimant. However, the Tribunal found that none of this conduct was related to sex. Mr JM had to plan the work and allocate appropriate personnel to the work that the Respondent needed to do for its clients. He became short of people at the last minute and asked the Claimant if she was willing to go to Staffordshire in those circumstances. There had not been any agreement that the Claimant would never have to work with YZ. Mr JM's request was unrelated to sex; it was about work requirements. Mr WC had not been told about the issues between her and YZ, to try and keep matters as contained as possible. His request/instruction that the Claimant transport YZ was not related to sex. It was simply the standard allocation of staff to transport/drivers. The fact that the Claimant was very anxious and did not want to be near YZ did not make WC's email conduct that related to sex. The Tribunal found Mr JM's conduct was the clumsy handling over the weekend of a last-minute change of arrangements that was about ensuring that the Respondent had the necessary personnel to meet its clients' requirements. While the underpinning events that led to the agreement to keep the Claimant and YZ apart as far as practicable were the incident after the Christmas party and the Claimant's informal raising of a concern about that, this does not, by itself, mean that Mr JM failing to anticipate an issue with transport, sending a text message that left open the possibility that the Claimant might be asked to transport YZ on Monday morning, and sending a text message asking her to contact AG about collecting YZ was conduct that related to sex. If there had been an agreement that the Claimant would never have to work with YZ, for reasons of which Mr JM was aware, this might have been closer to the borderline, but there had not. The fact that when the Claimant raised a concern about having to work with YZ, Mr JM gave an assurance that she would not; that he booked her accommodation over the weekend to ensure that she was not accommodated with YZ and told her about that; and that when she made her position in relation to the transport arrangements clear, he dealt with it himself and did not require the Claimant to transport YZ all satisfied that Tribunal that Mr JM's conduct was not conduct that related to sex.

Facts relevant to harassment allegation seven

90. The Claimant's second email of 24 October 2022 was treated as a formal grievance. That concerned both the original allegation against YZ and the Respondent's handling of it. Mr WT held an initial meeting with the Claimant on 4 November 2022, to understand the grievance. He interviewed YZ on 14 November 2022. On the afternoon of 16 November 2022, he arranged to meet with the Claimant the following day at 3pm at one of the Respondent's offices to deliver the outcome.
91. YZ was based in that office that week. Mr WT instructed him to be out of the office by 3pm on 17 November 2022 so that there would not be a risk of the Claimant bumping into him. When the Claimant arrived for the meeting with Mr TP, a few minutes before 3pm, YZ was still in the building. The Claimant's evidence to the Tribunal was that he was in the library at the end of a short corridor. Mr TP spotted him and pointed him out to the Claimant. YZ did not see the Claimant and there was no interaction between them. YZ said that he wanted to get out of the building quickly enough. His intention was to leave at 2.30pm but he lost track of time and left at around 2.45pm. He did not see the Claimant when he left the building. He had not been aware that he was seen by her before he left. YZ was ultimately given a first and final written warning for this. YZ told the Tribunal that none of his actions were targeted or deliberate. He agreed he could have done more. He wanted to get out of the building quickly enough but he lost track of time. He packed his things and left. He did not see the Claimant.
92. It seemed to the Tribunal that, to some extent, YZ did not appreciate the severity of the anxiety that the Claimant was experiencing. From his perspective, there had been an incident following the Christmas party, a month of working together without difficulty, then discussions in February with Ms LR, after which he and the Claimant did not speak again. Their paths crossed on a handful of occasions. There had recently been a formal grievance and he was aware of a continuing instruction to stay away from the Claimant.
93. The Tribunal found that Mr WT acted appropriately in anticipating the potential difficulty and instructing YZ to be out of the premises before the Claimant arrived. YZ strictly speaking complied with that instruction, but he did not leave a sufficient margin of error to ensure that the Claimant's path did not cross with his. This was clearly unwanted conduct by the Claimant; she did not want to be in the same building as him. But the Tribunal found that YZ's conduct was not related to sex. It was not deliberate or calculated. He was not trying to see or interact with the Claimant or to be visible to her. It was simply the case that YZ did not sufficiently appreciate the importance of the situation and ensure that he left the building in plenty of time, leaving a sufficient margin of error, instead losing track of time in the library. He did not speak to or interact with the Claimant. She did not see him, Mr TP did. He was in the library at his place of work doing research. His conduct was not, in those circumstances, related to sex.

