THE EMPLOYMENT TRIBUNALS

Claimant:	**Ms Sophia Walker**
Respondent:	**(1) Wallem Shipmanagement Limited**
	(2) Mr Brian Phipps
Heard at:	**Cambridge Employment Tribunal**
On:	**9, 10 and 11 May 2018**
Before:	**Employment Judge M Warren**
Members:	**Mr D Sutton and Mr R Eyre**
Representation	
Claimant:	Ms H Laurent, (Claimant's sister)
Respondent:	Mr D Reade QC

RESERVED JUDGMENT

The Claimant's claims fail and are dismissed for want of jurisdiction.

REASONS

Background

1. By a claim form issued on 11 December 2016, Ms Walker brings a claim of sex discrimination arising out of the terms an email dated 18 July 2016, in which Mr Phipps stated that whilst he would be interviewing 10 candidates for prospective sea-going positions with the First Respondent, he would not be offering a place for Ms Walker, because she is female and it cannot offer the appropriate on-board environment. The claim is resisted by the First Respondent. No response has been received from Mr Phipps; there has been no communication from Mr Phipps.

Issues

2. The particulars of claim set out in the claim form are prolix and repetitive, running to 38 pages with no numbered paragraphs. That is not a criticism of Ms Walker; she has been represented throughout until the last moment by her mother, (Ms Haines) who is not a lawyer. The issues were identified at a Preliminary Hearing before Employment Judge Tynan on 7 April 2017. I set out the issues as so identified, below:

Jurisdiction

i. Does the Tribunal have jurisdiction to hear the claims under Rule 8(2) of Schedule 1 to the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2014?

ii. Does the Tribunal have jurisdiction to hear the claims under s120 of the Equality Act 2010?

Direct Sex Discrimination

iii. Did the First Respondent treat the Claimant less favourably on the grounds of her sex?

The Claimant relies on the following:

a) An email from the Second Respondent dated 18 July 2016 sent to Jonathan Ward at The Blackpool and the Fylde College, Fleetwood Nautical Campus.

b) A statement made by the First Respondent to the Fleetwood Weekly News which was published on or around 3 August 2016.

Victimisation

v. Did the First Respondent subject the Claimant to a detriment because she committed a protected act?

vi. Was the Claimant's complaint of sex discrimination dated 19 July 2016 a protected act?

vii. Did the First Respondent not offer to interview the Claimant because of her alleged protected act and did this subject the Claimant to a detriment?

viii. Did the First Respondent send an email to the Claimant dated 25 July 2016 because of the Claimant's alleged protected act and did this subject the Claimant to a detriment?

ix. Did the First Respondent put a statement on its website from 5 August 2016 because of the Claimant's alleged protected act and did this subject the Claimant to a detriment?

ix. Did the First Respondent not provide the Claimant with the outcome of the investigation into the complaint made by the Claimant on 19 July 2016 because of the Claimant's alleged protected act and did this subject the Claimant to a detriment?

Harassment

x. Did the First Respondent engage in unwanted conduct as a result of the Claimant's sex which had the purpose of violating the Claimant's dignity?

xi. Was the First Respondent's email sending the Claimant an attachment to an email (an article from the First Respondent's company magazine dated 24 August 2016) unwanted conduct as a result of the Claimant's sex?

xii. Did this have the purpose or effect of violating the Claimant's dignity?

Remedy

xiii. If the Tribunal determines that there has been any breach by the First Respondent in relation to any of the claims made by the Claimant what is the amount which should be paid by the First Respondent to the Claimant?

xv. Should the Claimant be paid any sum for injury to feelings? If so, what sum?

xvi. Should the Claimant be paid any sum for loss of earnings? If so, at what level and for what period?

xvii. Is the Claimant entitled to any aggravated or additional damages as a result of the First Respondent's actions?

Service on Mr Phipps

3. The claim form was received and the proceedings issued on 11 December 2016. Mr Phipps was named as Second Respondent and his address was given as the same as that of the First Respondent. Notice of these proceedings was therefore originally sent to Mr Phipps at the First Respondent's address.

4. On being copied in to an email to the tribunal from Miss Walker's representative, Mr Doughty wrote to the tribunal on 22 January 2017, essentially noting that the correspondence indicates that employment tribunal proceedings had been issued but no documentation relating to the same had been received by the First Respondent and further noting that Mrs Haines was also emailing Mr Phipps at a Wallem email address, but that he no longer worked for Wallem.

5. On 6 February 2017 on the directions of an Employment Judge, the proceedings were served by email on Mr Doughty or the First Respondent and on a generic Wallem email address.

6. On 23 February 2017, solicitors for the First Respondent wrote to point out that Mr Phipps does not work for the First Respondent and he will have no knowledge of the claim.

7. The First Respondent submitted its Response through its solicitors on 6 March 2017, making it clear that it's Response was on behalf of the First Respondent only.

8. On 8 March 2017 a letter was written to the Claimant by the tribunal asking if she had an address for service on the Second Respondent.

9. Ms Haines wrote on 13 March 2017 to say that the Claimant does not have an address for Mr Phipps, but the First Respondent should have.

10. On 15 March 2017, the First Respondent's solicitors wrote to say that as a consequence of data protection legislation in Hong Kong, (where it is based) it is unable to disclose the address for Mr Phipps which it holds, as to do so would constitute a criminal sanction.

11. On 27 March 2017 on the instructions of Employment Judge Moore, a letter was written to the Claimant to inform her that it is for her to provide an address for the Second Respondent and if she is unable to do so, she cannot proceed with her claim against him. Ms Haines replied referring to rule 89, (permitting substituted service).

12. At the Preliminary Hearing on 7 April 2017, an order was made by Employment Judge Tynan that on receipt from the tribunal of an envelope addressed to the Second Respondent containing the necessary documentation, the First Respondent was to forward the same to the last known address for Mr Phipps. That was done and nothing has been heard from Mr Phipps.

Preliminary Issues

Postponement Application

13. We began this three-day hearing with an application for a postponement. The Claimant did not attend the tribunal. Her sister, Ms Laurent, attended as an observer. We refused the application. Set out in the paragraphs below is what I said about the application at the time:

    13.1. The Tribunal has received at 01:39 hours last night in an email from the Claimant requesting an adjournment, on the grounds that her representative, her mother, Mrs Haines, is unwell. This application was not copied to the respondents, who knew nothing of it until they arrived at the Tribunal this morning.

13.2. The letter of application refers to Mrs Haines becoming anxious and depressed to an unacceptable level. Attached to the letter is what was described as a doctor's statement, a document from Mind and a copy of a SMS text message. The letter from Mind tells us that Mrs Haines has been receiving regular support since September 2016. From the doctor, what we in fact have is the standard form of Fit Note certifying that the doctor assessed Mrs Haines on 8 May 2018, (that is yesterday) for mixed anxiety and depression. The certificate states that she is not fit for work. The photocopy SMS text message shows a text message from the NHS of 8 May 2018 timed at 14:55 hours, (yesterday) confirming an appointment at 18:00 hours yesterday evening.

13.3. Postponement applications are covered in the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. Rule 30A(1) requires that any application for a postponement should be communicated to the other party as soon as possible – that was not done in this case. Rule 30A(2) provides that an application for a postponement less than seven days before a hearing may only be granted in certain circumstances, the only one of which that may apply here is that at (c) - where there are exceptional circumstances. Rule 30A(4)(b) provides that exceptional circumstances may include health relating to an existing long-term condition. So, the only ground that may apply is exceptional circumstances and that is a matter that lies in the Tribunal's discretion.

13.4. We have had regard to the overriding objective and sought to balance the relative prejudice to the parties in reaching our decision. We have had regard to the fact that the respondents have been put to the expense of flying in a witness from Hong Kong for today's hearing. The history of the matter seems to suggest that recently, the Claimant has been doing all she can to avoid today's hearing proceeding.

13.5. The events in question date back to July 2016. Yesterday, Tribunal staff had to call the parties because it had been noticed that the notice of hearing had told them to go the Cambridge Magistrates Court, whereas in fact the hearing was taking place in the Cambridge County Court. Mrs Haines, I am told, initially reacted, (thinking that the matter was going to be moved to a location other than Cambridge) by saying that it can't be moved because she had booked hotel accommodation in Cambridge. On being told that the hearing was going to proceed in Cambridge but in a different venue, her response was that would be fine. There was no indication then that she was unwell or that the hearing could not proceed. That conversation I am told, took place between 15:45 and 16:00 hours.

13.6. We note the disrespect shown to the Tribunal by the Claimant simply not attending today, without any explanation as to her non-attendance. We note from amongst the evidence presented on behalf of the Claimant, that Mrs Haines had been unwell since September 2016,

she has therefore had plenty of time to arrange alternative representation or prepare to represent herself at this hearing.

13.7. Looking at the list of issues as identified at a preliminary hearing before Employment Judge Tynan, they are, notwithstanding the volume of documentation before us, straightforward. This is not a complex case and there are no significant disputes of fact. There was no verbal interaction between Miss Walker and the Respondents, so this is not a case where there are issues of fact to resolve in terms of conflict of evidence, the facts are set out in the documents. We are told that the Claimant has prepared a 65 page witness statement with a detailed commentary on the case, (that is not a reflection of the facts, they are as we say, limited and straightforward). In the circumstances, our view is that this matter can proceed and will proceed tomorrow morning. Mr Reade assured me that he believes the case can be completed within the remaining two-day time frame. Ms Walker should attend tomorrow ready to represent herself. Her sister is here today sitting at the back of the court, not appearing as a representative at all, but I would ask her to convey that information to Miss Walker and I will also ask the Tribunal staff to contact her and let her know that we will proceed tomorrow.

