



EMPLOYMENT TRIBUNALS

Claimant: Ms. K. Jackson

Respondent: Network Rail Infrastructure Limited

Heard at: London South, Croydon

On: 4-8 June 2018 and the 11 June and the 16-17 October 2018 in chambers

Before: Employment Judge Sage

Members: Ms. S V Mac Donald
Ms. C. Edwards

Representation

Claimant: Mr. Toms of Counsel

Respondent: Ms. Carse of Counsel

RESERVED JUDGMENT

1. The Claimant's claims for harassment at paragraph 3(a)-(d), (f), (m)-(p) are well founded.
2. The Claimant's claims at paragraphs 3(e), (g), (h)-(l), (q), (r), (s) and 10(b) are not well founded and are dismissed
3. The Tribunal awards to the Claimant a payment for injury to feelings of £17,500 together with interest of £3048.08 which makes a total award of £20,548.08
4. The Tribunal awards to the Claimant a sum of aggravated damages of £2,500

REASONS

1. By a claim form presented on the 1 June 2017, the Claimant claimed sex discrimination, sexual harassment and victimization.
2. The Respondent denied the allegations and relied on the statutory defence.

The Issues

Harassment related to sex (Section 26 Equality Act 2010)

3. Was the Claimant subject to the following unwanted conduct:
- (a) from September 2016 to the 22nd/23rd December 2016 by Mr Cameron Hayes, an Isolation Planner, making hand gestures and comments in reference to the Claimant's breasts;
 - (b) in late November/early December 2016 by Mr Hayes saying to the Claimant "*you're grumpy, is it your time of the month?*";
 - (c) in December 2016 (at some point prior to the 16th) by Mr Hayes saying to the Claimant "*if I can make you come with one finger, imagine what I can do with five*";
 - (d) on the morning of the 16th December 2016 by Mr Hayes saying to the Claimant "*your tits look massive in that jumper*";
 - (e) from on or around the week commencing the 26th December 2016 by Mr Hayes, Mr Martin Laws, an Isolation Planner, and Mr Stuart Martin, an Isolation Planner, ostracising the Claimant;
 - (f) at least once a week throughout January 2017 by Mr Sharplin, an Isolation Planner, invading the Claimant's personal space by standing too closely to her whilst she was sat down and/or sitting closely next to her with his legs apart and hers in between;
 - (g) in the week commencing the 23rd January 2017 by Mr Sharplin touching the Claimant on the arm with what she believes to be his penis when he was turning to leave her side;
 - (h) on the 1st February 2017 by Mr Sharplin being frosty with the Claimant and gesticulating in front of Mr Fowler, their manager, whilst looking over at her;
 - (i) on the 6th February 2017 Mr Martin was critical of the Claimant in an email copied to her manager;
 - (j) on the 6th and 7th February 2017 by Mr Hayes and Mr Martin ignoring the Claimant's requests for further information;
 - (k) on the 8th February 2017 by Mr Sharplin, Mr Hayes and Mr Martin sitting in on a meeting of the Claimant's. She believes their attendance was unnecessary and intended to intimidate her;
 - (l) on the 9th February 2017 by Mr Sharplin standing too closely to the Claimant and being critical of her;
 - (m) on the 27th February 2017 by Mr Hayes ignoring the Claimant whilst also being critical of her. He was facilitated by the Respondent in so doing;

- (n) from around the 27th February 2017, by Mr Hayes ongoing refusal to communicate directly with the Claimant on work related matters and excluding her from important emails;
 - (o) on the 21st March 2017 by Mr Hayes excluding the Claimant from important emails;
 - (p) on the 24th March 2017 by Mr Hayes making critical remarks and comments of a sexual nature about the Claimant to the Respondent during the course of a grievance investigation interview;
 - (q) from the 24th March 2017 by the Respondent's ongoing failure to take any action against Mr Hayes based on his remarks in (o) above;
 - (r) on the 8th May 2017 by Mr Hayes ignoring the Claimant's request for further information;
 - (s) on the 9th May 2017 by the Respondent commencing performance management of the Claimant.
4. If all or any of the matters set out in paragraph 1 above amounted to unwanted conduct, was the conduct related to sex ?
5. If all or any of the unwanted conduct was related to the sex, did it have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her ?
6. In considering whether the conduct had that effect, was it reasonable in all the circumstances, including the Claimant's perception, for the conduct to have that effect.

Direct sex discrimination (Section 13 Equality Act 2010)

7. Did the matters set out in paragraph 1 above amount to less favourable treatment ?
8. If all or any of the matters set out in paragraph 1 above amounted to less favourable treatment, was it because of the Claimant's sex ? The Claimant relies on a hypothetical male comparator doing the same job as her.

Victimisation (Section 27 Equality Act 2010)

9. Did the Claimant carry out the following protected acts:
- (a) her verbal complaint to Mr Laws on the 23rd December 2016
 - (b) her written grievance dated the 9th February 2017.
10. Did all of any of the following matters amount to detriments within the meaning of Section 27(1) EA ?

- (a) the matters set out in paragraph 1(e), (j) to (r) above; and
- (b) on the 6th February 2017 by Mr Martin being critical of the Claimant in an email copied to her Line Manager when the mistake was his;

11. If all or any of the matters set out in paragraph 10 above amounted to detriments, were they because of her protected act(s)?

Limitation

12. Have any aspects of the Claimant's claim been presented outside the relevant time limit? If so, were they part of a continuing act? If not, would it be just and equitable for the Tribunal to extend time?

Statutory defence

13. If the Claimant did suffer all or any of the discrimination alleged above, did the Respondent take all reasonable steps to prevent such discrimination taking place ?

The Witnesses

For the Claimant we heard from the Claimant and Mr Jackson (her union representative and husband)

For the Respondent we heard from:

Mr Sharplin Isolation Planner

Mr Laws Isolation Planner

Mr Hayes (referred to in his statement as Mr Cooper) Isolation Planner

Mr Martin Isolation Planner (now Delivery Assistant)

Mr Morris Lead Planner (Access)

Ms. Carvey Programme Manager (Change) and Grievance Manager

A witness statement was provided by Mr Grewar the appeals manager but he was not called to give evidence.

Findings of Fact

14. The Claimant commenced employment on the 17 May 2015 with the Respondent company. Mr Hayes commenced employment with the Respondent in December 2015 working in the Planning Department as an Isolation Planner, this was a safety critical role. On the 1 March 2016 the Claimant joined the planning department as a Planning Assistant (page 70-82 of the bundle). The job description of the Planning Assistant role was at page 83 of the bundle reflected that the role was not safety critical. The role required the post holder to "prepare as directed and in consultation with key project personnel and suppliers project plans capable of delivering the policy objectives and enter these plans into planning support systems and when directed, develop recovery programmes and contingency plans in order to meet changed objectives". This role also required her to liaise with internal and external customers.

15. The Tribunal saw that Ms. K Robinson joined the Department in November 2016 as a manager of the Isolation Planning Team; she therefore managed Mr Hayes, Mr Sharplin, Mr Laws and Mr Martin. She was confirmed to be an Equality and Diversity Champion by Mr Morris.

The Claimant was managed by Ms Lynch from May to December and from January to June 2017 she was managed by Mr Morris.

16. On the 2 January 2017 the Claimant was promoted to the role of Planning Specialist. Mr Morris confirmed that this was a promotion in cross examination as it was he and Ms Robinson who conducted the CV sift and interview. The Tribunal find as a fact that the promotion given to the Claimant was on merit and there was no evidence to suggest that the Claimant was struggling in her role. When the Claimant was promoted she moved desks and sat near one of the Isolation Planners Mr Sharplin.
17. The Tribunal saw the job description of Planning Specialist (Access) which was also not a safety critical role. The role was to “integrate all access and TSR requests for a designated element of the Area Plan” and to “manage effective relationships with internal and external customers”. The job skills experience and qualifications for the role was to be able to “integrate worksite requests into possession and optimise the possession plan” and to “specify all aspects of worksite and possession parameters”.
18. The Tribunal heard that it was the Isolation Planners who carried out the safety critical part of the planning; their role was to isolate the third rail when the track maintenance was carried out. Planning for work to be carried out track side was often planned two years in advance and when the Claimant started working as a Planning Specialist on the Kent route (and doing what was called ‘abnormals’ for both the Kent and Sussex routes), she would have been working on plans that had been put together by others. Mr Morris told the Tribunal that it was the Isolation Planners that published what were described as the B2 which was the safety critical part of the planning process.
19. Isolation Planners had got out of the habit of going to planning meetings. Mr Hayes told the Tribunal that the Isolation Planners were asked by Mr Fowler to attend meetings in February 2017 because “some third-party contractors were unhappy with the meetings” (paragraph 42). The Claimant’s evidence on the role of Isolation Planners was that they “refused to come to the planning meetings” however it was meant to be part of their role. Mr Morris at paragraph 14 of his statement confirmed that historically Isolation Planners had attended the Planning Specialist meeting and this approach was something they had been trying to bring back.
20. The Claimant told the Tribunal that the planning meeting takes place with the contractor, first to see if the work can be done and if everyone knows what they are doing and when to stand to one side; after the planning meeting finishes it is handed to the Isolation Planner. The Claimant stated that the correct process is for the Isolation Planner to go to what was described as the T14 meeting. The Claimant agreed that this was part of a long-term process and if a problem arose down the line she would be expected to put it right. The Claimant told the Tribunal that she had inherited many errors.
21. The Tribunal saw in the bundle at page 58 a copy of the Equality Diversity and Inclusion Policy, it was noted that none of the Respondent’s witnesses referred to this policy in the bundle. The Tribunal were also

taken to the Harassment Policy at page 65 of the bundle again we noted that none of the Respondent's witnesses referred to this policy in their evidence in chief. Ms Carvey for the Respondent confirmed that she received equality training in the period of three years prior to the discriminatory act. Although Mr Laws in cross examination told the Tribunal that he had seen the policies on the staff notice board, he confirmed that he had not read the harassment policy properly and did not know what was in the Equality and Diversity Policy. Mr Hayes did not corroborate Mr Laws' evidence and could not recall seeing the harassment policy on the notice board. Mr Sharplin, Mr Hayes, Mr Laws told the Tribunal that they had taken some e-learning modules about 8 weeks before this Tribunal hearing. Although Ms Carvey had received equalities training prior to hearing the Claimant's grievance, she made no reference to the policies in her interviews or in the grievance outcome report and letter.

