



# EMPLOYMENT TRIBUNALS

## BETWEEN

**Claimant:** Mrs Silvia de Mentaberry

**Respondents:** (1) Ground Truth Intelligence Ltd  
(2) Ground Truth Holdings Ltd  
(3) Mr Stewart Kelly

**Heard at:** in public (in person)

**On:** 3, 4, 5, 8, 9, 10, 11, 12 September 2025  
(4 Sept a reading day; 12 Sept a chambers day)

**Before:** Employment Judge Adkin

### Appearances

For the claimant: Claimant in person  
(day 1 only) Mr P Shepherd, KC, Counsel, *pro bono*  
supported by Mr Blake on 4, 5, 8, 9, 10 September

For the respondent: Ms A Rumble, Counsel

## JUDGMENT

- (1) The complaint of unfair dismissal brought against the First Respondent, pursuant to sections 94 & 98 of the Employment Rights Act 1996 is well-founded.
- (2) The following complaints of victimisation pursuant to section 27 of the Equality Act 2010 are well founded in relation to the following allegations against the First and Third Respondents:
  - a. [5.2.13] Threatening to make the Claimant redundant if she refused to accept the reduced severance-package offered.

(3) The complaint of victimisation pursuant to section 27 of the Equality Act 2010 is well founded in relation to the following allegations against the First Respondent only:

- [5.2.14] Dismissing the Claimant.

(4) Remaining complaints brought against the First Respondent are not well founded and are dismissed:

- Direct sex discrimination pursuant to section 13, 39 of the Equality Act 2010;
- Harassment pursuant to section 26, 40 of the Equality Act 2010;
- All other allegations of victimisation pursuant to section 27, 39 of the Equality Act 2010;
- Equal pay pursuant to sections 64-71 of the Equality Act 2010.
- Breach of contract.

(5) All claims against the Second Respondent are stayed for six months and thereafter stand dismissed.

(6) The remaining complaints against the Third Respondent are not well founded and are dismissed.

## REASONS

### Summary

1. The Claimant (“**the Claimant**”, “C”) presented a claim to the Employment Tribunal on 3 April 2024. The claim comprises complaints of unfair dismissal, direct sex discrimination, harassment relating to sex, victimisation, equal pay and breach of contract.
2. This claim relates to Claimant’s working career at the First and Second Respondents’ business, first as a consultant then as an employee, and the circumstances of her dismissal.
3. A part of the claim is the Claimant’s contention that she was misled about discrepancies in remuneration between herself and others at the start of her relationship with the Respondent business, which she says amounted to a discriminatory pay differential. She says that communication about potential agreed termination and settlement amounted to harassment relating to sex and that she was victimised in a number of ways for raising her allegation of sex discrimination up to and including the circumstances of her unfair and discriminatory dismissal.
4. I did not find that the Claimant had been misled.
5. The Respondents accept that there was no process in relation to the dismissal, making it procedurally unfair. The Respondents contend that this was a

genuine redundancy situation which was precipitated by the sudden realisation by the Third Respondent Mr Kelly of a desperate cash flow situation.

6. My finding is that threats of performance management and of redundancy were, to a material extent influenced by the Claimant's allegations of sex discrimination. These were acts of victimisation by the First and Third Respondents. The dismissal was also an act of victimisation by the First Respondent.
7. All other complaints were not well-founded either because they were out of time and/or substantively not made out.
8. The full list of factual and legal issues is incorporated into the headings in the "Conclusion" section below.

## **Hearing**

9. On the first day of the hearing the Claimant's applications for dismissal of the response under the terms of an unless order and strike out of the response was refused. (In respect of that application the Claimant was supported by Mr Shepherd KC *pro bono* on day 1 only).
10. The act of admissibility of the Claimant's "Disputed document" bundle of 166 pages (including some without prejudice correspondence) was not opposed by the Respondents at the hearing. This bundle was admitted as evidence.
11. Additional documents were included following a complaint from the Claimant that certain documents missing.
12. On day 4 of the hearing I allowed the Claimant's application to amend to correct the date of an alleged protected act (allegation 5.1.6), from 28 November 2022 to 8 December 2022. This was opposed by Rs.
13. The Claimant through Mr Shepherd specifically indicated that, notwithstanding that she felt she had received documents and witness statements late, she did not wish to adjourn the final hearing. We did not sit on the second day of the hearing, which enabled me to read but also the Claimant to prepare. She did not need to cross examine the Respondent witnesses until 9 September, i.e. the fifth day of the hearing and as a result had benefit of a weekend for further preparation.

## **Evidence**

14. I heard live evidence from the Claimant, the Third Respondent Mr Kelly and Mr Matthew Hunt. There were three witness statements from Mr Kelly.
15. I received a witness statement from Robert Court, who did not attend to give evidence due to the ill-health of a family member.
16. The Claimant was concerned that Ms Sylwia Wolos, former Chief Strategy Officer did not give evidence, despite the fact that the Respondents had

indicated at an earlier case management hearing that she was due to be called as a witness. Ms Wolos no longer works for the First Respondent. On the first day of the hearing I stated that that it was open to Claimant to apply for a witness order, specifically explaining that this was an application that could be made by email and there was no need to copy in the Respondents. No application for a witness statement was made.

17. I received three bundles of documents. The “main” bundle, as amended, contained 3,242 pages. References to pages in that bundle appear thus [123]. The disputed document bundle references appear this [D/B123].
18. There was also a “mini” bundle of documents produced by the Claimant on the first day of the hearing in support of applications to dismiss and/or strike out the response.
19. There are various communications within the bundle by slack or WhatsApp, usually to a group but sometimes between two individuals. It is possible I have misidentified which messaging platform is being used in some instances, but on no occasion is the name of the specific platform material to the dispute. The more important matters are the person communicating, the audience and the date (and sometimes) the time.

## Parties

20. During periods material to this claim, Claimant was called “**Silvia Blake**”, her married name. Her Claimant’s previous history was in sales, selling into finance sector. She worked for Thompson Reuters for 14 years. She commenced working for the Respondents initially as a consultant, then “Head of Sales and Marketing” and eventually “Commercial Director”.
21. The First Respondent (“**R1**”) was the Claimant’s employer, I find in reality, despite the fact that her contract suggested that the Second Respondent (“**R2**”) was her employer.
22. The Second Respondent is the holding company of which the First Respondent was a subsidiary. I have stayed the claims against the Second Respondent on the basis that this has avoided a lengthy factual enquiry and lengthy consideration of which Respondent is the employer. I have taken at face value the representations put forward by the Respondents collectively that the First Respondent was the appropriate employer and will satisfy any award. By staying the claim rather than dismissing it I have protected the Claimant’s position.
23. I have referred to R1 and R2 collectively as “the business”.
24. The Third Respondent Mr Stuart Kelly (“**R3**”) was and is a founder and CEO of the business.

## Non-parties

25. There are several individuals referred to who have not given evidence, nor are they parties. I have not named all cases named individuals by their full name. While appellate guidance emphasises that there is a benefit in “name names”, where there are individuals who have been dismissed purportedly for performance concerns and whose identity is not relevant at all to the present claim, it seems to me that there is no public interest in these individuals being named, in circumstances where they do not have the opportunity to put their side of the story.
26. The parties will understand from the context who is being referred to.

## Findings of fact

27. These are findings of fact which are made on the balance of probabilities based on the oral and documentary evidence received and also what is inherently plausible.

### Founding of the business

28. Early conversations between Stuart Kelly (“R3”), Matthew Hunt (“MH”) and Patrick Carter (“PC”), (collectively “**the Co-founders**”) about setting up a due diligence business took place between the three co-founders in early 2019.
29. R1 and R2 were founded on 28 August 2019 and 3 September 2019 respectively.
30. Mr Kelly, R3 was CEO, co-founder, co-owner and statutory director.
31. Mr Kelly and Mr Carter each put in a financial investment into the business.
32. None of the Co-founders received any salary between September 2019 and July 2020.

### Initial conversations with the Claimant

33. Initial discussions took place between Claimant and R3, following an approach by Mr Hunt to Claimant in November 2019.
34. Mr Hunt is married to the Claimant’s first cousin. He evidently and understandably felt somewhat conflicted by the fact that there is a dispute between his wife’s cousin and the business.

### Basis of Claimant’s initial engagement – consultancy agreement

35. The Claimant joined the new business as “Head of Sales & Marketing”.
36. Mr Kelly emailed Mr Carter, Mr Hunt and two others this news.
37. The Claimant was initially engaged as a self-employed independent contractor to provide sales and marketing support to R1 and R2, through a “Consultancy

Agreement" dated 6 January 2020. At that stage she invoiced rather than having tax deducted on a PAYE basis.

38. The Claimant's work from 1 January 2020 to 30 June 2020 was governed by this agreement. There was no salary or agreed fixed retainer. Payment related to revenue. The appendix sets out the basis for her charging a fee:

Commission structure on company net revenue (ie company portion of total engagement fee), payable at the end of each quarter: 20% of fees originated by the Consultant; 10% of fees originated by another company employee; 5% of fees originated under the company's referral agreement excluding any applicable value added tax.

39. That agreement provided an option to buy 11,111 shares with a purchase price of £0.01. The Share Options were to vest from 1 January 2020 under a vesting schedule which provided that the Share Options would vest in equal tranches every year over a period of 2 years, with a 6 month cliff before the first tranche vests, such that at the end of the 2 year vesting period all Share Options would have vested.

#### Co-founder status

40. The Claimant was never at any stage a statutory director.

41. Mr Kelly says that he was open to adding the title "Co-founder" a title as a "gesture of reward and motivation" on the basis that the Claimant was a hard-working and first employee. He says that she did not accept that offer and pointed out that this was not accurate.

42. It would not be accurate as a matter of law to describe the Claimant as a Co-founder.

#### Discussion about title

43. In a slack messenger exchange on 29 June 2020, the Claimant and Mr Kelly debated her appropriate title. Mr Kelly floated "Head of Client Engagement", wondering if it was less "salesy". the Claimant's view was that transparency was best and so they agree to keep the title as "Head of Sales & Marketing".

44. The tone of these slack exchanges between them was chatty and it seems they were both excited about the new venture.

#### Employment status

45. By agreement dated 2 July 2020 between R1 and the Claimant, it was agreed that she would become an employee from 1 July 2020, superseding the earlier agreement.

46. By this new agreement her title was "Head of Sales & Marketing". She was reporting to Mr Kelly. Her duties were:

- acting as senior front line sales person
- defining targets and sales strategy -- short and long-term (in collaboration with CEO)
- liaising with colleagues as required
- supervising support staff and consultants as required

47. Her basic salary was £24,000 per annum. Additionally she was entitled to commission payable quarterly, net the amount already paid in salary. This somewhat unusual arrangement meant that she needed to earn more than her basic salary by way of commission before she received anything. Mr Kelly's perspective is that this was relatively generous given that the three cofounders had not been receiving any salary.

48. The Claimant was promised 20,000 shares. It took 18 months for the paperwork documenting this entitlement to be finalised.

#### Co-founder remuneration

49. Messrs Kelly, Hunt & Carter received a salary for the first time from 1 July 2020 onward.

50. The Claimant complains that she only discovered at a much later stage, in preparation for the Tribunal hearing that discovered that the three male co-founders received a much greater equity allocation and vesting terms. This was 10% of the total shares in the company, with 5% of those shares vesting immediately for Mr Hunt, 25% all vesting immediately for Mr Carter, and 65% all which also vested immediately for Mr Kelly.

51. The co-founders did not have the same allocation of equity as each other. The vesting terms were different among the co-founders. They contributed different amounts financially at the outset and had different roles. This had been established before the Claimant joined as a consultant. I am not satisfied that the Claimant had been told either that she was going to be allocated the same level of equity as the co-founders or that the vesting terms were identical. While it may be that the Claimant wrongly assumed that this was the case, that would have been a surprising assumption in the circumstances.

52. I find that at the outset Mr Kelly accurately told the Claimant that everyone was making salary sacrifices. I did not find that he told the Claimant that they were all on identical terms, although she may have wrongly inferred this.

53. Mr Kelly, Mr Hunt and Ms Carter had set up a business with founders agreement and two of them had put money in, in differing amounts. Each of them had different amounts of equity. It would have been untrue and highly surprising had Mr Kelly suggested that all four of them were on the same terms. I do not find that he did do this.

54. The business had already been set up before the Claimant joined as a contractor, and significantly before she joined as an employee.

Salary email

55. On 8 July 2020 Mr Kelly copied the Claimant into an email exchange with Verity Kendall, from a firm of accountants who were helping the Respondents with payroll. That email contained the following:

I have all the details for you, Patrick and Matthew and will put enter your salaries of £4,000 gross per month.

56. The Claimant therefore was party to the information about their gross monthly salary. I accept the Respondent's case that this undermines the suggestion that they were trying to keep a discrepancy in pay secret or confidential from her.

57. The following month the Claimant was auto enrolled into GTI's pension scheme.

Matthew Hunt – statutory director

58. On 8 July, Mr Hunt was appointed statutory director.

Product launch

59. The Respondent's "minimum viable" product was launched in mid-Aug 2020.

Salary discrepancy challenged

60. In September 2020 the Claimant became aware that she was being paid half the salary of Mr Kelly, Mr Carter & Mr Hunt, through access to company excel, which she says she immediately raised with Mr Kelly as discriminatory treatment. I find that she raised this complaint purely on the basis of basic fairness stating that she felt "used".

61. I do not find that this was expressed in terms of sex discrimination given that Mr Kelly denies it and there is no convincing corroborative evidence. Considering inherent plausibility, sex discrimination would be a significant and serious allegation to be raising so early on in her new employment.

62. In response to this complaint about the discrepancy of salaries Mr Kelly says that he said that he would increase the salary when income allowed.

Board meetings

63. The Claimant joined board meetings as first employee, though not as a board member.

64. Mr Kelly said that this was to make her feel "secure". While that was perhaps a slightly curious word to use, my impression was that he valued the Claimant's contribution and wanted to make her feel included in management team in what was at that stage a very small venture. It would have been exclusive and a little odd to have a Senior Leadership Team ("SLT") comprising 3 members having meetings which excluded the Claimant as a single employee.

Pay increases

65. In January 2021 there were pay increases.
66. "Co-founders" pay was increased at this time to £66,000 p.a.
67. The Claimant's basic salary was increased to £42,000 plus commission, net of salary. In other words for her commission to have a value, the Claimant would have to earn more than £42,000 in commission. In practical terms it was more difficult for her to achieve a substantial commission payment with this arrangement.
68. As to documentation, the Claimant wrote to Mr Kelly email on 20 January 2021 the Claimant wrote to Mr Kelly in relation to documentation:

As far as I'm concerned I trust you! so I am happy not to sign a revised agreement if it's a hassle,

"I do however still feel the current structure does not seem fair."

69. Mr Kelly replied:

"Re comp — yes it's in the budget and I already adjusted the payroll to numbers we discussed last year. Yours goes up to 3.5k gross per month, effective January pay packet, as an interim salary up to June, and then from July you'd be part of the senior management team in the company (hopefully for the long haul!) and get the same base salary as Matt, Pat and me. We also need to talk about equity and how we structure that for the longer term, beyond what you've currently got.

From our discussion last year, we agreed you'd prefer to be on **base + equity and part of senior management versus a commission structure**. I don't mind having some incentive in there that fits an overall sales management role. I'm all ears if you / Karin have ideas. As we've discussed before, as long as we are smashing targets, I want you and your team to be the best paid in the company."

[emphasis added]

70. I find that this did provide support for Mr Kelly's recollection that the Claimant's preference was for higher base salary rather than commission.
71. The Claimant replied, indicating agreement on 21 January 2021

"Thanks Stewart, always a step ahead! Great stuff."

Job title

72. On 10 February 2021, the Claimant's job title was changed to Commercial Director, following an email exchange between the Claimant and Mr Kelly in which the latter was open to suggestions.

Catch up

73. On 5 June 2021 Mr Kelly emailed the Claimant about a catch up meeting:

"Main things are: see how you're getting on generally and where you might need some help / support, especially with your newly expanded team; vision for your role over time + your equity comp and how we structure it."

Pay increase

74. On 1 July 2021 there was an increase to the Claimant's basic salary to £90,000, which then matched the co-founders' salary.
75. The Claimant was considered to be part of Senior Leadership Team ("SLT") at this point.

"Chief" job title

76. Mr Kelly disputes that Claimant in September 2021 (or ever) asked him to change her title to "Chief Revenue Officer" on the basis that she was the only one who did not have chief in her job title and she was the only woman
77. Thirteen months later in October 2022 Mr Kelly discussed with one of his business partners Matthew Hunt some possible options for a new title for the Claimant. He mentions "Chief customer officer" and "chief client officer" but rejects "Chief revenue officer" on the basis that "this was a numbers and people management game, neither of which were her strengths". He denies that the final option was raised here at the prompting of the Claimant.
78. A further five months later in March 2023 Mr Kelly and the Claimant had a slack exchange about the process of Bill Young joining the business and his title (not the Claimant's title). At one stage in that discussion Mr Kelly is leaning toward "Chief Client Officer" rather than "Chief Revenue Officer" which Mr Kelly worried would not play as well trying to sell to clients.
79. There is no corroborative evidence for the Claimant's contention that this was raised as discrimination in September 2021, and I do not find that this occurred as alleged.

