



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Warby
Respondent: DCI Fire Protection Limited

Heard at: Cardiff

On: 2nd-6th March 2026

Before: Employment Judge A Williams
Tribunal Member R Hartwell
Tribunal Member M Walters

REPRESENTATION:

Claimant: In person
Respondent: Mr Alex Lawson, Counsel

JUDGMENT

The judgment of the Tribunal is as follows:

1. The Claimant's claim of harassment related to sex was not presented within the applicable time limit and it is not just and equitable to extend time. The complaint of harassment related to sex is therefore dismissed.

2. The Claimant's claim of harassment related to sex is not well-founded and is dismissed.
3. The Claimant's claim of constructive dismissal is not well-founded is dismissed.
4. The Claimant's claim of unfair dismissal is not well-founded and is dismissed.

REASONS

Introduction

1. Judgment in this claim was delivered orally at the conclusion of the hearing. The Claimant made a request for written reasons in time on 16th March 2026. Unfortunately, that request was not forwarded to me by Tribunal staff until 12th May 2026 and I was not available to prepare these written reasons until week commencing 1st June 2026. I apologise therefore to the Claimant for the delay.
2. The claim is brought by Mrs Sara Warby ('the Claimant') against her former employer DCI Fire Protection Limited ('the Respondent'). The claims before the Tribunal are for ordinary unfair dismissal, constructive dismissal and harassment related to sex, arising from the end of the Claimant's employment in March 2025 and from events said to have occurred during the course of her employment, which began on 1st July 2020.
3. It is the Claimant's case that she was subjected to a sustained course of conduct arising from undermining and inappropriate sexual conduct which culminated in her oral resignation at a management meeting on 7 February 2025, which she subsequently followed up in an email on 9 February 2025.

4. The Respondent denies all claims. It maintains the Claimant was summarily dismissed for gross misconduct on 28 March 2025. It says the claim for harassment related to sex is out of time and in any event denies that the Claimant was subjected to harassment related to sex.
5. The issue of the Claimant's dismissal arose in the course of these proceedings and the Claimant clarified her claim to make clear she accepts she was dismissed on 28th March 2025, however she does not accept the Respondent had a genuine belief in her misconduct. She believes the dismissal was a sham. She has also raised concerns about the way in which the Respondent accessed certain material which led to the dismissal, however it has been explained to her that issues of GDPR breaches are beyond this Tribunal's remit.
6. Early conciliation was undertaken between 24 March and 5 May 2025. The Claimant presented her ET1 on 19 May 2025. A preliminary hearing was held on 27 August 2025 at which the Claimant was granted permission to rely on her detailed chronology as a supplement to her ET1 and the Respondent was granted permission to file and serve an amended GOR based on that chronology.
7. The parties were subsequently unable to agree a list of issues and, the matter not having come back before the Tribunal before this week's Final Hearing, we spent considerable time on the first day determining and agreeing the list of issues. The Claimant's chronology is lengthy and details incidents throughout her 5 years of employment with the Respondent. It was explained to the Claimant that she needs to identify precisely what acts by the Respondent she relies upon in her claim for harassment, who carried out those acts, and when. She was able to do so and they are now identified in the agreed list of issues.

The Hearing

8. At the hearing the Claimant represented herself and the Respondent was represented by Mr Lawson, Counsel.
9. We had received on the morning of the hearing a documents bundle running to 867 pages. The Claimant raised her concern that the bundle was in an illogical order. The bundle was not agreed. The Claimant confirmed having read it she didn't consider any documents were missing or documents included that shouldn't be included, just that it was difficult to follow. During the hearing this week where the Claimant has found emails she thought should have been in the bundle but weren't, they have been admitted.
10. Throughout the hearing the Tribunal had to assist both parties to find key documents in the bundle, for example the dismissal email of 28th March 2025. We found it particularly difficult to understand what documents the Respondent said it uncovered in its investigation, which again was finally resolved but only with the assistance of the Tribunal.
11. Mr Lawson was able to break down the relevant parts of the bundle and provided a broad reading list on Day 1. We made clear to the parties we would only read those specific pages we were either referred to in the witness statements or during the course of the hearing. The Claimant was invited, if she so wished, to create her own reading list of key pages, though she did not do so. Throughout the hearing there were broad references to documents being 'in the bundle'. There are significant amounts of private Whatsapp messages, for example, and lengthy meeting transcripts. Again, we read only what we have been taken to.
12. We heard evidence from the Claimant, Mrs Jan Jones, and Mr Andrew Stanton on behalf of the Claimant. We heard evidence from Lawrence Clark, Director, Steve Willoughby, Director, and Julie Clark, administrator, on behalf of the Respondent.

List of Issues

13. As already set out, the list of issues was discussed at length and agreed at the outset of the hearing.

14. The parties agreed that the hearing would focus on liability only first and continue to deal with remedy if required.

15. We explained to the parties that we need only hear evidence and submissions relevant to the determination of the list of issues, together with any relevant contextual matters.

1. Time limits

1.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 24th December 2024 may not have been brought in time.

1.2 Was the harassment related to sex complaint made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

1.2.2 If not, was there conduct extending over a period?

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

1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

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

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

1.3 Was the unfair/constructive dismissal claim made within the time limit in section 111 of the Employment Rights Act 1996? The Tribunal will decide:

1.3.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the effective date of termination / act complained of?

1.3.2 If not, was there a series of similar acts or failures and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?

1.3.3 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

1.3.4 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

2. Harassment related to sex (Equality Act 2010 section 26)

2.1 Did the Respondent do the following things:

2.1.1. The Respondent accepts that the following memes or messages were sent on a work Whatsapp group:

- a. 21st August 2021 - a meme "Too belt bra and thong – suggestion for female fitters."
- b. 12th April 2022 –a meme "911: What's your emergency?"
- c. 14th August 2022 –a meme about "Scratching of balls."
- d. 25th November 2022 – meme about "Breakfast in bed"
- e. 29th November 2022 – meme about "Donut Holster belt" and "Super Angry" towel joke.
- f. 31st December 2022 – meme about "New Year New Me"
- g. 15th Jan 2023 – meme about "Your wife will never start a fight while you are cleaning."
- h. 12 February 2023 – meme about Kermit the frog as an OnlyFans model.
- i. 28th February 2023- meme about women's moustaches.
- j. 21st March 2023 – meme about a wife saying "It was my fault" and her husband collapsing.
- k. 2nd August 2023 – meme about "Boobs, proof men can concentrate on two things at once."
- l. 22nd December 2023 – meme about "smile/drink/masturbate."
- m. 31st January 2024 – meme about "Rock Paper Scissors Blowjob"
- n. 7th February 2024 – meme about a "Dishwasher/Sandwich Maker woman in a box."

