



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr P Knorpel

**Respondent:** Fujitsu Services Limited

**Heard at:** Reading **On: 7, 8, 9 and 10 April 2025**

**Before:** Employment Judge Gumbiti-Zimuto  
Ms L Farrell and Mr J Appleton

## Appearances

**For the Claimant:** In person

**For the Respondent:** Mr Tom Brown, counsel

## REASONS

*[For judgment given on 10 April 2025]*

1. In a claim form presented on the 25 July 2023 the claimant made complaints of unfair dismissal and sex discrimination. In a judgment sent to the parties on 17 March 2025 the claimant's complaints of direct sex discrimination and harassment related to sex were dismissed. This judgment is concerned only with the claimant's complaint of unfair dismissal. The respondent defends the claimant's complaints.
2. The claimant gave evidence in support of his own case, Amanda Donaghy, Rachel Marsh and Mike Smit gave evidence in support of the respondent. All the witnesses provided written statements which were taken as their evidence in chief. The parties provided a Trial Bundle containing 403 pages of documents.
3. The respondent is an IT services company. The claimant was employed by the respondent from October 1999 to 29 March 2023, latterly as a Project Manager.
4. The claimant's primary work involved delivery of projects to two customers, a national hospitality business and a national retail store. His primary tasks were the delivery of services to their outlets, new hotels, restaurants and stores.
5. On 16 February 2023 the respondent was informed that female employees had raised concerns about the claimant's behaviour. The respondent requested

that the customer provide further information about the allegations. The respondent made the decision that, pending an investigation, the claimant would be assigned to carry out non-customer facing work.

6. On 17 February 2023 the claimant was informed that a complaint had been made against him by a member of staff of the respondent's hospitality business customer and he was instructed not to attend any further customer meetings, sites or have any direct communication with their employees. The claimant continued to carry out work for the customer remotely and anonymously.
7. The respondent received statements from two of its customer's employees setting out allegations against the claimant.
8. Rachel Marsh was appointed as an independent manager to carry out the investigation. On 6 March 2023 a meeting took place via MS Teams. Present at that meeting were, witness 1, witness 2, Amanda Donaghy and Rachel Marsh. Witness 1 was the manager of the employee who was Witness 2.
9. Witness 1 gave an account of the claimant asking for her telephone number, ostensibly for business reasons, which she provided. She then alleged that the claimant would text her at the weekend when she was not working and asked what she was doing. She described him as over friendly. She also described the claimant's body language as not professional in that he would lean very close to her which would make her lean away. Witness 1 also spoke of another employee who complained of the claimant being over-friendly and over-sharing personal information and that the claimant made her feel uneasy.
10. Witness 2 gave an account of the claimant attending unannounced at the hotel where she was working in November 2022 at 9pm and saying he was there to fix a problem with the phone lines. She said on that occasion he got very close to her by leaning close to her and made her feel uncomfortable. She claimed that he continued to hang around, when he had no reason to. She also alleged that that the claimant then asked her to go to the restaurant with him. She said that the claimant told her that he was then going on to another site to see another female employee, and so employee 2 rang this employee to warn her.
11. As part of her investigation Rachel Marsh also spoke with the claimant's line manager, Georgios Befas (Head of Projects and Programmes).
12. The meeting took place on 8 March 2023. Georgios Befas told the claimant a complaint had been made against him. The claimant's response was to say that he knew what it was about. The claimant then told him about another incident that was not the subject of the complaints under investigation.
13. Witness 3 refused to attend an interview with Rachel Marsh so she was provided with a list of questions from the respondent. Witness 3 responded

with written answers describing how she met the claimant, she said he was over friendly. She said that the claimant called into the site where she worked unannounced a few times and asked to speak to her, including when she was not at work, 'because he was in the area and wanted to say hello', he asked her if she wanted to get a coffee and when she was next at work. She said that the claimant made her feel uncomfortable, so she blocked him on Teams.