Further salary increase

80. As of 1 January 2022, there was further increase to the Claimant's basic salary to £135,000. This was equal to the three cofounders of the business, who also received an increase to salary at this time.

81. Mr Kelly's evidence was that this was a substantial salary for an employee, particularly bearing in mind that this was still a start-up business.
82. The Claimant's 11,111 share options vested a few days later on 6 January 2022.
83. The Claimant exercised an option in relation to the 11,111 share options on 6 July 2022.

Sales team management difficulties

84. In January 2022 Mr Kelly expressed concerns around the Claimant's management of the sales team. He wanted the Claimant to take more of a strategic rather than hands on approach with her subordinates. He told her to stop micromanaging her team which he felt was leaving her tired and frustrated. He asked her for a "total reset", and to produce solutions not complaints. He reminded her that she was in charge and told her "I want you to carve out the time for reflection, discussion, planning."
85. This style of communication was direct. Mr Kelly was giving the Claimant clear guidance as to how he wanted her to spend her time. The underlying dilemma in Mr Kelly's mind at least was that the Claimant was an effective frontline salesperson or "producer", but if she managed the team as a kind of "player-manager" in Mr Kelly's terms, it reduced her ability to do this valuable activity.
86. The following month, February 2022, the Claimant's management duties were temporarily reassigned to Karin Carpentier so that the Claimant could focus on being a "producer". The goal at that time was to get more "new logos", i.e. completely new clients rather than increasing revenue from existing clients.
87. There were a number of employees who joined the team that then left the sales team, or left the Respondent business employment altogether.
88. Management for LW moved from the Claimant to Mr Hunt. There was later a disagreement between the Claimant and Mr Kelly about her performance, Mr Kelly having formed a negative view.

Ms Wolos

89. Management of Sal Remtulla, who was doing marketing activity, was changed from the Claimant to Sylwia Wolos (Head of Product Strategy), who had recently joined the business in a senior role.
90. Mr Kelly then suggested that Sylwia Wolos should assume formal reporting line responsibilities for the team generally. There was an exchange in which he acknowledged a "slightly heated discussion", but then asked the Claimant to figure out what was good for the company and move on. He suggests:

"no time for squabbling amongst ourselves. I don't care who reports to whom. I just need to get a line and get Commercial working, asap"

91. By way of comment, it might be thought doubtful that many employees could easily and without any rancour agree amongst themselves a significant change in a reporting line.

Change in reporting line

92. Patrick Carter's job role changed in April 2022, when it was agreed that he would step down from the CTO role and became the Chief Information Security Officer for the Companies. Chris Miller was appointed to replace Patrick in the CTO role and Patrick reported to Chris in the organisational structure.

93. This is relied upon by the Respondents as a kind of evidential comparator, given that it was an example of a senior male employee being moved down the reporting line.

Strained working relationship

94. Mr Kelly says his working relationship with the Claimant became strained at this time. He wrote to her on 4 June 2022:

I'm aware that you're feeling frustrated with a lot of things at the moment. I think your frustrations are completely justified and reasonable. And I want to fix the underlying issues causing the frustration.

As we've said many times: your instincts are usually spot on, you're right to insist on high standards, customer focus, product that works, etc etc.

I think where we tend to fall down is in communication & process.

I think we have all the makings of a great commercial strategy — all of which you've created and all of which is crystal clear in your head.

The problem in my view is it's not formalised and not clearly communicated. I've tended to get frustrated with that aspect — when we've needed clear metrics, KPIs, reporting, planning etc.

95. The communication from Mr Kelly ended with:

Looking forward to your thoughts on all this

96. The Claimant provided a detailed response written in measured terms a couple of days later in which she mentioned the "changing priorities".

97. Later in the month, at a point nearly a calendar month through 2022, Mr Kelly complained that revenue from new logos was behind where he wanted it to be and that too much time was being spent winning small accounts.

Changes in management responsibility – September 2022

98. Mr Kelly sent an email to all staff advising on changes on 21 September 2022. The effect of this was to expand Ms Wolos' responsibility. The Claimant's responsibility remained Lead Generation, Field Sales and Account Growth.
99. Mr Kelly denies that at this time in September 2022 the Claimant pointed out that she and Sylwia Wolos were the only female members of SLT and did not have chief in their titles.
100. I accepted Mr Kelly's evidence that the point of dispute in September 2022 was a suggestion that the Claimant should report to Ms Wolos, which she was very angry about.
101. This question of "chief" was raised in February 2023 in the circumstances below.

Annual performance review

102. The Claimant and Mr Kelly appear to have different views on her performance for 2022 at the end of year review. In preparation for a review on 24 November 2022, the Claimant documented that the business had hit the revenue target of £2.8m, but admitted that she was struggling with the "hybrid" aspect of the role, i.e. both front line sales and management of the sales team. There was a review on 24 November in which Mr Kelly appears to have agreed with the overall positive view that the Claimant had of her review, but then felt the need to follow up with a number of mixed or negative messages in the following days.
103. Mr Kelly followed the meeting up the following day 25 November with 17 messages on slack in which discussed various figures and in summary complained 2022 was an absolutely unacceptable performance from both NL (i.e. new logo or new client) and Client Growth perspective.
104. Two days later on Saturday 26 November Mr Kelly wrote with his formal written feedback:

"You are a brilliant sales brain and producer, and we are lucky to have you and the many positives you bring:

- your energy, commitment, drive
- commercial instincts, strategic ability
- achievement in building a small team and getting us as far as we are today"

Nevertheless he reiterated his dissatisfaction with sales figures outside of the business's one main client, which had generated most sales.

105. Four days after the review Mr Kelly wrote an email on 28 November 2022 as follows:

"I did a bad job in the review discussion. I should have been clearer in my feedback. I'm sorry for that. I've also sent a couple of emails yesterday which also didn't fully state my feedback.

A couple of points:

- You stated in your review your 5 main objectives, and said they had been achieved. This is the opposite of my view. To me, the 2022 Commercial performance was massively disappointing and I genuinely struggle to find positives from it -- other than "we learned a lot of lessons". I was and am shocked that you consider it a success and that you consider your objectives achieved.

106. It does not surprise me that the Claimant felt that Mr Kelly was giving mixed messages about performance around the time of this review. A review followed by a stream of different messages on consecutive (including non-working) days was unprofessional and far from good management practice. It is this kind of conduct which lead the Claimant to characterise Mr Kelly's management of her as "abusive".
107. That day, on 28 November the Claimant evidently lost her temper with Mr Kelly in a lift, for which she apologised the next day.

#### Meeting between the Claimant and R3 – 8 December 2022

108. The Claimant and Mr Kelly agree that one occasion (I find that it was most likely on 8 December) that the Claimant told him that their relationship felt like an "abusive relationship" and a "bad marriage". Mr Kelly accepted that these words or words to this effect were used. He did not accept the characterisation of their working relationship as an "abusive".
109. There were features of the communications from Mr Kelly to the Claimant which would have been disconcerting. He would praise her quite lavishly on occasion while at the same time judging her quite harshly for the lack of growth in business other than the highest billing client. By his own admission he would change what the business priorities were. I formed the impression that as a start-up business both seeking to grow revenue rapidly and also obtain funding Mr Kelly's priorities would change. From the Claimant's perspective this felt like moving goalposts. This placed her under pressure.
110. I have no doubt that Mr Kelly personally felt under pressure, particularly at times when funding was running out. He had very high (at times perhaps unrealistic) expectations of what the Claimant as head of sales could achieve and this inevitably pressurised their relationship.
111. Mr Kelly's assessment of the Claimant was that she had a particular strength as a producer (i.e. as a salesperson). She evidently had an ability in this area which he recognised. This was her commercial background and prior experience. He felt that she was less good at management of others and financial reporting. The Claimant rejects that critique. It is not necessary or appropriate for me to express a view as to which of the two of them was right about this.

Back on track

112. In December 2022 Mr Kelly and the Claimant exchanged messages on slack regarding sales performance and both refer to earlier conversations and their mutual desire to get their working relationship "back on track".

Reporting line change

113. In or around December 2022 will Higgins, Head of Product was replaced in that role by Ben McLeod and took the title Product Manager.

Discussions regarding recruitment of Bill Yong

114. There was a dispute between the Claimant and Mr Kelly about the extent to which she was involved in the decision to recruit Bill Yong in the US, who was recruited as Chief Revenue Officer, taking over the Claimant's leadership of sales and replacing her in the Senior Leadership Team.

115. It is evident from contemporaneous correspondence that Mr Hunt had some misgivings about hiring someone paid more than anyone else in the business.

116. Mr Kelly mentioned to the Claimant in mid December 2022 that Mr Yong was looking for a role. She was initially enthusiastic, although at that stage it seems unlikely she understood Mr Kelly's plan was that he would take over her position as head of the sales function.

117. Mr Kelly forwarded to the Claimant a job description and sales plan from Bill Yong on 18 January 2023.

118. Contemporaneous messages, although not seen by the Claimant at the time, suggest that Mr Yong was seeking a package worth US \$400,000.

119. Mr Kelly's summary of Mr Yong's experience was:

Bill had a really impressive CV and had led the commercial function at a US due diligence firm called Steele Global (which was acquired by Diligent) for a four year period between 2017 and 2021 and prior to that, he had held senior sales positions at Dow Jones Risk and Compliance. He therefore had a considerable amount of sector-specific experience and key contacts, particularly with multinationals. In addition to this, I also understood that Bill also had a considerable amount of sales management and formal reporting experience. This was a key area the Companies were lacking in. In addition to this, at this point, given my concerns about cash flow, this was a key area of improvement needed for the survival of the Companies.

Meeting between Claimant, Mr Kelly and Mr Hunt 6 February 2023

120. A weekly accounts meeting between the Claimant, Mr Kelly and Mr Hunt on 6 February 2023 seems to have gone badly. The Claimant reported to her

colleague Ms Wolos that it had gone “very very badly”, which she illustrated with a mental explosion emoticon. She admitted “I opened my mouth and my emotions get the better of me”. She went on “at least we established that I’m still the head of sales so that something”.

121. It is not entirely clear, but it appears most likely that in the internal grievance investigation the Claimant was talking about this meeting when she said she “lost the plot”, told Mr Kelly and Mr Hunt that the way she was being treated was unacceptable. She clarified that she did not say at this stage it was because she was a woman.
122. Following on from that meeting the Claimant had “clear the air” conversations with both Mr Hunt and Mr Kelly.
123. At around this time Mr Kelly had a private message exchange with Mr Hunt in which he suggested formal procedures to manage the Claimant’s “conduct” and “competence”. Based on his comments in that exchange, by conduct he meant her behaviour in creating conflict. By competence he was really talking about sales performance. In fact no formal process was started.

#### Review of 2022 performance

124. On 7 February 2023 the Claimant and Mr Kelly had a discussion about performance the previous year. He followed up with an email the following day, which documented the positive outcomes, specifically that there had been growth, and acquisition and the main client had grown and committed further spending for 2023. There were also some less positive messages, specifically the existing clients had failed to grow materially, and that outside of the main client revenue numbers were stagnant. Also three new salespeople had hired and all three of them had been let go due to performance concerns.

#### Meeting with investor – “Chief” title dispute

125. On 9 February Mr Kelly had communication with Touchstone Ventures a West Coast based investor in advance of a 4 hour online meeting on 15 February 2023.
126. Both the Claimant and Ms Wolos were concerned and raised with Mr Kelly at around this time that it was assumed that they were not part of the management team because whereas, Messrs Kelly, Hunt, Carter and Miller had “Chief” in their title whereas the Claimant and Ms Wolos did not; they were listed as “Commercial Director”; and Head of Strategy (Ms Wolos).
127. It is not in dispute that this concern was raised by the two women. Mr Kelly blamed a junior employee at Touchdown for preparing the document and says that he spoke to his contact at Touchdown to resolve matters, which he did to the satisfaction of the Claimant and Ms Wolos.
128. Shortly afterwards Ms Wolos’ title was changed to “Chief Strategy Officer”.
129. Mr Kelly denies that this was raised as an allegation of sex discrimination.

130. I find that it was very likely in the Claimant's mind that her male colleagues had the title "Chief" whereas she and her female colleagues did not. I do not find however that this was raised as an allegation of sex discrimination.

Chief Client Officer Bill Yong hired

131. On 16 March, Bill Yong was offered Chief Client Officer role prior to commencing role on 1 April 2023. He was offered \$200k basic starting salary plus guaranteed bonus of \$50k for the first two quarters and a further \$50k (or potentially \$75k) bonus based on revenue target. Mr Yong was living and working in San Francisco

132. Mr Kelly attempted to position this new hire with the Claimant by his email of 22 March 2023 which confirmed that the Claimant was valued enormously, explained that Mr Yong's experience in commercial matters and also in obtaining investment the reasons for his recruitment.

133. While the reporting line would not change beneath the Claimant, it was implicit from this email that the Claimant would report to Mr Yong, although the task of working up the "best structure for the wider commercial team" was to be left to Mr Yong and the Claimant to work together on:

"Beyond the reporting line change, the company would like you and Bill together to determine the best structure for the wider commercial team, and to collaborate closely on strategy and execution to achieve our commercial objectives. We do not propose any immediate changes to reporting lines, responsibilities, targets, etc for any of your current direct reports.

6. We are not proposing a narrowly-focused "producer" role for you. Rather we believe that you and Bill together would be an ideal combination to achieve our commercial objectives in the coming phase. SK involving you in how announcing to the team

134. There was a further exchange of emails between the Claimant and Mr Kelly on 28 March 2023. Mr Kelly mentioned that it is common in start-ups for early leaders roles to evolve. He said that the Claimant had done an outstanding job in taking the company's commercial function from 0 to where it was today. He paid tribute to her various attributes. He admitted that they had vastly exceeded their revenue target, which the Claimant was accountable for. That might be surprising in view of the negative tone of the review given the previous month. He acknowledged that there had been some mistakes which she jointly took responsibility for.

135. The Claimant wrote back and said that she was looking forward to working with Bill.

136. On that day the Claimant had a telephone conversation with Bill and this went well. She reported back to Mr Kelly that they were "on the same page in everything".

137. Mr Yong's plan was for the Claimant to work with Mr Yong on the announcement to the team structure. The slack exchange between them went on. It seems that the Claimant discovered for the first time that Mr Yong's title was to be "Chief Client Officer" and that her colleague Ms Wolos had a new title of "Chief Strategy Officer".
138. It was Mr Kelly's perspective, based on a contemporaneous message sent to Ms Carpentier on 29 March, that this had all gone well and had been well accepted by the Claimant.
139. The exchange continued on to 30 March 2023. The Claimant comment that in respect of Ms Wolos, this change in title is to give her credit for the role that she did rather than a promotion. In terms of her own title however she says "essentially I am being demoted". Mr Kelly suggested that she could propose alternative language.

Communication to the whole company of change in line management

140. On 30 March Mr Kelly wrote to the whole company:

"In terms of the impact on the wider team, there is only one immediate change to our org structure: similar to the change in the product team in 2022 whereby Pat moved his reporting line to sit under Chris, Silvia will now report into Bill. Current commercial team reporting lines into Silvia will remain unchanged.

Silvia and Bill will be working very closely together on both strategy and day-to-day execution in the commercial team, as well as contributing to wider company strategy. No doubt they will consistently seek to evolve and improve our commercial capability – so please anticipate further positive changes in 2023 and beyond.

I'm sure we would all agree that Bill and Silvia are a dream team leadership combination to drive our commercial efforts in the coming phase of the company.

I would like to thank Silvia and highlight that this is another perfect example of our GTI philosophy – hire brilliant people, put them in a position to thrive, and the rest will take care of itself. Even if that means hiring someone to be our own day-to-day boss!

Silvia, Matt, Pat and I as the founding GTI team are determined to maintain this philosophy into the future as we continue to bring together an exceptionally talented group of people – enabling us to achieve our objectives at every stage.

141. It was evidently Mr Kelly's hope that this messaging would put a positive gloss on the Claimant's de facto promotion, and it followed an approach that he had taken in a different part of the business with a male colleague the previous year.

Message glitch

142. On 31 March 2023 the Claimant offered some feedback to a couple of junior colleagues accidentally to the whole team rather than personally.

Removal from SLT

143. In April 2023 Mr Kelly removed the Claimant from SLT slack channel and replaced her with Mr Yong.

Limbo

144. By a slack message on 28 April 2023 with Mr Yong, the Claimant tried to sort out the departure of a colleague and understand what her targets and objectives were so to define her new role as she felt "in limbo".