2.1.2. The Claimant says the Respondent also did the following things. The Tribunal will have to decide if the Respondent did the following things:

- a. Between March and May 2024 Lawrence Clark said to the Claimant 'what you think you heard and what I said are two different things'
- b. On 11th October 2024 Lawrence Clark made dismissive and belittling comments about the Claimant 'not being technical' and 'how hard can admin be'
- c. On 16th November 2024 Lawrence Clark made an inappropriate comment about 'showing Julie and Jan everything in case I die' and displayed anger over the fact he had to pick his daughter up from school and blamed the Claimant for being late on purpose
- d. Throughout the Claimants' employment, Lawrence Clark made small digs, sexist comments, undermining remarks and unnecessary obstacles.

2.2 If so, was that unwanted conduct?

2.3 Was it of a sexual nature?

2.4 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?

2.5 If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

3. Dismissal

3.1. Was the Claimant dismissed? If so:

4. Ordinary Unfair Dismissal

4.1 If the Claimant was dismissed, what was the reason or principal reason for dismissal? The Respondent says the reason was conduct. The Tribunal will need to decide whether the Respondent genuinely believed the Claimant had committed misconduct.

4.2 If the reason was misconduct, did the Respondent act reasonably or unreasonably in all the circumstances, including the Respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the Claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case. It will usually decide, in particular, whether:

4.2.1 there were reasonable grounds for that belief;

4.2.2 at the time the belief was formed the Respondent had carried out a reasonable investigation;

4.2.3 the Respondent otherwise acted in a procedurally fair manner; The Claimant challenges the fairness of the procedure in the following respects:

- a. The Respondent did not conduct a grievance process.
- b. The Respondent did not consult with her beyond the emails sent at the relevant time

4.2.4 dismissal was within the range of reasonable responses.

4.3 Did the Respondent act reasonably or unreasonably in all the circumstances, including the Respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the Claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.

4.4 If the Claimant was dismissed and the dismissal was fair, that concludes the constructive dismissal claim because the Claimant was fairly dismissed before her employment ended and before any claim for constructive dismissal crystallised.

5. Constructive Dismissal

5.1. If the Claimant was not dismissed, or if the dismissal was unfair:

5.2. Did the Respondent do the following things:

5.2.1. Repeated inappropriate and sexually explicit conduct by Lawrence Clark in workplace communications (the Claimant relies on the same course of conduct as in relation to the harassment related to sex claim set out in 2.1.1 and 2.1.2 above)

5.2.2. Make undermining and belittling comments about the Claimant and dismiss the Claimant's professional judgment on the following occasions:

- a. 3rd March 2022: 'Neptune Project meeting': Lawrence Clark undermined the Claimant by taking over the meeting, contradicting her and dismissing her input.
- b. 8th February 2024: 'Whitehead Project' concerns: Lawrence Clak undermined the Claimant's concerns.
- c. 11th October 2024: The Claimant took a service call and Lawrence Clark made dismissive and belittling comments about her not being technical and 'how hard can admin be'
- d. 16th October 2024: Site Meeting at Undy: Lawrence Clark undermined the Claimant in front of Vistry staff and made comments about her not being technical and that she could go home and he was not sure why she was there
- e. 30th-31st October 2024: Whiteheads Pump Work: Lawrence Clark overrides the Claimant's decision, damaging her credibility.

5.2.3. Failure by senior management to address or remedy the Claimant's complaints or concerns arising out of those incidents, in particular:

- a. 15th November 2024: Management Meeting:
The Claimant expressed her concerns about the business and Lawrence Clark to Steve Willoughby.

5.2.4. Gaslighting and denial of the Claimant's concerns by Lawrence Clarke, including. Minimising reported conduct, denying statements made and suggesting the Claimant had misunderstood or misinterpreted events.

5.2.5. Failure to provide a safe and supportive working environment for the Claimant.

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

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

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

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

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

Findings of Fact

16. The relevant facts are as follows. Where we have had to resolve a conflict in the evidence, we indicate how we have done so at the material point. We made findings on the relevant standard of proof, the balance of probabilities. That is, we were deciding what is more likely than not. We reminded ourselves that it is for the Claimant to prove the facts on which she relies insofar as her claim for harassment related to sex and constructive dismissal are concerned. The burden of proof rests largely with the Respondent in respect of the unfair dismissal claim.

Credibility

17. We make the following overarching findings about the evidence given by the witnesses before us.
18. We place little weight on the demeanour of witnesses in giving evidence. We recognise that Tribunal proceedings are stressful and can have an impact on memory and demeanour. In this claim, there was an overlap between the professional and personal, for reasons we explore later in this judgment, which heightened much of this stress. Mr Clarke, the Claimant and Mrs Clarke, in particular, were affected by this.
19. For this reason, where there is a conflict in the evidence – and the main conflict is the evidence of the Claimant and Mr Clarke, we have looked at other sources of evidence to decide what is more likely than not. Despite the size of the bundle, there is little by way of contemporaneous records to assist us in this

exercise particularly when it comes to the particular incidents relied upon by the Claimant. Instead, we found the evidence of the other witnesses of assistance.

20. Mr Willoughby was not an independent witness, being a Director of the Respondent's. However, he was somewhat removed from the pressure cooker of the Respondent's office and was, we find, a neutral observer of the dynamics between the Claimant and Mr Clarke. We find he gave straightforward evidence to the best of his ability and was candid, not always giving answers that benefitted the Respondent's case. For these reasons we were satisfied we should place significant weight on his evidence.

21. Similarly, we place significant weight on the evidence of Mrs Jones. She still works for the Respondent, and as we find well placed to observe the dynamics of the relationships we have been asked to explore in this claim.

22. Mr Stanton is an independent observer of a single incident. We were satisfied he gave straightforward evidence of his own perception of the incident, albeit he of course has less knowledge of the wider context than Mr Willoughby and Mrs Jones.

23. Mrs Clarke was upset when giving her evidence. Despite taking a break, she was unable to continue. The Claimant did not wish to ask her any further questions. We placed little weight on her evidence in light of the fact she did not conclude her oral evidence.

Claimant's Employment

24. The Claimant commenced her employment with the Respondent on 1 July 2020 as Office Manager. Her role encompassed administrative, operational and organisational duties within a small management structure that included both Directors and administrative staff.

25. During her time working for the Respondent, both parties agree her role grew and expanded and she became, we find, a key component in the running of the company.
26. It is clear from her evidence that the Claimant is detail-orientated and took on significant responsibility. She was highly engaged in the organisation and worked hard for them. She asked for and received increased responsibilities – for which she was paid an additional salary – including, at some point in 2023, additional HR training and becoming responsible for the company's HR policies and procedures.
27. We find the Claimant was considered 'higher up' in the company structure than the other administrative staff, Mrs Clark and Mrs Jones. The Claimant was a part of fortnightly management meetings, and reported directly to Mr Clark and Mr Willoughby. She allocated tasks to Mrs Clark and Mrs Jones. Mrs Jones, in particular, was clear she considered the Claimant her line manager. The Claimant had direct and frequent communication with clients, including as a project manager on some projects. An organisational structure chart at [824] shows that the Claimant was between the Directors and the administrative staff, Julie Clarke and Jan Jones.
28. The organisation was a small one, comprising of only those 5 people we have mentioned.
29. The Claimant and Mr Clarke had a prior personal relationship. Mr Clarke had been a long-term friend of her husband's, and as a result the Claimant was a long-term friend of Mrs Clarke's. We have been taken to some extracts of Whatsapp messages between the Claimant and Mrs Clarke. Mrs Clarke confided in the Claimant about her marriage. This placed the Claimant in the unusual position of knowing a lot of information about her boss on a personal level. She never appeared to take issue with this or ask Mrs Clarke to stop. Indeed, from the messages we have seen she encouraged it.