13.8. In the meantime, we will make use of today by reading into the case so that we are ready to start first thing tomorrow. I would also comment that in light of Mr Reade's helpful submissions and explanation, it seems to us that the question of jurisdiction is probably best dealt with after hearing the case and our being clear as to the facts, because we will need to form a view on the closeness of the connection with the United Kingdom, (the UK) given that the proposed employment would have been on a foreign registered ship in foreign waters.

Applications on Day Two

14. On the morning of Day Two, Miss Walker attended accompanied by her sister Ms Laurent, who was to represent her. Miss Walker gave an erudite apology for not attending the previous day, she said her mother had given her bad advice, in advising her not to attend. She also said that her mother had kept her illness from her until the last minute.

15. Before we went any further on Day Two, there were two further preliminary applications that we have had to deal with, applications which had been made in writing and which had been left to the hearing. Mr Reade responded to the applications. We then adjourned for a short while, whilst Miss Walker and Ms Laurent considered their reply. What I said in respect of those two applications is set out in the paragraphs below:

Application to Strike Out Response

15.1. The first is an application by the Claimant to strike out the response. We have regard to the overriding objective and seek to balance the

relative prejudice to the parties. In short, the basis of this application is that there is a different copy of the ET3 in the bundle from that which Miss Walker had received from the Employment Tribunal. The difference being that her copy is date stamped by the Employment Tribunal and a different contact name for the Respondent appears as compared to that in the bundle.

15.2. The Respondent explains that the ET3 which is in the bundle was originally submitted to the Employment Tribunal on 6 March 2017, but within a matter of hours they realised a mistake had been made in that the ET3 submitted contained the wrong contact name for the Respondent. A substitute ET3 was then submitted by email and the Tribunal staff asked to disregard the earlier ET3. There is a note on the tribunal's file which confirms that is indeed what happened and that a clerk actioned the respondent's request, processing and serving the second submitted ET3. The respondent explains that in compiling the bundle, somebody made a mistake, printing out and putting in the bundle, the wrong version.

15.3. As far as we are able to tell, there is no other difference between the two ET3's, nothing turns on the difference and this would appear to be nothing more than a simple error. It would therefore be wholly disproportionate to strike out the response and in effect, for the Claimant to succeed in her claim based purely on such a minor administrative error. The application is therefore refused.

Application to Amend

15.4. The second application is an application for Miss Walker to be permitted to amend her claim to add a complaint of race discrimination.

15.5. Dealing with the law first of all, I must record that the relevant rule is rule 76, and there are two well-known authorities to guide Employment Tribunals in considering amendment applications, those of Selkent Bus v Moore [1996] ICR 836 and Abercrombie v Aga Rangemaster Ltd [2014]ICR 209. These authorities and their guidance are familiar to the tribunal, but Mr Reade has taken us and therefore importantly, the Claimant, through the relevant passages from copies of the case of Abercrombie.

15.6. In Selkent Bus v Moore [1996] ICR 836 Mummery J as he then was explained that in exercising discretion, a Tribunal should take into account all the relevant circumstances and should balance the relative injustice and hardship of allowing or refusing the amendment. Non-exhaustive examples of what might be relevant circumstances included:

15.6.1. The nature of the amendment, whether it is a minor error, a new fact, a new allegation or a new claim;

15.6.2. The applicability of time limits and if the claim is out of time, whether time should be extended, and

15.6.3. The timing and manner of the application and in particular, why an application had not been made sooner.

15.7. On the question of time limits, section 123(1) of the Equality Act 2010 requires that a claim shall be brought before the end of the period of three months beginning with the date of the act to which the complaint relates or such further period as the Tribunal thinks just and equitable.

15.8. On the just and equitable test, the EAT in the case of Cohan v Derby Law Centre [2004] IRLR 685 said that a Tribunal should have regard to the Limitation Act checklist as modified in the case of British Coal Corporation v Keeble [1997] IRLR 336 which includes that:

15.8.1. One should have regard to the relative prejudice to each of the parties;

15.8.2. One should also have regard to all of the circumstances of the case which includes:

15.8.2.1. The length and reason for delay;

15.8.2.2. The extent that cogency of evidence is likely to be affected;

15.8.2.3. The cooperation of the Respondent in the provision of information requested, if relevant;

15.8.2.4. The promptness with which the Claimant had acted once she knew of facts giving rise to the cause of action, and

15.8.2.5. Steps taken by the Claimant to obtain advice once she knew of the possibility of taking action.

15.9. Selkent was recently revisited by Underhill LJ in the Court of Appeal, in Abercrombie and the guidance of Mummery J approved. Commenting on the now often referred to distinction between label substitution on pleaded facts as compared to substantial alterations pleading new causes of action, Underhill LJ commented that it was clear that Mummery J was not suggesting so formalistic an approach that the fact that an amendment pleading a new cause of action, weighed heavily against allowing an amendment. These are just factors likely to be relevant in striking the balance of injustice and hardship. He said that the focus should be not so much on, "formal classification" but more on the extent to which the amendment is likely to involve different lines of enquiry, *"the greater the difference between the factual and legal issues raised by the new claim and by the old, the less likely it is that it will be permitted".* See paragraphs 47 and 48.

15.10. Underhill LJ also explains in Abercrombie that just because the amendment relates to allegations that are out of time, that does not mean we should automatically disallow it. It is still in our discretion to amend.

15.11. The basis of the applications are set out in two letters dated 19 April 2017. The first is in Bundle One at page 163 and relates to something which Miss Walker discovered when disclosure was provided to her, in I think June 2017. They were the notes of the investigation into the actions of the Second Respondent, Mr Brian Phipps. He was recorded as saying the following:

> *"I have serious misgivings about taking a UK female at this moment. I have plenty of experience with female cadets ratings and officers in the Wallem fleet and if these experiences were repeated with UK nationals there would be serious repercussions for Wallem. I want to protect her and I have a responsibility to protect Wallem. If we take a UK female we have to get it right."*

15.12. Miss Walker also quotes the respondent's Chief Executive, Mr Simon Doughty commenting in an email of 19 July 2016 to the effect that:

> *"As you know we have female seafarers from India, Ukraine and the Philippines."*

15.13. In essence, the Claimant says that this points to a policy on the part of the respondents of not recruiting females from the United Kingdom, because they are in some way vulnerable on the ships to which they would be appointed.

15.14. The second letter of 19 April is at page 167. Here Miss Walker refers to an article in a newspaper called the, 'Fleetwood Weekly News' which had reported on the matters complained of in this case; the First respondent's failure to interview and recruit the Claimant and the contents of Mr Phipps email of 18 July. In this article, somebody from Wallem, unattributed, is quoted as saying:

> *"There is no reason Ms Walker could not be employed by the company, but in this instance, there were concerns because she would have been the only woman taken on."*

Miss Walker says those concerns were that she was a UK female.

15.15. So, to stress the point, these matters came to the Claimant's attention on disclosure in June 2017. She made an application in identical terms to that before us today, in two letters dated 24 and 27 July 2017. There was a preliminary hearing before Employment Judge Palmer on 10 August 2017. His record of that hearing starts at page 110 of Bundle One. At paragraph 10, we can see that he elected to deal with only those matters for which the preliminary hearing had originally

been listed, namely an application by the Claimant to strike out, an application to add two named respondents, Mr Doughty and Mr Price and an application for specific disclosure. Employment Judge Palmer then went on to say this at paragraph 11:

> *"None of the other aspects raised in the Claimant's letters of 18 July, 24 July, 25 July and the two letters of 27 July would form part of the issues to be dealt with at this hearing. Should the Claimant wish to pursue these issues separately she should make a further application to the Tribunal"*

We take it that in that list of letters, is included the two letters that we have looked at today and referred to above, the application to amend to bring in a claim of discrimination.

15.16. The Claimant says that her original lay representative, Mrs Haines, did not realise that she had to take further action. With respect, that is a little difficult to believe; firstly, because paragraph 11 of EJ Palmer's order is clear and secondly, because something like 25 applications have been made in this case before this one before us today, it seems to us quite likely that Mrs Haines knew very well that she could and should make further application if she wished to proceed with the amendment.

15.17. This is an application to add a completely new claim, one of race discrimination. The stage we have reached is that we ought now to be hearing evidence on the case as a whole. We are at a hearing with three bundles, (one of those is authorities) the bundles of documents and the respondents' witness statements, do not deal with this issue.

15.18. The claim of race discrimination based upon the incidents of July and August 2016 is plainly out of time. The time limit is three months from the event, nearly two years ago. That these matters were discovered in 2017 is certainly an argument, a very good argument, that it would be just and equitable to extend time to a point not long after when those matters were discovered. In fairness, the Claimant through her mother, did make an application in July 2017. However, Employment Judge Palmer made it clear that if she wished to proceed with a race claim, she would have to make further application. That was not done until the last minute and in the meantime, other applications had been made. This one could have been made sooner.

15.19. Cogency of evidence will be affected by the delay; it is nearly two years later and memories will have faded. One particular consideration is that Mr Phipps, although a party, is not here and may not even aware of these proceedings.