14. The respondent concluded that the claimant had a case to answer and decided that rather than holding an investigation meeting and then a separate disciplinary meeting there should be one meeting during which the claimant would have the opportunity to present his version of events, any evidence in support, and any mitigation.
15. A summary of the evidence of the witnesses who wanted to remain anonymous was prepared. On 15 March 2023, the claimant was asked to attend a disciplinary hearing on 17 March 2023.
16. On 17 March 2023, the day of the disciplinary meeting, the claimant was instructed by the respondent to go to one of the customer's sites in Dublin to carry out work. This was contrary to the direction that the claimant had been given to stay away from the customer's sites. The respondent subsequently sought the permission of the customer for the claimant to work on the site when arrangements had already been made for the claimant to go to Dublin.
17. The disciplinary meeting took place by MS Teams. The allegations were explained as follows:

*"The reason for this disciplinary hearing is to discuss allegations made by 3 female Whitbread employees that you have made them feel uncomfortable at work and have acted inappropriately and in an unprofessional manner towards them, to the extent that they do not want to work with you in the future. This complaint was escalated to us by the Customer, who asked that you did not visit sites until these matters had been fully investigated. Following investigation, your actions have the potential to cause serious reputational damage to Fujitsu with our Customer."*

18. Accompanying the letter were summaries of the evidence of the complaints and a copy of the respondent's conduct policy. The claimant was also told that *"the outcome of the hearing may be an official warning with a sanction imposed or may be dismissal with notice."*
19. At the disciplinary meeting the claimant attended with a companion, JD, Rachel Marsh chaired the meeting, Amanda Donaghy attended to provide HR support and Clare McSparron, HR Adviser, attended to take notes. Rachel Marsh went through the allegations in the witness summaries and asked the claimant a number of questions. The claimant accepted some of the behaviours

complained of, but denied others. The claimant said that he was a very friendly person but that he had clearly misjudged the level of friendliness, and if he upset anybody it was unintentional. The claimant said that he was happy to attend a training course to help him deal with situations going forward. The claimant also mentioned a past incident which had resulted in his receiving a final written warning (which had since expired). Rachel Marsh then adjourned the meeting to make her decision.

20. Rachel Marsh contacted Sarah Wadworths the HR Director and sought her guidance. Sarah Wadworth's view was that the type of behaviour in question was not welcome in Fujitsu and there should be zero tolerance of sexual harassment.
21. Rachel Marsh set out all her principal findings in her witness statement. These included that the claimant described himself as a friendly and tactile person who thought that perhaps he had misjudged friendliness of employees towards him when he had been described as 'over friendly'. That the claimant did not dispute all the information provided in the witness statements, but some of it he did not agree with. The claimant accepted that he may have contacted Witness 1 at the weekend, but could not recall the specifics. The claimant confirmed recall of the incident relating to witness 2 but did not agree with the whole description of this. The claimant said that he had known Witness 3 for quite some time and was friendly with her. He confirmed asking her to have a coffee with him and said that he did so a while after she mentioned that she was in a relationship. The claimant had relayed to his line manager a further incident that was not under investigation: that it was not an isolated incident. The had claimant relationships with people he met through work (both customer and the respondent's employees) and that he believed it was normal to try and gauge if someone is interested in a romantic relationship, and if they are not, to move on and try with someone else. Rachel Marsh did not think it was appropriate for this to be persistently pursued as an objective. Rachel Marsh concluded that the claimant had intimate interactions with female employees of the respondent's customer and that he had pursued numerous of its female employees some of which had been reciprocated, there was a pattern of persistently targeting female employees of the respondent's customer. The claimant had on a number of occasions pursued female employees of the respondent's customer with whom he had been working with whilst on customer sites. It seemed to her that the claimant would attempt to "make a move" on them, misjudging whether they were receptive to advances, and at times persist even when they had not indicated any interest or had rejected those advances. Rachel Marsh considered that this was workplace sexual harassment to which individuals should not be subjected.
22. Rachel Marsh considered that the claimant was guilty of serious misconduct.

