EMPLOYMENT TRIBUNALS

Claimant: Mrs. S. Garrod

Respondent: Riverstone Management Limited

Heard at: London South **On:** 9th, 10th, 11th, 12th, 13th, 16th, 17th, 18th, 19th, 20th, 23rd, 24th, 25th, 26th, 27th October 2023[1]

Before: Employment Judge Sudra
Sitting with non-legal members, Ms. J. Cook and Mr. K. Murphy

Representation:

Claimant: In Person (unrepresented)

Respondent: Mr. D. Panesar KC

(References in the form [XX] are to pdf page numbers in the Hearing bundle. References in the form [XX,para.X] are to the paragraph of the named witness's witness statement)

RESERVED JUDGMENT

The unanimous decision of the Tribunal is that the Claimant's complaints of:

[1] The Tribunal read into the case from 12.00pm on 9th October 2023 to 12.00pm on 11th October 2023.

(i) Unlawful detriments contrary to s.47 Employment Rights Act 1996 and reg.19 of the Maternity and Parental Leave etc. Regulations 1999 are not well founded and fail;

(ii) direct sex discrimination contrary to s.13 Equality Act 2010 are not well founded and fail;

(iii) unfavourable treatment due to pregnancy/maternity leave contrary to s.18 Equality Act 2010 are not well founded and fail;

(iv) harassment related to sex under s.26 Equality Act 2010 are not well founded and fail; and

(v) constructive unfair dismissal, s.95(1)(c) Employment Rights Act 1996 is not well founded and fails.

REASONS

1. The Tribunal apologises unreservedly to the parties for the inordinate delay in providing this judgment to them. This matter was listed for a Final Hearing from 13th to 27th October 2023 and after the conclusion of evidence we heard closing submissions on the final day. The Tribunal then arranged mutually convenient times to meet to deliberate in Chambers.

2. The Claimant was a litigant-in-person and the Respondent was represented by Mr. Deshpal Panesar – King's Counsel[2] instructed by Sherrards Employment Law Solicitors.

3. The Claimant began working for the Respondent, as an assistant company secretary, on 11th May 2015. On 1st January 2016, the Claimant was promoted to company secretary and remained in this role until the termination of her employment on 16th June 2020; she had resigned with notice on 16th March 2020.

[2] In the interests of brevity we will hereafter refer to Mr. D. Panesar KC as 'Mr. Panesar.' No discourtesy is intended.

4. The Claimant began Acas early conciliation on 11th January 2020 and was issued with an Acas Early Conciliation certificate on 11th February 2020. On 2nd March 2020 the Claimant presented her ET1 claim form and the Respondent defended the claims by way of an ET3 and Grounds of Resistance, on 24th April 2020, and an amended Grounds of Resistance on 24th August 2020.

The Issues

5. The Claimant's claims are recorded in an agreed List of Issues (at Appendix A) and her claims are for:

   (i) Unlawful detriments contrary to s.47C Employment Rights Act 1996 ('ERA') and reg.19 of the Maternity and Parental Leave etc. Regulations 1999 ('MPL');
   (ii) direct sex discrimination contrary to s.13 Equality Act 2010 ('EqA');
   (iii) unfavourable treatment due to pregnancy/maternity leave contrary to s.18 EqA;
   (iv) harassment related to sex under s.26 EqA; and
   (v) constructive unfair dismissal, s.95(1)(c) ERA.

Preliminary Matters

6. On the morning of the first day, Monday 9th October 2023, Mr. Panesar mentioned that he (together with his instructing solicitor, Ms. Smith) had attended the Claimants' waiting room to hand documents to the Claimant and that the Claimant had said that she prefers to speak inside the Tribunal room rather than outside of it. When the Tribunal asked why this was, the Claimant stated that when Mr. Panesar had entered the Claimants' waiting room he had aggressively shouted, '*ARE YOU REPRESENTED?*' Mr. Panesar stated that he had said, *'Good morning Mrs. Garrod, are you represented?'* and that this had been witnessed by Ms. Smith. The Tribunal explained to the Claimant that it is usual for parties or their representatives to speak with one another outside

of a hearing and doing so could reduce the time the Tribunal are required to spend on administrative/preliminary matters with which they need not be involved. It was also explained to the Claimant that she could rely on Mr. Panesar, as senior counsel, to be professional and courteous at all times but if she became anxious at any time she could simply ask that she is addressed in the Tribunal room and any issues could be raised then. The Tribunal did not accept that Mr. Panesar had been aggressive, shouted, or acted inappropriately in any way and was satisfied that he had at all times acted with the integrity expected of any legal professional. The Claimant accepted this and agreed to speak with the Respondent's representatives outside of the Tribunal room and said she understood that she could revert to her original position if she felt uncomfortable.

7. The Claimant then made an application for permission for her witness (the Claimant's husband) Mr. Garrod, to give his evidence via CVP video conference. It was explained by the Claimant that she has young children and Mr. Garrod was undertaking the 'school run' whilst the Claimant attended the Tribunal.

8. Mr. Panesar said that this was a surprise application and had not been mentioned at a previous Preliminary Hearing when CVP had specifically been discussed[3]. It was also said on behalf of the Respondent that they objected to the Claimant's application as there had been previous issues in respect of the unauthorised recording of CVP hearings and there were concerns as to the probity of evidence given via CVP.

9. The Tribunal decided that Mr. Garrod should attend in-person to give evidence and the Claimant agreed to this. The Respondent then stated that once the Claimant had been released as a witness the Respondent *may* acquiesce to the Claimant's application. As it turned out, the Claimant decided not to call Mr. Garrod as a witness in any event.

[3] One of the Respondent's witnesses, Fraser Henry, had been granted permission to attend the Hearing via CVP due to medical reasons.

10. There were a significant amount of documents for the Tribunal to read so the Hearing was adjourned to 1.00pm on Wednesday 11th October 2023 when the Claimant would begin her evidence. The Tribunal made it clear to the parties that it would not be proportionate nor possible to read every document. Therefore, the parties were told that the Tribunal would only read documents to which its attention was specifically drawn by the parties, in evidence or submissions, or referred to in witness statements insofar as relevant.

11. At the beginning of the evidence (1.00pm on 11th October 2023) the Claimant was informed that as her witness statement was of extraordinary length (186 typed pages) and referred to an excessive amount of documents, the Tribunal had only read the documents which were relevant to the issues to be determined. This was fair, proportionate, and in keeping with the Overriding Objective. The Claimant was also informed that whilst she was giving evidence, she must not directly or indirectly discuss the case or her evidence with anybody else and this included during breaks or an overnight adjournment. The Claimant confirmed that she understood.

12. On the morning of the fifth day, 13th October 2023, the Claimant mentioned that she wished to adduce extra evidence in response to cross-examination questions asked the previous afternoon. The documents - the Tribunal were told but which we had not yet seen - were, screenshots of Nicola Johnson's curriculum vitae, a three-page transcript of a board meeting which had taken place in May 2018, and a Word document of '*law firms websites*.'

13. Mr. Panesar voiced his concerns that the Claimant may have strayed out of the constraints a witness is placed under whilst giving evidence. It was also stated that the Respondent had grave misgivings about how the Claimant was able to transcribe board meetings, how she came into possession of the recordings of board meetings and how many more such recordings she had.

14. The Claimant was candid that she had 12 recordings of board meetings stored on her laptop and the dates of the recordings would be stated in the 'properties' function; she said that the Tribunal '*would be welcome to inspect my laptop*.' The Tribunal took the unusual step to look at the dates of the files in question

(first the Employment Judge and then Tribunal Member Ms. Cook), always maintaining an appropriate distance, and told the Respondent the dates of the recordings. The Claimant was asked a few times if she was happy to provide the information and she confirmed that she was, and had no objection as she had nothing to hide and was doing so voluntarily. The Claimant was coöperative and congenial.

15. Mr. Panesar mentioned that when Fraser Henry (Director, General Counsel and Company Secretary) was observing the Hearing or giving evidence, he would require a five-minute break every hour due to his impairment. This was agreed. Mr. Panesar also mentioned that as the Claimant was representing herself, the Respondent had no objection to the Claimant making notes during cross-examination on the proviso that the notes were related to re-examination points only. The Claimant agreed and the Tribunal granted her permission to do so.

16. It was also made explicitly clear to the Claimant that should she need a break at any time, she should speak up and a short adjournment will be granted. The Claimant did ask for breaks, frequently, when she became emotional and a break was taken. At times, when the Claimant's emotions surfaced or she became teary, we imposed breaks even when the Claimant would insist that she was fine to carry on. On 20th October 2023, the Claimant said that she was tired as she had had only four hours of sleep. We enquired if the Claimant felt fit enough to continue and she assured us that she did, but would like an early finish. We adjourned at 2.56pm that day so the Claimant could benefit from some rest.

Procedure and Documents

17. The Tribunal had before it:
    (a) An agreed core hearing bundle consisting of 3,465 pages;
    (b) a cast list;
    (c) a chronology; and
    (d) the Respondent's outline opening (which incorporated the List of Issues).

18. The Tribunal also had written witness statements and heard live evidence[4] from:

For the Claimant

(i) The Claimant;

(ii) Dr. Garrod;

For the Respondent

(iii) Luke Tanzer;

(iv) Jane Badejoko;

(v) Fraser Henry[5];

(vi) Nicholas Johnson;

(vii) Kalpana Shah;

(viii) Judith Wilding;

(ix) Mark Bannister;

(x) Charlotte Pritchard; and

(xi) Sophie Urwin[6].

19. The Claimant and Respondent both provided written closing submissions and supplemented them with oral submissions at the conclusion of the evidence.

Findings of Fact

20. The following findings of fact were reached by the Tribunal, on a balance of probabilities, having considered all of the evidence given by witnesses during the Hearing, including the documents referred to by them, and taking into account the Tribunal's assessment of the witness evidence.

[4] Except Mr. Garrod who did not give live evidence.
[5] Via CVP video conference.
[6] The Respondent informed the Tribunal, on 11th October 2023, that Ms. Urwin's evidence is relevant to remedy only and therefore, she did not attend the Hearing as a witness.

21. Only findings of fact relevant to the issues, and those necessary for the Tribunal to determine, have been referred to in this judgment. It has not been necessary, and neither would it be proportionate, to determine each and every fact in dispute. The Tribunal has not referred to every document it read and/or was taken to in the findings below but that does not mean it was not considered if it was referenced to in the witness statements/evidence and considered relevant.

22. The Claimant is a qualified chartered company secretary and had attained a degree in law, a postgraduate master's degree in law and has also completed the Legal Practice Course (although the Claimant had not qualified as a solicitor). The Claimant had approximately ten years company secretarial experience. Her employment with the Respondent began on 11th May 2015, at the Respondent's office in Brighton, and Judith Wilding (Director of Human Resources) was on the interview panel which appointed the Claimant. The Claimant had been working in London and was thrilled to have secured a role close to where she lived. The Claimant went on sick leave in October 2019 and did not return to work at all prior to the termination of her employment.

