EMPLOYMENT TRIBUNALS

Claimant: **Miss. Kim Beaney**

Respondents: **Highways England (R1)**
Mr. Grant Bosence (R2)
Mr. Steven Curtis (R3)

Heard at: **Nottingham**

On: **25th, 26th, 27th, 28th and 29th June 2018**

Before: **Employment Judge Heap**

Members: **Mr. A Beveridge**
Mr. A Kabal

Representatives

Claimant: **Ms. Rachel Barrett - Counsel**
Respondent: **Mr. Richard Adkinson - Counsel**

RESERVED JUDGMENT

1. The complaints of harassment prior to 3rd April 2017 are dismissed on withdrawal by the Claimant.

2. The complaint of harassment relating to a comment made by the Third Respondent on 18th April 2017 that he was "surprised to see her at work" is dismissed on withdrawal of that complaint by the Claimant.

3. The Claimant's complaints of harassment contrary to Section 26(3) Equality Act 2010 succeed in part to the extent set out below. The remainder of the complaints are dismissed.

4. The Claimant's complaint of direct discrimination relating to constructive unfair dismissal contrary to Section 39(2)(c) Equality Act 2010 is well founded and succeeds.

5. The complaints of direct sex discrimination and victimisation fail and are dismissed.

6. There will be a Preliminary hearing to be conducted by telephone listed in due course in order to list the claim for a Remedy hearing and to make Orders for the preparation for the same.

REASONS

BACKGROUND AND THE ISSUES

1. This is a claim brought by Ms. Kim Beaney (hereinafter "The Claimant") against her now former employer, Highways England (hereinafter "The First Respondent") and against two individual Respondents. They are namely Grant Bosence (hereinafter "The Second Respondent" or Mr. Bosence) and Steven Curtis (hereinafter "The Third Respondent" or Mr. Curtis) who were respectively the Claimant's direct Line Manager and Supervisor during the course of her employment with the First Respondent at the material times with which we are concerned.

2. The claim was presented by way of a Claim Form received by the Tribunal on 8th August 2017. The claim is one of harassment contrary to Section 26 Equality Act 2010 related to the protected characteristic of sex or, in the alternative, the Claimant advances complaints of direct discrimination and victimisation contrary to Sections 13 and 27 Equality Act 2010.

3. All three Respondents deny the claims in their entirety, either on the basis that the facts as set out were said not to have occurred and/or not to have occurred in the way that the Claimant contends that they did or, otherwise, that the Claimant was not harassed, discriminated against or victimised in respect of any of the matters of which she complains.

4. Prior to the commencement of the hearing before us, the Claimant's solicitors withdrew, by way of a letter of 8th June 2018, certain elements of the claim in respect of all complaints of harassment pre-dating the commencement of her employment on 3rd April 2017. That was for reasons that were entirely understandable given a consideration of whether those acts could be said to have occurred "in the course of employment". Ms. Barrett who appeared for the Claimant before us confirmed that there was no objection to those claims being dismissed in the usual way under Rule 52 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. The Judgment above therefore reflects that.

5. Both the Claimant and all Respondents were represented by experienced and well prepared Counsel who, before the commencement of the hearing before us, had helpfully agreed a list of issues which the Tribunal would be required to determine. We do not rehearse those issues here as a copy of the agreed list of issues is appended to this Reserved Judgment. There were some refinements to that list of issues, however, upon discussion with the parties. The first of those matters is that it was agreed by both parties - and the Tribunal took no contrary view - that given that the Claimant's complaints of harassment pre-dating the commencement of her employment on 3rd April 2017 had been withdrawn, there now remained no live issue as to jurisdiction in that it is accepted that the Claimant had presented the claim (given the extension of time for mandatory early conciliation) within the time provided for by Section 123 Equality Act 2010. Therefore, the Tribunal was not required to determine that particular issue.

6. It was also agreed between the parties and the Tribunal that we would not hear any evidence in relation to the matter of remedy until such time as we had determined liability on the basis that remedy would invariably turn upon which complaints, if any, succeeded at this hearing.

THE HEARING

7. The hearing of this matter took place over a period of five days over 25th to 29th June 2018 inclusive. The Tribunal spent until 3 o'clock on the afternoon of the first day reading into the witness statements and the considerable volume of documents (the bundles running to in excess of 800 pages). During the course of our reading in, it became apparent that one of the Respondent's witnesses, Mrs Diane Naylor, was known to one of the Tribunal members, Mr. Beveridge.

8. In short terms, Mr. Beveridge had in his previous employment, albeit not for the First Respondent with whom he had no connection, attended two or three meetings at which he was aware that Mrs. Naylor had been present in her own professional capacity. There had been no specific interaction and the meetings had taken place some years previously. However, the Tribunal were concerned that this was a matter which should be raised with the parties for transparency at the outset. An adjournment was provided for instructions to be taken from the Claimant and the Respondents in relation to any recusal application or any concerns which may be raised or further information required. Both parties subsequently confirmed after that adjournment that they had no reservations as to Mr. Beveridge continuing to sit on the Tribunal panel and we as a Tribunal were equally satisfied that Mr. Beveridge was not in any way conflicted by his previous very passing association to Mrs. Naylor.

9. After dealing with a number of preliminary matters and the discussions referred to above, we did not proceed to hear evidence on the first day as it was also necessary for Ms. Barrett to take some further instructions from the Claimant before she commenced her evidence.

10. Upon commencement of the evidence we heard from the Claimant in person and on her own behalf and on behalf of the Respondent we heard from the following:-

    (i) Grant Bosence - the Second Respondent to these proceedings. Mr. Bosence was the Claimant's former Line Manager during the course of her employment with the First Respondent;

    (ii) Steven Curtis – the Third Respondent to these proceedings. Mr. Curtis was, during the early stages of the Claimant's employment, her Supervisor in that he was a Highways Inspector to whom the Claimant was allocated as a driver/trainee inspector.

    (iii) Malcom Dangerfield – the First Respondent's Develop Needs Specialist Manager. Mr Dangerfield was the Claimant's second tier Line Manager and he dealt with a grievance which she raised concerning the Second and Third Respondent.

    (iv) Diane Naylor – Head of Business Improvement at the First Respondent. Mrs. Naylor dealt with the Claimant's appeal against the outcome of Mr. Dangerfield's grievance decision.

11. We say a word about our assessment of the credibility of each of those witnesses below.

12. We concluded the evidence and submissions of both parties late in the afternoon of the fourth day of the hearing. In her closing submissions, Ms.

Barrett withdrew the complaint of harassment relating to a comment made by the Third Respondent on 18th April 2017 that he was "surprised to see her at work" on the basis of the Claimant's evidence about that particular incident. We dismissed that complaint on withdrawal.

13. This left the following complaints for determination by us:

	Allegation	**Date**	**Discrimination alleged**
1.	Assignment of the Claimant to the Sandiacre site	3rd April 2017	Harassment – Section 26
2.	Assignment of the Claimant to work alongside the Third Respondent	3rd April 2017	Harassment – Section 26
3.	Comments from the Third Respondent to the Claimant regarding the Second Respondent	3rd April 2017 to 17th April 2017	Harassment – Section 26
4.	The Third Respondent telling the Claimant that he and the Second Respondent were friends outside work and that she needed to remember that she was on a three month probation.	April 2017	Harassment – Section 26
5.	The Third Respondent telling the Claimant on 13th April 2017 that he had had a lengthy telephone call with the Second Respondent and "knew everything".	13th April 2017	Harassment – Section 26
6.	The Third Respondent saying to the Claimant in respect of her denial of a relationship with the Second Respondent words to the effect of "as long as you keep	13th April 2017	Harassment – Section 26

	your mouth shut and it doesn't affect my work" and "I don't care what goes on between you two".		
7.	The Second Respondent informing the Claimant on 12th April 2017 that she was becoming "troublesome".	12th April 2017	Harassment – Section 26
8.	The Third Respondent shouting at the Claimant on 13th April 2017 and bring aggressive towards her.	13th April 2017	Harassment – Section 26
9.	On 13th April 2017 the Second Respondent telling the Claimant that she was "troublesome", as a new starter and needed to remember that she was in her three-month probationary period.	13th April 2017	Harassment – Section 26
10.	The Second Respondent informing the Claimant on 13th April 2017 that he was coming over to the depot to "have it out" with her.	13th April 2017	Harassment – Section 26
11.	The Third Respondent telling the Claimant that he had not made statements about her.	25th April 2017	Harassment – Section 26

12.	The enquiries by Mr. Dangerfield of members of staff at the depot as to whether the atmosphere had changed since the Claimant had begun to work there.	April 2017	Harassment – Section 26
13.	The grievance outcome	7th June 2017	Direct discrimination – Section 13 Harassment – Section 26 Victimisation – Section 27
14.	The failure to relocate the Claimant or the Second or Third Respondent	April to August 2017	Direct discrimination – Section 13 Harassment – Section 26 Victimisation – Section 27
15.	The First Respondent's approach and the procedure used when investigating and determining the Claimant's grievance and grievance appeal including the manner in which the First Respondent conducted the grievance appeal hearing on 4th August 2018.	April to August 2017	Direct discrimination – Section 13 Harassment – Section 26 Victimisation – Section 27
16.	The notes of the grievance appeal hearing	10th August 2017	Direct discrimination – Section 13 Harassment – Section 26 Victimisation – Section 27
17.	The grievance appeal outcome	27th August 2017	Direct discrimination – Section 13 Harassment – Section 26 Victimisation – Section 27
18.	Placing the Claimant in a position whereby she had no	30th August 2017	Direct discrimination – Section 13 Victimisation – Section 27

	alternative but to resign her position, this resignation being contended to be a discriminatory constructive dismissal in accordance with Section 39(2) Equality Act 2010.		

14. Given the number of facts which we have had to find in relation to the remaining complaints before us, we determined that we would reserve our decision and we spent the final day of the hearing, namely 29th June 2018, in deliberations and reaching our decision. Our decision in relation to the facts and our conclusions was a unanimous one.

15. It should be noted that there was a regrettable delay in this Reserved Judgment being promulgated following the hearing. The parties will be aware from correspondence sent after the hearing so as to keep them informed, that whilst the Judgment was dictated within a short time after we concluded our deliberations, there was a delay in the typing of the same with the result that this Judgment was not returned to be considered by the Judge until 5th September 2018. Thereafter, there was a delay in fairing up the Judgment as a result of judicial and other commitments and periods of leave and downtime (the Judge having a fractional appointment) taken. The patience of the parties in respect of the delay has been much appreciated and they can be assured that the Judge has paid careful regard when fairing up the Judgment to her notes of evidence, notes of deliberations on 29th June 2018; the witness statements and the documents adduced by the parties. Whilst the delay is both unfortunate and regrettable, that has not affected the findings or conclusions reached within this Reserved Judgment.

16. We should finally say a word about the assistance that Ms. Barrett and Mr. Adkinson have provided to us during the course of the hearing. Both have represented their respective clients diligently and helpfully. They have taken sensible and pragmatic approaches to the hearing and matters arising during the course of it and, particularly, both have dealt with sensitivity and care in what is clearly a difficult case for all concerned. By way of example, Mr. Adkinson dealt with cross examination of the Claimant in appropriately sensitive terms given the circumstances of this matter and complaints being advanced. We are grateful to both Counsel for their considerable assistance during the course of these proceedings.

CREDIBILITY

17. We turn now to our assessment of the credibility of the witnesses from whom we have heard, given that this has invariably informed our findings of fact in a case where there are a number of disputes as to events and, in some instances, where we are not assisted by way of the existence of any documentary evidence to support one side or the other.

18. We begin with our assessment of the Claimant. We considered her to be a credible witness and one whose account was rooted in truth. The Claimant has throughout been entirely consistent in the account that she has given in respect of the issues of which she complains. That has been the case throughout the

grievance process, appeal process, in her witness statement and in her account before us. Many of the matters of which she complains were also the subject of a complaint to the police as we deal with further below.

19. In this regard, whilst Mr. Adkinson draws to our attention that there were inconsistencies in the account which the Claimant gave to the Police, as opposed to that which is advanced before us, we are satisfied that those inconsistencies came only from the fact that the Claimant had been told to simply provide her version of events without worrying about references to dates, places etc. That had led to a rather jumbled account and we make further reference to it in our findings of fact below.

20. Whilst Mr. Adkinson quite rightly points to the fact that it would be unusual to say the least for a Police report to contain inaccuracies about what an individual has reported to them, we take into account the aforementioned explanation, the fact that the Claimant was at the time of making that Police report clearly under a great deal of stress and also the fact that that report is not a formal statement which would have come at a later stage of the process had the Claimant's complaint been taken forward for consideration of prosecution. Comments by the Officer himself make reference to the account given by the Claimant being a confusing one and one that no doubt was accordingly difficult to process in a set of relatively brief notes.

21. We also draw no negative inferences from the fact that the matters of which the Claimant complained to the Police were not taken forward for further investigation and prosecution. Given that they appear to have been viewed as matters as between an employer and employee, the decision is perhaps not surprising. It is of note, however, that the Claimant was prepared to take the serious step of reporting matters to the Police and although a lesser consideration in the overall assessment of her credibility, it does give some credence to her account as we do not consider that she would have taken such a step if, as the Respondents suggest, she was making matters up. Indeed, that could have had repercussions for her in respect of wasting Police time.

22. We also take into account in consideration of the Claimant's credibility the fact that she was clearly prepared to make sensible concessions during the course of cross examination. That included the fact that she had made serious errors of judgment in relation to messages that had been sent between herself and the Second Respondent and that she should have handled matters differently in retrospect and that, particularly, the influence of alcohol in relation to some of those messages had been an unfortunate contributing factor. She was candid in her evidence and prepared to accept the folly of some of her own actions.

23. We would also add that in relation to some of the allegations made by the Claimant in the course of these proceedings, if they were not rooted in truth then we would have had to conclude that the Claimant was either a liar or a complete fantasist. We do not get that impression from having observed the Claimant during the course of these proceedings and, particularly, during the course of her cross examination by Mr. Adkinson. We were satisfied therefore that the account that the Claimant gave to us, which is largely consistent with the documentation before us, was credible and truthful and we did not hold concerns accepting the account that she gave during the hearing.

24. We turn then to the Second Respondent. We did not find his evidence to be credible and we were far from satisfied that he gave a truthful account to the Tribunal during the course of his evidence.

25. Particularly, in sharp contrast to the Claimant the Second Respondent was unwilling to make any concessions whatsoever, including ones which should sensibly have been made. Prime examples included the fact that the Second Respondent contended that there was still nothing inappropriate in relation to his actions towards the Claimant in messages that he had sent and, in particular, a photograph that he had sent to her shortly after he had interviewed her for a position with the First Respondent which showed him lying in bed in a state of at least partial undress (see page 756 of the hearing bundle).

26. Given the circumstances, it is difficult to see how such conduct could be anything other than inappropriate in the context that it was sent – namely to someone that the Second Respondent had recently interviewed for a job working as his subordinate. Rather than making a sensible admission as to the inappropriate nature of his actions, the Second Respondent however sought to suggest that there was nothing wrong in his behaviour and, akin to his attempts during the later grievance process initiated by the Claimant, sought to shift blame onto her.

27. Also of concern to us in relation to the Second Respondent's credibility was his failure to provide any reasonable explanation for why his evidence before us - and also as we shall come to before the grievance investigation conducted by Mr. Dangerfield - was at best misleading. He had, for example, sought to suggest that it had been a mutual decision for he and the Claimant to meet shortly after she was offered employment by the First Respondent for lunch at Foxton Locks. When looking at the text message exchange on that subject it is in fact abundantly clear that it was the Second Respondent who had initiated that invitation for a meal. Despite that being put by Ms. Barrett in the face of the clear email evidence, the Second Respondent would not accept that he had instigated that contact but maintained that it was a mutual decision.

28. Similarly, when put to him by Ms. Barrett that he had initiated contact with the Claimant because he was attracted to her, the Second Respondent was at pains to deny that. That was despite the fact that he had made no such prompt text message contact with any other of the candidates who he had interviewed for a position, nor was the content when he did text them after offers had been made of the type that he had sent to the Claimant, It was abundantly clear from the text messages which had flowed between them, and to which we shall come in due course, that the Second Respondent was attracted to the Claimant from the get go.

29. Particularly, we were taken to messages from him remarking upon how attracted to her he had been at her interview (see for example his reference to the fact that the Claimant looked "hot" at her interview at page 548 of the hearing bundle and his reference at page 608 to how he had looked at her at interview). His denials before us of being attracted to the Claimant simply did not ring true given the content of his text and Facebook messages. It was abundantly clear to us from those messages – such as that at page 379 of the hearing bundle – that the Second Respondent wanted much more than friendship from the Claimant. The Second Respondent's witness evidence flew in the face of the documentary evidence.

30. As we have already touched upon above, the Second Respondent was clearly also prepared to provide what at best was deliberately misleading information during the course of the grievance investigation conducted by Mr. Dangerfield. Indeed, Mr. Dangerfield accepted in cross examination that the Second

Respondent had not been truthful with him in a number of areas during the course of his investigations and, particularly, during a meeting of 3rd May 2017 to discuss the Claimant's grievance.

31. In this regard, the Second Respondent had told Mr. Dangerfield that it had been the Claimant who had been pursuing him; that it was the Claimant who put kisses on text messages but that he did not do so; that it had been the Claimant who had proposed a meeting for coffee at the Dakota Hotel; that he had made an excuse not to attend lunch with the Claimant after she returned a piece of garden equipment to him and that he had not kissed the Claimant. None of those matters, as the text message chains between the Claimant and the Second Respondent demonstrate, were true. Particularly, in respect of the latter issue regarding kissing the Claimant, the Second Respondent sent her a message which asked her whether his kiss (the word was replaced with a mouth emoji but it was plain to see what was referred to in that regard) was ok (see page 492 of the hearing bundle). That did not accord with what he told Mr. Dangerfield where he denied kissing the Claimant (see page 261 of the hearing bundle). Furthermore, despite his denials to Mr. Dangerfield, a multitude of messages sent to the Claimant by him had a kiss or kisses on them.

32. The Second Respondent was therefore clearly prepared therefore to provide what might at best be described in generous terms as a misleading account to Mr. Dangerfield during the course of the grievance investigation and the fact that he was prepared to do so gives us little confidence in the truthfulness and accuracy of his account now. He was not able to provide any reasonable explanation for the fact that what he had told Mr. Dangerfield was clearly and plainly untrue when he was asked about that matter by Ms. Barrett in cross examination. In fact, he had also sought to go one step further in his evidence before us. In relation to an issue regarding the return of the garden equipment and his suggestion to Mr. Dangerfield during the grievance process that he had made up an excuse to avoid lunch with the Claimant, he gave an account before the Tribunal that he had told the Claimant that he had missed the junction where he said that she had been waiting for him. That was clearly not true either as the text message exchanges plainly demonstrated. Those messages show that the Second Respondent had met the Claimant at his home where she returned a lawn scarifier to him. He had not travelled to meet her, whether on a motorway or otherwise, and his evidence about him having invented an excuse about missing the turning on the motorway to avoid lunch with her was not a matter that was either mentioned at all in the Second Respondent's witness statement nor was it supported by the text message exchanges about that meeting. It was a matter which was patently untrue.

33. Again, the fact that the Second Respondent was prepared to compound the untruths that he had told Mr. Dangerfield in his evidence before this Tribunal gave us little confidence as to the accuracy of his account in other areas.

34. The Second Respondent also maintained in his evidence before us – as indeed he had before Mr. Dangerfield which we have already remarked upon above - that he had not kissed the Claimant. That denial also flew in the face of text messages that he himself had sent including the one to which we have referred above and another that said that he *"so wanted to kiss [her]* ***<u>again</u>****"* (our emphasis). It must logically be the case that he had kissed her once if he was referring to wanting to do so on a further occasion, but again the Second Respondent refused to accept that position even in the face of clear evidence in the form of his own messages.

35. Similarly, the Second Respondent denied ever having made a comment as alleged by the Claimant to the effect that he could have her "killed and buried for four grand". That was despite the fact that there was a reference made to that exchange by the Claimant in a later text message conversation (see page 694 of the hearing bundle) and at no point did the Second Respondent correct what she had said in that regard nor ask her what she was talking. Clearly, he would have done so if it was true that he had never said it. The Second Respondent could not provide any reasonable explanation for that apparent omission.