23. Rachel Marsh took into account the impact the claimant's behaviour had on the respondent's customer's employees, and the damage to the respondent's relationship with that customer. She was also concerned about further damage in the future if the claimant went into other customer-facing roles and the same thing happened again, it would seriously undermine the respondent's relationship with any customer.
24. The claimant had suggested that his behaviour could be addressed by training intervention. Rachel Marsh did not consider it was a training issue the claimant was already aware of internal policies around diversity and inclusion, and bullying and harassment. The customer wished the claimant to be removed from the account.
25. Rachel Marsh concluded that the claimant could not continue in his current role or in another customer facing role because she could not be satisfied that it would not happen again and did not think it was appropriate for the respondent to be taking that risk. Rachel Marsh did not consider that a warning would be appropriate.
26. Despite taking into account the claimant's length of service, Rachel Marsh decided to terminate the claimant's employment with notice because of his serious misconduct and the significant reputational damage which it had caused with the respondent's customer.
27. Having made her decision Rachel Marsh reconvened the disciplinary meeting to give her decision on 29 March 2023 when she informed the claimant that he was dismissed with immediate effect. A letter confirming the claimant's dismissal and setting out his right to appeal was sent to the claimant.
28. On 4 April 2023, the claimant appealed against the decision to dismiss. Mike Smit was asked to consider the claimant's appeal.
29. Mike Smit was provided with a pack of background information which included the evidence that was considered at the disciplinary stage (i.e. interview notes taken during the original investigation, the witness statements, and some follow up questions and answers sent to the witnesses), the notes of the disciplinary hearing, the disciplinary outcome letter, and the claimant's grounds of appeal.
30. On 6 April 2023 the claimant was sent a letter inviting him to an appeal meeting. The appeal meeting was eventually scheduled for 10 May 2023.
31. Before the appeal hearing and after reviewing the claimant's appeal, Mike Smit carried out some investigations that involved interviewing a number of individuals. The claimant also sent Mike Smit a number of written references portraying the claimant in a positive light.

32. The claimant attended the appeal hearing accompanied by JD.
33. The appeal hearing was held in two parts on 10 May and 25 May, the appeal hearing lasted about 4 hours in total. In the appeal meetings the claimant was able to speak to all his appeal points. Between the appeal meetings and after the appeal meetings Mike Smit made further investigations which included obtaining further information from Amanda Donaghy and Rachel Marsh, speaking to other people that the claimant had worked with, and he viewed a Ms Teams meeting that the claimant had with one of the customer's employees. The further information obtained was forwarded to the claimant to comment on.
34. In respect of the claimant's contention that the disciplinary hearing had not been carried out in a fair and reasonable manner, Mike Smit concluded that the investigation / disciplinary process had been conducted in accordance with the ACAS code, as well as Fujitsu's Conduct Policy and that there was enough evidence obtained from three different complainants to warrant inviting the claimant to a disciplinary meeting without there needing to be a separate investigation meeting beforehand.
35. The claimant had complained that he hadn't been able to contact the customer's employees in order to obtain evidence. Mike Smit saw a number of references provided by the claimant as part of the appeal process and concluded that while it was good to see the claimant had positive relationships with some of the customer's employees, it took nothing away from the seriousness of the original complaints, and Rachel Marsh's failure to offer to facilitate making contact with the customer's employees had no bearing on the overall fairness of the process.
36. Mike Smit considered that providing the claimant with summaries of the evidence was fair, that there were no material omissions and that it complied with the respondent's procedures.
37. The claimant had complained that Rachel Marsh should have been informed about the matters giving rise to his previous warning, however Mike Smit considered that those matters were irrelevant to the issues that the respondent was considering.
38. The claimant complained that there had been a failure to carry out a fair disciplinary hearing. Mike Smit concluded that as the customer had conducted a proportion of the investigation, it didn't seem wrong or unfair not to have a separate investigation manager before the matter was passed to Rachel Marsh and he considered that it was appropriate in all the circumstances.
39. Mike Smit concluded that the claimant's behaviours had resulted in several of the customer's female employees feeling uncomfortable, that this was unwanted attention and a form of sexual harassment.

40. The claimant had alleged that there had been no investigation into whether the matters giving rise to his previous warning had been the trigger for complaints made about him by the customer's employees. Mike Smit was satisfied that was not the case but concluded this probably should have been explored in more detail as part of the original disciplinary investigation, however, he found nothing that undermined Rachel Marsh's conclusion that the complaints made by the customer's employees were genuine and that they were genuinely made to feel uncomfortable by the claimant's behaviours during the period in question.
41. Mr Smit considered all the claimant's other points of appeal and decided that they were not made out, these included that decisions had been taken in respect of matters not in the disciplinary allegations; that there was no evidence of potential or actual reputational damage; that dismissal was not within the range of reasonable responses; and that the claimant had been subjected to sex discrimination.
42. The claimant's appeal was dismissed.
43. Section 98 of the Employment Rights Act ("ERA") provides that in determining whether the dismissal of an employee was fair or unfair, it shall be for the employer to show the reason (or, if there was more than one, the principal reason) for the dismissal, and that it is a reason falling within subsection (2). The conduct of an employee is a reason falling within the subsection.
44. Where an employer has shown a potentially fair reason the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and shall be determined in accordance with equity and the substantial merits of the case.
45. The Respondent must show that: (a) it believed the claimant was guilty of misconduct; (b) it had reasonable grounds upon which to sustain the belief; (c) at the stage which it formed that belief on those grounds, it had carried out as much investigation into the matter as was reasonable in the circumstances of the case. It is not necessary that the tribunal itself would have shared the same view of those circumstances.
46. After considering the investigatory and disciplinary process, the tribunal has to consider the reasonableness of the employer's decision to dismiss and (not substituting its own decision as to what was the right course to adopt for that of the employer) must decide whether the claimant's dismissal "fell within a band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair". The burden is neutral at this stage: the tribunal