23. The Respondent provides management services to legacy and run-off businesses and portfolios and has offices in the UK, Malta, Ireland and Bermuda. The Respondent grew its business by buying 'books' of business and acquiring other businesses.

Early on in the Claimant's Employment

24. The Claimant's employment between May and December 2015 was unremarkable in that there were no incidents between the parties and no change to the Claimant's day-to-day work routine and duties. The Claimant worked efficiently and completed tasks in good time to the extent, that there was a marked improvement in the Respondent's company secretarial (CoSec) function after the Claimant joined.

25. The only issue of note was that the Claimant was anxious, sometimes overly sensitive and at times would feel slighted quite easily by innocuous acts. Ms. Wilding observed this of the Claimant. This was why the Claimant felt, from

early on in her employment, that Mr. Henry had a '*terse'* attitude although, the evidence does not reflect this. The Claimant also did not always carry out specific instructions given to her by Mr. Henry. As the Claimant was new in her role, Mr. Henry had asked the Claimant to send him any emails to directors she had drafted so he could check them, suggest amendments, and correct any errors. Although this was a reasonable request on Mr. Henry's part the Claimant took umbrage to this and sent emails directly to directors anyway thus, ignoring his request.

26. Unfortunately, this was a sign of things to come. The Claimant quickly made it evident that she did not require guidance or management from Mr. Henry and that she was more than capable of doing her job without his oversight. When the Claimant did not agree that a task should be completed in the way Mr. Henry wanted it done, rather than discuss the matter with him, she would go straight to Luke Tanzer (Managing Director) and raise the matter with him. The Claimant would then tell Mr. Henry that she had spoken with Mr. Tanzer and that the task would be done in the way *she* wanted to do it. This was unreasonable of the Claimant and an example of her trying to keep Mr. Henry 'in check' by intimating that she had the full support of Mr. Tanzer (who, as the Respondent's Managing Director, was of course Mr. Henry's senior). We have no doubt that this would have put a strain on the relationship between the Claimant and Mr. Henry and he would have been more cautious when dealing with the Claimant than he should have had to be as her senior manager.

27. The Claimant believed Mr. Henry to be her equal, hierarchically speaking, rather than somebody she reported to and was managed by. This is apparent from the Claimant's language; *'I agreed to keep an eye on my Blackberry so that I could* ***direct*** *Mr Henry to cover tasks in my absence'* [SG, para 15] (our emphasis). The Claimant's resentment at being junior to her more qualified, experienced and senior colleagues and the inflated view of her own abilities and qualifications led to the Claimant developing a superiority complex. This is addressed further on in this judgment.

28. The Claimant had her first appraisal with Mr. Henry on 11th and 22nd December 2015 [238-240]. This was a positive process with Mr. Henry acknowledging that the Claimant had improved the Respondent's CoSec function and that her work was '*excellent*.' Mr. Henry discussed with the Claimant an opportunity to undertake a distance-learning MBA to allow her to further develop her skills and progress her career. The Claimant also benefitted from Mr. Henry's experience when he gave her constructive advice on how she could improve her communication style which at times could be brusque. As part of the appraisal, Mr. Henry told the Claimant of a plan to recruit an additional person to the team to support the Claimant and relieve her from carrying out more mundane tasks. Despite the unsteady start between the two, Mr. Henry was encouraging and supportive of the Claimant.

Promotion and Further Issues with Senior Managers

29. Following her appraisal, the Claimant was promoted from assistant company secretary to the role of company secretary, with effect from 1st January 2016. The Respondent had recognised the good work the Claimant had done and in March 2016, Ms. Wilding informed the Claimant that she had been awarded a 3% pay increase and a bonus of £5,265.00p; 90% of the maximum level of bonus potential.

30. On 8th April 2016 Jamie Stacey (Head of Compliance) who was more senior to the Claimant, emailed the Claimant regarding induction plans for the independent non-executive directors ('INEDS') and said that if the Claimant had other priorities he would pick up the tasks he had wanted the Claimant to do. The Claimant responded stating that she had more pressing commitments and that if he had concerns as to her priorities, he should take matters up with Mr. Tanzer. This was an unhelpful response to a reasonable email from Mr. Stacey and led to further email traffic between the two in which the Claimant became increasingly hostile, accusatory and threatening.

31. The Claimant accused Mr. Stacey of not speaking to her with respect, being rude, bullying, unfair, ungrateful, and threatened to complain to HR about Mr. Stacey [333]. The tone of the Claimant's emails and the allegations she made

against Mr. Stacey led to him bringing the matter to Mr. Henry and Ms. Wilding's attention.

32. In cross-examination, the Claimant accused Mr. Stacey of shouting at her and had previously also accused Mr. Henry of shouting at her. These are uncorroborated allegations and Messer's Stacey and Henry did not shout at the Claimant. A common theme emerged of the Claimant making allegations of bullying against anybody who gave her tasks which she did not like, or want to do, and further demonstrates her resistance to reasonable instructions from colleagues considerably senior to her.

33. Mr. Stacey's concerns regarding the Claimant led to Mr. Henry arranging a meeting with the Claimant which took place on 21st April 2016. Mr. Henry showed the claimant a copy of 'guiding principles' and discussed her email exchange with Mr. Stacey. Mr. Henry explained that her emails were inappropriate and confrontational and that in future, if the Claimant was concerned about the tone of her emails or wanted to make a complaint about someone, she should discuss it with Mr. Henry in the first instance. It was also explained to the Claimant that due to her workload and the issues they were meeting about, it would be better if the Claimant deferred the start of her MBA. Following this meeting there was somewhat of an, increasing froideur between the Claimant and Mr. Henry.

Late Minutes - 2015 Onwards

34. As had been discussed at the Claimant's December 2015 appraisal, Ben Huggins (administrative assistant) was recruited by the Respondent to provide administrative support for the corporate legal team and assist the Claimant with her increasing workload. At around this time, there was a delay in finalising and disseminating minutes of board meetings so it was thought the additional support of Mr. Huggins, would be beneficial to the Claimant in this regard.

35. Producing minutes of board meetings in a timely and competent manner was an essential part of the duties of the company secretary. The delayed board meeting minutes issue was not new and had been a problem from before the

Claimant's employment even began and was a continual enduring problem. In **2015** alone: 34 sets of minutes were sent out after one month; eight sets of minutes were sent out after two months; five sets of minutes were sent out after three months; three sets of minutes were sent out after four months; one set of minutes was sent out after seven months; and one set of minutes was sent out after eight months.

36. In **2016**, 36 sets of minutes were sent out after one month; six sets of minutes were sent out after two months; one set of minutes was sent out after three months; three sets of minutes were sent out after four months; and five sets of minutes was sent out after five months.

37. In **2017**, 44 sets of minutes were sent out after one month; eight sets of minutes were sent out after two months; eight set of minutes were sent out after three months; 25 sets of minutes were sent out between four to eight months; one set of minutes was sent out after five months; one set of minutes was sent out after seven; one set of minutes was sent out after eight months.

38. In **2018**, five sets of minutes were sent out after one month; nine sets of minutes were sent out after two months; two set of minutes were sent out after three months.

39. Therefore, the Claimant was well aware that there was an issue to be addressed in respect of delayed board meeting minutes even though there had been an improvement since she joined the Respondent due to her diligence. Whilst not all, or even most, instances of minutes being sent out late were attributable to the Claimant, she did send out minutes late despite her best endeavours.

40. Minutes being sent out late was a constant bane for the Respondent. The CoSec team had had a history of being under-resourced and at the rate the Respondent was expanding its business, the historic problem was exacerbated and it was clear that one individual would not be able to perform the company secretary role and meet expectations.

2017

41. At the beginning of 2017, Mr. Fraser had circa six-months of absence from work due to ill-health. During his absence there had been an annual review of the Claimant's salary. On 1st February 2017, the Claimant received another 3% pay increase and a bonus of £8,807.00p; 95% of the maximum level of bonus potential.

42. Nicholas Johnson (Head of Corporate Legal) joined the Respondent as legal counsel, on a temporary basis, in October 2017 and supported Mr. Henry and the corporate legal team. Mr. Johnson was a qualified solicitor with considerable experience in the insurance and reinsurance market. He had managed departments which included both lawyers and non-lawyers.

43. In November 2017 the Claimant had her annual appraisal with Mr. Henry which was positive and went well. The Claimant was pregnant at this time but had not disclosed this to anybody which, of course, was her prerogative. On 5th December 2017 following a 12 week scan, the Claimant informed Mr. Henry of her good news.

44. During 2017, the Respondent had embarked on a considerable number of projects and made many acquisitions. This included the acquisition of project Arven which was considerable in size and increased work at the Respondent significantly, not least, in CoSec.

2018: Maternity Leave

45. In April 2018, Mr. Johnson was made a permanent staff member at the Respondent in the capacity of senior manager in the corporate legal team. Mr. Johnson was also tasked with managing the corporate legal team to support Mr. Henry (whom could then focus on other matters) and in order to align the corporate legal team structure with the Respondent's other department structures.

46. In April 2018 the Claimant informed the Respondent that she intended to take 52 weeks of maternity leave from 8th June 2018. However, the latter stages of pregnancy had left the Claimant feeling tired and uncomfortable so she emailed Mr. Henry and Ms. Wilding on 24th April 2018 and said that she would like to take a week of holiday between 4th to 8th June 2018 and if that could not be accommodated, she would like her maternity leave to begin on 4th June 2018.

47. As any corporation would do, once the Respondent was aware that the Claimant was pregnant and would be going on maternity leave, they had turned their mind to finding maternity cover to perform the Claimant's role during her absence. The Respondent's search was successful and they were able to secure Jane Badejoko to cover the Claimant's maternity leave. Ms. Badejoko was suitably skilled for the role, as a qualified solicitor (non-practising) with considerable minuting and corporate governance experience. Ms. Badejoko resided in London but did not mind the commute to Brighton as she was aware that her assignment was temporary. The Respondent had envisaged an overlap between Ms. Badejoko beginning her role and the Claimant going on maternity leave so that there would be a smooth transition. Due to the length of notice Ms. Badejoko was obliged to provide to her former employer, the earliest she could start with the Respondent was 4th June 2018. Therefore, Ms. Wilding asked the Claimant if it would be possible for her to commence her maternity leave on 11th June 2018 so that she would have the opportunity to meet Ms. Badejoko and assist her with any queries she may have had as a newcomer to the Respondent. Ms. Wilding's query was just that. A question. There was no pressure applied to the Respondent to delay the start of her maternity leave.

48. On 9th May 2018 the Claimant sent Ms. Wilding an email stating that her work load was heavy, she was stressed, sick from Norovirus, desperate, and that she *'just need(ed) to switch off from work.'* As Ms. Wilding had only *asked* the Claimant if she could work one more week before taking maternity leave, in her email the Claimant rather curiously said *'Please don't <u>make</u> me work w/c 4 June,…'* [503] (our underlining).