The specific allegations of discrimination.

22. The Claimant alleged in the agreed list of issues above at paragraph 3(a) that "from September 2016 Mr Hayes made 'hand gestures' in her direction (making circular motions to indicate breasts) and made the following comments "your tits look massive" and "your tits look massive, I am only telling you the truth". The evidence in relation to this complaint appeared at paragraphs 3 and 4 of the Claimant's statement and she confirmed in cross examination that the circular gestures occurred every time she saw Mr Hayes. Mr Hayes denied this allegation in his statement (paragraph 17) and in cross examination.
23. The Tribunal were taken to emails that Mr Hayes had sent to Claimant when they both previously worked at Colas rail in 2014; although not strictly relevant to the issues before this Tribunal it gave an indication of how Mr Hayes communicated with his female colleagues. He was taken in cross examination to page 286 which was an email he sent to the Claimant on the 20 August 2014 saying that he had "trouble weeing when I get out of bed" and on the following day he sent an email to the Claimant and another female with the just the word "LEZZIES" (page 287). Although this was in a previous employment, it appeared to reflect Mr Hayes' use of inappropriate language related to sex. In cross examination Mr Hayes said when taken to page 286-7 that he did not see the relevance of the of the document and denied that these were inappropriate comments (but accepted that it was not appropriate to send an email containing the word Lezzies).
24. The comments made in his previous employment to the Claimant appeared to be similar to the type of offensive comments that the Claimant complained of in issue 3(a). Although there was no corroborative evidence of this allegation, the Tribunal conclude that to take each incident in isolation would lead to us forming a misleading picture of workplace relationships and dynamics. In order to form an accurate picture of the workplace environment, we have decided to take incidents 3(a)-(d) together as they all relate to the interaction between the Claimant and Mr Hayes in a relatively short period of time involving similar comments of a sexual nature or related to sex.

25. The second allegation above at paragraph 3(b) is in relation to the comment “*you’re grumpy, is it your time of the month*” this was in the Claimant’s statement at paragraph 7; the Claimant said that this was witnessed by Emma Bourke and Sinead Burgess. This allegation was denied by Mr Hayes (paragraph 20) and he stated that if he had made such a comment he was sure that someone would have said something. The Claimant confirmed in cross examination that this had happened. It was put to the Claimant that Ms Bourke never heard “anything out of order” and the Claimant’s response was that Ms Bourke and Mr Hayes’ were friends and she presented ‘a benevolent view’ of Mr Hayes.
26. The Tribunal conclude on the balance of probabilities that the Claimant’s evidence on this point was consistent although Mr Hayes denied the comment the Tribunal conclude that the Claimant’s evidence is preferred as her evidence in documents, in her statement and in cross examination has been largely consistent (see below in her grievance). Her evidence has also been consistent in relation to the type of language used by Mr Hayes towards her.
27. The allegation at 3(c) is in respect of a comment allegedly made by Mr Hayes that “*if I can make you come with one finger, imagine what I can do with five*” at some point prior to the 16 December 2016. The Claimant’s evidence on this point was at paragraph 8 of her statement and the same allegation was included in her grievance document (page 120-1 bundle). Mr Hayes denied he made this comment both in his statement and in cross examination; he stated that the Claimant had made it up. Mr Hayes was taken in cross examination to the grievance interview with Ms Robinson on the 15 March 2017 at page 170. Ms Robinson was at the time of the interview Mr Hayes’ boss. Ms Robinson had only been in the role since the 3 November 2016 and had not known him or the Claimant for very long, she appeared therefore to be an independent witness having developed no obvious allegiances in the office.
28. Ms Robinson confirmed in her interview for the grievance investigation that she heard Mr Hayes make inappropriate comments to the Claimant and described them as follows “*..when I had just joined the team and did hear him say something rude although he said it in quite a jokey way. I heard him say come here with one finger and then imagine what I can do with 5 or something like that. It was said almost as a joke but the content was creepy but he did try to make a joke out of it. I didn’t think it was appropriate I wish I’d said something*”. She also confirmed that he “*makes “off” jokes as (sic) sees it as banter generally. That was probably the worst but I did also hear him tell Kellie that her boobs looked good as well around Christmas time. Kellie did look embarrassed and (sic) after the comment was made*”. This quote was put to Mr Hayes in cross examination and he said that he had ‘a problem’ with Ms Robinson and he gave the reason for this was due to the ‘letter’ she sent out. He stated that he was looking after his own welfare

29. The Tribunal saw the letter that was referred to by Mr Hayes at page 131 of the bundle dated the 21 February 2017 from Ms Robinson. This letter was sent after the Claimant presented her first grievance. In this letter Ms Robinson informed Mr Hayes that he was only allowed to make contact with the Claimant by email and she asked to be copied in to all communications. Mr Hayes was also temporarily relocated to Tonbridge. This instruction appeared to be perfectly sensible and reasonable and did not suggest that Ms Robinson's recollection of the events was untrue or inaccurate or that she would have a reason to lie.
30. The Tribunal find as a fact that Mr Hayes made the offensive comment referred to above at paragraph 3(c), we conclude that the evidence of the Claimant was corroborated by Ms Robinson who was a relatively new member of the team. We also conclude that his unpleasant comment was consistent with his previous two comments and were also consistent with his conduct while at Colas rail. The Tribunal conclude that this comment was inherently unwanted as it was of a highly offensive nature made in front of a number of staff (including managers). It was Ms Robinson's view that this comment was 'creepy' which reflected that it made her feel uncomfortable and she witnessed the Claimant looking embarrassed. This corroborated that it created an offensive environment for the Claimant and Ms Robinson, who was also made to feel uncomfortable. The Tribunal conclude that this comment was made, and the purpose of the comment was to violate the Claimant's dignity and the comments taken together at 3(a) to (c) created a degrading or offensive environment for the Claimant. We conclude it was Mr Hayes purpose to do so as there was no evidence to suggest that she had joined in with any inappropriate 'banter' which would lead him to conclude that this was an appropriate manner to communicate with female colleagues in the workplace.
31. The Tribunal find as a fact that Mr Hayes made the statement referred to at issue number 3(c) due to the consistent evidence of offensive comments made by him which reflected a consistent pattern of behaviour. We also refer to the above comments made by Mr Robinson in her interview for the Claimant's grievance to support our conclusion. The Tribunal also considered that the Isolation Planners appeared to pass off offensive comments as 'jokes' even where they focussed on the Claimant's appearance; these comments were in breach of the Respondent's harassment policy. The Tribunal conclude that it was objectively reasonable in the light of the offensive nature of the comment to be embarrassed and offended.
32. The fourth allegation at 3(d) was an incident on the day of the Christmas dinner on the 16 December 2016 when the Claimant was wearing her Christmas jumper. The Tribunal saw this jumper and it was red with a large penguin on the front wearing a scarf; the jumper was covered with about ten small snow balls randomly covering the front of it. The Claimant's evidence (at paragraph 9 of her statement) was that Mr Hayes had said to her that her "tits look massive in that jumper". This allegation was again reported in her grievance letter seen at page 120. It was put to the Claimant in cross examination that there were two baubles in the position of her chest however this did not appear to explain the relevance of Mr Hayes' comment. She accepted that some of the

snowballs were around the chest area. Mr Hayes denied that he made the comment.

33. Mr Hayes referred to this incident in his statement and the thrust of his evidence was that, in his view, the Claimant was 'struggling in her role' (paragraph 73) inferring that this was the reason she had made allegations against him. Mr Hayes made a counter allegation that the Claimant raised her Christmas jumper up to her neck and stated that "*the only thing I remember about her Christmas jumper was that she was walking around pointing at the jumper and that I remembered her lifting it up to Mr. Sharplin. I had seen this from behind*" (paragraph 78). This evidence was not corroborated by Mr Sharplin who made no mention of it in his statement or in his interview with the grievance manager; Mr Sharplin also denied this occurred in cross examination. It is surprising that, if the incident occurred as Mr Hayes had alleged, that it would have been a memorable incident.
34. Mr Hayes' evidence on this point did not seem to be credible or consistent. He told the grievance investigation that the Claimant exposed her chest to Mr Martin (page 198) and he told the Tribunal that where the grievance investigation minutes referred to Mr Martin this was incorrect and he did not notice that the minutes of the investigation referred to Mr Martin. It was put to Mr Hayes that Mr Martin had a completely different version of events in his statement saying that he had been told that the Claimant had lifted up her jumper to another member of the team Neil Bettles Hall (paragraph 15 of Mr Martin's statement) Mr Martin in his statement also went further to say that the Claimant asked Mr Bettles-Hall "*if her tits looked massive*"; this appeared to be an embellishment of this allegation as Mr Hayes did not suggest that the Claimant said anything when she was alleged to have lifted up her jumper. When Mr Martin was cross examined about his evidence he accepted that he did not make any reference to this incident when he was interviewed as part of the grievance investigation. In cross examination Mr Martin was taken to his statement and he changed his evidence and denied that the Claimant lifted her jumper up to Neil Bettles-Hall (as referred to in paragraph 15) but to Mr Sharplin. Mr Martin could not explain why he changed his evidence. The Tribunal raise an inference that in the absence of any credible explanation for this change of evidence, we conclude that it was to corroborate Mr Hayes version of the alleged event. Mr Martin's evidence lacked any credibility or consistency.
35. The Tribunal found the evidence of Mr Hayes and Mr Martin's on this point to be incredible; there was no consistency on the facts (internally or externally). Mr Sharplin, Mr Hayes and Mr Martin were together at the same time but all had completely different recollections of the event. It was also of considerable concern to the Tribunal that Mr Hayes' evidence was internally inconsistent in that the grievance investigation notes showed that he first alleged that it was Mr Martin who was the recipient of the alleged conduct and then in his statement this was changed to Mr Sharplin; he failed to provide a credible explanation as to why his evidence had changed. Similarly Mr Martin's evidence lacked consistency and credibility as in cross examination he stated that it was Mr. Sharplin who 'definitely' witnessed the Claimant raise her jumper but in his statement referred to a different colleague telling him about the incident. The Tribunal

conclude on the facts that Mr Martin deliberately changed his evidence when under oath to corroborate Mr Hayes evidence (who gave evidence to the Tribunal the day before). The Tribunal conclude on the balance of probabilities that this evidence lacked any credibility. The Tribunal can only conclude that the witnesses changed their evidence before the Tribunal and we raise an adverse inference from this, concluding from the lack of consistency of the Respondent's witnesses that this evidence was untrue.