Facts relating to harassment allegation eight

94. The final harassment allegation, apart from the complaint of constructive dismissal, is that Mr WT offered the Claimant mediation with YZ as a resolution to the grievance, even though she had made it clear that she did not want to be in the same room as him.

95. Mr WT did offer mediation to the Claimant at the grievance outcome meeting on 17 November 2022. This is one of the meetings she was covertly recording. Mr WT explained to the Claimant that he was not upholding her grievance. Then he offered professional mediation. She responded that she did not want to be in the same room as YZ. *He* needed to go on a course so that he knew he could not do this.
96. Mr WT sent a written outcome letter the next day, 18 November 2022. It explained that he was not able to uphold her complaint against YZ. His conclusion was that there was not sufficient evidence to uphold the grievance as it was the Claimant's word against YZ's. Mr WT concluded that the company had done all it could, in circumstances where the Claimant had been offered the option to make a formal complaint from the outset and had declined until now. Mr WT said that the company would continue to try to keep the Claimant apart from YZ where it reasonably could, but no guarantee could be given. He then offered the opportunity, should the Claimant wish, for a professional, externally mediated meeting with YZ in order to help the Claimant reach a satisfactory outcome.
97. Mr WT's evidence was that offering the Claimant mediation was not harassment related to sex. The sole purpose of the offer was to see if a satisfactory outcome could be achieved. In cross-examination, he said that he was trying to find ways to help and support the Claimant and he thought this was one way.
98. The Claimant did not deal with this allegation in her witness statement.
99. The Tribunal found that the offer was unwanted by the Claimant; it was unwelcome, she did not want to have any interaction with YZ. However, the Tribunal found that the offer was not conduct that related to sex. It is important to note that it was made in the context that the Claimant's complaint about YZ had not been upheld. That limited the options that were available to the Respondent. The Claimant was not obliged to participate in mediation, she was offered it as an option. Mr WT was trying to help the Claimant. What he was offering was professional mediation process, not an informal, internal process. In all those circumstances, the making of the offer was not conduct that related to sex.
100. The Claimant was signed off work on 18 November 2022 and did not ultimately return.

Facts relevant to the complaint of victimisation

101. The Claimant made a formal complaint on 24 October 2022 and explained it in the meeting with Mr WT on 4 November 2022. There is no dispute that in doing so she did a protected act. She says that this caused the Respondent to write to her on 21 November 2022 inviting her to a meeting regarding allegations of misconduct concerning colleague Ms S, with whom she had not worked since April.
102. The Tribunal saw emails from Ms C and Ms S, dated 15 and 16 November 2022 respectively. Ms C said that over the last six months, several instances of the Claimant spreading untrue rumours had been brought to her attention. One of the most recent incidents had happened in late August 2022. Ms S had telephoned Ms C extremely upset because she said that the Claimant had been telling staff that she (Ms S), Mr JD and a third colleague were having some form of intimate relationship with each other. Another colleague had also complained about this. Ms C spoke to the Claimant's line manager and was assured that the Claimant had been spoken to and would apologise to all parties. That had not happened. Ms C had noticed the mental toll on Mr JD and Ms S and had spent a great deal of time talking to them both for a few months. It was impacting on her job. Ms S

said that she had previously raised her concerns about her working relationship with the Claimant but felt that it now needed to be escalated. She said that the Claimant had directed inappropriate language at her in her first week working with her; had told her supervisor on one occasion that she had not been doing any work all day; and had been spreading rumours about Ms S and another male employee having a relationship. Ms S had been told that this had been raised with the Claimant's line manager, and that she would receive an apology, but that had not happened.