Mr Court governance matter

145. On 9 May the Claimant emailed Robert Court, an advisor to the Board of R1 regarding a "governance related matter".

146. Although Mr Court was at that time on holiday overseas, he agreed to have a call and spoke to the Claimant. Mr Court did not attend to give live evidence, but the account in his signed witness statement was:

7. ... I remember that Silvia was frustrated and upset about a number of issues relating to staff changes at GTI and her role. She also told me that she was dissatisfied with the arrangements that were in place regarding salaries, bonuses and commission payments. Silvia also raised concerns about how she considered her colleague, [LW] .... , was being treated, as questions had been raised about her performance.

8. During the call I remember asking Silvia to clarify what she had meant when she had referenced "governance" in her email and whether she thought that GTI had failed in any of its obligations as set out in its Code of Conduct, for example, in relation to equal opportunities. I do not believe that Silvia explicitly said that her concerns related to discrimination, or equal opportunities.

147. The Claimant had a follow up conversation on 17 May 2023. In her witness statement at paragraph 43 the Claimant explains that she was tired having been in hospital. It was evidently quite an emotional conversation, but the Claimant does not say that she alleged discrimination conversation.

Deterioration in the Claimant's health.

148. The day before, on 16 May 2023 the Claimant suffered an acute anxiety attack and was hospitalised.

149. On 17 May 2023 the Claimant wrote to Mr Kelly about her health

It's the last 6 months at gti that's led to my health situation Stewart, and the ongoing problem with my voice not being heard on this subject and many other matters. So whilst I am sure the intention is kindly meant here, for you to lead and cut me out of this process at this stage is a further slap in the face to be perfectly frank. When you brought in Bill you assured me it was strictly a reporting line and for investor reporting and I'd still be involved in strategy and decisions but this has certainly not been the case, as we see happening on this very matter. I know you hate details, but putting a new structure in place without factoring the detail in the execution implications of structural such changes I find very troubling. As far as L is concerned as she still reports to me, and I have a duty of care not to let her health situation deteriorate any further, I would be grateful we could apply our openness, simplicity etc alleged values in managing any transition whether it leads for her remaining or leaving the company.

150. On 23 May 2023 there was the following communications between Mr Kelly and Mr Yong:

[25/05/2023, 11:54:01] Stewart: Hi Bill, fyi I had another positive chat with SB yesterday. Encouraged her to take some time off, setup a fortnightly 1-1 for me and her so she can let off steam. I also encouraged her to get focused with you and get back to doing what she does best: hunting and winning.

With a bit of luck, I think we're onto a better path.

#### Meetings between Claimant and R3 regarding health and role

151. On 23 May 2023 the Claimant and Mr Kelly had a chat, which he documented in an email to Mr Hunt. It seems to have been agreed between Mr Kelly and the Claimant that she would take some time off but that she would keep "basic tabs on work things" on the basis that it would be better for her to stay involved than worrying about missing work.

#### Accident

152. On 15 June 2023 the Claimant crashed her car trying to attend a zoom meeting. She later attended a zoom meeting with Mr Kelly, Mr Hunt, Ms Wolos and Mr Yong and explained that she had crashed her car and crashed into a lamppost.

153. The Claimant was critical of the lack of concern on the part of her colleagues in this meeting.

Wrong slack channel

154. On 19 June 2023 the Claimant posted a frustrated personal message in which she was venting about the commercial model and being excluded from a process. She accidentally posted this in an external facing “product wish list” channel. She deleted it, but it was seen by Chris Miller. She explained to Mr Yong and Mr Kelly that she did not make the best decisions when she was stressed tired and in pain.
155. Two days later on 21 June 2023 Mr Kelly and Matthew Hunt met with Claimant to discuss health and wellbeing.
156. The Claimant took extended period of leave between 14 July and 1 September 2023. Her direct reports moved to Bill Yong

Summer 2023 – Zen deal

157. Following up from a conversation on 21 June, In a private WhatsApp with the Claimant and Mr Hunt, on 23 June 2023, Mr Kelly documented what he called the “Zen deal”:
  - SB focus on herself and well-being
  - Official start date Friday 23 June
  - Tentative end date Sept 1
  - 1. Slack — temporarily cut off
  - 2. All internal 1-1s, meetings, responsibilities ([LW], Gio) — temporarily gone
  - 3. All existing (ie signed clients) client responsibilities temporarily gone
  - 4. Any execution needs / internal stuff / admin — automatically delegated to MH and SK
  - 5. Keep New Logo efforts going up to July 14 latest
  - 6. Total switch off from work July 14-Sept 1 (with out of office, delegated to MH and SK. SB inbound emails forwarded to MH & SK).

Ongoing communication about role 27 June

158. There was further communication about roles by email and then later by slack on 27 June 2023.
159. The Claimant mentioned her panic attack the previous month and explained that uncertainty over her role together with the LW situation was creating significant stress for her. She was concerned about delaying the resolution of

her role further until September. She reiterated that not having a clearly defined role and compensation for a further two month would fuel her stress.

160. Mr Kelly reiterated that he wanted the Claimant to “de-stress”. He gave a narrative about adjustments to roles and reporting lines for various colleagues, none of which he said had been characterised as a “demotion”. He emphasised that this was common in an early stage company and offered to share some “literature” in this topic.
161. This “switching off” Zen deal notwithstanding, the Claimant, made clear in a message on 27 June 2023 that she wanted her role and compensation agreement sorted out. Mr Kelly replied a few minutes later stating that he appreciated that having 100% clarity re role and comp would help her to de-stress. Later on that evening he wrote

A few things you had said you wanted:

- 1."Hunter" role
- 2.To retain influence & input into strategy — leveraging all your experience and insights gleaned over the 3.5 years
- 3.Minimise draining aspects of people-management
4. Minimise involvement in execution and project-related problem-solving with existing clients

Is any of the above correct?

162. Matters moved forward nearly two weeks later on 6 July 2023 when the Claimant had a positive conversation with Mr Yong and suggested a one-to-one conversation with Mr Kelly following Friday and a further meeting with Mr Kelly and Mr Hunt. Mr Yong had provided to the Claimant a clear structured approach to her compensation by an email of 29 June.

#### Potential agreed termination

163. Again, notwithstanding the agreement to “switch off”, Mr Kelly made contact with the Claimant by WhatsApp on 6 July 2023 to have an “f2f Protected Conversation”. That was a reference to a “protected conversation”, a statutory concept under **section 111A** of the Employment Rights Act 1996. It allows an employer and employee to have confidential, off-the-record discussions about ending employment on agreed terms, without those discussions being admissible in ordinary unfair dismissal proceedings.
164. On 10 July 2023 Mr Kelly and the Claimant had a discussion about her future role. They discussed the possibility of an amicable exit or alternatively the Claimant as a “producer-only” role with no management responsibilities.
165. The following day on 11 July 2023 in an email sent at 17:43, the Claimant suggested that this second option was not really viable and that the only realistic route was the first option, in respect of which she put forward proposed

terms for termination of her employment which would fall under a settlement agreement. She wrote:

"I know you have been worried about me bringing a claim for stress, or discrimination, so I am of course happy to sign a settlement agreement confirming that the above is in full and final settlement of any and all claims, including personal injury (for stress and anxiety), unfair dismissal, discrimination and whistleblowing (re: treatment of others within the Company). Apparently compensation for discrimination claims can be tax free (otherwise it is limited to £30k tax free), so it would be helpful for us both if the compensation is categorised in this way."

166. Mr Kelly responded to the Claimant's email of 11 July with a series of WhatsApp or slack messages. There are eight messages, taking up nearly a full page of close type sent in a period of approximately 30 minutes. In it Mr Kelly asks whether she was being poorly advised and suggest her getting a proper lawyer before making a position final. He wrote

"bringing a company to employment tribunal is a serious thing, so you'd want to make sure you're ready for it, and its consequences."

167. The Claimant responded briefly to say that she wanted to get an amicable route. She clarified that she saw it that Mr Kelly wanted her gone.

[11/07/2023, 19:30:54] Stewart Kelly: I didn't expect the email. Especially the reference to territory change, and then stuff about discrimination, whistle-blowing etc.

168. The reference to discrimination was most likely a reference to what the Claimant had said in her email nearly a couple of hours earlier.

#### Suspicious download

169. The following day, 12 July 2023 Mr Kelly was alerted by Pat Carter about a an apparently suspicious download of a large amount of client data made by the Claimant. He set up a group called "SP downloads investigation" in WhatsApp to manage the situation. That lead to a fairly intensive investigation and discussion and among the co-founders about the volume of data downloaded by the Claimant (over 4,000 projects created on the system together with client contact details). They discuss the actions necessary including legal advice.

170. It seems clear from Mr Kelly's contribution to the discussion that he is wondering whether there might be a basis to dismiss the Claimant for gross misconduct whether or not she has been acting in bad faith.

171. Comments from Mr Carter and Mr Hunt are a little more thoughtful, and reflected the possibility that the Claimant was innocently downloading data in order to evaluate her own bonus entitlement by reference to the work that she had done.

172. Ultimately Mr Kelly spoke to the Claimant by telephone on the evening of 13 July. She provided a full explanation by email on the evening of 13 July 2023 in which she expresses surprise at the accusatory tone and provides an explanation as to why she needed the data to calculate commission payments and also to analyse deals by client segment which she sees as being within her role as Head of Sales and Marketing.

14 July 2023 conversation

173. On 14 July 2023 the Claimant had a further conversation with Robert Court. He says that by this stage he had been briefed by Mr Kelly and Mr Hunt that they had concerns about her health and well-being and that she was taking some time off work. He says that he did not remember the Claimant raising specific concerns about harassment or being victimised on grounds of sex.

174. The Claimant was in general terms complaining about Mr Kelly and his negotiation and that she felt harassed by him and the allegations he was making against her.

175. There is no clear evidence that the Claimant raised with Mr Court in terms that Mr Kelly was discriminating against her because of sex or harassment relating to sex, i.e. specific allegations of unlawful acts under the Equality Act 2010.

New “commercial director” hires

176. The Respondents hired Lee van Deventer as Commercial Director, Americas, based in the state of Texas, USA on 17 July 2023.

177. An offer of employment was made to Casper Bekker as Commercial Director, EMEA by letter of 26 September 2023. His employment, based in Spain but with a wide geographic scope it commenced on 1 November 2023. [2939-2940]

Correspondence regarding Claimant’s role and compensation package

178. On 7 September 2023 Mr Kelly wrote to the Claimant

Just checking in to see how you are doing. I hope you had a nice break and managed to get some proper time off work.

Please let me know if it would be helpful to have a catch up on any issue.

Otherwise I’m happy for you to crack on, if you remain keen to do that (including finalising the role focus and comp etc with Bill).

179. The Claimant wrote back the same day stating that she thought that the terms of her role and compensation have been agreed, but she had then realised based on recent conversations with Mr Yong that they had not been. She mentioned that the proposed territory and accounts have been narrowed further and compensation was minimal. She flagged up that compensation for Q2 had

not yet been honoured, given that she should have received this payment in July or August.

180. Mr Kelly chased up Mr Yong “not urgent” for a basic written version of the new role job description, terms and compensation.

8 September 2023

181. The Claimant alleges that on 8 September 2023, she asked Mr Kelly to cease communications with her and said, amongst other things, that he was discriminating against her because of sex. This is not borne out by the wording of the email exchange.
182. Mr Kelly sent the Claimant (with others in copy) a relatively upbeat email about a “really exciting opportunity” on 8 September 2023.
183. The Claimant responded substantively to his email, but signed off:

“Finally, can I propose that if Chris has any concerns in future, he has the courtesy to at least respond to my email, rather than communicate with me via you? Bill and the wider team were in copy on my email to him on Wednesday morning. This will save everyone time and provide a better customer & partner experience in future.”

184. Also on 8 September 2023 there was an exchange between Mr Kelly and the Claimant under the heading “Roles and terms”, and in respect of which the Respondents originally asserted that privilege, but which was waived at the tribunal hearing.
185. Mr Kelly wrote to the Claimant to emphasise that the offer made to her was “extremely generous”, given that she was being paid on the same level as the company’s senior leadership team plus a commission component and the biggest equity options package of any non-founder employee. The Claimant pushed back and said that she wanted something concrete. She referred back to an offer to leave the business back in July. She reiterated that what was being offered is not hundred percent clear. Mr Kelly then responded to her dividing son more arguments, saying that the concrete role proposal would be set out the following week.
186. The Claimant wrote back saying that Mr Kelly’s email was aggressive and misrepresented the facts. She asked for communication to be put on hold as it was making her unwell again. She said that it was completely unacceptable for him to mention “conduct issues” particularly given that she had already accepted his apology for false accusations about her stealing company data. She reiterated that she had apologised for inadvertent slack message in the wrong channel. She disputed that she was being uncollaborative.
187. There was no allegation of discrimination in the Claimant’s communication.

New proposed terms

188. On 12 September 2023 Mr Yong wrote to the Claimant with the heads of terms for her role of "Commercial Director, EMEA".

Allegation of discrimination (first protected act)

189. On 18 September 2023 Claimant sent an email to Mr Kelly, complaining about the process of trying to get to agreed terms, rejecting the terms put forward by Mr Yong and additionally alleging that she had been discriminated against as a woman, and raised further concerns about her health and wellbeing. This complaint included the following:

"my health and well-being has deteriorated significantly, not only due to my ever increasing workload (doing not only my old job while Bill transitioned at the same time as continuing to generate new logos and working on existing clients to maintain and continue to grow the revenue for the business), but also due to the **difficulties which I have encountered as a woman on the Senior Leadership Team (but without the matching title)**, with no commission being paid despite being responsible for revenue generation (well in excess of £2M YTD in 2023 alone, and with no guaranteed commission at the supposed start of a new role (unlike Bill). I have done all of this while having no certainty as to the new terms of my employment in a role which you have effectively tried to force upon me

the deleterious effect of all of this on my health and well-being continues, as does the ongoing discrimination (e.g. bringing Bill in on a double OTE and 6 months guaranteed comp while claiming that the very reason I was not eligible for commission before Bill started was because "I was in the executive leadership team" and "one of the founders" of the business, and despite telling me a number of times you'd be happy to add "Founder" and the "Chief" to my job title, as a comparator with you, Matt, Pat and Chris (and Bill on his arrival), never actually doing so)."

[emphasis added]

190. This was **the first protected act**.

Investigation

191. On 20 September 2023 Mr Kelly confirmed that he would appoint an independent investigator and referral the Claimant to occupational health.

Further email of complaint

192. In her response, Claimant by an email of 22 September 2023 raised that she had been excluded from marketing events that she had been scheduled to attend in the US, that she was excluded from key account communications and meetings, she had been informed that a new colleague Alyria now lead all client

relationships including commercial discussions, she was excluded from a specific client meeting today despite this being within the scope of her role, and that the promised fortnightly one-to-one meetings had not taken place.

193. She also complained that the process of renegotiating her terms had now taken six months.

"Threats" of redundancy & disciplinary action

194. On 26 September 2023 Mr Kelly wrote an email to the Claimant which he responded to things that she had said. He stated that he made it clear that never wanted to pay her off to leave the business. The previous without prejudice offer, rejected by the Claimant was a "very generous option" which was now no longer on the table. He put forward an alternative offer.
195. Further to this he wrote as follows:

"Whilst I am conscious that I suggested we park the discussions around your role, I did note your reference in your email in open correspondence to your role being potentially at risk of redundancy. In light of the fact that you have rejected the recent role profile – which is in fact strikingly similar to the role proposed by you in July 13 – I feel it is appropriate for me to highlight to you at this stage that the business **may be compelled to initiate a more formal restructure in relation to your role**, as a result of which you may be placed at risk of redundancy.

I am also increasingly concerned about your lack of cooperation in relation to the recent Pipedrive of data download, and your persistent refusal to send the documents that you collated at the soft time and presumably still have in your possession. That is – and has been throughout – a reasonable management instruction.

I also remain concerned about your abrasive communication to ward colleagues in the business – and again your persistent refusal to engage with meeting to discuss that issue, despite my having raised it frequently since your end of year review in December 2022."

196. Mr Kelly wrote further on 29 September 2023 at 17:47 as follows:

Please let me know by 6pm on Monday if the offer is accepted in principle, in which case I will arrange for the necessary paperwork to be prepared.

I don't hear from you by 6pm on Monday, I will assume that the offer is rejected.

Subject to your response, please note that on Monday we will initiate the following processes:

1. The independent investigation into your discrimination allegations
2. The occupational health assessment
3. Formal redundancy process

Further details will be provided in open correspondence.

In addition, I will arrange the meeting for you and me, together with Peter O'Higgins, to discuss your conduct – – specifically the Pipedrive downloads and your abrasive communication towards colleagues in the company.

#### “Blackmail”

197. The Claimant forwarded the email a little over an hour later on 29 September, to Robert Court to characterise Mr Kelly's announcement in without prejudice correspondence a redundancy process as “pure blackmail”.