49. On the same day Ms. Wilding emailed the Claimant re-assuring her that she had only made a request and that the Claimant should go on her leave when it was right for her, even if that meant before 1st June 2018.

50. The Claimant began her maternity leave on 1st June 2018 and to mark the occasion, on 31st May 2018 the Respondent treated her (and other colleagues) to a sit-down meal at the 'Chilli Pickle' restaurant which was the Claimant's favourite eatery. At this lunch, the Claimant was given presents by the Respondent. On the day of her maternity leave Ms. Wilding emailed the Claimant and said that she was welcome to keep her work issue Blackberry and laptop whilst on maternity leave and stressed that this was for her convenience and not because the Claimant was expected to do any work. Mr. Henry had made clear to Ms. Wilding (also on 1st June 2018) that whilst the Claimant was able to retain the Respondent's Blackberry and laptop, it was to be reiterated that she was not required nor expected to work during her maternity leave.

51. The Respondent kept communication with the Claimant during her maternity leave to a 'necessary' basis. As the Claimant had stated that she was stressed and needed to switch-off from work, this was not an unreasonable approach. The Claimant had chosen to retain her work Blackberry and laptop so was not incommunicado and she could herself regulate when she chose to view any work-related communications. On 3rd August 2018 the Claimant attended a summer barbeque which the Respondent hosted annually for staff. The Claimant emailed Sophie Urwin (HR manager) confirming that she had had a lovely day at the barbeque and that she hoped that Ms. Urwin was not working *'like a maniac'* due to the recent acquisitions the Respondent had made.

52. On 4th June 2018 Ms. Badejoko began her assignment with the Respondent as the Claimant's maternity cover on a fixed-term contract.

Changes at the Respondent

53. The Respondent's business model was not complicated; it was growth. Growth of its business, growth of revenue and growth of its presence in the market. In

order to achieve this aim, the Respondent had always had a strategy of acquisition of businesses and portfolios and the Claimant did not dispute this. The period 2018 to 2020 was a time when the Respondent had, what can only be described as, exponential growth. One of the drivers of growth, was the Respondent's fervent acquisition of companies and portfolios. In 2018 the Respondent acquired: Project Arven; Project Hyperion; Project Legatum; and Project Regulated. In 2019 the Respondent acquired: Project Beaulieu; and the Advent group of companies. In 2020 the Respondent acquired: P95; Androp; Caerus; and Crown.

54. The frantic purchase of companies and portfolios led to the Respondent's staff members increasing from 130 to 220, a significant increase in the volume of boards and committees, and an increase in the amount of policies under management from £780 million to £7 billion. Whilst the Claimant was on maternity leave and up to 2022, the Respondent had acquired 28 new UK companies, several overseas companies and appointed two new non-executive directors.

55. The net result of the Respondent's rapid expansion was a very marked increase of workload across all departments of the Respondent including, and especially, the CoSec and corporate legal functions. Due to the growth experienced by the Respondent (which, at the time of this Hearing, was the largest syndicate in Lloyds) it came under even closer regulatory scrutiny which resulted in much more work for the CoSec team and an expansion in the Claimant's role.

56. There was a real fear by the Respondent that the increased strain the CoSec team had come under would result in further delay of it performing its functions and that one company secretary would not be able to cope with the workload. Even prior to her maternity leave and therefore, the Respondent's growth, the Claimant had found it difficult to cope with her workload and had complained to the Respondent that she felt under pressure.

57. In 2018 the Respondent changed the structure of its corporate legal team. Previously, Mr. Henry had an inordinate amount of people directly reporting to him. As Mr. Henry's role evolved and because he was unable to sustain the

rigours of his role due to health issues, the Respondent made the decision for the CoSec and corporate legal functions to report to Mr. Johnson, whom in turn reported to Mr. Henry. This change was effected on 1st June 2018. Due to the Claimant's heightened sensitivities and feelings of bearing too much pressure, the Respondent decided not to inform her about this change until after she had given birth and was in a more relaxed state [JW, para.17].

58. On 31st August 2018, Mr. Henry set up a monthly team lunch to take place on the last Friday of each month. Recurring diary invites were sent to the entire team including the Claimant.

59. Due to the changes in structure and reporting lines at the Respondent, on 1st January 2019 Mr. Johnson's job title was changed to 'Head of Corporate Legal.' The rationale for Mr. Johnson's change of title was that due to the changes in the Respondent's dynamics, Mr. Johson was frequently involved in intense negotiation with general counsel at other companies and law firms and his previous title did not provide him with the level of authority deserved or required. Mr. Johnson's actual role did <u>not</u> change.

60. The Head of Corporate Legal title given to Mr. Johnson was not a new role and therefore, not a role which was advertised or a role which anybody, including the Claimant could apply for. It was commercial expediency that led to the change of Mr. Johnson's job title by the Respondent.

<u>Changes at the Respondent and in CoSec</u>

61. As the Respondent had grown significantly in terms of business, size, staff and turnover, it quickly realised that an additional company secretary would be required to cope with the increase in work for an already strained CoSec team. Ms. Badejoko had performed exceedingly well in the company secretary role whilst the Claimant was on maternity leave. She was diligent and her work was of a high standard but the increased volume of work meant that even when the Claimant returned from maternity leave, one company secretary would not be sufficient to deal with the workload. Therefore, the Respondent decided that it would offer Ms. Badejoko a permanent role as a second company secretary,

equal in grade to the Claimant. Ms. Badejoko accepted the Respondent's offer and signed a contract to this effect on 2nd May 2019. Due to Ms. Badejoko's place of residence, she would be working from the Respondent's London office whilst the Claimant would return to her original role in the Brighton office.

62. The Respondent had been mindful to keep communications with the Claimant at a minimum whilst she was on maternity leave as prior to going on leave, the Claimant had been stressed and stated that she wanted a complete break from work. However, in or around March 2019, it was necessary for Mr. Johnson to discuss the proposed changes to CoSec with the Claimant. The Claimant did not fully understand the proposals which is evident from an email she sent to Mr. Johnson on 26th March 2019 [651]. The Claimant said that half of her role would be given to Ms. Badejoko and that she would not be returning to the same job. This was not correct. The Claimant further stated in her email that whilst she looked forward to working with Mr. Johnson and Ms. Badejoko, she felt that Ms. Badejoko should be retained as an *assistant* company secretary rather that a company secretary. It is clear that the Claimant, wrongly, felt that Ms. Badejoko was not as qualified and experienced as she was and resented the fact that they would be equals. The Claimant wanted Ms. Badejoko to report to her in the capacity of an assistant company secretary.

63. In the email the Claimant had sent to Mr. Johnson on 26th March 2019, she had stated a desire to undertake future development opportunities and expand her skills outside of CoSec. In order to facilitate the Claimant's request, Mr. Henry decided that the Claimant should be allocated two tasks; to produce a note on the implementation of Diligent Software and to adopt new articles for Group Companies. Both tasks were to be completed by the end of 2019 and would provide the Claimant with interesting career developmental opportunities. Mr. Henry's proposal was not a mandate and the Claimant was able to refuse the tasks should she have wished.

64. On 3rd April 2019 Mr. Johnson responded to the Claimant's email explain the reasons for the changes to CoSec and why it was necessary to appoint an additional company secretary. Mr. Johnson also assured the Claimant that

having two company secretaries was the most suitable way of dealing with the increase in work as it would be unfair to expect one person to shoulder the entire load. He also stressed that the Claimant, upon her return, would be responsible for the same company secretary duties as she had prior to her maternity leave. Finally in his email, Mr. Johnson stated that they could discuss matters further at the Claimant's next 'keeping-in -touch' ('KIT') day when Ms. Badejoko would also be present at work. The Claimant attended a KIT day on 12th April 2019 and met with Mr. Johnson and Ms. Wilding. At the meeting it was explained to the Claimant that: She was valued as a team member; her role was not being 'halved'; two full time company secretaries were needed (the delay in producing minutes had continued whilst the Claimant was on maternity leave); there had been a drastic increase in workload; changes in reporting lines had occurred across most departments not just CoSec; and that the changes would mean that the Claimant had future development prospects with the Respondent. Following the meeting, Mr. Johnson treated the Claimant to lunch at her favourite Chilli Pickle restaurant and they had a pleasant time.

KIT Days

65. On 14th April 2019, the Claimant emailed Mr. Johnson asking if she could take a KIT day on 10th May 2019. Mr. Johnson explained to the Claimant that on that date, a team meeting, followed by luncheon, had been arranged to take place in the London office on that date. However, as the Respondent wanted the Claimant to participate in the team meeting and lunch, the event was relocated to Brighton to accommodate the Claimant and her London colleagues travelled to Brighton rather than the Claimant having to travel to London. Mr. Johnson emailed the Claimant and informed her that matters had been re-arranged and the team lunch would take place at 12.30pm at the Park View public house in Brighton followed by the team meeting in the office. The Claimant attended the meeting but not the team lunch.

66. The Claimant attended a further KIT day on, 7th June 2019. Prior to this, the Respondent had commissioned an independent board effectiveness review ('iBER') which was undertaken by Vicky Kubitscheck. On 7th June 2019, the

Claimant met with Ms. Kubitscheck and was interviewed as part of the iBER process[7]. The Claimant's next KIT day – on 28th June 2019 – which had been arranged between the Claimant and either HR or Mr. Johnson, coincided with a team lunch. Nicola Johnson (no relation to Mr. Johnson) was due to leave the Respondent's employ and the team lunch also served as a leaving lunch for Ms. Johnson. It was not a specific leaving lunch for Ms. Johnson but a serendipitous circumstance and the Claimant did not attend the lunch despite having been sent a recurring invitation to team lunches.

The Claimant's Return from Maternity Leave

67. On 15th July 2019, the Claimant returned to work following her maternity leave. The Claimant alleges that a return to work lunch was not organised for her. However, the Respondent did not have the usual practise of organising specific lunches or events when a staff member leaves or joins the Respondent. Sometimes, the occasion of a person joining or departing from the Respondent coincided with a date near to the monthly team meeting. If that was the case, the team lunch may act as a joint event. The Respondent not organising a return to work lunch for the Claimant was not because of her pregnancy or maternity leave. When a colleague of the Claimant returned to the Respondent after a secondment at an external law firm, she did not have a return to work lunch arranged for her either.