15.20. In terms of the promptness of action being taken, the Claimant through her representative has not acted promptly post the preliminary hearing in August 2017.

15.21. As for the taking of advice, the Claimant has had plenty of opportunity to take advice. She has clearly been assisted by someone with either a knowledge of the law or with the intellect to investigate and obtain some understanding of the law.

15.22. In terms of balancing prejudice, as I have indicated, the case has been prepared and is ready to go. If we allow the amendment we will have to postpone the case and give the respondent an opportunity to answer the new cause of action. We would have to re-list the case for another day, which with the way things are in this region at the moment, is likely to be after Christmas 2018. The respondents have flown their witness in from Hong Kong ready to deal with the matter today. There will be significant further cost to the respondent both legally and practically. We have the difficulty that the person who made the remark is not here and apparently, cannot be traced.

15.23. As for prejudice from the Claimant's point of view, we certainly agree these are serious issues which she raises. It is possible that the Respondent at the least through Mr Phipps, maybe others, had a policy, overt or covert, of not recruiting females from the United Kingdom, because they are in some way seen as being more at risk if they are placed on ships with crews of certain other nationalities. That is certainly potentially direct and/or indirect race discrimination. However, the real wrong done to the Claimant, as she sees it, what this case is really about, is the offending email of Mr Phipps dated 18 July 2016 and the events that flowed as a consequence. Those are the matters that are currently keyed up and ready to be dealt with. By refusing the application, it seems to us less prejudice will be done to the Claimant. The case of race discrimination would have little if any impact on any compensation that might subsequently be awarded were she to succeed.

15.24. For these reasons, balancing these matters, the conclusion that we reach is that the application should be refused.

16. Before we move on, we as a tribunal are anxious to pay tribute to Ms Laurent, whose grasp of the facts, the issues and whose advocacy, was most impressive.

The Law

17. The relevant law is set out in the Equality Act 2010.

18. Sex, (i.e. one's gender) is one of a number of protected characteristics identified at s.4.

19. Section 39(1)(a) proscribes an employer from discriminating in deciding to whom to offer employment.

20. Section 55(1) (a) proscribes an employment service-provider from discriminating in selecting who to offer for employment by its clients.

21. Section 109(1) provides that an employer is liable for acts of discrimination, harassment and victimisation carried out by its employees in the course of employment.

Direct Discrimination

22. Miss Walker says that she was directly discriminated against because of her gender. Direct discrimination is defined at s.13(1):

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

Harassment

23. Harassment is defined at s.26:

> *"(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…*
>
> *(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—*
>
> *(a) the perception of B;*
>
> *(b) the other circumstances of the case;*
>
> *(c) whether it is reasonable for the conduct to have that effect.*
>
> *(5) The relevant protected characteristics are—*
>
> *…*
>
> *sex;*
>
> *…*

We will refer to that henceforth as the proscribed environment.

24. The EAT gave some helpful guidance in the case of Richmond Pharmacology v Dhaliwal [2009] IRLR 336. It is a case relating to race discrimination, but his comments apply to cases of harassment in respect of any of the proscribed grounds.

> *"We accept that not every racially slanted adverse comment or*

conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. Whilst it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred). It is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase."

25. Those sentiments were reinforced by Sir Patrick Elias in Grant v Her Majesty's Land Registry [2011] EWCA Civ 769. Of the words, "intimidating, hostile, degrading, humiliating or offensive" he said that Employment Tribunals, "*should not cheapen"* the significance of those words, they are an important control to prevent trivial acts causing minor upsets being caught up in the concept of harassment.

Victimisation

26. Section 27 defines victimisation as follows:

(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.
…"

27. Detriment was defined in Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285; the Tribunal has to find that by reason of the act or acts complained of, a reasonable worker would or might take the view that he or she had been disadvantaged in the circumstances in which he or she had thereafter to work.

28. Whether a particular act amounts to victimisation should be judged primarily from the point of view of the alleged victim, whether or not they suffered a "detriment", rather than from the point of view of the alleged discriminator. Whether or not a claimant has been disadvantaged is to be viewed subjectively; see St Helens Metropolitan Borough Council v Derbyshire [2007] IRLR 540 HL. That said, an unjustified sense of grievance could not amount to a detriment.

29. To be an act of victimisation, the act complained of must be, "because of" the protected act or the employer's belief. The protected act does not have to be the sole cause of the detriment, provided that it has a significant influence, (see Lord Nicholls in Nagarajan v London Regional Transport [1999]ICR 877). "Significant influence" does not mean that it has to be of great importance, but an influence that is more than trivial, (see Lord Justice Gibson in Igen v Wong cited below).

Burden of Proof

30. Section 136 deals with the burden of proof:

> *"(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
>
> *(3) But subsection (2) does not apply if (A) shows that (A) did not contravene the provision.*

31. The Appeal Courts guidance under the previous discrimination legislation continues to be applicable in the context of the wording as to the burden of proof that appears in the Equality Act 2010. That guidance was set out in Igen Limited v Wong and others [2005[IRLR 258. That case sets out a series of steps which we have carefully observed in the consideration of this case. Amongst those steps is the expressed expectation that where the burden of proof has shifted to the Respondent, it is to produce cogent evidence to discharge that burden.

32. This does not mean that we should only consider the Claimant's evidence at the first stage; Madarassy v Nomura International plc [2007] IRLR 246 CA is authority for the proposition that a Tribunal may consider all the evidence at the first stage in order to make findings of primary fact and assess whether there is a *prima facie* case; there is a difference between factual evidence and explanation. That case also confirms that a mere difference in treatment is not enough.

Evidence

33. We had before us a witness statement from Ms Walker running to 62 pages and 341 paragraphs. From the First Respondent, we had two witness statements from Mr David Price, the first consisting of 4 pages and 13 paragraphs signed on 2 August 2017 and the second, consisting of 13 pages and 45 paragraphs, signed at the outset of his oral evidence.

34. We also had before us three bundles. The first was entitled Hearing Bundle, which originally ran to page number 494. With the agreement of the First Respondent, additional documents were added to the bundle at the request of Ms Walker, page numbers 495 to 540. The second bundle consisted of pleadings, orders and witness statements. The third bundle contained copies of authorities to which Mr Reade proposed to refer.

35. On day one of the hearing, after we had decided to proceed with the case as discussed above, we read the witness statements and read or looked at in our discretion, the documents in the bundle referred to by page number in the witness statements. As Ms Walker's statement had been prepared giving page numbers from an earlier draft bundle, Mr Reade provided us with a copy of Ms Walker's statement bearing manuscript annotations thereon indicating the page numbers of documents to which she referred as contained in the Hearing Bundle.

36. At the outset of the case, Mr Reade provided us with a 30 page opening note. At the conclusion of the case, Ms Laurent provided us with written submissions on behalf of the Claimant.

Facts

37. Ms Walker attended Blackpool and Fylde College, Fleetwood Nautical Campus, (the College) and in February 2016, gained qualifications as a Deck Officer. She had experience working on an Emergency Response and Rescue Vessel and on a Chemical Tanker.

38. The First Respondent is a company registered in Hong Kong. It provides ship management services to ship owner clients who operate cargo ships. Its business is based in Hong Kong, Germany and Singapore. Part of its service is to provide crew. It has 8000 employees.

39. Mr Phipps held the job title, Regional General Manager, Marine Human Resources. He was employed by the First Respondent. He was based in Hong Kong.

40. The College assists its graduates in obtaining employment and facilitates interviews.

41. Mr Price is the Managing Director of the First Respondent. The First Respondent does not usually recruit in the United Kingdom. However, Mr Price's son was attending the College during 2016 and as a consequence, Mr Price decided to arrange for someone from the First Respondent to interview a group of graduates who had not found work, including his son.

42. The College informed a group of such graduates of this possibility and those interested wrote to apply, enclosing their CVs.

43. Mr Phipps was visiting the United Kingdom, (on holiday) and so arrangements were made for him to attend the College on 21 July 2016 in order to interview those potential recruits, one of whom was Ms Walker.

44. The contact at the College was a Mr Jonathan Ward, Senior Tutor. Mr Ward made contact with Mr Price by email on 29 June 2016. Mr Price wrote on 1 July that Mr Phipps would visit the college to, *"meet some of the potential candidates".*

45. Mr Phipps wrote to Mr Price's son on 6 July 2016 that the plan was, *"to place approximately 10 cadets (the exact numbers might vary, but for the moment let's say 5 deck +5 engine) on vessels within our fleet",* (Page 79).

46. In an email discussing the experience of the candidates, Mr Phipps wrote to Mr Ward, *"…it has a bearing on salary and so on".*

47. On 11 July 2016, Mr Phipps wrote to Mr Price and Mr Fared Khan, (Marine Director) (page 89):

> *"What I would like to do right now is get a clearer idea on how we plan to employ and deploy these new lads. To give them 12 months seatime as cadets is relatively easy. But none of these lads need seatime. They are looking for a job, and deployment sometime soon. Wallem has a backlog of fully licensed ex-cadets that we are trying to absorb into the fleet, and for this reason the cadet programme (globally) is on hold. So in effect they are going to barge into the queue and displace some others who are waiting.…*
>
> *I think within the Wallem organisation as it presently stands they will need to be given priority for deployment and the planning managed from Mumbai."*

48. Mr Khan replied:

> *"Just like the Shenzen cadet programme for business need we will fast track the induction and deployment process for these officers.*
>
> *But I would like to a [sic] structured review of total sea time already obtained, induction for those that served on tankers as cadets and those that did not and of course Wallem systems."*

49. On 14 July 2016, Mr Phipps wrote to Mr Ward that he was waiting for confirmation from Mr Price as to Wallem's intentions, but that he was certain that they intended to place officers on tankers and perhaps offshore in the future, albeit not immediately.