has to make its decision based upon the evidence of the claimant and respondent with neither having the burden of proving reasonableness.

47. The range of reasonable responses test (the need to apply the objective standards of the reasonable employer) applies as much to the question whether the investigation into the suspected misconduct was reasonable in all the circumstances as it does to the reasonableness of the decision to dismiss for the conduct reason.
48. The claimant makes several points in support of his claim that he was unfairly dismissed we summarise some of the points below but have taken all the matters raised by the claimant including his closing submissions. The overarching point that the claimant makes is that in his case the final decision actually depended upon 'where the HR Director wants to go' and that the decision to dismiss him was already made by the respondent before the claimant had been given an opportunity to defend himself. The claimant says that the respondent's investigation was inadequate, the conclusions not justified and dismissal disproportionate: the respondent ought to have found that the allegations were not proven. The claimant makes various complaints about the procedure that was followed by the respondent, the claimant says the decision was already made in his case. The claimant contended that the conclusions set out in the disciplinary outcome letter were not justified by the evidence. The claimant says that the flaws in the procedure were not cured by the appeal process which was itself flawed and conducted with a view to finding evidence to support the dismissal decision.
49. The claimant says that the witnesses colluded and refused to be interviewed as part of the appeal process.
50. The claimant complains that he was not given permission to contact the customers employees, so he never had the opportunity to show that the allegations made against him are not as the claimant is known to behave. The claimant states that he made it clear at the disciplinary meeting that he wished to provide evidence from employees of the customer.
51. The claimant was made aware of the details of the allegations against him two days before the disciplinary hearing. The claimant was required to attend the disciplinary hearing without having been given an opportunity to comment on the allegations at an investigation meeting. The claimant considers that in doing this the respondent breached its own procedure and the ACAS Code.
52. The claimant argued that matters giving rise to his previous warning had been the trigger or motivation for the complaints that were made against him and therefore Rachel Marsh should have been made aware of those matters and the witnesses questioned about their motivation and its relationship to the matters giving rise to the previous warnings. Withholding this information from

Rachel Marsh was unfair to the claimant or showed bias on the part of Amanda Donaghy against the claimant.

53. Rachel Marsh carried out both an investigation into the allegations against the claimant and conducted the disciplinary hearing. The claimant says that this is in breach of paragraph 6 of the ACAS Code of Practice on Disciplinary and Grievance Procedures. The respondent is a large company with significant resources; it would have been practicable for a separate Senior Manager to have chaired the disciplinary hearing. The claimant contends that this was a deliberate decision by the respondent to breach the ACAS code in this way.
54. The claimant contends that the conclusion that the claimant viewed women he meets at work as people with whom he might initiate a relationship was not justified on the evidence.
55. The claimant states that the reason for the termination of his employment differs from the allegations that were made against him. The allegation was “*the potential to cause reputational damage*” to the respondent: the conclusion was that the claimant had caused “*significant reputational damage*” with the customer.
56. The claimant says that it was not reasonable for the claimant’s conduct to lead the customer’s employees to feel very uncomfortable and subjected to unwanted attention and therefore there could not in fact be reputational damage to the respondent based on the claimant’s conduct. Further the claimant says that dismissal was not a proportionate sanction for the claimant’s “*unintended over-friendliness*”: some training and a warning would have been the appropriate outcome.
57. The respondent has set out its arguments in the written submissions that we have taken into account. The respondent also made some oral observations replying to the claimant’s submissions.
58. The conclusion of the majority is that the claimant’s complaint of unfair dismissal is not well founded and is dismissed.
- 58.1 What is the reason for the claimant’s dismissal? In her dismissal letter Rachel Marsh explains to the claimant that she had concluded that the claimant had “*pursued female employees of our customer with whom you have been working closely whilst on customer sites, in an attempt to “make a move” on them, misjudging whether they are receptive to your advances, and at times persisting regardless of the fact that they have not indicated any interest or indeed rejected those advances. This is a form of workplace sexual harassment to which individuals should not be subjected and this repeated behaviour amounts, in my view to serious misconduct.*”