#### OH assessment

198. An independent Occupational Health professional was engaged on 2 October 2023.

199. An Occupational Health assessment took place by telephone on 24 October 2023, leading to the production of an occupational Health report dated 2 November 2023. In that report it was noted that the Claimant was reporting increased stress associated with her role and that following the hospital admission she had been diagnosed with anxiety. She was undergoing therapy treatments but not medication.

#### Investigator

200. The Claimant was informed Gillian Pickersgill (HR consultant, with a background as an employment lawyer) had been appointed to investigate the complaints raised on 4 October 2023.

#### Management update

201. On 4 October 2023, the same day that the Claimant was informed about the investigation, Mr Kelly wrote the following to a WhatsApp group. It is unclear exactly who the members of this group were, although it seems likely from the message and the context that these senior managers (and all male).

WhatsApp Chat – SB Issue:

[04/10/2023, 07:17:40] Stewart: Hi gents, just to update you. We now have the following processes underway:

1. Independent investigation into discrimination allegations
2. Occupational Health assessment

3. Redundancy process — starting post investigation

4. Misconduct investigation— ongoing

Peter — FYI SB made a whistleblower complaint to Robert Court, who is our whistleblowing officer. It is likely the complaint doesn't qualify as whistleblowing, so it will be folded into the discrimination investigation.

Timeline for discrimination investigation is 2-4 weeks.

Timeline for redundancy process is a further 2-4 weeks.

[redacted]

[04/10/2023, 07:21:56] Peter O'Higgins: Thanks for the update

#### Investigation meeting

202. The Claimant attended an investigation meeting as part of the grievance on 26 October 2023. I had the benefit of a transcript of that investigation meeting which ran to 42 pages. Reading through this transcript, I formed the impression that there was a good rapport between Ms Pickersgill and the Claimant and they had an open and honest conversation. There are a few lines which are redacted.

203. Approximately halfway through that meeting (internal numbering page 21), Ms Pickersgill asked the claimant about victimisation. There was the following exchange:

GP: .....

..... Silvia, did you, have you expressly complained about that to Stuart? Did you say to him, 'You're treating me this badly because I'm a woman'.

SB: Like when I blew the, no I didn't in, when I blew my roof off (GP: Yeah) or whatever the expression is, in that meeting with Matt (GP: Yeah) and Stuart, I lost the plot and you know kind of was like well, when I say lost the plot I just thought ...

GP: Yeah, you, you challenged back.

SB: Hold back anymore. This unacceptable the way you're treating me is not acceptable. I didn't like, what I said was, 'you're treating Matt his way and you're treating me this way'. **I didn't say because I'm a woman.**

[emphasis added]

204. In the transcript the conversation moved on to discuss different points, moving away from the topic of victimisation.

Sales territory update

205. In November 2023 Bill Yong circulated updated sales territories for Claimant, Lee van Deventer and Casper Bekker.

Options data

206. The Respondent disclosed a list of options granted to all employees as of November 2023. At that stage can be seen that the Claimant had 31,000 options, which was approaching three times more than the next highest number of options which was 12,000.

Financial performance of business concerns leading to redundancy

207. In December 2023 concerns about GTI's financial situation were identified given a significant discrepancy between the estimate of the financial position and the reality. Mr Kelly says that he discovered himself that there was an over-estimate of the future cash balance by approximately £800,000, and the business average monthly loss was £275,000, which meant that it would run out of cash in approximately three months.

208. A draft memorandum prepared for the Board, dated 14 December 2023 from Peter O'Higgins, Director, documented that on 14 December 2023 as part of the monthly management accounts review it was flagged that the cash in bank as at 30 November 2023 was £1.3 million, which was different to the £1.8 million which the financial model forecast should be there. This 12 page report identifies various concerns, including that monthly review of finances is insufficient and that the excel spreadsheet financial model is now not adequate for the growing business. In particular in November 2023, there was a cash outflow of £800,000, which was significantly higher than expected and in part due to a large invoice of over £200,000 from a partner organisation coming in belatedly. There is an error identified in relation to the cash flow model caused by costs of sales from the previous month not being appropriately subtracted. There are some detailed given and extracts from the spreadsheet set out. An assumption about the payment time of certain customers to pay is found to have been wrong.

209. There were a series of actions over a five day timeframe taken to try to shore up the financial problem. The model is updated. "Operational improvements" were planned due to happen in early January 2024, a task owned by Matt Hunt.

210. Metadata for the report produced to the Tribunal shows that the document was created on 14 December and modified on 18 December 2023 by Peter O'Higgins. It can be seen from the version history that he had saved this and worked on it throughout the morning on 14 December 2023 and in the morning of 15 December. That data at least shows on the balance of probabilities that this report was created time that the Respondents say that it was and Mr O'Higgins was working on this document fairly intensively at that time.

Grievance outcome

211. The grievance investigation report was produced, 2 January 2023 (almost certainly a typographic error, mostly likely it was 2024). This was a report of 117 pages with a detailed chronology and extensive quotations from various interviewees and a conclusion. It seems likely that the time it took to produce that report is longer than had originally been envisaged by management.
212. The investigator Ms Pickering was of the opinion that, having examined all the available evidence on the issues raised and on the balance of probabilities that there was insufficient evidence that Mr Kelly has breached the GTI Code of Conduct or failed to engender a culture of honesty in the business.
213. The recommendation was that none of the allegations were upheld.
214. In line with this report, the Respondents did not uphold the Claimant's grievance, as was communicated to the Claimant by a letter of 8 January 2024.
215. The key points of this grievance outcome were as follows.
216. Allegation 1 - discrimination on the grounds of gender in relation to a) pay, b) benefits, and/or c) title - the conclusion was that the Claimant was paid less than male comparators in the period January 2022 to July 2021, but also received commission on sales, whereas they did not. The Claimant received the same salary as male comparators since July 2021, save for Bill Yong. The Claimant was the largest employee shareholder in the business. There was no evidence that the Claimant had asked for "chief" to be included in the job title.
217. Allegation 2 - a breach of contract, specifically that there has been a unilateral change of the contract of employment in relation to the Claimant's a) role, b) status, c) territory, and/or d) commission – Ms Pickersgill accepted the case put forward by management that the Claimant's role had involved with the development of the business both in terms of management responsibility and geographic area. She emphasised that the Claimant had prioritised higher base salary over commission.
218. Allegation 3 - victimisation by a) plotting to removal, and/or b) fabricating conduct issues / false allegations, and/or c) threatening behaviour, and/or d) failing to support the Claimant after she raised concerns - this allegation was not accepted on the basis that the data download and accidental public criticisms of Mr Yong were both admitted conduct on the part of the Claimant and that there was a reason for less communication from Mr Kelly, specifically that the reporting line had changed so that the Claimant was reporting to Mr Yong.
219. Allegation 4 – causing personal injury – this was not accepted given attempts to reduce the Claimant's workload.
220. Allegation 5 - Breach of the GTI Code of Conduct, by the a) belittling behaviour towards LW and/or b) failing to engender a culture of openness and honesty at the company – LW had not been interviewed given that she was no longer an

employee, but there was a complaint at the time and no evidence of willing or inappropriate treatment. As to openness/honesty, the investigator highlighted the significant discussion on slack which supported that this policy had been adhered to.

Communication with investors re cuts to workforce

221. By the outcome of grievance on 8 January 2024, plans were already well advanced for a significant redundancy exercise. Five days earlier, Mr Kelly had a telephone call with investors at Touchdown Ventures, based in San Francisco on 3 January 2024 and followed up with an email the next day entitled "Financial sustainability in Q1 – follow-up to yesterday's call". Mr Kelly undertook to

"execute the cuts as swiftly and efficiently as possible, to minimise costs and get to sustainability by the end of March."

222. That email is followed the next day, 5 January 2024, by another in which Mr Kelly forwards the latest weekly commercial update from Bill Yong in the sales team dated 29 December, with the comment:

"For our assessment of **whether and when to cut the sales team**, I thought it would be worth us all seeing the below latest weekly sales update"

[emphasis added]

223. The plan was to make the entire sales and marketing team redundant, of whom four employees were sales including the Claimant and two employees were marketing. Mr Kelly was hoping to reduce the monthly cost of these functions which was in the region of £100,000.

Proposed redundancy

224. Mr Kelly wrote the following to Mr Hunt on 8 January 2024 in which he set out his thinking following on from the discussion with the investor the previous week:

"[08/01/2024, 09:55:41] Stewart Kelly: Topic for discussion:

- Having reflected on the current state
- Based on Mike's comments last week
- Based on what you and I have observed

**I think we should cut the entire sales team, immediately.**

BY, LV, CB, SB.

[08/01/2024, 09:55:42] Stewart Kelly: Rationale for cuts

1. Sales team would have to generate £2m+ in 2024 just to cover their cost

2. No indication they can achieve that, or anywhere close to it
3. Company doesn't have the capital (or investor backing) to give the sales team more time to succeed
4. Smaller sales team of MH, SW, SK — with support from marketing and junior staff — can achieve more modest 2024 sales goals: win more big advisories, pin down the MNC sales process, develop partnerships. Lower total revenue number — £6m+ goal.
5. Focus will be on getting to profitability in Q2, while achieving point 4 goals
6. Capital raise in Q3 from a position of strength (ie profitability).
7. SK will play Chief Revenue Officer role.

[08/01/2024, 09:55:52] Stewart Kelly: **You, me and SW are the only successful salespeople anyway. So I actually think we'll be better as a more lean team**

[08/01/2024, 09:56:11] Stewart Kelly: Key will be to get buy-in and support from full team, and to keep Alicia

[08/01/2024, 09:57:19] Stewart Kelly: BY, LV, **SB — should not be surprised**. CB — it's tough and very unfair. But we can't afford to keep the experiment going with him. Just not enough cash to sustain it for as long as it'll need to succeed — ie 1 year-plus

[08/01/2024, 09:58:48] Stewart Kelly: Under the leaner team, we have opex base of £325 (max) and can be break-even at £600k/month revenue ... Under the bigger team, with commissions, we'd have to be hitting £750k+ per month. I just don't see that happening. At least not as soon as we'd need it to happen (ie within 6 months)

225. Mr Kelly evidently took action immediately, and spoke to Bill Yong. The following day he updated the "Exec team" Whatsapp group as follows:

Stewart Kelly created group "Exec Team"

[09/01/2024, 08:48:25] Exec Team:

[09/01/2024, 08:50:56] Stewart Kelly: Hi folks, creating this group for ease of chat / coordination.

Everyone here is up to date re departures of Bill, Lee and **SB** [i.e. Claimant].

I spoke to Bill last night and everything was amicable and he wants to ensure smooth transition.

I have a call scheduled with him and Lee for Wednesday evening.

I intend to have the conversation with **SB** on Wednesday.

...

Confirmation of redundancy by letter

226. The Claimant was invited to a meeting with Mr Kelly and Lucca Bowman (HR) discuss the potential redundancy. The Claimant responded to Ms Bowman to say that she did not consider it was appropriate to meet with the Claimant.
227. Mr Kelly's requested that the Claimant attend the meeting as a reasonable management request. She did not attend.
228. On 10 January 2024 the Claimant was informed that the decision had been made to make her role, along with the rest of the sales function redundant, due to significant pressure and direction from external investors to take immediate and drastic action to save costs. That was stated to be the result of the company's failure to achieve new sales revenue. It was stated that there were no ways of avoiding redundancy. The Claimant was to receive pay in lieu of notice of 60 days plus statutory redundancy payment.
229. The Claimant had the right to appeal.

Wider team communication about redundancy

230. The decision was communicated to the wider team in an email from Mr Kelly, which included the following rationale:

“The unfortunate reality is that the new-client revenue results from the sales team in 2023 were not sufficient to justify maintaining a team of the size and cost we had, and the future sales pipeline was not strong enough to merit continuing the effort further into H1. Our excellent revenue progress in 2023 was driven primarily by our existing clients (Alicia in collaboration with our CX team) and new clients won by Sylwia and Matt through their part-time sales efforts.

Continuing with the larger team would have put our financial sustainability objective at risk, whilst we were not sufficiently confident that it would eventually produce enough results to impact our revenue growth objective.

Disparaging comments

231. On 10 January 2024 Mr Kelly wrote to Ms Blake accusing her of making “very serious disparaging and derogatory remarks about the Company and its senior leadership team to an employee”.

232. The Claimant wrote back the following day denying it and suggested that “as usual” he had made serious allegations about her without foundation or substance.

Other redundancies

233. At this time Bill Yong was made redundant – on 1 month’s notice (as per his contract) on 10 January 2024.

234. Lee van Deventer was also made redundant, as of 15 January 2024.

235. The Head of Marketing Sal Remtulla was made redundant on 29 January 2024 and.

236. A Marketing Executive MW was made redundant on 29 January (page 3086).

237. The Chief Technical Officer Chris Miller was also made redundant on 29 January 2024.

Casper Bekker

238. Casper Bekker, based in Spain, was not initially made redundant, but an alternative arrangement that he work on commission only basis was discussed.

“[10/01/2024, 12:09:05] Stewart Kelly: We spoke to Casper. He is fully on board and motivated to be the sole sales rep, working with Matt and Sylwia. Let’s see how it goes.”

239. This did not work out and Mr Bekker was informed of the decision to make his role redundant with lawful termination on 29 February 2024. The Respondent’s case is that was because he was employed in Spain by an employer of record and the mechanism for termination was lengthier as a result, not because he was being given preferential treatment to the Claimant. I find that there was a discussion with Mr Bekker about “sole sales” arrangement but in practical terms his employment was terminated on 29 February 2024.

Salimah Remtulla

240. In respect of Salimah Remtulla in marketing, the Respondents’ case is that her employment was also terminated on 29 January 2024, which is evidenced by an email sent on that day at 10:19am.

241. The Claimant said that Ms Remtulla told her that Mr Kelly suggested that she could carry on working on a freelance basis, but she declined. That position which was at paragraph 60 of the Claimant’s witness statement and confirmed by her in her oral evidence is supported by a contemporaneous summary of a lunch meeting that the Claimant had with Ms Remtulla on 18 March 2024. While I am conscious that this is hearsay evidence and the Claimant did not call Ms Remtulla, on balance I found that this did happen.

242. I note that in the WhatsApp exchange disclosed from 9 January 2024 Mr Kelly updates the exec team about the departures of Mr Yong, Mr van Deventer and

the Claimant in a single category. There is no mention of Mr Bekker and Ms Remtulla in that communication.

Appeals

243. The Claimant appealed against grievance decision on 14 January 2024.

244. On the following day, she appealed against redundancy decision.

Grievance appeal outcome

245. The Claimant was provided with outcome of grievance appeal by Peter O'Higgins, Director in a two page letter rejecting her appeal on 1 February 2024.

Appeal outcome

246. The Claimant was provided with outcome of redundancy appeal on 8 February 2024, again from Mr O'Higgins dismissing her appeal.

Respondents' disclosure

247. Mr Kelly's account regarding disclosure of documents is contained at paragraph 21 of his witness statement (a separate statement dealing with disclosure):

21. In relation to WhatsApp messages, in or around February 2024, when GTI was having serious financial issues and was at risk of insolvency, I took the decision for all senior members of management staff to use the "Disappearing Messages" function on WhatsApp. The reason this decision was taken was because at the time, we were having conversations on very sensitive financial issues at a senior level about the long-term solvency and survival of GTI. I therefore did not want any messages to get into the wrong hands in the event that a mobile phone was stolen or went missing. Matthew Hunt, Sylwia Wolos, Karla Chams and I agreed that going forward we would only use "Disappearing Messages" and that we would delete our entire previous WhatsApp message history. These conversations were highly confidential and whilst WhatsApp is very user-friendly, it is not a secure way in which to have these discussions. We did so for convenience with the safety net of knowing that the messages would automatically be deleted, creating a more secure way of using WhatsApp. I understand that once WhatsApp messages have been deleted, they cannot be recovered. I have checked my archives and have uninstalled and reinstalled WhatsApp and these messages have not been recovered."

248. Subsequently it was discovered that MH had not deleted all messages as instructed. Some messages in January 2024 were found available, specifically for 9 January 2024 [e.g. 3240].

The Claimant's discovery of pay inequality

249. The Claimant says she became aware through the disclosure process from documents disclosed to her on 27 June 2025, specifically the founders' service agreements and Mr Kelly's executive service agreement, that contrary to representations the co-founders had far more favourable vesting terms than her, as well as better pay and overall terms (such as holiday entitlement and notice pay).
250. Nearly 5 years earlier, in September 2020 the Claimant had become aware that she was being paid half the salary of Messrs Kelly, Carter and Hunt after gaining access to the company's projections Excel model.