50. On 15 July 2016, Mr Phipps wrote to Mr Khan suggesting they would only take those candidates with tanker experience and tanker safety certification. Mr Khan replied on 19 July that they would take on 10 cadets and move forward and that Mr Price was keen to take on non-tanker cadets into the tanker pool.

51. Mr Phipps wrote by email to Mr Ward on 18 July 2016, to say that he would meet all the prospective candidates, but that Wallem would only be taking 10. He went on to write, (page 95a):

> *"Wallem is an equal opportunity company but we WILL NOT offer places for the female cadets because we can't offer the appropriate on-board environment to make it work. In my opinion girls have a place and a chance to succeed, but it needs to be got right from the*

> *outset. I'm sure the college explores all avenues of opportunity for all of the cadets, and I would suppose the cruise industry is the most appropriate (indeed the Captain of the Queen Victoria, on which I cruised recently, was a lady.)"*

52. Mr Ward forwarded that email to the prospective male candidates and copied it to Ms Walker writing, (page 95b): *"this is the email I received from Brian Phipps of Wallem Ship Management… Sofia, sorry about the omission.".*

53. On 19 July 2016, Ms Walker wrote to the First Respondent to make a formal complaint about the terms of Mr Phipps email. Included within her complaint was the following, (page 96):

> *"I was outraged and disgusted when I read the email sent by Mr Brian Phipps to Jonathan Ward (Fleetwood Nautical College). It is difficult to comprehend that the person who espoused such blatant gender discrimination, is in fact a Regional General Manager of Marine Human Resources – the views he expressed, are ignorant, degrading, offensive and thoroughly disrespectful to all female mariners.*
>
> *…*
>
> *A copy of Brian Phipps email was sent by Jonathan Ward to the other 10 male Deck Officer possible candidates. As such I sustained deep humiliation – those 10 male Deck Officers, know [sic] I have exactly the same maritime qualifications and abilities as them – nevertheless they were being encouraged to view me as* inferior *to them – wholly because of* ***my gender****.*
>
> *I now request an unreserved apology and also that I be accepted as a prospective candidate for an interview on 21 July, with a view of [sic] being employed as a Deck Officer for your company.*
>
> *…*
>
> *I will not accept anything but a timely fully contrite cooperative response.…*
>
> *I also wish to bring to your attention that I have contacted the following:*
>
> *… The Guardian; The Independent; The Sailors' Society; The Telegraph; The Telegraph – Nautilus International; The Times (both legal and law editors) and the Today Programme, Radio 4 – as this disgraceful matter is of public interest."*

She invited contact either by email or telephone, providing her mobile telephone number.

54. Various officers of the First Respondent reacted immediately. Mr Price wrote by email to Mr Khan and to the Chief Executive Officer, (CEO) Mr Doughty on 19 July, (page 119):

> *"I can't tell you how angry I am about this. Brian acted completely outside of his authority in this statement and we will need to agree what action we take. I know that we have a number of females in our fleet so we can demonstrate that we do not discriminate…*
>
> *My view is that we cancel Brian going to carry out the interviews until we agree our next steps."*

55. Mr Khan replied that he would stop Mr Phipps from going to Fleetwood.

56. Mr Doughty wrote in an email of 19 July 2016 to Non-Executive Chairman, Mr Nigel Hill, (page 123):

> *"I can't tell you how annoyed I am with Brian Phipps who has brought the Company's reputation and name into disrepute.*
>
> *This is his personal view and not the Company's view on female seafarers; as you know we have female seafarers from India, the Ukraine and the Philippines. This almost certainly means I will terminate Brian tomorrow.…*
>
> *Unbelievable, what should be seen as a positive step of Wallem recruiting UK cadets has been destroyed by one person's stupidity".*

57. Also on 19 July, Mr Doughty wrote to somebody called Debbie Mannas, who must be a human resources adviser, (page 121):

> *"I believe we have grounds for terminating Brian Phipps based on his email, which is his own view point not one that the Company agrees with.*
>
> *This message of his will turn a positive initiative, i.e. taking UK cadets, into damage to our brand.*
>
> *As you are aware we have female seafarers from other nationalities."*

58. Mr Hill joined into this email correspondence on 19 July 2016, (page 186):

> *"Well this is totally unacceptable, as you say (not to mention wrong). It is unfortunate that she has decided to contact all of those media outlets before checking with the company but that is the world we live in, I guess. A quick and firm response will hopefully deal with it."*

Ms Walker suggests that Mr Hill's reaction is negative and critical of her, that he is suggesting that her letter is unacceptable. That is a plain misreading of

the correspondence. It is clear Mr Hill is writing here that Mr Phipps' email was unacceptable and wrong.

59. On 20 July 2016, Mr Phipps was suspended. Mr Price then wrote on behalf of the First Respondent to Ms Walker that same day, by way of apology. We quote from Mr Price's letter extensively, (page 146):

> *"Your complaint has reached the highest levels within the Wallem group and I can assure you that it has been taken very seriously and appropriate action will be taken to prevent recurrence.*
>
> *I would like to start by making an unreserved apology for the comments made by Mr Phipps, they are his own views and in no way reflect the views of Wallem Shipmanagement Ltd. This can be readily evidenced by the fact that today we have a significant number of female seafarers serving within our fleet and we have female employees in our shore based organisation at senior levels. We have a very clear policy about recruitment; we employ the right person for the position based on due process which takes into account their qualifications, skills, experience and a variety of assessments alone.*
>
> *I can confirm that Mr Phipps has been suspended from his position pending the conclusion of a full investigation into his actions.*
>
> *I note that you have addressed your letter to our London address which is used for mailing purposes only. I would like to clarify that we are a Hong Kong registered company and as such we do not maintain an operating establishment within the United Kingdom. Because of Mr Phipps suspension, we do not have an alternative person to carry out the previously arranged interviews. As such I unfortunately have had had no option but to postpone interviews of all candidates until further notice.*
>
> *Please let me know when it would be convenient for you to talk with me, I would welcome to [sic] the opportunity to talk further on this matter with you."*

60. Mr Khan sent an email to Mr Price on 20 July 2016 suggesting two named individuals, *"or one of the fleet managers"* as people who could possibly carry out the interviews in place of Mr Phipps. He suggests that they should not delay or cancel. Asked about this in evidence, Mr Price said the individuals named were not available.

61. Mr Phipps' view of the complaint is evident from an email he wrote on 20 July to Mr Khan, which includes the remarks, *"it does seem to be a lot of noise about nothing".*

62. All of the interviews were in fact cancelled and did not take place subsequently. The First Respondent recruited no one from the College, not even Mr Price's son.

63. As mentioned above in quoting from Ms Walker's letter of complaint, she had written to the Sailors Society. They replied on 21 July 2016. The letter of reply refers to the author, (Mr Stuart Rivers, Chief Executive) having spoken to, *"Wallem at the most senior level"* from which he understands that Mr Phipps had been suspended. He also commented, *"I also know from our long-standing association with Wallem that they too are an equal opportunities employer, with around 45 female officers in their employ at present."* He comments that it is clear that the views of Mr Phipps expressed in his email are not representative of the values and culture of the First Respondent.

64. Not having received a reply from Ms Walker, an exchange of emails on 22 July 2016 reveals that they, or at least Mr Price, were becoming uneasy. In the first email, (page 190) Mr Price says that he had heard that Mr Ward, (of the College) was being subjected to disciplinary action and on that he commented, *"this whole thing really has got out of hand"*. He goes on to suggest that they offer Ms Walker two weeks internship in Hong Kong commenting:

> *"…that way she will be able to clearly see that we are not the Demons that she thinks we are. If it does get legs with the media I think that would be real brownie points for us and unless she is just a complete liar it would take all of the wind out of her sails. We would need to make it clear upfront that this is NOT an interview for a job."*

65. Mr Doughty's reply is that they need to consider this very carefully and that the first issue must be the disciplinary action against Mr Phipps. He suggests that once Mr Phipps has been dealt with, they do nothing further until Ms Walker has responded and they have had an opportunity to talk on the telephone.

> *Mr Price replies, "the silence is really bothering me – I know it shouldn't, there is no doubt that Brian was stupid and she suffered an injustice but if she is sending emails around the industry badmouthing Wallem I feel that we have also suffered an injustice and I really would like to put that right."*

66. On 24 July 2016, Ms Walker wrote to Mr Price acknowledging his, "unreserved apology". She went on to write, (page 193):

> *"Due to possible pending legal action and in order to protect my interests, I would be grateful if you would place any further talk in writing to me.*
>
> *However, if the above is not agreeable to you, I will be left with no alternative but to refer to ACAS Early Conciliation hopefully for a wholly positive resolution to this Gender Discrimination matter."*

67. Mr Price responded on 25 July 2016, (page 199) in a brief email acknowledging receipt of her letter and her request for any further

communications to be in writing. Miss Walker says that this was an act of victimisation.