- 58.2 The claimant was at one stage suggesting that the real reason for his dismissal was because he was male and had been the subject of complaints made by women, but the sex discrimination element has not been part of this case and in our view was not the reason for his dismissal.
- 58.3 The conclusion of the Tribunal is that the claimant was dismissed because Rachel Marsh formed the genuine belief that the claimant's conduct towards the customer's employees, for the reasons described in the dismissal letter, amounted to serious misconduct.
59. Did the respondent have reasonable grounds upon which to sustain the belief that the claimant was guilty of serious misconduct? The claimant's case did not contest some of the alleged conduct, while other matters were contested by the claimant. The claimant made the point that it was not his intention to make the witnesses feel uncomfortable, and further that he was a friendly person who behaved in the same way towards men and women alike. The claimant was more critical of the procedure followed and the conclusions reached by the respondent.
60. The claimant did not recall the incident related by witness 1, the claimant denied aspects of the account given by witness 2, and the in respect of witness 3 gave an account confirming aspects of her complaint but giving a different interpretation. There was in our view justification for the conclusion that the claimant had behaved in the manner alleged.
61. In addition to the accounts given by the witnesses the claimant gave his line manager details of an incident with a female who was not a complainant. This account is a matter that Rachel Marsh took into account and in our view she was entitled to have regard to these matters in reaching her conclusions.
62. The claimant alleges that there was collusion between the witnesses and he further suggested that it may have been was knowledge of the background to the matters that led to his previous warning had been the motivation or trigger for the complaints that were made by the witnesses. This is a matter that the claimant considers should have been investigated and had such an investigation taken place would have shown that there was a motivation for the complaints putting in doubt the credibility of the allegations made against him. However, there was in fact no evidence of collusion or any other indication pointing to a conclusion that there was any ulterior motive behind the complaints other than the matters about which complaint is being made.
63. The material that was before Rachel Morgan, including the claimant's version of events, was such that the conclusions that she arrived at were ones that were properly open to her.

64. Did the respondent carry out as much investigation into the matter as was reasonable in the circumstances of the case? The claimant has a list of complaints about the procedure followed by the respondent in dealing with his disciplinary process and appeal. The majority view is that taking into account the procedure as a whole the process was fair.
65. The claimant complains that Rachel Morgan did not hold an investigation meeting at which the claimant was allowed to give his version of events before the disciplinary hearing meeting to which he was invited. The claimant points to ACAS Code of Practice on Disciplinary and Grievance Procedures paragraph 6, which states that *"In misconduct cases, where practicable, different people should carry out the investigation and disciplinary hearing."* The claimant contends that Rachel Morgan carried out both an investigation and disciplinary meetings in breach of the ACAS Code.
66. The conclusion of the majority is that there was no breach of the ACAS Code in this case. The Code specifically states at paragraph 5 that

It is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case. In some cases this will require the holding of an investigatory meeting with the employee before proceeding to any disciplinary hearing. In others, the investigatory stage will be the collation of evidence by the employer for use at any disciplinary hearing.

The code anticipates that not every case will involve an investigatory meeting with the employee in the claimant's position, in some cases the investigatory stage will be the collation of evidence by the employer for use at any disciplinary hearing. That separate people conduct the investigation meeting and the disciplinary hearing is not mandatory, it should take place where practicable.

67. The reason why Rachel Morgan proceeded as she did is explained in her witness statement.

Further, it seemed a bit artificial to conduct an investigation meeting to discuss the allegations and then conduct a disciplinary meeting to discuss the same allegations again. Whitbread had conducted their investigation, and we had conducted some additional fact-gathering. Based on the information collected it felt appropriate to move to a disciplinary hearing during which Philip would be given every opportunity to present his version of events and any relevant information – it did not feel necessary to split this over two separate meetings.

Witness 1 and witness 2 were spoken to by Rachel Morgan. Witness 3 agreed to answer questions in writing. When the statements were obtained the respondent considered that there was a case to answer by the claimant.