36. The Tribunal find as a fact that the Claimant's evidence in relation to issue 3(d) is preferred to that of Mr Hayes, having concluded that Mr Hayes' evidence lacked credibility. We noted that Ms Robinson made specific reference to a remarkably similar comment in her interview (see above at paragraph 28) and we conclude that this corroborated the consistency and credibility of the Claimant's version of the events.
37. The Claimant stated in paragraph 10 of her statement that Mr Hayes had noticed that she was trying to avoid him, so she spoke to him at the printer on or around the 16 December 2015 ("the printer conversation"). The Claimant's evidence on this conversation was that Mr Hayes asked her what was wrong, and she informed him that she did not like what he was saying to her and told him that she didn't want to speak to him. Although Mr Hayes had no recollection of this conversation, the Claimant's evidence is preferred as her approach to Mr Hayes appeared to be consistent overall with the Claimant's approach to try and deal with problems by talking to her colleagues.
38. The Claimant stated that she mentioned this incident to Mr Laws around the 22 or 23 December 2016 about how the comments made by Mr Hayes (and gestures) had made her feel uncomfortable. In her statement at paragraph 11 she stated that Ms Laws said the behaviour was 'normal' and that Mr Hayes was 'joking'. He stated further that even though others in the department were not saying similar things that "they might not be saying it, but they are thinking it". These comments were put to Mr Laws in cross examination and he could not recall the conversation.
39. The Claimant explained in cross examination that she raised this with Mr Laws because "*it had all gone frosty after the incident at the printer with Mr Hayes. I explained what had happened, it was circumstantial, I wanted to explain why he was frosty*". She explained that she felt that she had raised it informally with Mr Hayes rather than go to a line manager. She also confirmed that "they all went a bit frosty after that". Mr Laws' evidence was that this did not happen but accepted that a frosty atmosphere occurred "after all this came out" meaning that the atmosphere changed after her grievance had been submitted and his colleagues were moved. He denied that the atmosphere was different at this time. Although the Tribunal heard that Mr Laws' denied that the atmosphere changed in December towards the Claimant, he corroborated that the atmosphere changed towards the Claimant after her grievance was submitted on the 9 February 2017 (see below).
40. The Tribunal find as a fact that the evidence of the Claimant is preferred to that of Mr Laws, as it was noted that the allegations in her statement were consistent with the facts referred to in her grievance and

discussed in the grievance interview. The Claimant's evidence in cross examination also remained consistent. The Tribunal compared this to Mr Law's evidence which was mostly non-committal and he appeared to have almost no recollection of any of the incidents that took place in this case. We therefore find as a fact that this conversation took place. We also find as a fact due to the overall consistency of the Claimant's evidence, as compared to that of Mr Hayes and Mr Martin, the complaints discussed in this conversation were factually accurate.

41. Although the Tribunal accept that this conversation took place, there was no evidence to suggest that the conversation with Mr Laws was a protected act. The Claimant's evidence was that in this conversation she told Mr Laws how she felt but there was no evidence to suggest that the Claimant referred to a matter that could amount to an allegation under the Equality Act or that she was doing any other thing for the purposes of the Equality Act. This was a confidential conversation with a colleague to explain why her relationship with Mr Hayes had cooled.
42. The Claimant alleged that after the above conversation with Mr Laws took place, she began to be ostracised by Mr Laws, Mr Hayes and Mr Martin and that their conduct amounted to harassment and victimisation.
43. Mr Hayes alleged in his statement that there was an occasion after the Christmas break that he spoke to the Claimant about a work matter and she started "swearing at me" saying the errors were not her fault. The Claimant denied that she ever swore at work and stated that this evidence was embellished. He stated that later on the Claimant became friendly again. Mr Laws was asked by the Tribunal if he had seen the Claimant upset and he stated that she never appeared to be upset but did say that they had all been under a lot of pressure. He did not corroborate Mr Hayes evidence that the Claimant had sworn at work, the Tribunal therefore conclude on the evidence that this incident did not occur as alleged.
44. In the issue at paragraph 3(e) the Claimant alleged that Mr Hayes, Mr. Laws and Mr. Martin ostracised her from "on or around the week commencing the 26 December 2016". Although the Claimant stated that she discussed this with Mr Laws, he appeared again to have no recollection of the conversation and none of the other witnesses could recall Mr Laws discussing this with them. We have looked at the Claimant's grievance in detail and she accepted that Mr Hayes' behaviour towards her improved after her conversations at the printer and with Mr Laws (the Claimant's statement accepted that after the 22/23 December Mr Hayes made no further sexist comments). Although she noted that Mr Hayes was 'offish' with her after these conversations, it was evident that his behaviour towards her changed and the Tribunal conclude that this was because he had heeded her complaints and respected her request that she did not wish to speak with him (see above at paragraph 37). There was no consistent evidence to show that Mr Hayes ostracised the Claimant after the 26 December. There were no details of how Mr Martin's behaviour was alleged to have changed after the 26 December and although the Claimant commented in her grievance that he was less friendly towards her she did not explain in detail how he ostracised her. The Tribunal were not convinced by the Claimant's allegation against Mr

Laws, we noted that she had turned to him twice (once about Mr Hayes on the 22/23 December and subsequently in respect of Mr Sharplin see below), this suggested that their relationship remained cordial after the 26 December and she still felt comfortable approaching him about difficult workplace relationships.

45. The Tribunal will now deal with the issues in relation to Mr Sharplin at allegation 3(f). The Claimant deals with this allegation at paragraphs 13-15 and 16 and 17 of her statement. It was the Claimant's evidence that Mr Sharplin sat close to her at times during January 2017 after she was promoted and stated that "*his body was close to me and sometimes he would lean on me*" and she stated that "*He would also sit at my desk and position himself so that my legs were between his which I found very uncomfortable*". The Tribunal note that the description given in her grievance letter at page 121 of the bundle was that Mr Sharplin would "try to position himself so that my legs were between his and you could not move without contact". The Tribunal saw the evidence given by Ms Robinson to the grievance investigation at page 171 of the bundle, in her testimony she confirmed that she had seen Mr Sharplin stand close to the Claimant. The question was specifically put to Ms Robinson whether she felt that there was a sexual motive behind Mr Sharplin's actions and she replied "*It's hard to say as it's subjective but I do think that he had a crush on her and I have seen him sat close to her with his legs wide open, but then I have seen people who have completely innocently done the same they are just unaware*" The Claimant did not ask him to move because she found it to be embarrassing and awkward.
46. It was put to the Claimant in cross examination that Mr Sharplin sat close to her because he was hard of hearing however the Claimant stated that she did not know this. This was corroborated by Mr Sharplin in cross examination who confirmed that he did not tell the Claimant he was hard of hearing and did not tell her that was why he needed to sit close to her. Mr Sharplin in cross examination accepted that standing too close could amount to harassment, but denied he was standing that close and denied that he touched the Claimant. It was put to the Claimant that it was a noisy environment which she disagreed with saying that it "*was a corporate environment, sometimes you could hear a pin drop*". It was put to the Claimant in cross examination that Mr Sharplin's conduct was not related to her sex but the Claimant disagreed with this saying "*the way it felt for me felt I was being selected*" and she felt so uncomfortable that she moved back to her old desk. This conduct appeared to be corroborated by Ms Robinson who said that Mr Sharplin did not sit with everyone and help them and others had noticed this (see page 170). Ms Robinson also stated in the grievance hearing that she did not know that he was hard of hearing and she had not heard this before (the Claimant's complaint was presented).
47. It was put to the Claimant in cross examination that her behaviour was "flirty or aggressive" to Mr Sharplin (as alleged by Emma Bourke on page 219 in her evidence to the grievance investigation) which the Claimant denied. The Claimant also denied that Mr Sharplin was leaning close to hear what she had to say (as alleged by Ms Bourke in her statement given to the grievance at page 219). The Tribunal noted that Mr Sharplin did not

allege that the Claimant was flirty or aggressive toward him in his statement or in the interview he gave as a part of the grievance investigation (see page 202 of the bundle). If the Claimant had been flirting with Mr Sharplin this would have been a relevant matter for him to raise at the time.