**Case management of claim**

251. Case Management orders were made by Employment Judge Brown on 20 November 2024 and Employment Judge Nicolle on 20 January 2025.
252. On 20 January 2025, Employment Judge Nicolle Decided that "equal value" for the purposes of the Equal Pay claim would be deferred pending the Tribunal's judgement, but "like work" and the material factor defence would be considered at the substantive final hearing. He found that various documents labelled "without prejudice" or related to settlement negotiations were not admissible for the purposes of the Claimant's amendment application. The application to amend was refused.
253. On 25 July 2025 Employment Judge Connolly, having heard from counsel for both parties, declined to strike out the response for non-compliance, but instead made an unless order giving the Respondents four weeks to produce their witness statements and a witness statement dealing with disclosure, due to the concerns raised by the Claimant. He commented that the Respondents' conduct of the case had left a lot to be desired, although was not able to explain the reason for it.

**LAW**

Statute

254. The relevant provisions of the **Equality Act 2010** in relation to the complaints of direct discrimination, harassment and victimisation are sections 13, 26, 27, 123.
255. The relevant provisions of the **Equality Act 2010** in relation to the complaint of equal pay are sections 64-71, 129-130 (time limits).

Harassment: "Related to" protected characteristic

256. HHJ Auerbach sitting in the EAT provided guidance on harassment in the case of **Tees Esk and Wear Valleys NHS v Aslam** [2020] IRLR 495, in particular at paragraphs 20, 24 and 25.

257. The following guidance was given at paragraph 25 on “related to the protected characteristic”:

“25. ... there must be still, in any given case, be some feature or features of the factual matrix identified by the Tribunal, which properly leads it to the conclusion that the conduct in question is related to the particular characteristic in question, and in the manner alleged by the claim. In every case where it finds that this component of the definition is satisfied, the Tribunal therefore needs to articulate, distinctly and with sufficient clarity, what feature or features of the evidence or facts found, have led it to the conclusion that the conduct is related to the characteristic, as alleged. Section 26 does not bite on conduct which, though it may be unwanted and have the proscribed purpose or effect, is not properly found for some identifiable reason also to have been related to the characteristic relied upon, as alleged, no matter how offensive or otherwise inappropriate the Tribunal may consider it to be.”

Time limits (not equal pay)

258. In **Robertson v Bexley Community Centre t/a Leisure Link** 2003 IRLR 434, the Court of Appeal held that when employment tribunals consider exercising the discretion under [what is now] S.123(1)(b) EqA, ‘there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse, a tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule.’

259. In **Abertawe Bro Morgannwg University Local Health Board v Morgan** 2018 ICR 1194, CA, the Court of Appeal pointed to the fact that it was plain from the language used in S.123 EqA (‘such other period as the employment tribunal thinks just and equitable’) that Parliament chose to give employment tribunals the widest possible discretion and it would be wrong to put a gloss on the words of the provision. At paragraph 1<sup>19</sup> Leggatt LJ said:

“it is plain from the language used (such other period as the employment tribunal thinks just and equitable) that Parliament has chosen to give the employment tribunal the widest possible discretion. Unlike s 33 of the Limitation Act 1980, s 123(1) of the Equality Act does not specify any list of factors to which the tribunal is instructed to have regard, and it would be wrong in these circumstances to put a gloss on the words of the provision or to interpret it as if it contains such a list. Thus, although it has been suggested that it may be useful for a tribunal in exercising its discretion to consider the list of factors specified in s 33(3) of the Limitation Act 1980 (see *British Coal Corporation v Keeble* [1997] IRLR 336), the Court of Appeal has It is submitted made it clear that the tribunal is not required to go through such a list, the only requirement being that it does not leave a significant factor out of account: see [2003] EWCA Civ 15, [2003] IRLR 220, para

[33]. The position is analogous to that where a court or tribunal is exercising the similarly worded discretion to extend the time for bringing proceedings under s 7(5) of the Human Rights Act 1998: see *Dunn v Parole Board* [2008] EWCA Civ 374, [2009] 1 WLR 728, paras [30] [32], [43], [48]; and *Rabone v Pennine Care NHS Trust* [2012] UKSC 2, [2012] 2 All ER 381, para [75].

That said, factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh)."

260. In *Adedeji v University Hospitals Birmingham NHS Foundation Trust* [2021] EWCA Civ 23, [2021] ICR D5, Underhill LJ said:

"The best approach for a tribunal in considering the exercise of the discretion under section 123(1)(b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular (as Holland J notes) the length of, and the reasons for, the delay. If it checks those factors against the list in Keeble, well and good; but I would not recommend taking it as the framework for its thinking."

### Remedy

261. **Polkey v A E Dayton Services Ltd** [1988] A.C. 344 the Tribunal has the power to limit compensation by reference to the percentage likelihood that, had a fair procedure been carried out, the claimant could/would have been dismissed in any event, and/or by reference to a date by which the tribunal considers that this is likely to have transpired;

262. **Software 2000 Ltd v Andrews** [2007] IRLR 568 confirmed the principles on Polkey reductions generally and that there will be circumstances where the nature of the evidence which the employer wishes to adduce, or on which he seeks to rely, is so unreliable that the tribunal may take the view that the whole exercise of seeking to reconstruct what might have been is so riddled with uncertainty that no sensible prediction based on that evidence can properly be made. Whether that is the position is a matter of impression and judgment for the tribunal; but in reaching that decision the tribunal must direct itself properly. It must recognise that it should have regard to any material and reliable evidence which might assist it in fixing just compensation, even if there are limits to the extent to which it can confidently predict what might have been; and it must appreciate that a degree of uncertainty is an inevitable feature of the exercise. The mere fact that an element of speculation is involved is not a reason for refusing to have regard to the evidence.

263. Having (a) that if fair procedures had been complied with, the employer has satisfied it – the onus being firmly on the employer – that on the balance of probabilities the dismissal would have occurred when it did in any event; (b)

that there was a chance of dismissal but less than 50%, in which case compensation should be reduced accordingly; (c) that employment would have continued but only for a limited fixed period. The evidence demonstrating that may be wholly unrelated to the circumstances relating to the dismissal itself; ; or (d) employment would have continued indefinitely.

264. **Abbey National Ltd v Chagger** [2010] ICR 397 CA in assessing compensation for discriminatory dismissal, it is necessary to ask what would have occurred had there been no unlawful discrimination. If there were a chance that dismissal would have occurred in any event, even had there been no discrimination, then in the normal way that must be factored into the calculation of loss (paragraph 57).

## CONCLUSIONS

265. I have attempted to retain the numbering from the list of issues in the headings for easy of reference.

### Was the Claimant employed by R1 or R2?

1.1.1 The Claimant contends that her employment contract was with R2 but that she was paid by R1 and was selling R1's product in the course of her work. The Claimant agrees that her unfair dismissal complaint is brought against her employer. She contends that both R1 and R2 had control/authority over her employment for the purposes of a discrimination complaint.

266. I have taken at face value without any investigation the Respondents' submission that R1 was the Claimant's employer.

267. I have stayed rather than dismissed the claims against R2 to protect the Claimant's position and to avoid a lengthy fact find and legal dispute on this point.

### **Discrimination (not including Equal Pay):**

#### Burden of proof

268. Where the allegations are in time I have been able to make positive findings (per **Hewage**) which mean that I have not had to consider the operation of the burden of proof.

#### Time Limits:

269. Given the date the claim form was presented on 3 April 2024 and the dates of early conciliation 1 February 2024 to 14 March 2024, any complaint about any act or omission which took place more than three months before **2 November**

**2023** (allowing for any extension under the early conciliation provisions) is potentially out of time, so that the tribunal may not have jurisdiction.

Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

[2.2.1] Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act or omission to which the complaint relates?

270. The penultimate allegation of sex discrimination, [3.1.24] in November 2023, was potentially in time. Allegations earlier than this were out of time
271. Last allegation of harassment was 2 October 2023. All the allegations of harassment were out of time.
272. The allegation that the dismissal was victimisation [5.2.14] was in time but earlier allegations were out of time.

[2.2.2] If not, was there conduct extending over a period?

If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

273. I did not find that there was a continuing act of direct sex discrimination (or indeed any act of direct sex discrimination at all).
274. In respect of victimisation there was, I find a continuing act which started by Mr Kelly's threat of a formal restructure on 26 September 2023. Mr Kelly reported this to other members of the leadership team as a settled plan on 4 October 2023 and this never changed until the redundancy exercise was carried out. This was his plan and it was implemented. It was a continuing act.

If not, were the claims made within a further period that the Tribunal thinks is just and equitable?

The Tribunal will decide:

2.5.1 Why were the complaints not made to the Tribunal in time?

275. See below.

2.5.2 In any event, is it just and equitable in all the circumstances to extend time?

276. The Claimant contends that she discovered discrepancies in contractual terms in June 2025, specifically the more favourable vesting terms, better pay and overall terms such as holiday entitlement and notice pay. She relies upon this as a reason to extend time under the Tribunal's just and equitable jurisdiction to do so.

Time not extended - pay

277. I do not accept that the Claimant only became aware of a discrepancy in pay in June 2025. She was aware of a salary discrepancy as early as September 2020, when she raised this in a zoom call at that time. In her written grievance of 18 September 2023 the Claimant did complain of discrimination and the recent renegotiation of her terms but did not refer to pay discrepancy. In the interview carried out during that grievance process she referred to being paid less as an employee (from July 2020) to July 2021. The claim form was presented on 3 April 2024. In the "Further & Better Particulars of Claim" dated 14 October 2024, the Claimant complained about a discrepancy in salary.
278. In relation to the claim relating to salary discrepancy, the Claimant raised that there was a salary discrepancy as early as September 2020. I do not find it is just and equitable to extend time in relation to salary.

Time extended – vesting periods

279. As to the complaints relating to a differential in option vesting periods, I find that it is just and equitable to extend time given that the Claimant only received her comparator's service agreements in June 2025. In respect of this allegation time is extended back to 1 January 2020 to be dealt with on the substantive merits.

Time extended – discrimination & victimisation from February 2023 onward

280. I take account of the fact that the Claimant submitted a grievance on 18 September 2023 in relation to events from the appointment of Bill Yong onward and the failure of the parties to reach an agreement in relation to her terms and conditions. The Respondents were on notice of her concerns from this time onward. I also take account of the fact that the Claimant was significantly unwell during the middle part of 2023 and that it would have been difficult for her to present a claim at this stage.
281. For these reasons I find that it is just and equitable to extend time as far back as events in **February 2023** (allegation in relation to positioning for external investor). I have dealt with all allegations from February 2023 onward on the substantive merits.

## Direct Sex Discrimination

Did the Respondents do the following things:

Pay

[3.1.1] From January - July 2020, R1 and/or R2 and/or R3 paid Stewart Kelly, Matthew Hunt and Patrick Carter a salary and/or consultancy fee, when the Respondents did not pay the Claimant at all;

282. This allegation is out of time and time has not been extended.
283. The allegation would not have succeeded on the substantive merits in any event given that the Claimant was paid during this period and the co-founders were not as explained by Mr Kelly at paragraph 26 of his witness statement, which was not challenged.

[3.1.2] From 1 January 2020 – 30 June 2020, the Claimant was given 11,111 Ordinary B shares, vesting over a period of time and only while she was employed, whereas her comparator Matthew Hunt was given 10% of the equity, vesting immediately;

284. There are two factual matters contained within this allegation which are not made out. First, the Claimant was not employed in the period 1 January 2020 – 30 June 2020. Second, Mr Hunt's 10% equity did not vest immediately. Half of it had already invested at the time of the schedule [2800], but the remainder vested in equal tranches every quarter over a period of four years.
285. The fundamental problem with this claim is that the Claimant and Mr Hunt were not in materially similar circumstances. He was a co-founder. He was a statutory director. He was involved from the beginning. He owned 100,000 ordinary shares in the Second Respondent in September 2019, which was months before the Claimant's involvement.
286. The Claimant by contrast was someone initially working on a consultancy basis and then after six months became an employee with options. The fact that Mr Kelly may have discussed describing her as a co-founder as a means of acknowledging her early contribution or as a boost to her status did not as a matter of fact make her a co-founder. That could not retrospectively happen since she was not there at the beginning.
287. The Claimant was always in a different category to the three co-founders (Mr Kelly and Mr Carter had additionally invested some of their own capital in the business). I find that this must have been clear to the Claimant at the time.

[3.1.3] The terms on which the Claimant was granted shares were less favourable; the Claimant's shares vested 30 months' after her employment, so that the Claimant's

shares did not vest until 15 July 2022; She relies upon Stewart Kelly, Patrick Carter and Matthew Hunt as comparators;

288. For the same reasons as given above this allegation does not succeed. The Claimant was not in materially similar circumstances as her comparators.

289. It seems doubtful whether this has caused any actual financial loss to the Claimant since in the case of all parties concerned the shares have all vested.

[3.1.4] From 1 July 2020, the Claimant was given a further 30,000 [allegation amended during the Tribunal hearing to 20,000] share options in GTH, vesting in tranches, in place of commission, only being exercisable for value. Her comparators, Stewart Kelly, Patrick Carter and Matthew Hunt, were given more shares, which vested immediately and did not have to be paid for, until April 2023.

290. For the same reasons as given above this allegation does not succeed. The Claimant was not in materially similar circumstances as her comparators.

[3.1.5] From 1 July 2020 to January 2021 R1 and/or R2 and/or R3 paid Stewart Kelly and Matthew Hunt and Patrick Carter (“PC”) twice the base salary which they paid the Claimant (£48,000 per annum compared to her base salary of £24,000 per annum);

291. Time is not extended in relation to this allegation which is out of time. The Claimant was aware of the circumstances of salary differential as early as September 2020.

292. In case I am wrong about that, for the same reasons as given above this allegation would not succeed. The Claimant was not in materially similar circumstances as her comparators.

293. By way of comment Mr Kelly felt that the Claimant had made an assumption that she and the co-founders were all on the same terms. I think that he is right about that. I find that Mr Kelly’s email of 8 July 2020 demonstrated however that he was not trying to pull the wool over the Claimant’s eyes. The Claimant’s salary of £2,000 per month plus commission and the co-founder’s salaries of £4,000 a month are clearly there to be seen in an email which he forwarded to her. She also saw a spreadsheet containing salary data in September 2020. This undermines the Claimant’s suggestion that there was a lack of transparency.

[3.1.6] From January 2021 R1 and/or R2 and/or R3 paid the Claimant base salary of £42,000 per annum, but paid Stewart Kelly and Matthew Hunt and Patrick Carter base salary of £90,000 per annum; the Claimant accepts that incorrect [Friday, 05 September 2025, 12:57 PM]

294. The same reasons as per 3.1.5 above apply.

[3.1.7] From January 2020 to July 2021, the Respondents required the Claimant to cover her salary by earning commission, when they did not require Stewart Kelly and Matthew Hunt and Patrick Carter to generate commission at all;

[3.1.8] In January 2021 R3 told the Claimant that her salary needed to be covered by the commission she earned, so that, in order to be paid £48,000, and not £42,000, she would have to earn the additional amount through commission - when Stewart Kelly and Matthew Hunt and Patrick Carter were not required to generate commission at all;

295. It is convenient to deal with these two similar allegations together.
296. These allegations are brought out of time and time is not extended. In case I am wrong about that I have gone on to deal with them in the substantive merits in the alternative.
297. It was agreed in the hearing that the way that these allegations had been framed in the list of issues using the word "covering" was a little unclear. That is not a criticism of the Claimant, but merely the effect the effect of the case management process drawing up a list of issues using summary language which sometimes does not quite accurately capture what the nature of the allegation is.
298. In essence the Claimant would receive any bonus *net* of her salary, in other words she would only receive a bonus once she had earned more than her salary in terms of bonus by reference to sales.
299. For the reasons given above the Claimant was not in materially similar circumstances to her comparators. They were cofounders. She was not. She was performing a sales role. They were not.
300. Given the material differences in circumstances I do not find that the Claimant being a woman was the reason for the difference in treatment.

[3.1.9] In January 2021 R3 misled the Claimant by representing to her that, by being paid £48,000, she would be being paid the same as R3, Matthew Hunt and Patrick Carter;

301. This allegation is brought out of time and time is not extended. In case I am wrong about that I have gone on to deal with them in the substantive merits in the alternative.
302. The Third Respondent Mr Kelly denies that he misled the Claimant in the way alleged. The evidence does not support the Claimant's case on this. The burden would be in the Claimant to establish this. In relation to matters of pay agreed at that time I accepted what Mr Kelly said about it.
303. It may be that the Claimant has made assumption about equality of pay, but I do not find that Mr Kelly deliberately misled her. This allegation is not made out.

[3.1.10] From 1 July 2021 – January 2022, R1 and/or R2 and/or R3 paid the Claimant a base salary of £90,000 per annum, but refused to pay the Claimant commission on sales. When the R1/R2/R3 replaced the Claimant with Bill Yong from April 2023, they paid him \$250,000 per annum plus commission, initially guaranteed for 6 months, and thereafter calculated on sales. The Respondents continued to refuse to pay the Claimant commission at all. The Respondents' discriminatory prohibition on the Claimant earning commission therefore started in July 2021 and continued until her dismissal;

304. This allegation is brought out of time and time is not extended.
305. In case I am wrong about that, had this been considered in the substantive merits, the same conclusions on the substance of the claim (ignoring time extension) as are set about below in relation to allegation 3.1.11 below would apply.