Witness 1 and witness 2 appear to have been reluctant complainants. Witness 3 was only willing to answer written questions. The respondent did not interview the claimant as part of the disciplinary investigation stage this is an approach that they were entitled to take in our view. The reasons for not interviewing the claimant in the disciplinary stage are explained by Rachel Morgan.

68. The answers to questions from the claimant made it clear that Rachel Morgan made a considered decision to not have a separate investigation meeting with the claimant. The respondent required on the cooperation of the customer and its employees to gather evidence. One person was only willing to give a written account (witness 3) and another wished to be interviewed in the presence of her manager. The relevant disciplinary investigation involving the witnesses was conducted by the customer's HR department not by the respondent. There is no tangible indication that such an approach led to the claimant being disadvantaged in his ability to respond to the allegations that were being made. In these circumstances there was no unfairness in the decision taken by the respondent.
69. There is no prohibition in the respondent's own procedure to the same person carrying out the investigation meeting and disciplinary meeting.
70. The claimant alleged that there was an inadequate investigation and sought to rely on the failure to chase down leads relating to possible collusion. There was no direct evidence of collusion by the witnesses.
71. The claimant sought to rely on a temporal proximity of the search relating to events around matters giving rise to his previous disciplinary warning and the complaints made by witness 1 and witness 2. Such evidence as we have seen shows that the complaints about the claimant made by witness 1 and witness 2 were made first. The making of those complaints resulted in 2 other employees of the customer making a search about the claimant: It was not the other way around and also it was not any of the witness complainants who made the search. This does not support collusion.
72. The claimant also relies on the fact that witness 1 was the manager of witness 2 and witness 3. Additionally he points to the properties tab on the word document containing witness 3's written response to questions that shows it was written on witness 1's computer. The reason why the claimant discovered that witness 3's evidence was created on witness 1's computer is unexplained. Looking at the nature of the matters set out by witness 3 we do not consider that it supports a suggestion of collusion between them.
73. Witness 1 and witness 2 may have had a common mistaken understanding of the claimant's living arrangements but this is not in our view evidence of collusion. The claimant accepted significant parts of the allegations against him so that we consider that they are unlikely to have been matters which arose as a result of collusion. Witness 1 and witness 2 worked together and witness 2

wanted the support of her manager when she was interviewed. We can see no evidence of collusion in that.

74. The claimant and Rachel Morgan discussed the possibility of adducing evidence from others. It is not clear whether the claimant was to inform Rachel Morgan who he wants to speak to and the claimant says it was for Rachel Morgan to give him permission to speak to employees as witnesses. The claimant also made it clear that he did not want the allegations against him going widely abroad and also that he wanted to control conversations with his witnesses. The record of the conversation between the claimant and Rachel Morgan is ambiguous in this respect and appears to have resulted in different understanding between the claimant and Rachel Morgan as to who was responsible for possible witnesses for the claimant.
75. The claimant contends that he was prevented from being able to produce evidence because he was refused permission to speak to any of the customer's employees. It is accepted by the respondent that the claimant was instructed not to contact the customer's employees. At the disciplinary hearing Rachel Morgan asked the claimant if there was anyone else she would need to speak to. The claimant responded saying he

"Could give you 10 hotel managers who would say I am a friendly person. They love who I am. Could give you 3 say I am not... what I do not want to do is spread this wider than it needs to be involve other people unnecessarily ... if you want to speak to others, its only right that I ask them if they are ok."

The response from Rachel Morgan was

Depends on how you feel and whether you think need to after this meeting. If you could easily provide people to reference your good nature both men and women at work. They should be asked first if they would step forward and give a positive account.

Of this exchange Rachel Morgan said, *"I said that it was up to him if he wanted to ask people to provide their positive accounts of working with him. I did not think it was appropriate for me to pursue those additional statements and I did not see how that would take anything away from the accounts of the individuals who had raised complaints against him. I was satisfied to leave that in Philip's hands and I would review whatever he wanted to provide me with."*

76. The claimant did not specifically ask to contact the customer's employees and Rachel Morgan appears to have considered that it was for the claimant to have adduced any further evidence. There may well have been a misunderstanding between the claimant and Rachel Marsh as to what was going to happen next. At the appeal the claimant did have an opportunity to identify who he wanted Mr Smit to speak to and Mr Smit did speak to others. The Tribunal do not

consider that the claimant was hampered from adducing evidence in support of his case so as to make the process unfair.