36. Given the fact that there are some 2,500 text and Facebook messages passing between the Claimant and Second Respondent, we find it inconceivable that had the Claimant made such a comment and the Second Respondent be completely unaware of what she was talking about that he would not have raised in one of his multitude of messages to her.

37. The Second Respondent has also sought to divert attention away from his own actions by seeking to apportion blame upon the Claimant and in doing so has been, to say the least, conservative with the truth. Of particular note in this regard during the course of the proceedings before us was the fact that the Second Respondent suggested that it had in fact been the Claimant who had sought to kiss him rather than the other way around during an evening where she had stayed the night at his home. The Second Respondent suggested in his evidence before us that he had rejected the Claimant's advances in that regard.

38. Firstly, this evidence as to a rebuffing of the Claimant's alleged advances flew entirely in the face of an earlier part of the Second Respondent's witness statement where he had contended that if the Claimant had tried to kiss him then he would have been flattered. It also flew in the face of a number of text messages which he had sent, and to which we shall come in due course, indicating how attracted he was to her and how he wanted to kiss her. It is clear to us that had the Claimant tried to kiss the Second Respondent as he contends then there would have been no question that he would have reciprocated. We are satisfied that the suggestion otherwise in the Second Respondent's witness statement and in his witness evidence before this Tribunal was both completely untrue and also an attempt to discredit the Claimant by suggesting that it was her who had done the running in relation to pursuit of him.

39. The suggestion made by the Second Respondent that nothing untoward had occurred during the evening at his home also flew in the face of a later text message exchange where the Second Respondent, on at least four occasions, had referred to himself as having been "pushy" or having "pushed things" during the course of that evening and/or the following morning. We say more about those messages below. That is entirely consistent with the account which the Claimant gives to us and which we have accepted as we shall come to further below. The Second Respondent was not able to come up with any rational explanation during the course of his evidence as to why he would have sent such messages if, as he would have this Tribunal believe, it was the Claimant who had made an advance towards him and he had brushed her off. That was a glaring and unexplained inconsistency.

40. A further issue of concern in relation to the Second Respondent's evidence, and indeed that of the Third Respondent which supported that particular account, was that another supervisor, Geoff Currie, to whom the Claimant had later been allocated had said that he would not work with her and that she had made inappropriate comments to him about male genitalia. That was also not true.

41. It was said by the Second Respondent that Mr. Currie had given a statement to that effect. When asked by the Tribunal as to who had told him that such a statement had been given, he contended that it was Mr. Dangerfield. When the Tribunal asked Mr. Dangerfield about that matter he could not recall having made such a comment to the Second Respondent. Despite Mr. Dangerfield's somewhat careful wording in regard to that question, it would also appear to us to be extremely unusual that he would have made such a representation to the Second Respondent on the basis that it is clear that no statement was ever given by Mr. Currie to Mr. Dangerfield, let alone one in which he complained about the Claimant discussing male genitalia. They had had only a brief telephone conversation whilst Mr. Dangerfield was driving in his car and Mr. Dangerfield confirmed in cross examination that Mr Currie had raised no issues in relation to the Claimant and that he was quite happy working with her.

42. It should be noted that following cross examination and during questions at a later stage from the Tribunal, Mr. Dangerfield changed his evidence slightly to say that there had been some concerns raised by Mr. Currie about the Claimant. He was not, however, able to provide us with any detail at all about what those concerns apparently were nor does the suggestion particularly accord with his comments about the Claimant and Mr. Currie in his grievance outcome letter. We would also observe that if they were the sort of concerns which are set out at paragraph 38 of the Second Respondent's witness statement in relation to inappropriate comments of a sexual nature which it was alleged that the Claimant had made, we have no doubt whatsoever, particularly in the context of these proceedings, that Mr. Dangerfield would have recalled those matters with crystal clarity. That is particularly in view of the allegations made by the Claimant in her grievance with which he was tasked with dealing and during the course of these proceedings.

43. The assertion that Mr. Currie did not want to work with the Claimant and that she made inappropriate comments of a sexual nature flew entirely in the face of the evidence before us. We are satisfied that the evidence of both the Second and Third Respondents in that regard was simply designed to paint the Claimant in a negative light and to suggest that she had a propensity toward inappropriate conduct relating to sexual comments or suggestions.

44. As a result of those matters, we treated the account given to us in these proceedings by the Second Respondent with a considerable degree of caution. We did not consider him to be a witness of truth and we considered many areas of his evidence to lack credibility. Therefore, where there is a conflict between the evidence of the Second Respondent and that of the Claimant we have invariably preferred that of the Claimant unless we have expressly said otherwise.

45. We turn then to the evidence of the Third Respondent. We also considered him to be an unsatisfactory witness and we were far from convinced as to the truthfulness of the account which he gave to us. That was most notably in respect of his failure to properly answer questions put to him and to tend towards the evasive. Moreover, in response to a number of questions asked of him he sought to answer the question with a blanket denial before the question had even been posed by Ms. Barrett in full. That tendency, along with his somewhat defensive stance as to questions asked of him, gave us little confidence that he was seeking to provide an open and honest account and to genuinely deal properly with the questions which were being put to him.

46. As touched upon above, we also considered the evidence of the Third Respondent to be somewhat evasive on occasions. In this regard, for example, the Third Respondent had been asked at least three times by Ms. Barrett during the course

of cross examination if the Claimant had told him on 13th April 2017 that she would be going to Stirling House to make a complaint. The Third Respondent singularly failed to answer that question repeating instead a mantra that at an earlier point in time the Claimant had said that she was going to see her son. Ms. Barratt's questions had been quite clear but it appeared to us that the Third Respondent was simply not prepared to give a straight answer.

47. The Third Respondent was also not assisted by his support of the Second Respondent in respect of the Mr. Currie comments when we are satisfied that that account was untrue. Moreover, his credibility was also not assisted by the fact that he too had given to Mr. Dangerfield during the course of the grievance investigation what was at best a misleading account of some events and at worst he had simply lied to him.

48. In this regard, for example the Third Respondent had maintained to Mr. Dangerfield that prior to the Claimant commencing employment on 3rd April 2017 he had not even known her name. That was patently untrue given that we have in the bundle before us text messages sent to the Claimant by the Third Respondent prior to the commencement of her employment and he also accepted that he had telephoned her prior to her start date. To suggest therefore that he had had no interaction with her and did not even know her name was clearly untrue. The Third Respondent was not able to provide us with any reasonable explanation as to that apparent inconsistency and as we have already observed in respect of the Second Respondent, it is troubling that he had clearly sought to mislead Mr. Dangerfield during the grievance investigation.

49. Again, for those reasons where there is a dispute between the Claimant and the Third Respondent which cannot be resolved by way of documentary evidence we have preferred the evidence of the Claimant on those point unless we have expressly said otherwise.

50. We turn then to the evidence of Mr Dangerfield. We considered him to be a largely credible witness and one who was providing us with an accurate account as far as he recalled it. He made sensible concessions in a number of areas, although as we shall come to we still ultimately considered his evidence to have been tainted and blindsided by his rather cursory grievance investigation and his ultimate belief that the Claimant had reciprocated and invited contact with the Second Respondent. We deal with that further in our findings of fact below but clearly Mr. Dangerfield continues to view matter through that prism.

51. Lastly, we then turn to deal with the evidence of Diane Naylor. Ultimately, we did not consider her evidence to be at all satisfactory. It is abundantly clear that she was not prepared to countenance any other view point other than her own from the appeal outcome and she was not willing to make concessions even where it was sensible to do so. Particularly she was not willing to make any concessions or even observe an alternative point of view in relation to what was clearly a paucity of investigation on her part. Again, she simply viewed matters through the prism of her staunch belief that the Claimant had welcomed, and even encouraged, the attentions of the Second Respondent.

52. Similarly, Mrs. Naylor was not prepared to make any concessions that comments that had been added to her grievance appeal minutes by the Claimant might be an accurate version of what had occurred thereat. That was despite the fact that where she and the note taker had disagreed with annotations that the Claimant had made they had made their own comments in reply. Mrs. Naylor could not accept that where there had been no such response it would tend to suggest that

Claimant's amendments had been agreed at that time as being accurate and, thus, it was more than likely not that her unchallenged amendments were reflective of what was said that the meeting. That was despite the fact that any challenges to the amendments were made at a time proximate to the grievance appeal meeting, whereas now she was seeking to recall the events almost a year on.

53. We were therefore far from convinced for all of those reasons as to the credibility and accuracy of the account which she gave to us.

THE LAW

54. Before turning to our findings of fact, we remind ourselves of the law which we are required to apply to those facts as we have found them to be below.

55. The Claimant's discrimination complaints all fall to be determined under the Equality Act 2010 ("EqA 2010) and, particularly, with reference to Sections 13, 26, 27 and 39.

56. Section 39 EqA 2010 provides for protection from discrimination in the work arena and provides as follows:

> *(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.

Direct Discrimination

57. Section 13 EqA 2010 provides that:

"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".

58. It is for a Claimant in a complaint of direct discrimination to prove the facts from which the Employment Tribunal could conclude, in the absence of an adequate non-discriminatory explanation from the employer, that the employer committed an unlawful act of discrimination (**Wong v Igen Ltd [2005] ICR 931**).

59. If the Claimant proves such facts, the burden of proof will shift to the employer to show that there is a non-discriminatory explanation for the treatment complained of. If such facts are not proven, the burden of proof will not shift.

60. In deciding whether an employer has treated a person less favourably, a comparison will in the vast majority of cases be made with how they have treated or would treat other persons without the same protected characteristic in the same or similar circumstances. Such a comparator may be an actual comparator whose circumstances must not be materially different from that of the Claimant (with the exception of the protected characteristic relied upon) or a hypothetical comparator.

61. Guidance as to the shifting burden of proof can be taken from that provided by Mummery LJ in **Madarassy v Nomuna International Plc [2007] IRLR 246:**

"'Could conclude' ….. must mean that 'a reasonable tribunal could properly conclude' from all the evidence before it. This would include evidence adduced by the complainant in support of the allegations of …… discrimination, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. It would also include evidence adduced by the respondent contesting the complaint. Subject only to the statutory 'absence of an adequate explanation' at this stage …. the tribunal would need to consider all the evidence relevant to the discrimination complaint; for example evidence as to whether the act complained of occurred at all; evidence as to the actual comparators relied on by the complainant to prove less favourable treatment; evidence as to whether the comparisons being made by the complainant were of like with like….. and available evidence of the reasons for the differential treatment.

The absence of an adequate explanation for differential treatment of the complainant is not, however, relevant to whether there is a prima facie case of discrimination by the respondent. The absence of an adequate explanation only becomes relevant if a prima facie case is proved by the complainant. The consideration of the tribunal then moves to the second stage. The burden is on the respondent to prove that he has not committed an act of unlawful discrimination. He may prove this by an adequate non-discriminatory explanation of the treatment of the complainant. If he does not, the tribunal must uphold the discrimination claim."

62. The protected characteristic need only be a cause of the less favourable treatment but need not be the only or even the main cause. A Tribunal when considering the cause of any less favourable treatment will be required to consider that question having regard not only to cases where the grounds of the treatment are inherently obvious, but also those where there is a discriminatory motivation (whether conscious or unconscious) at play (see **Amnesty International v Ahmed [2009] ICR 1450**).

Harassment

63. Harassment is dealt with by way of the provisions of Section 26 EqA 2010, which provide as follows:

(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.

64. The conduct complained of, in order to constitute harassment under Section 26, must relate to the protected characteristic relied upon by the complainant. However, in respect of a complaint of harassment, the word "relate" has a broad meaning (see for example paragraph 7.10 of the EHRC Code).

65. As restated by the Employment Appeal Tribunal in **Nazir & Anor v Aslam [2010] UK EAT/0332/09** the questions for a Tribunal dealing with a claim of this nature are therefore the following:

a) What was the conduct in question?

b) Was it unwanted?

c) Did it have the purpose of violating dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the complainant?

d) Did it have the effect of doing so having regard to an objective, reasonable standard and the perception of the complainant?

e) Was the conduct related to the protected characteristic relied upon?

Victimisation

66. Section 27 EqA 2010 provides that:

(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.

67. In dealing with a complaint of victimisation under Section 27 EqA 2010, Tribunal will need to consider whether:

(i) The alleged victimisation arose in any of the prohibited circumstances covered by Section 39(3) and/or Section 39(4) EqA 2010 (which are set out above);
(ii) If so, was the Claimant subjected to a detriment;
(iii) If so, was the Claimant subjected to that detriment because he or she had done a protected act.

68. In respect of the question of whether an individual has been subjected to a detriment, the Tribunal will need to consider the guidance provided by the EHRC Code (as referred to further below) and the question of whether the treatment complained of might be reasonably considered by the Claimant concerned to have changed their position for the worse or have put them at a disadvantage. An unjustified sense of grievance alone would not be sufficient to establish that an individual has been subjected to detriment (paragraphs 9.8 and 9.9 of the EHRC Code).

69. If detriment is established, then in order for a complaint to succeed, that detriment must also have been "because of" the protected act relied upon. The question for the Tribunal will be what motivated the employer to subject the employee to any detriment found. That motivation need not be explicit, nor even conscious, and subconscious motivation will be sufficient to satisfy the "because of" test.

70. A complainant need not show that any detriment established was meted out solely by reason of the protected act relied upon. It will be sufficient if the protected act has a "significant influence" on the employer's decision making (**Nagarajan v London Regional Transport 1999 ICR 877**). If in relation to any particular decision, the protected act is not a material influence of factor – and thus is only a trivial influence - it will not satisfy the "significant influence" test (**Villalba v Merrill Lynch & Co Inc & Ors 2007 ICR 469**).

71. In any claim of victimisation, the Tribunal must be satisfied that the persons whom the complainant contends discriminated against him or her contrary to Section 27 EqA 2010 knew that he or she had performed a protected act (**Nagarajan v London Regional Transport [1999] ICR 877**). As per **South London Healthcare NHS Trust v Al-Rubeyi (2010) UKEAT/0269/09** and **Deer v Walford & Anor EAT 0283/10**, there will be no victimisation made out where there was no knowledge by the alleged discriminators that the complaint relied upon as a protected act was a complaint of discrimination.

The EHRC Code

72. When considering complaints of discrimination, a Tribunal is required to pay reference to the Equality & Human Rights Commission Code of Practice on Employment (2011) ("The Code") to the extent that any part of it appears relevant to the questions arising in the proceedings before them.

Constructive Unfair Dismissal

73. A dismissal for the purposes of Section 39(7)(b) EqA 2010 (as set out above) includes a situation where an employee terminates the employment contract in circumstances where they are entitled to do so on account of the employer's conduct – namely a constructive dismissal situation.

74. Tribunals take guidance in relation to issues of constructive dismissal from the leading case of **Western Excavating – v – Sharp [1978] IRLR 27 CA**:-

"If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract; then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains; or, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract."

75. Implied into every contract is a term that an employer will not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and the employee. Breach of that implied term, if established, will inevitably be repudiatory by its very nature.

76. Where an employer discriminates against or harasses an employee, then those acts of discrimination may represent a breach of the implied term of mutual trust and confidence (see for example **Reed v Stedman [1999] IRLR 299, EAT**).

77. However, not all incidents of discrimination will be repudiatory breaches of contract entitling the employee to terminate the contract and treat themselves as dismissed. A finding of unlawful discrimination will not inevitably of itself mean that the employer has breached the implied term of mutual trust and confidence (**Amnesty International v Ahmed 2009 ICR 1450**).

78. The question of whether or not there has been a repudiatory breach of the duty of trust and confidence is to be judged by an objective assessment of the employer's conduct. The employer's subjective intentions or motives are irrelevant. The actual effect of the employer's conduct on an employee are only relevant in so far as it may assist the Employment Tribunal to decide whether it was conduct likely to produce the relevant effect.

79. If there is a fundamental breach of contract, an employee must, however, resign in response to it. That requirement includes there being no extraneous reasons for the resignation, such as them having left to take up another position elsewhere or any other such reason if that is unrelated to the breach relied upon. However, if the repudiatory breach was part of the cause of the resignation, then that suffices. There is no requirement of sole causation or predominant effect; **Nottinghamshire County Council v Meikle [2004] IRLR 703**.

80. It is possible for an employee to waive (or acquiesce to) an employer's breach of contract by their actions. In those circumstances, an employee will affirm the contract and will be unable to rely upon any breach which may have been perpetrated by the employer in seeking to argue that they have been constructively dismissed

FINDINGS OF FACT

81. We should note to the parties that we have limited our findings of fact to those which are strictly necessary for the determination of the remaining complaints before us. We have not therefore made a finding of fact in relation to each and every event where there is dispute between the parties where that is neither necessary nor relevant to the matters which we are tasked with determining.

82. The parties should be assured, however, that we have considered all of the documentation and witness evidence before us; all that each of the witnesses have had to say and all that both Counsel have represented to us during the course of the hearing and by way of their oral, and in the case of Ms. Barrett oral and written, submissions.

The Claimant

83. The Claimant is a single mother of two children, one of whom was at the material time with which we are concerned aged 18 years and the other who was aged 10 years. She has had some degree of difficulty in her personal life. It is not necessary for us to set out those difficulties here but suffice it to say, as we shall come to, whilst the Claimant can in communications display some degree of bravado in text messages, she is nevertheless a relatively vulnerable individual.

84. The Claimant's employment immediately preceding her engagement with the First Respondent ended in acrimony. We do not deal with the details of that here but we understand the matter to have also ended in the commencement of separate and earlier Employment Tribunal proceedings. We accept that her personal circumstances and the acrimonious ending of her previous employment rendered the Claimant somewhat anxious about obtaining a secure position with another employer. In short, she was desperate to settle in a secure role and develop her career for the benefit of herself and her family. That gave her a particular vulnerability, as we shall come to further below and as we have touched upon already above.

The position with the Respondent

85. After her previous employment came to an end in the manner referred to above, the Claimant applied for a position with the First Respondent. That position was for a Highways Inspection Driver, a role which would involve the successful candidate driving a qualified Highways Inspector around their various regions or network inspecting the roads and carriageways. It was possible that a Highways Inspection Driver might then themselves in due course progress to become a Highways Inspector.

86. The Claimant applied for the Driver position on 3rd January 2017. Applications were sifted by the Second Respondent; Malcom Dangerfield, who was the Second Respondent's Line Manager, and by a member of Human Resources ("HR") team. The Claimant was successful in the sift stage and was offered an interview by the First Respondent.

87. The interviews for the roles were either carried out by a two person combination of the Second Respondent and Mr. Dangerfield; Mr Dangerfield and a member of HR or the Second Respondent and a member of HR. It fell that the Claimant was interviewed by the Second Respondent and a member of the HR team. The interview took place on 16th February 2017. During the course of the interview it became clear that the role had expanded slightly in that in addition to the opportunity of being a driver, the role would also encompass being a trainee Highways Inspector with an opportunity therefore to progress. We accept the Claimant's evidence, which is supported in text messages sent in the aftermath of the interview, that she was extremely excited about that particular role and she was very anxious to get the job. We have no doubt, in part at least, that that was as a result of wanting to build stability for her family and the opportunity to progress in a career with a large and well known employer. Doubtless it was fuelled also by whatever problems had caused her last employment to end in a state of acrimony and to therefore get herself back on track in a settled position.

88. The evidence of the Respondents is to the effect that the position for which the Claimant applied was only to be on a fixed term until April 2018. It is common ground, however, that those were not the terms later offered to the Claimant nor indeed it would appear other successful candidates who started at the same time. We do not make any specific findings in relation to those matters at this stage and for the purpose of dealing with the question of liability, although we would observe that the Claimant certainly had no idea at the time that there was any temporary nature to the position for which she had applied. She saw the role as a career and not just as a job.

89. Early in the evening of 16th February, that is the day of the Claimant's interview, she received a text message from the Second Respondent. That was sent from the second Respondent's personal mobile telephone rather than his work handset. He sent the text to the Claimant's personal mobile telephone number and that number had clearly been taken from her application for employment.