68. Upon the Claimant's return to work, she and Ms. Badejoko were assigned one major client each (RIUK for the Claimant and RSMA for Ms. Badejoko) to ensure fairness and to avoid any one person doing more work than the other. Work in CoSec was abundant and the Claimant and Ms. Badejoko were extremely busy with their duties. The Claimant returned to her original role in CoSec albeit there were changes to the companies the Claimant provided company secretarial services to. The Claimant's role had never been to provide services exclusively to particular companies; it was to provide company secretarial services to companies as required. It was natural that as the Claimant had returned to a company that had massively grown and expanded,

[7] Ms. Kubitscheck's iBER findings were critical of CoSec and the delay in producing board meeting minutes.

the companies she provided services to also changed to meet demand and provide a high quality service. There was nothing untoward about this nor was any change because of the Claimant's pregnancy or maternity leave. During the Claimant's absence the Respondent had undergone significant change and had to adapt to this. Neither company secretary had a right to provide their services to a particular company only. The companies CoSec provided services to and how the companies were allocated to the Claimant or Ms. Badejoko, was determined by pragmatism, equity and business needs.

69. The Claimant's contract of employment stipulated that her role was not specific to certain companies or agency companies only which would exclusively be 'her companies.' The companies allocated to a company secretary was in the gift of the Respondent. Thus, it follows that the taking of minutes for a particular company was not an entitlement for the Claimant or Ms. Badejoko. They were both allocated minute taking duties for companies according to business needs and convenience. Furthermore, as the Claimant had expressed a desire to be allocated interesting projects, this would only have been achievable if there was fluidity in which companies were allocated to her. For these reasons the Respondent did not discriminate against the Claimant or subject her to a detriment by adjusting the agency companies the Claimant provided CoSec services for.

70. What is of significance is that the Claimant returned to, her original role, the same grade, the same (increased) pay and conditions, the same location, and the same benefits. A change which *had* occurred upon the Claimant's return, was the manager the Claimant was required to report to (Mr. Johnson rather than Mr. Henry). The reasons for the change in the Claimant's line-management have been discussed above and were not related to her pregnancy or maternity leave. The change did not amount to a demotion of the Claimant or a detriment.

71. Prior to going on maternity leave, <u>part</u> of the Claimant's duties was to attend the Respondent's Group Remuneration Review Committee 'GRRC'). As with the companies assigned to a company secretary, the Claimant nor Ms.

Badejoko had a sole *right*, contractual or via custom and practice, to attend and deal with the GRRC. Upon returning from maternity leave the Claimant failed to appreciate the scale of change at the Respondent or that the appointment of Ms. Badejoko as a company secretary, would lead to obvious changes to how committees and companies would be assigned in CoSec. The Respondent was striving to ensure that duties were designated in a fair and efficient manner in CoSec. The Claimant felt that as some of the companies and committees she had previously dealt with had changed, her actual role had changed. This was not a sensible conclusion to arrive at. The very nature of the Respondent's business meant that its corporate landscape was constantly evolving.

72. It is undisputed that the Claimant returned to a very different company than she had left when she began her maternity leave. What is also apparent, and understandable, is that the Claimant will have been daunted at the level of change in the Respondent's size, turnover and staff numbers. The appointment of Ms. Badejoko as additional company secretary had also caused the Claimant some chagrin. The Claimant did not accept that Ms. Badejoko was her equal, and not her assistant, as she had wanted, and felt that she was far more able, qualified and experienced than her peer. Cumulatively, these feelings led the Claimant to convince herself that she had returned to a different role and duties when she returned to work in July 2015. Nothing could be further from the truth. The Claimant had returned to her same role and duties and the only significant changes were: (a) The Claimant's pay had increased (b) the Claimant was no longer the *only* company secretary, and (c) the appointment of Ms. Badejoko had eased the burden on the Claimant and went some way toward turning CoSec into a more efficient and dynamic unit. The Claimant's *role* and *duties* had not changed, the *company* had changed. It had changed into a larger, more successful, prosperous and 'heavyweight' outfit.

73. The Claimant's consternation to the changes at the Respondent she had returned to, led her to become hypersensitive. The Claimant believed that she was being excluded from emails sent by Ms. Badejoko and Messer's. Henry and Johnson. This was not true. There is a distinction between a person being omitted from an email which they had no reason to be included in and a person

not being copied into emails which they should have been included in, to aid the execution of their role. There was no deliberate exclusion of the Claimant from emails. The Claimant felt that she had the right to be included in all emails to do with CoSec even when the subject matter of emails did not directly concern or affect her. What the Claimant had wanted was for Ms. Badejoko to copy her into all the emails she sent without the Claimant reciprocating. The Claimant would also insist on sitting-in on meetings Ms. Badejoko was dealing with whilst she would make Ms. Badejoko sit outside of meetings that she was attending [JB, paras. 27-28]. This is further evidence of the Claimant viewing Ms. Badejoko as her junior and not her equal. Notwithstanding, that whilst Ms. Badejoko was a qualified solicitor and had previous experience of managing a team, the Claimant was not a qualified solicitor and had no prior experience of managing a team.

Relations Between the Claimant and Ms. Badejoko.

74. On 4th and 6th September 2019, the Claimant and Ms. Badejoko attended the Respondent's strategy, board, and committee meetings 'away days' at Ashdown Park in East Sussex. The two company secretaries were required to coordinate material and minute meetings and sessions at the away days. This event, unfortunately, was the beginning of a deterioration in relations between the Claimant and Ms. Badejoko.

75. The Ashdown Park event did not start very well. Ms. Badejoko felt that the Claimant ignored her messages and was dismissive of her when they met in person. During the course of the event, the Claimant had asked Ms. Badejoko to organise pastries, request reception to fix her hotel room television, and carry her notebooks to her car whilst walking a pace or two in front of Ms. Badejoko. This caused Ms. Badejoko to feel that she was being treated as a minion by the Claimant. Ms. Badejoko was also upset that the Claimant had not told her that she and others were going to lunch and only was told her half way through the lunch which meant that when Ms. Badejoko attended, the Claimant and others had finished eating. The Claimant was irked by Ms. Badejoko handing out material which directors had requested because they were materials for 'her'

meetings. On 12th September 2019, the Claimant and Ms. Badejoko attended a course in London and the Claimant ignored Ms. Badejoko.

76. The incidents on 4th, 5th, and 12th September 2019 caused both the Claimant and Ms. Badejoko to complain to Mr. Johnson. Mr. Johnson asked Ms. Badejoko to attend the Brighton office on 16th September 2019 and took her and the Claimant to a café to discuss their respective complaints. The meeting lasted around two hours and at its conclusion, Mr. Johson believed that matters between the two had been resolved. The Claimant and Ms. Badejoko agreed that in future, they would be mindful to speak to one another with respect and work collaboratively.

The Claimant's Second Pregnancy

77. At the conclusion of the meeting on 16th September 2019, the Claimant informed Mr. Johnson and Ms. Badejoko that she was pregnant but was worried about what other staff my think. The Claimant's latter comment surprised Mr. Johnson as to the best of his knowledge, the Respondent had not treated an employee unfavourably due to becoming pregnant or going on maternity leave.

78. The Respondent had a practice of hosting 'team building' activities and social events to reward staff, improve morale, and promote cohesion. The cost of such events was borne by the Respondent. At a Christmas event, the Claimant attended with her husband and dog and the Respondent had paid for all meals, accommodation and activities except for the Claimant's dog's board which she had paid circa £15.00 for.

79. On 26th September 2019, the Respondent had held a 'Legal Department Goals Meeting' followed by an evening supper. The invitation had been circulated to all staff on 10th May 2019 and the meeting was to take place between 3.00pm to 6.00pm after which the evening event would take place. At this point in time the Claimant had adjusted her working hours to 8.30am to 4.00pm to accommodate her childcare duties. The litigation team (which was based in London) would be travelling to Brighton to attend the meeting and evening meal. The Claimant informed Mr. Henry that she would be unable to attend the

meeting and meal due to her adjusted working hours. In an attempt to counter this, Mr. Henry re-scheduled the meeting for 2.00pm so that the Claimant could attend. He was unable to change the time of the supper due to the fact that a large number of people would be attending from London and had already booked train tickets and made childcare and other arrangements. However, Mr. Henry told the Claimant that in future, he would organise a lunch instead of a supper so that the Claimant could attend.

80. As the event had been organised over four months in advance, it is very implausible that Mr. Henry arranged the timing of the meeting and meal specifically so that the Claimant would be excluded from them. A monthly team lunch had been scheduled to take place on 27th September 2019 but as the team had had a meeting and supper the previous day, the team lunch was cancelled. Again, the cancellation was not because Mr. Henry wished to exclude the Claimant but a matter of simple convenience. The Claimant's belief that the two occurrences were deliberately staged so as to exclude her was her hypersensitivity trespassing into the realms of paranoia.

81. Following the iBER audit which had taken place, the Respondent's INEDS were keen to broach the issue of very delayed board meeting minutes by CoSec and implement the recommendations of iBER. To this end, Kalpana Shah (INED and someone whom the Claimant had been inspired by [815]) emailed the Claimant and others stating that the Claimant and Ms. Badejoko should send draft minutes to the Chair within one week of the corresponding meeting. The Claimant responded to Ms. Shah on the same day and sent her a curt response [831]. The Claimant stated that Ms. Shah's request was unrealistic and that CoSec had *'other immediate work'* which Ms. Shah was unaware of. In response, Ms. Shah emailed the Claimant to say that she was happy for the deadline to be extended from one week to 10 working days. Ms. Shah's frustration is understandable as she, and other INEDS, had not received minutes for the Respondent on time. Ms. Shah was not attacking the Claimant personally but addressing the deficiency in CoSec as a whole.

82. On 15th October 2019, Ms. Shah and Tom Riddell (INED) travelled to London to meet with the Claimant and Ms. Badejoko (the Claimant attended remotely from Brighton due to a medical appointment) to discuss the resource and needs of the CoSec function and agree on action plans for the future. The meeting induced further frustration in Ms. Shah as the Claimant refused to meaningfully engage in the meeting and held fast to her opinion that there was no issue with the CoSec function and that she did a good job. Ms. Shah explained that the Claimant as an individual was not being scrutinised but the CoSec team, as a whole, was. Due to the Claimant's stance, a timeframe in which to produce and disseminate minutes was unable to be agreed. The Claimant was steadfast in her belief that there was no issue and that she and CoSec were performing well and did not require further resources. Ms. Shah voiced her opinion that if there was no resource problem in CoSec then the issue may be time management and the prioritisation of work.

83. Ms. Shah did not place pressure on the Claimant to abide by stringent deadlines but was simply trying to agree on a mutually acceptable deadline (a deadline of three weeks was later agreed with Mr. Johnson). Neither did Ms. Shah state that she *'didn't care'* that the Claimant had a schedule of holiday booked. Ms. Shah was addressing the CoSec function as a whole and not individuals within it.

84. Every week (insofar as circumstances allowed) Mr. Henry or Mr. Johnson would host a team meeting; the first portion would be a meeting of CoSec and the legal team would join the second half of the meeting to have a department wide meeting. On 17th October 2019, the Claimant, Ms Badejoko (via telephone conference call), Ruth Lyall and Messer's Henry and Johnson met for the CoSec weekly meeting in Mr. Henry's office. Prior to the meeting the Claimant had emailed Sophie Urwin (HR associate) and Mr. Henry stating that she was pregnant and her due date of delivery was 18th April 2020. At the meeting workload and deadlines were discussed and the Claimant revealed that she was struggling to get some minutes completed within the prescribed timelines due to other work commitments.