68. Also on 25th July 2016, Ms Walker wrote to a newspaper local to the College, the Fleetwood Weekly News, asking it to print her story.

69. Mr Phipps was subjected to a disciplinary meeting on 25th of July 2016, minutes of that meeting are in the bundle starting at page 224. Within those minutes are the following quoted comments from Mr Phipps:

> *"I was not being discriminatory. I believe that we needed to ensure her safety on board, given the number of incidents we have had in the recent past that could open us to allegations of harassment and even rape (in a different jurisdiction), and that we were not in a position between now (being the Monday) and the interview (on the Thursday) to ensure her safety on board."*

70. Mr Price is recorded as asking Mr Phipps if his intent, *"was the safety of the female candidate which led him to write that email"* and Mr Phipps is recorded as confirming that it was.

71. Mr Phipps is also recorded as saying in his closing remarks:

> *"What is relevant is that I have serious misgivings about taking a UK female <u>at this moment</u>. I have plenty of experience with female cadets (and I'm the mentor of several), ratings and officers in the Wallem fleet and if these experiences were repeated with UK nationals there would be [very] serious repercussions for Wallem. I want to protect her, and I have a responsibility to protect Wallem. If we take a UK female <u>we have to get it right</u> – before the event, not after. On the Monday, when the email was written, we (we being Wallem) were not in a position to get it right."*

72. By letter dated 1 August 2016, Mr Phipps was informed that he was dismissed.

73. On 3 August 2016, an article appeared in the Fleetwood Weekly News under the heading, *"Female shipping officer told to, 'try cruise industry instead' on job application"*, (page 233). A non-attributed spokesperson for the First Respondent is quoted as responding that it employs more than 50 female staff in various roles and, *"was only guilty in this instance of a poorly worded email which did not explain the situation fully"*. A further response was quoted as follows:

> *"A senior Wallem staff member said there was no reason Ms Walker could not be employed by the company but in this instance there were concerns because she would have been the only woman taken on. The company wanted to ensure that it had a suitable environment in place before female staff are employed."*

74. Mr Price agrees that these two comments were his. He explained that he had been caught by surprise on his mobile telephone as he emerged from a tube station. He said in evidence that the words that he used were not appropriate and do not reflect, "our feelings". He also said that the comments were made in the heat of the moment in a conversation which lasted 15 seconds and that he had concluded the conversation by saying that he would have to speak to their communications manager.

75. Once the Fleetwood Weekly News article appeared, a number of other newspapers and trade publications, internationally, picked up on the story and published similar stories.

76. On 5 August 2016, the First Respondent placed a formal statement on its website, (page 241). Mr Price acknowledged that he was involved in drafting this statement. He says that the motive was the massive media interest following the article in the Fleetwood newspaper, they were receiving telephone calls and emails from the press and so the statement was put on the website so that those dealing with these enquiries could refer to the statement on the website for confirmation of the First Respondent's position. The statement, (page 241) includes the following passages to which Ms Walker objects:

> "*Wallem addressed Ms Walker's complaint and responded to her directly on 20th July with an unreserved apology and an invitation for further dialogue, which was rejected by Ms Walker.*
>
> *The views expressed in the message sent to Fleetwood Nautical College, that Ms Walker objected to, were made in poor judgment by a single individual and do not in any way reflect the views held by Wallem or the values and culture of the Group"*

77. In response to the website statement, Ms Walker wrote to Mr Price on 7 August 2016 a letter headed, "Request for Correction". She complains that the statement strongly suggests that she did not wish to communicate with Wallem and this was untrue. She quotes back to Mr Price the correspondence we have quoted above in which she had simply asked for future communications to be in writing. She also asks in this letter that the First Respondent provide her with the findings on the investigation into her complaint.

78. We were taken to another email exchange on 7 August 2016, between a Mr Nigel Moore and Mr Doughty, (page 297) in which Mr Moore writes:

> *"I think it would be wise to limit David's further involvement in this case because he is too emotionally invested in this case (his son also still actively involved); does not agree we have done anything wrong; and so continues to push for an aggressive response in the press against better advice not to exacerbate the situation. Regardless of rights & wrongs of the case – wise heads must now prevail. The issue has moved on from a WSM recruitment issue to one of protecting the wider company interests".*

79. On 10 August 2016, Mr Doughty wrote a letter to Ms Walker which repeated the formal apology for the comments by Mr Phipps. He goes on to express the First Respondents regret that Ms Walker now feels offended by their communications. He explains that he felt they had no alternative but to respond to articles in the media which they saw as misrepresenting their position. In respect of the investigation into the complaint, he states that an internal investigation had been carried out and disciplinary action taken, but that the result was confidential. He concludes, *"we now consider the matter to be closed but wish you well with your future career at sea".*

80. On 16 August 2016, Mr Doughty sent an email to Mr Hill, (page 275) making reference to a letter he had been shown written by Ms Walker to the Sailors Society. We have not seen that. In his reply, Mr Hill comments, *"Hell hath no fury…"* and refers to her letter as, *"awful!".* He goes on to comment:

> *"And, in Brian's defence, what should our policy be (or is) re-women on board (which was presumably what Brian was groping towards in his crass email)? Obviously, there is no reason not to have them on board (and no special provision to be made as far as I can see from a practical point of view) but how does one deal with (protect them from) sexual harassment and so on? For instance, would one place a woman on board a ship with other crew members with a different cultural mindset (he says, choosing his words with care)?"*

81. Mr Doughty replied to explain that the First Respondent has a written policy which largely follows UK law and a policy for discrimination on board ships. He comments, *"with regards to seafarers we would prefer not to put one gender, one nationality, one cadet et cetera on board a vessel – we try to operate a buddy system – but sometimes we have no option (shortage of seafarers, crew matrix et cetera)".* He also explained to Mr Hill that Mr Phipps had checked with Mr Khan with regard to interviewing Ms Walker and Mr Khan had replied that all applicants should be interviewed and positions offered based on merit. He further comments, *"Is it [sic] Gender Discrimination of pure stupidity that led him to flush his 30+ years maritime career down the toilet."*

82. On 19 August 2016, Ms Walker submitted a further written letter of complaint to Mr Price, (page 296). In this letter she makes reference to the First Respondent's various claims to have, *"a significant number of female seafarers within our fleet"* and to have 400 vessels employing 7000 seafarers. She asks for information as to the total number of female seafarers, their rank and the type of vessel on which they are employed.

83. In an exchange of emails dated 22 August 2016, we can see that Mr Doughty and others at the First Respondent, whilst discussing how to respond to enquiries from the Hong Kong Free Press, decide to confirm that Mr Phipps is no longer in their employment, a Kristen Beattie commenting, (page 325):

> *"This would be the first time that we are putting it out there that the person is no longer in employment – before we had just stated that he was suspended… But it's not like we were hiding that…"*

84. Also in this email correspondence on 22 August 2016, Mr Doughty suggested to colleagues that he send Ms Walker an article from the company magazine, (True North) which he suggests is illustrative of the company's culture and strategy. The article from 2015 is entitled, *"How Wallem is Leading by Example When it Comes to Women in Shipping".* Kristen Beattie replied suggesting Ms Walker will, *"find more holes to pick"* if they send her that article. Nonetheless, Mr Doughty chose to do so by email of 24 August 2016, (page 334). He refers to Ms Walker's earlier letter of 19 August, states that they now consider the matter to be closed, refers to the attached article and writes, *"I trust this will confirm to you our Company values on such issues and that your experience was an isolated incident for which we have already apologised"*.

85. We should also refer to one further email of 22 August 2016, in which Mr Price informed Kristen Beattie and Mr Doughty that he had spoken to a former employer whose name appeared on Ms Walker's CV. He wrote, *"when spoke with James Fisher they said that they 'had a year of misery with that woman' so she isn't going to go away quickly."*

86. Ms Walker replied to Mr Doughty's letter of 10 August and email of 24 August, by letter of the same date. She referred the letter of 10 August as, *"highly provocative, shocking and deeply distressing – in the context that I am a victim of Wallems Gender Discrimination".* With regard to the email, she referred to that as, *"highly provocative and an affront to my dignity".* She said that she would not be reading the enclosed article and protested that the First Respondent should not be sending her unsolicited Wallem literature. She further comments that, *"this gravely serious issue has not in any way been resolved by Wallem – that is, resolved in the manner of mature leadership"*.

87. An article appeared in the Hong Kong Free Press on 26 August 2016. Within the article, the First Respondent is quoted as saying, *"it is an extremely unfortunate incident of very poor judgment by a single individual and does not in any way reflect the views held by the Wallem Group*. *The company also said that the individual in question is no longer in Wallem's employment".*

88. In November 2016, the First Respondents were contacted by ACAS as part of the Early Conciliation process. We can see from copied email correspondence in the bundle that they were reluctant to respond because they were worried that to do so would amount to acknowledgement of jurisdiction. Mr Price commented, *"I would hope that if we put our side ACAS will go to her and tell her not to be silly and let the matter drop".*

Jurisdiction

89. The First Respondent contends that the Employment Tribunal does not have jurisdiction to consider this claim. It says that it does not reside in or carry on

business in the United Kingdom, it is engaged in the business of managing ships for ship owners and that it does not employ mariners.