48. We find as a fact that the allegation at 3(f) is well founded on its facts that Mr Sharplin sat close to the Claimant with his legs open as this was witnessed by others. We also conclude that he had singled the Claimant out for attention as this had been noticed by others. This conduct was unwanted conduct and we also conclude that it was related to sex.
49. The Claimant conceded in cross examination that she could not be sure if the allegation at 3(g) occurred as alleged. In the light of her concession that she was unsure as whether this happened, and in the face of Mr Sharplin's denial and the fact that in all other respects he was a consistent and credible witness, we conclude that this claim is not made out on the facts.
50. The Claimant stated that on the 31 January 2017 she was working from home and spoke to Mr Laws on the telephone, during this call she told him that she was not in the office because Mr Sharplin would not leave her alone and she felt harassed by him (paragraph 16 of her statement). It was her evidence that Mr Laws told her to tell Mr Sharplin to "fuck off". Mr Laws denied recollection of this call but accepted that it was "*conceivable that might have been my response*" (paragraph 24 of Mr Laws statement). The Tribunal therefore prefers the evidence of the Claimant as compared to that of Mr Laws who failed to have any recollection of any of his communications with the Claimant.
51. The Claimant also stated that Mr Sharplin became very "frosty" towards her which is issue 3(h) above on her on her return to the Cotton Centre on the 1 February 2017. It was put to the Claimant in cross examination that Mr Sharplin denied this (paragraph 27 of his statement) where he explained that at the time he was talking with Mr Fowler about attending the meetings of the Planning Specialists and denied that he gesticulated towards the Claimant. The Claimant was taken to this evidence in cross examination and she accepted that his explanation was 'possible'. As the Claimant has conceded that an innocent explanation to this incident was possible and in the light of an absence of corroborative evidence to suggest that this was an act of direct sex discrimination or harassment related to sex, we conclude that there were insufficient facts to support this allegation.
52. Allegation 3(j) is that Mr Hayes and Mr Martin were ignoring the Claimant's requests for information. This was denied by Mr Hayes. The Tribunal saw a document at page 111-4 where the Claimant stated that the way Mr Hayes was working was not a standard way of working and she described the procedure he advocated as a 'late change' and she needed to know the details. Having looked at the email chain, the Claimant's request for information was whether the Isolation Planners had been "sent the rack out form" on the 30 January 2017. When she received

the rack out form, she then wrote to Mr Laws on the 30 January 2017 at 10.56 asking if he agreed with the rack out request. Mr Laws did not appear to reply. After this matter was chased by Mr Warren, the Claimant again chased Mr Laws on the 6 February 2017 at 12.29. Then 4 minutes later the Claimant requested the same information from Mr Hayes and Mr Martin and Mr Hayes replied expeditiously asking for further information, which the Claimant provided. Despite providing this information the Claimant received no response and again had to chase Mr Hayes the following day the 7 February 2017 at 10.05. The Tribunal noted that the Claimant made the point at the end of the email chain that she needed to know the details of what was described as the 'rack out' as she needed to update the PPS. Mr Martin told the Tribunal that he did not reply to this email as he had noted that Mr Hayes had responded. The Tribunal noted that although this was a dispute about the standard way of working and there appeared to be a delay in responding to the Claimant's request, there was no evidence to suggest that this was less favourable treatment of the Claimant because of sex and no evidence that this was unwanted conduct of the Claimant related to her sex. As the Tribunal have found as a fact that the discussion with Mr Laws was not a protected act, we do not conclude that this was an act of victimisation.

53. The Tribunal now turn to issue 3(l) in relation to the conduct of Mr Sharplin. We saw an email from the Claimant dated the 9 February 2017 to her husband stating that "*Stuart glaring at me while talking to th (sic) eiso (sic) planners because Kelly [Robinson] and John Fowler have told him to leave me alone*" (page 115 of the bundle). The Claimant dealt with this incident at paragraph 22 of her statement. It was her recollection that she was asked by Mr Sharplin how she thought that the meeting had gone the previous day and she replied that she thought the meeting went well and in reply he said "hmm", which to her suggested that he did not think it went well. The Claimant said she reported this incident to Mr Fowler and asked him to speak to Mr Sharplin. It was Mr Sharplin's evidence that he said the meeting was "OK" (paragraph 32 of his statement). The evidence before the Tribunal was that no positive or supportive feedback was given by Mr Sharplin but at the same time it did not appear to be critical, merely non-committal. The Tribunal conclude on the balance of probabilities that the Claimant has failed to show consistent evidence that Mr Sharplin had stood close to her on this occasion and no evidence that he had been critical of her in this conversation. The issue is not made out of the facts.
54. The next allegation at 3(i) relied on by the Claimant was that on 6 February 2017 Mr Martin wrote an email to the Claimant copied to her manager which was critical of her. The Claimant stated that it criticised her however the Tribunal noted that this appeared to be written in neutral terms stating that the matter 'belongs to Kellie Jackson'. Mr Martin stated that it was a factual statement (paragraph 19-20). There was no evidence to suggest that this email was anything other than a work related communication expressed in neutral in terms. The Tribunal did not find this to be critical, the email expressed a statement of fact we conclude therefore that this allegation is not made out on the facts.

55. Turning to allegation 3(k) which was in relation to Mr Sharplin, Mr. Hayes and Mr. Martin all attending the Claimant's meeting with the contractors on the 8 February 2017 (the planning specialists meeting). It was the Claimant's evidence at paragraph 20 that their attendance at this meeting was unnecessary and was intended to intimidate her. It was the Claimant's evidence that they sat for the entire meeting and looked at her sternly. The Tribunal find as a fact that although they may have appeared to be stern, the Tribunal took into account that this was a meeting attended by a senior line manager and external contractors, there was no evidence that their demeanour was different or more favourable when they attended other meetings. The Claimant stated that after the meeting Mr Fowler the manager (who was also in the meeting) gave her a thumbs up, which she felt inferred was an indication of good performance.
56. Although we have found as a fact and from the evidence given by a number of witnesses that the Isolation Planners had got into the habit of not attending the Planning meetings, this was the Claimant's experience. The Tribunal referred to the evidence of Mr Morris above at paragraph 18 and the evidence of Mr Hayes, who explained that the reason they had been asked to attend these meetings by Mr Fowler was some contractors had been unhappy with the meetings (paragraph 42 of his statement). The Claimant accepted this explanation when taken to it in cross examination. It was also noted that they all attended the meeting of Ms Burgess and Ms Bourke as well as the Claimant's meeting. Mr Hayes stated that they fed back their comments on the conduct of the meetings to Ms Burgess and Ms Bourke because they asked for feedback but as the Claimant did not ask for feedback, none had been provided.
57. Mr Hayes stated that the Claimant's meeting was unacceptable (paragraph 44) and afterwards they fed back their comments to Mr Fowler; there was no evidence that any feedback was provided to the Claimant by Mr Fowler.
58. The Claimant said that it was untrue to suggest that her meeting was unacceptable. Mr Martin's evidence about the meetings given in cross examination that he viewed their attendance at these meeting as a "team get together" (paragraph 26); he made no adverse comments about the conduct of any of the meetings. Mr Sharplin's evidence about the meeting was at paragraphs 30-33 of his statement, he denied glaring at the Claimant in this meeting. He shared Mr Hayes' view that the meeting was poor because her approach was difficult to follow. The Tribunal noted that the reason all three attended this meeting was because they had been asked to do so; there was no evidence that it was harassment of the Claimant related to her sex or that it was less favourable treatment of the Claimant because of her sex. Although feedback was given to others and not to the Claimant, we accept Mr Hayes evidence on this occasion that this was because others had asked for feedback, but the Claimant had not. Although the Claimant alleged that their attendance was 'unnecessary' the evidence given by Mr Morris suggested otherwise. There was no credible evidence to suggest that they 'intended to intimidate her', we accepted the Respondent's explanation as to why they attended this meeting.

59. The Claimant alleged that after Mr Fowler spoke to Mr Sharplin he was “glaring at her all morning” (paragraph 23). He denied that this was the case.

The grievance.

60. The Claimant then presented her written grievance to Ms Robinson under cover of an email dated the 9 February 2017 (page 119 and for the grievance see pages 120-123). In the email the Claimant stated, *“Please could you have a word with the iso planners about behaving professionally, I have been subjected to an aggressive and unhelpful barrage of emails from Stewart today with any request for either clarification or assistance with my requests have been ignored”*. The email reflected that the Claimant did not want to go down the grievance route but felt she had no choice as her colleagues were not conducting themselves in what she believed to be a professional manner. She described their behaviour as ‘mindless bullying’. The Tribunal find as a fact that her grievance seen in the bundle at pages 120-3 amounted to a protected act, she referred to allegations of sexual harassment and victimisation and made specific reference to the Harassment Policy.
61. On the morning of the 9 February 2017 the Claimant contacted her line manager Mr Morris and was, in his words, “sounding distraught” when he spoke to her on the phone. He met with her in a meeting room and she complained to him that she had been “subjected to crude comments by Mr. Hayes and she felt that Stuart Sharplin was invading her personal space” (see paragraph 28 of his statement). The Tribunal noted that the evidence the Claimant gave to Mr Morris appeared to be consistent with the complaints she pursued as part of her grievance and in the case she presented in Tribunal (see his written responses to the investigation at pages 182-4).
62. The substance of the Claimant’s grievance raised on the 9 February 2017 (see page 119 for the covering email and the grievance was on pages 120-123) included a complaint against Mr Hayes in relation to what she described as a “a raft of unwanted comments” which he dressed up as ‘jokes’. She referred to the comments (and gesticulations) about her breasts and her periods (see allegation 3(a) and (b)) and stated that she tried to ignore the comments, but things came to head when he made the “finger” comment (see issue 3(c)). The Claimant described in her grievance to being “mortified and deeply embarrassed” and after that incident, she avoided speaking to him. She stated that Mr Hayes then approached her and asked her what was wrong, and she informed him that she did not like what he was saying to her. She stated that after this Mr Hayes, Mr Martin and Mr Laws were not as friendly to her as they were before however she made no mention of being ostracised by them.
63. The Claimant’s grievance letter went on to refer to the conversation that took place with Mr Laws on the 22/23 December 2016 and we have made findings of fact about this above at paragraph 38. She stated that after she discussed her concerns about Mr Hayes behaviour with Mr Laws she felt that the relationship with Mr Laws and Mr Martin got ‘even frostier’. However, the Claimant noticed that after she raised concerns she felt that Mr Hayes *“took notice of the concerns I raised with him and has not*

repeated his behaviour since", the Tribunal compared the Claimant's evidence in her statement to that in her grievance and we conclude that the sexist comments stopped after the conversation she had with Mr Hayes and Mr. Laws.