85. Ms. Badejoko said that she had some capacity and offered to produce a first draft of the minutes the Claimant had been unable to produce. However, the Claimant did not accept or welcome Ms. Badejoko's offer.

86. Soon after, Ms. Badejoko left the meeting. At this point Messer's Henry and Johnson said to the Claimant that as she was having some difficulty in completing the minutes, she should accept Ms. Badejoko's offer of help. Mr. Henry told the Claimant that he would prefer that Ms. Badejoko begin drafting the minutes for the Claimant to approve as this would ease the pressure on her. The Claimant did not take kindly to this suggestion and became aggressive. She stated that the minutes were *her* minutes for *her* client and that *she* would produce them. The Claimant then accused Messer's Henry and Johnson of trying to take tasks away from her and attempting to re-write her work profile. This was not the case. No tasks were being taken away form the Claimant. Instead, the Claimant was being offered assistance in completing a task she was struggling with.

87. Mr. Henry tried to assure the Claimant that Ms. Badejoko was acting out of benevolence and urged her to accept the offer of help. This incensed the Claimant further and she threatened to complain to HR that work was being taken away from her. The Claimant's stubborn refusal to accept help and her threat to report him to HR annoyed Mr. Henry who said words to the effect of *'you do that'* and walked out of his office to calm down. Mr. Henry returned back a short while later and began to work at his desk. The meeting clearly being over, Mr. Johnson and the Claimant left.

Sickness Absence and Grievance

88. On 18th October 2019 the Claimant was absent from work due to illness and had been signed off work by her GP due to *'stress at work.'* The Claimant remained off work until the termination of her employment. During her time of work due to sickness, the Claimant contacted the Equality and Human Rights Commission and undertook her own research on the Acas code on grievance

procedures. Informed by her research, the Claimant raised a lengthy grievance on 30th October 2019 [972-979].

89. The headline of the Claimant's grievance was that she had been subjected to bullying, harassment, and direct and indirect discrimination on grounds of pregnancy and maternity leave. The matters complained of in the Claimant's grievance stretched back to her very first week of employment with the Respondent in February 2015 and a sizeable portion of the grievance is comprised of the Claimant complaining about Ms. Badejoko's alleged inferior quality of work. The Claimant had indicated that she would be happy for her grievance to dealt with by Mark Bannister (Group Chief Operating Officer).

90. The Respondent initially decided to deal with the Claimant's grievance by way of a preliminary discussion between the Claimant and Harry Sherrard (solicitor) who was independent of the Respondent. The Claimant and her husband met with Mr. Sherrard on 8th November 2019 at Singing Hills Golf Course. Employment Judge Harrington, at a Preliminary Hearing on 28th May and 3rd to 5th August 2021, made specific findings as to the meeting in a judgment at pp. 3467-3483 of the bundle. We do not interfere with Employment Judge Harrington's findings save as to say, that the meeting between the Claimant and Mr. Sherrard did not resolve her grievance.

91. Mr Bannister was tasked with investigating the Claimant's grievance, in November 2019, by the Respondent's HR and he set about his investigation by interviewing Messer's Henry, Johnson and Tanzer, and Ms. Wilding. These interviews were conducted prior to a planned interview with the Claimant on 6th December 2019.

92. On 5th December 2019, Mr. Bannister emailed the Claimant asking if their meeting scheduled at 2.00pm on 6th December 2019 could be brought forward to 1.30pm. The Claimant responded to Mr. Bannister advising that her husband would not be available to attend the meeting and that her GP had advised that she was not fit to attend the planned meeting [1080]. The Claimant also stated

that her GP had recommended that as she was unable to attend an in-person meeting, any questions should be put the Claimant in writing as an alternative.

93. Mr. Bannister responded to the Claimant the next day and set out that:

(a) He had no intention to ask the Claimant to leave her job;
(b) he would not be legally represented at the meeting but a notetaker from Sherrards solicitors would be attending as the Claimant did not want a notetaker from the Respondent;
(c) he had spoken to the relevant people in respect of the grievance; and
(d) that due to the depth of her grievance and its sensitive nature, it would be preferable to meet face-to-face.

The Claimant telephoned Mr. Bannister and said that the grievance meeting would be a *'sham.'* Mr. Bannister re-iterated what he had said in his email, explained why it would be more beneficial to have an in-person meeting, and assured the Claimant that he would be fair and impartial. The Claimant said that she would speak with her husband and revert to Mr. Bannister.

94. The Claimant emailed Mr. Bannister on 9th December 2019 and said that in consideration of her health and after having spoken with her husband, she had opted to answer any questions from Mr. Bannister in writing rather than a face-to-face meeting. Mr. Bannister acceded to the Claimant's request and on 16th December 2019 he emailed the Claimant explaining how he was investigating her grievance and sent her questions to answer in writing, as she had requested [1085-90]. The questions posed by Mr. Bannister (16 in total) were comprehensive and covered all relevant aspects of the Claimant's grievance.

95. On 17th December 2019 the Claimant sent Mr. Bannister her responses to his questions and in the covering email, complained that his questions had taken time to be sent to her, were one-sided, and that she was being painted as a *'bad employee.'* The Claimant's response to Mr. Bannister's question was interspersed with her own questions. Overall, both from her responses (which contained a degree of aggression) and own questions, it is apparent that the Claimant felt that only she was right and her colleagues were wrong in every

aspect of something she disagreed with. The Claimant sought to feign that she knew why people had acted as they did even if it would have been impossible for her to have had this knowledge. An example is that the Claimant accused Mr. Johnson of treating her to lunch at her favourite Chilli Pickle restaurant because he felt guilty. This was not the case and a pattern of the Claimant skewing altruistic acts into something sinister and duplicitous. The Claimant, for instance, stated in her response that her promotion to company secretary and the payment to her of bonuses was because the Respondent had to do these things not because the Respondent was an employer committed to rewarding deserving members of staff. More seriously, she outright stated that Ms. Wilding and Mr. Johnson had been proven to be liars; they had not, and neither is there any evidence of them having lied in respect of the Claimant or at all.

96. On 23rd December 2019, Mr. Bannister advised the Clamant that he would be conducting further interviews with staff as a result of her responses and also posed five further questions to the Claimant [1150-51]. As the Claimant had maintained that there was nothing wrong with CoSec resources and the way it functioned, Mr. Bannister decided to write to the relevant INEDS for their views. Mr. Masterson (INED) responded to Mr. Bannister and corroborated the Respondent's position i.e. that CoSec was under resourced, that the volume of work had significantly increased, and that he absolutely agreed that the Respondent required two company secretaries. The other INEDS responded to Mr. Bannister with similar sentiments and Ms. Shah, stated that in her time with the Respondent, she had never seen board meeting notes completed in a reasonable timeframe.

97. On 2nd January 2020 the Claimant responded to Mr. Bannister's further questions and maintained that CoSec were not under resourced, problems in CoSec would not have arisen if she had not been on maternity leave, a second company secretary was not required, and sought to ally blame on Ms. Badejoko for shortcomings in CoSec.

98. Mr. Bannister emailed the Claimant on 8th January 2020 and informed her that he hoped to conclude his investigation soon and when he had, the findings would be shared with her. On 11th January 2020, the Claimant emailed Mr. Bannister and stated that she had begun Acas early conciliation as she intended to make an Employment Tribunal claim against the Respondent. The Claimant also accused Mr. Bannister of deliberately delaying his conclusion of the grievance investigation in an attempt to allow the primary time limit to elapse (the Claimant believed that she had until 16th January 2020 to submit her claim) and effectively time-bar the Claimant from submitting an Employment Tribunal claim. There is no evidence of Mr. Bannister seeking to thwart a potential claim from the Claimant.

99. As part of his investigation, Mr. Bannister had received a statement from Bill Evans (Head of Litigation) who had briefly line-managed the Claimant in early 2017. Mr. Evans believed – from his interaction with her whilst she reported to him – that the Claimant: Was reluctant to discuss pre and post board meeting processes; was protective of her role; made him feel like he was interfering; found it difficult to report to Mr. Henry; was dismissive of queries from Mr. Henry; and desired a direct reporting line to Mr. Tanzer.

100. In the Claimant's grievance she said she had text messages from Mr. Henry where he was pressuring her to work continuously following an operation. On 13th January 2020, Mr. Bannister asked the Claimant for copies of the text messages. The Claimant responded to Mr. Bannister on 16th January 2020, stating that the said text messages were on an *'old phone but it has a cracked screen'* and that she *'would need to recover the data at the apple store.'* The Claimant asked Mr. Bannister to proceed to his conclusions nonetheless. During cross-examination from Mr. Panesar, the Claimant said that she had dropped her mobile telephone (with the alleged text messages from Mr. Henry) whilst chopping wood. She then said that the mobile phone was '*lost'* and then provided an alternative explanation saying that she had '*thrown* (it) *away*.' We find that there were no such messages sent to the Claimant

from Mr. Henry. If the messages existed, the Claimant would have preserved and produced them.

101. Mr. Bannister then finalised and produced his grievance investigation report [1218-1236] and sent it to the Claimant on 17th January 2020. Mr. Bannister's report was comprehensive and clear. The report was divided into two parts, 'discrimination' and 'behaviour.' The Claimant's grievance in respect of discrimination was not upheld. Mr. Bannister found that whilst the Claimant's work was of a very high standard, the CoSec function prior to the Claimant's maternity leave was not *'fit for purpose'* and this continued upon the Claimant's return from maternity leave. It was evident from Mr. Bannister's findings that he was not apportioning blame to the Claimant for CoSec's deficiencies and that an additional company secretary was a stark necessity as opposed to an indulgence. The appointment of Ms. Badejoko as a second company secretary had not diminished the Claimant's role but had the effect of enhancing the functions of CoSec.

102. It is plain from Mr. Bannister's report that there was no evidence of the Claimant returning to a, lesser or different role, inferior pay or conditions, inferior status, or that the Claimant's career progression had in any way been impeded. However, Mr. Bannister did find that the Respondent could have explained in more detail why a second company secretary was needed and been more frank about the shortcomings of CoSec especially in light of the Respondent's exponential growth; but accepted that this was done as the Claimant could be sensitive of perceived inadequacy or criticism. Mr. Bannister also found that the Claimant had been dishonest in leading Mr. Johnson and Ms. Wilding to believe that she had accepted a new role profile when in fact, she had 'spoiled' her signature in the way a person may spoil a ballot paper.

103. Ultimately, Mr. Bannister did not find any evidence that the Claimant had been discriminated against for reasons of maternity and, or, pregnancy.

104. In respect of the second aspect of the Claimant's grievance 'behaviour,'

Mr. Bannister's findings can be summarised as follows,

(i) Whilst the relationship between the Claimant and Mr. Henry was at times strained, he did not humiliate, bully, or act inappropriately to her there was no evidence of Mr. Henry raising his voice to the Claimant (nor anybody else).