103. The Tribunal noted that Ms C was somebody in whom the Claimant said she confided. For example, it was Ms C she called and spoke to for an hour when YZ came to dinner at her accommodation. The Tribunal heard evidence from Mr JD. In his witness statement he said that he had heard rumours of a love triangle involving himself, Ms S and another party emanating from the Claimant, and rumours that the Claimant had overheard Mr JD and Ms S being intimate together. These were not true. The three of them decided against reporting the matter at that stage. It became clear later on that the Claimant was still spreading rumours and that was when the Claimant's conduct was reported in November 2022. In cross-examination Mr JD said that it was later that the third colleague had told him that she had personally heard the rumour from the Claimant when working in Sheffield.
104. The Claimant's questioning was about whether there was any evidence to support the allegations against her. She did not give evidence about whether in fact they were true or an invention, or whether these matters had been raised with her by Mr TP. Her case in the Tribunal was that these complaints were engineered so that the Respondent could get rid of her, because of the grievance she had raised. She was asked who she said had engineered them and she said that it was Mr CW. This was put to Mr CW in cross-examination. He said, "I can assure you there is no connection. I did not engineer the complaints."
105. The Tribunal accepted Mr CW's evidence. There was absolutely nothing to suggest that he had engineered these complaints, apart from the fact that they were made not long after the Claimant had lodged a formal grievance. It was Ms LR who gave evidence about receiving the complaints, taking advice, and then writing to the Claimant to invite her to a meeting at which they would be investigated. The Claimant did not suggest that Ms LR was engineering the situation or victimising her. It seemed to the Tribunal wholly implausible that the Managing Director would solicit junior employees to put forward complaints of this nature in response to the Claimant lodging a formal grievance. That was particularly so given: one of the complainants was apparently friendly with the Claimant; Mr JD's evidence about the history behind the complaints and the failure of the Claimant to apologise in August 2022; and the fact that Respondent had been dealing with the issues arising from the aftermath of the Christmas party since late January 2022. It was in many ways in the Respondent's interest for a formal grievance to be raised, as had been suggested on a number of occasions, because that would enable it to take more formal action if appropriate.

Facts relating to termination of employment and time limits

106. The Claimant appealed against the outcome to her grievance. Mr CW dealt with the appeal. He met with the Claimant and YZ and he obtained other written statements. In a letter dated 12 January 2023 he upheld a part of the Claimant's grievance, in relation to (1) YZ being present at the accommodation in Staffordshire when the Claimant drove to pick

up colleagues on Monday 24 October 2022; (2) YZ being present in the office when the Claimant arrived for the grievance outcome meeting on 17 November 2022, on both occasions YZ having failed to follow instructions given by senior staff; and (3) Mr JM putting the Claimant and YZ on the same field project, albeit on different sites, because he had forgotten the need to keep them apart. Mr CW said that he had put steps in place to rectify the situation, including taking action with YZ in relation to his two failures; giving an instruction that the Claimant and YZ should be kept apart wherever practicable and that HR must be informed of any potential overlap; and giving YZ a formal instruction that he must stay away from the Claimant at all times. The remainder of the grievance appeal was rejected.

107. The Claimant was still on sick absence at this time. She resigned on 23 March 2023, giving two months' notice. Mr CW invited her to reconsider but she did not do so, and her employment ended on 18 May 2023. She had been on sick leave since 18 November 2022.
108. The Claimant contacted ACAS to initiate early conciliation on 13 April 2023 and obtained a certificate on 25 May 2023. She lodged her Tribunal claim on 22 June 2023.
109. She did not give any evidence in her witness statement about why her claim was not presented until 22 June 2023. She was asked about it in cross-examination. Her evidence included the following:
 - 109.1. She spoke to her friend who worked at ACAS on 24 October 2022. She accepted that he probably told her about Tribunal time limits at that time. They talked about a potential constructive dismissal complaint in the Tribunal.
 - 109.2. On Monday 21 November 2022 she forwarded emails to herself. She did not now remember doing it. She was angry at the time.
 - 109.3. She contacted the police in December 2022, having previously reported the incident to them in May 2022.
 - 109.4. She wrote her grievance appeal letter while on sick leave, attended the grievance appeal hearing on 14 December 2022 and the outcome meeting on 10 January 2023.
 - 109.5. She said that the delay in lodging a Tribunal claim was because of her mental health.
 - 109.6. She agreed that while she was off work, she was looking for alternative employment. She applied for a role on 10 March 2023, attended an interview on 14 March 2023, accepted an offer on 20 March 2023 and started work on 15 May 2023.
 - 109.7. It was suggested to the Claimant that if she was well enough to go to the police, attend grievance appeal meetings and look for a new job, she was well enough to lodge a Tribunal claim. She said that she found it hard to confront anything to do with these issues. It was pointed out that by going to the police and participating in the grievance appeal she was doing precisely that. She said that she had had good interactions with the police and was cajoled by her friend at ACAS to pursue the grievance. He also pushed her to start early conciliation.
 - 109.8. The Claimant's medical records confirm that she was accessing her GP in relation to anxiety and depression during this period. In January and February 2023 she was taking fluoxetine and diazepam and was struggling with motivation. By March she was feeling a bit better. The medication had helped and she was ready to talk to somebody through IAPT. She continued to experience difficulties in May.

Finding out that the Respondent would not settle her case and that she needed to go to court had set her back. She had also had a setback in her new work but was hoping to return to work the following week.

Application of the law to the facts

110. The Tribunal's detailed findings of fact are set out above. We can deal with the issues much more briefly, because many of them turn on the findings of fact.

Time limits

111. We begin with the question of time limits in relation to the harassment and victimisation complaints. There is no dispute that the harassment claim about the Claimant's alleged constructive dismissal was presented within the Tribunal time limit. All of the other complaints relate to acts that occurred before 14 January 2024, which is the earliest date for which a free-standing complaint of discrimination or victimisation would have been presented within the Tribunal time limit. It is therefore necessary to consider whether these matters formed part of a course of conduct over a period.
112. As noted above, if any of the alleged acts relied on in asserting conduct over a period is not established on the facts or is found not to be discriminatory, it cannot form part of conduct over a period. On the Tribunal's findings of fact, one of the alleged acts of harassment did not happen and none of the remainder amounted to discrimination/harassment, either because they were not unwanted or because the conduct complained of did not, as a matter of fact, relate to sex. The Tribunal found that there was not, in those circumstances, conduct over a period that ended on or after 14 January 2024 for the purposes of s 123 Equality Act 2010.
113. It was therefore necessary to consider, for each individual complaint, whether it was just and equitable to extend the time limit for presenting that complaint. The Tribunal concluded that it was not.
114. We deal separately with the earliest of the complaints. The incident after the Christmas party happened in December 2021. The claim to the Tribunal was presented in June 2023. That is more than two years outside the Tribunal time limit. The Claimant did not give clear reasons for the delay in making a Tribunal complaint about this incident from December 2021 onwards. Her evidence focussed on the period from around October 2022 onwards. Her mental health evidently declined over the whole period of the events we have considered. It was better in the first half of 2022. She remained at work until November 2022. She made a report to the police in May and again in December 2022 and she raised a grievance in October 2022. She was aware of the Tribunal time limit by, at the latest, October 2022. Her friend who works at ACAS told her about it. There is clearly prejudice in not allowing the Claimant to bring this complaint, raising a serious allegation about YZ. On the other hand, there is clear prejudice in allowing her to do so, and requiring YZ (and the Respondent) to defend an allegation of this nature brought two and a half years after the event. There was no formal internal process until almost a year after the event, so there is not a clear, contemporaneous account from YZ. The Tribunal's findings above show that memories have faded over time – for example there were clearly matters that YZ could recall in 2022 that he cannot now recall. Recollections or accounts have also changed over time. That presents a very real risk of prejudice. The Tribunal's conclusions on this