64. Her second grievance was against Mr Sharplin and she referred to him sitting up close to her and putting his legs around hers. The Claimant said she found this to be unsettling. She went on to make the allegations that are referred to above at paragraphs 45-49 and 51 of our findings of fact. The Claimant referred to speaking to Mr Laws for a second time on the 31 January 2017 and we have made findings of fact about this above at paragraph 50. The Tribunal noted that although the Claimant complained that Mr Laws was one of the colleagues she alleged ostracised her, she still felt comfortable going to him to discuss difficult and challenging behaviour in the workplace. This did not appear to be consistent with a relationship that was frosty. We have found as a fact that Mr Sharplin's conversation with Mr Fowler at paragraph 51 above (issue 3(h)) was an innocent exchange and the Claimant in her grievance made no accusations against Mr Fowler and he had no knowledge of any protected acts or of any conduct that amounted to discrimination.
65. The Tribunal were taken to an email dated the 13 February 2017 from Ms. Robinson to the Claimant's husband (and union rep see page 124 of the bundle); she confirmed that all those mentioned in the grievance had been asked not to have any direct contact with the Claimant and to email if they had any enquiries about work. The Tribunal noted that this instruction appeared to suggest that it would be appropriate to have no contact with the Claimant and we accept that this email was not clear as to what contact was acceptable going forward. The letter that was sent out to all those that were the subject of the grievance was dated the 21 February 2017 (see pages 131-8 sent to Hayes Sharplin and Martin) and only referred to the need to not correspond with each other, they made no reference to making no contact with the Claimant, this reflected that there was some lack of clarity about how communications with the Claimant should be managed.
66. On the 23 February 2017 (page 139) Mr Martin sent an email to all those involved in the Claimant's grievance (including the Claimant herself) describing her complaints as "*spiteful allegations*", this was before any investigation had taken place. There was no evidence that any action was taken against him.
67. Turning to issues 3(m) and (n) which we will deal with together relates to Mr Hayes conduct on the 27 February 2017, where it is alleged that he was critical of the Claimant and ignored her. The Tribunal saw that by this time, Mr Hayes had been moved and was told that he should only have communications with those involved in the grievance by email and he should include his manager, Ms Robinson in the communication (see page 131). The email communications that is the subject of this complaint appears at pages 145-6 where Mr Hayes communicated with Ms. Robinson on a work issue but did not reply to an email sent from the Claimant. Mr Hayes accepted in cross examination that after the Claimant put in her grievance he refused to be in contact with her, he stated that "*as long as she was getting the information I did not need to be in contact*".

We therefore find as a fact that he refused to respond to the Claimant on work issues and he clarified in cross examination that he "*wanted nothing to do with her at all*". The Tribunal noted that Mr Hayes also said this in his grievance interview at page 199 where he stated that he would not correspond with the Claimant by email.

68. After the above incident on the 27 February 2017, the Claimant presented a further grievance (see page 141-154) stating that she felt that Mr Hayes conduct was an act of sex discrimination as the person who was to blame for the error made was a man. She also commented in her grievance that it was obvious that Mr Hayes did not want to have any direct contact with the Claimant.
69. The next issue at 3(n) is described as Mr Hayes 'on going refusal' to communicate with the Claimant directly and excluding her from important emails. This complaint is similar to 3(m) and as Mr Hayes in cross examination accepted that he did not wish to have any contact with the Claimant, we conclude that he was excluding the Claimant from communications which was seen in various emails. We were taken to page 314 when Mr Hayes emailed the Claimant on 8 March 2017, it was put to her in cross examination that this was an example of when he had communicated with her and she replied that this only applied when he had a query. Mr Hayes confirmed in his evidence at paragraph 66 of his statement that all enquiries from the Claimant would be sent through others as intermediaries and therefore this appeared to corroborate issue (n) that he refused to reply to the Claimant directly. As Mr Hayes corroborated that he refused to communicate with the Claimant after she put in a grievance (and this was his evidence to the grievance investigation) we conclude that it was a detriment because she had done a protected act.
70. Moving on to issue 3(o) where Mr Hayes was accused of excluding the Claimant from important emails on the 21 March 2017. In this email Mr Hayes complained to management that the work the Claimant had done was "extremely unsafe"; the Claimant was not copied in to this. Mr Hayes sent this to four managers (Mr. Peters, Ms. Robinson, Mr. Morris and Mr. Fowler). Mr Hayes deals with this matter in his statement at paragraphs 67-70; he was unable to explain why he did not copy this to the Claimant. It was the Claimant's evidence that she should have been sent this email. The Claimant confirmed that she did not object to him identifying a mistake, she only objected to being excluded from an email that was sent to management and her colleagues but had excluded her. In the absence of any explanation of why an email critical of the Claimant's work was sent to all managers but not to the Claimant, we find as a fact that this was a detriment because she had done a protected act. There was insufficient evidence to suggest that this was an act of harassment related to sex or that it was an act of direct discrimination.

The grievance investigation

71. Although the agreed list of issues does not refer to the grievance investigation and outcome, the Tribunal have made findings of fact about

the evidence provided by all parties in the grievance investigation in order to establish the consistency or otherwise of the evidence. Ms Carvey was appointed to investigate the Claimant's grievance. She told the Tribunal that she had investigated a number of grievances but only one that involved discrimination. This was the only witness appearing on behalf of the Respondent who made reference to receiving Equalities Training (and only when put to her in cross examination). She accepted that she had never investigated a sexual harassment claim prior to hearing the Claimant's grievance. She accepted in cross examination that she asked no questions of any of the witnesses about their understanding of the Respondent's Equal Opportunities and Diversity Policies.

72. Ms Carvey was taken in cross examination to the Equality Diversity and Inclusion Policy at pages 61-62 bundle and accepted that she did not investigate whether the policy had been communicated as envisaged. She also accepted that the policy anticipated a zero tolerance of discrimination in the workplace. The Tribunal raise an adverse inference from this. Ms Carvey was taken in cross examination to the harassment policy which defined unacceptable behaviour included "unwanted sexual advances such as touching, standing too close...lewd comments, sexual innuendo" it also included "demeaning comments" about a person's appearance and the use of "obscene gestures". Ms Carvey accepted that if these were found to be proven they would be serious.
73. The Tribunal noted that Ms Carvey described a number of factors about the Claimant's case to be "odd" in her statement. For example, at paragraph 14 she found it odd that the Claimant was looking for different outcomes in relation to the acts of Mr Hayes and Mr. Sharplin. At paragraph 15 she found it odd that the Claimant had asked for disciplinary action to be taken. Ms Carvey found it odd that the Claimant (paragraph 30 her statement) did not want her to interview those who Ms Carvey believed would corroborate her version of the events. It was put to her in cross examination that the Claimant had explained that Mr Hayes and the other witnesses were all friends they may not support her version of the events however despite this explanation she still found the Claimant's conduct to be odd. Ms Carvey also found the Claimant's behaviour in the meeting to be odd (paragraph 31) because she laughed 'numerous times' and although she recorded that the Claimant had said she was nervous, to describe the Claimant's conduct as 'odd' suggested to the Tribunal that she treated this explanation with caution. Ms Carvey also found it to be strange (paragraph 32) that the Claimant "let the behaviour go on for so long if the allegations were true", this appeared to be a negative value judgment strongly suggesting that Ms Carvey questioned the Claimant's motive or veracity. It was also noted by the Tribunal that when she asked about this in cross examination she replied that if this was her, she would not have let it go on for so long. It was noted that she also described Ms Robinson's conduct as being 'odd' that she did not take action when she heard Mr Hayes comment about the finger (despite the candid explanation from Ms Robinson that she accepted that she should have taken action at the time).
74. The Tribunal compared Ms Carvey's description of the Claimant and Ms Robinson with her description of those who were the subject of the grievance, for example she described Mr Hayes as being 'confident and

believable' (paragraph 52). It was noted by the Tribunal that Mr Hayes put forward Ms Bourke and Mr Laws as possible witnesses (paragraph 53). Ms Carvey described Mr Sharplin as being "convincing" and "highly believable and plausible" (paragraphs 61-2). Ms Bourke was described as being "clear and articulate and I found her believable" (paragraph 70). It was noted that the description given to those giving evidence against the Claimant were on the whole favourable and positive whereas the description of the Claimant and Ms Robinson was negative, critical and suspicious. This appeared to suggest a strong preference for the testimony of those giving evidence against the Claimant.