WORKPLACE CULTURE

30. Mr Willoughby did not work for the Respondent. As a result, in the office were Mr Clarke, the Claimant, Mrs Clarke, and eventually Jan Jones.
31. The staff worked in close quarters. The personal relationships between them fostered, we find, an informal environment. We accept Mrs Jones' evidence she found it unconventional.
32. The Respondent's company is in the construction industry. It is in the business of the supply, installation and maintenance of sprinkler systems.
33. Due to a combination of the industry it was in, the small number of people and the personal relationships in the office, we find that the culture in the Respondent's office was at times inappropriate and unprofessional. The office was, we find, in light of the dynamics between the staff, a pressure cooker environment.
34. We've heard evidence particularly from Mrs Jones and Mr Willoughby that relationships could be emotionally charged, and the personal lives and relationships of the Claimant, Mr Clarke and Mrs Clarke bled into the professional life. We find, on the basis of Mrs Jones' evidence, that Mr Clarke and the Claimant in particular would argue often and publicly. Whilst this is unusual in a working environment, we find that the Claimant was in Mrs Jones' words more than capable of standing up for herself and gave as good as she got.
35. We find that the Claimant and Mr Clarke had a volatile and symbiotic relationship. Their personalities clashed, and the Claimant felt, perhaps more than she might in another workplace, capable and able to raise any issues directly and robustly with Mr Clarke given her personal relationship with him.
36. We accept, on the basis of Mrs Jones', Mr Stanton and Mr Willoughby's evidence, that Mr Clarke could be difficult to work with and behave in a less than professional manner but we find that this was conduct that affected

everyone in the office and which the Claimant was not afraid to raise either directly with him or Mr Willoughby.

37. We find, on the basis of the evidence of Mrs Jones and Mr Willoughby, that these arguments were more often than not about Mr Clarke's work ethic. The Claimant would complain about Mr Clarke to Mr Willoughby, who in turn sought to act as a mediator.
38. The culture was also inappropriate because, we find, misogynistic and unsavoury comments would be made and messages and memes shared across staff group Whatsapp chats.
39. There is no evidence in the bundle that the Claimant made a complaint about this culture or comments made by the Mr Clarke during her employment. As we have said, her concerns about him seemed to be largely due to his work ethic.
40. Mrs Jones said in evidence the Claimant had often complained about Mr Clarke making inappropriate comments. When she was specifically asked for an example, she raised only one occasion when Mr Clarke had disclosed some private health information about her. She did not reference any specific examples of complaints made because of inappropriate sexual comments or conduct. She said when inappropriate comments are made now she simply rebukes them but she has not raised any formal complaint. We find they are accepted as part of the office culture.
41. The Claimant says she was routinely making complaints to Mr Willoughby. He says she never complained about inappropriate workplace culture or comments made by Mr Clarke. We prefer Mr Willoughby's evidence for the reasons already given and find that she made complaints about Mr Clarke's conduct, but that was in relation to his work and not sexualised or inappropriate comments or conduct.

42. We find the Claimant at the very least tolerated this culture. There is no evidence of her having raised any objection to it. On at least one occasion, the Claimant contributed to it by sending a photo of 'Cockshoot Forest' [596].
43. We find the Claimant, given her HR training and as the responsible HR officer at the Respondent for the majority of the time we are being asked to consider, was aware of the mechanisms in place for escalating concerns about workplace conduct and inappropriate behaviour. We find that whilst the Claimant was junior to Mr Clarke, she was more than capable and willing to confront him directly when issues arose. We recognise that a failure to raise concerns does not mean that they did not exist, but find that in this Claimant's circumstances it indicates that the workplace culture was not something she took issue with. We find that had the Claimant been genuinely concerned or offended about some of the issues raised in this claim, she was aware of how to escalate them and indeed would have.

The Claimant's technical knowledge

44. As we have said, the Claimant gained increased responsibility during her employment which was reflected in an increased salary throughout her time working for the Respondent. She was, we have found, second to the Directors but considered more senior to admin staff and a crucial part of the team.
45. The Claimant accepted she gained some technical knowledge due to this increased responsibility, but that she had no technical training or qualifications. We find the increased responsibility and knowledge made the Claimant feel part of the management team and, to an extent, Mr Clarke was willing for her to use that technical knowledge in discussions with clients. We find that sometimes, the Claimant would express a view or opinion beyond her remit and Mr Clarke would be required to correct her or remind her of her role. We find that technical advice and problem-solving remained the remit and responsibility of Mr Clarke as technical lead and it was, generally, reasonable for him to remind the Claimant of her role.

46. Turning then to the particular incidents or issues raised by the Claimant in her claim:

Memes

47. From 21 August 2021 onwards, a series of sexually explicit or gender-related memes were shared within a work WhatsApp group used by employees of the Respondent, largely by Mr Clarke. These occurred periodically between August 2021 and February 2024 and included images and captions of a sexual or gendered nature. The Respondent accepts that these messages were shared, and the dates on which they were circulated are not in dispute.

48. We have considered the memes and find they are inappropriate to share on a work Whatsapp group. They are misogynistic and somewhat ridiculous. They are not, we find, overtly sexual.

‘Neptune Project’ Meeting 3 March 2022

49. On 3 March 2022, during a meeting concerning the Respondent’s Neptune Project, the Claimant says that Mr Clarke undermined her contribution by arriving late, taking over the discussion and dismissing her input.

50. Mr Clarke says the meeting was about resetting the working relationship with the client. He says the strategy was for the Claimant to lead the meeting, demonstrate to the client how her decision was correct and for Mr Clarke to end the meeting by making it clear to the customer that their previously confrontational communications with the Claimant was unacceptable.

51. The Claimant does not deal with this incident expressly in her Witness Statement. We remind ourselves that this element of the claim is for her to prove.

52. We accept, in light of our findings about the relationship between the Claimant and Mr Clarke, that Mr Clarke was somewhat bullish when he arrived at the meeting. This is evidenced by the fact that the Claimant felt she had to walk away from a debrief meeting later on. We are not able to find on the evidence before us that the Claimant was undermined, or that he dismissed her input into the meeting.

53. The Claimant was able to address her concerns about Mr Clarke's conduct at the debrief meeting. She walked away from that meeting without concluding it. She accepts she did not interact with Mr Clarke other than by email for a week thereafter.