(ii) The Claimant was not supported in pursuing a MBA as it was not commercially beneficial to the Respondent and that decision applied to any member of staff who wished to embark on a MBA.

(iii) The Claimant had not been excluded from social or team events by Mr. Henry, Mr. Johnson, nor anybody else.

(iv) The individuals interviewed by Mr. Bannister (and the INEDS whom had provided statements to him) had been honest and transparent, there was no evidence of any ulterior motives.

Thus, Mr. Bannister did not uphold this aspect of the Claimant's grievance and advised her of her right of appeal.

Grievance Appeal

105. On 23rd January 2020 the Claimant appealed the grievance investigation findings [1266] and Charlotte Pritchard (Group Risk and Compliance Director) was tasked to deal with the appeal. Ms. Pritchard was an exceptionally able and talented member of the Respondent's staff. Having begun employment with the Respondent in 2017 as an Internal Audit Manager, Ms. Pritchard swiftly rose through the ranks due to her dedication and hard work.

106. Ms. Pritchard was of sufficient seniority and standing to handle the Claimant's grievance and hitherto, she had had minimal contact or interaction with the Claimant so was appropriately impartial. Prior to her appointment to chair the Claimant's grievance appeal, Ms. Pritchard had been unaware that a grievance had even been raised by the Claimant.

107. In order to adequately prepare to chair the Claimant's appeal, Ms. Pritchard was provided with, and had proper regard to,

(a) The Claimant's grievance appeal and appendices.
(b) The Claimant's original grievance.
(c) Questions from Mr. Bannister to the Claimant on 16th December 2019 and 23rd December 2019, and the Claimant's responses to those questions.
(d) Communications between Mr. Bannister and the INED's.
(e) Mr. Bannister's outcome letter to the Claimant.

Due to the volume of documents provided to Ms. Pritchard and as she wished to meticulously examine them, she took to reading them in her non-work time. Ms. Pritchard also spoke with Mr. Bannister to ensure that she had received all of the relevant documents and was satisfied that she had.

108. On 28th January 2020, Ms. Pritchard emailed the Claimant advising that her appeal was being addressed and that she may request a meeting. Ms. Pritchard was aware that the Claimant had previously asked that questions were put to her in writing but was alert to the fact that the Claimant's circumstances may have changed and she may be able to attend a face-to-face meeting.

109. On 5th and 12th February 2020 the Claimant pursued Ms. Pritchard for an update but as Ms. Pritchard had been on annual leave, she responded to the Claimant on 12th February 2020 informing her that she needed to speak with relevant people and would revert to her. Ms. Pritchard set about interviewing the relevant people and in the process, obtained a witness statement from Mr. Sherrard [1378]. Ms. Pritchard was meticulous in her preparations and created various excel workbooks [1382] [1397] which were colour coded to ensure nothing was missed.

110. Having completed her investigations Ms. Pritchard emailed the Claimant

on 21st February 2020 to ask if she could meet and canvassed possible dates. On 23rd February 2020, the Claimant emailed Ms. Pritchard stating that she had been advised to minimise contact with the Respondent and for Ms. Pritchard to deliver her appeal outcome in writing [1459]. From the Claimant's communication, Ms. Pritchard surmised that the Claimant wanted no further interaction in the process and set about finalising her outcome to the appeal.

111. Upon conclusion of her investigation into the Claimant's appeal, Ms. Pritchard sent the Claimant her outcome on 6th March 2020 [1469]. Ms. Pritchard found that the Claimant's appeal was not upheld and the original grievance outcome was confirmed.

112. On 16th March 2020, the Claimant resigned from her role [1490]. The Claimant stated that she was resigning on the basis of *'constructive dismissal'* and cited the relevant statutory provisions. The Claimant clarified that whilst she was aware of her right to resign with immediate effect, she was however, choosing to resign with notice as she may become sufficiently well enough to resume work or secure alternative employment.

113. The Claimant did not return to her role and her employment with the Respondent terminated on 16th June 2020.

Relevant Law

Unlawful Detriments for Pregnancy and/or Maternity

114. S.47C of the Employment Rights Act 1996 ('ERA 1996') provides (so far as material),

> **47C Leave for family and domestic reasons.**
>
> (1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done for a prescribed reason.

(2) A prescribed reason is one which is prescribed by regulations made by the Secretary of State and which relates to—

(a) pregnancy, childbirth or maternity,

….

115. Regulation 19 of the Maternity and Parental Leave etc. Regulations 1999 ('MPL 1999') states (so far as material),

Protection from detriment

19.— (1) An employee is entitled under section 47C of the 1996 Act not to be subjected to any detriment by any act, or any deliberate failure to act, by her employer done for any of the reasons specified in paragraph (2).

(2) The reasons referred to in paragraph (1) are that the employee—

(a) is pregnant;

(b) has given birth to a child;

….

116. It is established law that an unjustified sense of grievance could not amount to a detriment, *Barclays Bank plc v Kapur and others* (No 2) [1995] IRLR 87 and *Shamoon v. Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337, HL. In, *Shamoon*, Lord Hope referred to the case of *Lord Chancellor v. Coker and Osamor* [2001] IRLR 116 where it was held,

'…that there had to be some physical or economic consequence as a result of discrimination which was material and substantial to constitute a detriment.'

Direct Sex Discrimination

117. The starting point is, as always, the statutory provisions. By virtue of s.13 EqA 2010,

'A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.'

118. Under s.23(1) EqA 2010, where a comparison is made, there must be

no material difference between the circumstances relating to each case. It is possible to compare with an actual or hypothetical comparator.

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

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

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

122. S.136 EqA 2010 sets out the relevant burden of proof that must be applied. A two-stage process is followed. Initially it is for the Claimant to prove, on the balance of probabilities, primary facts from which we could conclude, in the absence of an adequate explanation from the Respondent, that the Respondent committed an act of unlawful discrimination.

123. At the second stage, discrimination is presumed to have occurred, unless the Respondent can show otherwise. The standard of proof is again on the balance of probabilities. In order to discharge that burden of proof, the Respondent must adduce cogent evidence that the

treatment was in no sense whatsoever because of the Claimant's sex. The Respondent does not have to show that its conduct was reasonable or sensible for this purpose, merely that its explanation for acting the way that it did was non-discriminatory.

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

125. The Court of Appeal in *Madarassy*, stated:

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

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

127. We are required to adopt a flexible approach to the burden of proof provisions. As noted in the cases of *Hewage v. GHB* [2012] ICR 1054 and *Martin v. Devonshires Solicitors* [2011] ICR 352, they will require careful attention where there is room for doubt as to the facts necessary

to establish discrimination. However, they may have little to offer where we in a position to make positive findings on the evidence one way or the other.

128. Allegations of discrimination should be looked at as a whole and not purely on the basis of a fragmented approach (*Qureshi v. London Borough of Newham* [1991] IRLR 264, EAT. This requires us to '*see both the wood and the trees*' (*Fraser v. University Leicester* UK EAT/1055/13 at paragraph 79).

129. We are also required to consider whether or not there is a causal link between the impugned act and the Claimant's sex, *Nagarajan v. London Regional Transport* [1999] IRLR 572.

130. S.18 EqA 2010 provides (so far as material),

> '**18 Pregnancy and maternity discrimination: work cases**
>
> (1) This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of pregnancy and maternity.
>
> (2) A person (A) discriminates against a woman if, in or after the Protected period in relation to a pregnancy of hers, A treats her unfavourably —
>
> (a) because of the pregnancy, or
>
> (b) because of illness suffered by her in that protected period as a result of the pregnancy.
>
> (3) A person (A) discriminates against a woman if A treats her unfavourably because she is on compulsory maternity leave or on equivalent compulsory maternity leave.
>
> (4) A person (A) discriminates against a woman if A treats her unfavourably because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave or a right to equivalent maternity leave.

(5). . . . . .

(6) The protected period, in relation to a woman's pregnancy, begins when the pregnancy begins, and ends—

(a) if she has the right to ordinary and additional maternity leave, at the end of the additional maternity leave period or (if earlier) when she returns to work after the pregnancy;

(aa) if she does not have that right, but has a right to equivalent maternity leave, at the end of that leave period, or (if earlier) when she returns to work after the pregnancy;

(b) if she does not have a right as described in paragraph (a) or (aa), at the end of the period of 2 weeks beginning with the end of the pregnancy.

....

Harassment Related to Sex

131. S.26(1) EqA 2010 provides:

'A person (A) harasses another (B) if

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or
(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.'

132. A similar causation test applies to claims under s.26 as described above to claims under s.13 EqA 2010. The unwanted conduct must be shown 'to be related' to the relevant protected characteristic.

115. The shifting burden of proof rules set out in s.136 of the EqA 2010 can be helpful in considering this question. The burden is on the Claimant to establish, on the balance of probabilities, facts that in the absence of

an adequate explanation from the Respondent, show she has been subjected to unwanted conduct related to the relevant characteristic. If she succeeds, the burden transfers to the Respondent to prove otherwise.

116. Harassment does not have to be deliberate to be unlawful. If A's unwanted conduct (related to the relevant protected characteristic) was deliberate and is shown to have had the purpose of violating B's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for B, the definition of harassment is made out. There is no need to consider the effect of the unwanted conduct.

117. If the conduct was not deliberate, it may still constitute unlawful harassment. In deciding whether conduct has the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for B, we must consider the factors set out in s.26(4) EqA 2010, namely:

(a) the perception of B;
(b) the other circumstances of the case;
(c) whether it is reasonable for the conduct to have that affect.

118. The shifting burden of proof rules can be also be helpful in considering the question as to whether unwanted conduct was deliberate.

119. Whilst the unwanted conduct need not be done 'on the grounds of' or 'because of', in the sense of being causally linked to, a protected characteristic in order to amount to harassment, the need for that conduct be 'related to' the protected characteristic does require a 'connection or association' with that; see *Regina (Equal Opportunities Commission) v. Secretary of State for Trade and Industry* [2007] ICR 1234 QBD. Notwithstanding it was decided under the prior legislation including the formulation 'on the grounds of', the observations made by the EAT in *Nazir v. Asim* [2010] ICR 1225 may still be of some relevance:

'69 We wish to emphasise this last question. The provisions to which we have referred find their place in legislation concerned with equality. It is not the purpose of such legislation to address all forms of bullying or anti-social behaviour in the workplace. The legislation therefore does not prohibit all harassment, still less every argument or dispute in the workplace; it is concerned only with harassment which is related to a characteristic protected by equality law—such as a person's race and gender.'

120. In relation to the proscribed effect, although the Claimant's perception must be taken into account, the test is not a subjective one satisfied merely because the Claimant thinks it is. The ET must reach a conclusion that the found conduct reasonably brought about the effect; see *Richmond Pharmacology v. Dhaliwal* [2009] IRLR 336 EAT.