75. The Tribunal were concerned that Ms Carvey's evidence to the Tribunal strongly suggested that she formed a negative view about the Claimant and her evidence that adversely impacted on the way she dealt with the grievance. There was no evidence that Ms Carvey applied the Respondent's policy to the facts before her as she accepted that she failed to follow the grievance policy at paragraph 5.5 (page 54) which gave an individual the right of reply where allegations are made. She accepted that she did not follow this policy because she told the Tribunal that she dismissed the allegation made by Mr Hayes against the Claimant (about the jumper incident) however Ms Carvey did not form a view as to whether this accusation was true. It was noted by the Tribunal that the grievance procedure was linked to the disciplinary procedure where it stated at paragraph 6.1-2 (at page 54 of the bundle) that where an investigation found evidence of misconduct, the manager would consider putting the grievance on hold to investigate the matter. Ms Carvey did not explain why, if she dismissed Mr Hayes' allegation about the jumper, it appeared in the notes that were subsequently sent to the Claimant. She also failed to explain to the Tribunal the reason why, if the jumper accusation made by Mr Hayes had been dismissed, whether it made his evidence overall any less believable.
76. As part of her investigation, Ms Carvey interviewed the Claimant on the 9 March 2017 and the minutes were on page 160-166.
77. The Tribunal were taken to the interview conducted with Ms Robinson as part of the grievance investigation (dated the 15 March 2017 at page 170 at 171). In this interview Ms Robinson told the investigator Ms Carvey about a text that she had received from Mr Hayes demanding a meeting. When she attended the meeting called by Ms Hayes, all the Isolation Planners were there (including Mr Laws, Mr Sharplin and Mr Hayes) and they "*demanding I told [them] what was going on with Stuart Sharplin as they had overheard that [the Claimant] was going to put in a grievance against Stuart*".
78. The minutes of the meeting went on to record Ms Robinson saying of the Claimant that "*I think that she is quite sensitive but there are behaviours such as Cameron's comments which are unacceptable and if Stuart has touched her inappropriately then he needs to be more cautious. I can see why she might think that they were bullying her after they had been told to back off as they did change their behaviours*". She went on to inform Ms Carvey that "*I don't think that they are being very cautious since the complaint and it hasn't helped that Stewart Martins email to whole team saying he is stressed as he is almost in sighting (sic) others to have*

a bad feeling against [the Claimant]". The Tribunal have referred to this email above at paragraph 66 (page 139). This document was put to Ms Carvey in cross examination and she confirmed she had not seen this document until these proceedings. The Tribunal noted that she did not investigate this issue when it was raised by Ms Robinson. Ms Robinson informed Ms Carvey that there was evidence of another comment which she described as follows "*the isolation planners were all having a conversation about the number of women joining the team and they made a comment that could we stop having any more women in the team as Sinead (Burgess), Emma (Bourke) and Kellie (the Claimant) were all nuts. I told them that they couldn't say that about people, they were like why not and I said that they can't because it could be taken the wrong way. I mentioned this in passing to John Fowler as part of another conversation and he did say he would mention it to them*".

79. Although it was put to Ms Carvey that Ms Robinson was an independent witness which she conceded but went on to state that she was only one out of 7 witnesses. Ms Carvey gave Ms Robinson's testimony less credibility on the grounds that she had seen the Claimant's grievance allegations and discussed it with her, she concluded therefore that she was not "fully independent" (paragraph 88.4). Ms Carvey was taken in cross examination to page 49 of the bundle which was the Respondent's grievance procedure; we were taken specifically to paragraph 2 where the procedure required an employee to discuss a grievance with their manager to seek to resolve the matter informally first. Ms Carvey's point was that Mr Morris was the Claimant's manager but she conceded that the Claimant had spoken to both and Ms Carvey did not indicate that Mr Morris' evidence to the investigation was less credible as a result of him discussing it with her first.
80. Ms Carvey then interviewed Mr Fowler on the 15 March 2017 (pages 174-5), it was noted that he only witnessed inappropriate comments made about football. Ms Carvey did not ask any questions of what he described as 'man banter like football'.
81. Mr Morris, the Claimant's manager was not interviewed but provided a written statement dated the 17 March 2017 (see pages 182-4).
82. Ms Carvey interviewed Mr Hayes on the 24 March 2017 (see pages 197-201). The interview notes reflected that he made an accusation that the Claimant had lifted up her jumper towards Mr Martin (page 198). Ms Carvey did not challenge this allegation and no further investigation was carried out to see if it was true (and this allegation was not put to the Claimant). Mr Hayes confirmed to Ms Carvey (page 199) that he had refused to have any correspondence with the Claimant because of the accusations she had made; Ms Carvey did not delve into why he said this or challenge his reason for refusing to do so. Mr Hayes was shown to make a number of allegations against the Claimant saying she had "*done this before*" and described her as "*losing the plot*". Mr Hayes described the Claimant as being *aggressive* and said that she was not performing in her role and implied that her work was dangerous. He also said she was volatile. There appeared to be no substance to these allegations and they were not investigated by Ms Carvey.

83. Ms Carvey then interviewed Mr Sharplin on the 24 March 2017 and the interview notes were on pages 202-4. He denied all allegations made against him and denied that his manager spoke to him about any allegations. He suggested that Ms Carvey interview Ms Bourke.
84. Ms Carvey interviewed Mr Martin on the 24 March 2017 and the notes were on pages 205-7. He denied hearing or seeing anything untoward and said that in the office they had 'friendly banter' about football, he denied that there was anything "along the sexual lines".
85. On the 30 March 2017 the Claimant wrote to Ms Robinson (page 208 of the bundle) stating '*I am finding this facilitation of [Mr Hayes] wish to ignore me due to my complaint against him very upsetting*', she complained that this was encouraging him to ostracised her because she had raised a complaint.
86. Ms Carvey interviewed Ms Bourke on the 10 April 2017 and the minutes were on pages 218-220. She said she heard a bit of banter but "*nothing I have heard I have taken offence to*" but went on to comment that "*there is a lot of sensitivity in the team*". She stated that it was the Claimant that made Mr Sharplin feel uncomfortable and described the Claimant as being 'flirty or aggressive'. This was a comment that was not followed up or investigated and appeared to have been taken at face value. Lastly Ms Carvey interviewed Mr Laws on the 12 April, 2017 and the minutes were on pages 222-3, he accepted banter took place but in his view there was nothing inappropriate. Ms Carvey did not interview Ms Burgess even though the Claimant had referred to her in her interview. She was asked by the Tribunal why Ms Burgess was not interviewed but Ms Bourke was and she replied that she was 'named by others'.
87. The Tribunal noted in Ms Carvey's statement that she made a number of disparaging comments about the Claimant including a comment at paragraph 49-50 about her performance (even though this had not been investigated) and she appeared to make a connection (paragraph 50) to the Claimant's performance and the veracity of her grievance. The Tribunal noted that similar opinions had been referred to in Mr Hayes statement. She accepted in cross examination that she was not there to conduct a performance interview, it was to investigate the Claimant's grievance and performance had nothing to do with her grievance. Ms Carvey defended raising issues about the Claimant's performance saying "*she didn't seem to realise that she had to correct her errors it was a performance issue*". Ms Carvey appeared to accept the evidence given by Mr Hayes and others that the Claimant was making mistakes and not performing, even though this was not investigated or put to the Claimant and this was not supported by any corroborative evidence before the Tribunal and Mr Fowler in his evidence given during the grievance investigation confirmed that it was all the Planning Specialists that were 'not doing a good job'.
88. It was put to Ms Carvey that Ms Robinson had provided evidence that the Claimant had been treated differently after she put in her grievance and it was put to her that this was corroborative evidence that supported

the Claimant; Ms Carvey replied that she hadn't got the emails that show this was happening. The Tribunal find as a fact that this comment was further evidence of Ms Carvey's failure to conduct a fair and even hand investigation and a failure to engage with the grievance process. It was put to Ms Carvey that Mr Hayes had stated that he wanted nothing to do with the Claimant and refused to have communications with her (page 199) this went far beyond the instruction given by management. When this was put to Ms Carvey in cross examination she did not agree commenting "I believe he is protecting himself, I don't believe he is victimising, protecting himself". Ms Carvey accepted however that he had gone beyond the management instruction.

89. It was also put to Ms Carvey that Mr Hayes had made a number of allegations against the Claimant of a sexual nature (in relation to her allegedly lifting up her jumper -see page 198 of his meeting notes for the grievance). She accepted that these notes would be sent to the Claimant and it would be scandalous if they were untrue. She accepted that she took no steps to investigate this but merely 'noted it down'. Again it was put to Ms Carvey that it was a further act of harassment by sending her untrue allegations made against her by Mr Hayes (and Ms Bourke); she denied that was the case. The Tribunal find as a fact that Ms Carvey approached the allegations against Mr Hayes and others with mistrust and suspicion but appeared to accept without question allegations made by them against the Claimant.

90. The grievance outcome was delivered in a meeting on the 5 May 2017 (see pages 231-4), the Claimant stated that the notes were inaccurate, it was her recollection that she was told of the outcome at the start of the meeting. The Claimant's representative could not attend this meeting. The grievance meeting notes showed that the Claimant was informed that seven out of eight people did not support the allegations made by her and that all her claims were rejected. Ms Carvey alleged (paragraph 100) that the Claimant became aggressive and offensive towards her in this meeting. The Tribunal were also taken to the grievance report at pages 253-6 which again reflected that the decision not to uphold the grievance was due to 'insufficient evidence'. There was no mention of Ms Carvey's decision to 'dismiss' the allegations made by Mr Hayes in respect of the jumper issue. Ms Carvey did not uphold the grievance and made a number of recommendations (which were seen in the outcome letter dated the 12 May 2017 at pages 257-9). The recommendations suggested mediation and for the Claimant to be provided with a 'professional mentor'. It also recommended an independent review of the planning processes.

91. The next allegations of detriment relied on by the Claimant are at paragraphs 3 (p) and (q) which we will consider together as they both arise out of Mr Hayes' evidence given in the grievance investigation. We found as a fact that Mr Hayes made critical remarks about the Claimant's performance and comments of a sexual nature about her. The Tribunal noted that Mr Hayes made an allegation against the Claimant which the Tribunal subsequently concluded had no merit and was untrue, Mr Hayes would have known this at the time he made the allegation. We conclude that this was a detriment and further conclude that this allegation was made in the grievance interview because Mr Hayes was angered about

being the subject of a grievance. We consider this to be a detriment because the Claimant did a protected act; she was accused of inappropriate conduct which she had no opportunity to rebut or to answer.