54. The Claimant raised no further complaints about this incident.

55. At some time thereafter – the precise date is in dispute suffice to say some time thereafter, the fortnightly management meeting set up by Mr Willoughby in order for any issues to be aired on a regular basis.

56. There are no complaints about any incidents in 2023.

March-May 2024

57. Between March and May 2024, the Claimant says that Mr Clarke made comments to her including, "what you think you heard and what I said are two different things," which she regarded as dismissive of concerns she had raised.

58. The Claimant does not deal with this in her Witness Statement. In her oral evidence she added that Mr Clarke repeatedly said 'that's the problem with you women – what you think you hear and what you heard are two different things'.

59. We remind ourselves it is for the Claimant to prove the facts she asserts. On the basis that there is no specificity as to when this was said, the Claimant has raised new evidence orally, and there is no evidence of any complaint made at the time, we are unable to find that this comment was made by Mr Clarke.

‘Whitehead’ Project Meeting 8 February 2024

60. On 8 February 2024, the Claimant raised concerns about the safety implications of certain water connection issues on the Respondent’s ‘Whitehead’ project. She says these concerns were dismissed or minimised by Mr Clark.

61. Mr Clarke says there was a miscommunication between the end customer, Lovell, himself as Technical Lead, and Mrs Warby, but that there had been an error by Lovell’s plumbers which had led to an issue and Mr Clarke had decided it was not the Respondent’s place to repair it.

62. The Claimant does not deal with this incident in her Witness Statement. In her oral evidence, she said she felt she wasn’t listened to. She accepts she had been able to put her opinion across but that the issue was Mr Clarke did not listen to her. She had pulled all staff off site because she was concerned about their safety, but Mr Clarke had put staff back on site.

63. We find this was not undermining conduct by Mr Clarke. He was the Technical Lead with the appropriate technical knowledge and the Director of the company and so the decision ultimately fell with him. The Claimant may have felt undermined however the situation arose, we find, from a miscommunication between all parties involved and did not involve any malicious intent by Mr Clarke in reaching his decision on the appropriate course. That his decision was different to hers was not, we find, undermining, simply the assessment and decision of a Director with the appropriate technical knowledge and ultimate decision-making power.

Service Call 11 October 2024

64. On 11 October 2024, during a service call, the Claimant says that Mr Clark made comments questioning her technical competence and remarking “how hard can admin be.”

65. Again, this is not in the Claimant’s Witness Statement. She said in oral evidence that she was describing what she had been told by John March, Service Engineer, about servicing to a potential customer. She said that after the phone call Mr Clarke told her that what she had said was incorrect.

66. She told Mr Clarke that that was what Mr March had told her, and Mr Clarke said that’s incorrect and he explained that to Mr March.

67. The Claimant was, we find, seeking to give technical advice she was not qualified to give and which was wrong – not through any fault of her own, but because of what she had been told by Mr March – and was appropriately corrected by Mr Clarke privately after the phone call.

68. She took issue with the tone of that correction, however we do not find that Mr Clarke was undermining her in reminding her of the limitations of her role and knowledge. We find it was appropriate in the circumstances for Mr Clarke to correct the Claimant when she was giving technical advice that was incorrect.

69. As to the way or the tone in which that was done, there is no evidence she raised any concerns at the time and we are unable to find that it was done in an undermining manner. As we have already found, the Claimant was more than capable of openly raising issues with both Mr Clarke and Mr Willoughby.

Undy Project Meeting 16 October 2024

70. On 16 October 2024, at a site meeting in Undy, the Claimant says Mr Clark questioned her presence and technical competence. She says this was a

private conversation between her and Mr Clarke, although she relied on the evidence of Mr Stanton who said he had heard the exchange.

71. We find the Claimant was invited to attend the meeting as the Project Manager, on the basis of Mr Stanton's evidence.

72. Mr Clarke denies making such comments, he says he took the Claimant aside and told the Claimant not to offer 'off the cuff' advice and that Mr Neil Pritchard, the pump installer, agreed.

73. We find the Claimant was not offering advice, she was asking a question about a potential solution.

74. We accept the tone of Mr Clarke in responding to her was dismissive on the basis of Mr Stanton's evidence. We find that Mr Clarke made some comment in front of the other attendees because Mr Stanton heard it. We find the Claimant was thereafter taken aside and reminded of the remit of her role.

75. The Claimant did not raise any formal complaint about this incident.

'Whitehead' Project Issues 30-31st October 2024

76. Between 30 and 31 October 2024, the Claimant says that when issues arose from the Whiteheads pump work, Mr Clarke overrode her operational decision-making, which she believed undermined her credibility. She says she and Mr Clarke made a joint decision to take staff off the site but Mr Clarke subsequently decided to put staff back on site. She says the Project Manager at Whiteheads had shouted at her. This was a weekly occurrence, and she was used to dealing with it. On this occasion, she called Mr Clarke to tell him about the Project Manager's inappropriate behaviour.

77. Mr Clarke says the Project Manager at Whiteheads had shouted at the Claimant and that he had spoken to him and told him he expected him to apologise to the Claimant.

78. We find on this occasion Mr Clarke was supportive of the Claimant, demanding an apology of a Project Manager that had spoken to the Claimant inappropriately. Mr Clarke's decision to put staff back on site is not, we find, undermining, because he has the ultimate operational decision making power to do so. We find it was outside the Claimant's remit as a Project Manager and office manager to unilaterally decide to take staff off a site.

79. The incident was subsequently discussed amicably at a Teams Management meeting, the transcript of which appears in the bundle.

80. We find the Project Manager did attempt to call the Claimant to apologise at Mr Clarke's request but that she didn't answer the call. The Claimant accepts there is a good strong possibility she had a missed call from him.

Raising Concerns with Steve Willoughby

81. At a management meeting on 15 November 2024, the Claimant says she raised concerns with Steve Willoughby about Mr Clarke's conduct and the impact it was having on her work and welfare.

82. Mr Willoughby told her to put those concerns in writing. She did not because she was too busy.

Comments by Lawrence Clarke 16 November 2024

83. On 16 November 2024, the Claimant says Mr Clarke made a comment about needing to “show Julie and Jan everything in case I die,” and expressed anger connected with collecting his daughter from school, which he blamed on the Claimant.

84. We have little evidence about this comment from the Claimant. We preferred Mr Clarke’s evidence, which was detailed, that he commented about contingencies being in place in case a staff member is ‘hit by a bus’. Again, this is indicative of the gruff way Mr Clarke spoke in the office. We find it was not undermining or belittling the Claimant.

85. The Claimant raised no complaint at the time.

December 2024 to January 2025

86. During late 2024 and into January 2025, the Claimant says she continued to experience undermining comments, dismissive responses to her concerns and what she describes as repeated “small digs” or sexist remarks from Mr Clark.