90. We are satisfied that the Second Respondent took the number from the application to as to enable him to make contact with the Claimant. We do not accept that HR sanctioned the Second Respondent contacting the Claimant in this way about the interview earlier that day and it is noteworthy that he did not contact any of the other candidates that he had interviewed by way of text message in the immediate aftermath of their interviews. Any such telephone contact came much later after the point of offers of employment having been made (see page 419H of the hearing bundle) and certainly did not run to the volume of messages – some 2,500 – that later passed between the Claimant and Second Respondent.

91. The Second Respondent's message said this:

"Hi Kim, it's Grant from Highways England. Just to say we were impressed with you today. Hope the interview went ok for you. I'm sure we will be in contact soon. Regards Grant."

92. The Claimant replied:

"Thanks for the message. Much appreciated. Sincerely hope so! Regards Kim."

93. The Second Respondent replied:

"You will be fine."

94. There was no further interaction on that day.

95. Whilst relatively innocuous on the face of it we have no doubt whatsoever that the Second Respondent initiated that contact with the Claimant on her personal mobile phone because he was attracted to her. Whilst the Second Respondent denied that position, there is no other rational explanation for his conduct in that regard. He did not contact any other of the candidates that he had interviewed until such time as they had in fact been offered employment (see again page 419H of the hearing bundle). He also chose to contact the Claimant outside of what might be regarded as normal working hours and using his personal mobile phone rather than his work mobile. It was clear that he had taken her telephone number from her application for employment for that purpose. There equally appears to be no rational explanation for why such a message would have been sent in the evening after an interview. The next logical step in such a process is either the offer of or rejection for employment.

96. It is clear to us that the Second Respondent was attempting to strike up a text message exchange with the Claimant and we are satisfied that the reason for that, given the content of messages to which we shall come in due course, was that he was attracted to her from the outset. Given his position in having interviewed the Claimant for a position within his team, his actions in that regard were inappropriate to say the least.

97. The next contact that the Claimant had with the Second Respondent was on 20th February 2017 when he telephoned her, notably on this occasion from his work mobile telephone handset, to offer her the position for which she had applied. Unlike the text messages, that telephone contact was consistent with calls to other successful candidates (see again page 419H of the hearing bundle where the first recorded entry to other candidates is on the same date at the point that job offers were made).

98. The Claimant, we accept, was elated to receive that offer given the background that we have described above. Whilst the offer was subject to references and other appropriate checks by HR, we accept that the impression that the Second Respondent gave to the Claimant was that the decision about the role was his. We equally accept that that was the impression that the Second Respondent wanted the Claimant to have and that he wanted her to feel grateful for the offer and impressed as to his authority and status. We say more about the reasons for our findings in that regard later.

99. Later that day, the Second Respondent again initiated text conversation with the Claimant. Again, we accept that it was not usual for him to make such contact with prospective employees and that he again did so on this occasion because he was attracted to the Claimant and was seeking to strike up a conversation with her. It is notable he did not text any other successful candidates on that date as page 419H again demonstrates.

100. Although the initial messages, which were this time sent from the Second Respondent's work mobile, began as ones which on the face of it could appear to be work related, he later introduced a personal tone to the messages with regard to a reference to his connection with Essex. Both he and the Claimant originally came from that area.

101. We accept the Claimant's evidence that the Second Respondent had in fact mentioned his connections to Essex and the fact that the Claimant also came from that area as early on as the date of her interview for the driver position. He had also mentioned that he used to work as a doorman and, in view of what was to come, we are satisfied that that was to in part try to impress the Claimant and in part to set a tone for authority over her.

102. The Claimant replied to the messages from the Second Respondent and over twenty messages passed between them into the late evening. In one of those messages the Claimant expressed a concern that she had in respect of references from her former employer (given the circumstances of her leaving to which we have referred above). The Second Respondent told the Claimant not to worry and again gave the distinct impression that the decision about the appointment was his alone. He again also made reference to having worked "on the doors" and again we are satisfied that that was made to seek to impress the Claimant.

103. The Second Respondent ended the conversation by telling the Claimant that it had been nice chatting and that she should keep in touch (see page 722 of the hearing bundle). Again, it is clear that that was the Second Respondent seeking to continue with a personal discussion with the Claimant and again we are satisfied that he did so because he was attracted to her.

104. Early the following day, the Second Respondent again sent the Claimant a text message with a view to initiating a further conversation. We accept the Claimant's evidence that she felt awkward and uneasy regarding the contact from the Second Respondent but ultimately did not feel able to do anything but continue the conversation because she was concerned about the job offer and references and the Second Respondent continued to impress upon her that the decision in relation to appointment was his (see for example page 723).

105. The Claimant and the Second Respondent also spoke on the telephone. We prefer the Claimant's evidence as to the content of that telephone conversation and, in particular, we accept that he made reference to him being a "great boss" (that was mentioned in a number of the messages that we have seen) but that people knew not to cross him and that he also mentioned the Rettendon murders, the film "The Essex Boys" and that an associate of those killed was his best friend. The Second Respondent denies having made that comment but there is support for it at page 447 and 448 of the hearing bundle which is an extract from Facebook showing that individual as one of the Second Respondent's "Facebook Friends".

106. Again, we find that that was done to try to both impress the Claimant and to reference the fact as to a certain status that the Second Respondent felt that he had as a result of those connections. It was akin to the references to him having worked as a doorman and to later messages that the Second Respondent sent to the Claimant about guns (see pages 744 and 745 of the hearing bundle).

107. We are also satisfied that the Second Respondent asked the Claimant during that telephone conversation whether she was single and that he did so again on the basis that he was attracted to the Claimant. We are satisfied that the

Claimant attempted to end that line of thought by saying that she had applied for a job and not a man.

108. The messages between the Claimant and the Second Respondent thereafter continued but began to take on a slightly flirtatious tone, with the Second Respondent initiating that with regard to a comment about what "would be nice" to see under her fluorescent work clothing. That had come after an innocuous query from the Claimant about what she should wear underneath (see page 724 of the hearing bundle).

109. During that particular conversation, the Second Respondent enquired if the Claimant was on Facebook. The Claimant replied that she was and that the Second Respondent could "add" her as a friend if he wished. Although on the face of it this appeared to be the Claimant inviting the Second Respondent to further contact her via non-work means, we accept that the Claimant did not see Facebook as anything more than a bit of fun and that she thought nothing of suggesting that the Second Respondent become a Facebook friend. The Claimant made that clear in her messages to the Second Respondent (see page 725 of the hearing bundle). Thereafter, the Second Respondent also contacted the Claimant via Facebook messages as well as by texts from his personal and work mobile telephones. Those included messages where he referred to her as "sexy" and ones where he had clearly been looking at the photographs that the Claimant had posted on Facebook, such as a reference to her "squinty eye".

110. The following day the Second Respondent again initiated contact with the Claimant by text message and invited her to have coffee. The Claimant replied to say that she would meet the Second Respondent if he was at a loose end. He replied that he was not at a loose end but just wanted to see the Claimant. This was clearly in a non-work capacity and we are again satisfied that this invitation was because the Second Respondent was attracted to the Claimant.

111. As we have already observed, there are some 2,500 text and Facebook messages passing between the Claimant and the Respondent and we have seen and read all of them as part of the proceedings before us and our determination of the issues. It would be impossible here to set them out in full for fairly obvious reasons.

112. However, it is necessary for us to remark on some of the messages given the Claimant's contention before us that the Respondent's conduct was unwanted.

113. Particularly, there are exchanges at pages 450 to 452 of the hearing bundle which are clearly on the face of it a flirtatious conversation between the Claimant and Second Respondent. The Second Respondent refers to the Claimant as "pretty one"; makes reference to her legs; calls her "beautiful"; says that he "fancies" her and that she should "shush and kiss [him] slow". The Claimant in turn refers to the attraction as being mutual and again repeats that in further messages at page 458 of the hearing bundle. On the bare face of it, those messages suggest a reciprocal interest and not that the conduct of the Second Respondent was unwanted.

114. However, as we shall come to further below, we are satisfied from the evidence before us that the Claimant was concerned from the get go about the tone and nature of the contact from the Second Respondent and also comments that he made about him being in charge of her job and the offer of employment. We are satisfied that the Claimant played along, something which she accepts in hindsight was somewhat foolish, as she felt that she had no alternative but to do so. As we shall come to, we also accept that on more than one occasion the

Claimant sought to restrict any suggestion of a relationship outside of work to a purely platonic one but the Second Respondent continued to press the issue and to take matters back to the suggestion of wanting a physical relationship.

115. The Claimant did, as she now accepts, send what might best be described as a number of ill-advised text messages to the Second Respondent.

116. We are satisfied that there was an element to those messages of stringing the Second Respondent along out of ongoing concern for the job offer being withdrawn and also that a number of the messages were sent at a time when the Claimant had been drinking and was not thinking entirely clearly (see for example pages 449, 510, 523 and 560 of the hearing bundle) or ones sent by a friend for a "joke" (see for example page 465 of the hearing bundle). Whilst some of those messages suggest that the Claimant was attracted to the Second Respondent (again see for example page 449 of the hearing bundle) we accept her explanations for having sent them was that because she was worried about the job offer being rescinded and we further accept that she did not wish to pursue any romantic liaison with the Second Respondent.

117. Indeed, it is clear from exchanges at page 468 to 470 of the hearing bundle that the Claimant attempted to row back from the earlier messages and place things back on a plutonic level. At this stage, the Second Respondent, without any other relevant references, introduced into the conversation reference to the Claimant's job saying *"No matter what happens it's your job and nothing with affect it".* Although on the face of it reassuring, we accept that there was no need to reference the Claimant's job in the context of what might be "happening" in their private lives and that was indicative of the fact that the Second Respondent sought to pressure the Claimant to continue to engage with him by referring to her job with the First Respondent and that he was responsible for it. That pressure was consistent with the impression that the Second Respondent gave to the Claimant during telephone calls.

118. After the Claimant had said that she wanted to bring matters back on track as friends, and the Second Respondent had indicated his apparent acceptance of that point, he reverted almost immediately to comments about wanting to kiss her neck and asking her what *"a dinner was worth in sexual favours"* (see pages 472 and 474 of the hearing bundle). That was a theme that continued whenever the Claimant sought to extricate herself from the situation. Prime examples are at pages 530 and 531 and 534 to 539 of the hearing bundle. There are similarly further examples at pages 567, 569, 571, 575, 588, 589 and 590 with the Claimant thereafter reminding the Second Respondent that they had agreed to just be "mates". Undeterred, the Second Respondent continued with messages that he "fancied" the Claimant and suggesting clearly being more than friends (see for example pages 597, 609, 620 and 625 of the hearing bundle)

119. The Claimant further reiterated the same position in messages at page 670 of the hearing bundle, which the Second Respondent singularly failed to heed as by a few short messages later he was commenting *"shush and kiss me"* (see page 671 of the hearing bundle).

120. The Second Respondent also suggested to the Claimant within the messages sent to her that he may be able to secure her a position as a Highways Inspector (see page 543 of the hearing bundle) which was of course an extraordinary suggestion given that at that stage the Claimant had not even commenced employment as a driver/trainee. We find that the Second Respondent did so to seek to impress the Claimant and also to reinforce his importance and authority

as her "boss" and that he was ultimately in charge of her employment prospects with the First Respondent.

121. We are ultimately satisfied from the Claimant's evidence and the evidence before us generally that the conduct of the Second Respondent was unwanted conduct. The Claimant, we accept, felt compelled for fear of her role or the withdrawal of the job offer to interact with the Second Respondent in the terms that she did and it is clear that a number of her messages were sent, as we have already observed, in circumstances when she was not thinking clearly. We also accept that the Claimant had attempted more than once to extricate herself from the situation but that the Second Respondent persisted with his messages and attempts to take their "relationship" beyond a platonic level.

The Claimant's offer of employment

122. Following the call from the Second Respondent, the Claimant received a formal offer of employment from the First Respondent by way of a letter dated 23rd February 2017 (see pages 99 to 109 of the hearing bundle). The letter referred, as the Second Respondent had, to the offer being subject to pre-employment checks, which we accept included references.

123. The Claimant signed her acceptance of the terms and conditions in the offer of employment on 27th February 2017. That offer of employment set out that the Claimant was to be based at Stirling House, a head office in the Midlands region for the First Respondent. In fact, as a Highways Inspection Driver the Claimant would be based at one of the depots located on or within easy reach of the motorways within the Midlands regions. We say more about the depot to which the Claimant was allocated in due course.

The meeting at the Dakota Hotel

124. On 24th February 2017 the Claimant met the Second Respondent for coffee at the Dakota Hotel, a location opposite Stirling House which, as we have observed, is one of the First Respondent's head offices. The hotel was a venue proposed by the Second Respondent.

125. The Second Respondent had not suggested the meeting for work related purposes but, as his earlier text message to the Claimant set out, because he had simply wanted to see her.

126. During the meeting, we accept that the Claimant felt uncomfortable and that the Second Respondent again sought to impress her by talking about his hobby of bodybuilding and that he also made reference to the job offer, her references (which he was well aware that she was anxious about from their earlier text exchange) and the fact that she should not worry because he was "in charge". We have little doubt that this was not an attempt to reassure the Claimant but rather the Second Respondent impressing upon her that the decision as to whether she secured her coveted job – which at that stage as we have observed was conditional - was entirely in his hands.

127. The Second Respondent also at that meeting made a further reference to the Claimant being single and the suggestion that her life may benefit from having a man in it. The only reason for such references was the fact that the Second Respondent found the Claimant attractive and was interested in seeking a relationship with her. Nothing that the Claimant said or did at that meeting encouraged him in that end.

128. Following the coffee, we accept that the Second Respondent was insistent that the Claimant go for a ride in his new car. We are satisfied that the Second Respondent was proud of his car (something borne out by text messages to the Claimant which we have seen and pictures that he sent her of it) and that he was again seeking to impress her.

129. Whilst the Claimant later sent a message to the Second Respondent to suggest that she had enjoyed the coffee meeting, something which on the face of it flies against the suggestion to the contrary in her witness statement, we are satisfied that the reason for that was the continued impressing upon her by the Second Respondent that the job offer lay in his hands. We accept that the Claimant felt pressured as a result not to upset the Second Respondent, as she was concerned that that might place her job at risk of being withdrawn. That is not least given her continuing concerns about her reference from her former employer.

130. We accept the Claimant's evidence that as she went to leave the Second Respondent's car he attempted to kiss her and that she had not wanted to kiss him so she continued to exit the vehicle.

131. There is a text exchange within the hearing bundle at page 757 which does not necessarily fit with the Claimant's version of events regarding the kiss in the car park and we have considered it carefully. However, again we view that against the backdrop that the Claimant knew that the Second Respondent was attracted to her and that she was worried about the job being taken away from her and so her replies were such as to, in effect, play along with the Second Respondent at that time.

Foxton Locks

132. On the same day as the meeting for coffee at the Dakota Hotel, the Second Respondent sent a later message to the Claimant suggesting dinner. Again, we are satisfied that that was not a work related meeting and the reason for the suggestion was because the Second Respondent was attracted to the Claimant and he wanted to seek to develop a relationship with her outside work.

133. We accept the Claimant's evidence that she did not want to go to dinner with the Second Respondent but felt pressured into a further meeting outside of work given a telephone call that the Second Respondent made to her. Again, we are satisfied that the Claimant was still in fear that her job offer might be taken away from her by the Second Respondent and as such felt compelled to agree to the suggestion of a further meeting. However, the Claimant indicated that she would instead meet the Second Respondent for lunch; believing that to be less of a "date" scenario.

134. However, the Claimant later changed her mind about the lunch meeting and sought to cancel. There was a text message exchange regarding that position in which, on the face of it, the Second Respondent appeared to accept that the Claimant was cancelling lunch and that it was not a problem (see pages 467 to 470 of the hearing bundle). However, we accept her evidence that following those messages the Second Respondent telephoned the Claimant and the purpose of that call was to change her mind about cancelling lunch.

135. Again, we accept that he did so by making reference to the fact that he was the Claimant's "boss"; that she should not upset him and that he did not like being messed around. That, we accept, followed on from earlier communications to which we have already referred where the Second Respondent was seeking to

exert authority over the Claimant by reference to the fact that he was her "boss" in order to persuade her to continue to interact with him outside of the working environment. The Second Respondent was of course well aware of what the driver/trainee position meant to the Claimant and her fears about the offer of employment being withdrawn. Most notably, as we have already mentioned, he was aware of her concerns over references. He played on that fear in later messages to the Claimant to which we shall come in due course.

136. Following that call the Claimant again felt concerned by what the Second Respondent had said and accordingly sent him a message asking him not to cancel the lunch. We accept that that was not because she wanted to attend but because she felt pressured by what the Second Respondent had said during the call to meet with him. She accordingly attended the lunch.

137. At the end of the lunch we accept that the Second Respondent again tried to kiss the Claimant. Akin to the situation when they had met for coffee the Claimant did not want to kiss the Second Respondent and so she angled her face away from him. That had the result of a rather awkward position which the Claimant describes as the Second Respondent having licked her face. We can see how, in a situation where the Claimant had moved as described, that would have occurred and we accept her evidence on that point. The Claimant made her excuses to leave but not before the Second Respondent presented her with a bunch of roses. Again, we are satisfied that that occurred as described by the Claimant and that it was indicative of the Second Respondent seeking to pursue a romantic relationship with the Claimant. There is a text message exchange which we have seen making mention of those flowers and clearly such a gift was not in keeping with a purely platonic state of affairs on the Second Respondent's part.

References

138. On 28 February 2017 the Second Respondent sent a message to the Claimant to say that her references had been received and they were "not good" (see page 505 of the hearing bundle). At that time, the Claimant made the Second Respondent was aware that the Claimant had initiated Employment Tribunal proceedings against her former employer. The Second Respondent gave the impression that he would sort the situation out and, again, we are satisfied that that was to impress upon the Claimant that he was in control of her offer of employment.

139. That is not least given that, as the Second Respondent admitted within that string of messages at page 506 of the hearing bundle, that no poor references had in fact been returned for her. There was no other reason for the Second Respondent to have misled the Claimant about that position, especially as he was aware that she was nervous about her references, other than to impress upon her that he was in control of her employment prospects. The Second Respondent was certainly not able to provide a reasonable explanation for that before us. It also came at a time after the Claimant had begun to seek to try to extricate herself from anything other than a platonic relationship with the Second Respondent by saying that they should just remain friends.

Dinner at the Claimant's house

140. On 1st March 2017, the Second Respondent sent a message to the Claimant again inviting her for dinner as he would be in the area. In response, the Claimant instead invited the Second Respondent to her home for dinner the following evening.

141. We have considered the position in respect of this issue carefully given that the suggestion of dinner at her house would, on the face of it, be an unusual one to make given the Claimant's case that she did not want to meet with the Second Respondent for dinner at all and that she was concerned about his continuing approaches towards her.

142. However, we accept the Claimant's explanation for the invitation to her home, which was on the basis that again she was concerned about rebuffing the Second Respondent and she was aware that both of her children would be at her home on the evening of the dinner and that she would not therefore have to be alone with the Second Respondent. The Claimant saw that as the preferable option to going out for dinner with the Second Respondent and she made it clear to him that she would be introducing him to her children as her boss (see page 515 of the hearing bundle). That was consistent with her references to him that they should keep things as "mates".

143. Although it was a perhaps somewhat unwise, decision on her part to invite the Second Respondent for dinner we accept that the Claimant felt compelled to agree to meet with the Second Respondent and saw that as the lesser of two evils.

144. The Second Respondent accordingly attended the Claimant's home on 2nd March 2017 for dinner. At the end of the evening, we accept that he again attempted to kiss the Claimant and that she again moved her head away to avoid that advance.

145. After the dinner, the Second Respondent sent further messages to the Claimant indicating once again that he was looking for more than friendship or a working relationship with her. The Claimant reciprocated in relation to those messages (see pages 531 and 532 of the hearing bundle) thus giving the impression that she was interested in the Second Respondent in a romantic way. We accept that the Claimant again felt in a position to reply in those terms as a result of fear for the job offer and also because of the difficult position that she found herself in and her inability to properly extricate herself from it.

146. Whilst on the face of it the messages suggest a degree of interest, and no doubt that spurred the Second Respondent on in his attempts to develop a relationship with the Claimant, we are satisfied that the Claimant did in fact find his advances and messages objectionable and that they were unwanted.

Visit to the Second Respondent's home

147. Following the dinner at the Claimant's home, the Second Respondent invited the Claimant for a meal at his own home. The Claimant accepted that invitation. Again, we have considered the circumstances of this situation carefully given that the Claimant in fact went a stage further than accepting the dinner invitation but also asked if she was able to stay over at the Second Respondent's home.

148. We have carefully considered if that request squares with the Claimant's case that she wanted to avoid the romantic attentions of the Second Respondent. However, ultimately we accept her evidence that the journey to the Second Respondent's house would take approximately six hours and she was concerned about driving that distance and having to then embark upon the return journey after dinner. We further accept that she had also been assured by the Second Respondent that he accepted that they were only friends (see pages 561 and 562 of the hearing bundle).

149. As we have already observed, we do not accept the Second Respondent's account that the Claimant attempted to kiss him during the evening at his house and that he rejected her advances.

150. The following morning, the Second Respondent and the Claimant had breakfast and watched television together. We accept that during that time the Second Respondent attempted to cuddle the Claimant and to kiss her and that she rebuffed his advances. The Second Respondent also requested that the Claimant accompany him for Sunday lunch and we accept that he became vexed when the Claimant sought to make her excuses to leave his house earlier than he had intended. That culminated, we accept, in the Claimant becoming very concerned by the Second Respondent's behaviour, most notably his indication to her that he had locked the doors to his house and that if she wanted to leave she would need to find the keys. That, we are satisfied, was part of the Second Respondent's game playing with the Claimant and his attempt to exert his authority over her. His ire at the Claimant not agreeing with what he wanted, and thereafter as the Claimant describes it sulking with he is also consistent with his reaction in messages which we have seen where the Claimant disagreed with him or placed the relationship onto a friendship level (see for example pages 387, 694 and 672 of the hearing bundle).

151. The Claimant watched a body building film with the Second Respondent, at his suggestion, before leaving. We accept her evidence that because of the position she found herself in, she felt compelled to watch the film. The Second Respondent also gave the Claimant a bottle of whiskey, which she accepted, before she left.

152. We accept the Claimant's version of events of this occasion for the reasons that we have already given and the fact that after the Claimant arrived home she received a text message from the Second Respondent apologising for "pushing" things. Again, this is an element of the Second Respondent's evidence that we found not to be credible. He claimed in his evidence that he had not done anything untoward and that it had in fact been the Claimant who had attempted to kiss him. That simply does not square with his later messages to the Claimant (see for example pages 563 and 565 of the hearing bundle) apologising for pushing things. The Second Respondent could not provide any credible explanation for those messages during his evidence and we are satisfied that they sit better with the Claimant's evidence than the account provided by the Second Respondent.

153. Thereafter, the messages between the Claimant and the Second Respondent continued and the Second Respondent continued to send flirtatious messages. Whilst it is clear that it was perhaps unwise for the Claimant to continue to exchange messages with the Second Respondent given the circumstances, we accept that she had still not commenced employment at this juncture and was still concerned for her job offer, particularly as the Second Respondent was also regularly speaking to the Claimant over the telephone and exerting his authority over her during those calls by reference to the job and the fact that he was her boss.

The scarifier incident

154. During one of the exchange of messages between the Claimant and Second Respondent, she had made reference to work that she was doing on her lawn and accepted an offer from the Second Respondent to lend her a scarifier. It was agreed that the Claimant would collect the machine from the Second

Respondent's house and on that occasion she took her teenage daughter with her so that she would not need to be alone with the Second Respondent.

155. However, the Claimant had to return the scarifier to the Second Respondent alone and he again asked the Claimant to go for dinner with him. It is common ground that the Claimant agreed although we accept again that she had felt compelled to do so for the reasons that we have already given.

156. During the dinner, we accept the Claimant's evidence that the Second Respondent attempted to hold her hand and would not let go such that they attracted the attention of one of the waitresses who looked concerned for what was occurring.

157. After dinner, we accept that the Second Respondent made further advances towards the Claimant and made it clear to her that he wanted more than friendship. The Claimant replied that she could report his behaviour to HR. It is the Claimant's case that thereafter the Second Respondent made reference to the fact that he could have her *"killed and buried for four grand"* or words to that effect.

158. The Second Respondent denies having made that comment but we accept that he did. Most notably, that is supported by a reference made by the Claimant in a later text message exchange (see page 694 of the hearing bundle). As we have already observed, the Second Respondent did not reply to ask the Claimant what she was talking about if he had never made such a comment and clearly that would have been the only logical thing for him to have done.

159. That type of comment also fits in, we are satisfied, with the image that the Second Respondent was trying to convey to the Claimant as having "connections" with guns and the "Essex Boys" and that he had friends in prison serving significant sentences (see for example page 511 of the hearing bundle). We accept the Claimant's account that after this incident she discovered from the Second Respondent's Facebook page that he was "friends" on that social media platform with two associates of those killed in the Rettendon murders, including the individual to whom he had referred some time previously. We accept that the sort of comment made by the Second Respondent in that regard, along with those that the Claimant should not upset him or "mess him about", was designed to pressure the Claimant and to seek to frighten her into going along with what he wanted.

Commencement of employment

160. The Claimant's first day of work for the First Respondent had been scheduled for 3rd April 2017. She reported, as she had been told by the Second Respondent to one of the First Respondent's depots in Sandiacre (see page 681 of the hearing bundle). She was there to work alongside, amongst others, the Third Respondent who was a Highways Inspector. As the Second Respondent accepted, it was his decision to place the Claimant with the Third Respondent and as the Third Respondent was based at Sandiacre, it is also logical to assume that her location at that depot was also the Second Respondent's decision.

161. We accept the Claimant's evidence that the Third Respondent told her more or less from the get go that he was friends with the Second Respondent and that they socialised outside of work. We did not believe the evidence of the Second and Third Respondents to the contrary. We are also satisfied that the Third Respondent made reference on one such occasion to the fact that the Claimant

was in her probationary period and that he made frequent comments, as we shall come to, about the Second Respondent and the Claimant's relationship with him.

162. We are satisfied from the evidence before us that the Second Respondent did in fact engineer the placement of the Claimant at the Sandiacre site and that, as she was later told by another member of the First Respondent's staff at her induction that she had been assigned to and was expected at the Leicester Forest East depot.

163. In this regard, prior to her start date the Claimant had received a call from an Ian Forbes, a Highways Inspector at Leicester Forest East depot. He had left her a voicemail to say that she was to go to "LFE". We accept that the Claimant did not know what LFE was (it was of course a reference to Leicester Forest East) and that the Second Respondent had told her that she was to be based in Sandiacre and so that was where she duly reported.

164. The fact that a message was received from Mr. Forbes, albeit not detailing the content, is supported by a text message sent by the Claimant to the Second Respondent which appears at page 699 of the hearing bundle. We are satisfied from the Claimant's evidence that the content of that voicemail message from Mr. Forbes was as the Claimant described it to be and we also find support for that position in a later comment made to the Claimant at her induction to which we refer below. We accept also that the Claimant thought that the message had been a mistake and that in all events she did not know what LFE was given that she had been told by the Second Respondent that she would be working alongside and under the supervision of the Third Respondent and thus would be based with him at Sandiacre.

165. The Second Respondent suggests that the Claimant was placed at Sandiacre because it was the most proximate location to her home. However, Leicester Forest East is also within a reasonable commuting distance and the Claimant had indicated at interview that she was prepared to work anywhere on the M1 stretch of motorway. She had clearly been originally allocated to Leicester Forest East as the telephone call from Mr. Forbes demonstrated. As Ms. Barrett points out, the Respondent has adduced nothing to suggest a reason for the decision to locate the Claimant to Sandiacre or when that decision was taken. We find it more likely than not given the circumstances that the Second Respondent was responsible for that position and that he did so because of his attraction to the Claimant.

166. We are satisfied in that regard that the reason for the Claimant being placed at Sandiacre instead of where she had been allocated to was that the Second Respondent wanted her at a depot working alongside one of his close friends, the Third Respondent.

167. That again was part of the process of seeking to control or exert authority over the Claimant and, also, as we shall come to so that the Third Respondent could extol to the Claimant the Second Respondent's virtues as a potential romantic interest.

168. The Third Respondent had made contact with the Claimant by calls and texts prior to her commencement of employment (see page 269A of the hearing bundle) despite his later denials of having even known the Claimant's name to Mr. Dangerfield at a later grievance investigation meeting. It is clear that that contact was engineered by the Second Respondent (see page 699 of the hearing bundle being a text message from the Claimant with the words *"I did genuinely think you was having a giggle getting everyone to call me…").*

169. We find it likely that the Second and Third Respondent had discussed the Claimant prior to her joining the Sandiacre depot given the calls to her and, in view of the matters which we have set out above, we find it likely that the Second Respondent had wanted to place the Claimant with his close friend given his attraction to her and so that the Third Respondent could keep an eye on her. It was clear from the Claimant's evidence, which we accept, that she discovered that the Third Respondent and another Inspector that he worked with, Amie Smith, had looked the Claimant up on Facebook before she started employment and clearly, despite his protestations to the contrary, the Third Respondent did not confine his dealings with colleagues only to work matters. He was clearly interested in our view in the Claimant and her "relationship" with the Second Respondent.

Comments by the Third Respondent

170. We accept the Claimant's evidence that whilst she was working with the Third Respondent he would routinely ask her personal questions and make reference in positive terms about the Second Respondent. We accept that that included suggesting that the Claimant "could do worse" than the Second Respondent. Clearly, that was a suggestion that the Claimant should consider a relationship with the Second Respondent. Given their close friendship, we find it highly likely that the Second Respondent had discussed his attraction to the Claimant and that the Third Respondent's comments were with the purpose of trying to persuade the Claimant to think of the Second Respondent in romantic terms. That was not least given by that time the Claimant was impressing upon the Second Respondent her wish only to be friends.

171. As a result of the comments and actions of the Third Respondent concerning the Second Respondent, the Claimant determined to delete the Second Respondent as a Facebook "friend" and she notified him of that in a message. At the same time, she also referred to the possibility of mentioning the matter at work (see page 710 of the hearing bundle) although she did not in fact do so at that particular time. We are satisfied that that was as a result of the level of comments made by the Third Respondent about the Second Respondent and the Claimant's connections to him. That included whether they had known each other previously in Essex and the like.

172. Instead of reporting the matter at that time, the Claimant spoke to the Second Respondent to seek to determine what he had said to the Third Respondent. We accept her evidence that during that telephone conversation the Second Respondent referred to the Claimant as "troublesome" or words to that effect and that the reason for that was the fact that she had raised concerns with regard to gossip from the Third Respondent and made the suggestion of reporting matters at work. That was not the only occasion that the Second Respondent told the Claimant that she was "troublesome". We also accept that the Second Respondent told the Claimant that he regretted hiring her; referred to the fact that she was on a trial period and that he could discipline people and have them moved. Again, we are satisfied that that was done for the purpose of exerting authority over the Claimant in an attempt to have her comply with what the Second Respondent wanted her to do and to cause her concern for her job. As a result, the Claimant apologised to the Second Respondent (see page 710 of the hearing bundle).

173. The Claimant did, however, speak to the Third Respondent about his comments on 10th April 2017. The Claimant informed the Third Respondent about the actual position with the Second Respondent and, particularly, that he had taken

her mobile telephone number from her application details to text her after her interview and that he had, effectively, been pursuing her since that time. She indicated that the Second Respondent could get into trouble in relation to his conduct. The Third Respondent told the Claimant that he would be speaking to the Second Respondent about what she had told him, essentially to ascertain if her account was accurate. We have little doubt that the reason for that comment was that there had been discussions by the Second Respondent about the Claimant and his attraction to her (and thus why Ms. Smith had looked up the Claimant on Facebook whilst the Third Respondent was present and there had been comments made that the Claimant and Second Respondent were friends on Facebook – see for example in relation to the latter point page 716 of the hearing bundle) and that the Third Respondent took the view that there was a more than plutonic relationship between the Claimant and the Second Respondent as a result of those discussions.

174. We accept that he later told the Claimant that he had spoken to the Second Respondent and that he "knew everything". We again find that in keeping with the Third Respondent's general suggestion to the Claimant that he knew that there was more to her "relationship" with the Third Respondent and his somewhat inquisitive and pressing attitude and comments in respect of such matters.

The Claimant's induction

175. After the Claimant's commencement of employment, she had an induction which took place on 12th April 2017.

176. During the Claimant's induction she discovered from another of the trainees undertaking that session that she had in fact been expected at Leicester Forest East depot rather than Sandiacre, a matter which we have of course already touched upon above. That trainee was aware of the position because he himself was based at Leicester Forest East and he knew that Ian Forbes (the Inspector who had left the voicemail message for the Claimant) had been making enquiries as to where the Claimant was and why she had not attended at Leicester Forest East as planned. The Claimant was concerned about that position, which was understandable given that she had been told that Mr. Forbes was unhappy about her not having turned up.

177. She was also concerned that she was the only one of the new inductees who had not received a key fob and identification badge and she telephoned the Second Respondent, as her line manager, to raise those concerns. As it transpired, those items and her protective equipment had been delivered to Leicester Forest East because that is where the Claimant was supposed to have been based.

178. During that conversation, we accept that the Claimant told the Second Respondent that she was being "troublesome" and told her to speak to the Third Respondent.

179. The Claimant persisted in her concerns and explained to the Second Respondent that she wanted to be able to access the site like everyone else (which she could not do without a fob) and that she found the questions about her connections to the Second Respondent difficult and that she wanted to work under another Inspector, Geoff Currie as a result. She said that she would learn more working with Mr. Currie, whom she had travelled out with previously, and that she had in fact learned more from him in two hours than with the Third Respondent over the period of a week. She referenced that it would be better to

inspect the M1 everyday with Mr. Currie than the A46 with the Third Respondent twice a week.

180. The Second Respondent refused to transfer the Claimant to be supervised by Mr. Currie and so she then requested to transfer to Leicester Forest East depot; that being the place where she should have been in the first place. We accept that the Claimant perceived the Second Respondent as being agitated during the conversation and that he ended it again by calling the Claimant "troublesome"; that he did not have time to deal with the matter and that she should speak to the Third Respondent.

181. The fact that he would refer to the Claimant in such terms is supported by other comments made by the Second Respondent in text messages when the Claimant raised issues with him – such as that she would "give an aspirin a headache".

The incident on 13th April 2017

182. On 13th April 2017 the Claimant arrived for work at the Sandiacre depot and was asked by the Third Respondent to go for a cigarette with him. When they had ventured outside we accept that the Third Respondent recounted a conversation that he had had with the Second Respondent the previous evening in which it had been said that the Claimant had told the Second Respondent that the Third Respondent had not been doing his job and that he never went out on site. We accept that the Claimant had not said what the Third Respondent had been told in this regard and that she became upset and that she ended up crying.

183. We also accept that during the same conversation the Second Respondent was raised. The Claimant had of course consistently denied any relationship with him but that was seemingly not accepted by the Third Respondent. It came of course at a proximate time to the Third Respondent's conversation with the Second Respondent and his comment that he "knew everything". We also accept that the Third Respondent during the discussion in that regard said words to the effect of *"as long as you keep your mouth shut and it doesn't affect my work I don't care what goes on between you two".* We prefer the Claimant's consistent account on that issue to the blanket denial by the Third Respondent and we have of course already set out our views on the credibility of each of them above. We accept that such comments were distressing for the Claimant who had repeatedly attempted to extricate herself from anything other than a platonic "relationship" with the Second Respondent.

184. The Claimant told the Third Respondent that she was going to Stirling House (the main office for the First Respondent in that region) to find someone who would listen to her. We accept that the Third Respondent told the Claimant that there was no need to do so and that thereafter there was a discussion regarding the Second Respondent and the Third Respondent again told the Claimant that whatever was going on between them should remain between them, or words to that effect.

185. The Claimant had said that nothing was going on to which the Third Respondent had replied that that was not what the Second Respondent had told him. Again, that accords with our earlier findings that the Second Respondent had more than likely not been speaking to the Third Respondent about the Claimant and his attraction to her.

186. The Claimant told the Third Respondent about the problems that she had experienced with the Second Respondent and that there was no relationship

between them. Thereafter, the Claimant told the Third Respondent that she was leaving to go home which she duly did. She spent some time speaking over the telephone to the Respondent's employee helpline before returning to work.

187. The impression that she was given on return by the Third Respondent was that a fresh start could be made. She then left to go out on site with the Third Respondent and another Inspector with whom they both worked, Amie Smith.

188. During and prior to that time, the Second Respondent made repeated attempts to contact the Claimant. He telephoned the Claimant; made contact with Ms. Smith after the Claimant had left the depot and was told that she had gone home and thereafter he made calls to the Third Respondent with whom he spoke whilst the Claimant remained in the van. Thereafter, he also made further attempts to telephone the Claimant directly, on one occasion leaving a voicemail. When the Claimant did not return his calls, the Second Respondent again called the Third Respondent and after a further conversation, the Third Respondent and Ms. Smith left the Claimant in the van to telephone the Second Respondent.

189. We prefer the account of the Claimant to the Second Respondent as to the content of that telephone conversation. We accept that he again referred to her as "troublesome" and made reference to the fact that she was still in her probationary period. We also accept that he told the Claimant that he was coming to the Sandiacre depot to "have it out" with her and that the Claimant had replied that she would not be there and that she was going to make a formal complaint. We further accept that the Second Respondent said that he had done nothing wrong and implied that he was with a member or members of the HR team whilst he was on the telephone to the Claimant. In fact, he was not and we find it likely that he made that comment to try to make the Claimant think twice about making a complaint about him. After that call, the Second Respondent spoke again to the Third Respondent and the Claimant drove back to the depot with the Third Respondent and Ms. Smith, stopping at Ms. Smith's house at her suggestion on the way there.

190. When the Claimant arrived at the depot she went to leave straightaway. The Third Respondent was speaking with the Second Respondent on the telephone and he asked the Claimant to speak to him before she left. We find it likely that this level of contact belied a concern on the Second Respondent's part that the Claimant intended to make a complaint about him to HR as she had indicated during their telephone conversation.

191. The Claimant did not speak to the Second Respondent and the Third Respondent told her that he had left her a message on her voicemail. The message was from the Second Respondent in which he suggested that he had spoken to HR about the Claimant leaving site but that she was now able to work with Geoff Currie, another Inspector based at the Sandiacre depot, instead of the Third Respondent.

192. The Claimant returned to work on 18th April 2017 and the Third Respondent expressed surprise at seeing her and that he did not think that she would be returning. That was perhaps understandable as the Claimant had given the impression when leaving on 13th April that she would not be going back.

193. Given the transfer of the Claimant to work alongside Geoff Currie, she did not accompany the Third Respondent in the van again but went on calls with Mr. Currie. The Claimant explained her difficulties to Mr. Currie who was supportive of her and we accept that they got on well; a matter indeed that was referred to in the later outcome of the Claimant's grievance to which we refer below.

194. The Claimant continued to work alongside Mr. Currie with little further interaction with the Second or Third Respondent until she commenced a period of ill health absence on 2nd May 2017 and thereafter terminated her employment in the circumstances which we describe below.

195. However, there was one further occasion when, we accept, that there was a notable interaction between the Claimant and the Third Respondent. This occurred in the circumstances that we describe further below.

Complaint by the Second Respondent about the Claimant

196. On 17th April 2017 at 17.48 the Second Respondent made a complaint by email about the Claimant addressed to HR. That complaint appears at pages 120 and 121 of the hearing bundle. The complaint was about the Claimant's alleged attitude and her having left site but we have little doubt in the circumstances that this was a pre-emptive strike on the Second Respondent's part on the basis that he now knew that the Claimant was going to report him to HR.

197. It was designed in our view to paint the Claimant in a poor light (such as he attempted to do in regards to the comments allegedly made by Mr. Currie on which we have remarked above) and in an attempt to get the first shot in before she made her complaint regarding his conduct. The complaint was copied to both the Third Respondent and Ms. Smith. There was no need for it to be nor did the Second Respondent provide a reason why it needed to be sent to them also in his evidence before us. We find it more likely than not that the reason for doing so was to seek to garner support for his complaint, particularly from the Third Respondent, and so that they would know if later asked about the incident what account the Second Respondent had provided about the Claimant.

198. Moreover, it is noteworthy that in the penultimate paragraph of his complaint about the Claimant the Second Respondent said this:

"Kim since starting the job did not seem interested I spoke to Amie another inspector she stayed she just sits staring at her she has been leaving depot to go out early as it felt awkward also each time she called me regarding P.P.E etc she was very blunt and demanding a huge change from few week's ago we had built up a healthy relationship going in to the new role I had gone the extra mile to help and advice [sic] *we had met and had coffee and she had thanked me for helping after she got the job by introducing me to her family and having a meal at no time was I unprofessional always polite all seemed good I am happy to show any correspondence or scoring in role by both myself and Heidi I thought best mention this as I have just had information on her last job role she is about to go to court for unfair dismissal this might not be relevant but fel* [sic] *better to inform, I am not in work for a week so not sure if Kim will return on Tuesday I will have Steve contact my manager for a way forward if she does, I am not sure how we stand on dismissal for leaving depot twice without permission perhaps you could inform me of the best way forward for all".*

199. Firstly, the reference to coffee and a meal and the Second Respondent at no time being "unprofessional" in that regard did not appear to fit with the main thrust of the complaint. Again, it appears clear that the inclusion of that particular reference was in the knowledge that the Claimant intended to raise a complaint about his conduct and he was seeking to provide his account first. Equally, the reference to showing the scoring to HR was a reference to the scoring from the interviews and could only have been included on the basis of concern that the Claimant was going to suggest that the Second Respondent had appointed her because of his attraction to her – a matter that she had expressed concern about

to him previously because of his actions (most notably when he mentioned the Highways Inspector vacancy to which we have referred above).

200. Secondly, we have little doubt that the reference to the Claimant being "about to go to court for unfair dismissal" was again intended to paint her in a negative light with HR. It was not relevant to the complaint that the Second Respondent was making and, the statement made was disingenuous as it suggested that the Second Respondent had only recently become aware of that position when, in fact, he had been made aware of it by the Claimant before she even commenced employment and as early as 28th February 2017 (see page 505 of the hearing bundle). He had in fact discussed the Tribunal with the Claimant at some length, including offering to be a character witness and giving her advice on a settlement offer made (see pages 687 and 688 of the hearing bundle).

201. Thirdly, the Second Respondent was clearly looking to seek to exit the Claimant from the First Respondent given his reference to *"how we stand on dismissal".* Again, we have little doubt that that was on the basis that he was aware that the Claimant intended to raise her concerns about his conduct with HR.

202. The Second Respondent also had Amie Smith and the Third Respondent provide a statement in response to what he had said. He had indicated in his email of 17th April that he intended to do so and, as we have already observed, we are satisfied that he copied that email to Ms. Smith and the Third Respondent so that they would be able to note his account before making their own. Ms. Smith made her email statement on 18th April 2017 (see page 122 of the hearing bundle) making reference, amongst other things, to the Claimant having left site and to an "unbearable atmosphere" within the office environment.

203. The Third Respondent also made a statement on 18th April 2017. He set out the events of the Claimant leaving site and also made reference to the telephone call between himself and the Second Respondent on 12th April 2017 where he had been told that the Claimant had complained that she was bored working with him and that they did not go out on the road enough.

204. All communications were copied to the Second Respondent's Manager, Malcolm Dangerfield, as was the Second Respondent's initial complaint.

205. As we have already observed above, after the incident on 13th April 2017, the Second Respondent informally transferred the Claimant to work with Mr. Currie and as such she did not have a significant amount of further interaction with the Third Respondent as she was no longer on driving duties with him. That is with the exception of one occasion when Mr. Currie had other things to attend to and was not with the Claimant. At that point we accept that she was approached by the Third Respondent who said words to the effect of "we have not made statements about you". The "we" in that context was himself and Ms. Smith. That was, of course, untrue given that he and Ms. Smith had both given statements on 18th April 2017 in connection with the complaint by the Second Respondent. We have been unable to ascertain why such a comment had been made but it may well have been to unsettle the Claimant given that, doubtless, the Second Respondent would have informed the Third Respondent of the Claimant's intention to make a complaint to HR.

<u>The Claimant's grievance</u>

206. On 17th April 2017, that is in the aftermath of the events of 13th April 2017 involving the Second and Third Respondents, the Claimant wrote to HR raising a grievance (see pages 116 to 119 of the hearing bundle). The Claimant's

grievance referenced the fact that the Second Respondent had taken her personal details from her application for employment; that he had thereafter contacted her by text message and phone calls; that he had made it clear that he wanted to be more than friends and would not accept that she did not wish to be; that he had ignored her and continued to harass her; that he had harassed her and that he had made it clear that he was her boss and had said that he could have her killed and buried for £4,000.00. She also referred to the problems that she had had with the Third Respondent and that she considered that she had been subjected to harassment and bullying. We would observe here that the account given by the Claimant in her grievance was consistent with the account that she gave before us and also the account in her grievance and appeal meetings.

207. The determination of the Claimant's grievance at the first stage fell to Malcolm Dangerfield, a Develop Needs Specialist Manager with the First Respondent. In our view, Mr. Dangerfield was not a sensible choice. The Claimant's grievance was a complicated and serious one and Mr. Dangerfield had never in fact dealt with a grievance as a decision maker before. Moreover, he was ill prepared. For example, Mr. Dangerfield was not aware of the full nature of the grievance until the time of a grievance hearing with the Claimant on 24th April 2017. He had not received or read the documentation beforehand and we find it deeply concerning that he had clearly not properly prepared before meeting with the Claimant to discuss her grievance. Indeed, he only had the documentation before him some five minutes before the grievance meeting was due to commence. That included the Claimant's grievance letter. This was a grievance both of some complexity and of a very serious nature. We find it very troubling that Mr. Dangerfield was so thoroughly unprepared and that he had no apparent concerns about holding the meeting when set against that background. We are not satisfied that he took the matter at all seriously or gave it due scrutiny but we find that that was most likely due to his inexperience in dealing with grievances at all, let alone a grievance of this nature.

208. At the grievance meeting, the Claimant clearly explained to Mr. Dangerfield that the Second Respondent had taken her contact details from her application for employment and had continually messaged and telephoned her and that he had attempted to kiss her. We have little doubt looking at the content of the minutes of that meeting that it was clear that the Claimant was saying that she had been sexually harassed by the Second Respondent.

209. Prior to the grievance meeting, the Claimant had raised concerns about Mr. Dangerfield being sufficiently independent to deal with the grievance given that he worked in the same team as the Second and Third Respondents. Mr. Dangerfield dismissed those concerns and continued to deal with the grievance, although it appears to us that the Claimant's concerns were in fact well founded given that part of Mr. Dangerfield's thought process in relation to the complaints about the Second Respondent was that he did not believe that he would act in the way described. We accept the Claimant's evidence that that comment was made to her by Mr. Dangerfield and he accepted before us that something of that nature may well have been said.

210. It should be noted in this regard that Mr. Dangerfield had a relatively long history of working alongside the Second Respondent (and indeed the Third Respondent) as they had all previously worked for a different company, A1+, before transferring under the Transfer of Undertakings (Protection of Employment) Regulations to the First Respondent. We are satisfied that Mr. Dangerfield failed to look objectively at the evidence before him and precisely what the Claimant

was saying and instead focused on how the text and Facebook messages looked on the face of it and whether he felt the Second Respondent was capable of the type of conduct complained of. There was a lack of objectivity in that regard, despite the fact that the Claimant provided all evidence to Mr. Dangerfield and pointed him to areas, such as the text about kisses, which would have demonstrated that the Second Respondent was not being truthful when he was later interviewed by Mr. Dangerfield.

211. Particularly, despite accepting before us that the Second Respondent had been less than truthful with him during the grievance investigation (a point that was amply demonstrated by a proper reading of the text messages) Mr. Dangerfield did not appear to factor that into his determination of the grievance and whether, for example, the Second Respondent was being untruthful about pressure applied to the Claimant.

212. We are satisfied that Mr. Dangerfield saw the messages as reciprocal and failed to engage at anything more than that superficial level with what the Claimant was complaining about.

213. During the course of his dealings with the Claimant's grievance, Mr. Dangerfield met with the Claimant; the Second and Third Respondents and Amie Smith. He also spoke to Geoff Currie. Amie Smith had worked alongside the Claimant and the Third Respondent and Mr. Currie had of course taken over from the Third Respondent as the Highways Inspector to whom the Claimant was assigned. Contrary to the Second Respondent's adamant evidence on that point, no statement was given by Mr. Currie to Mr. Dangerfield and their discussions were limited to a telephone call. We do not accept that Mr. Currie made any disparaging comments about the Claimant as the Second and Third Respondents contend and certainly that he did not say that he did not want to work with her or suggest that she had made sexually inappropriate comments. We have already made, and thus repeat here, our observations made in our assessment of credibility about the likelihood of Mr. Currie having made such comments.

214. We also understand that Mr. Dangerfield spoke with other successful applicants for the trainee position, although surprisingly no notes of those discussions were made. Again, that is perhaps indicative of the lack of seriousness with which Mr. Dangerfield approached his investigations and his inexperience in dealing with grievances.

215. Mr. Dangerfield also spoke with a number of other staff in the depot and asked them about the atmosphere within the same since the Claimant had joined the team. We are satisfied ultimately that the reason that Mr. Dangerfield did so was on the basis of the content of the statement of Ms. Smith which had referred to her view that the atmosphere had become "unbearable".

216. Mr. Dangerfield wrote to the Claimant with the outcome of her grievance on 7th June 2017. The outcome was a relatively brief and cursory letter given the severity of the allegations that the Claimant had made. Again, that was no doubt due to a lack of experience on Mr. Dangerfield's part. The letter set out the findings made by Mr. Dangerfield but did not engage with the reasons why those findings had been made and why the account provided by the Claimant had not been accepted. The relevant findings section of the outcome letter said this:

"I have decided to uphold in part your grievance of a complaint of sexual harassment and bullying by Mr Grant Bosence and Mr Steve Curtis in the workplace.

The reason for this decision is that the evidence presented by all parties concurs with the events that occurred but not the intent that is indicated in the grievance:

- *All applicants for the position of driver progressed through the recruitment process in the same manner and no external factors influenced the decisions.*
- *Grant Bosence interacts socially with all of his team to the level that they each wish.*
- *Following interaction with yourself through social media Grant Bosence made contact and met with you at the Dakota hotel on 24th April and correspondence indicates this meeting was on a social basis.*
- *Grant Bosence acknowledges your rejections to meet up and develop a relationship on a number of occasions after your meeting at the Dakota hotel. However, both he and you acted to reinstate the social interaction and relationship.*
- *Your induction to Highways England employment, along with all other applicants for the same post had issues in relation to provision of training and equipment, but you were treated no differently to other applicants.*
- *The nature of the relationship with Grant Bosence before your employment commenced impacted on the communications with those you were directly working with in the Sandiacre depot.*
- *It was always the intention that your place of employment would be Sandiacre depot.*
- *At the meeting of 27th April, you stated that you had no issues with Amie Smith and Steve Curtis, but there was a remaining tension in the workplace with these two people.*
- *The awkward atmosphere with Steve Curtis may have been influenced by separate issues he was involved in both within the work environment and outside the work environment.*
- *Your work with Geoff Currie indicated that in a change of environment you were able to continue with the role for which you were employed.[1]"*

217. Mr. Dangerfield set out in his letter that he intended to take a number of what he referred to as actions as a result of the grievance and in this regard he said this:

"Request that the Senior Management Team review the situation and take further action as they deem necessary with Grant Bosence.

Undertake discussion with Stephen Curtis to ensure that his conduct is not influenced by social interaction within and outside the work environment."

218. As part of her grievance, the Claimant had requested to be relocated away from the Sandiacre depot. That was a request that was supported both by the Claimant's General Practitioner and Occupational Health to whom she had by that time been referred.

219. Mr. Dangerfield refused that request on the basis that he indicated that there were no vacancies at the Claimant's grade within the region. However, Mr. Dangerfield did not undertake any enquiries to determine if anyone from Leicester Forest East was prepared to move depots to accommodate the Claimant's request for relocation. We are satisfied that he did not take such further sensible steps on the basis that he considered that the Claimant's

[1] Again, we observe that there was no suggestion made that Mr. Currie had made any negative comments about the Claimant.

interaction with the Second Respondent demonstrated that there was something more to it and that she had in effect reciprocated and that accordingly he saw no need to relocate the Claimant. Instead, he suggested mediation.

220. We are entirely satisfied from the evidence before us that Mr. Dangerfield allowed the messages that he had seen to cloud his determination of the grievance and the relocation request and that he did little more in reality to look behind those. He did not, for example, take into account what the Claimant was telling him about the telephone calls from the Second Respondent and how she had felt pressured by him and concerned for her job, nor did he properly take into account the fact that the Second Respondent had been untruthful with him.

221. Mr. Dangerfield also wrote to the Second Respondent (see pages 294 to 295 of the hearing bundle). He indicated that as a result of some of his findings he had referred the Second Respondent for consideration of disciplinary action at a conduct hearing at which a sanction of a warning might be given.

222. In fact, no sanction was actually imposed on the Second Respondent by the First Respondent.

223. The Claimant was signed off sick with stress for a period of one month with effect from 2nd May 2017. She thereafter submitted a further Fit Notes covering the period 7th June to 31st August 2017 and in fact, she never returned to work for the First Respondent.

Grievance Appeal

224. The Claimant appealed against the grievance outcome on 8th June 2017 (see page 298 and 299 of the hearing bundle).

225. The Claimant's appeal clearly belied her distress and frustration at the grievance outcome and it said this:

"With reference to the title matter[2] it is my understanding that an appeal can be lodged for reasons such as:
New or misunderstood information, erroneous or misconstrued fact plus, of course, lack of impartiality and bias. In this particular case I submit that an appeal cannot be conducted unless a fair and reasonable investigation has preceded it, it is on this basis that this appeal is presented.

The facts of this case irrefutably demonstrate (through txt msgs) that Mr. Bosence texted me on the evening of my interview and again shortly after before any contact on social media, I attended that interview with NO KNOWLEDGE of Mr. Bosence whatsoever, Mr. Dangerfield has decided and I quote: "FOLLOWING INTERACTION WITH YOURSELF THROUGH SOCIAL MEDIA GRANT BOSENCE MADE CONTACT"… This is totally untrue…. Mr. Bosence totally abused his position within the company by taking my personal details and instigating an uninvited and unwelcome approach in an attempt to secure favours of a sexual nature which did not happen but I tolerated them knowing that outright rejection would nullify and prospects I had for this job.

Furthermore, how DARE Mr. Dangerfield substitute his opinion of Mr. Bosence 'INTENT' for mine…. He was NOT on the receiving end of Mr. Bosence 'INTENTIONS' …. I was!

[2] The title of the email being "Grievance".

I am aware that the chain of command through this section of Highways consists mainly of ex A ONE+ employees who have known each other for many years, this hardly guarentees impartiality…. I'm sure you would agree that an investigating officer who has no prior relationship or knowledge of the parties would be more appropriate?

Mr. Curtis continual questioning (and assumptions) of me regarding Mr. Bosence could only have had one source …… Mr. Bosence therefore where is the logic in a 'Mediator'…. there is nothing to mediate?

I enquired as to why I could not work at Leicester as originally scheduled? … Mr. Dangerfield states 'IT WAS ALWAYS THE INTENTION THAT MY PLACE OF EMPLOYMENT WOULD BE SANDIACRE DEPOT'… this is simply Not True…. why would Mr. Ian Forbes ring me on the 31st March welcoming me to Leicester Forest East depot and why was all of my induction documents sent to Leicester?

I am sending a courtesy copy of this email to San Johal (Information only) because I am totally bewildered as to how and why a senior member of HR could sanction such an inappropriate report with such obvious errors of truth; thereby I reiterate, Any Appeal must be based on a fair and reasonable investigation which, in this case, has NOT taken place.

Finally, I notice my attention has been drawn to the Disciplinary Procedure for the third time now during this grievance, if this is an expectation of what is to come then kindly could I be supplied with a copy of it please.

Ever since applying for a job at Highways and coming into contact with its Management and staff….. all I have received is Stress, Anxiety and other Detrimental treatment…. all I wanted was a job".

226. As we have already observed, the content of the Claimant's appeal clearly belied her frustrations and distress and the fact that Mr. Dangerfield had not adequately listened to her and his findings, particularly, that the Second Respondent's conduct had been unwanted.

227. The Claimant chased up a response or acknowledgment to her appeal on 27th June 2017 and was told the following day by Mr. Dangerfield that it had been escalated to the senior casework team and that they would explore the possibility of the mediation raised in his outcome letter with the Claimant. Of course, the Claimant did not want mediation, she wanted to be listened to.

228. The following day the Claimant wrote to raise a further grievance in respect of what she termed to be the ineffective performance in respect of the grievance procedure (see page 303 of the hearing bundle). The Claimant was advised to discuss the matter with the relevant HR caseworkers before raising a further formal grievance (see page 304 of the hearing bundle). There was therefore never any outcome given to the Claimant in respect of that particular complaint.

229. On 12th July 2017 the Claimant was advised that Diane Naylor, the Head of Business Improvement, would be dealing with the Appeal. She was subsequently invited to a meeting with Mrs. Naylor on 27th July 2017. That hearing was rescheduled at the Claimant's request to 1st August 2017. It was further postponed until 4th August 2017, again at the Claimant's request as a result of her unavailability.

230. The notes of the appeal hearing are at pages 354 to 362 of the hearing bundle and we have read those, and later amendments made by the Claimant, very carefully.

231. The Claimant had made it clear from the outset of the appeal hearing that her view was that if she had not continued to reply to the Second Respondent in text and other message form then she would not have got the job with the First Respondent. The reaction of Mrs. Naylor to that comment was that having read the correspondence between the Claimant and Second Respondent (i.e. the text and Facebook messages) "there seems more".

232. She set out a number of the messages in question – plucked it has to be said from somewhere in the region of 2,500 messages – and made the initial judgment that "this does not read to me as unwelcomed". This comment was made more or less at the outset of the hearing. It suggests to us that Mrs. Naylor had already made a determination that there was "more to it" from her reading of the text messages. In essence, she had made up her mind that there had been a relationship of some sort and that the Claimant had been happy with that position. Indeed, she later asked a frankly outrageous question, given the clear points made by the Claimant in her grievance appeal letter that there had been no relationship with the Second Respondent, so as to check that the Claimant and Second Respondent had not had sexual intercourse (see page 359 of the hearing bundle). We accept that that reduced the Claimant to tears. Given the circumstances, that was an entirely understandable reaction.

233. The Claimant sought to make it clear that she had felt compelled to go along with the Second Respondent's messages but that point appears to have been completely overlooked by Mrs. Naylor. Her questions were not designed to delve into her understanding of the Claimant's appeal but to in effect challenge her – for example asking *"Is that how you would expect someone to react if they were aggrieved"?* and "*where is the evidence"?*

234. The Claimant made it clear that she was complaining that the Equality Act had not been adhered to (see page 357 of the hearing bundle) and that *"the reason why the Equality Act was invented was to stop men like this".* Mrs. Naylor's only reaction to that comment was to ask the Claimant what she *"had done to stop this"*. We find it surprising that such a comment would be made given that the Claimant was complaining about sexual harassment. It belied her thinking that the Claimant had reciprocated as a result of the messages and, again, that there was "more to it".

235. It was clear from what the Claimant was saying both at that meeting and from her grievance and appeal that she was saying that she had been sexually harassed by the Second Respondent. However, Mrs. Naylor simply took the messages at their bare face value. She did not consider that the Claimant had felt coerced into replying; that she had been in fear of her job because of what the Second Respondent had told her or about the calls and pressure that he had placed upon her. She simply continued with her initial view, which was clear from the outset of the meeting, which was that having read the messages there was clearly more to it and that the Claimant had been happy to flirt and perhaps have a relationship with the Second Respondent.

236. She had, in short, prejudged the matter and did not listen to what the Claimant was telling her at the appeal meeting and sought to close her down in relation to practically every point raised (see for example page 358 of the hearing bundle and the comment by Mrs. Naylor "You introduced having a gun into the text

conversation").

237. It is clear to us that Mrs. Naylor had taken the view that having reciprocated in messages to the Second Respondent, the Claimant had invited and participated in his attentions and thus his conduct could not have been unwanted or harassing. The Claimant urged Mrs. Naylor to look at all of the messages as a whole and, as we shall come to further below, pointed out a number of occasions where she had closed down the Second Respondent's push to be anything more than friends but that he had persisted. We are satisfied that Mrs. Naylor, having already made her mind up about the matter, did not properly consider those messages and the fact that the Second Respondent continued to push the Claimant for a relationship that was far from platonic.

238. The Claimant again discussed at the appeal hearing a wish to be transferred to another commutable location as she did not wish to have any contact with the Second Respondent and could not work with him. She also complained, not unreasonably it appears to us, that she was not being listened to by Mrs. Naylor and the First Respondent.

239. The Claimant was provided with a copy of the minutes of the appeal meeting on 8th August 2017 with a request for any comments or amendments to be made by 11th August 2017 (see page 376 of the hearing bundle). The Claimant made proposed amendments under cover of an email of 10th August 2017 (see page 381 of the hearing bundle). A number of those amendments passed without comment (although as we have already observed Mrs. Naylor nevertheless disputed before us that the amendments were in fact an accurate reflection of events) whilst others attracted comment or were disputed by the author of the notes, Jennifer Hurley of HR. As can be seen from the notes at, for example, page 385 to 387, Ms. Hurley made any comments in reply to certain of the Claimant's amendments in red type with her initials signifying her input. Despite the disputing by Ms. Naylor almost 12 months later of some of the amendments made by the Claimant where there was no comment made by Ms. Hurley, we find it more likely than not that Ms. Hurley, an HR professional, would not have chosen only to comment on some comments that she disagreed with rather than all of those and we accept that it is more likely than not that the Claimant's amendments represented a reliable account of what was said at the meeting.

240. In that same email, the Claimant sent to Mrs. Naylor a selection of highlighted messages where she had, in terms, refused the Second Respondent's advances. The relevant parts of the Claimant's covering email said this:

"I would like to bring to your attention that in the absence of the direct term 'No' my responses were in a manor [sic] *which do not indicate my personal acceptance rather than knowing any outright refusal would impact on my career prospects because of Grant Bosence need to remind me of this unequal situation therefore, in other words unless this man hears what he wants to hear I had no career prospects with Highways England at all.*

I am becoming increasingly of the opinion that it is me who is under investigation rather than the instigator, you have previously stated that you are only interested in the facts yet I am at a loss to understand why the facts I have supplied and explained to you appear to be of less interest rather than the explanation put forward by Grant Bosence whatever they are.

I must state that it not only concerns but it offends me when some of the questions you are asking me relate to a non-existent intimate scenario which has

never taken place for which you appear to be lax to accept".

The Appeal Outcome

241. On 27th August 2017 Mrs. Naylor wrote to the Claimant with her decision in respect of the appeal (see pages 397 to 401 of the hearing bundle). The Claimant initially only received the first two pages of the grievance appeal outcome (see page 402 of the hearing bundle) but we accept her evidence that it was clear to her from the content of the same that her appeal had not been upheld.

242. The relevant parts of the outcome letter said this:

"Correspondence between Grant Bosence and Kim Beaney

In the grievance outcome letter dated 7 June 2017 it outlines "Following interaction with yourself through social media, Mr. Bosence made contact and met with you at the Dakota Hotel?". I acknowledge that following your interview on 16th February 2017, Grant texted you first stating "Hi Kim it's Grant from Highways England just to say we were impressed with you today hope the interview went ok for you I'm sure we will be in contact soon regards Grant".

You have provided extensive evidence where you have reciprocated and agreed to meet with him, on a number of occasions we well as introduce him to your children. You mention in your appeal that this was an unwelcomed approach. There is no dispute that Mr. Bosence made contact first by texting you on the evening of the interview 16 February 2017. This was followed by a further text from Mr. Bosence on 20 February 2017 stating "forgot to say if you have any questions before you start give me a quick text or call anytime look forward to you joining the team Grant". This was a quick and polite interaction finishing at 15.54 p.m. which was picked up again by a further text from Mr. Bosence at 21.42 'Got to look after the Essex posse lol'. This ignites a text conversation over the next hour and 5 minutes where you appear to be comfortable to interact. I can find no suggestion that this was unwelcome or unwanted by you or any indication that if you did not continue the conversation the job was under threat. In fact you are explaining your concern over references, and Mr. Bosence is providing reassurance that there won't be an issue. From my reading of the text conversations you appear content to chat and welcome the reassurance "I do appreciate your show of reassurance in me, I really do"', "not stopped smiling since you rang this afternoon!", "You're a good man Grant and look forward to being your subordinate. Still smiling!".

On 22 February 2017, you confirmed receipt of an email with the job offer in your text to Mr. Bosence. On 23 February you received your contract of employment from the HR team and on 27 February 2017 you returned a signed copy of the contract. The contract of employment dated 23 February 2017 confirms your start date of employment as 03 April 2017 and your location as Stirling House, Mansfield and that you may be required to travel to other locations as the job requires. When recruited, there were two people on the panel; Mr. Bosence (Inspector Manager) and Heidi Carroll [Business Support]. Within seven working days of your interview you had returned a fully signed contract confirming your employment with Highways England. From this point to when you lodged your written statement with the HR team on 17 April 2017, you raised no concerns in relation to your correspondence with Mr. Bosence, nor did you raise any concerns that you felt your job would be at risk if you chose not to engage.
Having signed your contract of employment on 27 February 2017, on 28

February 2017 you texted Mr. Bosence "can we still meet today", and later in the day you texted "All I can smell is your aftershave!" to which Mr. Bosence replies "Is it nice I miss your kiss". The evidence you provided demonstrates that you continue to engage in correspondence with Mr. Bosence and during our meeting you advised that "even my children knew I was leading him up the garden path to get the job" and that "Some of the messages I sent Grant was when I was drunk with my friends and we were taking the 'mick'". Having considered the evidence you provided in relation to correspondence between you and Mr. Bosence, I can find no evidence of threats to lose your job and your replies, in my view, are more than just casual interaction. Therefore your statement you tolerated the interaction knowing that outright rejection would nullify any prospects you had for the role of Driver/Assistant Inspector, I find unfounded.

In addition you raise serious allegations in relation to the face to face interactions that took place before you and Grant prior to commencing employment. Having considered these allegations further I believe them to be inconsistent with the text messages and evidence that you have provided as a whole in this matter. You mentioned that prior to your grievance appeal meeting which took place on 27 April; you raised these concerns with the Police. You advised that you have not received an outcome from the Police but that you believed the Police spoke to Malcolm Dangerfield as part of their investigation. I can confirm that the Police have not made contact with Malcolm Dangerfield or Highways England in relation to this matter. I asked if you would share the crime reference number but you advised this was personal and did not wish to share.

When you receive the outcome of the Police investigation and should this have any implications for Highways England to consider, I would be grateful if you could inform Malcom Dangerfield.

Intent

In the grievance outcome letter, Malcolm Dangerfield states "The reason for this decision is the evidence presented by all parties concurs with the events that occurred but not the intent that is indicated in the grievance". This statement outlines Malcolm Dangerfield's opinion having completed the investigation into your grievance. Having clarified with Malcolm that his decision to uphold in part your original grievance he has confirmed that the evidence showed that some of the actions that you alleged to have taken place did so. And some of which were clearly not appropriate. That said in accepting that some of the events did take place he did not believe that this amounted to bullying or harassment.

Location

During our meeting you clarified that you were aware, prior to commencing employment, that you would be based at the Sandiacre depot. On 14 March 2017 you text Mr. Bosence stating "I'm working from Sandiacre". In the grievance outcome letter Malcolm Dangerfield acknowledges that along with all other applicants for the same post there had been issues with the on boarding and this may have resulted in confusion where the new drivers would be based. You mentioned that you were concerned that Mr. Bosence paired you with Steve Curtis because they were friend but failed to evidence why their friendship may be detrimental to you.

I believe I have fully considered the grounds of your appeal raised in your email dated 8 June 2017 and during the appeal meeting on 14 August. In relation to resolving this matter, I recommend no further actions than those outlined in the

grievance outcome letter."

243. It is notable that the appeal outcome did not make mention of any of the 22 instances which the Claimant had referenced to show that she had said 'No', in terms, to the Second Respondent.

244. Mrs. Naylor noted that there were no vacancies to which the Claimant could be transferred and that she should reconsider engaging in mediation. Mrs. Naylor did not make any more enquiries than Mr. Dangerfield had about the possibility of relocation and simply pressed the issue of mediation. We are satisfied that, like Mr. Dangerfield, she did not see relocation as being necessary on the basis that she did not accept the Claimant's account that the Second Respondent's conduct had been unwanted (and thus she did not accept that the Claimant had been sexually harassed) nor that she was frightened of him and could not work with him.

The Claimant's resignation

245. On 30th August 2017 the Claimant resigned from employment with the First Respondent by way of an email to Mr. Dangerfield. Her resignation, which appears at page 406 of the hearing bundle, followed the receipt of her grievance appeal outcome and the email said this:

"I have now received the outcome of my Grievance Appeal which has not been upheld.
At the outcome of this Grievance I submitted (in good faith) copies of all the text messages involved between Grant Bosence and myself as evidence of his inappropriate actions which commenced literally hours after my interview at Highways England; I have also repeatedly explained as to why I tolerated them….. because I was aware that this vile person was using his position to try and secure sexual favours from me by using the position as bait, I really wanted this job, it was a unique opportunity in my life, but there was no way I was ever going to submit to that man's aspirations. My coping strategy has been totally condemned.
It is now very apparent to me from the e mail of my recent Appeal meeting and from the Appeal outcome that the consideration of my Appeal was most certainly NOT centred upon discussing my reasons for appeal, as set out in my email of 8th June, but to morally bully me even to the inexcusable extent of enquiring whether sexual intercourse had ever occurred between Grant Bosence and myself (as recorded in the notes). I am sick of repeatedly stating there was NO relationship. All I did was apply for a job.
The Company, in terms of investigating this mater have made their stance very clear as summarised below:

1. *The Company does not recognise this complaint as serious at all.*
2. *The Company prefer to blame me for what has happened rather than Mr. Bosence or Mr. Curtis.*
3. *Of all the text messages, I supplied as evidence, the Company has been very selective in identifying and promoting a small number to condemn me whilst the instigator of the majority of the messages raises no concerns with them at all.*
4. *The Company's solution is mediation – for mediation to succeed the facts must be agreed first, this is not possible for obvious reasons.*
5. *The Company has not followed its own Dignity at Work Police, example: 2.16.3, Q8 and Q11.*

It is clear from the Appeal outcome that Mr. Bosence is to remain my manager despite everything that has happened.

Since raising this grievance all that has been achieved is further Bullying and Harassment from the Company themselves culminating in the Appeal outcome. I have no trust or confidence in Highways England as an employer whatsoever. It is because of this breach of trust, bullying, bias and harassing behaviour that I am resigning from your employ with immediate effect."

246. We are satisfied from her evidence and resignation letter that the Claimant viewed the rejection of her appeal as rendering her employment with the First Respondent untenable and that there was no prospect of her returning to work. In this regard, she would have had to return to Sandiacre and continue to be line managed by the Second Respondent.

247. Mr. Dangerfield acknowledged the Claimant's resignation on 4th September 2017. He set out that there were no vacancies at the Claimant's banding within the region and that alternatives to facilitate a return to work had been explored. He invited the Claimant to contact him to arrange a meeting if she wanted to discuss the reasons for resignation and what else might be able to be done in order for her to be able to return to work. We do not find it surprising that the Claimant did not make contact with Mr. Dangerfield in this regard given the decision which he had taken in relation to her grievance.

Report to the Police

248. The day prior to her resignation, the Claimant made a further report to the Police regarding the Second Respondent. The Claimant had in fact made a number of earlier reports about her concerns over the conduct of the Second Respondent, the first of which was on 3rd May 2017. The notes of the reports to the police appear in the bundle at pages 448a to 448n.

249. The Respondent points to the fact that some of the matters which are recorded in the notes do not accord precisely with the account that the Claimant gives in her witness statement in terms of the timings of various events. Most notably in this regard, the notes suggest that the incident in the public house where the Second Respondent would not release the Claimant's hand occurred after she had stayed at his home rather than upon return of the lawn scarifier and that he had also told her on the same occasion about his alleged connection with the Rettendon murders when that had in fact on the Claimant's evidence before us been during a telephone conversation.

250. As we have already observed above, we do not find those discrepancies to be anything out of the ordinary. We accept the Claimant's evidence that she was simply told to make plain what the events she complained of were rather than the timeline and it is clear from the brevity of the notes themselves that a great deal of information was condensed into a few lines. It is perhaps not entirely surprising that there were some inaccuracies as to the timing of events in those circumstances but the main content of the actual complaints themselves are consistent with the evidence that the Claimant has given to us. Moreover, the Claimant's evidence that matters came out in something of a jumble when reporting the situation to the police is perhaps supported by the entry on page 448E which records the account given by the Claimant on that occasion as *"all very confusing and disjointed".*

251. One of the reports, dated 28th August 2017, recorded that the Claimant *"would be resigning soon".* That was before the point that the Claimant had received the full appeal outcome, on which she relies as being the last straw which prompted her resignation, but as we have noted above she had in fact already by that

stage received the first two pages of the appeal outcome (see page 402 of the hearing bundle) which had been sent to her the previous day.

252. As we have already remarked, we are satisfied that from those two pages, the Claimant was aware that her grievance appeal had not been upheld and that, as far as the Claimant was concerned, that was the last straw which prompted her resignation.

CONCLUSIONS

253. Insofar as we have not already done so above, we now set out our conclusions in respect of the remaining complaints before us.

254. We begin with consideration as to whether the Second Respondent's conduct in sending text and Facebook messages to the Claimant of the sort that we have referred to above amounted to harassment. Whilst the Claimant no longer pursues a complaint in respect of those matters, the question remains relevant for our determination of a number of the other complaints before us.

255. We ask ourselves the following questions in relation to that conduct:

a) What was the conduct in question?

b) Was it unwanted?

c) Did it have the purpose of violating dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the complainant?

d) Did it have the effect of doing so having regard to an objective, reasonable standard and the perception of the complainant?

e) Was the conduct related to the protected characteristic relied upon or of a sexual nature?

256. The conduct in question was the sending by the Second Respondent of the text and Facebook messages to which we have already referred. We are satisfied, for the reasons that we have already given, that the messages amounted to unwanted conduct as far as the Claimant is concerned. Ms. Barrett's stating as to the law and the applicable authorities referred to in her skeleton argument, and particularly that the Claimant need not expressly say at the time that she found the conduct to be unwanted conduct, is agreed by Mr. Adkinson on behalf of all Respondents. In our view, the evidence before us of the Claimant seeking to extricate herself and ensure that things were placed back firmly on a plutonic footing; her evidence to us about the distress that the messages caused and the fact that these led her to drink more than she ordinarily would and the fact that she took the serious step of reporting matters to the Police is sufficient for us to conclude and accept her account that the conduct of the Second Respondent was unwanted conduct.

257. We also accept that that conduct had the effect referred to in subsection Section 26(1)(b) EqA 2010. The Claimant clearly from the evidence before us found the Second Respondent's conduct to be intimidating, humiliating and offensive. The Second Respondent made it clear to the Claimant that he wanted to have a physical relationship with her despite her referring on many occasions that she wanted nothing more than friendship. That was set against a backdrop where

the Second Respondent either ignored what the Claimant was saying in that regard or where he pressed her, by making it clear that he was her "boss" and that he was responsible for how and whether she progressed within the First Respondent, to meet with and continue to interact with him outside of work.

258. We accept that the Claimant was not attracted to the Second Respondent and she accordingly found messages from him suggesting that they engage in physical activity and his attempts to kiss her upsetting, humiliating and offensive. Given the circumstances and the frequency and content of the communications and attempts to kiss the Claimant; hold her hand forcefully and to embrace her, we have little hesitation in concluding that the Claimant's perception that there was an offensive, humiliating and intimidating environment was entirely reasonable.

259. We turn then finally to the question of whether the conduct of a sexual nature or related to sex. We are entirely satisfied that it was. The purpose of the communications and attempts to kiss the Claimant was because the Second Respondent wanted to have a physical relationship with her. That is entirely clear from the evidence before us and to that degree the conduct was related to the protected characteristic of sex. Moreover, it was also conduct of a sexual nature. It included attempts to kiss the Claimant; to hug her and to hold her hand. The communications sent to the Claimant referred to her as "sexy"; that the Second Respondent wanted to kiss her; commenting upon her legs and her eyes; that she had looked "hot" at interview and that he "fancied" her and sending him a number of pictures of himself partially clothed with his muscles exposed or even of him in a state of undress in bed. Those are amongst the other examples that we have given in our findings of fact above. It was clear conduct of a sexual nature given both the content and the purpose that it was intended to serve – that is to seek to enter into a physical relationship with the Claimant who the Second Respondent was sexually attracted to.

260. We therefore have little hesitation in the circumstances of concluding that the conduct of the Second Respondent in terms of both his messages and his physical advances towards the Claimant amounted to harassment contrary to Section 26 EqA 2010.

261. As we have already observed, that is no longer a live complaint before us given the withdrawal of those complaints before the hearing but they are relevant to a number of the remainder of the complaints which we now turn to below.

262. We deal with each of those remaining complaints in turn and begin with the claims of harassment only.

<u>Assignment of the Claimant to the Sandiacre site</u>

263. As we have already found above, we are satisfied that the decision to allocate – or perhaps best termed reallocate – the Claimant to Sandiacre was taken by the Second Respondent. He accepted that it was his decision to place the Claimant with the Third Respondent and Sandiacre was the venue where the Third Respondent was based.

264. As we have already also found, we are satisfied that the reason that the Second Respondent took that step was that he was very clearly attracted to the Claimant and had been seeking, since her interview, to forge a personal relationship with her as a result of that attraction. We are satisfied that he wanted to place the Claimant at Sandiacre under the supervision of the Third Respondent in order to

"keep an eye" on her and for the Third Respondent, as indeed he came to do, to seek to pressure the Claimant with suggestions about the Second Respondent – such as how "she could do worse" than have a relationship with the Second Respondent.

265. We turn then to consider whether that conduct amounted to harassment within the meaning of Section 26 EqA 2010. We begin with the conduct in question which was the placing of the Claimant at Sandiacre. That, in itself as a placement, was not unwanted conduct or conduct that had the purpose of violating dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. It was in fact the nearest location for the Claimant.

266. However, we are satisfied that we need to look past the mere location in these circumstances because the location was solely for the purpose of placing the Claimant under the supervision of the Third Respondent in order that he could make the sort of "could do worse" comments to which we have referred above.

267. We are satisfied that against that background, this was unwanted conduct. The Claimant clearly did not invite nor want intrusive comments to be made about a person with whom she had made it clear that she had no romantic interest. We are equally satisfied from her evidence that such comments created an offensive environment for the Claimant as she was still unable to move away from continued suggestions made firstly by the Second Respondent and thereafter by the Third Respondent about having a relationship or interest in the former.

268. We are satisfied that the conduct of placing the Claimant at Sandiacre (in order to place her under the watch of the Third Respondent) was related to her sex on the basis that it stemmed entirely from the Second Respondent's sexual interest in the Claimant and his desire to pursue a physical relationship with her.

269. We are therefore satisfied that the conduct in this regard amounted to harassment related to the Claimant's sex and was contrary to the provisions of Section 26 EqA 2010.

270. The Claimant's complaint in that regard is therefore well founded and it succeeds.

Assignment of the Claimant to work alongside the Third Respondent

271. We can deal with this aspect of the claim in short order given that our findings and our conclusions with regard to this matter are identical to those set out above in respect of the assignment to Sandiacre given that both actions were for the same purpose.

272. It follows therefore that this aspect of the claim similarly amounted to harassment related to the Claimant's sex and was contrary to the provisions of Section 26 EqA 2010. This part of the claim is therefore well founded and it succeeds.

Comments from the Third Respondent regarding the Second Respondent

273. We are satisfied, as we have set out in our findings of fact above, that the Third Respondent made comments to the Claimant about the Second Respondent, including most notably that the Claimant "could do worse" than the Second Respondent and inferring that they were in a relationship.

274. Given the background which we have found above, we are satisfied that those sorts of comments were made by the Third Respondent because he was well aware from even before the Claimant commenced employment that the Second Respondent was attracted to her and wanted a physical relationship to begin.

275. We turn then to consider whether such conduct amounted to unlawful harassment contrary to Section 26 EqA 2010.

276. Firstly, we are satisfied that the conduct was unwanted conduct. The Claimant did not wish to, nor did she have, any "relationship" with the Second Respondent. She merely wished to get on and succeed in her role with the First Respondent. We accept that she found it distressing and objectionable to have continuing comments made by the Third Respondent about a "relationship" that she was not having and which was based on the Second Respondent from whom she was receiving conduct that amounted to sexual harassment. The fact that the conduct was unwanted is demonstrated by the Claimant's attempts to set the Third Respondent straight and her enquiries to the Second Respondent about what it was that he had apparently told the Third Respondent.

277. We accept that the conduct had the effect set out in Section 26(1)(b) EqA 2010 and that the Claimant's perception to that end was a reasonable one. In this regard, the comments were again made about a "relationship2 that the Claimant was neither engaged in nor wanted. It was against a background of those comments being made by the Claimant's new supervisor whom she knew was a close friend of the Second Respondent and about there being "more to" her "relationship" with a man who had for some time been harassing and pressuring her. The comments were both intrusive and suggestive and we accept that for all those reasons they caused the Claimant distress and that they created an intimidating and hostile environment.

278. Finally, we consider whether the comments were related to sex. Again, we take into account the wide nature of the term "related to". It is clear to us that the Second and Third Respondent had discussed the Claimant prior to the commencement of her employment as, indeed, the Second Respondent had encouraged the Third Respondent to make contact with her. We find it more likely than not, given the friendship between the Third Respondent and the Second Respondent; the fact that the Third Respondent had been involved in part at least in looking her up on Facebook and the nature of the comments that he made to her about the Second Respondent (for example that she "could do worse") that those comments were made because the Third Respondent was aware that the Second Respondent was attracted to her. As that attraction was a sexual one with a physical relationship in mind towards the Claimant as a woman, we are satisfied that the comments were related to the Claimant's sex.

279. The complaint of harassment contrary to Section 26(1) is well founded and succeeds in respect of this element of the claim.

<u>The Third Respondent telling the Claimant that he and the Second Respondent were friends outside work and that she needed to remember that she was on a three-month probation.</u>

280. We are satisfied, as we have found above, that the Third Respondent did refer to being friends with the Second Respondent outside work and also made the reference claimed to her probationary period.

281. However, we are satisfied that that comment was made in the context of a

heated discussion between the Claimant and the Third Respondent which had been generated by the fact that the Third Respondent had been told by the Second Respondent that the Claimant had complained about him not going out on the road. The issue raised by the Claimant in that call with the Second Respondent was to the effect that she had learned more with Mr. Currie than she had going out twice a week on the roads with the Third Respondent. The conversation between the Claimant and the Second Respondent during which that comment was made was itself heated.

282. To any degree that the Second Respondent may have exaggerated what the Claimant told him in his later conversation with the Third Respondent, we find it more likely that this was on account of his ire at the Claimant having argued with him (something that he clearly found objectionable) rather than for any reason related to sex or his interest in her.

283. This complaint therefore fails and is dismissed.

The Third Respondent telling the Claimant on 13th April 2017 that he had had a lengthy telephone call with the Second Respondent and "knew everything".

284. As we have already set out in our findings of fact above, we accept that the Third Respondent did tell the Claimant that he had spoken to the Second Respondent and that he "knew everything". We are satisfied that that comment was made on the basis of the Third Respondent's view that there was more to her "relationship" with the Second Respondent and was in keeping with the type of comments that he had made to her from the commencement of her employment.

285. We have little doubt that that was on the basis that the Second Respondent had told the Third Respondent all about the Claimant prior to the commencement of her employment (and hence the telephone and text contact that he had had with her) and that the reason for that discussion was the Second Respondent's personal interest in the Claimant in that he wanted a physical relationship with her.

286. For the same reasons as we have found in respect of the general comments made by the Third Respondent, we are satisfied that the Claimant found this unwanted conduct. Furthermore, again for largely the same reasons as in respect of the general comments made, it was conduct which fell within Section 26(1)(b) EqA 2010. It was again a further instance of the Third Respondent not accepting the fact that the Claimant had clearly told him that there was nothing between her and the Second Respondent; the reference to 'knowing everything' was clearly to the effect that there was something more to the "relationship" than the Claimant had said there to be. Given the background which we have set out in respect of the general comments above, we accept that that created an intimidating and hostile environment as the Third Respondent persisted with the suggestion of a relationship which the Claimant considered abhorrent.

287. Finally, we turn then to consider if the comment was "related to" sex. We are satisfied that it was. Again, it stemmed from the Third Respondent's belief that there was "more to" the relationship between the Claimant and Second Respondent because he was aware of the latter's sexual interest in the Claimant. Again, for the same reasons that we have already given in respect of the general comments made, we are satisfied that the "knew everything" comment related to the Claimant's sex.

288. The complaint of harassment contrary to Section 26(1) is well founded and

succeeds in respect of this element of the claim.

The Third Respondent saying to the Claimant in respect of her denial of a relationship with the Second Respondent words to the effect of "as long as you keep your mouth shut and it doesn't affect my work" and "I don't care what goes on between you two".

289. As we have already set out in our findings of fact above, we accept that the Third Respondent did make this comment to the Claimant and we have preferred her evidence on that point to the blanket denial made by the Third Respondent. We are again satisfied, akin to the "knew everything" statement that that comments was made on the basis that the Third Respondent's view was that there had been or was some sort of "relationship" between the Claimant and the Second Respondent. Again, those comments were in keeping with the type of comments that he had made to her from the get go.

290. For the same reasons as we have found in respect of the general comments made by the Third Respondent and his "knew everything" comment, we are again satisfied that the Claimant found this unwanted conduct. Furthermore, again for largely the same reasons as in respect of the general comments and "knew everything" statement, this too was conduct which fell within Section 26(1)(b) EqA 2010 given that it amounted to a yet further occasion on which the Third Respondent was vocalising a belief that there was something going on between the Claimant and the Third Respondent when she had vociferously protested throughout to the contrary.

291. Finally, we turn then to consider if the comment was "related to" sex. We are again satisfied that it was. Again, like the other comments made this conduct stemmed from the Third Respondent's belief that there was "more to" the relationship between the Claimant and Second Respondent because he was aware of the latter's sexual interest in the Claimant. Again, for the same reasons that we have already given in respect of the general comments made and the "knew everything" statement, we are satisfied that these comments also related to the Claimant's sex.

292. The complaint of harassment contrary to Section 26(1) is well founded and succeeds in respect of this element of the claim.

The Second Respondent informing the Claimant on 12th April 2017 that she was becoming "troublesome".

293. As we have already set out above in our findings of fact, we are satisfied from the evidence before us that the Claimant was referred to by the Second Respondent as becoming "troublesome". That was against the background of the Claimant having spoken to the Second Respondent about concerns that she had regarding what she had been told about being posted to Leicester Forest East; not having a fob and identification like the other trainees and wanting to transfer to work alongside Mr. Currie.

294. However, we do not conclude that that was, as the Claimant contends, on the basis that she had rejected his advances towards her.

295. We consider it far more likely, having regard to the pattern of controlling behaviour of the Second Respondent to which we have referred already above, that he simply did not take kindly to the Claimant arguing with him – particularly about decisions that he himself had made such as which depot to send the

Claimant to and who she would be supervised with. When the Claimant had previously disagreed with the Second Respondent he had of course on her evidence acted in a petulant manner – for example when she had refused Sunday lunch with him when she had stayed at his home – and we consider this to be simply a further extension of that position. In short, the Second Respondent did not take kindly to the Claimant challenging him and his use of the word "troublesome" was more than likely not made in that context.

296. That would, in our view, also accord with the fact that the Second Respondent was becoming agitated during the conversation – something that he had done before when the Claimant had disagreed with him – and that he had commented that he did not have time for such matters.

297. Therefore, we do not find that the conduct complained of in this regard amounted to harassment contrary to Section 26(3) EqA 2010 as it was not related to the Claimant's sex but to the Second Respondent's dislike of being argued with.

298. However, the Claimant contends in the alternative that the comment "troublesome" was gender related so as to see it amount to harassment under Section 26(1) EqA 2010. In respect of the latter point, had the Second Respondent used the words "nagging wife"; "fishwife" or similar then we may have accepted a certain gendered tone to the comment but the term "troublesome" does not in our view fit into such a category and is no more aimed at women than it is at men when used in the context that we have found here.

299. This complaint therefore fails and is dismissed.

<u>The Third Respondent shouting at the Claimant on 13th April 2017 and being aggressive towards her.</u>

300. We are satisfied, as set out in our findings of fact above, that the Third Respondent did act in the way described by the Claimant after taking her outside for a word with her. We are satisfied that the reason that he did so was because the Second Respondent had told him that the Claimant had complained about him the previous day and had given a distorted version of what had been said in that regard. The Third Respondent was under the impression that the Claimant had complained that, effectively, he was not doing any or much work and it is perhaps against that background not entirely surprising that he was irked about that matter.

301. We do not accept that the reason for the treatment of the Claimant by the Third Respondent was related to sex because she was a woman who had been romantically linked to the Second Respondent or because he suspected that the Claimant was not telling the truth about the "relationship"; it was because she was thought by the Third Respondent to have made an unfounded complaint about him.

302. We have considered, however, the Claimant's alternative contention that the Second Respondent had made the comments to the Third Respondent as to what he alleged the Claimant to have said about him as the Claimant had rejected his advances. Even if that was the motivation for the Second Respondent having done so (and we find it more likely that he had done so because he viewed the Claimant as "troublesome" by dint of her complaining to or disagreeing with him on work matters) then the Third Respondent's quite separate conduct of remonstrating with the Claimant about what he had been told that she had said was in our view too remote a connection to the motivation

of the Second Respondent for stirring up trouble to amount to harassment contrary to Section 26(3) EqA 2010.

303. Therefore, we do not find that the conduct complained of in this regard amounted to harassment contrary to Section 26(3) EqA 2010.

<u>The Second Respondent informing the Claimant on 13th April 2017 that she was being "troublesome", was a new starter and that she needed to remember that she was in her three-month probation period.</u>

304. As we have already set out in our findings of fact above, we are satisfied that the Second Respondent did make the comments which are set out above during his telephone call with the Claimant on 13th April 2017.

305. The Claimant contends that the reason for the comment was because of her rejection of the Second Respondent's advances towards her. Again, we find it much more likely on the evidence before us that this was a further manifestation of the Second Respondent's dislike of the Claimant disagreeing with or arguing with him. The background to this matter was that the Claimant had argued with the Third Respondent, a close friend of the Second Respondent, and had threatened to go to Stirling House.

306. The Second Respondent had then made considerable efforts to speak with the Claimant – calling her several times and also calling Ms. Smith and the Third Respondent on a number of occasions – before managing to get the Claimant to talk to him over the telephone. We find it more likely that the Second Respondent made the comment in view of the fact that he was disgruntled about the Claimant's argument with the Third Respondent and his having to make attempts to speak to her and in that context viewed her as "troublesome". We do not suggest for one moment in the circumstances that that was a justified comment, but given the pattern of behaviour of the Second Respondent which we have already described, we consider that that was at the heart of his comments to the Claimant on 13th April 2017 and that his reference to her probationary period was an effort to bring her back into line.

307. Therefore, we do not find that the conduct complained of in this regard amounted to harassment contrary to Section 26(3) EqA 2010 for the same reasons as we have already given in respect of the earlier "troublesome" comment.

308. The Claimant again contends in the alternative that the use of the word "troublesome" was gendered so as to bring it within Section 26(1) EqA 2010. For the same reasons as we have given above with regard to the 12th April comment, we reject that assertion.

This complaint therefore fails and is dismissed.

<u>The Second Respondent informing the Claimant on 13th April 2017 that he was coming over to the depot to "have it out" with her.</u>

309. Again, our findings of fact above reflect that we prefer the account of the Claimant on this point and that the Second Respondent did say that he was coming to the depot to "have it out" with her. Again, this formed part of the conversation, which had developed into something of an argument, over the telephone on 13th April 2017. Akin to our conclusions with regard to the comments about being troublesome and the Claimant's probationary period, we are satisfied that the reasons that the Second Respondent made this comment

was on the basis that he was angry that the Claimant had argued with him. He disliked being challenged or disagreed with. It was not, in our view, because the Claimant had rejected him but because she had argued with him and he again, as part of his controlling nature, intended to go to the depot to "have it out" with the Claimant in order to bring her back into line.

310. That was not, however, as a result of her rejection of his advances nor because he had previously been interested in her as a woman – it was because she had dared to disagree with and argue with him.

311. Therefore, we do not find that the conduct complained of in this regard amounted to harassment contrary to Section 26(1) or (3) EqA 2010 for the same treasons as we have given in respect of the "troublesome" comments.

<u>On or around 25th April 2017, the Third Respondent telling the Claimant that he had not made statements about her</u>

312. As we have set out in our findings of fact above, we prefer the Claimant's evidence on this point. Ultimately, we have no way of knowing (given his blanket denial of having made the comment although, as we have said we do not accept that) whether the Third Respondent was referring to a statement regarding the Claimant's grievance or the complaint which had been made by the Second Respondent about the Claimant. If it was the latter, what the Third Respondent had said in that regard was of course untrue.

313. There was clearly by this stage a degree of bad feeling between the Claimant and the Third Respondent. Most notably, the Third Respondent thought that the Claimant had made an unfounded complaint against him to the Second Respondent. We ultimately cannot properly ascertain why the Third Respondent made the comment that he did, although it may simply be to unsettle the Claimant given that level of bad feeling, but we do not find it likely that, as the Claimant contends, it was made because of the perception that the Third Respondent had about the Claimant's "relationship" with the Second Respondent. We remind ourselves in this regard that the Third Respondent had in fact been seeking to promote a relationship between the Claimant and the Second Respondent – such as in his use of the "could do worse" comments.

314. We also do not find that the comment amounted to sex-related harassment. Ms. Barrett contends that it referred to the Claimant's grievance which she had made about the Second Respondent's sexual pursuit of her but we find ourselves unable to conclude that that was the case. It could well have related to the complaint that the Second Respondent had made about the Claimant – which might perhaps be the more logical use of the term *"statements about **<u>you</u>**"* (our emphasis).

315. Therefore, we do not find that the conduct complained of in this regard amounted to harassment contrary to Section 26 EqA 2010 because it was not conduct that related to the Claimant's sex and this aspect of the claim fails and is dismissed.

<u>Complaints of harassment; direct discrimination and victimisation</u>

316. We turn then to the complaints of harassment; direct discrimination and victimisation.

317. We deal firstly, for the purposes of the victimisation complaint, with whether the acts relied upon by the Claimant were protected acts for the purposes of Section

27 EqA 2010. It is perhaps fair to say that Mr. Adkinson does not argue strongly in relation to this point; leaving those as matters for the Tribunal.

318. The protected acts relied on and our conclusions in respect of them are as set out below:

The Claimant's grievance of 17th April 2017

319. We have no hesitation in concluding that the grievance was a protected act. As we have already observed, the Claimant clearly made reference to the fact that the Second Respondent wanted to be more than friends; that she had rebuffed his advanced and that he continued nevertheless. She made express reference to being harassed and the Second Respondent continuing to harass her and given the matters to which the Claimant referred about the Second Respondent's intentions towards her, it is plain as a pikestaff to see that she was complaining about sexual harassment.

320. We are therefore entirely satisfied that the Claimant's comments within her grievance were sufficient to constitute a protected act under Section 27(2)(d) EqA 2010 as it was clear that she was making an allegation that the Second Respondent had sexually harassed her.

Comments made in the grievance meeting of 27th April 2017

321. As we have set out in our findings of fact above, during the grievance meeting, the Claimant clearly explained to Mr. Dangerfield that the Second Respondent had taken her contact details from her application for employment and had continually messaged and telephoned her and that he had attempted to kiss her. It is clear from looking at the content of the minutes of that meeting that that the Claimant was saying that she had been sexually harassed by the Second Respondent.

322. In view of the complaints that she was making about the conduct of the Second Respondent in that regard we are entirely satisfied that the Claimant's comments at the grievance meeting with Mr. Dangerfield were sufficient to constitute a protected act under Section 27(2)(d) EqA 2010.

Comments made by the Claimant in her appeal meeting on 4th August 2017

323. As we have already set out above, during her appeal meeting the Claimant made it clear that there had been a failure to comply with the Equality Act; that the Equality Act was designed to "stop men like that". In view of the complaints that she was making about the conduct of the Second Respondent and her references to the Equality Act, we are entirely satisfied that the Claimant's comments at the appeal meeting were sufficient to constitute a protected act under Section 27(2)(d) EqA 2010.

The Claimant's email to Diane Naylor of 10th August 2017

324. This email has to be viewed in the context of the attachments which accompanied it. Those were a series of emails which the Claimant told Mrs. Naylor demonstrated that she had rejected the advances of the Second Respondent and were sent in the context of Mrs. Naylor having cast her doubt on whether the Second Respondent's conduct was "unwanted". She also made that position clear in her covering email which said "*my responses were in a manor* [sic] *which do not indicate my personal acceptance".*

325. It is abundantly clear to us that that email was making the position clear that the Claimant was complaining that she had been sexually harassed by the Second Respondent and the content was again therefore sufficient to constitute a protected act under Section 27(2)(d) EqA 2010.

326. Turning then to the individual complaints in relation to this part of the claim:

The enquiries by Mr. Dangerfield of members of staff at the depot as to whether the atmosphere had changed since the Claimant had begun to work there.

327. Mr. Dangerfield accepted in his evidence before us that he had had conversations with members of staff in this regard. The Claimant contends that the conduct came about as a result of the fact that the enquiries had been prompted by the Second Respondent because of the Claimant's rejection of his advances towards her. The Claimant does not pursue the complaint as sex related harassment; direct discrimination or victimisation (see paragraph 34m(iii) of Ms. Barret's Skeleton Argument).

328. Firstly, we do not find that the complaint about the Claimant stemmed from her rejection of the Second Respondent's actions - she had in fact rejected him on a number of occasions previously. We find it more likely than not that the reason that the Second Respondent made the complaint against the Claimant was because he recognised that the Claimant was going to report his conduct to HR (given she had said as much to him in the conversation of 13th April 2017) and he as effectively getting in first with his version of events and to seek to paint the Claimant in a negative light.

329. However, even had we found that the purpose of the complaint had been because of the Claimant's rejection of him, that is not the conduct complained of by the Claimant in respect of this aspect of the claim. The conduct in that regard was that of Mr. Dangerfield in interviewing staff. That came as a result of the statements as a whole – and particularly Ms. Smith's statement was vocal as to the issue of an "unbearable atmosphere".

330. The reason that Mr. Dangerfield investigated the matter was not because of a rejection of the Second Respondent's advances by the Claimant but because those concerns had been raised by staff and it was his responsibility in considering that complaint to investigate those matters. The motivation for the raising of the complaint itself by the Second Respondent (assuming that we had found it to be on the basis of the Claimant's rejection of him) is too remote to visit upon Mr. Dangerfield's otherwise innocent and understandable enquiries a finding of harassment under Section 26(3)(c) EqA 2010.

331. This complaint therefore fails and is dismissed on the basis that the action was taken as a result of complaints about the atmosphere and not for any reason related to the Claimant's sex.

The grievance outcome

332. As we have already set out above, Mr. Dangerfield's grievance outcome decision was to partially uphold the Claimant's grievance but he did not conclude that the Second Respondent had sexually harassed her.

333. As we have already observed, we are satisfied that Mr. Dangerfield did not undertake a full and proper investigation into the Claimant's grievance. He took the fact that she had replied to messages sent by the Second Respondent at

face value and because his view was that the content showed that she had reciprocated in the contact, he did not properly interrogate what the Claimant was saying about how she had felt compelled to reply. He fell into the same mindset as Mrs. Naylor that on the face of the messages; there must be more to it.

334. That, we accept as Ms. Barrett submits, was indicative from the findings that Mr. Dangerfield made that there was no "intent" as claimed in the grievance and that the Second Respondent interacted socially with the team to the level that they each wanted. That finding logically included the Claimant and it is clear that the conclusion reached in this regard by Mr. Dangerfield was that the conduct complained of by the Claimant was not unwanted.

335. Furthermore, as Ms. Barrett also points out in her submissions, Mr. Dangerfield had drawn from the representations made by the Claimant in the grievance meeting that the Second Respondent had gone to kiss her to say in his evidence before us that the Claimant *"even kissed Grant at that meeting".* Again, in our view that is indicative of the fact that Mr. Dangerfield viewed the Claimant's messages as being demonstrative of a welcoming of his attentions and that the conduct of which she complained could not have been unwanted. He did not consider the totality of the evidence or what the Claimant was saying about the pressure placed on her.

336. We are therefore entirely satisfied that the reason that Mr. Dangerfield reached the conclusions that he did was because of the Claimant's initial messages to the Second Respondent which, we accept, was a submission to the Second Respondent's harassing conduct. Had she not submitted in that regard, Mr. Dangerfield would in our view have treated the grievance more seriously and interrogated what the Claimant was saying in the face of the content of the messages sent by the Second Respondent to a subordinate member of staff.

337. We are satisfied for those reasons that the grievance outcome was an act of harassment contrary to Section 26(3) EqA 2010 and this complaint is therefore well founded and succeeds.

338. We should observe that the Claimant also contends that the actions of Mr. Dangerfield also amounted to direct discrimination and victimisation. Dealing firstly with the contention that the failure to uphold the grievance in totality amounted to direct discrimination, we need to consider the "reason why" the grievance was not upheld in that way. We are satisfied, as we have said above, that that was on the basis that Mr. Dangerfield had a fixed mindset regarding the Claimant's messages and her initial submission to the Second Respondent's conduct.

339. We ask then if Mr. Dangerfield would have treated a man in those circumstances more favourably. We do not conclude that he would have. We are satisfied that he would have viewed the same messages if they had been sent by a man in response to messages from the Second Respondent in the same way and to that end we are satisfied that the Claimant was not treated less favourably because of her sex.

340. We turn then to the question of whether the rejection of the Claimant's grievance amounted to victimisation. We remind ourselves that the questions for us in that regard are as follows:

(i) Whether the alleged victimisation arose in any of the prohibited circumstances covered by Section 39(3) and/or Section 39(4) EqA 2010;

(ii) If so, was the Claimant subjected to a detriment; and

(iii) If so, was the Claimant subjected to that detriment because she had done a protected act. The only protected acts which engage in respect of this element of the complaint are the Claimant's grievance and the content of her comments at the grievance meeting itself. We have found both to be protected acts.

341. We deal with each of those questions in turn. With regard to the first question, the applicable prohibited circumstance would fall within Section 39(4)(d). The question then falls as to whether that was in fact a detriment to the Claimant. We are satisfied that it was. The Claimant had raised serious complaints of harassment but, as she complained from the outset, she was not being listened to. The rejection of the material part of her complaints in that regard cannot be anything but a detriment.

342. We turn then to consider if in taking his decision Mr. Dangerfield was materially influenced by the fact that the Claimant had done a protected act. We are not satisfied that this played any part in his decision. That decision was on the basis of his reading of the Claimant's messages and conclusion that the conduct had accordingly not been unwanted. Whilst Ms. Barrett submits that Mr. Dangerfield was biased against the Claimant because she had raised allegations of sexual harassment against the Second Respondent as a direct report of his with whom he had worked for a number of years and with whom he had a good working relationship, we do not find that that played any part in his decision. That decision was simply the result of being blindsided by the content of the Claimant's initial messages to the Second Respondent and her submission to his conduct. Thereafter, he lost sight of the wood for the trees.

343. Therefore, whilst the complaint of harassment in respect of this matter succeeds, the alternative complaints of direct discrimination and victimisation fail and are dismissed.

The failure to relocate the Claimant

344. As we have found above, there was a failure to properly consider and investigate the possibility of relocating the Claimant. Particularly, Mr. Dangerfield took no steps to enquire of other drivers if they were prepared to swap depots and we remind ourselves that the Claimant had said that she was prepared to work anywhere along the M1 motorway.

345. We are satisfied that the reason for failing to make appropriate enquiries in this regard was again because Mr. Dangerfield's mindset was that nothing particularly untoward had occurred that could not be resolved via mediation. He would clearly have not adopted that mindset had he considered properly what the Claimant was telling him in that she had been sexually harassed by the Second Respondent; that he had abused his position as her line manager to do so and that she was frightened of him.

346. Again, Mr. Dangerfield reached his conclusion that mediation was the way forward and failed to properly consider the request for relocation because the Claimant's initial messages to the Second Respondent amounted to a submission to the Second Respondent's harassing conduct. Again, he did not view for those reasons the conduct as unwanted. Had the Claimant not initially

submitted, Mr. Dangerfield would in our view have treated the relocation request much more seriously and would not have suggested mediation as the resolution in the circumstances. We are therefore satisfied that the Claimant was treated less favourably than he would have treated her had she not initially submitted to the Second Respondent's conduct.

347. We are satisfied for those reasons that the grievance outcome was an act of harassment contrary to Section 26(3) EqA 2010 and this complaint is therefore well founded and succeeds.

348. The Claimant also contends that the failure to relocate her was an act of direct discrimination and/or victimisation. Again, for the same reasons as we have given in respect of the grievance outcome itself, we do not conclude that the decision not to relocate the Claimant (which came from the same mindset that resulted in the grievance decision) was an act of either direct discrimination or of victimisation and that element of the claim also fails and is dismissed.

The notes of the grievance appeal hearing

349. The notes of the grievance appeal hearing were taken by Jennifer Hurley of HR, from whom we have not heard, although there was some discussion as to the content of the same with Mrs. Naylor following receipt of the amendments which the Claimant made to the notes. As we have already indicated above, we accept that the amendments which the Claimant made to the notes were more than likely an accurate representation of what was discussed at the appeal hearing.

350. However, we use our own industrial experience and experience as sitting in this jurisdiction to observe that notes of such hearings are rarely verbatim nor were these notes expressed as such. It is not unusual that things are missed out – and we would observe that it was not the case that the comments made by Mrs. Naylor to which we refer below were omitted nor was it the case that the Claimant was not given the opportunity to review and make her own amendments to the notes.

351. There is nothing before us to suggest that the fact that the notes were not taken verbatim and entirely accurately had anything at all to do with the Claimant's sex; the fact that she had initially submitted to the Second Respondent's conduct or the fact that the Claimant had done a protected act or acts.

352. The complaints of harassment, direct discrimination and victimisation in respect of this matter therefore fail and are dismissed.

The way in which the investigation of the Claimant's grievance and the grievance meeting was conducted

353. We have split this complaint into two parts given that we do not find that they can easily be rolled into the complaint about the appeal hearing given that they were conducted by two separate individuals. We therefore deal separately below with the conduct of the appeal hearing on 4th August 2017.

354. We have to say that we agree entirely with the assessment by Ms. Barrett in her skeleton argument that the way in which Mr. Dangerfield dealt with the grievance meeting was "atrociously poor". He was ill prepared, had not even read the grievance until five minutes before the hearing was due to start and was woefully inexperienced to be dealing with a complaint of this nature. He did not challenge the accounts of the Second and Third Respondent even when he suspected that

they were not telling him the truth and, as we have observed separately, his grievance outcome was scant on the evidence upon which he relied in respect of his findings, for example, that the team (including quite obviously the Claimant) interacted with the Second Respondent to the level that they all wished and that the "intent" relied upon by the Claimant was not accepted.

355. However, we are satisfied that the reasons for all of that was quite simply because Mr. Dangerfield was not experienced enough, adequately prepared or properly equipped to deal with the matter. We do not find that his mindset as to the Claimant's initial submission to the Second Respondent's conduct had formed at the point of the initial grievance meeting as that did not come until later when he had read the grievance letter and the messages that the Claimant provided during the course of the grievance process. His shambolic dealings did not therefore amount to harassment.

356. Equally, the "reason why" matters progressed as they initially did was on the basis again of inexperience and ill-preparedness. There is nothing before us to suggest that Mr. Dangerfield would have been any better prepared or dealt with the grievance meeting any differently for a male member of staff making the same complaints as the Claimant. Accordingly, we do not find that to have been an act of direct discrimination.

357. Finally, there is nothing before us to suggest that Mr. Dangerfield was in any way motivated by the fact that the Claimant had done a protected act; again inexperience and lack of preparation were the reasons why the grievance meeting was as "atrociously poor" as it was. The complaint of victimisation in respect of this element of the claim therefore also fails and is dismissed.

The conduct of the appeal hearing

358. However, the same cannot be said of the way in which the appeal hearing was conducted. In contrast to the ill-prepared Mr. Dangerfield, Mrs. Naylor had read all of the text messages between the Claimant and the Second Respondent before the opened the appeal meeting. Her view from the outset was that from those messages "there seems more". Her opening gambit in essence was to challenge and disbelieve the Claimant.

359. She also made a judgment at the outset of the hearing having regard to a selection of just a few of the many messages in question – plucked it has to be that "this does not read to me as unwelcomed". The Claimant was challenged and questioned throughout the meeting in the way that we have described in our findings of fact above and even questioned as to whether the Claimant was saying that she had not had sexual intercourse with the Second Respondent. As we have observed already, that question was entirely unnecessary and the Claimant had made it consistently and abundantly clear that there had been no relationship with the Second Respondent but that he had in fact been harassing her.

360. We are satisfied, as we have said previously, that Mrs. Naylor had already reached the conclusion that, because of the content of the text and Facebook messages from the Claimant to the Second Respondent, the conduct of which she complained could not have been unwanted. She clearly did not believe the Claimant and that informed her approach – which was tantamount as Ms. Barrett points out to cross examining the Claimant – and to making snap judgments and questioning about sexual intercourse.

361. The messages upon which Mrs. Naylor specifically relied and referenced in the grievance appeal meeting were submissions by the Claimant to the Second Respondent's harassing conduct. Had the Claimant not submitted to that conduct, we are satisfied that Mrs. Naylor would not have made the judgment that she did ahead of the meeting and question and comment to the Claimant as she did. We are therefore satisfied for those reasons that the way in which the grievance appeal meeting was conducted was an act of harassment contrary to Section 26(3) EqA 2010 and this complaint is therefore well founded and succeeds.

362. However, the Claimant also contends that the actions of Mrs. Naylor in this regard also amounted to direct discrimination and victimisation. Dealing firstly with the question of direct discrimination, we again need to consider the "reason why" Mrs. Naylor acted as she did. That was of course on the basis that Mrs. Naylor had made up her mind before the appeal hearing that there was "more to it" and that the Claimant's messages were not demonstrative of any unwanted conduct from the Second Respondent.

363. We accordingly then to the question of whether Mrs. Naylor would have treated a man in those circumstances more favourably. We do not conclude that she would have. Again, we are satisfied that she would have viewed the same messages if they had been sent by a man in response to messages from the Second Respondent in the same way and to that end we are satisfied that the Claimant was not treated less favourably because of sex.

364. We turn then to the complaint of victimisation.

365. In these circumstances, the applicable prohibited circumstance would again fall within Section 39(4)(d) EqA 2010. The question then falls as to whether that was in fact a detriment to the Claimant. We are satisfied that it was. The Claimant had raised serious complaints of harassment but she was not listened to – a fact she made clear in the grievance appeal meeting. A decision on what she was saying had already been taken before the meeting even began. The Claimant was subjected as a result to challenging and inappropriate comments and a clear indication that she was not believed from the outset. She did not have a fair hearing and was reduced to tears. Her complaint about this matter cannot be anything but a detriment.

366. We turn then to consider if Mrs. Naylor was materially influenced by the fact that the Claimant had done a protected act. We are not satisfied that this played any part in that decision. That reason for her conduct at the appeal meeting was on the basis of the reading of the Claimant's initial messages to the Second Respondent and the mindset formulated as a result that the conduct could not have been unwanted. We are not satisfied that the fact that the Claimant had done a protected act formed any part at all of the reasons why Mrs. Naylor treated the Claimant as she did at the appeal meeting.

367. Therefore, whilst the complaint of harassment in respect of this matter succeeds for the reasons given above, the alternative complaints of direct discrimination and victimisation fail and are dismissed.

The grievance appeal outcome

368. As we have already observed above, we are satisfied that Mrs. Naylor fell into exactly the same mindset as Mr. Dangerfield had in that by looking in insolation at the Claimant's initial messages to the Second Respondent she formed the

view that there was "more to it" and that the Second Respondent's conduct could not have been unwanted conduct. It was clear from the outset of the appeal hearing that Mrs. Naylor had formed that view, not least by her comments in both the grievance appeal meeting itself (such as checking with the Claimant that she was saying that she had not had sexual intercourse with the Second Respondent and her reference to individual messages) and the appeal outcome letter itself.

369. Akin to the way in which Mr. Dangerfield dealt with the matter, Mrs. Naylor did not consider the totality of the evidence or what the Claimant was saying about the pressure placed on her nor did she take into account the specific messages to which the Claimant referred her after the grievance appeal meeting when she had made it clear that she had "said no".

370. We are therefore satisfied that the reason that Mrs. Naylor reached her decision to reject the Claimant's grievance appeal was on the basis of the Claimant's initial messages to the Second Respondent which, we again accept, was a submission to the Second Respondent's harassing conduct. Had she not done so, Mrs. Naylor would – and should - have treated the grievance appeal more seriously and properly investigated and considered the points that the Claimant was making and to which she specifically directed her during the course of the grievance appeal.

371. We are satisfied for those reasons that the grievance appeal outcome was also an act of harassment contrary to Section 26(3) EqA 2010 and this complaint is therefore well founded and succeeds.

372. However, the Claimant also contends that the actions of Mrs. Naylor also amounted to direct discrimination and victimisation. Dealing firstly with the contention that the failure to uphold the grievance appeal amounted to direct discrimination, we again need to consider the "reason why" the appeal was not upheld. As per our conclusions on the harassment complaint we are satisfied that that was on the basis that Mrs. Naylor had made up her mind before the appeal hearing that there was more to the matter and that the Claimant's messages did not belie any unwanted conduct from the Second Respondent.

373. We accordingly turn to the question of whether Mrs. Naylor would have treated a man in those circumstances more favourably. We do not conclude that she would have. Again, we are satisfied that she would have viewed the same messages if they had been sent by a man in response to messages from the Second Respondent in the same way and to that end we are satisfied that the Claimant was not treated less favourably because of her sex.

374. We turn then to the question of whether the rejection of the Claimant's appeal amounted to victimisation.

375. With regard to the first question, the applicable prohibited circumstance would again fall within Section 39(4)(d). The question then falls as to whether that was in fact a detriment to the Claimant. We are satisfied that it was. The Claimant had raised serious complaints of harassment but again she was not being listened to. The rejection of the material part of her complaints in that regard cannot be anything but a detriment.

376. We turn then to consider if in taking her decision Mrs. Naylor was materially influenced by the fact that the Claimant had done a protected act. We are not satisfied that this played any part in that decision. That decision to reject the appeal was again on the basis of the reading of the Claimant's initial messages

and the mindset formulated as a result that the conduct could not have been unwanted. Again, and akin to Mr. Dangerfield, she also lost sight of the wood for the trees.

377. Therefore, whilst the complaint of harassment in respect of this matter succeeds, the alternative complaints of direct discrimination and victimisation fail and are dismissed.

Constructive dismissal

378. We turn finally then to whether the Claimant's resignation from employment with the First Respondent rendered her constructively dismissed.

379. Firstly, we consider whether the actions of the First Respondent and/or those employees for whose conduct they were ultimately responsible breached the implied term of mutual trust and confidence.

380. We are satisfied that that implied term was breached in respect of the matters of harassment that we have found to be made out. The role with the First Respondent was a very significant and important one for the Claimant and one which she truly wanted to build into a career; something that the First and Second Respondents were well aware of. The actions of the Second Respondent were not such as to ultimately give the Claimant that chance. She was deliberately placed at a different depot to that which she was supposed to attend – namely Leicester Forest East – for the sole purpose that the Second Respondent wanted her to work alongside the Third Respondent. As we have found above, his motivation for that was not to assign the Claimant the most appropriate supervisor and depot but because he was sexually attracted to her.

381. That in turn led to a course of the Claimant being subjected to comments from the Third Respondent about a "relationship" with the Second Respondent such as that she "could do worse" than him. The Claimant found the suggestion of anything of a romantic nature with the Second Respondent objectionable and such invasive and inappropriate comments clearly caused her a great deal of distress. They marred the course of what should otherwise have been a happy time for the Claimant as she moved into the job that she had coveted and was excited to succeed in being appointed to.

382. The Claimant attempted to have matters rectified by way of issuing a grievance. As we have observed, Mr. Dangerfield was unprepared for the grievance meeting and he did not take the grievance seriously. He did not listen properly or investigate what the Claimant was actually saying. As was clear from the Claimant's comments on 13th April 2017 to the Third Respondent, she simply wanted someone to listen to her. Mr. Dangerfield failed to do so. In all fairness to him, this was a complicated and sensitive grievance and it was one which the First Respondent should never have allocated to a manager who had no prior experience of dealing with even one straightforward grievance in the past.

383. The dismissal of the Claimant's grievance, as we have found, was an act of harassment and the fact that Mr. Dangerfield had clearly ignored what the Claimant had told him was clearly a matter of intense frustration for her as her later appeal demonstrated. It was naturally even more important for the Claimant that at the appeal stage someone actually listened to what she was saying.

384. Those matters eventually took their toll on the Claimant's such that she was signed off as being unfit to work on 2nd May 2017 and in fact never returned to

work for the First Respondent.

385. Regrettably, the way in which the appeal was dealt with simply compounded the situation further. At almost the outset of the appeal meeting Mrs. Naylor was, as Ms. Barrett aptly puts it, almost cross examining the Claimant about her messages to the Second Respondent. She was clear from the outset that she did not view the conduct as unwanted and that was before the Claimant had had much opportunity to speak. Again, the Claimant made the quite understandable comment at the appeal meeting that no one was listening to her.

386. Mrs. Naylor had formed that view on the basis of the messages that she had read and, for the reasons that we have already found, her comments at the appeal meeting and the appeal outcome made it clear that the decision was pre-judged and was an act of harassment.

387. We accept that the outcome of the appeal was the last straw for the Claimant. She had received two pages of the outcome letter on 28th August 2017 and it was abundantly clear from the same that the appeal had not been upheld. We are satisfied that that was the last straw which prompted the Claimant's resignation two days later.

388. It is clear to us from the foregoing that the acts of harassment to which the Claimant was subjected and to which we have referred above were entirely destructive of the implied term of mutual trust and confidence. The Claimant had been subjected to harassment since the commencement of her working life with the First Respondent. She had reported those matters and no one had listened to her because of the focus on messages that she had sent to the Second Respondent. The First Respondent was not prepared to countenance moving the Claimant to another depot and wanted her to engage in mediation with and continue to be line managed by the very person who she had complained had sexually harassed her. The position had made the Claimant ill and there was no possibility of her countenancing a return to work given that she would be required to return to Sandiacre where the Third Respondent was based and to continue to be line managed by the Second Respondent.

389. We are entirely satisfied that given the background that we have described, there was a breach of the implied term of mutual trust and confidence. That breach was a fundamental one – it was conduct that went to the very core – or the root – of the contract between the Claimant and the First Respondent. In short, the position that the Claimant was left in was that there was no prospect of her ever being able to return to work. In resigning in response, the Claimant is to be treated accordingly as having been dismissed.

390. The Claimant's resignation therefore amounted to a dismissal and was as such an act of unlawful direct discrimination contrary to Section 39(2)(c) EqA 2010. The complaint in this regard therefore is also well founded and succeeds.

REMEDY

391. By agreement with the parties at the outset we have not heard evidence in respect of the matter of remedy and given that a number of the complaints brought by the Claimant have succeeded there will shortly be listed a Preliminary hearing to make Orders for the preparation of the claim for a Remedy hearing and to list that hearing accordingly.

392. The parties do of course have the continued use of the services of ACAS to assist them in seeking to resolve the matter of remedy without the need for a further hearing.

Employment Judge Heap
Date: 4th December 2018

JUDGMENT SENT TO THE PARTIES ON

FOR THE TRIBUNAL OFFICE