92. The Tribunal has no evidence before it to conclude whether the Respondent had “failed to take any action” against Mr Hayes which was described as a detriment because of a protected act. There was no evidence before the Tribunal to suggest that the Respondent failed to take any action because the Claimant had done a protected act and no evidence that it was an act of harassment related to sex. No action was taken against Mr Hayes because Ms Carvey had concluded that the grievance was not well founded, this is the reason no action was taken. The Tribunal note that there was no agreed issue in relation to the conduct of the grievance by Ms Carvey or in respect of the conclusion reached by her; this not being an issue before the Tribunal we conclude that this head of claim is not supported on the facts.

93. The Claimant makes a further allegation which is 3(r) which is that on the 8 May 2017 Mr Hayes further ignored her request for information. The Tribunal saw this on pages 237 where the Claimant wrote to him asking for a possession number and he failed to respond. The Tribunal looked at the chain of emails on page 237 and 240 and it was noted that the Claimant had sent a request to Ms Robinson to be provided with a possession number, this was not sent to Mr Hayes directly. We accept Mr Hayes evidence on this point and we conclude that on this matter he did not fail to respond to the Claimant’s request. This is not made out on the facts

94. The last allegation at 3(s) is that the Respondent ‘commenced performance management’ of the Claimant. We heard evidence from Mr Morris who explained in his statement at paragraphs 20-25 his reasoning for attending the Claimant’s meetings. He described this as being part of an ongoing review of the Planning Improvement Processes. The Claimant emailed him on the 9 May 2017 to object to him overseeing her meeting and he acceded to her concerns and agreed not to attend and she thanked him. There was no evidence to suggest that on the 9 May the had Respondent had commenced performance management. This head of claim is not supported on the facts.

Closing Submissions

95. The Tribunal had written submissions from both parties are they were supplemented by oral submissions.

Cases referred to

96. The Claimant referred to *Richmond Pharmacology v Dhaliwal* [2009] IRLR 336 EAT, *Shamoon v Chief Constable of the RUC* (2003) ICR 337, *Igen v Wong* (2005) IRLR 258; *Armitage, Marsden and H M Prison Service v Johnson* [1997] IRLR 162; *Commissions of the Police of the Metropolis v Shaw* [2012] IRLR 291 EAT; *H M Land registry v McGlue* UKEAT/0435/11 [2013] EqLR 701 EAT; *Broome v Cassell* [1972] 1 All ER 801; *H M Prison Service v Salmon* [2001] IRLR 425; *British Telecommunications v Reid* [2003] EWCA 1675, [2004] IRLR 327.

97. The Respondent referred to the following (additional) cases: Robertson v Bexley Community Centre [2003] IRLR 434; Caston v Chief Constable of Lincolnshire [2009] EWCA Civ 1298; Rathakrishnan v Puizza Express (Restuarants) Ltd [2016] IRLR 278; Abertawe Bro Morgannwg University v Morgan [2018] EWCA Civ 640; Hendricks v Metropolitan Police Commissioner [2003] ICR CA; Aziz v FDA [2010] EWCA Civ 304; Laing v Manchester City Council [2006] ICR 1519; Madarassy v Nomura international PLC [2007] ICR 867; Ayodele v Citylink Limited [2017 EWCA Civ 1913; O'Donoghue v Redcar and Cleveland Borough Council [2001] IRLR 615 CA; St Helens Metropolitan Borough Council v Derbyshire [2007] IRLR 540 HL.

The Law

13 Direct discrimination

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

26 Harassment

(1) A person (A) harasses another (B) if--

- (a) A engages in unwanted conduct related to a relevant protected characteristic, and
- (b) the conduct has the purpose or effect of--
 - (i) violating B's dignity, or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) A also harasses B if--

- (a) A engages in unwanted conduct of a sexual nature, and
- (b) the conduct has the purpose or effect referred to in subsection (1)(b).

(3) A also harasses B if--

- (a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,
- (b) the conduct has the purpose or effect referred to in subsection (1)(b), and
- (c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account--

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

- (5) The relevant protected characteristics are--
- age;
 - disability;
 - gender reassignment;
 - race;
 - religion or belief;
 - sex;
 - sexual orientation.

27 Victimization

- (1) A person (A) victimises another person (B) if A subjects B to a detriment because--

- (a) B does a protected act, or
- (b) A believes that B has done, or may do, a protected act.

- (2) Each of the following is a protected act--

- (a) bringing proceedings under this Act;
- (b) giving evidence or information in connection with proceedings under this Act;
- (c) doing any other thing for the purposes of or in connection with this Act;
- (d) making an allegation (whether or not express) that A or another person has contravened this Act.

- (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

- (4) This section applies only where the person subjected to a detriment is an individual.

- (5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

109 Liability of employers and principals

- (1) Anything done by a person (A) in the course of A's employment must be treated as also done by the employer.

- (2) Anything done by an agent for a principal, with the authority of the principal, must be treated as also done by the principal.

- (3) It does not matter whether that thing is done with the employer's or principal's knowledge or approval.
- (4) In proceedings against A's employer (B) in respect of anything alleged to have been done by A in the course of A's employment it is a defence for B to show that B took all reasonable steps to prevent A--
- (a) from doing that thing, or
 - (b) from doing anything of that description.

(5) This section does not apply to offences under this Act (other than offences under Part 12 (disabled persons: transport)).

39 Employees and applicants

- (1) An employer (A) must not discriminate against a person (B)--
- (a) in the arrangements A makes for deciding to whom to offer employment;
 - (b) as to the terms on which A offers B employment;
 - (c) by not offering B employment.
- (2) An employer (A) must not discriminate against an employee of A's (B)--
- (a) as to B's terms of employment;
 - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
 - (c) by dismissing B;
 - (d) by subjecting B to any other detriment.
- (3) An employer (A) must not victimise a person (B)--
- (a) in the arrangements A makes for deciding to whom to offer employment;
 - (b) as to the terms on which A offers B employment;
 - (c) by not offering B employment.
- (4) An employer (A) must not victimise an employee of A's (B)--
- (a) as to B's terms of employment;
 - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for any other benefit, facility or service;
 - (c) by dismissing B;
 - (d) by subjecting B to any other detriment.
- (5) A duty to make reasonable adjustments applies to an employer.
- (6) Subsection (1)(b), so far as relating to sex or pregnancy and maternity, does not apply to a term that relates to pay--

- (a) unless, were B to accept the offer, an equality clause or rule would have effect in relation to the term, or
- (b) if paragraph (a) does not apply, except in so far as making an offer on terms including that term amounts to a contravention of subsection (1)(b) by virtue of section 13, 14 or 18.

(7) In subsections (2)(c) and (4)(c), the reference to dismissing B includes a reference to the termination of B's employment--

- (a) by the expiry of a period (including a period expiring by reference to an event or circumstance);
- (b) by an act of B's (including giving notice) in circumstances such that B is entitled, because of A's conduct, to terminate the employment without notice.

(8) Subsection (7)(a) does not apply if, immediately after the termination, the employment is renewed on the same terms.

40 Employees and applicants: harassment

(1) An employer (A) must not, in relation to employment by A, harass a person (B)--

- (a) who is an employee of A's;
- (b) who has applied to A for employment.

123 Time limits

(1) [Subject to [sections 140A and 140B],] Proceedings on a complaint within section 120 may not be brought after the end of--

- (a) the period of 3 months starting with the date of the act to which the complaint relates, or
- (b) such other period as the employment Tribunal thinks just and equitable.

(2) Proceedings may not be brought in reliance on section 121(1) after the end of--

- (a) the period of 6 months starting with the date of the act to which the proceedings relate, or
- (b) such other period as the employment Tribunal thinks just and equitable.

(3) For the purposes of this section--

- (a) conduct extending over a period is to be treated as done at the end of the period;
- (b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something--

- (a) when P does an act inconsistent with doing it, or
- (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

Decision

The unanimous decision of the Tribunal is as follows:

98. We first need to deal with the issue of whether the claim is in time. It was noted that the claim was presented on the 1 June 2017 and the Claimant entered into ACAS conciliation on the 18 March 2017, therefore any act or omission carried out before the 19 December 2016 is potentially out of time. We have made detailed findings of fact above and we noted that the acts of harassment all relate to a small number of individuals acting individually and at times collectively. Mr Hayes was involved in most of the allegations, the first of which took place in September 2016 and the last act was on the 8 May 2017. The evidence before us reflected that these were continuous acts and not acts that could or should be taken in isolation. As we have concluded that they were all interrelated we conclude that they were continuing acts and therefore are all in time.

99. It was noted that the Respondent relied on the statutory defence in their ET3 and this was an agreed issue before the Tribunal (see above at paragraph 13). It was confirmed by the Respondent at the end of closing submissions that they no longer relied on the defence. We have made detailed findings on the Respondent's witnesses evidence in relation to their knowledge of the Equality and Diversity Policies. Ms Carvey who dealt with the Claimant's grievance made no mention of the policies in her evidence, in the interviews conducted or in the grievance outcome letter. The Tribunal noted that policies were in place covering equalities issues and harassment however none of the Respondent's witnesses accused of discrimination had, at the relevant time, received any training nor did they appear to have any understanding of equal opportunities issues in the workplace. We refer specifically to the evidence that the Isolation Planners had asked for no further females to be recruited into to the team because they (women) were all 'nuts' (see above at paragraph 78). This was a derogatory term used to describe the female staff which strongly suggested that they viewed women as less emotionally equipped to carry out the role than their male colleagues. We raise an adverse inference from this. It was surprising that the statutory defence remained an issue for the Tribunal until closing submissions.