issue turned on whether the Claimant had met the initial burden of proof that rests on her. It was not possible for the Tribunal to reach a definitive determination. The Tribunal found that the Claimant was well enough to complain to the Tribunal about this in the first half of 2022 if she had chosen to. She could have sought advice, from her friend or by researching on the internet, about bringing Tribunal claims and the time limit for doing so. Although there is significant prejudice in not allowing her to advance this complaint now, the Tribunal found that that prejudice was outweighed by the prejudice in allowing her to do so, both to YZ personally in being required to defend this serious allegation so long after the event given the impact of that delay on the evidence; and to the Respondent in being potentially held liable in the same circumstances. Therefore, we found that it was not just and equitable to extend the time limit in respect of this allegation.

115. We deal with the remaining out of time harassment allegations and the victimisation allegation together. They are all complaints about the conduct of the Respondent in its handling of the Claimant's informal complaint, then formal grievance. The last of the acts she complains about took place on 17 and 18 November 2022 – the offer of professional mediation as part of the grievance outcome. That took place almost two months before the “cut-off” date for presenting a complaint in time. The earliest act took place in February 2022, many months before that.
116. The Claimant's evidence in cross-examination about the reasons for not presenting a Tribunal claim sooner really focussed on her mental health and her unwillingness/inability to engage with what had happened after the Christmas party. As explained in the findings of fact, the Tribunal accepted that the Claimant was accessing her GP in relation to anxiety and depression, certainly during the latter part of the period. In January and February 2023 she was taking fluoxetine and diazepam and was struggling with motivation. By March she was feeling a bit better, but was not recovered. She continued to experience difficulties in May and experienced some setbacks at that time. The Tribunal heard what the Claimant said about the difficulties in confronting the events, not wanting to think about what had happened to begin with and how hard she found it to deal with. We took that into account. However, we concluded that it was also important to look at what the Claimant was able to do at the time. She was able to contact the police about YZ twice – in May and December 2022; she was able to lodge a formal grievance, attend a grievance investigation meeting and outcome meeting, lodge a formal grievance appeal and attend a grievance appeal meeting all dealing with these events. She had help and advice from a friend who advised her of the time limit in October 2022. She was able to take steps in preparation for a potential Tribunal complaint, such as forwarding emails to herself in November 2022. She was also able to initiate the early conciliation process in April 2023. That itself happened more than two months before the claim was presented. All of these matters led the Tribunal to conclude that, despite her mental ill health, anxiety and difficulty in personally confronting events, the Claimant was well enough to present a Tribunal claim and able to do so within the time limit in respect of each complaint had she chosen to.
117. Again, the Tribunal noted that the Claimant would face real prejudice in not being able to advance these complaints of harassment and discrimination as free-standing complaints. On the other hand, she would still be able to advance her complaints of discriminatory/harassing and unfair dismissal, which entail consideration of the same events. That means that the prejudice is substantially less. There would again be substantial prejudice to the Respondent. It is prejudicial to have to defend claims that would otherwise be out of time, and there is again an inevitable impact on the cogency of the evidence. Recollections in relation to many of the events were evidently less clear

because of the passage of time. Of course, as is apparent from the findings of fact above, the Tribunal heard evidence and made findings of fact on the balance of probabilities based on the available evidence in relation to these events, because they formed a part of the constructive dismissal complaints. However, the evidence before the Tribunal was undoubtedly affected by the delay and that is relevant in whether to extend time to bring individual out of time harassment and victimisation complaints. Weighing all the relevant circumstances, the Tribunal again concluded that the prejudice to the Respondent was greater and that it was not just and equitable to extend the time limit for presenting the out of time complaints.

Harassment related to sex, victimisation and constructive dismissal

118. Apart from the complaint of constructive dismissal, the Tribunal does not therefore have jurisdiction to deal with the individual harassment complaints. However, for the purposes of the harassment constructive dismissal complaint, and for the reasons set out in detail in the findings of fact above, the Tribunal's conclusions in relation to those events were:
- 118.1. On the balance of probabilities, the events after the Christmas party in December 2021 took place as set out in detail above. The Claimant has not proved on the balance of probabilities that this was unwanted by her.
 - 118.2. YZ was present in a meeting with the Claimant and Ms LR on 10 February 2022, but that was not unwanted by her. In fact it was consistent with her express wishes.
 - 118.3. YZ was brought over to do a flint scatter search in a field in which the Claimant had been working in February 2022, but the Claimant was given work to do in the cabin while that took place.
 - 118.4. The Claimant was instructed to work with YZ in the same large field for one week in February/March 2022, but was kept separate from him by Mr BT, who was "very good" about that. That was not conduct related to sex.
 - 118.5. The Claimant was housed in the same accommodation block as YZ during a number of weeks, but was in a separate accommodation unit (for all but one week a single flat). That was not conduct related to sex.
 - 118.6. YZ did travel in the van driven by the Claimant on one occasion during the period. That was not conduct related to sex.
 - 118.7. The Respondent did make efforts to keep the Claimant and YZ apart during the training event in July 2022. They were not put in the same small groups. However, they were put in the same medium group, and were in the same whole staff events. The Respondent's actions were not unwanted by the Claimant at the time and, in any event, were not related to sex.
 - 118.8. The Claimant was requested to work on the Staffordshire project on 21 October 2022. That did not require her to work with YZ or pick him up in the van. She was initially requested to pick him up in the van and Mr JM's handling of her concern about that was clumsy. She did not have to drive YZ and she did not have to work with him. The actions of Mr JM and WC were not related to sex.
 - 118.9. YZ was present in the building when the Claimant attended for her grievance outcome, despite being told to stay away. He was seen by Mr TP but not by the Claimant. That was not conduct related to sex.
 - 118.10. Mr WT did offer the Claimant professional mediation with YZ as part of the grievance outcome. That was not conduct related to sex.
119. In those circumstances, the Tribunal did not deal in any detail with the question whether any of these matters had the purpose or effect proscribed by s 26 Equality Act 2010. The

Claimant did not put to any witness that their purpose was to violate her dignity or to create the environment prohibited by s 26. The Tribunal's provisional view was that, while the Claimant was undoubtedly upset, anxious and sometimes angry, none of the events from February 2022 onwards met the threshold of objectively and subjectively violating the Claimant's dignity or creating an intimidating, hostile, degrading, offensive or humiliating environment for her. We did not consider the issue in relation to the first allegation, in view of our conclusion that the "unwanted conduct" part of the test was not met.

120. The Tribunal does not have jurisdiction to consider the victimisation complaint. However, for the purposes of the constructive dismissal complaint, for the reasons explained in detail in the findings of fact, the Respondent did not victimise the Claimant by instigating an investigation into the complaints made about her in November 2022. Those complaints were not solicited or generated by Mr CW. When Ms LR received the complaints, she took advice and instigated an investigation because the Respondent was obliged to investigate these concerns that had been raised.
121. The Claimant says that she was constructively dismissed because she was harassed and victimised in the ways she alleges. She says this constructive dismissal therefore itself amounted to harassment. The Tribunal has found that the Claimant was not harassed or victimised in any of the ways she alleged. She was not therefore subjected to a constructive dismissal that amounted to harassment.

Unfair dismissal

122. Although the complaints of harassment and discrimination on which the unfair dismissal complaint was based were not made out, there were shortcomings in some elements of the relevant conduct, and the Tribunal considered for completeness whether any of those matters, or the events outlined above, amounted, singly or cumulatively, to conduct without reasonable or proper cause, that was calculated or likely to destroy or seriously damage trust and confidence and that gave rise to a constructive dismissal. We concluded that that they did not. In particular:
 - 122.1 The Claimant's employment ended almost 18 months after the Christmas party in December 2021. Even if YZ's conduct at the hotel after the party had amounted to a fundamental breach of contract by the Respondent, the Claimant had continued to work for the Respondent, accepting a promotion and starting a new job in May, attending work until November 2022 and then presenting and pursuing a grievance. The Claimant had clearly affirmed the contract by the time of her resignation. Nothing that happened subsequently revived that element.
 - 122.2 The Claimant did not wish to pursue a formal complaint about YZ when she raised a concern in February 2022. The Respondent nonetheless took steps from that point onwards to keep them apart so far as practicable, but it was inevitably constrained in its ability to do more without having conducted an investigation and reached conclusions in relation to YZ's conduct. Instances in February and March 2022 of the Claimant working or being accommodated near YZ have to be viewed in that context.
 - 122.3 The Claimant started her new, office-based role in May 2022, and was not then working on sites anywhere near YZ after that (prior to the Staffordshire project in October 2022).

- 122.4 The next time she was in the vicinity of YZ was at the July training event. In the context of no formal complaint having been raised, the Respondent kept the Claimant and YZ apart where practicable, but they were put in the same medium and large groups. There were at least 20 people in those groups, in large rooms with trainers. The company managing director was present throughout the training event. The Claimant was told in advance what the groups would be. She did not raise any concern in advance or during the week. The Respondent's conduct in making the arrangements for the company-wide training week was not, in those circumstances, calculated or likely to destroy or damage mutual trust and confidence.
- 122.5 It appeared to the Tribunal unfortunate that the Claimant was requested to work on a site away from home at the Staffordshire project in October 2022, so soon after she had agreed with Ms LR that she would not be required to work at sites away from home. However, there is no dispute that it was a request, not a requirement, and that the Claimant could have declined. The request was made because there was a last-minute staffing shortage. We have also described the way the arrangements were made as clumsy. Ideally, Mr JM would have anticipated and dealt with any issues relating to YZ being on the same project, ensuring that accommodation and transport were addressed proactively and that the arrangements were explained to the Claimant before any issue or concern arose. However, these were arrangements being made at the last minute, over the weekend, and in circumstances where the agreement was to keep the Claimant and YZ apart "where practicable." The Claimant's concerns were addressed and she was not required either to transport YZ or to work on the same site as him. While this could have been handled better, the Tribunal concluded that it was not by itself conduct, without proper cause, that was calculated or likely to destroy or seriously damage trust and confidence. It might have been capable of contributing to a breach of mutual trust and confidence alongside other matters, but it did not, by itself, reach the threshold of amounting to a breach of mutual trust and confidence.
- 122.6 The Tribunal accepted that it was necessary for the Respondent to investigate the complaints that were made about the Claimant in November 2022.
- 122.7 Ideally YZ would not have been present in the building when the Claimant went for the grievance outcome. However, Mr WT had given an instruction for him to leave the building before the Claimant came and had acted appropriately in doing so. The Tribunal found that YZ's own conduct, in failing to leave a sufficient margin of error, so that he was still on site and seen in the library by Mr TP when the Claimant arrived, was not a fundamental breach of the implied term of trust and confidence by the Respondent. It was an oversight by YZ, in circumstances where the Respondent had only agreed to keep the Claimant and YZ apart so far as reasonably practicable. That was not something that was calculated or likely to destroy or seriously damage mutual trust and confidence.
123. Therefore, the Tribunal found that there was no fundamental breach of contract, and that the Claimant was not constructively dismissed. Her complaint of unfair dismissal cannot therefore succeed.

**Employment Judge Davies
2 July 2024**

Notes

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings.

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