[3.1.11] When the R1/R2/R3 replaced the Claimant with Bill Yong from April 2023, they paid him \$250,000 per annum base salary, when they had paid the Claimant much less throughout her employment in that role; for example, £90,000 base salary July 2021 – January 2022 and, from January 2022, £135,000 base salary;

306. There has been a just and equitable extension to time limits to deal with this on the substantive merits.
307. Mr Kelly freely admitted that the recruitment of Mr Yong in April 2023 on a significant remuneration package, followed by his redundancy less than a year later was not a commercially successful decision. Mr Yong was paid a lot comparatively speaking and did not ultimately deliver sales for the business in the period of less than a year that he was employed. Mr Yong was not called as a witness, so did not have the opportunity to give his side of the story.
308. The circumstances of the Claimant and Mr Yong however were not materially similar. The role that Mr Yong was recruited to perform in April 2023 was different to the role that the Claimant was doing in July 2021 or January 2022.
309. Mr Yong joined at a different stage in the development of the business to the Claimant. His title was to be Chief Revenue Officer. He was based in San Francisco, and employed in the US in part to develop the business in the US and accordingly in a different market altogether. Mr Kelly's evidence, which I accepted, was that part of the motivation for recruiting Mr Yong and meeting his salary expectations was that he had been recently involved in the sale of a start up business within the US. Mr Kelly hoped that Mr Yong would bring some of that experience, which went beyond the expertise within sales.
310. I accepted Mr Kelly's evidence that his expectation was that reporting lines would have to be fluid as the start up business grew and his evidence that two male employees had in fact experienced the insertion of managers above them in the reporting line, specifically Messrs Higgins and Carter. This significantly undermines the situation that the Claimant's sex was a factor.

311. I noted that the Claimant's employment agreement dated 2 July 2020 stated "initially reporting to Stewart Kelly" (emphasis added).
312. The changes seemed to Mr Kelly a natural consequence of a growing business, though this was something that the Claimant found difficult to accept.
313. I did not conclude that the discrepancies in pay were because the Claimant was a woman.

[3.1.12] From July 2023, R1/ R2/ R3, appointed Lee Van Deventer ("LVD") as Commercial Director (with the same job title as the Claimant, albeit the Claimant relies on Mr Van Deventer as a comparator in her sex discrimination complaint if he was not doing like work, or work rated as equivalent, or work of equal value) on a base salary of US\$165,000 per annum and with a guaranteed commission of US\$30,000 for the first 6 months, and commission based on sales thereafter. The Respondents therefore paid Mr Van Deventer more than they paid the Claimant and continued to refuse to pay the Claimant commission at all;

314. Mr Van Deventer started on or around 17 July 2023 on a basic starting salary of \$175,000 per annum (c. £135k based on exchange rate of 1.29), plus guaranteed bonus of \$15,000 (c. £11.6k) for Q3 and \$15,000 (c. £11.6k) for Q4 and additional variable compensation. The role was based in Texas and contingent in the right to live and work in the United States.
315. At of mid July 2023, the Claimant was paid a salary of £135,000 but the other components of her remuneration were still "in limbo" due to the extremely protracted negotiation with Bill Yong over her terms in the new role.
316. I note that the basic salary figure was similar, allowing for some exchange rate fluctuation. The Claimant did not have a guaranteed bonus.
317. I accept the Respondents' argument that Mr Van Deventer was in another sales role and it is common when recruiting someone from another sales role to offer a guaranteed bonus to compensate the employee for a bonus that they are foregoing by leaving employment elsewhere.
318. Mr Kelly accepts that the decision to recruit Mr Van Deventer was not a commercially successful decision. It should be said that Mr Van Deventer had little time to make an impact before the redundancy exercise.
319. The Claimant and her comparator here are in different circumstances for similar reasons to the comparison with Mr Yong. I accept that he had the same title. The circumstances were more similar between the Claimant and Mr Van Deventer than between her and Mr Yong.
320. The role was required to be based in Texas and with the right to work in the US. The role covered different geography under different employment law. Mr Van Deventer was joining at a different time. I find that the reason that the Claimant did not have an additional component to her remuneration beyond her basic salary was the protracted negotiation with Mr Yong. I note that each party points at the other in respect of why that negotiation was so protracted.

321. I did not find that this was because of the Claimant's sex.

[3.1.13] In November 2023, appointed Casper Bekker ("CB") as Commercial Director (with the same job title as the Claimant, albeit the Claimant relies on Mr Van Deventer as a comparator in her sex discrimination complaint if he was not doing like work, or work rated as equivalent, or work of equal value), on a salary of €175,000 per annum, plus commission. The Respondents therefore paid Mr Bekker more than they paid the Claimant and continued to refuse to pay the Claimant commission at all;

322. Mr Bekker was based in Madrid and was brought into the business to cover Spain, Switzerland, Germany and Denmark.

323. €175,000 per annum would have been equivalent to something in the range £150,000-£155,000, which was more than the Claimant's salary.

324. For similar reasons as to the comparison with Mr Van Deventer I find that the Claimant and Mr Bekker were not in material similar circumstances. While they had the same job titles, he was recruited at a different time, based in a different place and covering a different geography.

325. This was not because the Claimant was a woman.

#### Job Titles

[3.1.14] From 1 July 2020 until the Claimant's dismissal, R1/R2/R3 failed to state in public, including on its website and LinkedIn, to clients and prospective investors, that the Claimant was a Co-Founder of R1 and R2, when they did so state that Stewart Kelly and Matthew Hunt and Patrick Carter were Co-Founders. This was in the circumstances that R3 repeatedly told the Claimant herself, and said in internal meetings, and on internal communications, that the Claimant had "co - founder status" in the business;

326. Mr Kelly did make comments to the effect that the Claimant had "co-founder" status within the business. She herself recounts in her witness statement that he used phrases such as "one of the originals" and "honorary founder". This language suggests an acknowledgement of being in near the beginning but falling short of a statement of being an actual co-founder.

327. The Claimant was not strictly a co-founder as she and Mr Kelly both knew. She was not part of the business when it was set up.

328. This was unrelated to the Claimant's sex.

[3.1.15] R1/R2/R3 all gave R3, Patrick Carter and Matthew Hunt "Chief" job titles, Chief Executive Officer ("CEO", SK), Chief Technology Officer ("CTO", PC), Chief Operating Officer ("COO", MH), but declined to call the Claimant 'Chief Revenue Officer ("CRO")'. When Chris Miller joined in 2022 he was given the title of Chief Technology Officer and Patrick Carter was given a new title of Chief Information Security Officer ("CISO"). When Bill Yong was appointed to the Claimant's role in April 2023, he was given the job title of "Chief Client Officer". The only other female in the Senior Leadership Team, Sylwia Wolos, was initially given the title, "Head of Strategy". Ms Wolos' title was changed to "Chief Strategy Officer" in April 2023, after

the Claimant and Ms Wolos raised concerns about not being described as members of the Senior Leadership Team, but the Claimant's title was not changed;

329. I did not find that the reason that the Claimant did not have "Chief" in her job title was because she was a woman, for four reasons set out below.
330. First, the Claimant's female colleague Sylwia Wolos was given a title with "Chief" in it. This was not an organisation adverse in principle to a female employee with such a title.
331. Second, once Mr Yong was appointed to the head of sales, it would not have been appropriate for the Claimant to have "Chief" in her title.
332. Third, contemporaneous documents suggested that Mr Kelly was quite open to negotiating job titles and involved the Claimant in the discussion in more than one occasion as to what her title should be.
333. Fourth, I find that unrelated to her status as a woman, Mr Kelly believed that the Claimant's strengths were as a "producer" i.e. front-line sales rather than senior management. This was in large part the reason for the recruitment of Mr Yong. Mr Kelly's doubts about the Claimant's ability as a senior manager ran for much of her employment and are evidence by contemporaneous documents.

[3.1.16] In February 2023, when the Senior Leadership Team met with a potential investor, the agenda for the meeting stated that the Senior Leadership Team were Stewart Kelly, Matthew Hunt, Patrick Carter and Chris Miller. The Claimant and Sylwia Wolos were not mentioned as part of the management team.

334. This was I find a consequence of the fact that the Claimant and Ms Wolos did not have "Chief" in their title. As discussed above, this was not because the Claimant was a woman

#### Unilateral change of contract terms/Job demotion

[3.1.17] In April 2023, R1/R2/R3 appointed Bill Yong ostensibly to the same role as the Claimant, but required the Claimant to report to Mr Yong, effectively demoting the Claimant.

335. I find that this was a demotion. The Claimant moved down in the reporting line, was no longer reporting to the CEO and was no longer part of the senior leadership team.
336. This was less favourable treatment than experienced by Bill Yong.
337. Mr Yong was however not in materially similar circumstances. He had experience of working in America; he was based in San Francisco which was an expensive place to be based. He had a private equity experience based on related to being part of the management team where there was a successful "build and sale" for a significant increase in value.

338. The Respondents' evidential comparators, Messrs Carter and Higgins being moved down the reporting line as the business expanded undermines the contention that this was because the Claimant was a woman.

[3.1.18] From April 2023, R1/R2/R3 removed the Claimant from the Senior Leadership Team ("SLT") Slack channel; excluded from SLT and offsite meetings; excluded the Claimant from all other SLT communications, discussions and matters, including sales strategy, planning, and change implementation; removed her from all SLT decision-making, including recruitment and termination decisions relating to sales team members.

339. These matters were a consequence of the non-discriminatory decision to recruit Mr Yong to head up the team, which is dealt with above.

340. The Claimant was evidently upset about being removed from the SLT slack channel. She believed that Mr Kelly was less than transparent in the way that this was handled.

341. It was clear however that the reporting line was changing at the time.

342. The internal communications about this change were an attempt to "sugarcoat" and to reduce the extent to which the Claimant felt undermined. The failure to communicate about removal from the SLT Slack did cause upset.

[3.1.19] From April 2023, R1/R2/R3 failed, despite the Claimant asking, to tell the Claimant what her role now was.

343. These circumstances were a consequence of the recruitment of Mr Yong and Mr Kelly's suggestion that the Claimant negotiate the terms of her new role with Mr Yong.

344. The Claimant's oral evidence was that Mr Kelly and Mr Yong passed the buck backward and forward between them, creating such uncertainty that she ended up being hospitalised.

345. Mr Kelly's version of the same events was that the Claimant was unreasonably pushing back in the negotiation and dragging her feet and would not accept a role with her predominantly as producer with commission, instead she wanted management even though in his view that was not playing to her strengths. His evidence was that Mr Yong actively thought that the Claimant should be on commission and was pushing for this but it was not possible to reach agreement.

346. It is clear that the negotiation between Mr Yong and the Claimant was excessively protracted and that this uncertainty was not good for her.

347. I did not find that this was because the Claimant was a woman.

[3.1.20] In July 2023 R1/R2/R3 allowed Mr Yong to recruit 2 new members of the sales team, Alicia Moore and Lee Van Deventer, without involving the Claimant (who had previously been responsible for sales and marketing recruitment);

348. These circumstances were a consequence of the recruitment of Mr Yong.
349. I find that this was as a result of changing roles and the expectation that Mr Yong was “managing” sales which would include recruitment.

[3.1.21] In July 2023 R1/R2/R3 allowed Mr Yong to require the 2 new members of the sales team to report to Mr Yong, rather than the Claimant;

350. These circumstances were a consequence of the recruitment of Mr Yong.
351. Mr Van Deventer had previously worked with Mr Yong and also worked in the US, which mean that it made sense for the reporting line to be structured in the way that it was.

[3.1.22] From July 2023, R1/R2/R3 allowed Mr Yong to require existing members of the team, including Sal Remtulla who had previously reported to the Claimant, to report to Mr Yong, undermining the Claimant in the eyes of her colleagues;

352. These circumstances were a consequence of the recruitment of Mr Yong. Mr Kelly held the opinion, I find based on experience of working with the Claimant that for the Claimant attempting to be a producer and manager did not play to her strengths.

[3.1.23] In May and August 2023, R1/R2/R3 allowed Mr Yong to terminate two members of the sales team who had been recruited by the Claimant, without informing or involving the Claimant in the decision making;

353. These circumstances were a consequence of the recruitment of Mr Yong. I find that this was as a result of changing roles and the expectation that Mr Yong was “managing” sales which would include recruitment. In August 2023 the claimant was supposed to be “off-line” to manage her feeling of stress.

[3.1.24] In November 2023, R1/R2/R3 allowed Mr Yong to recruit Casper Bekker, to report to Mr Yong, as Commercial Director, without involving the Claimant. R1/R2/R3 allowed Mr Bekker to understand that the Claimant’s role was the same as his, at the same seniority-level;

354. The same considerations apply as for allegation 3.1.20 above.
355. I find that this was as a result of changing roles and the expectation that Mr Yong was “managing” sales which would include recruitment.

[3.1.25] In breach of clause 20 of the Claimant’s Employment Contract, she was not at any stage notified of any “reasonable changes” to her terms of employment, whether in writing or at all;

356. If this was a breach it was because of the protracted negotiation, not because she was a woman.

## DISMISSAL AS DIRECT SEX DISCRIMINATION

### [3.1.26] Dismissing the Claimant.

357. There was no direct evidence that the dismissal was because the Claimant was a woman. I found that this was an act of victimisation, see below.

#### Was that less favourable treatment?

[3.2] The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's.

If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated.

358. The Claimant says she was treated less favourably than:

Regarding **pay**; as specified in the allegations: Stewart Kelly, Matthew Hunt, Patrick Carter, Bill Yong, Lee Van Deventer, Casper Bekker;

Regarding **Title**; as specified in the allegations: Stewart Kelly, Matthew Hunt, Patrick Carter, Bill Yong, Chris Miller, who were given "Chief" job titles, were described as Founders and were described as members of the SLT;

Regarding **Change of Contract Terms and Job Demotion**: Stewart Kelly, Matthew Hunt, Patrick Carter, Chris Miller (who were founder members and/or members of SLT but were not demoted);

Bill Yong, who was appointed to the same role as the Claimant but was treated more favourably than the Claimant;

Bill Yong, Lee Van Deventer and Casper Bekker who were given a defined role.

Regarding **Dismissal**: A hypothetical male comparator.

The Claimant also relies on a hypothetical male comparator, in the same circumstances as the Claimant, in respect of all the sex discrimination allegations.

### [3.3] If so, was it because of sex?

359. I have considered the specific evidence of sex discrimination relevant to each of the allegations above. I did before reaching those conclusions step back to look at the totality of the evidence.

360. The Claimant's case was that at times her communication and relationship with Mr Kelly was "like a bad marriage" and she had told him this in terms in December 2022. This was put to him and he did not disagree that this expression had been used. She characterised the relationship as an "abusive relationship". I find that she did describe the relationship to him as abusive. Mr Kelly rejected that characterisation of their relationship.
361. Based on the slack and email communications contained within the bundle the dynamic of their relationship was different to the dynamic of the relationship of Mr Kelly and his cofounders. Mr Kelly's style of communication with the Claimant was a mixture of sometimes quite lavish praise, sometimes reassurance or guidance, but on the other hand criticisms of her as a manager. Mr Kelly's management of the Claimant's performance left a lot to be desired. There were mixed messages and on one occasion his communication over a performance review went on for days. A far better approach would have been to a simple clear message or messages delivered in one meeting or a single document.
362. I formed the impression that the Claimant felt that Mr Kelly's priorities often changed which made her job difficult.
363. I also formed the impression that Mr Kelly genuinely felt that management of the sales team was not the Claimant's biggest strength, she was too inclined to "micromanage" the team, which took her away from her particular skill which was as a frontline salesperson interfacing with potential clients.
364. The Claimant was on occasions fairly robust with Mr Kelly. She lost her temper with him. Given the degree of pressure that he put her under and the changing priorities that was not at all surprising.
365. I did consider carefully whether this dynamic led me to a conclusion or at least an inference that it was because the Claimant was a woman that she was treated less favourably. I did not come to that conclusion, notwithstanding the criticisms made in these reasons of Mr Kelly's management.

**[4] Harassment relating to sex:**

366. I agreed with the parties early in the hearing that the complaint of harassment had been wrongly described in the list of issues given that the statutory language under section 26 of the Equality Act 2010 is "relating to sex".
367. I have considered the guidance in the Employment Appeal Tribunal case of **Tees Esk**. My finding is that none of the treatment complained of by the Claimant's "related to sex".