87. There is insufficient evidence before us and this element of the Claimant’s claim is not sufficiently particularised for us to find it proven.

January 2025

88. By January 2025 the Claimant describes ongoing strain in working relationships within the administrative team, including with Julie Clarke, and said she was increasingly placed under pressure without adequate managerial support.

89. There is no evidence of her raising these concerns at the time.

90. Both parties agree that Mrs Clarke and the Claimant argued on 13 January 2025 and the friendship irrevocably broke down. Much has been made of the cause of that argument but it does not form part of the Claimant's claim and we do not need to make findings on it.

91. As a result, whilst the Claimant and Mrs Clarke continued to work together their professional relationship became increasingly strained.

7th February Meeting

92. On 7th February 2025 there was a management meeting. The Claimant says at this meeting she was seeking to raise all of her concerns about sexualised behaviour, dismissive comments and her inability to manage and work with Mrs Clarke.

93. We find that the Claimant's primary concern at the 7th February meeting was the breakdown of her relationship with Mrs Clarke and the fact she felt she could no longer work with her. We find she did not raise any concerns about Mr Clarke's behaviour. Her resignation email, which we address next, raises no issues about sexual or inappropriate conduct by Mr Clarke. We accept Mr Willoughby's evidence as to the contents of this meeting and find it was primarily about the Claimant's relationship and argument with Mrs Clarke.

94. During the meeting, Mr Clarke put headphones on and started working on a document that they were discussing. The Claimant felt he wasn't listening to her and she tendered her resignation orally.

Claimant's Resignation Email 9th February 2025

95. The Claimant confirmed her resignation formally by email on 9 February.

96. The resignation email appears at [208] in the bundle. In it, the Claimant says:

“I wanted to formally address my concerns and my decision to resign. ... I felt unheard, particularly by Lawrence, and found the situation unprofessional and unacceptable. Unfortunately, this is not the first time I have felt this way during my time at DCI. Whilst I have always strived to remain professional, there have been multiple occasions where I have felt the need to remove myself from difficult situations.

During the meeting, I was trying to explain why I feel my position has become untenable due to the ongoing difficulties in the working relationship between myself and Julie

... I made it clear in the meeting that I was not willing to put you in a position where you had to choose between us, which left me with no real option but to resign.”

97. We find the Claimant resigned because of the breakdown in her relationship with Mrs Clarke, her inability to work with both Mrs Clarke and Mr Clarke, and Mr Clarke's conduct at the meeting of 7th February 2025. We find that had the friendship not broken down, the Claimant would not have resigned. Other concerns or difficulties she describes about her employment she had, we found, coped with or accepted as she always had.

98. We find that the email of 9th February was explaining the Claimant's reasons for her resignation. It did not raise a formal grievance.

Correspondence Subsequent to Claimant's Resignation

99. Between 10 and 23 February 2025 the Claimant raised concerns about confidentiality, the handling of her resignation, and her access to work systems. She was placed on gardening leave from 24 February 2025 following the handover of all work and company property, other than her key.

100. There was a number of exchanges of emails during this time. The Claimant asserted that she expected a response to her resignation email of 9th February 2025. She began to raise allegations of a breach of trust and confidentiality by the Respondent, but did not specify what those breaches were until 26th February 2025 when she emails the Respondent setting out the issues she felt contributed to the 'current situation', namely her resignation and being on gardening leave. She identified them as: a breach of trust and confidentiality, although she did not specify what those breaches were, a lack of support and unclear expectations, unmanageable working relationship with Mrs Clarke, and a forced resignation due to the lack of support from management and unprofessional treatment by Mrs Clarke.

101. On 27th February 2025 the Respondent replied, setting out its response to the Claimants concerns. Mr Clarke stated he felt that ended the conversation from the Respondent's point of view.

102. At no point during this time did the Claimant raise concerns about sexual harassment, undermining or belittling conduct by Mr Clarke.

Claimant's Dismissal 28th March 2025

103. The Claimant's contract of employment stated"

'Other Employment

The employee shall not, without the Employer's written consent, be involved directly or indirectly with any business or employment which is similar to or in any way connected or competitive with the Employer's business'

104. At some time in March 2025, Mr Clarke accessed the work laptop the Claimant had returned because it was the only laptop with the company

payroll software on it. He found documents which led him to commence an investigation.

105. The investigation was carried out by Mr Clarke and Mr Willoughby jointly. They found documentation which led them to believe the Claimant had been carrying out self-employed work for companies – Oakwood and WBD – that were either connected to or competitive with the Respondent.

106. The Respondent was aware the Claimant was carrying out self-employed work for DCI Electrical, Mr Willoughby's company. The works were self-contained and confined to some certification work she had already done for the Respondent.

107. Mrs Jones said the Respondent was well aware of the Claimant carrying out work for her own husband's company, Oakwood, as it was discussed openly in the office.

108. We find whilst the Respondent was aware the Claimant was or had carried out some work for Oakwood, they were not aware of the extent of that work. In particular they were not aware that she was carrying out consultancy work. They were not aware she was working with WBD. This is evident, we find, in Mr Clarke's email of 28th March. They were aware she was doing admin, or tax (GOR) or self contained tasks, but not that she was doing consultancy. We make this finding on the balance of probabilities, on the basis it is unlikely that any commercial enterprise would knowingly allow an employee to utilise skills and knowledge obtained working for it to consult and advise other companies in the same industry.

109. We accept Mr Clarke and Mr Willoughby believed the other companies to be similar or connected to or competitive with the Respondent's business, namely in the construction industry. WBD in particular, we were told, offers turnkey projects that would include work the Respondent does.

110. On 27th March 2025, Mr Clarke wrote to the Claimant setting out its concerns, having examined her company laptop, that she had committed gross misconduct in the following terms:

- (a) Using the employer's time, materials or equipment for unauthorised work citing evidence that the Claimant had used the equipment provided by the Respondent to carry out unauthorised works during her gardening leave and prior
- (b) Deliberately falsifying employers records by removing training records from a folder
- (c) Immoral conduct in contacting the Respondent's customers on behalf of other companies
- (d) Operating as a self-employed consultant advising companies that are in adjacent areas to the Respondent and offering introductions to the Respondent's customers
- (e) Breach of confidentiality by storing data and allowing access to data saved from other companies on her company laptop

111. On the same date, the Claimant's responded requesting evidence in support of the allegations and stating the Respondent was fully aware the Claimant had carried out self-employed work for Mr Willoughby's company DCI Electrical and various subcontractors and companies and it was never raised as an issue. She denied removing any documents from the Respondent's folders. She denied sharing any confidential data of the Respondent's.

112. Mr Clarke replied on 28th March, setting out the Respondent's belief that the Claimant's actions 'crossed the gross misconduct threshold'. He stated in the email that the Claimant's self employed status had never been approved by the Respondent and that they were unaware that she was representing other companies in the construction sector while being full time employed by the Respondent. He states the Claimant had shared information with others that she was only aware of through her work with the Respondent. He referred to a

meeting transcript in which the Claimant is shown to be offering a connection with a current client of the Respondent to another company.

113. He attached to his email three documents – board meeting notes for WBD which the Claimant attended on 11th October 2024, a document titled ‘Sara removing training files’ and a screenshot of the Claimant’s Onedrive listing a number of invoices titled ‘SW Service Invoice [date] WBD.

114. The Claimant replied complaining that the documents referred to by the Respondent had been obtained in breach of GDPR and by accessing her personal Onedrive file. She maintained that any self-employed work has carried out outside of her paid hours for the Respondent. She said any work done on gardening leave was because having returned her laptop to the Respondent she had no work to do for them and contractual obligations to them. She disputed that one of the companies in question was a competitor.

115. At 16.50 on 28th March Mr Clark responded to the Claimant. He stated that the investigation continued but that he was satisfied in light of the Claimant’s responses her actions constituted gross misconduct and terminated her employment with immediate effect.

116. The email goes on to state that the investigation continues but that the Claimant will be invited to attend a final disciplinary meeting if she wishes, once all the information has been gathered. Mr Willoughby tried to contact the Claimant to arrange a meeting but she did not respond.

117. The Claimant had already contacted ACAS on 24th March 2025. ACAS advised the Respondent not to contact the Claimant directly any further and so they did not seek to arrange a disciplinary hearing.

The Law

Constructive Dismissal

118. Constructive dismissal claim is a form of unfair dismissal. The Claimant must therefore firstly establish that she was dismissed. Section 95(1) Employment Rights Act 1996 provides:

“...an employee is dismissed by his employer if

(c) The employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer’s conduct”

119. Dismissal is a contractual concept. The Tribunal must be satisfied that the Respondent has acted in such a way that it amounts to a repudiatory breach of the employment contract – a breach that goes to the root of the contract and entitles the Claimant, as the employee to treat the contract as at an end and consider herself discharged from any further performance of the contract. It is not enough that the Respondent has simply acted unreasonably. The conduct must be sufficiently serious to entitle the Claimant to leave employment.

120. We remind ourselves of the Malik threshold. The employer must not without reasonable and proper cause conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of trust and confidence between employer or employee. **Malik v Bank of Credit and Commerce International SA (in compulsory liquidation) 1997 ICR 606 HL**

121. The burden is on the Claimant to prove that the Respondent had no reasonable and proper cause.

122. There is a second constituent part, that the Claimant must make up his or her mind soon after the conduct of which they complain. If they continue to work for any length of time without leaving, they will lose their right to treat themselves as discharged.

123. In this claim, the Claimant says the contractual term that the Respondent breached is the implied term of trust and confidence. There are two elements to this that the Tribunal must decide:

123.1. Whether the Respondent behaved in a way calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and Respondent; and

123.2. Whether it had reasonable and proper cause for doing so.

124. We remind ourselves that this test, laid down by the House of Lords in *Malik and Mahmud v BCCI* [1997] ICR 606 is an objective test. All the circumstances must be considered. It is a high threshold. The employer must be shown objectively by its behaviour to be abandoning and altogether refusing to perform the contract.

125. We approach it as follows:

31.1. What is the conduct or failure to act on the part of the employer which is said to breach the implied term?

31.2. Was there reasonable and proper cause for that conduct or inaction?

31.3. If not, when viewed objectively was that conduct which was calculated or likely to destroy or seriously damage the trust and confidence?

Harassment – Section 26 Equality Act 2010

126. Section 26 Equality Act 2010 provides that a Person harasses another if they engage in unwanted conduct related to – in this case, sex – and the conduct has the purpose or effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant.

127. The phrase 'related to' is wider than the test in direct discrimination which requires unfavourable treatment 'because of' the protected characteristic. It is not necessary to consider whether the alleged perpetrator would have treated someone without the relevant protected characteristic in the same way.

128. Whether conduct is 'related to' the protected characteristic does not have a mental element. There may be circumstances in which harassment occurs where the protected characteristic did not motivate the harasser. One example given by HHJ Tayler in **Carozzi v University of Hertfordshire and Lucas 2024 EAT 169 2024** is a person who unknowingly uses a word that is offensive to people who have a relevant protected characteristic because it is historically linked to oppression of the people who have the protected characteristic. The fact that the person did not know it had such a meaning would not prevent the word used being related to the PC.

129. Unwanted conduct means conduct that is unwanted by the employee, so it is a subjective question. It does need to have been directed specifically at the Claimant. Conduct can be unwanted even where a complainant has seemingly laughed along with it.

130. Where it is unwanted and related to the PC, it can either be purposefully intended to violate dignity or create the relevant environment, or it can simply have that effect. If not satisfied the conduct was purposefully intended to create the adverse environment, the Tribunal must ask itself:

- Did the Claimant genuinely perceive the conduct as having that effect?
- In all the circumstances, was that perception reasonable?

131. The test is therefore both subjective and objective. We must look at the effect that the conduct of the alleged harasser has on the Claimant, and then ask ourselves whether it was reasonable for the Claimant to claim the conduct had that effect. **Land Registry v Grant (Equality and Human Rights Commission intervening) 2011 ICR 1390 CA**: Intent can be relevant to assessing the effect of the conduct in question, but a lack of intention is not determinative.

132. Where the Claimant is claiming harassment on the back of several separate incidents, the Tribunal should avoid 'carving up' the case into a series of specific incidents and trying to measure the harm or detriment in relation to

each. We are entitled and should consider whether the impact of separate incidents may accumulate, and the work environment created may exceed the sum of the individual episodes.

133. The Tribunal should consider carefully the meaning of the words 'intimidating, hostile, degrading, humiliating or offensive' and afford the seriousness those terms require to them.

Burden of Proof

134. Section 136 Equality Act 2010 sets out the burden of proof relevant to claims under the EqA 2010. If there are facts from which a tribunal could decide, in the absence of any other explanation, that a person has contravened the provision concerned, the tribunal must hold that the contravention occurred, unless that person can show he or she did not contravene the provision.

135. Guidance on the burden of proof given by Court of Appeal in *Igen Ltd v Wong* [2005] EWCA Civ 142' [2005] IRLR 258. Once the burden of proof has shifted, it is then for the respondents to prove that they did not commit the act of discrimination. To discharge that burden it is necessary for the Respondents to prove on the balance of probabilities that the treatment was in no sense whatsoever on the grounds of the protected characteristic

Unfair Dismissal

136. Section 94 Employment Rights Act 1996 gives employees the right not to be unfairly dismissed. enforcement of the right is by way of complaint to an Employment Tribunal under section 111. The Claimant must show that she was dismissed by the Respondent under section 95, and in this case all parties are agreed that the Claimant was dismissed on 28th March 2025.

137. Section 98 Employment Rights Act 1996 deals with the fairness of dismissals. There are two stages. First, the employer must show that it had a potentially fair reason for the dismissal within s.98(2). Second, if the Respondent shows it had a potentially fair reason the Tribunal must consider, without there being any burden of proof on either party, whether the Respondent acted fairly or unfairly in dismissing for that reason.

138. In this case the Respondent argues that the Claimant was dismissed due to committing acts of gross misconduct. Conduct is a potentially fair reason for dismissal under section 98(2).

139. Section 98(4) then deals with fairness generally and provides that the determination of the question whether dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and shall be determined in accordance with equity and the substantial merits of the case.

140. There is well-established guidance on fairness within s.98(4) in *British Home Stores Ltd v Burchell* 1978 IRLR 379 and *Post Office v Foley* 2000 IRLR 827. The Tribunal must decide whether the employer had a genuine belief in the employee's guilt. Then, whether employer held such genuine belief on reasonable grounds and after carrying out a reasonable investigation. In all aspects, investigation, grounds, penalty and procedure, the Tribunal must decide whether the employer acted within the band or range of reasonable responses open to an employer in the circumstances.

141. It is immaterial how Tribunal would have handled the events or what decision it would have made, and the Tribunal must not substitute its view for that of the reasonable employer.

Analysis and Conclusions

1. Harassment related to sex (Equality Act 2010 section 26)

1.1. Did the Respondent do the following things:

142. The Respondent accepts that the following memes or messages were sent on a work Whatsapp group:

- a. 21st August 2021 - a meme "Too belt bra and thong – suggestion for female fitters."*
- b. 12th April 2022 –a meme "911: What's your emergency?"*
- c. 14th August 2022 –a meme about "Scratching of balls."*
- d. 25th November 2022 – meme about "Breakfast in bed"*
- e. 29th November 2022 – meme about "Donut Holster belt" and "Super Angry" towel joke.*
- f. 31st December 2022 – meme about "New Year New Me"*
- g. 15th Jan 2023 – meme about "Your wife will never start a fight while you are cleaning."*
- h. 12 February 2023 – meme about Kermit the frog as an OnlyFans model.*
- i. 28th February 2023- meme about women's moustaches.*
- j. 21st March 2023 – meme about a wife saying "It was my fault" and her husband collapsing.*
- k. 2nd August 2023 – meme about "Boobs, proof men can concentrate on two things at once."*
- l. 22nd December 2023 – meme about "smile/drink/masturbate."*

m. 31st January 2024 – meme about “Rock Paper Scissors Blowjob”

n. 7th February 2024 – meme about a “Dishwasher/Sandwich Maker woman in a box.”

2.1.2. The Claimant says the Respondent also did the following things. The Tribunal will have to decide if the Respondent did the following things:

a. Between March and May 2024 Lawrence Clark said to the Claimant ‘what you think you heard and what I said are two different things’

143. As per our factual findings above, we are not satisfied on the evidence presented this incident occurred as alleged by the Claimant.

b. On 11th October 2024 Lawrence Clark made dismissive and belittling comments about the Claimant ‘not being technical’ and ‘how hard can admin be’

144. As per our factual findings above, we find this incident was not dismissive or belittling, and was simply an instance of Mr Clarke reminding the Claimant of the remit of her role.

c. On 16th November 2024 Lawrence Clark made an inappropriate comment about ‘showing Julie and Jan everything in case I die’ and displayed anger over the fact he had to pick his daughter up from school and blamed the Claimant for being late on purpose

145. As per our factual findings, we do not find this comment inappropriate.

d. Throughout the Claimants' employment, Lawrence Clark made small digs, sexist comments, undermining remarks and unnecessary obstacles.

146. This is a broad allegation. As per our findings, we accept Mr Clarke and the Claimant had a tempestuous working relationship. We accept this meant Mr Clarke sometimes conducted himself in a way that was not professional towards the Claimant. However we are not satisfied on the evidence that he made sexist remarks and we find the Claimant gave as good as she got and either tolerated, or actively participated in the workplace culture.

1.2. If so, was that unwanted conduct?

147. Insofar as we have found some of the alleged incidents occurred, albeit not in the way the Claimant described, as per factual findings we find the memes were inappropriate and some of the conduct inappropriate in a professional environment but the Claimant does not succeed in establishing that the conduct was unwanted. We remind ourselves that this is a subjective test. The Claimant at best tolerated the conduct, however on occasion she contributed to it. She did not raise any concerns about the conduct despite being vocal in her criticism of Mr Clarke in other areas. We are therefore not satisfied that the conduct, to the extent we have found it occurred, was unwanted.

1.3. Was it of a sexual nature?

148. We find the conduct was not of a sexual nature. The memes in particular were often inappropriate and misogynistic. However they were not overtly sexual and could more accurately be described as 'toilet' or 'postcard' humour.

149. The claim for harassment related to sex is therefore not well-founded and fails.

TIME LIMITS

150. In any event, the claim for harassment related to sex is out of time. The most recent incident relied upon by the Claimant is 16th November 2024, more than 3 months before the Claimant brought her claim.

151. In light of our factual findings above, there is no course of conduct extending over a period the last of which falling within time.

152. The claims were not brought within a further period that we consider just and equitable. The Claimant brings a claim for apparent harassment related to sex dating back to 2021. She has not explained in her claim or evidence why, if the conduct was so persistent, she did not bring a claim sooner. We remind ourselves that the extension of time is the exception, not the rule. We are not satisfied in this case it is just and equitable to extend time.

2. Dismissal

3.2. Was the Claimant dismissed? If so:

153. The Claimant accepts she was dismissed. We find the Claimant was dismissed for gross misconduct on 28th March 2025.

3. Ordinary Unfair Dismissal

3.1. *If the Claimant was dismissed, what was the reason or principal reason for dismissal? The Respondent says the reason was conduct. The Tribunal will need to decide whether the Respondent genuinely believed the Claimant had committed misconduct.*

154. In light of our factual findings above, we accept the Respondent genuinely believed the Claimant had committed misconduct.

155. The Respondent had gathered evidence on the Claimant's laptop that showed her issuing invoices to WBD and attending WBD board meetings during her gardening leave and prior. There was some discussion as to whether the fact the Claimant was on gardening leave absolved her of the misconduct. For the avoidance of doubt, we find it does not. The Claimant was still bound by the terms of her contract of employment.

156. The Claimant, in her response to Mr Clarke's email of the 27th March 2025, did not dispute that she had done the work but stated the Respondent was aware that she was doing the work. We have found the Respondent was not aware of the extent and nature of the work she was carrying out for other companies.

157. We accept that the Respondent held a genuine belief that the companies are of a similar nature or connected to or competitive with its business and that that belief is reasonable. They are companies in the construction industry and the Respondent believed them to provide services similar or connected to the work it does.

158. The term of the Claimant's employment she is said to have breached is broadly defined and, we find, clear.

159. For these reasons, we are satisfied that the Respondent held a reasonable belief the Claimant was in breach of her employment contract and had committed misconduct.

3.2. *If the reason was misconduct, did the Respondent act reasonably or unreasonably in all the circumstances, including the Respondent's size and administrative resources, in treating*

that as a sufficient reason to dismiss the Claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case. It will usually decide, in particular, whether:

3.2.1. there were reasonable grounds for that belief;

3.2.2. at the time the belief was formed the Respondent had carried out a reasonable investigation;

3.2.3. the Respondent otherwise acted in a procedurally fair manner; The Claimant challenges the fairness of the procedure in the following respects:

c. The Respondent did not conduct a grievance process.

d. The Respondent did not consult with her beyond the emails sent at the relevant time

3.2.4. dismissal was within the range of reasonable responses.

160. We accept dismissal was within the range of reasonable responses and rely on the following factors:

(a) We have found the Respondent had a reasonable belief in the Claimant's misconduct in light of the evidence they had uncovered in their investigation.

(b) The alleged misconduct is a fundamental breach of the Claimant's employment contract. We find the Respondent acted reasonably in treating the breach with the seriousness that it did. We are satisfied that

business ethics and efficacy require companies to ensure its confidential and commercial information is not utilised for the benefit of other companies.

- (c) The investigation was admittedly perfunctory. However, we find the Respondent had sufficient information before it, in conjunction with the Claimant's recognition in her response, to form its belief of the misconduct.
- (d) The Respondent gave the Claimant an opportunity to respond to its findings by emailing her the findings of their investigation. Her response did not deny the allegations but raised concerns about how they had accessed the information.
- (e) The Respondent is a small company. The Claimant was their HR representative and was on gardening leave and so they couldn't consult her. They consulted a HR advisor on an ad hoc basis. Having regard to the size and administrative resources, the investigation whilst brief was reasonable.
- (f) The Claimant says she raised a grievance. The resignation email was not a grievance. She never said it needs to be dealt with as such. We remain unclear what her grievance was that the Respondent failed to deal with. Insofar as it was her email of 26th February 2025, we find the Respondent did not address it formally by way of investigation but it did respond to the Claimant's concerns. The email lacked specificity and did not assert it should be dealt with as a formal grievance. In any event, this arising prior to the Respondent discovery of the alleged misconduct, we do not find the Respondent's failure to deal with it as a grievance affected the fairness of the dismissal which was for unrelated reasons.

(g) We acknowledge the Claimant was not afforded an opportunity to address the allegations in a disciplinary hearing. However, it is clear the Respondent intended to afford her that opportunity in its dismissal email and by way of Mr Willoughby's attempt to contact her. The opportunity never came because the Respondent reasonably followed ACAS advice not to contact the Claimant directly.

161. Having regard to all of the above, the dismissal was within range of reasonable responses and the unfair dismissal claim is not well-founded and dismissed.

3.3. *If the Claimant was dismissed and the dismissal was fair, that concludes the constructive dismissal claim because the Claimant was fairly dismissed before her employment ended and before any claim for constructive dismissal crystallised.*

162. We nevertheless went on to apply our factual findings to the constructive dismissal claim as set out below and found that notwithstanding our conclusion that the Claimant was fairly dismissed, the Claimant's claim for constructive dismissal would have failed in any event.

4. Constructive Dismissal

5.6. *If the Claimant was not dismissed, or if the dismissal was unfair:*

5.7. *Did the Respondent do the following things:*

5.7.1. *Repeated inappropriate and sexually explicit conduct by Lawrence Clark in workplace communications (the Claimant relies on the same course of conduct as in relation to the harassment related to sex claim set out in 2.1.1 and 2.1.2 above)*

163. In light of our factual findings above, whilst we find Mr Clarke behaved inappropriately, we are not satisfied that he engaged in sexually explicit conduct or, we find the Claimant did not object to that conduct at the time or afterwards until this claim was brought.

5.7.2. Make undermining and belittling comments about the Claimant and dismiss the Claimant's professional judgment on the following occasions:

e. 3rd March 2022: 'Neptune Project meeting': Lawrence Clark undermined the Claimant by taking over the meeting, contradicting her and dismissing her input.

164. As per our factual findings above, we find Mr Clarke did not undermine the Claimant on this occasion.

f. 8th February 2024: 'Whitehead Project' concerns: Lawrence Clark undermined the Claimant's concerns.

165. As per our factual findings above, we find Mr Clarke did not undermine the Claimant on this occasion.

g. 11th October 2024: The Claimant took a service call and Lawrence Clark made dismissive and belittling comments about her not being technical and 'how hard can admin be'

166. As per our factual findings above, we find Mr Clarke did not undermine the Claimant on this occasion.

h. 16th October 2024: Site Meeting at Undy: Lawrence Clark undermined the Claimant in front of Vistry staff and made

comments about her not being technical and that she could go home and he was not sure why she was there

167. As per our factual findings above, we accept Mr Clarke spoke to the Claimant in an undermining way in front of Vistry staff on this occasion. We find however that the issue was discussed and resolved informally at the time, and the Claimant raised no further concerns.

i. 30th-31st October 2024: Whiteheads Pump Work: Lawrence Clark overrides the Claimant's decision, damaging her credibility.

168. As per our factual findings above, Mr Clarke did not undermine the Claimant on this occasion.

5.7.3. Failure by senior management to address or remedy the Claimant's complaints or concerns arising out of those incidents, in particular:

a. 15th November 2024: Management Meeting: The Claimant expressed her concerns about the business and Lawrence Clark to Steve Willoughby.

169. As per our factual findings above, the Claimant did raise concerns about Mr Clarke but they were about his work ethic and conduct more broadly. She was given an open forum to discuss those issues with Mr Willoughby and Mr Clarke and never sought to formalise her concerns, despite Mr Willoughby's invitation. On that basis we find the Claimant was content to continue in her work.

5.7.4. Gaslighting and denial of the Claimant's concerns by Lawrence Clarke, including. Minimising reported conduct, denying statements made and suggesting the Claimant had misunderstood or misinterpreted events.

170. As per our factual findings above, this is a broad accusation which is not made out in the evidence before us.

5.7.5. Failure to provide a safe and supportive working environment for the Claimant.

171. As per our factual findings above, this is a broad accusation which is not made out in the evidence before us.

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

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

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

172. We find the Respondent did not breach the implied term of trust and confidence between it and the Claimant. Whilst we have found there was some unpleasant conduct and some undermining conduct by Mr Clarke, this was not sufficient to create a repudiatory breach of contract entitling the Claimant to consider her employment as at an end. She did not escalate or formalise any complaints and we find the mixed professional and personal nature of her relationship with Mr Clarke was the primary source of many of their disagreements.

173. For those reasons, the constructive dismissal claim is not well-founded and is dismissed.

Employment Judge Williams

**Authorised for issue on:
2nd June 2026**

Judgment sent to the parties on:
24 July 2026

For the Tribunal:
Kacey O'Brien

Note

Public access to employment tribunal decisions

Judgments (apart from judgments under rule 52) and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.