90. Mr Reade says that overnight on Day Two to Day Three, he has realised and therefore submits that actually, because of the provisions of Section 81 of the Equality Act, the relevant provisions of that Act are excluded from application to seafarers in the circumstances of this case.

91. There are two elements to the question of jurisdiction. The first is whether the tribunal has jurisdiction under its rules of procedure. If it does, one then looks to the legislation relied upon in the proceedings to see if it has jurisdiction to determine the legal rights at issue.

92. The rules of procedure are set out in Schedule 1 to the Employment Tribunal's (Constitution and Rules of Procedure) Regulations 2013. Rule 8(2) provides:

> *A claim may be presented in England and Wales if—*
>
> *(a) the respondent, or one of the respondents, resides or carries on business in England and Wales;*
>
> *(b) one or more of the acts or omissions complained of took place in England and Wales;*
>
> *(c) the claim relates to a contract under which the work is or has been performed partly in England and Wales; or*
>
> *(d) the Tribunal has jurisdiction to determine the claim by virtue of a connection with Great Britain and the connection in question is at least partly a connection with England and Wales.*

93. The First Respondent accepts that as Mr Phipps was in England and Wales when he sent the offending email, which was received by Ms Walker in England and Wales, the act of discrimination took place in England and Wales and these proceedings meet the requirements of Rule 8(2)(b).

94. The claim is brought under the Equality Act 2010, (the Equality Act). Ms Walker's complaint is of direct discrimination, (defined in section 13) on the grounds of sex, (i.e. gender). Part 5 of the Equality Act sets out the prohibitions against discrimination in the context of employment. Thus, Section 39(1)(a) provides that an employer must not discriminate in the arrangements it makes for deciding to whom to offer employment.

95. The First Respondent says that it does not employ seafarers and specifically, in the context of the planned interviews at the College, was not proposing to employ the candidates and therefore section 39(1)(a) does not apply. However, it accepts that it is an, "employment service-provider" as defined in section 56 of the Equality Act. In other words that acting as agent, it provides people to do work for employers. Section 55, in identical terms to section 39, prohibits an employment service-provider from discriminating against a

person in the arrangements it makes for selecting those whom they offer to employers. Section 55 and 56 are also of course, within Part 5.

96. There is specific provision in Part 5 of the Equality Act for work on ships and hovercraft, section 81, which reads as follows, (emphasis in bold added):

> *(1) This Part applies in relation to—*
>
> *(a) work on ships,*
>
> *(b) work on hovercraft, and*
>
> *(c) seafarers,*
>
> ***only in such circumstances as are prescribed**.*
>
> *(2) For the purposes of this section, **it does not matter whether employment arises** or work is carried out **within** or outside the **United Kingdom**.*
>
> *(3) "Ship" has the same meaning as in the Merchant Shipping Act 1995.*
>
> *(4) "Hovercraft" has the same meaning as in the Hovercraft Act 1968.*
>
> *(5) "Seafarer" means a person employed or engaged in any capacity on board a ship or hovercraft.*
>
> *(6) Nothing in this section affects the application of any other provision of this Act to conduct outside England and Wales or Scotland."*

97. This means that the prohibition against discrimination in the context of work as provided for in Part 5 of the Equality Act only applies in relation to seafarers in circumstances which have been prescribed. Such prescription has been provided for in the Equality Act 2010 (Work on Ships and Hovercraft) Regulations 2011. Regulation 4 of those regulations states:

> *"(1) Part 5 of the Act applies to a seafarer who works wholly outside Great Britain and United Kingdom waters adjacent to Great Britain if the seafarer is on—*
>
> *(a) a United Kingdom ship and the ship's entry in the register maintained under section 8 of the Merchant Shipping Act 1995 specifies a port in Great Britain as the ship's port of choice, or*
>
> *(b) a hovercraft …*
>
> *and paragraph (2) applies.*
>
> *(2) This paragraph applies if—*
>
> *(a) the seafarer is a British citizen, or a national of an EEA State other than the United Kingdom or of a designated state, and*

(b) the legal relationship of the seafarer's employment is located within Great Britain or retains a sufficiently close link with Great Britain."

98. Seafarers in the United Kingdom are provided for in Regulation 3, but there is no question here of Miss Walker working for the First Respondent in the United Kingdom or its adjacent waters.

99. These provisions were considered in the EAT in the case of Wittenberg v Sunset personnel Services Ltd and others UKEAT/19/13/2017 to which we have been referred. In that case, the claimant was a German living in Germany, working on a foreign registered ship providing support services to oil rigs off the coast of Nigeria. He was employed by a subsidiary of an American group of companies registered in Scotland with offices in Aberdeen, from where his employment was conducted. His contract of employment was expressed to be subject to the laws of the United Kingdom. His complaints included claims of discrimination contrary to the Equality Act. Lady Stacey held that the provisions of Part 5 only applied to seafarers in the circumstances prescribed by the above-mentioned regulations and specifically, only applied to seafarers working outside British waters if their ship was registered at a port in Great Britain. Lady Stacey held that claims under Part 5 of the Equality Act were not open to the claimant, such claims could only be brought by seafarers in the prescribed circumstances.

100. In Wittenberg, reference had been made to an earlier case, Hassan v Shell International Shipping (Pte) Ltd and Others UKEAT/0242/13/SM, a decision of Supperstone J. Mr Hassan was a British National working as Second Officer on a Singapore ship. He complained of discrimination in the circumstances of his dismissal. The Equality Act was held not to apply, because the circumstances of his employment did not meet the prescribed circumstances set out in the 2011 Regulations.

101. In both Wittenberg and Hassan, it had been argued that the restrictions in section 81 should be disapplied on the basis that when a claimant is seeking to enforce a directly enforceable EU derived right, territorial restrictions ought not to apply. The authority for that proposition was said to be Bleuse v MBT Transport Ltd [2008] IRLR 264. Supperstone J and Lady Stacey both hold that Bleuse is no such authority in respect of work carried out outside the EU.

102. Miss Walker is a seafarer. The employment for which she hoped to be selected, was aboard a ship not registered in the UK, sailing in non UK waters. The application of Part 5 to such employment is excluded by Section 81 and not brought back into play by Regulation 4(1). The test in Regulation 4(2) is not engaged because her work would have been outside the UK and not on a UK registered ship.

103. Miss Walker's submissions on the point were that neither in its pleaded case nor in the list of issues, has the Respondent indicated that it would argue that the Tribunal has no jurisdiction to consider a claim under Part 5 of the Equality Act. That appears to be correct. However, the question of jurisdiction is something the tribunal is obliged to consider, whether raised

by the parties or not. We are only permitted to consider cases that parliament has authorised us to hear, (we have no "inherent jurisdiction"). If we have not been authorised to hear a case on a particular point, we are not permitted to hear it, whatever the parties may say; we are obliged to consider issues of jurisdiction, whether they are raised by the parties or not.

104. We considered whether it could be said that at the time of the proposed interview, Miss Walker was not in fact a seafarer and was not in fact, employed. Sections 39(1) and 55(1) proscribe discrimination before the employment relationship begins. However, the proposed employment was that of a seafarer on a ship. Section 81 is therefore engaged. Section 81(2) states that it matters not whether the employment arises in the UK; that contemplates the pre-employment scenario of sections 39(1) and 55(1).

105. In the circumstances, we are constrained to conclude that we do not have jurisdiction.

106. However, given that we have heard the case, we will do the parties the courtesy of setting out what the outcome of the case would have been had we found otherwise.

Conclusions On the Facts, Had We Found That We Had Jurisdiction

Direct Sex Discrimination

107. The First Respondent concedes that the email from Mr Phipps to Mr Ward dated 18 July 2016 was an act of direct discrimination.

108. The second allegation of direct sex discrimination is in respect of the remarks of Mr Price, anonymously quoted in the Fleetwood Weekly News on 3 August 2016. This is not conceded.

109. The statement does amount to a detriment, in that it reinforces or upholds, in more subtle language, the sexist, directly discriminatory remarks of Mr Phipps; that the First Respondent will not offer employment to women because they cannot offer them an, "appropriate onboard environment". Mr Price's statement amounts to the same thing, that Miss Walker could not be offered employment because they need to ensure that it had a suitable environment in place before women are employed. Mr Price knew that he had made a mistake, which is why in his evidence he acknowledged that he was effectively saying the same thing and that the words used were not appropriate.

110. A man in the same circumstances, the hypothetical comparator, (a man who had the same experience and qualifications as Miss Walker and had attended the College with Mr Price's son), would not have been subjected to a statement by Mr Price that he could not be employed because the First Respondent does not have facilities in place.

111. Did Mr Price make these comments because Miss Walker is a woman? The answer is yes, because she is a woman, he upholds the stated position of Mr Phipps that she cannot be offered a position on a ship.

112. Mr Reade argues that this allegation is not one of arrangements for deciding to whom to offer employment and therefore, regardless of whether it comes within the section 13 definition of direct discrimination, it does not come within Part 5. It seems to us that this is a reiteration of the act of discrimination in the arrangements the First Respondent makes for deciding to whom to offer employment and is therefore within the scope of Part 5. Her complaint in this respect, would have succeeded.

Victimisation

113. Miss Walker's formal complaint of 19 July 2016 is a complaint that she has been discriminated against because she is a woman, it is therefore a protected act.