Did the Respondents:

**[4.1.1]** On 11 July 2023 R3 subjected the Claimant to a barrage of calls and WhatsApp messages, pressurising the Claimant into accepting his proposal for her to leave the business, ridiculing her and telling her that his lawyers were infinitely better than any lawyer she could instruct, and that any advice the Claimant had

received was undoubtedly wrong, and imposed a 1-day deadline for her to re-evaluate or confirm her decision;

368. The allegation is framed in somewhat hyperbolic language in the list of issues. I accepted that Mr Kelly was putting pressure on to the Claimant. The messages from him amounted to something of a barrage. It was overbearing and patronising of him to query whether she was getting good advice.
369. This was unwanted treatment and it did create an intimidating environment. I find that this did have the proscribed effect, subjectively and objectively.
370. The one ingredient missing from the statutory definition of harassment in relation to this allegation is that it be "related to sex" per **section 26(1)(a) EqA 2010.**

[4.1.2] On 13 July 2023, R3 called and messaged SB requesting she call him urgently and then accused her of data privacy breaches and stealing company data. R3 was intimidating and threatening on the telephone.

371. In the context of a substantial download and the CRM system flagging this up it was not unreasonable or surprising that Mr Kelly queried this with the Claimant, especially at a time when it seemed that the Claimant was significantly in doubt about whether she was going to carry on working for the business.
372. It was not unreasonable of Mr Kelly to be concerned exactly what the Claimant was downloading and what her motivations were. A list of details of clients was valuable intellectual property which the Claimant might conceivably take to a rival. The fact that Mr Kelly's concern was misplaced did not make his actions unreasonable.
373. An essential ingredient missing from the statutory definition of harassment in relation to this allegation is that it be "related to sex" per section 26(1)(a).

[4.1.3] On 14 July 2023, when the Claimant was due to travel abroad, for a week's holiday with her young son, R3 continued to bombard her with WhatsApp messages and telephone calls;

374. Given the history of the Claimant's reported work related stress, it was probably unwise of Mr Kelly to continue to communicate with her during her holiday.
375. An essential ingredient missing from the statutory definition of harassment in relation to this allegation is that it be "related to sex" per section 26(1)(a).

[4.1.4] On 8 September 2023 R3 told the Claimant that "conduct issues that continue to arise" and made false negative accusations about the Claimant's conduct;

376. I find that Mr Kelly did consider that there were conduct issues, which were reflected in his email of 8 September 2023. These were based on real events.
377. An essential ingredient missing from the statutory definition of harassment in relation to this allegation is that it be "related to sex" per section 26(1)(a).

[4.1.5] Despite the Claimant having asked R3 on 8 September 2023 to cease communications with her regarding the scope of her new role until R3 had defined its terms, explaining that she found R3's communications aggressive and misrepresentations of the facts, causing her severe stress and upset and palpitations, on 26 September 2023, instead of outlining the terms of the Claimant's "new" role, R3 offered terms on which the Claimant would leave the business.

378. This allegation features in part of the successful complaint of victimisation.

379. As to the complaint of harassment, an essential ingredient missing from the statutory definition of harassment in relation to this allegation is that it be "related to sex" per section 26(1)(a).

[4.1.6] On 29 September 2023, R3 threatened the Claimant that if she did not accept the offer he had made a few days earlier he would "initiate the following formal processes: 1. The independent investigation into your discrimination allegations 2. The occupational health assessment 3. Formal redundancy process." "In addition, I will arrange a meeting for you and me, together with Peter O'Higgins, to discuss your conduct -- specifically the Pipedrive downloads and your abrasive communication towards colleagues in the company."

380. This correspondence is further to the email of 26 September which features in part of the successful complaint of victimisation.

381. As to the complaint of harassment, an essential ingredient missing from the statutory definition of harassment in relation to this allegation is that it be "related to sex" per section 26(1)(a).

[4.1.7] On 2 October 2023, R3 again threatened the Claimant that if she did not accept the offer he had made a few days earlier he would initiate a redundancy process.

382. This correspondence is further to the email of 26 September which features in part of the successful complaint of victimisation.

383. As to the complaint of harassment, an essential ingredient missing from the statutory definition of harassment in relation to this allegation is that it be "related to sex" per section 26(1)(a).

#### ADMISSIBILITY OF WITHOUT PREJUDICE CORRESPONDENCE

[4.2] Are the matters at 4.1.1, 4.1.3, 4.1.4, 4.1.5, 4.1.6 and 4.1.7 above subject to the 'without prejudice' rule? Should they be removed as issues to the claim on this basis?

384. The parties waived privileged in respect of this "without prejudice" communication.

[4.3] If so, was that unwanted conduct?

385. This is dealt with under each of the allegations above.

[4.4] Did it relate to sex?

386. For reasons given above none of the treatment complained of related to sex.

[4.5] Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

[4.6] perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

387. This is dealt with under each of the allegations above.

**[5] Victimisation:**

PROTECTED ACTS

[5.1] Did the Claimant do any protected act/s as follows:

[5.1.1] To R3 in around September 2020, in a video call, the Claimant said that she had discovered that she was being paid less than Stewart Kelly, Matthew Hunt and Patrick Carter and that it did not seem fair that they were paying themselves more than they were paying her, when they were equals, and that she was the only woman and the only one who was not being paid the same;

388. I found that the complaint at this stage was in fairness not sex discrimination.

389. This was not a protected act.

[5.1.2] In around September 2021 the Claimant asked R3 to change her job title to Chief Revenue Officer ("CRO"), saying that she was the only one who did not have "Chief" in her title and that she was the only woman;

390. This allegation was not made out. This was not established protected act.

[5.1.3] In September 2022, the Claimant told R3 that she was concerned that both she and Sylwia Wolos, as the only two female members of the SLT, were referred to as "Commercial Director" (SB) and "Head of Strategy" (SW), rather than as "Chief -", so appearing as less senior members of the SLT, in contrast to the male members of the SLT;

[5.1.4] In September 2022 the Claimant told R3 that she concerned that she was the only founder of the business who was also not recognised as a "Co-Founder" in their job title nor on the GTI website, unlike Stewart Kelly, Matthew Hunt, Patrick Carter, all of whom were male;

391. Taking both of these allegations together, neither are made out. The evidence suggests that this complaint about the "Chief" titles arose in relation to the investor meeting referred to at [5.1.5] below.

[5.1.5] In February 2023, as a result of the Agenda for a meeting prepared by a potential investor specifying that the “Management Team” included Stewart Kelly, Matthew Hunt, Patrick Carter and Chris Miller, only, both the Claimant and Sylwia Wolos told R3 that they were concerned that the only 2 women in the Management Team were being treated differently to the male members of the SLT, who were being referred to as the “Management Team”;

392. This allegation was not made out. This was not established protected act.

[5.1.6] On 28 November 2022 [amended to 8.12.22], at a face-to-face meeting, the Claimant raised with R3 that his behaviour towards her and LW, whom the Claimant had recruited to join the sales team, was discriminatory because of sex, in that he did not treat men in the same way, and was “abusive”;

393. I find that the Claimant did describe their relationship as a “bad marriage” and told Mr Kelly that she thought the working relationship was “abusive”. Afterward they communicated about getting their relationship back on track.

394. I did not find however that the Claimant had explicitly said that the relationship was sex discrimination. I did consider whether the reference to “bad marriage” or “abusive” was by implication an allegation of sex discrimination, on the basis that it might be said that the subtext was that the Claimant was implying Mr Kelly would not treat male colleagues like this. I did not conclude that the Claimant was suggesting a comparison or less favourable treatment. My finding is that she was drawing attention to the dynamic which was quite intense with ups and downs.

395. I found this finely balanced but on balance found that it was not a protected act stop

[5.1.7] In about April 2023 the Claimant told Mr Yong that the fact that she was not allowed to earn commission was sex discrimination;

396. This alleged protected act was not established.

397. Mr Kelly’s unchallenged evidence was that no such allegation was raised with him by Mr Yong.

[5.1.8] On 17 May 2023, in a meeting by video call with Robert Court, R1’s Whistleblowing Reporting Officer, the Claimant told that Mr Court that R3 treated LW and the Claimant differently to the way in which he treated the male members of the SLT;

398. This was a continuation of a conversation on 9 May 2023. The Claimant’s own witness statement does not suggest that in allegation of discrimination was made in the conversation on 17 May 2023.

399. This alleged is not established.

[5.1.9] On 14 July 2023, the Claimant complained to Mr Court that R3 had been harassing and victimising her;

400. I did not find that the Claimant was making an allegation of unlawful treatment falling under the Equality Act 2010, although the term harassment may have been used in relation to the communications of Mr Kelly and the accusations made by him.

401. This allegation is not established as a protected act.

[5.1.10] On 8 September 2023, the Claimant asked R3 to cease communications with her and said, amongst other things, that he was discriminating against her because of sex;

402. The exchange of emails on 8 September 2023 did contain a request that Mr Kelly cease communications. It did not contain an allegation that Mr Kelly was discriminating against her because of sex.

403. This was a clear instance where the contemporaneous documentation demonstrated that what the Claimant alleged was said (i.e. an allegation of sex discrimination) was not said. For this reason, I have not given the Claimant the benefit of the doubt in relation to any of the alleged protected acts where there has not been corroborative evidence.

[5.1.11] On 18 September 2023, the Claimant sent a grievance email to R3, where she raised a number of concerns, including that she had been subjected to "ongoing discrimination".

404. This was a protected act, rightly conceded.

405. I find that this was the **first protected act**.

[5.1.12] On 27 September 2023, the Claimant reported her concerns about R3's behaviour and unfair treatment to Robert Court ("RC"), Whistleblowing Reporting Officer, saying that: R3 had discriminated against the Claimant (and other women at the company) on the grounds of sex; R3 had caused the Claimant to suffer personal injury by way of stress (leading to an anxiety attack and car accident); R3 had bullied and victimised the Claimant, including by using threats and intimidation, as a result of the Claimant raising concerns with R3 about his behaviour towards SB and other women employees; Mr Court needed to ensure that, as GTI's Whistleblowing Reporting Officer, the Claimant was not subjected to further detrimental treatment as a result of raising these concerns;

406. The Respondents concede that **this was a protected act**.

[5.1.13] On 1 October 2023, the Claimant met with Mr Court over video-conference and asked him to intervene to prevent the Claimant suffering further discriminatory treatment by R3;

407. The Respondents concede that **this was a protected act**.

[5.1.14] In October 2023, the Claimant met with Gillian Pickersgill, grievance investigator, and told her that she had been subjected to sex discrimination by R3.

408. The Respondents concede that **this was a protected act**.

[5.2] Are the matters referenced at paragraphs 5.1.10 and 5.1.12 subject to the 'without prejudice' rule? Should they be removed as issues to the claim on this basis?

409. Parties waved privilege attaching to "without prejudice" correspondence. Accordingly this point fell away.

### ALLEGED DETRIMENTAL TREATMENT

[5.2] Did the Respondent do the following things:

410. Given that the first protected act occurred 18 September 2023 was, there cannot be victimisation under section 27 EqA before that date.

### ALLEGED DETRIMENTS PREDATING PROTECTED ACTS

411. The following allegations pre-dated the first protected act, which occurred on **18 September 2023** and therefore cannot succeed.

[5.2.1] Refusing to confirm the Claimant's revised terms of employment for a period of 9 months;

412. This appears to relate to the period March 2023 (recruitment of Bill Yong) to December 2023, most of which is before 18 September 2023. I do not find that protected acts were the cause of the length delay in confirming the revised terms.

[5.2.2] Excluding the Claimant from business discussions, SLT and strategy meetings, and off-site company events;

413. This allegation was a consequence of the appointment of Bill Yong, which pre-dated the first protected act and therefore does not succeed as an allegation of victimisation.

[5.2.3] Reducing the scope of the Claimant's role and the sales territories she was due to cover on more than one occasion, with the effect of reducing her role in the business and the amount of commission she would be entitled to receive;

414. This allegation was a consequence of the appointment of Bill Yong, which pre-dated the first protected act and therefore does not succeed as an allegation of victimisation.

[5.2.5] Belittling the Claimant's legal knowledge and the legal advice she had received;

415. The comments about the Claimant having a good lawyer and so on occurred in July 2023.

[5.2.6] Making unwarranted criticisms of the Claimant's past and present performance;

416. The criticisms of performance predated the protected acts.

[5.2.8] Making persistent phone calls and sending multiple text messages to the Claimant when she was on holiday and/or sick-leave;

417. While I am critical of this style of communication above, I find that this was Mr Kelly's style of communication and management generally, not something precipitated by protected acts.

[5.2.9] Accusing the Claimant of breaching the company information-policy by downloading customer sales data, when this was part of her role and required so that she could calculate the amount of commission due to her under any severance package;

418. This predated the first protected act.

[5.2.10] Creating an 'isolating atmosphere' in which the Claimant's colleagues felt unable to speak with her;

419. Insofar as this allegation relies on such matters as being removed from the SLT/Channel and an email sent on 24 June 2023 notifying employees that the claimant was on an "extended period of leave", which the Claimant says left her feeling isolated, these are matters which predated the first protected act.

#### ALLEGED DETRIMENTS POST-DATING PROTECTED ACTS

420. The following allegations occurred after 18 September 2023, and accordingly I have considered whether any of these allegations amounted to detrimental treatment and if so whether they were two more than a trivial extent because of the protected acts.

[5.2.4] Offering the Claimant a minimal severance package if she agreed to leave the business;

421. Mr Kelly accepts that the severance offer that he put forward to the Claimant on 26 September 2023 was lower than that which was previously offered to her, he argues that this was a negotiating tactic to try to help her to come to a more reasonable outcome to that which she had already brought to the table.

422. This is not a case in which the Claimant can point to a statutory or contractual right to a payment which the Respondent were in breach of. The fundamental problem with this allegation is that any negotiation of this sort is one in which

an employer has a financial incentive to attempt to pay as little as possible. I did not find that this was victimisation.

[5.2.7] Repeatedly speaking in an 'aggressive and nasty' tone to the Claimant;

423. It seems that relations deteriorated between Mr Kelly and the Claimant, this is something that seems to have happened from the end of 2022, if not earlier. The tone of the communication between them did become less pleasant. That was two-way.
424. I was not satisfied that I could identify particular speech based on the Claimant's case said in a "aggressive and nasty" tone, which was precipitated by the protected acts.

[5.2.11] Offering the Claimant a reduced severance-package in the knowledge that the Claimant was in a weakened bargaining position due to her ill-health;

425. Similar considerations apply to allegation [5.2.4]. Mr Kelly was obviously motivated to make a low offer given that this was a commercial negotiation.

[5.2.12] Threatening to put the Claimant into a performance management process if she refused to accept the reduced severance-package offered;

426. While there were threats of an investigation into conduct and potential redundancy, Mr Kelly denied that there was any threat of a performance management process. Conduct (i.e. misconduct) and redundancy (deletion of role) are not equivalent to performance (effective discharge of duties or meeting targets).
427. The burden was in the Claimant to establish that there was such a threat and that it was because of making protected acts. I was not satisfied that this burden had been discharged.

[5.2.13] Threatening to make the Claimant redundant if she refused to accept the reduced severance-package offered;

428. There was a threat of redundancy made by Mr Kelly by email on 26 September 2023.
429. This was detrimental treatment.
430. Given that threat to restructure and make the Claimant redundant came only 8 days after the Claimant first made an allegation of sex discrimination and that it came out of the blue, I draw an inference that the reason for this threat was, at least to more than trivial extent the making of the protected act.
431. **This allegation of victimisation is well founded.**

## DISMISSAL AS VICTIMISATION

### [5.2.14] Dismissing the Claimant.

#### Respondents' case

432. The Respondents' case is that there was a substantial "hole" in the finances identified by Mr Kelly in December 2023 and that there was an average monthly loss of £275,000 per month, which was substantially larger than he had previously understood due to a cash flow modelling error. He decided, with the support of the senior team that drastic cuts were required and essentially they made the entire sales and marketing team redundant. Only the Claimant out of all those individuals had made a protected act. The Respondents argue therefore that the protected act had no causative effect on the redundancy, since employees were dismissed whether or not they had made a protected act.

#### Discussion

433. I have to consider whether the dismissal was influenced significantly, meaning more than trivially by the four protected acts i.e. the grievance email of 18 September 2023, the email of 27 September to Robert Court, the conversations with Mr Court and the Ms Pickersgill in October 2023.

434. The first time that redundancy was mentioned was in September 2023, 8 days after the first protected act. I find that this threat was to more than a trivial extent because of a protected act, see Issue [5.2.13] above. This was specifically directed at the Claimant at a time before the financial difficulties alleged to be the basis for the wider redundancy exercise, had been identified.

435. Mr Kelly reiterated this threat of a formal redundancy process in an email to the Claimant on 29 September 2023.

436. Mr Kelly updated members of the senior management team (or at very least Mr O'Higgins) in a WhatsApp message sent on 4 October 2023 stating that the redundancy process would start "post investigation". That is exactly what transpired in January 2024 following the grievance outcome.

437. Each of these statements about a redundancy were not in the context of the alleged financial discrepancy of £800,000 discovered in December 2023. Logically the threat of redundancy for the Claimant's role in September and October 2023 could not have been prompted by that discovery.

438. This evidence is sufficient to reject the Respondents' case and to find that the decision to make the Claimant's role redundant was significantly influenced by her allegations of sex discrimination. I have reached that conclusion without needing to consider inferences to be drawn from the Respondents' disclosure irregularities.

Disclosure

439. Additionally and in support of that conclusion, full disclosure of documents has not been given as admitted by Mr Kelly. He admits that WhatsApp messages from a time material to the dismissal were deliberately destroyed.
440. It is clear that Mr Kelly used WhatsApp as a management tool to discuss and coordinate the senior management team decisions. The response of the senior management team to the Claimant downloading data from the CRM system is a clear illustration of this. The discussions on WhatsApp relating to the period when the sales redundancy/structure was discussed were deleted on Mr Kelly's instruction. That instruction was only partially carried out.
441. I find it likely that these messages would have contained discussion relevant to the claim and infer that some of the discussion would be damaging to the Respondents' defence. The explanation given by Mr Kelly that he was trying to prevent confidential information about long-term solvency falling "into the wrong hands" I do not find convincing. On balance it seems more likely that he was attempting to destroy a paper trail of management decision making.

Sales work on contractor basis

442. Finally, although apparently the whole sales and marketing team was made redundant, in fact the Respondents were concerned about losing the whole team. Mr Casper and Ms Remtulla were approached about something other than an immediate cessation of their work i.e. working on a contractor basis. This was not an option discussed with the Claimant. This to some extent suggests that the immediate and inevitable dismantling of the sales and marketing team is not a clear cut as suggested by the Respondent.

Conclusion

443. For all of the reasons above I find that the decision to make the Claimant's role redundant was significantly influenced by her allegations of sex discrimination.

[5.4] Are the matters referenced at paragraphs 5.2.4, 5.2.5, 5.2.8 and part of 5.2.9, (specifically "and required so that she could calculate the amount of commission due to her under any severance package"), 5.2.11, 5.2.12 and 5.2.13 subject to the 'without prejudice' rule? Should they be removed as issues to the claim on this basis?

444. This is dealt with above.

[5.5] By doing so, did it subject the Claimant to a detriment?

445. This is dealt with above.

[5.6] If so, it is because the Claimant did a protected act?

446. This is dealt with above.

[5.7] Was it because the Respondent believed the Claimant had done, or might do, a protected act?

447. This consideration is not relevant.

## **[6] Remedy for Victimisation**

[6.6] Is there a chance that the Claimant's employment would have ended in any event? Should their compensation be reduced as a result?

Polkey/Chagger

448. Following **Chagger**, the Tribunal can reduce any award for compensation for discrimination or victimisation to reflect a chance that dismissal would have occurred in any event.

449. I have considered the argument that (following **Polkey** and **Chagger**) the whole sales and marketing function was dismissed and so the Claimant was bound to be dismissed in any event, irrespective of and the finding of the Tribunal that the decision to dismiss was an act of victimisation.

450. In this case I am not satisfied, the burden being on the Respondents, that the Claimant would have been fairly dismissed at the same time that she was, had a fair process been followed and no victimisation occurred. The destruction of evidence of management discussion at the material time means I find it is too speculative to find that this is what would have occurred.

451. On balance I find that absent victimisation the whole set of events would have played out in a different way. While Mr Kelly gave evidence about certain overseas recruitment being an expensive mistake which had no yielded sales, it was never suggested that this applied to the Claimant, who was a hard working member of the team of long standing (in the context of a recent startup).

452. These points notwithstanding, I find however that there was some prospect of the Claimant's role being made redundant in the first half of 2024, which I have factored into my assessment of the limited period that the Claimant would have continued working, below.

Other reasons for the Claimant's employment coming to an end

453. The Claimant's relationship with Mr Kelly had significantly deteriorated over a period of time, and in particular during 2023, even before any act of victimisation. The Claimant had fundamentally not accepted the change in the reporting line and the negotiation with Mr Yong had become extraordinarily protracted. Each side in this dispute suggests that the other is to blame for this. It is not necessary or helpful to apportion blame. The Claimant was no longer a happy employee of the business and had not been for months before the first protected act.

454. The Claimant's health had suffered significantly. It was her position that in part this was due to her workload. She had raised a grievance. There was a lengthy investigation. The grievance had not found in the Claimant's favour.

455. It is true that the Claimant had historically been significantly motivated by her equity in the business and had chosen to remain working for this reason when she might otherwise not have done so. However, had there not been a redundancy in early 2024, I find that absent redundancy the Claimant would on balance of probabilities have chosen to leave the company within months and most likely within the first half of 2024.

456. In short, I find that matters could not have continued as they were even absent victimisation.

Conclusion on possibility of lawful termination

457. It is necessarily an imprecise exercise and requires a degree of speculation on the part of the Tribunal. Bringing together the possibilities that the Claimant's role would have lawfully been made redundant at some stage in the first half of 2024, together with the likelihood that she would have left voluntarily had there been no redundancy has led me to the conclusion that even absent the victimisation and unfair dismissal the Claimant's employment would have come to an end by **30 June 2024**.

458. This is subject to arguments about mitigation of loss, which I have not yet heard.

Other matters relevant to remedy

459. The remaining questions in relation to the remedy for victimisation, below, will be dealt with at a remedy hearing.

[6.1] What financial losses has the discrimination caused the Claimant?

[6.2] Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

[6.3] If not, for what period of loss should the Claimant be compensated for?

[6.4] What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?

[6.5] Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for that?

[6.7] Should interest be awarded? How much?

## [7] Equal Pay

[7.1] The Claimant is bringing a like work and/or equal value claim.

[7.1.1] The Claimant says that she was doing work of **equal value** to Stewart Kelly, Matthew Hunt and Patrick Carter:

460. By order of EJ Nicolle, the question of “equal value” is not been dealt with as part of this liability hearing.
461. The question of equal value requires a detailed and involved factual enquiry and the Tribunal has a different, separate process to deal with this.
462. This question can be revisited at a case management hearing.

[7.1.2] The Claimant says that she was doing **like work** to Bill Yong, Lee Van Deventer and Casper Bekker; and, in the alternative, work of equal value to those comparators.

463. The Respondents sensibly and realistically conceded that the roles performed by the Claimant and Lee Van Deventer and Casper Bekker were “broadly similar”. They had the same title. I find that the Claimant **was doing like work to these two comparators**.
464. As to Bill Yong, the Respondent denies “like work.” They argue that Mr Yong role’s was more senior, covering entire commercial function (sales, marketing, client experience), financial reporting, and managing a global team. He had extensive sector-specific experience and was based in San Francisco, which had a higher cost of living. His salary and guaranteed bonus were justified by market norms in the US and an alleged business-critical nature of his role. Mr Kelly had in mind that Mr Yong might be a future CEO of the US business overall.
465. There are a couple of the aspects of the Respondents’ position that I did not think should legitimately form part of the analysis in like work. That Mr Yong might have potential to be head of the US overall was not an aspect of his role, this was simply a possible future role for him. As to the “business critical” nature of his role, that has to be significantly in doubt given how easily the business parted company with Mr Yong only a few months later.
466. Certain aspects of the Respondents’ case do stand up to scrutiny, however. It was more than just a difference in title. His title was more senior, but beyond that he had a wider remit than the role that the Claimant had been performing. She reported to him. He covered a significantly expanded geography, including the US and some countries in Europe. The business was growing and attempting to expand internationally.
467. In conclusion I did not find that the Claimant was doing like work to Mr Yong.

The Claimant's claim relates to two periods:

[7.2.1] Her engagement as a self-employed independent contractor between 1 January and 1 July 2020.

468. The claim brought in relation to the period of contract to work in the first half of 2020 is very significantly out of time. There is no basis to extend time. This is not a concealment case. There is not a just and equitable jurisdiction to extend time.

[7.2.2] Her employment as an employee between 1 July 2020 and 10 January 2024.

469. This claim was brought in time.

[7.3] The Claimant's claim for equal pay relates to the following terms of employment:

[7.3.1] Her contention that she was not paid for work carried out under her consultancy agreement between 1 January 2020 and 1 July 2020. She relies upon the following comparators: Stewart Kelly, Patrick Carter and Matthew Hunt.

470. The Claim relating to this period was out of time, see above.

471. In any event, had I been required to deal with it, the material factor defence would have succeeded. The Claimant was not doing the same role as her comparators.

[7.3.2] Her basic pay between 1 July 2020 and 10 January 2024. She relies upon different comparators for different periods of her employment:

[7.3.2.1] July 2020 - 1 July 2021 with Stewart Kelly (Chief Executive Officer and Co-Founder), Patrick Carter (Chief Technical Officer and Co-Founder) and Matthew Hunt (Chief Operating Officer and Co-Founder) as comparators;

472. This part of the complaint is based on "equal value", which is not being determined as part of this decision.

[7.3.2.2] 1 April 2023 - 10 January 2024 with Bill Yong (Chief Client officer, based in San Francisco), Lee van Deventer (Commercial Director, based in Texas) and Casper Bekker (Commercial Director, based in Madrid) as comparators.

473. I found that Mr Yong was not performing "like work" to the Claimant.

474. In any event I found that the "material factor" defence was made out in respect of all three comparators, for reasons given below.

[7.3.3] Commission payments for the period 1 April 2023 and 10 January 2024 with Bill Yong and Lee van Deventer as comparators.

[7.3.4] Shares:

[7.3.4.1] For the period 1 January to July 2020 (when she was a self-employed contractor).

The Claimant's contention is that:

1. In January - July 2020 the Claimant received 11,111 Ordinary B shares, vesting over a period of time, whereas her comparator Matthew Hunt received 10% of the equity, vesting immediately;

475. This is out of time.

476. In any event this appears to be a claim of different treatment not an equal pay claim.

2. The terms relating to vesting periods for those shares. The Claimant contends that her shares vested 30 months' after her employment. The Claimant's shares did not vest until 15 July 2022; She relies upon Stewart Kelly, Patrick Carter and Matthew Hunt as comparators.

477. This part of the complaint is based on "equal value", which is not being determined as part of this decision.

[7.3.4.2] From 1 July 2020, the Claimant was given a further 30,000 ??? share options in GTH, vesting in tranches, in place of commission, only being exercisable for value. Her comparators, Stewart Kelly, Patrick Carter and Matthew Hunt, were given more shares, which vested immediately and did not have to be paid for, until April 2023.

478. This part of the complaint is based on "equal value", which is not being determined as part of this decision.

## **Equal Pay: Material Factor defence**

[7.4] If the Claimant was doing like work or work of equal value to that of the work performed by any comparator and the terms and conditions upon which the Claimant was employed were less favourable than those of any comparator, was that difference due to one or more material factors, reliance upon each of which does not involve treating the Claimant less favourably because of her sex; and none of which places women at a particular disadvantage when compared with men doing work rated as equivalent or of equal value, further and alternatively, each of which is a proportionate means of achieving a legitimate aim.

The Respondents rely upon the following material factors:

479. The burden is on a respondent to make out a material factor defence.

480. Overall, taking account of the three elements discussed below, I found that the Respondents did establish a material factor defence in relation to the three comparators.

[7.5.1] location (in relation to Mr Yong, who at the material time lived and worked in San Francisco, USA, Mr Bekker, who at the material time lived and worked in Madrid, Spain and Mr Van Deventer, who at the material time lived and worked in Texas, USA);

481. The Respondents successfully established a material factor defence in relation to location. The comparators were working in different geographies. They needed to have the ability to work in those geographies. They were in different labour markets.

[7.5.2] increased levels of sector-specific experience and skills; and

482. This material factor defence was established in relation to Bill Yong. I accepted that he had sales management experience beyond the Claimant's experience, and that was the role he was performing. He had experience of due diligence and sales management. Furthermore he had experience of selling a business in the context of private equity investment. This was distinct from the Claimant.

483. In relation to Mr Bekker and Mr Van Deventer the burden was on the Respondent to establish different sector specific experience and skills. I was not satisfied that this had been established. They had the same title Commercial Director and appeared to be performing a similar role to the Claimant albeit in a different geographies.

[7.5.3] market factors relating to the difficulty in recruitment and/or retention.

484. It was certainly the case that the Claimant was recruited and joined the business at a different time and in a different market compared to her comparators. The Claimant had joined a fledgling start-up business within the first year of its operation whereas these comparators were joining a business that had been running for several years.

485. To some extent the market factors element overlaps with the location element which I find was established.

## **[8] Breach of Contract**

486. The Schedule of Loss dated 14 October 2024 contained a single line item "unpaid commission: £100,000 – £150,000".

487. The Employment Tribunal only has jurisdiction to hear claims for breach of contract which are arising on or outstanding at the point of termination, and with a cap of £25,000.

[8.1] The Claimant relies on the following contractual term/obligations:

CI 4 PERFORMANCE BONUS

"In addition to your basis salary we will pay you a performance bonus as follows:

Commission structure on company net revenue (ie company portion of total engagement fee), payable at the end of each quarter: 20% of fees originated by the Consultant; 10% of fees originated by another company employee; 5% of fees originated under the company's referral agreement excluding any applicable value added tax. Commission is payable quarterly. The commission amount will be net the amount already paid in salary. For example, if total commission in a given quarter is 10,000 and salary payments for the quarter were 6,000 then commission of 4,000 will be paid for that quarter. You must be employed by the Company at the end of a bonus period in order to qualify for that period's bonus.

Pension 8 PENSION

"GTH confirms to you that it will comply with the employer pension duties in accordance with its staging date and under Part 1 of the Pensions Act 2008."

[8.2] The Claimant contends that:

[8.2.1] In breach of those terms the Respondent failed to pay the Claimant commission at all from 1 January 2021 – 10 January 2024. The Claimant says that she ought to have been paid commission in accordance with the contract from December 2022.

488. The burden would be on the Claimant to establish a contractual term, that this term has been breached and that she had suffered loss.
489. By an email exchange dated 21 January 2021 the Claimant agreed that her remuneration would be changed to be comprised of base salary at the same level as the co-founders and equity and no commission element. In line with that agreement her salary was increased to £90,000 on 1 July 2021. There was a subsequent increase in salary maintaining parity with the co-founders on 1 January 2022.
490. It might have been better HR practice to produce a new contract or at least variation agreement.
491. Nevertheless, I find that the Claimant had agreed a variation in her contract through this email exchange, which lead to her receiving pay rises in line with the co-founders but no longer any entitlement to commission.
492. This claim is not well founded.

The Respondent failed to pay pension contributions from 1 July 2020 – 30 May 2021

493. As I understood it the Claimant did not pursue this claim. This would in any event be out of time.

## **[9] Unfair Dismissal**

9.1 Was the Claimant dismissed for a fair reason pursuant to dismissed for a fair reason for the purposes of s.98 (2) of the Employment Rights Act 1996 namely redundancy?

494. I find that the Claimant was dismissed for redundancy, which was a potentially fair reason, albeit that this had been significantly influenced by the making by her of a protected disclosure.

9.2 In the alternative the Claimant was dismissed for some other substantial reason within the meaning of s.98(1)(b) of the Act, namely a business reorganisation carried out in the interests of economy and efficiency?

495. It has not been necessary to consider this alternative case.

9.3 If so, was the decision to dismiss the Claimant reasonable in all the circumstances of the case?

9.3.1 The Claimant contends that the dismissal was unfair in that there was no procedure, no pool, no selection from pool, no attempt to find suitable alternative work and no consultation on any of these.

496. In this case, as the Respondents accept, there was no pool, no selection process, no consideration of an alternative role, nor was there consultation.

497. Given that the minimum procedural requirements of a fair redundancy dismissal were not complied with, it was not a fair dismissal.

9.3.2 She contends that her dismissal was a sham.

9.4 In determining the above, the Tribunal must consider the following:

9.4.1 whether the Respondents acted reasonably in treating the reason as a sufficient reason for dismissal taking into account the size and administrative resources of the employer's undertaking; and

9.4.2 equity and the substantial merits of the case.

498. It was not a substantively fair dismissal given that a significant part of the reason for the dismissal was the making of protected acts by the Claimant.

## 10. Remedy for unfair dismissal

499. These matters will be considered as part of remedy:

10.1. What basic award is payable to the Claimant, if any? The Respondents assert that no basic award is payable as the Claimant received a statutory redundancy payment.

10.2 If there is a compensatory award, how much should it be? The Tribunal will decide:

10.2.1 What financial losses has the dismissal caused the Claimant?

10.2.2 Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

10.2.3 If not, for what period of loss should the Claimant be compensated?

10.2.4 Does the statutory cap apply?

10.2.5 If the Respondent dismissed the Claimant procedurally unfairly, what was the likelihood that the Respondent would have dismissed the Claimant fairly, following a fair procedure?

500. This has been dealt with above [Issue 6.6].

## Remedy Hearing

501. A separate case management order will be sent to the parties.

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Employment Judge Adkin

Date 21 December 2025

SENT TO THE PARTIES ON

22 December 2025

FOR THE TRIBUNAL OFFICE