77. The claimant says that Rachel Morgan was not given important information namely the facts behind the matters leading to his previous warning. Amanda Donaghy explains that she considered the matters irrelevant. The claimant in the event did inform Rachel Morgan about the matters. We do not consider that in acting as she did in the circumstances in this case that Amanda Donaghy can be criticised.
78. Rachel Morgan understood that the claimant considered that those matters had been known to the complainants and therefore led to the allegations against him. Rachel Morgan explained that her view of this was that it was irrelevant to her decision and as to the complaints she said, *"Having spoken to the women who raised these complaints, I accept that their evidence was genuine."*
79. The claimant states that he was not given a full version of events by the respondent and relies on the fact that both witness 1 and witness 2 say that the claimant lived with his father, which the claimant says was wrong. The claimant states that had he been told this he could have asked that they are questioned about this, and it could have shown that it was not correct and therefore damage the credibility of their evidence and support his contention of collusion. The respondent's obligation under the ACAS Code is to provide sufficient information about the alleged misconduct to enable the employee to prepare to answer the case at a disciplinary hearing. There is no requirement to provide every piece of information known to the respondent. The fact that the two witnesses had a common misunderstanding in our view does not impugn their credibility and does not suggest collusion.
80. The respondent concluded that complaints made by witness 1 and witness 2 were genuine complaints arising from their experience with claimant. This was a conclusion that was open to the respondent's decision maker.
81. The claimant contends that his dismissal was unfair because he was accused of actions that "have the potential to cause serious reputational damage". While in his dismissal letter it stated that the claimant's conduct caused "serious reputational damage". The claimant complains that there was a difference between the allegations he faced, and the conclusions reached by the respondent. We do not agree, the conclusion reached by the respondent is consistent with the allegation made in the disciplinary invite letter and the disciplinary conclusion of reputational damage in our view encompasses the allegation of a potential to cause reputational damage.
82. The claimant complains about the involvement of the Head of HR and says it was her who made the final decision. This is not correct. Rachel Marsh contacted the head of HR to update her and was informed that her view was

that this type of conduct should not be tolerated and that there should be a zero tolerance to sexual harassment. We do not consider that Rachel Morgan's actions were unreasonable or improper.

83. Finally, we have considered the respondent's procedure overall and asked whether it was fair. We note that the claimant criticises the scope of the enquiry made by the respondent. However, we also observe that the claimant's contemporaneous response to the allegations was not the full frontal attack that he makes on the makers of the allegations in the hearing. The claimant either accepted or did not dispute the conduct alleged and focussed on his intention and judgment, the issue was not whether the witnesses had lied or colluded in manufacturing the allegations which the claimant accepted. In the circumstances the majority are satisfied that the respondent's procedure in dealing with the claimant's disciplinary was within the range of responses of a reasonable employer.
84. The minority view is that the respondent's failure to have an investigation stage, at which the claimant could participate, conducted by an investigation manager and then disciplinary hearing stage conducted by a different manager, was in the circumstances of this case, in particular having regard to the size and resources of the respondent, a serious flaw amounting to a breach of the ACAS Code and not in keeping with the spirit and intention of the respondent's own procedure which has a key principle that provides: *"it is our policy to ensure that any disciplinary matter is dealt with fairly and that steps are taken to establish the facts and to give employees the opportunity to respond before taking any formal action."* The minority consider that such failing as there was in the procedure were not cured by the appeal process.
85. Was dismissal reasonable in all the circumstances? The allegations raised important matters for the respondent. They came from the respondent's client and involved allegations that the customer's employees felt uncomfortable working with the claimant, further the customer considered the matters serious enough that they did not want the claimant working on their account, the respondent considered that the claimant's alleged conduct presented a potential reputational damage to the respondent and was concerned that there was a real risk of the conduct recurring again, such that the respondent did not feel able to continue to employ the claimant in a client facing role.
86. The respondent having come to this conclusion, the respondent's decision to dismiss the claimant fell within the range of responses of a reasonable employer.
87. The decision of the Tribunal (by a majority) is that claimant's complaint of unfair dismissal is not well founded and is dismissed.

Approved by:  
Employment Judge Gumbiti-Zimuto

Date: 6 June 2025

Sent to the parties on: 13 June 2025

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For the Tribunals Office

**Public access to employment tribunal decisions:**

All judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the Claimant(s) and Respondent(s) in a case.

**Recording and Transcription**

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>