100. We now deal with the credibility of the witnesses. We found the Claimant overall to be a reliable and consistent witness, she made

concessions when an alternative or innocent explanation for the conduct was put to her. We contrast this with the evidence of the two of the Respondent's witnesses. We have found as a fact above at paragraphs 34-5 that the evidence given by Mr Hayes and Mr Martin lacked credibility and we go as far to say that Mr Martin changed his evidence. Mr Hayes also changed his evidence before the Tribunal distancing himself from the minutes of the grievance meeting. The Tribunal concluded that the evidence they gave to the Tribunal about the incident where the Claimant was alleged to have lifted up her jumper, was untrue. We considered this to be a significant aggravating factor in this case, this was an untrue accusation that was damaging to the Claimant; these allegations were repeated in Tribunal. We therefore have concluded that where there was a conflict in evidence between Mr Hayes Mr Martin and the Claimant, we will where appropriate to do so, prefer the evidence of the Claimant.

101. We also wish to comment on the witnesses and the Claimant's criticism of the Respondent's decision not to call Ms Robinson or Ms Bourke; we refer to the Claimant's oral submissions on this point. We noted that Ms Robinson could have provided relevant evidence to the Tribunal as she was a witness to the acts of sexual harassment above at 3(c) and (d) and (f). She also line managed the three-people accused of discrimination; she was not called, and no reason was given as to why this was. Although it is very much up to the parties as to who they called to give evidence, it was noted that Ms Robinson had corroborated much of the Claimant's evidence in relation to the early acts of discrimination. It was also of concern that Ms Carvey provided a negative view of the Claimant and Ms Robinson's evidence as compared to the positive manner in the way she represented the evidence of Mr Hayes and others. Ms Carvey did not appear to approach the evidence in a balanced manner and she failed to question the motives or credibility of those giving evidence against the Claimant but viewed the Claimant's evidence with suspicion. It was of concern that Ms Carvey accepted without question Mr Hayes view of the Claimant's performance, without investigating the matter and without seeing any corroborative evidence. Ms Carvey did not ask the Claimant's line manager Mr Morris if there were problems with the Claimant's performance.
102. We refer above to our findings on all of the above matters, we did not find for the Claimant in respect of issue number 3(e), (g), (h), (i), (j), (k), (l), (m) partially, (q), (r) and (s). We found these not to be well founded on the facts.
103. We first wish to deal with the allegations above at 3(a), (b), (c), (d) together as they all refer to the conduct of Mr Hayes from September to 16 December 2016.
104. The Tribunal conclude on the balance of probabilities that the allegation at 3(a) is made out and the conduct was unwanted and related to sex. The Tribunal also conclude that the conduct either violated the Claimant's dignity or it created a degrading environment for the Claimant. The Tribunal also noted that this was the type of conduct that was identified in the Respondent's harassment policy.

105. We also conclude that a comment related to menstruation at 3(b) was unwanted conduct related to sex that was inherently unwanted. This comment was highly personal and embarrassing, and it either violated the Claimant's dignity or created an offensive humiliating demeaning environment for the Claimant in front of her peers, many of whom were men.
106. We conclude that the comments at 3(c) and (d) were inherently unwanted conduct related to sex and either violated her dignity or created an offensive or humiliating environment for the Claimant; we noted that they were witnessed by Ms Robinson and we have made findings of fact about this above at paragraph 28.
107. We concluded in respect of the allegations 3 (a) to (d) against Mr Hayes that it was his purpose to subject the Claimant to unwanted conduct. We concluded on the balance of probabilities that the Claimant's evidence is to be preferred to that of Mr Hayes, as corroborated by Ms Robinson. We do so on the basis of evidence of similar offensive emails sent by Mr Hayes to the Claimant when they both worked at Colas and due to our findings above at paragraphs 34-35 when it was concluded that Mr Hayes and Mr Martin had changed their evidence before the Tribunal. We also concluded that the words spoken were related to the Claimant's sex and in the case of 3(c) was a deeply offensive sexual reference. We also conclude that it was his purpose to create such an environment taking into account his previous conduct and the quality and consistency of his evidence to the Tribunal. It was also of concern to the Tribunal that Mr Hayes showed no insight into his actions even though he and Mr Martin had received Equal Opportunities Training prior to the Tribunal Hearing.
108. The Claimant's evidence was that these comments were distressing and upsetting and, in her grievance,, she stated that the comments left her feeling mortified and deeply embarrassed (page 120 of the bundle) the Tribunal conclude that this was a reaction that was objectively reasonable on the facts. The Tribunal conclude that in the absence of an explanation to show that the treatment of the Claimant was in no sense whatsoever on the grounds of sex we conclude that allegations 3(a) to (d) are well founded.
109. Turning to allegation 3(f) which is the complaint against Mr Sharplin, we do not find that it was his purpose to subject the Claimant to sexual harassment, however we concluded that it was the effect. We made detailed findings of fact about this above at paragraph 45-8. We accepted the evidence of the Claimant that this conduct made her feel uncomfortable and we noted that invading personal space was referred to in the Respondent's harassment policy as conduct that could amount to an act of harassment which we refer to above in our findings of fact at paragraph 72. We found this to be unwanted conduct related to her sex. We conclude that it was reasonable for the Claimant to conclude that this was an act of harassment related to her sex and this behaviour had been witnessed by others. This claim is therefore well founded.

110. The other complaints that are found to be well founded are the acts of victimisation at paragraphs 3(m), (n) and (o). We concluded that the protected act was the Claimant's grievance. We found as a fact that the discussion with Mr Laws on the 23 December 2016 (see our findings of fact above at paragraph 38) was no more than a conversation with a colleague, there was no evidence to suggest that she referred to an allegation of discrimination or a contravention Equality Act. We have found as a fact above that Mr Hayes had decided not to communicate with the Claimant directly because she had lodged a grievance against him. We conclude that this was a detriment to the Claimant because it made it more difficult for the Claimant to perform her role.
111. We conclude that 3(m) amounted to victimisation because the Claimant had raised a grievance alleging discrimination. Although we had a concern that the instruction given to staff appeared to be open to misinterpretation, the clear reason given by Mr Hayes for not communicating with the Claimant directly was because she had raised a complaint against him. We do not find however that the comment Mr Hayes made in the email was critical of her (see page 145) as Ms Robinson commented when she forwarded the response to the Claimant that his comments were "meant to be helpful". This part of the allegation was not supported on the evidence.
112. The Tribunal also conclude that 3(n) was an act of victimisation. Although Mr Hayes told the Tribunal that this approach had been agreed by management and the Tribunal accepted that there was some confusion on the instruction given, the Tribunal took into account Mr Hayes' clear evidence as to why he refused to communicate with the Claimant. The Tribunal found as a fact that Mr Hayes excluded the Claimant from this email because she had raised a complaint of discrimination against him. This was a detriment to the Claimant because it was critical of her performance and his views had been escalated to people in management without the Claimant having an opportunity to respond.
113. The last allegation is 3(p) where Mr Hayes was alleged to have made comments of a sexual nature and critical remarks about the Claimant was during the course of the grievance investigation. We have found as a fact that these were untrue and a significant aggravating factor in this case; Mr Hayes also made critical comments about the Claimant's performance which were not supported by any evidence and were not investigated by Ms Carvey. The Tribunal were concerned that these allegations were not investigated, and the Claimant was given no opportunity to challenge the evidence against her. The Claimant saw this evidence for the first time when the minutes were sent to her. Ms Carvey appeared to accept Mr Hayes' evidence as it was her view that he was 'confident and believable' but the Claimant was not. Ms Carvey did not approach the counter allegations made against the Claimant with any scepticism and did not ask why Mr Hayes had not complained about this at any time before the grievance interview. Although she told the Tribunal that she 'dismissed' the jumper comment made by Mr Hayes, there was no evidence to corroborate this. The Tribunal conclude that he made these allegations against the Claimant and they amounted to a detriment because she had done a protected act.

Remedy

114. We now consider the issue of remedy. We noted that the Claimant described being mortified and deeply embarrassed by the comments made by Mr Hayes. In her statement at paragraph 67 she referred to her time at the Respondent as being “an awful period in my life that has caused me both physical and emotional pain”. She described suffering eczema and being prescribed strong steroid cream. The Tribunal have found as a fact that the acts of sexual harassment were serious and showed a pattern of offensive conduct, the acts of victimisation were then carried out by the harasser. We accept that the acts of harassment related to sex were particularly offensive and demeaning. We conclude that the effects of the harassment were serious and adversely impacted on the Claimant’s health and wellbeing.
115. We consider this is a middle band Vento case and as the ET 1 was presented on the 1 June 2017, the D’Bell band applies with the Castle and Simmons uplift of 10%. We conclude that the Claimant will be awarded the sum of £17,500 for injury to feelings.
116. We now turn to whether it is appropriate on the facts to award a sum for aggravated damages. We conclude from our findings and in our decision above that it is appropriate to make an award for aggravated damages in respect of the conduct of the Respondent’s witnesses in relation to the allegation made by Mr Hayes and Mr Martin that the Claimant had lifted up her jumper. This evidence had no credibility and we were concerned that Mr Martin changed his evidence to support Mr Hayes’ unreliable testimony. We concluded that was untrue and the witnesses evidence lacked any credibility. We also conclude that this evidence was given out of spite or vindictiveness by Mr Hayes and his colleague to cause the Claimant distress. The Tribunal will award the further sum of £2,500 for aggravated damages.
117. We also conclude that we shall add interest at the rate of 8% per annum, the first act of discrimination took place in September 2016 and the Tribunal are making the award in the chambers hearing on the 17 October 2018, we shall therefore apply 8% interest for a period of 2 years and 1 month to the award for injury to feelings. The total interest is £3048.08 therefore the total award for injury to feelings is £20548.08.

Employment Judge **Sage**

Date: 22 November 2018