121. Guidance on the threshold for conduct satisfying the statutory definition was given by the EAT in *Betsi Cadwaladr University Health Board v. Hughes* [2014] 2 WLUK 991; per Langstaff P (as he then was):

> **10. Next, it was pointed out by Elias LJ in the case of Grant v HM Land Registry [2011] EWCA Civ 769 that the words "violating dignity", "intimidating, hostile, degrading, humiliating, offensive" are significant words. As he said:**
>
> **"Tribunals must not cheapen the significance of these words. They an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment."**
>
> **11. Exactly the same point was made by Underhill P in Richmond Pharmacology at paragraph 22:**
>
> > **"..not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase."**
>
> **12. We wholeheartedly agree. The word "violating" is a strong word. Offending against dignity, hurting it, is insufficient. "Violating" may be a word the strength of which is sometimes overlooked. The same might be said of the words "intimidating" etc. All look for effects which are serious and marked, and not those which are, though real,**

truly of lesser consequence.

Constructive Unfair Dismissal

133. Under section 95(1) ERA 1996, an employee is considered to have been dismissed in circumstances where 'the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.' This is commonly known as constructive dismissal.

134. In order for there to have been a constructive dismissal there must have been:-

a. A repudiatory or fundamental breach of the contract of employment by the employer;
b. a termination of the contract by the employee because of that breach; and
c. the employee must not of affirmed the contract after the breach, for example by delaying their resignation.

135. In *Western Excavating (ECC) Ltd v. Sharp* [1978] ICR 221, CA, it was said

'*If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed.*'

136. An employee can rely on breach of an express or implied term of the contract of employment. In cases of alleged breach of the implied term of trust and confidence the test is set out in the case of *Malik v. Bank of Credit and Commerce International Ltd* [1998] AC 20; namely, has the employer, without reasonable and proper cause, conducted itself in a

manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. The test of whether there has been such a breach is an objective one (see *Leeds Dental Team Ltd v. Rose* [2014] IRLR 8).

137. The EAT in *Frenkel Topping v. King* UKEAT/0106/15/LA set out that simply acting in an unreasonable way is not sufficient to satisfy the test. The employer '*must demonstrate objectively by its behaviour that it is abandoning and altogether refusing to perform the contract. These again are words which indicate the strength of the term*.'

138. It is open to an employee to rely on a series of events which individually do not amount to a repudiation of contract, but when taken cumulatively are considered repudiatory. In these sorts of cases the 'last straw' in this sequence of events must add something, however minor, to the sequence (*London Borough of Waltham Forest v. Omilaju* [2005] ICR 481).

139. On the question of waiving the breach, the *Western Excavating* case makes clear that the employee '*must make up his mind soon after the conduct of which he complains; if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will regarded as having elected to affirm the contract*.'

140. In respect of the Claimant returning to the same job post her maternity leave, we were assisted by the law set out at paragraphs 73 to 84 of Mr. Panesar's written closing submissions. We do not repeat the law here but are satisfied that it was accurately and fairly stated[8]. We have also considered the law as stated by the Claimant within her submissions. Whilst we have had regard to the law as set out by both the Claimant and Mr. Panesar, we have not quoted or repeated it in full in this judgement in the interests of brevity. However, that does not mean we have omitted to

[8] The Claimant, in her oral closing submissions, did not query or challenge the law as set out in Mr. Panesar's written submissions.

consider it.

Conclusions

Credibility

141. The Claimant is no doubt a very intelligent, educated and ambitious person. She was successful in her role with the Respondent and they held her in high regard, this is evident from her swift promotion and the considerable bonus payments awarded to her. What is also clearly apparent is that there were considerable issues with the Respondent's CoSec function before, during, and after the Claimant was employed but no blame was apportioned to the Claimant at any time. The Respondent fully recognised that the issue was a team issue and not one which could be attributed to an individual. We have no reservations that the Claimant was highly competent, able, and would have gone on to enjoy a very successful and rewarding career with the Respondent.

142. Therefore, it is regrettable and disappointing that the documentary and oral evidence revealed that the Claimant dissembled from the truth, distorted facts to suit her narrative – even when that narrative had little or no evidential basis – and viewed almost every generous act from the Respondent with suspicion and hostility.

143. Within her witness statement, pleadings and during cross-examination, the Claimant frequently painted an untrue picture and gave untrue evidence or refused to accept facts which were unimpeachable. A few examples of this (but by no means all examples) are:

(a) When asked if the Claimant had attended a Christmas lunch in 2018 at Al Duomo restaurant, she denied this. The Claimant only conceded the fact when Mr. Panesar reminded her that she herself had stated this in her witness statement [SG, 152].

(b) The Claimant denied that Mr. Johnson had extended kindness to her multiple times. However, she then accepted that Mr. Johnson had treated her to lunches at the Chilli Pickle restaurant, arranged a lunch for the Claimant to meet with his wife so she could be reassured following her miscarriage (Mrs. Johnson too, sadly, had previously miscarried), and relocated a team day to Brighton from London so that the Claimant could attend.

(c) The Claimant continually maintained that the workload in CoSec had not been increased despite the incontrovertible evidence, that the Respondent had grown exponentially and naturally, so did CoSec's workload.

(d) The Claimant would not concede that the Respondent needed two company secretaries despite that being the view of *every* Respondent witness, the INEDS and plainly evident from the documents. Post the Claimant's departure, the Respondent still maintain two company secretaries.

(e) It was said by the Claimant that Ms. Wilding was unsympathetic to mothers as she herself did not have children. This is wholly untrue and we accept Ms. Wildings evidence that she has an adult daughter.

144. The Claimant, in her witness statement and evidence, sough to introduce 'red herrings' by referring to Mr. Johnson speaking about dildos and Mr. Henry having massages. Such matters were not a part of the Claimant's allegations and did nothing to further her case. We were not assisted by such information as it did not relate to any matters which we had to determine.

145. It was apparent to us that the Claimant had a very inflated belief of her abilities, knowledge, and qualifications. This sense of self-importance held by the Claimant caused her to genuinely believe that she was as

skilled and able as her senior and more experienced peers when she should have been aware that she was not. It also caused the Claimant to gratuitously make some very callous and hurtful allegations against witnesses and people employed by the Respondent. A sample of such behaviour is:

(a) The Claimant's allegations that,

(i) Mr. Johnson was surprised that the Claimant's bright yellow car had keyless entry and that the boot could be opened remotely (features that are banal, not unique, on modern vehicles).

(ii) Mr. Johnson drove around in a £900 '*banger'* whilst she had a new expensive car. In actuality, Mr. Johnson had a campervan worth circa £19,000.00p and after the birth of his second child, bought a £20,000.00p Volkswagen Golf TDI.

(iii) Mr. Johnson forewent luxury holidays so he could bring his children up properly. The reality was that Mr. Johnson has travelled extensively with his family including tours of Asia, Australia and the USA.

(iv) Mr. Johnson was envious of the Claimant's two-week holiday at a farmhouse in France. There was no reason for Mr. Johnson to envy the Claimant as he had himself enjoyed a holiday in France with his family (in his luxury campervan).

(v) Mr. Johnson's children only went to nursery after the age of three when they were assisted by the Government's free entitlement scheme and that Mr. Johnson fabricated in evidence that his children went to a private nursery. Again, this is simply untrue. Mr. Johnson's children attended a fee-paying nursery and he was forced to provide evidence of this as the Claimant maintained that he had lied about this. Mr. Johnson did not lie and provided evidence corroborating what he had said.

(b) Knowing that Mr. Henry attended this Hearing via CVP due to a serious brain tumour (and who is disabled by virtue of his impairment) and despite having had sight of medical advice to this effect, the Claimant maintained that Mr. Henry deliberately avoided attending the Tribunal in person as he wanted to avoid facing her in the '*theatre'* of the Tribunal. This was a particularly unattractive accusation by the Claimant.

(c) When the Claimant cross-examined Ms. Pritchard, she accused her of covering up discrimination to please Mr. Tanzer, found no grounds to uphold the Claimant's appeal as she wanted to be promoted, and therefore, conducted a vitiated process. The Claimant's accusations were totally unsubstantiated by any evidence and clearly caused Ms. Pritchard offence. That sense of offence by Ms. Pritchard was justified as she is a very talented, hard-working and qualified person whose career advancement is fully deserved.

146. What also became clear, as the evidence unfolded, was that the Claimant was hypersensitive. The Claimant perceived that any criticism or questions about the functions and efficiency of CoSec were specific attacks on her and her ability. Such hypersensitivity, and at times feelings of paranoia, skewed the Claimant's view. If the Respondent acted with kindness, the Claimant felt that it was doing nothing more than what it was duty bound to do. If the Respondent made a decision or acted in a way the Claimant did not agree with, she felt that this was automatic discriminatory conduct. The Claimant also had difficulty accepting that colleagues were more qualified, more experienced, and more senior to her. The Claimant had a personal dislike for Mr. Henry and resented that he line-managed her and this was revealed during the evidence.

147. We found that the Respondent's witnesses were honest, consistent,

reliable and trustworthy. Their evidence was clam and cogent even in the face of personal pejorative assertions by the Claimant. Where there was conflict in the evidence, we preferred the evidence of the Respondent.

Allegations[9]

148. The Claimant's claims of discrimination, largely, consist of allegations which are cited as breaches of discrete legislation i.e. ss.13 and 18 EqA 2010, s.47C ERA 1996, and r.19 MPL 1999. For ease of reading we have addressed each allegation in turn using the numbering adopted in the agreed List of Issues using the reference 'LoI X' ('X' denotes the numbered paragraph in the List of Issues).

LoI 2

149. The Claimant and her colleagues had been sent a recurring calendar invite to team lunches which were to take place on the last Friday of each month. The Claimant had possession of her work issue laptop and BlackBerry and was able to access this information. The Claimant's name was on the list of invitees for the team lunches. The Claimant attended the leaving lunch for Ben Huggins on, 13th November 2022 and could have attended the team lunch on 28th June 2019. Notwithstanding that the Claimant had been paid for a full KIT day on 28th June 2019, she did not attend the office until the afternoon when the team had left the office. The Claimant received the invitation but *may* not have read it. However, the Claimant did not put to Mr. Henry that he had failed to notify her of the lunch and when Mr. Panesar put to the Claimant that Mr. Henry was not trying to hide team lunches from her, she agreed. This allegation is not made out.

[9] Where the burden of proof has passed it has been specifically mentioned. Where it has not, it has not been referred to.

LoI 5

150. By July 2019, as the Respondent had monthly team lunches, no specific return-to-work lunches were laid on by the Respondent for its staff. Milestone events (leaving work, returning to work, birthdays etc.) were marked at the monthly team lunches and the Claimant was not treated unfavourably by the Respondent not organising a specific return-to-work lunch for her.

LoI 6

151. Although the burden of proof has passed to the Respondent, it has provided a non-discriminatory explanation for its actions. There was no promotion opportunity for the role of head of corporate legal. There was no role to advertise or apply for. What had happened is that Mr. Johnson's job title, not role, had changed to align with the job title of his contemporaries from acquired companies. Even if there had been a new role created of head of corporate legal, the Claimant clearly would not have been qualified for the role. The Claimant was not a solicitor, was not qualified to give commercial advice on acquisitions and had not ever drafted a, even in part, commercial contract.

LoI 7

152. This allegation is not made out. When the Claimant began her first period of maternity leave in June 2018, she made it explicitly clear that she wanted to totally switch-off from work. If there was a deluge of communication for the Respondent to the Claimant, she could have argued that she was in this sense being discriminated against when she had made clear that she wanted a total break from her work. In any event, there was no lack of communication from the Respondent as the Claimant – during maternity leave – attended KIT days and social events.

LoI 8

153. The Respondent did not err in respect of this allegation. Whilst the Claimant was on maternity leave there was significant expansion of the Respondent but the Claimant's role had not changed. What had changed was that due to a massive increase in workload, Ms. Badejoko was taken on as a second company secretary and companies that the company secretaries dealt with were equally allocated. The Claimant considered that the companies she had delt with were '*her'* companies. This was not true. A company secretary had no domain over a particular company, it was for the Respondent to decide which companies to allocate to its staff.

LoI 9

154. This allegation is dismissed. As explained in the preceding paragraph (153 (supra.)), the Claimant did not have a specific portfolio to which her role was dedicated; she may have done work for certain companies more than others but that did not mean that they were solely her remit.

LoI 10

155. The Claimant had no remit for specific companies and thus, none were removed from her. What the Respondent did was to balance the work between the Claimant and Ms. Badejoko which it was perfectly entitled to do. The Claimant resented Ms. Badejoko dealing with companies she regarded as 'hers' and this allegation fails.

LoI 10 and 11

156. These allegations fail, see paragraphs 152 and 153 (supra.).

LoI 12, 13 and 14

157. The Claimant's role, pay and conditions, terms of employment, job description, and seniority remained the same on her return from maternity leave as it had when she left to take maternity leave. As mentioned several times in this judgment, the Respondent had changed through significant expansion and it was necessary to employ a second company secretary. For obvious reasons this meant that work had to be allocated and reallocated to ensure the sufficient performance of CoSec. The idea that the Claimant returned to a different role is a chimera. The Claimant's overall role and key responsibilities remained the same and did not change. These allegations fail.

LoI 15

158. There is simply no evidence that Ms. Wilding and Mr. Johnson gave the Claimant incorrect reasons for the alleged changes to her role. The Claimant fails to appreciate the distinction between changes to a role and changes to what needs to be done in a role due to business needs. Ms. Wilding and Mr. Johnson's rationale for the changes within the Claimant's same role were valid and not incorrect. The Claimant understood this following a meeting on 12th April 2019 and after the meeting sent a message to Mr. Johnson stating that:

'Hi Nick, thanks for today. Me you and Jane are going to make a great team. I feel bad that you thought that the emails

were directed at you. It was just that you were the spokesperson and I never had any issue with working with you. I genuinely respect and trust you. I will send you an email tomorrow with details of my return info and holiday days
Sarah'

Lol 16

159. Upon Ms. Badejoko being offered the role of a second company secretary and after her acceptance and appointment to the role, the Respondent had no obligation or requirement to notify the Claimant as her role was totally unaffected by Ms. Badejoko's appointment. If fact, the only material difference Ms. Badejoko's appointment had to the Claimant was that it meant she would not be overburdened in her role and that responsibilities would be shared. This was a positive, not negative, development and certainly not unfavourable treatment. The nub of this allegation is that the Claimant believed that she was *entitled* to be consulted about anything to do with CoSec and her ensuing dismay that her maternity cover (whom the Claimant believed was not as qualified, experienced, or capable as herself) had been appointed to a role as her equal and not as her assistant.

LoI 17

160. This allegation does not get off the ground. None, let alone *'a significant number,'* of the Claimant's duties were allocated to Ms. Badejoko or anybody else. The Claimant's duties and job description remained the same as they were prior to her maternity leave. What had changed was the increased number of companies acquired by the Respondent, and subsequently committees and boards, which meant that the allocation of duties had to be reconfigured to ensure parity. Neither the Claimant nor Ms. Badejoko had the right to only deal with specific companies.

LoI 18

161. As with the allegation which forms the basis of LoI 16, the Claimant was not entitled to be copied into all emails regarding CoSec. Where the Claimant's work was affected, she *was* copied into emails by Ms. Badejoko and Messer's. Henry and Johnson. There needs to be a *reason* to copy somebody into an email otherwise, a person can be unnecessarily overwhelmed with emails. The Claimant felt that she should be copied into all emails in respect of CoSec and especially any emails emanating from Ms. Badejoko. This was as the Claimant did not see Ms. Badejoko as her equal. It is of note that at times when the Claimant emailed Mr. Tanzer regarding CoSec, she did not include anybody, not even her line-manger, into the emails. This allegation fails.

LoI 19

162. The Claimant had always made it known to the Respondent that she had ambition and wished to progress in and develop her career. There is nothing wrong with this and on the contrary, such determination is to be lauded. However, when the Claimant was provided with such opportunities, at her behest, by Messer's. Henry and Johnson, she complained that it was unfavourable treatment. The Claimant was not admonished for not completing career developing goals in a timely

fashion and had the opening to decline to take on these tasks if she had so wished. She did not. This allegation is not made out.

LoI 20

163. For the reasons in the preceding paragraphs this allegation fails.

LoI 21

164. Messer's. Henry and Johnson did tell the Claimant that her level of seniority was equal to Ms. Badejoko. They told her this because it was true. Whilst the Claimant was qualified at a chartered level she had not qualified as a solicitor; Ms. Badejoko had. Ms. Badejoko was an experienced and highly competent company secretary and had had experience of managing a team, which the Claimant had not. Therefore, telling the Claimant that Ms. Badejoko was her equal was a statement of fact and not unfavourable treatment.

LoI 22

165. As we have found, Ms. Shah did seek to introduce more stringent deadlines on when board meeting minutes were produced in an email on 10th September 2019. However, the desire to meet the deadlines wished for by Ms. Shah applied to CoSec and not solely the Claimant. As an INED, Ms. Shah was entitled to espouse her views as to the timeliness of the completion of board meeting minutes and it was reasonable for her to do so in robust terms. Ms. Shah's actions do not amount to a detriment or unfavourable treatment of the Claimant.

LoI 23

166. There is no evidence of this allegation and the Claimant failed to put this to Mr. Henry when she cross-examined him. In fact, the opposite is true. Mr. Henry did rearrange team meetings to accommodate the Claimant's flexible working hours and arranged for future 'socials' to be held at

lunchtime as opposed to evening time to accommodate the Claimant. This allegation is not made out.

LoI 24

167. This allegation involves Messer's. Henry and Johnson removing tasks from the Claimant after 17th October 2019 when she announced she was pregnant. Ms. Badejoko was asked to produce minutes which the Claimant had not had the time to produce. As Ms. Badejoko had capacity and the Claimant did not, the instruction to Ms. Badejoko was reasonable and not connected to the Claimant's pregnancy or maternity and not unfavourable treatment. Messer's. Henry and Johnson were seeking to reduce the pressure on the Claimant in a situation when Ms. Badejoko was available and willing to assist. This allegation fails.

LoI 25

168. For the reasons set out in this judgment, the Claimant did return, after her maternity leave, to the job she was employed to do so this allegation is not made out and fails.

LoI 26 and 27

169. There is no evidence whatsoever that the Claimant returned from maternity leave to a different job nor that she returned on less favourable terms or conditions. These allegations are not made out.

Harassment

LoI 29 - 30

170. As we have found (in this judgment) that the Respondent did make provision for the Claimant's KIT day on 28th June 2010, did not exclude the Claimant from a team 'night out' on 26th September 2019, and

cancelled the team lunch on 27th September 2019 for innocuous reasons, the Claimant's allegations of harassment are not made out. Mr. Henry's attitude was not untoward (and went unchallenged in cross-examination by the Claimant) and did not constitute conduct capable of harassment under s.27 EqA 2010. The Claimant's allegations of harassment related to sex are not made out and stand dismissed.

Personal Injury

LoI 30

171. The Claimant put forward no evidence in support of this claim nor did she put it to the Respondent in cross-examination. We have no evidence that the Claimant suffered any personal injury arising from the Respondent's alleged discriminatory actions and therefore, this claim must fail.

Constructive Unfair Dismissal

LoI 33 to 36

172. We have found (supra.) that none of the Claimant's allegations under this head of claim (LoI 33 (i)-(iv)) occurred as alleged or at all.

173. We are satisfied from the documentary and oral evidence that the Claimant's grievance and grievance appeal were carefully dealt with by Mr. Bannister and Ms. Pritchard.

174. There was no fundamental breach, or any breach, of the Claimant's contract of employment by the Respondent. The Claimant resigned of her own volition and her resignation was not forced upon her by any action or actions of the Respondent. The Claimant's claim of constructive unfair dismissal fails.

Jurisdiction

175. The Claimant has not made out that any alleged unlawful acts by the Respondent were part of a continuing course of conduct. Neither did we hear any evidence or submissions from the Claimant as to why it would be just and equitable to extend time for her out of time claims. However, due to our findings, we need not pursue the issue of jurisdiction further.

176. For these reasons, all of the Claimant's claims fail and are dismissed in their entirety.

Postscript

177. On 28th and 30th October 2023, after the Hearing had concluded and the Tribunal were in the deliberations stage, the Claimant emailed the Tribunal seeking disclosure from the Respondent in respect of matters she could, and should, have requested disclosure of at a much earlier stage (the issue of where Mr. Johnson's children pre-schooled). The Respondent responded to the Claimant's email on 3rd November 2023. It is especially disappointing as the Claimant sought, and received, disclosure of a matter which was accepted by the Tribunal i.e., the attendance of Mr. Johnson's children at the fee-paid Montessori (nursery) School in Brighton and Hove. It is entirely inappropriate for the Claimant to impugn the integrity and honesty of Mr. Johnson and Mr. Henry (both solicitors) on a suspicion; a suspicion proven, via disclosure by the Respondent, to be devoid of any factual basis.

178. The Claimant is advised not to cast any further aspersions on the characters of the Respondent's witnesses unless she has credible and tangible evidence. Allegations of dishonesty and fraud committed by legal professionals can have damaging consequences on their careers.

179. The Claimant's post-Hearing correspondence provides us the

opportunity to make two matters entirely clear. Firstly, we are satisfied that the integrity and honesty of Messer's. Johnson and Henry are untroubled by the Claimant's accusations and remain intact. Secondly, we are content that Mr. Panesar's actions – both in and outside of the Tribunal room – were wholly appropriate.

Employment Judge Sudra

Date: 23rd August 2024