114. We consider each of the four allegations of victimisation in turn; failing to interview Miss Walker at all, the email to Miss Walker of 25 July 2016, the statement on the First Respondent's website and not informing Miss Walker of the outcome of the disciplinary process instigated against Mr Phipps.

Not interviewing Miss Walker

115. Once the discrimination complaint was made, the First Respondent appears to have dropped the whole proposal to interview the College's graduates like a hot potato. They did not interview anybody. We have seen the email of Mr Khan on 20 July 2016, suggesting two particular named individuals who could have conducted the interviews. He also suggested, "one of the fleet managers". It is clear to us that somebody could have carried out those interviews. When I asked Mr Price why one of these people had not carried out the interviews, he said that none of them were available. His evidence in that regard was unconvincing. The First Respondent knew that this would be an issue, one would have thought that if no one was available, they would have produced evidence about that.

116. Alternative means of arranging interviews could have been made, perhaps for example by Skype, perhaps online in the form of a desktop interview.

117. It is noteworthy that the First Respondent did not even interview or offer a position to Mr Price's son. From the pre-interview email exchanges, we saw that the First Respondent appeared to be determined to offer the 10 male individuals positions on their ships, leapfrogging those already waiting. Suddenly, they have all been dropped, including Mr Price's son. It seems to us that the reason for this is that Miss Walker has justifiably and properly complained of sex discrimination and the First Respondent thinks that it will compound its problems if it goes ahead and conducts the interviews, thereafter offering employment to her male cohort, (including the Managing Directors son). The safest course of action appeared to the First Respondent to be, not to conduct the interviews at all.

118. These are facts from which we could properly conclude, absent an explanation, that not offering Ms Walker an interview was because of her complaint. The burden of proof shifts to the Respondents. We look to the First Respondent for cogent evidence to the contrary. It produces no evidence to support its contention that no one was available, which is contradicted by Mr Khan's email.

119. Not offering Miss Walker an interview was a detriment. She lost the opportunity to gain employment. An opportunity which was, judging from the pre-interview emails, a certainty.

120. Miss Walker's complaint of victimisation in this respect, would have succeeded.

The First Respondent's email of 25 July 2016

121. This is no more than a simple acknowledgement by Mr Price of Miss Walker's letter asking him to communicate in writing only. It does not amount to a detriment and the reason for sending it was nothing more than the courtesy of acknowledging receipt and the request. The complaint of victimisation in this respect would have failed.

The Statement on the First Respondent's Website

122. The statement does amount to a detriment, in that it incorrectly states that Miss Walker had rejected an invitation to further dialogue. She had not done so, she had merely requested that future communications be in writing.

123. Absent an explanation and having regard to the background, (Mr Phipps' email, Mr Price's reiteration, the cancelled interviews) we could properly conclude that the reason for this misrepresentation was Ms Walker's complaint. However, we accept that the reason for making a statement on the website was not, "because of" the protected act. Mr Price's motive for the statement was, we accept, the need to provide a consistent response to the enquiries the First Respondent was receiving from the press. It was a source of information that employees of the First Respondents, taking phone calls from the press, could refer the enquirer to.

124. Mr Price did not misrepresent the position of Miss Walker in respect of dialogue, we accept, having heard his evidence, that he misunderstood it. He thought what he had written there was correct. The complaint of victimisation in this respect would have failed.

Not Telling Miss Walker of the Outcome of Mr Phipps Disciplinary

125. It is natural that Miss Walker wished to know the outcome of her complaint of such blatant discrimination, to know what had happened to the perpetrator of the wrong inflicted upon her.

126. It is frequently the case that employers do not inform griever's of the outcome of disciplinary proceedings against others resulting from their grievance. The reason is often because the outcome is regarded as private and confidential.

127. Although later, the First Respondent made a statement to the Hong Kong Free Press to the effect that Mr Phipps no longer worked for them, it did not say that he had been dismissed. There is no inconsistency there with the position taken by the First Respondent.

128. In circumstances where a Respondent has upheld a discrimination grievance, apologised and confirmed that it has taken disciplinary action against the perpetrator, we do not think that we could properly conclude that the reason for not informing the griever of the outcome of the disciplinary action was victimisation for raising the complaint in the first place. In any event, we are satisfied that the reason the First Respondent did not inform Miss Walker of the outcome was that it thought it had obligations of confidentiality. The complaint of victimisation in this respect would have failed.

Harassment

129. Miss Walker complains that Mr Doughty's email of 24 August 2016, attaching a copy of an article from its in-house magazine, amounted to harassment related to sex. Mr Doughty was trying to illustrate to Miss Walker that Mr Phipps' email was not representative of the First Respondent's attitude toward employing women. Having regard to Miss Walker's perception and all the circumstances of the case, can that action be reasonably regarded as violating Miss Walker's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment?

130. All the circumstances of the case include Mr Phipps offensive email, Miss Walker's complaints, the First Respondent's apology, the abandonment of interviews, the failure to interview Miss Walker, Miss Walker's rebuttal of the offer to talk, her request for communication to be in writing, Mr Price's statement to the press, the publicity, the website statement, the failure to inform Miss Walker what had happened to Mr Phipps.

131. Mr Doughty's email concluded with words that he hoped that the article would confirm to Miss Walker that her experience was contrary to the company's values. Miss Walker is angry about that because she thinks that all she sees is sexism and misogyny. Nevertheless, we do not consider that Mr Doughty's letter and the attachment can reasonably be regarded as violating her dignity or creating the proscribed environment. The complaint of harassment would have failed.

In Summary

132. In summary, Miss Walker would have succeeded in her complaint of direct discrimination in respect of Mr Phipps' email, Mr Price's comments to the press and in her complaint of victimisation in respect of the First

Respondent not providing her with an interview. In all other respects, her claims would have failed.

Remedy – if the Tribunal had Jurisdiction

133. We go on to set out, as far as we can, what remedy the Claimant would have received, had we found that we had jurisdiction to consider this claim.

Law

134. Where a claim has succeeded before an Employment Tribunal under the Equality Act 2010, section 124 provides that the Tribunal may order the Respondent to pay to the complainant compensation of an amount corresponding to the damages the Respondent might have been ordered to pay by a county court. Section 119(1) sets out what a County Court may order, which is to grant any remedy which could be granted in the High Court in proceedings for tort or judicial review, which includes compensation for financial loss and personal injury. Such compensation can include damages for injury to feelings, (s119 (4)). Those damages would be payable by reason of a statutory tort on the part of the Respondent, the measure of damages in respect of which is to place the Claimant, so far as is possible, in the position that she would have been in but for the discrimination, (see Ministry of Defence v Channock [1994] IRLR 509 EAT).

135. Placing a Claimant in the position she would have been in but for the discrimination will entail an assessment of what might have happened, but for the discrimination, (see for example Chagger v Abbey National Plc [2009] EWCA Civ 1202 CA, [2010] IRLR 47).

136. Damages are assessed under two headings; General Damages for pain, suffering, loss of amenity or injury to feelings and Special Damages in respect of the financial losses flowing directly from the discrimination.

137. In the case of (1) Armitage, (2) Marsden and (3) HM Prison Service v Johnson [1997] IRLR 162 the EAT set out five principles to consider when assessing awards for injury to feelings in cases of discrimination:

156.1 Awards for injury to feelings are compensatory. They should be just to both parties. They should compensate fully without punishing the tortfeasor. Feelings of indignation at the tortfeasor's conduct should not be allowed to inflate the award.

156.2 Awards should not be too low as that would diminish respect for the policy of the legislation. Society has condemned discrimination and awards must ensure that it is seen to be wrong. On the other hand, awards should be restrained, as excessive awards could be seen as the way to untaxed riches.

156.3 Awards should bear some broad general similarity to the range of awards in personal injury cases. This should be done by reference

to the whole range of such awards, rather than to any particular type of award.

156.4 In exercising discretion in assessing a sum, Tribunals should remind themselves of the value in everyday life of the sum they have in mind. This may be done by reference to purchasing power or by reference to earnings.

156.5 Tribunals should bear in mind the need for public respect for the level of awards made.

138. Further guidance was given on the range of awards by the Court of Appeal setting out three bands of compensation for injury to feelings in the case of Vento v Chief Constable of West Yorkshire Police (2) [2003] IRLR 102. Those bands were as follows:

157.1 The top band was set at £15,000 to £25,000. Sums in this range should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race.

157.2 The middle band of between £5,000 and £15,000 was to be used for serious cases, which do not merit an award in the highest band.

157.3 Awards of between £500 and £5,000 were said to be appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence.

139. Those bands were subsequently amended to take into account inflation, in Da'Bell v NSPCC [2010] IRLR 19. In the case of AA Solicitors v Majid UKEAT/0217/15/JOJ (paragraph 22) Mr Justice Kerr said that it was not necessary for Employment Tribunals to await guidance from the appellate courts before raising the thresholds of those bands to take into account inflation.

140. In a personal injury case known as Simons v Castle [2012] All E R 90 the Court of Appeal held that General Damages awards for personal injury should be increased by 10% in all cases where Judgment is given after 1 April 2013. After a period of uncertainty, with conflicting decisions from the EAT, the Court of Appeal has now in De Souza v Vinci Construction (UK) Ltd [2017] EWCA Civ 879 confirmed that injury to feelings awards should similarly be uplifted.

141. In De Souza the Court of Appeal invited the Presidents of the Employment Tribunals in England & Wales to issue fresh guidance, adjusting the Vento figures for inflation and the Simmons 10% uplift. On 5 September 2017 the Presidents of the employment tribunal's for England & Wales and Scotland issued such guidance in respect of cases on which proceedings were issued on or after 11 September 2017. That comes too late for this case, however the methodology recommended for cases issued before that date seems to have unimpeachable logic and we therefore adopt the approach

set out at paragraph 11 of the Presidents' guidance in recalculating where the Vento boundaries should be as at July 2016, when the first act of discrimination took place. Mr Reede did the figures for us, but we checked them. We divided each of the figures by 178.5 being the RPI figure as at the date of Vento and then multiplied by 263.4 being the RPI figure for July 2016. We then multiplied the results of those calculations by 10% to add the Simmons v Castle uplift, rounding up or down to the nearest 10, (Mr Reede's figures did not include the 10% uplift).

142. On that basis, the Vento bands should be for the purposes of this case:

    Top: £24,340 to £40,570

    Mid: £8,110 to £24,340

    Bottom: £810 to £8,110

143. We have also had regard, in broad terms, to the Judicial College Guidelines for the Assessment of General Damages in Personal Injury Cases, so as to have in mind the levels of awards made in personal injury cases.

144. An award of compensation can include an element of what is known as Aggravated Damages. In Alexander v The Home Office [1988] IRLR 190 CA the Court of Appeal said that this may be appropriate where the respondent has behaved in a high handed, malicious, insulting or oppressive manner in committing the act of discrimination.

145. The sort of behaviour that can warrant an award of aggravated damages can include the manner in which the defendant has conducted the proceedings, as the EAT made clear in Zaiwalla & Co v Walia [2002] IRLR 697. In that case, the Respondent's solicitors had put in a, "monumental amount of effort" to an, "inappropriate" extent and had conducted the proceedings in a manner, "deliberately designed …to be intimidatory and cause the maximum unease and distress to the Claimant".

146. In Metropolitan Police v Shaw [2012] IRLR 291 the EAT reiterated that Aggravated Damages should be compensatory, not punitive and are an aspect of injury to feelings, not a separate head of claim.

147. In Shaw the EAT identified 3 broad examples of circumstances in which aggravated damages might be appropriate:

    166.1 Where the manner in which the discrimination was done was particularly upsetting, referred to in Alexander as, "high handed, malicious, insulting or oppressive";

    166.2 Where there was a discriminatory motive, known to the claimant;

    166.3 Where subsequent conduct adds to the injury, for example in the conduct of tribunal proceedings.

148. Tribunals now have the power to uplift or reduce any award by up to 25% where a party has unreasonably failed to comply with a relevant Code of Practice. This is provided for in the Trade Union and Labour Relations (Consolidation) Act 1992 at section 207A. The only code of practice which has been prescribed as relevant at the moment, is the ACAS Code of Practice 1 Disciplinary and Grievance Procedures (2009) which has no application in this case.

149. Awards of compensation for discrimination may be joint and several between two respondents. However, it is not for the Tribunal to apportion the damages payable between two respondents unless an element of the discrimination and resultant loss is clearly divisible, see London Borough of Hackney v Sivanandan 2013 EWCA Civ 22.

150. Special Damages is the name given to the award that is to compensate for financial losses that flow from the discrimination. They fall into 2 elements; losses to the date of the hearing, (which can usually be calculated with some precision) and future financial losses, (which invariably involve speculation as to what the future may hold for the claimant).

151. In respect of financial losses, the Claimant is under a duty to mitigate her loss. The First Respondent does not suggest that Miss Walker has failed to mitigate her loss.

152. The Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 provide that interest is payable on awards of compensation in cases of discrimination. The rate of interest payable stands at 8% for proceedings issued after 28 July 2013. Interest should be calculated from the 'day of calculation' which in a case of injury to feelings, is the period beginning on the date of the contravention or act of discrimination complained of, through to the date of calculation. In respect of other damages, interest is calculated from the midpoint, half way through the period in question, to the date of calculation. A Tribunal has a discretion where it considers a serious injustice would be caused if interest would be awarded, in respect to the periods specified, to calculate interest for such different period as it considers appropriate.

Discussion and Hypothetical Conclusions

153. Miss Walker relies on her Schedule of Loss, which is at page 70 of the Pleadings Bundle.

Injury to Feelings

154. There is no doubt that Miss Walker was very upset by Mr Phipps' letter and the First Respondent's subsequent failure to interview her. She is a young women, starting out in her chosen career, seeking to break into what has traditionally been regarded as a, "man's world". One in which overt attitudes prevalent 30 years ago still apparently manifest themselves. The extent of her anger is apparent from her correspondence.

155. We considered the implications of Miss Walker going to the press right from the start. She is perfectly entitled to do so, but what does this tell us about Miss Walker's state of mind? Does it reveal a person determined extract the absolute maximum she can out of what has happened to her, to enhance as much as she can the compensation she will receive? We think not. Miss Walker was very angry and she wanted the world to know the obstacle she had encountered in seeking employment with the First Respondent; the apparent Edwardian attitude to women. Her going to the press is symptomatic of her degree of upset, not her avariciousness.

156. We remind ourselves that an injury to feelings award is about compensating the victim, not punishing the perpetrator.

157. Equally, the significance of the First Respondent's prompt and genuine apology, is not that the compensation should be reduced because it apologised so promptly. The issue is the degree to which that limits the extent to which Miss Walker's feelings are hurt. Unfortunately, the ameliorating effect the commendable prompt apology may have had was countered by the unfortunate misjudgement in cancelling the interviews and terminating any prospects of employment for Miss Walker, because she had complained of discrimination. Mr Price does not help either, by repeating the offence in his unattributed comments to the press.

158. This is not a minor case. It is not a one off, in that it is not just about the email, there is the remark to the press and the ongoing failure to interview. On the other hand, this case does it bear comparison to a serious case such as a lengthy campaign of harassment. It is dangerous to focus on how many incidents occurred, our assessment is about the degree of upset caused to the Claimant.

159. In our judgment, this is a case that belongs in lower range of the middle Vento band. We have regard to the every day value and purchasing power of the sums that we have in mind and the level of awards one might receive for various personal injuries. We come to the conclusion that the appropriate award for injury to feelings would have been £9,000.

160. In her Schedule of Loss, Miss Walker seeks 25% uplift for breach of the Equality and Human Rights Commission Code of Practice, in various respects. Unfortunately, as we have mentioned above, only the ACAS code relating to discipline and grievance has so far been prescribed as attracting the 25% uplift.

161. Miss Walker also seeks aggravated damages. The facts of this case do not begin to approach the thresholds iterated in the authorities referred to above. Miss Walkers injured feelings would have been adequately compensated in the award of £9,000.

162. Miss Walker would have been entitled to interest on the injury to feelings award, from the date of the act of discrimination, 18 July 2016, to the date of the hearing, 11 May 2018. That is 662 days. The daily rate of interest would be £1.98 and the total interest would therefore have been £1,308.

163. We also note that in her Schedule of Loss, Miss Walker has sought a sum of money for injury to feelings in respect of each individual allegation of victimisation. An award for injury to feelings is a global award for the hurt caused by the discrimination as a whole.

Financial Losses

164. At paragraph 341 of her witness statement, Miss Walker deals with her loss of earning claim by simply referring to her Schedule of Loss. In her closing submissions, the only point made is that she says the opportunity with the First Respondent was as Third Officer, not as Fourth Officer as the First Respondent suggests.

165. We accept Mr Price's evidence that it would have placed these recruits on board ships as Fourth Officers, for an assignment of 6 months and the rate of pay would have been $1250 or £940 per month, (taking $1.33 as the sterling exchange rate).

166. We do not accept Mr Price's evidence that there was some doubt as to whether the recruits would have been placed on ships even if selected. It is clear to us from the early email correspondence we have quoted, that the First Respondent had every intention of placing them on ships and that they would, "leapfrog" those already waiting.

167. Mr Price's oral evidence was that the induction and training process would take 2 to 3 weeks. Thereafter, no doubt there would be a week or two's delay before a placement could start.

168. We therefore find that from 1 September 2016 to 28 February 2017, Ms Walker would have earned £5,640.

169. Thereafter, we think it more likely than not that Miss Walker would have secured a position as Third Officer with the First Respondent, (that seems to be what is contemplated by Mr Phipps' email of 11 July 2016). We have not been provided with their rate of pay for a Third Officer, we accept that it would have been a lower rate than that on a UK registered ship, which is the information supplied by Miss Walker. We are unable to assess what her income would have been for the remaining 4 months from 28 February 2017 until 31 July 2017 when her loss is likely to have ended, as she secured employment in the Royal Fleet Auxiliary on a salary of £23,963 from 1 August 2017. We cannot complete the loss of earnings calculation for lack of information.

170. However, we note that the Schedule of Loss shows that in fact Miss Walker earnt some £9,925 between 18 July 2016 and 19 May 2017. Credit to her for doing so. We would have had to reduce any loss of earnings to take that into account, which is likely it seems, to have reduced the loss of earnings to zero or very little.

171. We accept the evidence of Mr Price that the First Respondent would not have paid the training costs claimed in the Schedule of Loss.

172. The tribunal fees should of course be claimed back from the tribunal service, if they have not been already.

Dated: 12 June 2018

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Employment Judge M Warren

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE