EMPLOYMENT TRIBUNALS

Claimant: **Ms HE Biggs**

Respondents: **(1) A Bilborough & Company Ltd**
(2) Ian Barr
(3) Anthony Jones
(5) Steve Roberts

Heard at: **East London Hearing Centre**

On: **25, 26, 27 June 2019 and (in chambers) 13, 17 & 18 September 2019 and 4 February 2020**

Before: **Employment Judge Jones**

Member: **Ms M Long**

Representation

Claimant: Mr P Lockley (Counsel)
Respondent: Mr G Self (Counsel)

RESERVED JUDGMENT

The judgment of the Tribunal is that: -

1 All claims against the Claims against 4th and 6th Respondents are dismissed by way of withdrawal.

2 The complaint of wrongful dismissal is dismissed by way of withdrawal.

3 The Claimant was not a disabled person in accordance with the Equality Act 2010 and her complaints of disability discrimination fail and are dismissed.

4 The complaints against Mr Jones failed as it was a complaint of disability discrimination.

5 The Claimant made protected disclosures. The Claimant's dismissal was automatically unfair as it was contrary to section 103A Employment Rights Act 1996 and section 13 and 39 of the Equality Act 2010.

6 The complaints of direct sex discrimination, victimisation and harassment succeed.

7 Some complaints against the 1st, 2nd and 5th Respondents succeed.

8 The Claimant is entitled to a remedy for her successful complaints. The Tribunal will set a date for a remedy hearing and notify the parties. The parties will send in written submissions in relation to remedy by 30 July 2020, which will include submissions as to whether the parties should attend the hearing in person or whether the Tribunal should address remedy issues on the papers.

REASONS

1 The Tribunal began hearing this case as a panel of three members on 25 June. On the 9th day, 9 July 2019, one of the non-legal members, Dr Ukemenam was unable to continue to sit on the case, for personal reasons unrelated to the case. Both parties signed to give their consent to the hearing continuing before a Tribunal of two members.

2 The Tribunal apologises to the parties to the regrettable delay in the promulgation of this judgment and reasons. This was due to ill-health of the judge for most of 2019, pressure of work, difficulty in getting dates together for the two members of the Tribunal to meet and the number of issues in this case.

3 This hearing was to determine liability only.

Evidence

4 The Tribunal bundle had almost 2000 pages of documents. The Claimant produced 4 witness statements on her own behalf, the main one running to 396 paragraphs.

5 For the 1st Respondent the Tribunal had witness statements from: -

Ian Barr - 2nd Respondent and Claims Director; who dismissed the Claimant
Anthony Jones - 3rd Respondent, Compliance, IT and Personnel Director;
Ian Gooch - Chief Executive and 4th Respondent;
Steve Roberts, 5th Respondent and Claims Director;
DO, company secretary, and 6th Respondent;
TT, independent HR Consultant who conducted the appeal against dismissal.

6 The Tribunal had live evidence from all the witnesses.

7 The Tribunal made the following findings of fact from the evidence. There were many matters explored in evidence over the duration of the hearing. The Tribunal has endeavoured to only make findings of fact on those matters that relate to the issues in the case.

8 In these findings the Tribunal has referred to people other than the directors/named Respondents by their initials unless it was necessary to refer to their full names. It is hoped that the parties will be able to recognise who the initials refer to. For example, the Claimant's comparator in the equal pay claim is referred to as KH.

9 The reference to "Respondent" in these findings are to the 1st Respondent. the other named Respondents are referred to by their names apart from DO as the Claimant withdrew her personal claim against her in the hearing.

Findings of Fact

10 The Claimant is a qualified solicitor specialising in shipping. The Claimant had worked in private practice before being employed by the Respondent. The Claimant joined the Respondent as a claims handler in October 2004. When she first joined the practice, the Claimant shared a room with another claims handler and Steve Roberts who was her line manager.

11 The Respondent is an FCA regulated manager of a mutual indemnity fund (the Club) operating globally with branch offices in Greece and Hong Kong. The Respondent had an approved Quality Management System which held the business processes. This was overseen by the 3rd Respondent who was the Compliance Director. There were many steering committees for different business areas.

12 Sometime during 2006 the Claimant informed Ian Barr that she was pregnant. It was agreed that following her announcement he had gone directly to another female adjuster in the other team and told her to 'keep her legs shut'. The Claimant was surprised at the comment and felt that it was offensive to the other claims adjuster. At the time, the Claimant did not say anything about this to Mr Barr. The other woman no longer works for the Respondent and Mr Barr's evidence was that they were still in touch.

13 Mr Barr agreed in evidence that he did make another comment about her friendship with one of the Respondent's female clients. He suggested that their friendship might be because the client was a lesbian. His evidence was that he felt that it was unusual for a client to 'pick out' the female claims adjuster and invite her for drinks. He suggested us that in making this comment, he was trying to protect her. We were not clear how making this comment would protect her. Instead, it is more likely that this was an assumption he made because they were both female. The Claimant found it odd that the Respondent would assume that the fact that a woman had invited another out for drinks might reflect their sexual orientation.

14 In 2006 the Claimant was promoted to the post of Claims Executive. In 2008 the Claimant did a lot of work on the occupational disease claims. In 2010 she was promoted to the post of Associate Director at the same time as another solicitor, her colleague KH. Steve Roberts had been made a Director in 2008. Ian Barr became a Director in 2010 with Ian Gooch as CEO from 2009.

15 We find that Steve Roberts distributed some of the various fleets that he had as clients between the Claimant, KH and two other Associate Directors. Following their promotion, the Claimant and KH would cover each other's desk/work whenever the other was absent. Both the Claimant and KH continued to be line managed by Mr Roberts and the three of them worked together.

16 At a meeting to discuss the division of work, Steve Roberts informed the Claimant that he could not give her a particular fleet because she was a woman. Instead, the fleet was allocated to KH. The Claimant's feelings were hurt by this comment. Mr Roberts explained at the time and in the hearing that this was because the operators of the fleet held sexist views about women and he could not force them to work with the Claimant. The Claimant had not asked to work on that account but felt that it had not been necessary to tell her the real reason why she could not work with that fleet. At the time she did not believe that Mr Roberts had said that in order to offend her.

17 At the time of their promotion the Claimant had been at the Respondent approximately five and a half years. KH started working for the Respondent in 2003, having been there on secondment for four months earlier. We find it likely that the difference between the 16 months referred to in paragraph 10 and the 20 months in paragraph 25 of Mr Roberts witness statement was the 4 months KH spent on secondment with the Respondent. He was not promoted to Associate Director until 2010 at the same time as the Claimant, which was 7 years after the started there.

18 We find that the Claimant and KH were not given strong or close line management by Mr Roberts. The Claimant's evidence was that he was a very 'hands off' manager and 'let people get on with it'. He was also very busy. The Claimant and KH were now quite senior within the business as the post of Associate Director is one step below that of Director. They were also line managers to more junior staff. The Claimant believed that she was carrying the heaviest caseload of the London-based Associate Directors. The Claimant was also keen to progress within the business. She would often handle claims on other fleets to help her colleagues. She took on more managerial responsibility than KH, including monitoring and promoting compliance. The Claimant was one of the few managers who carried out regular appraisals of the staff who reported to her and others.

19 We heard other evidence about the extra responsibility the Claimant took on. In his statement Steve Roberts recalled that the Claimant would always be looking to volunteer for tasks – whether claims or project related. The Respondent appreciated her enthusiasm. At the time, the Claimant had no training in carrying out appraisals. Mr Roberts' evidence was that the Claimant would frequently overestimate her capacity to take on more work and that he would have to 'curb her enthusiasm' for additional work. We find it likely that following her promotion, whether because of work allocated to her or work she took on, the Claimant's workload became heavy.

20 In 2010 Ian Gooch asked the Claimant to assist with a project to improve the business processes in relation to a new product that had been introduced a couple of years earlier. This was a significant piece of work.

21 Around the end of 2010, the Claimant undertook her first appraisal which was of RG. At the time, the Claimant had not been trained in how to do appraisals. She did some research on RG's work before conducting the appraisal and told Mr Roberts what she was doing and the issues that came up for her. it is likely that he broadly agreed with her approach. Issues identified for RG at the time were time management and a tendency

to lack attention to detail. It is likely that Mr Roberts agreed with those assessments at the time as we were not told about him taking issue with the Claimant's assessment of the people she appraised. The Claimant tried to source courses for RG in time management.

22 We find that in January 2011 the Claimant's marriage broke down. The Claimant had a few days off in January 2011 when this initially happened. The Claimant's divorce involved a custody hearing in February 2012. In the run up to the hearing the Claimant asked to be allowed to reduce her hours from 140 per week to 130 per week in a four-week flexi-period and then later, in March 2012, to 120 hours per week. In relation to the second request, the Claimant asked to be allowed to arrive at work at 10.30am, after the start of core hours. The Respondent agreed to this. The Claimant's salary was reduced and she was told that this would be a temporary measure which would be reviewed after four months. The Claimant was told that if on review, it was found that the change in working arrangements had significantly impaired her ability to satisfactorily perform her duties, they would seek to redeploy her to what they considered to be a 'more suitable position'.

23 In April 2012 the Claimant was due a pay review. She asked the Respondent to defer this until her situation was more settled. A few months later, in June, she spoke to Mr Roberts about her changing situation. Following the custody hearing the Claimant and her partner were going to have their children live with them on alternate weeks. She asked the Respondent to allow her to return to working 140 hours per week in a four-week period but continue to start at 10.30am every day on the alternate weeks when the children were due to be with her. The Claimant asked for this arrangement to be put in place to allow her to make permanent childcare arrangements. Steve Roberts supported this application and recommended it to the Board in an email dated 18 June 2012. This arrangement was agreed and came into effect towards the end of June 2012.

24 In the summer of 2012 the Claimant asked Mr Roberts for some management training. She did so because she was expected to manage claims handlers in the team without much involvement from management but she had not had the training to do it. She also wanted training in how to deal with difficult people. The Claimant wanted to do her job well.

25 The Claimant believed that her workload was heavier than that of KH who is her comparator in this case. She assisted Dimitri with a matter that involved a fleet that was part of KH's responsibility when he moved in to share her room.

26 In 2013, the Claimant was dealing with many high value, complex cases in 2013. Her experience of sharing a room with KH was that both her managerial workload and her caseload were heavier than his. He was engaged in more technical work because of his work on sanctions and being on the bill of lading subcommittee. She believed that he was not so involved with managing junior staff as she was. KH did manage junior staff as there are emails in the bundle which show him collaborating with her and Mr Roberts on various line management matters such as the authorisation of absence or receipt of reports.

27 In the summer of 2013 the Claimant raised these issues with Mr Roberts just before he went to Greece. She told him that she considered that she was contributing more to the team through her own claim handling activities and line management work. She asked the Respondent to recognise the differences that were developing between their respective roles. The Claimant also wanted to be on a subcommittee as she

considered that it was another way to progress within the business. Mr Roberts told her that membership of a sub-committee was a waste of time. He confirmed in the hearing that the Claimant did similar work to KH but that at the same time, it was different.

28 The categorisation of sitting on sub-committees as a waste of time did not make sense to the Claimant as she knew that Mr Roberts sat on two sub-committees and the other directors all sat on international sub-committees. The Claimant was aware that at the time all the Respondent's representatives who sat on committees were male. Mr Roberts told her that he would have to go away and find out what KH was doing before discussing the issue any further.

29 The sub-committees were of the International Group of P&I clubs of which the London Club was a member. The sub-committees covered a wide range of subjects such as personal injury and salvage. According to Mr Roberts, each member of the club could seek representation on any sub-committee. Members of a sub-committee would identify action points and volunteers would be sought to progress them between meetings. Mr Roberts' evidence was that the Claimant's tendency to volunteer for tasks and her capacity for work made her unsuitable for sub-committee work as she could overextend herself. This was not the reason that he gave to her at the time.

30 We find that while Mr Roberts was away in Greece he needed some information on salaries within the business and the Claimant volunteered to ask the person who had the information to send it to her. Mr Roberts agreed that she could do this. When the information was sent to her the Claimant noticed that it contained salary information for both her and KH. The Claimant noticed that KH was paid more than she was. The difference was less than £2,000. The Claimant was surprised to find this out and became quite upset about it. This was particularly upsetting to her, when she reflected on the conversation that she had had with Mr Roberts before his departure.

31 The Claimant decided to say nothing about this to Mr Roberts as she did not want to cause trouble for the person who had accidentally disclosed the information to her. She decided to do nothing about this but to put all her efforts into getting herself appraised and in that way, get proper recognition from the Respondent for her contribution to the business.

32 On 23 September 2013 the Claimant emailed Mr Roberts with her summary of their discussion about her workload and the steps they had agreed on managing it and supporting her for the near future. The Claimant recorded an agreement that she should divest herself from some of the non-core work such as stop loss and possibly Club News, on which she reported to Ian Barr. The Claimant had been responsible for organising the Associate Director meetings. Part of the discussion she had with Mr Roberts had included whether she could delegate that task and the support she might be able to get on it. She ended the email by asking whether they could work together to identify some objectives for her for the next 6 – 12 months so that could make sure that she was spending her time on the activities the Respondent wanted her to. We find that the Claimant was asking the Respondent for support, recognition and direction on her work.

33 In late 2013 the Claimant, KH and Mr Roberts discussed various issues which included managing a junior colleague called PS. PS was a senior claims manager and someone who transferred to the Respondent from its Greek office. He had been working for the Respondent since 1985. There had been some concerns about his performance but the Respondent did not have a clear picture of his workload or his progress on claims.

The team discussed who would address these issues with PS. This fell to the Claimant to do as KH refused to do it and Mr Roberts' decision was that he should remain out of it for the time being and be available to deal with any appeal that PS may bring against any decision that was made because of any management process. No decision was taken but it was clear that the first matter was for the Respondent to gain a clearer picture of PS's performance in his job.

34 The Claimant was left as the only person out of the three who was willing to tackle any performance issues with PS. The Claimant decided to start with a file review of his work. She put all the information from that review in an Excel spreadsheet so that the Respondent could consider PS's work. She presented this to the Respondent but nothing further was done at that time.

35 In 2013 the Respondent arranged some appraisal training for new managers. The Claimant attended along with KH and another colleague.

36 In January 2014 Mr Roberts asked the Claimant to prepare a committee report for the forthcoming meeting. It was on a case that belonged to one of the Claimant's colleagues who was on maternity leave. The Claimant did the report but considered that that there were issues that made this a difficult case. She asked if the matter could be given to KH as she was busy with her own work. Mr Roberts asked the Claimant to do the report and then give the file to KH to manage. However, KH refused to take it on. The Claimant reported back on this to Mr Roberts. As far as she was aware, KH was never challenged on his refusal to take on this or any other work. She was not aware that Mr Roberts intervened. The Claimant found this disappointing as by then she was aware that KH was paid more than she was and yet he could refuse to share the workload.

37 The Claimant recalled that someone called Dimitri found sharing a room with KH difficult and he moved in to share a room with the Claimant. Dimitri would often refer line management queries to the Claimant rather than to KH who was meant to be his line manager.

38 At the start of 2014 the Claimant continued to be very busy. She had many matters that she was dealing with. The Claimant had raised the issue of management training with Mr Roberts some time earlier and she was concerned that she was being asked to appraise and supervise staff and she had not had much training in those skills. She identified the Diploma in Management course run by the Open University (OU) which was not only a recognised qualification but was Stage 1 of the OU's MBA programme.

39 Mr Roberts was supportive of the Claimant undertaking the OU course. The course cost £4,145. Mr Barr was also supportive and the Claimant's request was approved. They considered that it would allow the Claimant to develop her interests in the operation and development of the business beyond a pure claims function. Mr Roberts hoped the Claimant's growing knowledge would be beneficial to the company. The note from the Board's training committee at which Mr Jones and Mr Barr was present, was to approve the request. Mr Barr was noted as saying that the course appeared to be a suitable course for a relatively new manager.

40 On 15 May 2014, the Claimant and Mr Roberts had a discussion on the development of Key Performance Indicators as a tool to assist her in conducting appraisals with junior staff. She felt that the absence of KPIs in the business was an area of work which had the potential to become a source of tension and misunderstanding

between managers and staff. During that discussion the Claimant heard Mr Roberts describe her a '*pushy'*. She was shocked and upset by that comment and considered it to be a negative term used to describe assertive women.

41 The Claimant mulled over the comment during the day and in the afternoon, she decided that she was too upset to continue to stay at work. She wrote an email to Mr Roberts in which she referred to personal stresses and said that she was emotionally exhausted, shattered and not feeling robust at receiving constructive criticism as she would normally have been able to. The Claimant's evidence was that she hardly slept that night and on the following morning while on her way into work, she sent Mr Roberts a longer email in which she referred directly to the '*pushy'* comment and discussed how he could have come to that conclusion. Mr Roberts replied that day to say that it would not be his choice of word and that if it came from him, it was ill-judged.

42 He apologised for not having any ideas that would assist her with the management project that she had to do related to the course she was taking. He suggested that when she was back at work she should make him sit down and talk about it '*using your charm'*. Lastly, Mr Roberts stated that he placed great trust and reliance on the Claimant and apologised to her if he had not made that apparent.

43 The Claimant took offence at the suggestion that she should use her charms to get anything done at work when she had tried hard to progress through hard work and effort. In addition, the Claimant considered that this was a comment Mr Roberts was highly unlikely to make to a male colleague.

44 In or around July 2014 Mr Barr invited the Claimant out to lunch with the two solicitors. The Claimant's recollection was that one of the solicitors who sat next to her and who had been drinking heavily through the lunch, started touching her towards the end of the afternoon. He put his hand on her back and let it fall so that it rested on the bench where they were sitting, against her bottom. The Claimant did not want to cause a scene and being aware that this was a senior partner in a firm that had close business ties with the Respondent, made her excuses and went back to the office.

45 On the following day the Claimant went to see Ian Barr and told him that she had been groped during the lunch. She remembered being quite agitated about the incident and affronted that the individual could behave in this way. Mr Barr was unsympathetic about it and tried to make it into a joke. He did not appreciate how it had made the Claimant feel. In evidence he confirmed that he remembered the conversation. He acknowledged that on reflection, he had not dealt with the incident in the best way. The Claimant was aware that the solicitor had a close relationship with one of the Respondent's biggest clients so she appreciated that it might have been difficult for the Respondent to do anything about it. It is likely that what she was seeking was some acknowledgement from the Respondent about how she was feeling and how inappropriate the solicitor's conduct had been. At the time, she did not get that.

46 Towards the end of 2014, Ian Gooch asked the Claimant to assist him in developing the business process to implement a change in the deductible structure. She considered that this required the development of new processes and introduced a greater credit risk for the business. The Claimant highlighted this in her report to the Board. Mr Gooch did not usually work with the Claimant, although they had done one or two other projects together. We find it likely that he asked her to do this work as she was someone

who worked hard and got things done. The Claimant completed the project and presented a report to the Board.

47 At the beginning of March 2015, the Claimant's husband asked her to vary the custody arrangement so that he had the children every other weekend and that they lived with her the rest of the time. The Claimant agreed to the variation and emailed Mr Roberts about this. He was supportive. Once the custody proceedings concluded, the Claimant's experience of the custody arrangements with her husband was that they were not particularly stressful as they were able to agree variations between them. Since then, they have both abided by the arrangements which were clear and remain in place.

48 On 11 March the Claimant emailed Mr Roberts to set out a pattern of working that would accommodate the change in the custody arrangements. Mr Roberts forwarded her email to HR, commenting that he, Ian Barr and Ian Gooch valued the Claimant and wanted to actively find a way to accommodate her. He commented that the Claimant's plan that she set out in the email looked ok to him.

49 In response, HR sounded a note of caution in relation to the Claimant's request that in the future she may ask to be allowed to work from home on one day a week depending on how things go. The HR person stated that she would be in favour of it if it were a one-off but as a regular event, she would be concerned because of the precedent that it would set within the company. Mr Roberts' response was that the Claimant was valued and that if he was persuaded that working from home was the only option, he would agree to it as he would not want to lose her.

50 Mr Roberts agreed to trial her proposal of coming in late a few mornings a week. Following his email exchange with HR he told the Claimant that her working from home presented many issues that required careful consideration but proposed that her initial suggestion should be trialled first.

51 The Claimant was disappointed that the Respondent did not agree to her idea of her working from home for one day a week. She knew of a male colleague who worked from home on a regular basis. She knew that this was not particularly organised or pre-arranged. The Respondent would only know that he was not coming in when he did not turn up to the office. That was different from her situation as she had suggested doing it in an organised way. She considered the difference in the Respondent's attitude to her suggestion to be unfair and that the response to her suggestion had been less than encouraging. She interpreted this as an indication that an application for liberty to work from home on occasion would be refused and she did not make a formal application.

52 Also in March, the Claimant asked the Respondent to support her to do the next module in the Open University course, which related to strategy. She discussed this with Mr Roberts. The matter was discussed at a meeting of the training sub-committee of the Respondent's Board. The note produced in the trial bundle was that the Respondent wanted more information as how this course fitted in to the post-graduate Certificate in Business Administration that she was already undertaking and how the Claimant felt this had assisted her in performing her role. Mr Roberts supported the Claimant's request for the Respondent to assist her in funding this course. After their discussion about this the Claimant felt that she could raise the issue of equal pay with KH with him, as this remained an issue for her.

53 On 29 April 2015, KH spoke to the Claimant in a way that she considered rude and because of the way she was feeling about everything else at work, she decided to leave work a little earlier than usual. It was 4.30pm when she emailed Mr Roberts to let him know that she was going home and the reason for doing so. She considered that KH had not meant it in a negative way but when he became agitated at work he would sometimes become a bit '*shouty'*. Ian Barr agreed that he sometimes described him in that way.

54 There followed an exchange of emails between the Claimant and Mr Roberts in which the Claimant expressed her frustrations about work. She listed some of the factors that had led to her feeling frustrated and demotivated. She specifically complained about inequality of pay between her and KH. She acknowledged that the gap between them was not massive but that it was the principle that bothered her.

55 Another factor was what she considered to be the unequal distribution of work between her and KH and the fact that although a year earlier, Mr Roberts told her that he was going to appraise KH before responding to her query about pay, nothing had happened. She referred separately to the fact that she had a bigger caseload compared to him and that she noticed that he spent time on matters not directly related to their work. She complained about how KH spoke to her and asked whether anyone was going to give him feedback on it. She had received complaints from other colleagues about KH's manner and on occasions, some of his reports had chosen to refer line management queries to her as opposed to speaking to him.

56 Lastly, she referred to a lack of discipline in the workplace and referred to the colleague who worked at home whenever he felt like it, as *'some people who are coasting or are actively abusing the system'.*

57 On 7 May, the Claimant and Mr Roberts met to discuss the issues raised in her email. In that discussion, Mr Roberts told the Claimant that the pay difference was because KH was older than her. That was not the reason relied on by the Respondent at the hearing or in the pleadings. Mr Roberts does not appear to have appreciated that the Claimant's complaint about inequality of pay between her and KH was a serious matter for her. in his witness statement his evidence is that he thought that she was generally having a moan about her lack of career prospects and that this was part of it. He stated that he considered it to be a minor matter or an aggravating factor. We find it likely that she was raising many issues, one of which was the issue of inequality of pay with KH which was an important matter for her.

58 Although Mr Roberts did not recall the issue of the differential between the two salaries being mentioned before the email of 29 April, we find it likely that she had mentioned it before as in the email she referred to the earlier discussion in February 2014 when she was told that he would conduct an appraisal of KH first so that he could understand his contribution to the business and then come back to her on the issue.

59 The Claimant was aware that other colleagues had asked for pay rises and got them without any particular conditions being put on it. She felt sure that once she brought it to the Respondent's attention, the difference would be made up. It is likely that in 2015 the Claimant considered that the salary differential had been overlooked by the Respondent and that if she raised it, it would be addressed and put right. It is likely that she was surprised when it was not addressed in the way she had hoped.

60 When it became clear in the conversation that the Respondent was not going to make up the difference, the Claimant became upset and made a comment about how naïve she had been in the past when she simply accepted her pay reviews. Mr Roberts responded by telling her that she should be careful and that the issue could be '*dangerous'*. She could not remember the whole statement he made and did not understand what he meant but the word '*dangerous'* stood out to her.

61 We find it likely that the Claimant was complaining about her lack of career prospects, her increasing frustration with the way in which the company was organised as well as about inequality of pay between her and KH.

62 We find it likely that he told her that the Board were actively working to close the gap between them. We did not have Board minutes that showed discussions about the gap between the Claimant's and KH's salary. In his live evidence, Mr Roberts stated that it is likely that what he meant was that pursuing this issue could be an '*own goal'* for the Claimant and that her long-term interests would be better served by leaving this matter alone.

63 It is likely that soon after, the Claimant spoke to HR to check whether the pay differential remained the same. She was told that she was the third highest paid claims associate director in London. The Claimant thought of all the reasons why this was so. She knew that KH and the other associate director qualified as solicitors in 1998 and she qualified in 1999. By this time the Claimant had a post-graduate management qualification, which KH did not have and which the Respondent supported her to get because it would be of benefit to the business.

64 Mr Roberts' evidence was that the Respondent used maritime specialists to benchmark all claims employees' salaries in advance of each annual review and that they had never pointed out the Claimant's salary as being an issue. We were not shown any of the data produced by such specialists and so the Tribunal is unable to comment on their assessment of salaries at the Respondent or whether they were asked to look at KH's and the Claimant's salaries in particular.

65 In his witness statement, Mr Roberts' evidence is that the difference in salaries was based upon the Board's assessment that KH's contribution to the business was greater than the Claimant's in the first few years of their employment. However, he also referred to this as the reason why they started at different salaries, when the extent of their respective contributions would have been unknown. Later in his witness statement, Mr Robert said that the reason for the difference in starting salaries was to reflect the fluctuations in the employment market for qualified maritime lawyers at the time. They were employed 20 months apart and as already stated, qualified as solicitors a year apart. We were not shown any data on the typical starting salaries for maritime lawyers at the time KH was employed with a comparison to the state of the market when the Claimant was employed. In such a short space of time as 20 months we would have wanted to see evidence of such a big change in the market to explain a difference of £3,700 between their starting salaries.

66 Mr Roberts referred in his witness statement to KH having knowledge and experience that would be difficult to replace and of him having extended himself in different ways. He also spoke of the Claimant extending herself by offering to assist directors with work and by taking on various challenges within the business. Although these qualities on the Claimant's part are portrayed in a negative light in the witness

statement, they appear to be similar to the qualities that are commended in KH. Mr Roberts' stated in his statement that the perception of both the Claimant's and KH's performance was that they were both very good in their own ways.

67 In his witness statement Mr Roberts also described the Claimant as 'overly dominant' and being incredibly ambitious. He stated that these were facts as he saw them. He did not see any sexist overtones in these terms.

68 The Respondent did not have a salary structure that was tied to job title. Instead, the Respondent preferred to reward members of staff for their perceived contribution to the business.

69 After their discussion, the Claimant spoke to a recruitment consultant used by the Respondent who reassured her that she was highly regarded by the senior managers. Their conversation reassured the Claimant that her longer-term career prospects in the organisation were positive.

70 Funding for the Claimant's courses were discussed at the training sub-committee in May. It was unlikely that the Respondent gave similar support to other members of staff or that anyone else asked for this type of support. There was no mention in the minutes of the training sub-committee meeting of the Claimant's wages in relation to KH or anyone else or whether funding her courses was related to her remuneration. In May 2016 the Respondent agreed to additional support for the Claimant to take further modules of study.

71 On 27 August, while Steve Roberts was away on holiday, the Claimant spoke to Ian Gooch about the inequality of pay between her and KH. Mr Gooch's evidence was that he did not think the Claimant was raising this as an equal pay issue. We find that the issue for the Claimant which it is likely that she made clear to him was that she was getting paid less than KH. It was one of the things that had been an issue for her since she found out that he was paid more than she was. She was also concerned about her career prospects within the company as she wanted to progress.

72 On 4 September the Claimant emailed Mr Roberts to give further examples of the support she had offered junior staff and how they had improved as a result. She stated that she was resigned to the fact that there was no appetite to do anything about the pay differential between herself and KH. Mr Roberts indicated that they would have a conversation about this on the following Monday.

73 The issue of the difference between the two salaries and the Claimant's unhappiness with it, was raised at the October Board meeting. By the time of the meeting, the Claimant had spoken to both Steve Roberts and Ian Gooch about her unhappiness with the inequality of pay between her and KH. It would have been appropriate for Mr Roberts, as her line manager, to raise the issue and it is likely that Mr Gooch would have been able to confirm his conversation with the Claimant. The Board agreed to immediately increase the Claimant's pay to equalise with KH. We find that it was highly likely that the Board treated it as a reasonable request for equality of pay because the increase was not recorded as being based on any assessment of the work the Claimant and KH were doing and no reports were requested from them or about their work for consideration at the meeting. Instead, it is likely that the item was discussed and a decision taken to equalise their pay.

74 In his witness statement, Mr Gooch stated that the Board considered whether to pay back pay to the date of the Claimant's appointment to the associate director position and decided against that because of the amount of money the Board had already spent on the Claimant's education. However, Steve Roberts' evidence was that he told her that the Board had decided not to pay her any backpay because it could see no reason to do so. The Board did not consider that the previous awards had been unreasonable or unfair and so did not consider that there was any basis to pay back any historical difference.

75 When they discussed it, the Claimant asked Mr Roberts whether the board had any appetite to deal with the historical pay difference. She recalled Mr Roberts saying that he would do something about it if he thought that it would make a difference. That stuck in her mind as a statement that did not make sense as it should have been obvious that it was a matter that was important to her and would have made a difference to her. She did not take the discussion any further that day.

76 Mr Roberts' witness statement states that the increase related to an assessment of the Claimant's growing contribution to the business and that the cost to the Respondent of her Open University (OU) course was considered a compensating factor. We find it likely that those were not in any of the Respondents' minds at the time. We say this because his note to the company secretary sets out that the simple decision was to equalise her pay with that of KH.

77 The letter sent to the Claimant to confirm the pay rise referred to the salary increase resulting from her conversation with Steve Roberts.

78 In emails between the directors in October 2015, Mr Roberts was asked whether he considered that it was appropriate for the business to spend over £10,000 on courses for the Claimant. He confirmed that he did and that it would provide good motivation for the Claimant as well as be of potential value to the business. He also acknowledged that in the longer term it could make the Claimant a greater flight risk. There was no mention of the Claimant's pay.

79 On 31 January 2016, the Claimant emailed Steve Roberts to inform him that she was feeling unwell with a headache/migraine. She was unsure if she would be able to attend work on the following day but was hoping to be seen by the doctor the next day. The documents in the bundle that preceded this email show that the Claimant had been busy managing junior staff, with work and with her domestic life. On 4 February, the Claimant experienced heart palpitations while seated at her desk. This did not subside during the day so she called 111 and was advised to see her doctor. She did so and was referred to A&E. Her emails to Steve Roberts that night record that the palpitations had by then calmed down. She was told that she needed a follow up appointment with her GP and a referral to a cardiologist. She asked to be allowed to work from home on the following day, which Mr Roberts agreed.

80 Although the Claimant's case was that Mr Roberts was upset with her for going above his head to Mr Gooch about the inequality of pay issue, there was no hint of any issue between them in this exchange of emails about her being unwell at the beginning of February. The Claimant wrote a longer email the following day, 5 February in which she reported that she had been having migraines of increased duration over the past 6 months and that the long commute, the requirement to study and the demands of parenting two growing boys was causing her some stress. She stated that she was in the process of

reflecting whether she wanted to continue working in London. The commute was awful because of the work that was at that time going on at London Bridge station.

81 She floated two possibilities. She could either work from home on more occasions to ease the pressure of the commute or she could apply to work reduced hours. She was reluctant to reduce her hours but stated that she was unclear about her career prospects with the Respondent and if that was made clearer and/or she received maintenance payments from her ex-husband, she might be able to make it all work. She was happy to return to full working hours once the timetable reverted to normal.

82 She ended the email by thanking Mr Roberts for his help and support the previous day.

83 Mr Roberts responded by agreeing that they needed to discuss the issues raised in her email on her return to work.

84 On another occasion the Claimant experienced chest pains on her way to work and decided to return home. It may have been the first day she was due back to work after being unwell in February.

85 While the Claimant was at home she continued to support and manage junior colleagues. We had copies of an email exchange she had with GI on 9 February where she successfully conveyed to him her support, enquired how he was getting on with a complicated matter. This was evidence of a good managerial style and approach from the Claimant.

86 When the Claimant returned to work she spoke with Mr Roberts about her desire to occasionally work from home. He advised her against putting in a formal application for flexible working. He told her that such an application could be problematic and he quoted HR by saying that it could set a precedent. He considered that other less senior staff in the claims team would see the Claimant working this way and they would also want to have this arrangement. They agreed an informal arrangement where the Claimant would be able to work from home once she informed the Respondent of the reason. Mr Roberts did not see a big difference between agreeing to her working from home each time she requested it and having a set arrangement that she would work from home on one day a week. For the Claimant, there was a big difference in that she had to make a request each week and on each occasion, she had to have a specific reason for making the request. We had examples of the Claimant asking to be allowed to work from home and that request being granted. The reasons were usually related to the care of her children.

87 It is the Claimant's case that SH, the Respondent's then company secretary also asked to be allowed to work one day a week from home as she was caring for a sick relative but that the Respondent did not allow it. in contrast, she was aware that MB and RM both had formal flexible working arrangements with the Respondent and both were male and neither had any dependents.

88 The Respondent's case was that neither MB or RM reported to Mr Roberts. However, they were both senior members of staff as RM was a former head of IT and MB is head of claims services. Neither had a front-line claims handling role. Both CD, a

manager and SL, also had flexible working arrangements which allowed them to work from home for childcare reasons.

89 There was evidence in the bundle of the Claimant continuing to work on claims and liaise with colleagues while working from home. We were not told of an occasion when someone needed to contact the Claimant and could not because she was working from home or any other aspect of her work that was adversely affected by it.

90 In March 2016 the Claimant attended her GP surgery with chest pains which left her slightly breathless. The GP's notes record that she did not have palpitations but that she was worried about it. the Claimant had already been referred to cardiology and this was going to be expedited. The Claimant was advised of red flags to look for before referring herself to A&E.

91 The Claimant was not happy with the arrangement by which she had to make a request on every occasion but she did work from home on one day on most weeks. She would have to notify Mr Roberts by email or verbally before taking the leave and the reason for it. She had to repeatedly ask to be allowed to work from home. Mr Roberts did not appreciate the stress and uncertainty that would have been placed on her in having to go through the process of having to ask every week for permission to work from home and the anxiety she may have suffered given the chance that he might not agree to it. In the hearing, he agreed that his agreement to her requests were not a foregone conclusion and that it would at least have been inconvenient for her to have to ask him on every occasion. There was one occasion when Mr Roberts told her to come in to work. On all other occasions her request was granted.

92 Mr Roberts agreed in evidence that childcare fell disproportionately on women in society and that although there were requests for other matters such as when she expected carpet fitters, most of her requests were for childcare reasons.

93 He denied that he refused her because he wanted to control her or because he believed the women cannot be trusted to work if they are allowed to work from home.

94 The issues concerning PS had not been resolved. Nothing further had been done about his performance since the Claimant presented the Excel spreadsheet with evidence of his work to the Respondent in 2013. In 2016, two of the Respondent's clients complained about his handling of their cases. The clients were important to the Respondent and so there was a need to do something about this. The three managers dealing with the Greek fleets, Mr Roberts, KH and the Claimant discussed what they were going to do about PS.

95 They discussed how they were going to handle the situation as all three wanted this to be done sensitively but effectively. They were agreed that they had to monitor his work. PS had been employed for a long time and it was possible that his performance issues had been around for a while and had not been addressed by previous managers. In those circumstances, he was unlikely to welcome closer scrutiny from management.

96 Although Mr Roberts' evidence was that the Claimant wanted to move faster on PS than he did, we were not given evidence of any discussions between the team dealing with this - the Claimant, KH and Mr Roberts - in which she was told to slow down or to stop what she was doing or to take a different approach. This was always going to be a difficult management matter but we find it likely that they were agreed on the approach.

Following management discussions, the Claimant counted the number of emails PS had saved into the electronic document system as a way to measure his workload. The results suggested that he was one of the less busy claims handlers. However, he had not got on to some other work that he had been asked to do and at the same time, had been complaining of stress. In an attempt to better understand why, the team decided to move on to monitor traffic into his email inbox. Mr Roberts agreed that this should be done. Mr Roberts and the Claimant met with Mr Jones to check whether there were any employment law issues that may come up if they went ahead with their monitoring of the inbox. They discussed the fact that he might resign as a result, which Mr Jones stated he was prepared for. It is likely that the Claimant believed that the actions she took in monitoring PS were in line with the agreed approach and that management would support her if there were any issues. In his witness statement Mr Roberts agreed that the review of incoming email into PS's inbox was the logical next step but that he emphasised that they needed to move in measured steps.

97 In keeping with that intention, the Claimant met with PS on 10 June 2016 and spoke with him about his performance. They discussed his workload and personal matters and she informed him of the Respondent's proposal to follow his inbox to review the traffic to understand why he was seemingly struggling with his workload. PS later spoke to Mr Roberts to say that the Claimant had conducted the meeting in a constructive manner and he was complimentary about her. However, he was clear that the day the Respondent accessed his inbox was the day he would resign. Mr Roberts reported on their conversation in an email to the Claimant.

98 The Claimant sent Mr Roberts a note on the meeting with PS outlining all that they had discussed. The note reflected the report that PS have given to Mr Roberts. In an email to the Claimant Mr Roberts stated that he had reassured PS that all the Claimant was doing at present was to report back to him on how the meeting went and that he would consider what would happen next. He did not take the Claimant to task for going beyond what had been agreed as the way forward or tell her that she had overstepped her authority or not done as had been agreed. We find that the Claimant had done exactly as she had been delegated to do.

99 However, once PS threatened to leave, Mr Roberts decided to slow down the performance management process. He altered the Claimant's report of her meeting with PS to state that it had been decided to give PS an opportunity to articulate reasons why he considered it inappropriate for the Respondent to follow his inbox (as opposed to gaining access to his inbox) in the hope of understanding better his workload. The Claimant was unhappy about the change as she knew that was not what she had said to PS or reported to Mr Roberts.

100 In his email to the Claimant dated 24 July, Mr Roberts stated that he was "*building on what you have started with Phil"* indicating that he felt that they were working to the same broad agenda. He also confirmed in the same email that he supported the Claimant identifying GI's performance issues through an appraisal, including ensuring that he appreciates that while the Respondent's concerns are real, so was its belief in his abilities.

101 There were examples of emails in March/April 2016 between the Claimant and those who reported to her such as CB and GI in which the Claimant was polite, firm, managerial and set out her expectations as a manager. The responses from those members of staff do not show that they thought that she had overstepped her authority or had been inappropriate. In the exchange with CB on 715-716 the Claimant set out her

expectation that CB should have tackled the problem by doing a draft report that could be submitted to Mr Roberts rather than waiting for a further discussion and a decision on what to do. CB accepted this. We did not find the Claimant's email to be aggressive. It is unlikely that CB found it aggressive at the time as she did not raise it with anyone.

102 On the evening of 17 June 2016, there was a major casualty involving a ship called the *Benita* which ran aground. This happened on a weekend. There was a very real concern that the ship would break-up on site leading to increased pollution by the heavy fuel she was carrying.

103 Mr Roberts' evidence was that there have been fewer of these types of disasters in recent times which, while a positive thing for the environment also meant that P&I claim handlers had reduced exposure to such incidents and little opportunity to gain experience in dealing with them. KH and Mr Roberts were both on holiday when the incident occurred. The Claimant and IC, an experienced claims handler responded to the disaster over the weekend. Mr Roberts' evidence was that their intervention was effective and appreciated by him. The Claimant saw it as a valuable training opportunity to be involved in the case.

104 On the following Monday morning when KH and Mr Roberts were back, they met with the Claimant in a pre-meeting to discuss the handling of the case. Mr Roberts indicated that he wanted KH to oversee the casualty as it was on his account. There were practical issues such as the recovery or salvage of the vessel that had to be addressed as well as the cargo. Mr Roberts indicated that he wanted IC to continue to deal with the day-to-day handling. The Claimant's recollection was that he asked her whether she wanted to continue to be involved. Mr Roberts agrees that he did and the email on 731 confirms it. Her response was that she would be interested in dealing with the personnel aspects because of the training benefit. She thought that would be an interesting area to be involved in as personnel could be central to the liability issues in any subsequent claim. it was also an area that would not be covered by KH or IC. The Claimant understood that there were interesting personnel issues in the case. For example, was this the responsibility of a psychotic crewmember who locked himself in the engine room and drove the vessel towards the rocks?

105 Mr Roberts did not refuse her request. His recollection of the conversation as set out in his witness statement is different to the Claimant's but he agrees that she asked to remain involved and that he did not say no to her. The Claimant was surprised and disappointed when, later in the handover meeting with the whole team, Mr Roberts suggested that RG a claims handler, should handle the personnel aspects of the incident. In the hearing, Mr Roberts agreed that he had not been clear in the pre-meeting that the Claimant would not remain involved in the case.

106 The Claimant was happy that RG got the opportunity but was unclear why he would ask her if she wanted to be involved, not answer her clearly when she said yes and then give the opportunity to someone else, without any explanation. RG was a female claims handler.

107 At the time, Mr Roberts' explanation was that he needed her for other work. As KH was busy with the *Benita*, the rest of the claims team needed help with the day-to-day work. The Respondent wanted the Claimant available to assist the rest of the team as well as work on her fleet. He said words to the effect that he needed her now more than ever. If she had been working on the *Benita* it would have meant that the Respondent had

two associate directors, both heavily involved in one incident which would have limited the resources to address other matters that may have come up.

108 It is likely that the personnel issue was not a major piece of work and we find that the Claimant was able to keep in touch with what was happening on the case from the updates that Mr Roberts sent out to associate directors in which he highlighted the most significant developments in the case, outlined the difficulties that could be seen on the horizon and how the team proposed to mitigate them. In this way those who were not working on the case could still be informed remotely about what was happening. Mr Roberts also did a presentation on the *Benita*, which was used for inhouse training.

109 In June 2016 there were strikes on Southern Rail, which the Claimant would usually use to travel to work, which made commuting to work extremely difficult for her. Over a series of emails between the Claimant and Mr Roberts on 20, 21 and 22 June she expressed her frustrations with his way of managing, with the fact that she had been excluded from working on the *Benita* case and that even though she was working harder and more productively than other London-based associate directors. In one exchange the Claimant compared Mr Roberts' management style with that of Mr Barr, who she considered to have a much more controlling style that she described as '*micromanaging'*. She confirmed that she preferred Mr Roberts' style which she saw as a more liberal approach and empowering to the team.

110 On 22 June she referred to her disappointment about the allocation of work on the *Benita*, her lingering dissatisfaction over the inequality of pay between her and KH, the lack of appraisals, the fact that she did not like doing appraisals but considered it part of her job as a manager and was doing most of them; and the apparent lack of opportunity to progress within the company if not given opportunities to do different work. There had been no appraisal of her or of KH. She also complained in another email that she did not like being the disciplinarian in the team. She also referred to Mr Roberts' suggestion that there was no opportunity for promotion absent him stepping down/retiring which she saw as undesirable and unrealistic.

111 The Claimant was frank and honest in these emails and it is likely that she considered that she was having a private conversation with her line manager. Mr Roberts considered that it was appropriate to forward the email in which she commented on Mr Barr's management style, to Mr Barr. The Claimant was horrified when she found out that it had been forwarded to Mr Barr. Mr Roberts sought confirmation that the email he had drafted to send to the Claimant in response was okay and Mr Barr confirmed that it was.

112 In his response, Mr Roberts agreed that it would be a good idea for the Claimant to have an appraisal. He set out a framework for the discussion in writing and confirmed that two of the Claimant's strengths were productivity and delivering results to a timetable. He confirmed that in contrast, those were not his strengths and that everyone had strengths and weaknesses and effective management tries to make good use of both. He was sorry that the Claimant did not feel supported and would try to be more obvious in his support in future. He told her that he hoped she was seeing greater encouragement from him to present cases to the committee as part of him stepping back and supporting associate directors to take up more space. He hoped that in time, his stepping back and providing support should lead to the Claimant and the other associate directors having a higher profile amongst and importance to the Greek club membership.

113 Mr Roberts confirmed that the Claimant was a strong claims associate director and that added strengths were her interests in management skills and practices, which the Respondent hoped to harness as they gave her different insight into the business. He sought to reassure her that there were career opportunities for her in the business although he did not specify what those might be. He referred to Joanna as someone who had the complete claims skillset on the team. He did not specify what skills the Claimant lacked that Joanna had.

114 He also told her that he was continuing to build on what she started with PS and that he supported her recent appraisal with GI and that the Respondent would also want PS to know that it believed in his ability to turn any performance issues around.

115 The Claimant felt that this response was inaccurate and did not give her the reassurance she sought about her value to the Respondent or her place within the business. Instead, it caused her to become even more upset. She was already presenting cases to the Committee and had, over the period that she had been an associate director for many fleets, built up a high profile with most of the members that she represented. To her mind, Mr Roberts' response showed that he knew less about the work she did that she originally thought. She replied on 27 June. She made those points and commented on the lack of detail as to what skills Joanna had that she did not have and that it was not helpful to say to her that she lacked skills without identifying what those were. She referred to the fact that there was still no recognition for her perceived greater contribution to the business, no idea of where her prospects in the company lay or what opportunities there might be for her. She referred to previous discussions with Ian Barr about an operating officer role within the business but did not think those was going to go anywhere.

116 In terms of her being the person who usually dealt with underperformance, the Claimant stated that she felt that as she was the person who led on tackling that issue among staff, even though management may support her in doing so; it is likely that staff would see her as "the wicked witch of the West", which she did not like. She asked whether this was how the Respondent saw her role.

117 On 28 June, the Claimant spoke to Ian Gooch about the operating officer role within the business. Nothing had been done in terms of making this role a reality since her earlier conversations with Mr Barr. There had been no response from Mr Roberts to her reference to this idea in her email of the previous day.

118 Mr Roberts saw the Claimant's approach to Mr Gooch as going over his head as he refers to it in those terms in his witness statement.

119 The Claimant reminded Mr Roberts that he had said that he would speak to PS about the Respondent having access to his emails, before he went on holiday. He responded to say that there was a preliminary step that had not yet happened. The Claimant was annoyed at what she saw as a retreat from the agreed position on PS. She told Mr Roberts that it would be helpful if in future he voiced any concerns about a plan of action at an early stage which would save her having to experience the sort of difficult conversations she had with PS about his performance.

120 In July 2016, the Claimant went to see Ian Gooch about her role within the business. They had two discussions about this. She wanted to get some clarity on her

career prospects. They spoke about the shape and form of the operations role she thought the Respondent needed and her MBA studies had equipped her to do. She decided to speak to Mr Gooch about it as they had done some management projects together over the years so she thought that he might understand what she was talking about. Mr Gooch was open to the idea and sent an email to the other directors - Mr Roberts, Mr Jones and Mr Barr - summarising his discussions with the Claimant. He summarised the proposal as a role that the Claimant would occupy, in addition to her claims responsibilities, in which she would assist the business from an operations/quality costs and efficiency perspective, across different departments. This was envisaged as a cross-functional role. He was happy to discuss it further after the summer holiday period. He also forwarded her emails about the proposed operations role, to the other directors.

121 Mr Roberts had not been conducting regular appraisals for the staff he managed. This included the Claimant. She was keen to be appraised. It is likely that she believed that if she had a proper appraisal it would lead to a recognition by the Respondent that she was underpaid and them either increasing her salary, giving her a different role within the business or giving her an indication of her career prospects within it. The Claimant complained to Mr Roberts about his failure to conduct her appraisals and he agreed in evidence that her complaint was justified. She had not had an appraisal in many years. This was not isolated to the Claimant as Mr Roberts had not done appraisals for most of the people who reported to him.

122 The Claimant's evidence was that in the summer of 2016, CB approached her about GS having '*a go'* at her. The Claimant was concerned that she should be supported in dealing with this so she spoke to Mr Roberts about it. She understood that he spoke to GS about it.

123 She also recalled conducting an appraisal for CMcD around the same time. They had a constructive meeting in which the Claimant recognised that CMcD was trying to soften the tone of her correspondence. The Claimant was encouraged by her positive response to constructive criticism. They discussed CMcD's apparent difficult working relationship with KH, with the Claimant making suggestions as to how to work with it. They agreed to meet again for another review after 6 months.

124 Mr Roberts drew up a list of the points he wanted to make in the Claimant's appraisal which he sent to Mr Gooch and Mr Barr for their input. The document recorded what he perceived as her strengths such as strong motivation, passion and willingness to look for and tackle problems; her ability to deliver on objectives in a timely way and her ability to see the Club as a business. Her weaknesses were identified as being overambitious and her tendency to give too much emphasis to deadline over outcome.

125 Mr Gooch approved the draft outline and added a few points, which were incorporated into the preparation notes for the appraisal.

126 The agreed focus of the appraisal meeting was the evolution of the Claimant's role and the potential for it to change into the operations role that had previously been discussed with Mr Gooch and which the Claimant was keen to discuss.

127 They had a meeting arranged for 2 September at 3pm. By approximately 4.30pm, Mr Roberts had not yet approached the Claimant to start the meeting so she emailed him

to see whether he would prefer to move the appointment to the following week. Mr Roberts envisaged that it would be a short meeting so he suggested that they keep the appointment and have what he referred to as a '*scoping meeting'* for about 30 minutes.

128 There were no minutes produced from this meeting and Mr Roberts made no reference to this meeting in his witness statement, although he agreed that it happened. It was not a successful meeting. He outlined the highlights of the document that he had prepared with Mr Gooch's input. He referred to one of the Claimant's points for development as a need to show that she could '*carry people with you'*. He did not provide any context to that statement or give examples of scenarios where that had arisen as an issue.

129 This was a vague and unspecified comment which at the same time, was also a suggestion of a significant failing in the Claimant's management style. The Claimant was concerned about this comment and did not understand how it related to her experience and performance at work. It was not something that she had heard before. She asked Mr Roberts for details and whether he could give her examples of when this had been an issue for her or any other information he could give. She recalled that he stated that she sometimes rubbed people up the wrong way. He did not give her any examples. It is unlikely that Mr Roberts had prepared evidence for the appraisal. Furthermore, it is likely that he was irritated that she asked for examples rather than simply accepting this depiction of her.

130 In the hearing, Mr Roberts accepted that he could have dealt differently with the meeting and the issues he wanted to raise with the Claimant. He had not put the point about not carrying people with her in the most helpful way. 30 minutes was too short a time to properly discuss it and give the Claimant the context for that comment. He underestimated how long the discussion was likely to take. He also misjudged the impact that the comment would have on her. it is also likely that he and his fellow directors had not thought through beforehand what they would do if the Claimant asked for examples as he did not have any ready to refer to when she asked. His expectation had been that she would simply accept the categorisation of her as someone who was sometimes unable to bring people with her, and then he could move on to talk about the projects the board wanted her to work on. The projects the board wanted to talk about were ones designed for the Claimant to show that she could carry people with her so they were related to that statement. Without more detail as to how the Respondent came to that statement, the Claimant was unable to move on as she did not agree that it was a fair assessment of her abilities and her work.

131 Having waited all these years for an appraisal, her last one having been done in 2009; the Claimant was disappointed that the main message from the Respondent - without any explanation or context, was that she needed to show that she could '*carry people with her'*.

132 As that was just a scoping meeting, they had yet to have the actual appraisal meeting. On 5 September the Claimant emailed Mr Roberts to ask if her appraisal could be delayed until after she handed in her assignment on the MBA course, in October. In her email she stated that this would give Mr Roberts some time to find evidence of her behaviour that he wanted to critique and give him some opportunity to assess her performance since he had stated that he wanted to do so. She suggested that she would also like to make a list of issues that she wanted to raise and that it might be an idea to

separate out the negative, historical matters that needed to be resolved and address those in one meeting and then hold a separate meeting to talk about the future.

133 The Claimant commented that since she had waited so long for the appraisal and there had been issues that she had been unhappy about which had not been addressed for some time such as the allocation of work on the *Benita*, a few more weeks delay would not be disastrous. The Claimant suggested that it might be a good idea, when it is resumed, to have someone from HR sit in on the appraisal to ensure that it was productive. She referred to some appraisal training that the Respondent had organised for managers in 2013 and her recollection that the trainer had emphasised the need for evidence as a key aspect.

134 Initially, Mr Roberts wanted to press on with the appraisal process. He forwarded the Claimant's emails to the other directors, with covering emails expressing his frustration that having chased for an appraisal for some time, the Claimant now seemed content to delay the process. He did not appreciate the other points she made in her emails. He focussed on her point in the 3 September email that he told her in 2015 that he would be prepared to pay back pay to equalise the Claimant's pay with KH from the date of her appointment to the associate director post, if he thought that it would make a difference. She said that she would now like to take up that offer. Mr Roberts told his fellow directors that he did not recall making such an offer to the Claimant.

135 Mr Roberts referred in his witness statement to the Claimant's emails as demonstrating that she was preparing for litigation with the Respondent and that she was gearing up for confrontation. The Tribunal was unclear on what that assessment was based. We found it likely that the point that stuck in her mind at the end of the *'scoping meeting'* was the categorisation of her as having difficulty taking people with her, which did not resonate with her. She wanted examples so that she could understand it and what it was based on.

136 In her emails the Claimant expressed her frustration with Mr Roberts' reluctance to put the appraisal meeting off for another month, until October. In an email dated 8 September, the Claimant outlined the many personal and professional responsibilities she had to deal with over the next month, which made it appropriate to re-schedule the appraisal. She stated that if he wanted to make progress, he could make a payment to resolve the historical differential between her and KH but otherwise, she would rather postpone the appraisal for the reasons stated. Mr Roberts agreed that the Claimant's appraisal could be rescheduled to a date after the October committee meeting.

137 Mr Jones' evidence was that the Respondent was disappointed in the Claimant's response to the appraisal process. He asked on page 824 for a total of all the money that the Respondent had spent on the Claimant's training over the past 3 years. This was not relevant to the appraisal or to the discussion the Respondent was yet to have with the Claimant over her future with the business and demonstrated to the Tribunal that around this time, the board had begun to consider its whole relationship with the Claimant.

138 For the rest of the month of September the Claimant emailed the Respondent to ask to be allowed to work from home, because of her children's needs and because of her coursework for which she had a deadline. There were issues relating to one of her sons getting ready to change school and the Claimant was transitioning to a new live-in au pair

to assist with childcare. There were also Southern Rail strikes continuing around this time. The Respondent agreed to her working from home on the days she asked.

139 The Claimant had asked for someone else to attend her appraisal with her but after some consideration, Mr Roberts decided that there was no precedent for it and refused her request. The Respondent did not appreciate that the Claimant was feeling vulnerable and in need of support at the appraisal.

140 The appraisal took place on 27 and 28 October. The Claimant asked for examples to support the Respondent's assessment that she had difficulty taking people with her. Mr Roberts preferred to move on to talk about the projects that the Respondent had identified for her which she could start working on. When the Claimant asked for evidence of the limitations first mentioned in the scoping meeting and reiterated at this meeting; Mr Roberts referred to a draft article the Claimant had written a few weeks earlier, on 7 October, for the Club news in which she had confused the acronyms for the CLLMC (Convention for the Limitation of Liability for Maritime Claims) with the CLC (Civil Liability Convention). They related to very different things. They were both conventions enabling shipowners to limit their liability but their scope was different. Joanna was due to write the article but as she was busy, the Claimant volunteered to write a first draft. When the error was pointed out to her, the Claimant acknowledged it and Mr Roberts corrected the article before it was published and sent to members. The Claimant did not think that this was a significant matter and at the time she was not told that it was. Mr Roberts also stated that KH was better at detail than the Claimant was.

141 The Claimant's mistake in the article could not have been what the Respondent meant when Mr Roberts stated on 6 September that she had difficulty carrying people with her as it had not yet been written. Also, it was not an example of the Claimant having difficulties with colleagues. Mr Roberts did not give her any examples of failing to take colleagues along with her.

142 The Claimant asked why she had been paid less than KH back when they were both promoted to the associate director post. Mr Roberts gave a reason that he had not given in their previous discussions. He stated that it was because KH spent more time in the office. The Claimant thought that this was an unfair judgment as KH had no dependents so it would have been easier for him to work late in the office on a regular basis whereas it would not have been so easy for her as she has young children to care for.

143 When they talked about her work, the Claimant felt that what she did at the Respondent was not valued as Mr Roberts referred to her having to '*earn her stripes'*. It is likely that Mr Roberts meant that she had to show the board that she had the necessary people skills before they would allow the project role to develop. Although he wanted to move the discussion on to new projects and how her interests in them could be developed, it was likely that he and the rest of the board also considered that there were issues with the Claimant's performance, although he did not want to discuss them; preferring to give them what he described as a 'light touch' in the discussion. It was his opinion that the Claimant should have simply accepted the board's characterisation of her and agreed to move on.

144 Because the board had made up its mind about the Claimant's shortcomings, it limited the projects that were suggested in this meeting as ones the Claimant could

progress. The Claimant considered that there were many instances where she had been able to motivate people and she could not understand what the Respondent's comments related to.

145 The appraisal process did not resolve the issues between the Claimant and the Respondent or her relationship with Mr Roberts.

146 The emails between the directors in preparation for the appraisal shows that the directors agreed that there was work that the Claimant could do that would show her suitability for progression.

147 After the appraisal, the Claimant continued to correspond with Mr Roberts by email on the matters brought up in the discussion. She sent him what she considered to be evidence of the non-claims activity and presentations she had done between 2008 and 2009 to show that the pay difference should never had existed even when she and KH had first been promoted to the associate director position.

148 The Claimant hoped that the information she sent Mr Roberts after the appraisal demonstrated that she was not starting at the beginning as he had indicated in the appraisal but that she had a proven track record of work and achievements for the Respondent. This was in response to the point he made about her having to '*earn her stripes'*. The Claimant found it de-motivating to think that the Respondent was not going to consider the work that she had done up to then and that she was starting from scratch.

149 In November 2016 an issue arose about how CB was spending her time. The Claimant perceived that she was spending more than half her time working on matters for underwriters whereas she should have been bringing up any workload issues she had with the Claimant and KH as her direct line managers. This was a legitimate issue for the Claimant to take up with her fellow managers and decide a way to progress the issue with CB. Mr Roberts agreed that it was peculiar that she was choosing to approach other colleagues and bypassing her managers. The discussion continued between the Claimant and Mr Roberts. It was not unusual for them to discuss members of staff and issues of the distribution of work or come to an agreed position on an issue, in this way.

150 The Claimant spoke to CB and reported to Mr Roberts and KH in an email after their conversation that she had said to her that if she had questions she should start by asking the Claimant. She asked her if there was any reason she did not want to do so, as they were sitting in the same office. CB told the Claimant that she did not do so as she did not want to bother the Claimant and that the Claimant was never there. The Claimant was taken aback by that statement and said that it was unfair. CB responded by saying that the Claimant was trying to trap her in an argument. The Claimant stated that she was not trying to do that. Neither of them said anything further for a few seconds while the Claimant sent an email and the Claimant then left the room. The Claimant disputed that she had stormed out.

151 After that, the Claimant wanted to meet with CB to sort it out as she was uncomfortable with being perceived as hostile. She did not work with CB on specific projects but was keen to resolve their relationship for the sake of workplace harmony. When they met, CB accused the Claimant of shouting at her in their last exchange. The Claimant did not think that she had done so. CB then said that it was more of a change in tone. The Claimant was aware that as she was stressed at the time with various matters

and that she found the criticism of her office attendance to be unfair and stressful, she could not rule out the possibility of a change in her tone but she was sure that she had not shouted at CB.

152 In early November the Claimant wrote to Mr Roberts to enquire when he would produce a note of her appraisal meeting. He sent it to her on 16 November. After reading the note on the train on the way into work, the Claimant became upset. She felt that his criticism that the error she made in the draft report risked undermining the Club's reputation for service was unwarranted and was a serious allegation which did not reflect their discussion.

153 The note confirmed, under the title '*enforcer'*, that they discussed that the Claimant was the manager who mostly directly addressed underperformance amongst the claims staff and that this could make for difficult relationships between her and members of the team. Despite the Claimant stating in this meeting and in the hearing that she did not like being the manager who conducted the appraisals and dealt with difficult staff issues, Mr Roberts refused to hear it and was adamant that she enjoyed conducting appraisals.

154 They discussed the Claimant's ideas for career progression including the identified operations role which she envisaged doing alongside her existing claims role. It was recorded that Mr Roberts asked the Claimant to consider how she could reduce demands on his time in her continuing claims role while acknowledging that the board saw scope for someone such as her to undertake such a cross functional role.

155 It was noted that the Claimant considered that her salary had not and to some extent still did not fully reflect her contribution to the business. Mr Roberts confirmed that the way the Respondent operated was for people of similar apparent ability to start at differing salaries but that they would develop over time to reflect their value to the business.

156 He recorded that the Claimant's claims ability was strong. She was also strongly motivated, saw the Club as a business and was actively looking beyond a pure claims role. Her willingness to look for and tackle problems was described as a rare and valuable asset. At the same time, Mr Roberts recorded that that there were others with a greater depth of knowledge in certain respects or with the ability to more quickly identify the key issues, in comparison to her.

157 The most prominent weakness was that she was inclined to be '*overambitious'*, which was noted as the downside of the strengths outlined in the appraisal. The note recorded that this could be seen in the Claimant's work when oversights creep in because she is determined to carry out too much, too quickly, which risked undermining the Club's reputation for service. This was a reference to the draft article. Recommendations for progress under this heading was that she should *'give slightly less emphasis to deadline over outcome'* and to *'make greater allowance for the foibles of human nature with a view to more effectively carrying colleagues'*. She should be prepared to take smaller/slower steps and think about *'winning hearts and minds'.*

158 The notes concluded with a statement that it was accepted that the Claimant had the requisite skillset but the objective was to provide her with an opportunity to demonstrate to the board that she had the ability to carry colleagues with new initiatives.

159 The Claimant sent Mr Roberts an email in response while on the train. She asked why, if Mr Roberts was going to suggest that the severity or frequency of her mistakes were that bad, that point had not been made in the meeting and examples of those mistakes and any Member complaints were not brought to the meeting so that she could see them. The appraisal notes contained a list of objectives for the Claimant to achieve over the next 6 months. The list was mostly of work that had not been discussed in the appraisal meetings. She reminded him that any objectives set should be SMART ones (i.e. specific, measurable, agreed upon, realistic and time-specific).

160 Her notes in the margin of the appraisal note shows that there was insufficient detail on the objectives, she did not know what was meant by some due to the vague description and some were stated as an objective when they were already happening.

161 She asked why the work she did such as conducting appraisals and the associate director meetings which she set up and ran for a year before stopping as there was little interest; were not evidence of her ability to carry people with her.

162 When she arrived at work, the Claimant was still upset about the appraisal note. She did not feel able to go into a meeting that she was scheduled to attend with Mr Roberts and Ian Barr that morning. She went in to see Ian Barr before the meeting was due to start. She told him that she did not think that she could sit through a meeting with Mr Roberts given how she was feeling after receiving his note. She mentioned the main points to Mr Barr.

163 She also went to see DO, the Respondent's company secretary, about it. She told her that she was unhappy about some of things that were mentioned in the appraisal note that had not been referred to in the appraisal meeting. During their conversation she referred to Mr Roberts' point that she needed to demonstrate that she could carry people with her. The Claimant asked DO if she knew what he meant. DO did not and offered to ask Mr Jones who was her line manager, if he knew what it meant. The Claimant sent DO her annotated version of the appraisal notes so that she could understand what she was talking about. The Claimant developed a migraine headache at work. She worked to the end of the day but did not go to work on the following day as the headache worsened.

164 On 21 November, the Claimant had another conversation with DO about the appraisal process and the document Mr Roberts' produced from it. DO had spoken to Mr Jones about what Mr Roberts meant by setting the Claimant an objective to show that she could carry people with her. He had not been able to give any further clarification. DO advised the Claimant that she should not change the appraisal document itself but should put her comments at the end. The Claimant discussed the way in which the work on the *Benita* case had been distributed and the fact that the mistake she made in a draft article had been referred to in the appraisal meeting and report as something demonstrating a wider problem, which she did not agree with.

165 Mr Roberts shared with the other directors the documents that the Claimant sent him about the appraisal. They agreed to meet to discuss the issues raised in those documents.

166 At the Respondent's board meeting on 22 December, the board approved a list of projects as identified by Ian Barr, for the Claimant and her associate director colleagues to work on. The Claimant was also asked to work on a project with Anthony Jones, another

director and board member, to implement the GDPR which was due to be applied from 25 May 2018. That project was therefore time sensitive. This was an important project because of there was real potential for huge fines to be imposed on the Respondent for non-compliance. Mr Roberts was keen for her to do that project as he stated that if she was too busy, he was prepared to move something else that she was already doing to enable her to work on it.

167 When the Claimant was told about the GDPR project, she was keen to get involved as it gave her the opportunity to draw upon the skills she had acquired during her MBA studies. It could also provide material for her final evidence-based project to complete her studies.

168 There were emails in the bundle from an exchange the Claimant had with a colleague called Rachel, a senior claims manager, who was going to be absent on a business trip during the following week. The Claimant had been asked to approve her absence in the Respondent's absence management system but knew nothing of the trip. In her emails, the Claimant expressed her frustration with the Respondent's poor communication. Mr Roberts had given approval for the trip but had not informed the Claimant of it. The Claimant made it clear to Rachel that she had done nothing wrong but that she was frustrated with the Respondent's way of doing things which she was going to take up with Mr Roberts.

169 We find that the Claimant visited her GP on 11 January 2017. She was experiencing soreness in her finger joints which she recognised as a signal that she was being affected by stress. This was something she had experienced during her divorce. She had also noticed some problems with her memory over the preceding few months, which concerned her. She would sometimes be driving along a road and then realise that she had no idea where she was. This would cause her to feel disorientated. She also described to the doctor finding herself standing in front of an open fridge with no idea why she was there. She explained that this was not simply a case of forgetting what she went to get. Usually, she had no reason to go to the fridge in the first place.

170 The Claimant wanted the GP to run some blood tests to see if there were any underlying problems. Ultimately, although she was given a form to get a blood test, she did not go to the hospital for the tests.

171 Also in January, the Claimant had a discussion with another subordinate about her working from home one day to enable a BT engineer to attend to sort out her telephone line. The Claimant asked Mr Roberts to clarify the policy guidelines on working from home. He offered to reply to the individual so that the Claimant was not the 'enforcer' on this occasion.

172 In February the Claimant returned her GP. She went because she had been experiencing jaw pain for 4 – 5 weeks. She was diagnosed with Temporomandibular joint disorder and bruxism. She was given painkillers and analgesia and advised that it was likely that these were stress-related conditions.

173 Although the Claimant and Mr Roberts had agreed to have another meeting to discuss the appraisal report and the Claimant's issues with it and the process; they had not yet met to do so. Mr Roberts had a cycling accident in November when he broke his collarbone, which meant that he was unwell or recovering for a period and then was busy

up to 20 February because that was the date on which P&I policy renewals were done. The Claimant refrained from mentioning the appraisal meeting during those months.

174 She was upset when she heard Mr Roberts refer to spending time with CB on a fortnightly basis to support her. The Claimant emailed him on 6 March to ask if he wanted to go through the appraisal note with her. Mr Roberts did not respond. It is likely that he was reluctant to go through the appraisal notes with her. He was also busy, which was not unusual. Around this time, he was working on the case of the *Lyric Poet*, which was another casualty but was not a matter the Claimant was working on. IC had been assigned to work on it. The Claimant was aware that around the same time as Mr Roberts had not responded to her email, he had been responding to emails from other colleagues.

175 The Claimant was becoming increasingly frustrated with what she saw as the lack progress at the Respondent. There was no progress being made towards developing the role of operating officer which she thought was going to be the way forward for her. She was frustrated by the lack of progress towards that goal. There was also little or no progress being made to resolve the issues she had raised in the appraisal meeting and before.

176 On 15 March the Claimant emailed a colleague to ask for details of the way her salary would be affected if she were to reduce her hours by 10%. She stated that she had not made any decision to do so but was feeling the pressure of managing her family/childcare commitments and the duties of her job. The Claimant confirmed in her statement that the issues surrounding her work were also part of the reason for considering reducing her hours but she did not want to publicise those wider than necessary. She had a response on 20 March. The Claimant indicated that she would have a think about this over the Easter break and would discuss it with Mr Roberts when she returned to work. Ultimately, the Claimant did not progress any application to reduce her hours.

177 There was a discussion between senior members of staff in March 2017 about supporting Ian Barr's area of the business as it was a growing area; and how staff should be repositioned to do so. The upshot of the discussions was a decision that CB would transfer to Mr Barr's team for a year to focus on developing the offshore line of business and GI would be partially available to work on Turkish claims to cover a maternity leave. CMcD would support SL. This would all be on a trial basis. There was a lot of movement for the claims handlers in the office. The Claimant expressed a desire to continue to appraise GI to support his development. She was aware that no one undertook appraisals in Mr Barr's team. Mr Barr agreed that she could continue to do so.

178 On 27 March, she emailed Mr Roberts chasing a response on her request to go through the appraisal notes. When she got no response to the second email, she emailed DO to ask whether the report had been filed as he would have done if he considered the process to be complete. That would have helped to explain the lack of response. She told DO that she was close to giving up on getting her appraisal completed.

179 On the following day, the Claimant emailed Mr Roberts to say that if he was unable to make time to go through the appraisal document, then it would probably be best to file it as it stood. Mr Roberts accepted her suggestion and agreed to do that. The Claimant was disappointed and upset by his agreement. Although she had suggested

that it be filed, she was hoping that Mr Roberts would want to resolve matters and insist on completing the process.

180 When the Claimant attended the office, she was told by DO that Mr Jones, as the director responsible for personnel issues, did not agree that the appraisal should be left unfinished. He advised that the Claimant should continue with her efforts to sit down with Mr Roberts to complete the process. This caused the Claimant further frustration because at the same time, another director, Mr Roberts had just decided that it should be filed. This meant that as was not keen to continue with the process, it was left to her to pursue resolution of the issues that arose from the appraisal. We find it likely that Mr Roberts believed that the process had been completed or that the Claimant should be prepared to leave it as it was.

181 On 30 March, the Claimant became upset in her discussion with DO about work and the appraisal. The Claimant was visibly upset. She was so distressed that she could be heard crying from outside of the room. At 9.55am Mr Jones emailed Mr Roberts to inform him that the Claimant was in DO's office, '*bawling her eyes out'*. The Claimant could not recall all of what she said to DO but remembered discussing the objectives that Mr Roberts gave her in the appraisal which she felt that she could not meet as she did not understand them or was not being given an opportunity to meet them. She recalled saying that setting an objective which she was then prevented from achieving or understanding could amount to constructive dismissal. The appraisal note had set an objective for her to get involved/coordinate a team response to a casualty. She referred to the lack of opportunity to do so and the fact that whenever one did arise, Mr Roberts gave it to others to do rather than to her. She had been set an objective which was impossible for her to meet. When the *Lyric Poet* casualty occurred, it was given to IC to deal with.

182 She expressed her unhappiness that Steve Roberts had not made time to complete her appraisal process but that he had found time to meet CB on a fortnightly basis and that it was therefore unlikely that his failure to do so was due to time pressures.

183 The Claimant expressed her frustrations with Mr Roberts. Although DO's evidence was that the Claimant said that she would resign and claim constructive dismissal, we find it unlikely that the Claimant said that or that a tribunal would pay her up to a hearing. The Claimant was not an employment lawyer and was acutely aware that if she resigned, she would have no income. That was why she had asked earlier about the implications of reducing her hours as an option that would deal with her frustrations but allow her to continue to earn an income. The practicalities of her situation meant that as a lone parent, with an ex-partner who was not paying maintenance, she could not afford to resign. She had eventually decided that she could not afford to reduce her hours. She was the sole earner in the family, with a large mortgage and two small children. It was likely that DO heard the Claimant say something along the lines of if you set objectives and then do not enable people to do the work so that they could meet those objectives, that could be seen as constructive dismissal.

184 The Claimant did not recall swearing at Mr Roberts but did say that she had been contemplating asking to be demoted so she did not have to deal with all the '*shit'*. That is confirmed in Mr Jones' email of the same day.

185 DO clearly recognised that the Claimant was emotionally distressed and may have felt overwhelmed by it. She insisted on leaving the room and getting Mr Jones. When Mr

Jones came in the room, the Claimant repeated her concerns and frustrations to him. It is likely that she expected him to tell the other directors how upset she had been and the issues she had raised. This was probably the first time the Claimant had let her feelings show like this at work. We find that she expected the strength of her emotions to come as a shock to Mr Jones and in their discussion, she likened her response to 'battered wife syndrome'. That is a depiction of the effect on the mind of a victim of domestic violence who continues in the situation for a while, but who eventually snaps and does something out of character, usually to their abuser.

186 After the Claimant had calmed down, they agreed that she would stay at work for the rest of the day but keep a low profile and work from home on the following day, go on her skiing trip and then come back to work '*with her head in a better place'*; which were her words to Mr Jones. We find that if she had sworn during their conversation, it would have been recorded in Mr Jones' note and as it was not there, it is unlikely that it happened.

187 We find it likely that later that day Mr Roberts emailed the Claimant to confirm that he was holding to the agreement that the appraisal documents should be filed until the next review.

188 We find it likely that Mr Roberts had previously said words to the Claimant to the effect that he would backdate the salary difference, if he thought that it would make a difference and that he said that after the Respondent had equalised the Claimant's salary with KH's. Although Mr Roberts denied saying this, we find it likely that he did so. We find this because it is likely that he had not expected it to have continued to be an issue between them and to be referred to ever again. It is likely that he thought that to be the end of the matter as the Claimant had got what he thought she wanted. Also, the Claimant refers to it in her email on 997, long before this litigation was considered and at a time when she was making efforts to resolve her issues with the Respondent.

189 It is likely that Mr Roberts had not had authorisation or an agreement from the other directors to talk to the Claimant about backdating her wage increase to cover the difference in wage between her and KH. He would have been aware that it was not a matter that had been written down in supervision or management meetings between them or in the appraisal meeting. It was a throwaway comment made to the Claimant. He had not made a formal offer but we find it highly likely that he had said that he would make up the difference, if he thought it would make a difference. It was not a formal offer to do so

190 The Claimant spoke to DO on 1 April and told her that she was thinking of requesting a change of line management to Ian Barr. DO advised her to consider it while she was away. Having considered it, the Claimant decided against requesting a transfer.

191 There were a series of emails between the Directors around the end of March that referred to the Claimant as though she was a problem employee or at least that they considered that they had to coordinate their response to her and manage her as a difficult employee.

192 Mr Gooch's email of 31 March confirmed that the Respondent had decided on its position, which was that the Claimant had difficulty carrying people with her - and that it was holding to that position. Mr Gooch wanted to find out whether the Claimant was correct in her assumption that the comment originally came from him. We find that in this

correspondence, which was only between the directors, Mr Gooch did not refer to concrete examples of the Claimant's difficulties in carrying people with her. In relation to the examples he alluded to, he stated that they were not '*earth shattering stuff'* but that he could point to them if required to. That suggests that the Respondent was preparing a defence to any complaint she might make. The most severe criticism in their correspondence between themselves was that the Claimant could be a '*bit brisk'* and that she did not '*nudge'* staff when the Respondent wanted to encourage change. Reference was made to conversations he had had with the Claimant about *'winning hearts and minds'* but he provided no examples of her going against that or having a problem with it.

193 The board had a meeting or discussion about the Claimant in April, while she was away and decided on a way forward which was to move the Claimant from Mr Roberts' line management to someone else's. in his email of 1 April, Mr Roberts suggested a pre-meeting to their usual committee meeting to agree a preferred way forward and he confirmed in his witness statement that there had been a meeting between himself, Mr Barr, Mr Jones and Mr Gooch.

194 Mr Barr's live evidence was that he had a conversation with Mr Roberts about the transfer of the work and it was evident that Mr Roberts' recollection of the meeting was different to his. Mr Barr recalled there being a suggestion that he could help out on the Greek fleets and he did not recall there being a problem with that suggestion. Mr Barr thought that this was agreed and that is why he was able to say what he did to the Claimant on her return from holiday.

195 Contrary to the Respondent's case we find that although she mentioned it to DO as a way of resolving some of the issues at work, the Claimant was not in a position to make a decision that she would move from one manager to another as she was not a director and did not have the power to make that decision. We find it unlikely that she would have asked or demanded a change in line management as at the point of her return from leave she did not consider that her relationship with Mr Roberts was broken or was irredeemable.

196 On 17 April, on her return from holiday, the Claimant had a conversation with Ian Barr during which he told her that while she was away, Steve Roberts had been to see him and asked him if he would accept the Claimant in his team. He quoted Mr Roberts as having said that even though he had not meant to, he had broken his relationship with the Claimant. The Claimant became quite upset when he said this and remembered Mr Barr being surprised at her upset. Although she had not been happy with the way in which the appraisal had been handled, we find that she had been hoping that her and Mr Roberts could continue to work together but this statement and the use of the word '*broken'* suggested to her that he considered that their relationship was irreparable. The Claimant's recollection was that she then expressed regret at having pushed for the appraisal for so long. She had not thought that it had got to that stage and was upset that he felt so.

197 In his live evidence, Mr Roberts agreed that he had used the word '*broken'*. He said that he had done so to gain attention.

198 Mr Roberts' and Mr Barr's evidence was that it was the Claimant who approached Mr Roberts and stated that she could no longer work with him. We find that highly unlikely. We find that if that had happened, it is likely that it would have been referred to in emails between the directors and no such emails have been produced. Mr Roberts'

emails on 1001 and 1002 do not mention it. Also, it is highly unlikely that the Respondent would have so easily acceded to the Claimant's wishes.

199 The Claimant was upset at being told that Mr Roberts considered that he had 'broken' their relationship. She referred to it in an email dated 18 April. Instead, we find it likely that Mr Barr told her that the Respondent had decided at board level that because of the breakdown in her relationship with Mr Roberts, she should move to Mr Barr's line management, with the idea of keeping the Greek fleet with her but that they would see how that would work. She was told that this would be trialled, with the practical details to be worked out as matters progressed. Mr Barr was sceptical about being able to work out the practicalities but had agreed to give it a go. The Claimant and Mr Barr had a good working relationship as they had previously worked on projects together so he was prepared to give this new arrangement a try.

200 The Claimant accepted the Respondent's decision. She was glad that it looked like she would get to keep being involved in the Greek market and contact with the clients with whom she had developed relationships over many years.

201 On 18 April, the Claimant sent an email to Ian Barr to explain her position and to try to make sense of where Steve's comment about a '*broken'* relationship came from. She had not appreciated that Mr Roberts had shared everything with the board all along and she asked for clarification on that. She did not know whether Mr Roberts had told the Board about the background behind the request for backdating of the equalisation of her wage with KH's and she wanted them to know the background. It is likely that she wanted Mr Barr to think well of her. She also wanted to know whether the failure to pay her the backpay derived from a board decision or from Mr Roberts' decision not to action it.

202 The Claimant was happy to work with Ian Barr as she also considered that they had previously had a good working relationship. She was not concerned about the fleets she worked on transferring back to Mr Roberts in the long-term because as she understood it, this would only happen after she had built up new accounts with Mr Barr.

203 Mr Roberts responded to say that he would personally welcome the Claimant's ongoing support with the fleet cases she was already leading on. The Claimant felt that this was him being crass and disingenuous. The Claimant could not reconcile that invitation with the statement from Mr Barr that Mr Roberts had told her that he considered that he had broken his relationship with her.

204 He also referred to the change in line management as '*the proposal Ian conveyed to you on Tuesday'*, which confirmed to us that she did not ask to move teams but this was proposed to her.

205 We find it likely that Mr Roberts did not know that Mr Barr had told the Claimant that he had said that he had broken their relationship and at this point, he may have changed his mind about it. No one told the Claimant this. She responded that, given the status of their working relationship, she was finding it difficult to respond to a personal appeal.

206 On 19 April at a secretariat meeting it was recorded that the Claimant was going to be reporting to Mr Barr in the future and that he would be responsible for conducting her

appraisal in November 2017. There was no mention of the Claimant being the person who requested it.

207 It was also noted in the board minutes that Mr Jones was going to work with the Claimant on a project addressing the effect of the GDPR on the Respondent's business. The Claimant also wanted to use the GDPR project as the subject of her final assessment in her MBA course. She asked the Respondent to allow her to use her holiday time to work on it.

208 In April an issue came up with a ship called the *Esteem C*, which was part of a fleet belonging to one of Mr Roberts' clients. The Claimant referred it to Rachel as she was the associate fleet director for the fleet. In the hearing, Mr Roberts described his relationship with the client's Principal as a strong one and that it is an important client to the Club.

209 The *Esteem C* was one of the older ships in the fleet. The Claimant recalled there being cover issues with respect to any cargo being carried in hold number 6. It was her recollection that Mr Roberts had been advised that moisture sensitive cargo should not be kept in hold number 6 as there was a ventilation issue with it and that he had spoken to the Principal about this sometime before the incident. A cargo claim arose in early 2011 in respect of rice cargo carried in hold number 6 of the vessel which suffered wet damage.

210 This was the subject of the Claimant's two potential protected disclosures.

211 The cargo claim did not settle and in April 2017, the Respondent was preparing for a court hearing in Paris in June. The Claimant was invited to the meeting as part of the preparation for the court hearing. The Respondent had to seek settlement authority from two committee members. The Claimant declined the invitation to attend the meeting.

212 The Claimant had to prepare a report to be presented to the committee. It was the Claimant's case that when reviewing the file, she discovered advice that a warranty should have been taken out to the effect that no cargo was to be carried in hold number 6. That had been copied to Ian Barr. The file indicated that Mr Roberts intended to discuss these concerns with the Principal on an upcoming business trip. There was no note on the file to confirm that this had been done. The Claimant's case was that RG had been asked to look for - and when the file was allocated to her she also looked to see if she could find - a written reference to Mr Roberts' discussion with the Principal about the issues with hold 6 but neither of them could not find any. The Claimant believed that due to his loyalty to the owner, Mr Roberts was not going to put this in the report to the committee.

213 It is likely that she also believed that if the committee was made aware that the Principal had failed to follow the advice or Mr Roberts failed to inform it of it; the committee could have denied insurance cover for part of the claim which could be up to 50%. She believed that Mr Roberts' failure to do so exposed the committee to significant liability. Even if the Principal had not made representations about the safety of hold 6, there may have been a determination that the Respondent had been negligent in not failing to protect the Club by obtaining the warranty and the committee might have been able to seek a contribution from the Respondent towards the settlement of the claim.

214 During the hearing, the Respondent produced documents which showed that in 2011 there were discussions by email between the Claimant, RG and Mr Roberts on a report from a surveyor in Abidjan about the damage done to the cargo held on this ship and in particular, in hold number 6. In his email dated 20 September, Mr Roberts asked why the cargo in hold number 6 was so different/materially worse than the others. The surveyor identified the reason as rainwater ingress at the load port. The Claimant's case was that she believed, from the discussion about a warranty, that the old-fashioned hatches had insulation problems which made them slow to close, which meant that there was always a risk of claims due to water ingress and that the surveyor made no reference to crew negligence. The Respondent's case is that there was no issue of a warranty and that the crew negligence was implicit in what the surveyor wrote. The owners of the ship had insurance to cover crew negligence.

215 It is the Claimant's case that at the end of April/beginning of May she raised concerns with Mr Barr that she believed that Mr Roberts was going to gloss over the cover issues to protect the Principal's interests and secure a full reimbursement of the claim. The Principal was also a committee member and would have had to recuse himself if the case came before the committee. She discussed this claim with Mr Barr on more than one occasion. Mr Barr confirmed that they talked about the Esteem C and that the Claimant raised with him her concern that Mr Roberts had been aware that there should not have been any moisture sensitive products in the hold. She raised with him her concerns about the way in which the issue was going to be reported to the committee. The claim for the value of the damaged cargo was for around $1m.

216 Mr Barr's live evidence was that there had been sensitivity around this case because of the concern that the issue might have been with ventilation rather than rainfall. By October the claim had been paid out and could not be unpicked. He denied Counsel's suggestion that he was concerned that if the Claimant was allowed to pursue her concerns in relation to this issue, it could cause problems for the Respondent.

217 Although Mr Roberts' evidence was that he expressed reservations about the viability of Mr Barr assuming responsibility for the Greek fleets for which the Claimant was the associate fleet director, those reservations were not passed to the Claimant when she was told about the proposed change in her line management. Although his evidence was that the change would only happen if the Claimant returned unreceptive to restoring a constructive working relationship with him, there was no assessment of the position when she returned from holiday. We find that she was simply told that this was what was going to happen.

218 CMcD circulated her half-yearly appraisal to the Claimant and the other managers she reported to. The Claimant asked for feedback from those other managers, which were all positive. The Claimant noted that it was likely that because of the issues she had previously raised with CMcD, she had '*upped her game'*. Mr Barr asked why there had been a need for a half-yearly assessment. He commented that having half-yearly assessments seemed like 'overkill' to him and suggested that whenever they worked together, she had been fine.

219 The Claimant wrote to Mr Barr to find out whether she could raise the transition to his team to Mr Roberts as he had not mentioned it to her. Mr Barr agreed that it was okay to do so but asked her to let Mr Roberts tell KH. By the time she got that response, she had already spoken to KH who she said was fine about it.

220 The Claimant was anxious to hear from the Mr Barr and Mr Roberts as to the details of what a position on Mr Barr's claims team might involve. The appraisal process had achieved at least a recognition that the Claimant should have the opportunity to develop other work alongside her pure claims work and she was keen to find out what that would look like. She was already working with Mr Jones on the Respondent's readiness for the GDPR.

221 The Claimant emailed DO to get her opinion on a draft note that she wanted to be put in her personnel file alongside the appraisal documents, as her final word on the matter. She asked whether any of what she was saying could be considered to be personal or unreasonable in any way. The Claimant wanted the record of discussions that she had had on the appraisal to be accurate. She was concerned that the record should show that she disagreed with Mr Roberts' record of their discussion. The Claimant went to speak to DO about it and became upset during the discussion. The Claimant was clearly stressed about this. However, at the time, she insisted that she did not want to raise a grievance against Mr Roberts. DO considered that the contents of the email could be treated as a grievance. After further discussion, the Claimant agreed to reword her email to make it less like a grievance and sent the final version to DO for filing, with a copy to Mr Roberts.

222 The Claimant continued to be anxious to hear from the Respondent what it envisaged a position for her on Ian Barr's claims team might look like. Mr Roberts drafted a proposal which appears at page 1068. He was not enamoured of the idea of the Claimant taking the Greek fleets with her but proposed that she continue to work with him on a few matters. He considered instead that once she transferred, her primary focus would be on systems, procedures and support to Mr Barr, *"with scope to support marketing initiatives and develop a claims function within IB's team in the longer term".* He suggested a progressive handover of the Claimant's associate director responsibilities in relation to his fleets or that she could remain as claims lead on selective fleets they both worked on but reporting to him on those rather than to Mr Barr. He referred to the Prestige case and the Omegas as work on which he would welcome her ongoing input and involvement.

223 On 9 May the Claimant went to see Mr Roberts. He told her that she would not be taking her fleets with her. He referred to other personnel moves within the business that may impact on how work would be allocated but was clear that she would not keep her Greek fleets. He told her that while the Respondent valued her, they could not offer her any certainty regarding her role. At the end of their discussion, Mr Roberts told the Claimant that she should speak to Mr Barr about it. The Claimant was able to speak briefly to Mr Barr later that day who confirmed his understanding that the fleets were transferring across with the Claimant but then stated that Mr Roberts had the right to change his mind.

224 At the management meeting on 15 May a more tentative note was made that Mr Roberts and Mr Barr were continuing to discuss the Claimant's future role in the business.

225 There is a discussion thread of emails between the Claimant and Mr Roberts (1073 – 1074) in which they discuss various files and whether it would be a good idea for the Claimant to keep them or to reallocate them elsewhere. Mr Roberts was happy for the Claimant to keep oversight of some cases whereas, having agreed to move, the Claimant wanted a clean break. In her email of 15 May she recited the work that she had been

allocated by Mr Barr, such as Pool reports, the Pollution Sub-Committee and Mazars. She had also started work on the GDPR project. She was concerned that if she also remained the AFD on many of Mr Roberts' cases, that would mean a very heavy caseload.

226 On 17 May, Mr Roberts emailed the Claimant to indicate that he had in mind a 'progressive transfer' to her working more closely with Mr Barr and that in the interim, she should meet with existing Club members on her forthcoming trip to Greece. The Claimant had been waiting for details of the new arrangements since April. In response to this email the Claimant asked whether Mr Roberts had decided that she should withdraw from the Greek market. His answer was that that was one option but not the only one. The Claimant was still not clear what was envisaged for her future with the work on the Greek fleets with whom she had worked for the past 13 years.

227 The Claimant was becoming quite stressed towards the end of May. She was working on the GDPR project and had committed to provide a report to the board by the end of May. She was working on projects for Mr Barr as well as continuing to work on the Greek fleets.

228 A few days before the planned trip to Greece, the Respondent still had not yet provided the Claimant with an outline of her future role. The Claimant emailed on 2 June to ask for it. Although there was correspondence between Ian Barr and Steve Roberts about it, those were not shared with the Claimant.

229 The Claimant was not sure whether it was worth her spending time and effort making arrangements for childcare in anticipation of the trip, if she was no longer going to be working on the Greek files. Mr Barr confirmed that she could postpone the trip. He stated that the process of finding work that she could do, apart from the projects they already work together on, was not easy.

230 Mr Barr did not have a set of non-Greek fleets that he could hand over to her straight away for her to work on to enable her to keep up her claims skills. They were already working together on projects and on some claims. He stated that while this was being sorted out the best thing would be for her to keep the existing work she had with Mr Roberts until there was a better understanding of the project caseload and the likelihood of work developing in other markets. Mr Roberts also emailed the Claimant to confirm his agreement that she should retain some Greek fleets for the time being. There were at least 3 and possibly more old files that he wanted her to keep as she had done considerable work on them. He did not think that it would have taken that much time to work on them.

231 On 5 June the Claimant went to see DO to tell her that she was thinking of going to her GP to be signed off with stress. She also asked whether Mr Roberts or Mr Barr had spoken to her about her work situation. DO did not have any information but asked the Claimant to stay so that she could find out what was happening.

232 Later that day, Mr Barr wrote to the Claimant to ask her if she was able to meet to discuss the Respondent's draft outline for her role, which he attached to the email. It was similar to the one Mr Roberts drafted a month earlier and which had been discussed between the directors. It was not what the Claimant expected. It stated that the Claimant would work on the Greek fleets for a period with a view to handing them over to a different

claims handler. The Claimant would pass on her AFD responsibilities for Mr Roberts' fleets. She would only be able to continue working in the Greek market and retain her fleets if she agreed to continue working for Mr Roberts for as long as it took to hand over the work or complete the cases. The Claimant was upset.

233 She considered that the whole idea of the transfer to Mr Barr's team was to ensure that she would be able to avoid having to work with Mr Roberts. We find that when they spoke on her return from holiday on 19 April, it is unlikely that Mr Barr told her that she would be insulated from Mr Roberts and that she would have no dealings with him whatsoever.

234 Mr Barr's usual area of work was the Far East and USA. SL worked for him on Far Eastern business. Mr Barr had one client in Greece which was actually a client who had previously run his business from Singapore and had then relocated it to Athens. The fleet continued to be part of Mr Barr's fleets as he had a relationship with the principal in the business. IC worked in Mr Barr's team looking after the accounts in the USA. One of the businesses is based in New York with connecting businesses run by the principal's sons in Greece. The file was transferred from Steve Roberts to Ian Barr sometime in 2014 and IC continued to work on the fleet. Mr Barr was able to accept and keep the fleet as he continued to have a close personal relationship with the principal in New York.

235 Mr Roberts had close personal relationships with many of the principals on the Greek fleets that the Claimant worked on. Mr Barr's evidence was that Mr Roberts has a high-profile in the Greek market, having only ever worked in the Greek market and that it was unlikely that the Respondent would have transferred fleets to him when he had little chance of having the same impact in the market as Mr Roberts. Logistically, it was likely that the Respondent would have needed to consult with or at least inform the clients before transferring the cases to Mr Barr's management; as well as the underwriters.

236 It was also Mr Roberts' evidence that a feature of the Greek market is that the principals of clients are inclined to make a direct approach to the claims director for their fleet whenever something sensitive arises. It is not practical for the claims director to regularly visit each of their fleets but it is helpful when something does arise, if there had already been a historical relationship with that person.

237 The Claimant went to Mr Barr's office and spoke to him on receipt of the email. Mr Barr referred in his witness statement to her showing distressed by crying and shaking in his office that day. The Claimant was upset about what she saw as a turnaround in the draft job outline that she had been sent as she previously believed that she would be keeping her Greek fleet files with her under Mr Barr's line management. The outline indicated that she would continue to report to Mr Roberts on those Greek files she retained and would be gradually withdrawing from the Greek market in the medium term.

238 The Claimant informed Mr Barr that she was going to the GP to be signed off with stress. We find it likely that she was feeling unwell and considered that it was likely that when she told the GP her symptoms that she would be signed off with stress. The Claimant was finding the Respondent inconsistent in that she was being told that she had to continue to work with Mr Roberts and at the same time, that he considered their working relationship broken and had asked Mr Barr to take over her line management. The Claimant was also unhappy that the draft outline made it appear as though the transfer was happening because work in the Greek market was declining, which was not

the case. It referred to the Respondent trialling Messrs Barr and Jones having greater involvement as dominant line managers for the Claimant. This was also not the case at the time as although she had done some work for Mr Jones, he did not have any line management responsibility for her.

239 Later that day the Claimant wrote to the Respondent submitting a request for flexible working, citing stress and managing pressure. She asked to be able to reduce her time by 10% so that she would work and be paid 90% of her wages. She referred to the informal arrangement she had with Mr Roberts that she work one day a week at home and indicated that she now wanted to formalise that and make the day unpaid. The application was withdrawn on 6 June.

240 Another email to Mr Barr later that day set out in more detail the issues the Claimant had with the outline of her job. She again indicated that she was going to go to the GP to get signed off for the rest of the week with stress. A third email to Mr Barr at 4.30am the following morning showed just how stressed the Claimant was about her job. She stated that she was willing to continue to work with Mr Roberts if it was necessary for her to retain her fleets but if that was not a longer-term prospect, she did not wish to continue to work with him as her line manager, in any capacity. She considered that he had been inconsistent with her and changed what he said to her on many occasions which in her mind, makes any commitment from him totally unreliable. She said that that issue, coupled with the situation where he was directly responsible for her being paid less than her male counterpart and the unfair comments he made in her appraisal process; left her with no choice but to sever all connections with him.

241 She stated that she thought it would be best for all files to be reallocated immediately and that Mr Barr should assume line management responsibility for her. She raised her concern that the loss of her fleets would mean that she would not have enough work to do but she was prepared to see what happened to her time once the Greek fleets were reallocated.

242 The Claimant went to see her GP. While waiting for her appointment she telephoned an employment lawyer whom she knew. That person was unable to act for her as there was a conflict of interest. The solicitor advised her to raise a grievance.

243 As she had just spoken to the lawyer before going in to see the GP, it is likely that she referred to the conversation with the lawyer when discussing her symptoms with the GP and what was happening. The GP noted that that lawyer had advised her to get signed off. It is possible that the solicitor had advised her to do so but we find that it is unlikely that a GP is as careful of the words used and noted in their records as a solicitor would in writing an attendance note. A GP's notes are created mainly to record the advice given and the basis for their diagnosis or the action taken.

244 The Claimant's intention as set out in her email had been to ask for a sick certificate for a week. The GP decided that the Claimant needed more time off and signed her off for a month. The Claimant accepted this and hoped that by the end of the month she would be better able to deal with the work issues. Her GP asked her if she wanted anti-depressants which the Claimant refused. The certificate issued was for stress at work and for the period to 4 July 2017. The Claimant sent the certificate in to the Respondent on the same day.

245 The Claimant copied DO and Mr Roberts to her email of 6 June. DO emailed her and asked if she was in the office as she wished to speak to her. The Claimant informed DO that she had been signed off sick. In the conversation that they had that day, the Claimant requested that the email of 6 June should be treated as a formal grievance. DO forwarded the email to Mr Jones.

246 The Claimant emailed the Respondent later on 6 June to provide information on files that she had been working on so that someone could continue the work. She offered to continue to assist on the non-claims stuff she had been working on with Messrs Barr and Jones as she felt awful for letting them down.

247 DO advised the Claimant that she and Messrs Barr, Jones and Roberts had agreed that the Claimant's access to her work email address would be disconnected that day as she had been signed off sick with stress. The Claimant expressed her unhappiness about that decision in her email of the same day. She asked why it was necessary to do so given that she had stated that she was going to take a complete break. She had never known the Respondent to do this when anyone else had been off on sick leave. The Claimant asked for clarification of the reasons for the Respondent's decision.

248 The Claimant asked for access to her email account as she needed to access information for the assignment she needed to complete for her OU course which was due on 22 June. She needed to refer to correspondence which was in the Outlook system. In response, the Respondent reinstated the Claimant's access to her email account. The Claimant wrote to Mr Barr on 7 June to ask that in future, she be given 24 hours' notice before any restriction was imposed to enable her to pull off anything that she required beforehand. This would minimise the impact of the situation on other areas of her life.

249 The Claimant was worried about what she understood had happened with the Esteem C as well as her concerns over her work situation. It is likely that she was constantly ruminating about what had happened at work, her relationships with Mr Roberts and with the other directors, her career, her financial commitments - which meant that she could not simply walk out of the job, as well as her desire to maintain the positive working relationships she had with clients and colleagues.

250 DO sent the Claimant details of the Respondent's employee assistance programme. The Claimant set out her grievance in a letter dated 12 June which she sent to Mr Barr and copied to DO and Mr Jones. In it she referred to inconsistencies in Mr Roberts' behaviour towards her, in public and in private. She attached a list of the events in the form of a schedule, that she wished to refer to. She referred to a catalogue of behaviour that had occurred since she raised the issue of unequal pay since April 2015. She stated that she believed that she had been victimised and targeted, which was aimed at diminishing her as a person. She felt that she had been stonewalled on issues important to her, which made her feel increasingly powerless and isolated in the workplace. She referred to Mr Roberts exhibiting intimidating or demeaning behaviour, intentionally blocking her promotion or training opportunities and abusing his power.

251 In the grievance, the Claimant referred to the pay difference with KH as unfair treatment based on gender since their promotion to associate director. She referred to a campaign of victimisation since she raised her concerns regarding unequal pay.

252 The Claimant engaged in correspondence with DO and Mr Barr over the next few days enquiring about the procedure the Respondent would follow to investigate and consider the issues raised in her grievance and when it was likely that it would be done. She did not want the process to wait until after her sick leave ended. She preferred if it was resolved sooner as then they could all move on from it. The Respondent's procedure required the hearing to be conducted without reasonable delay. The Claimant offered to send in copies of emails and other documents to speed up the process.

253 Mr Barr decided that he would personally hear the grievance. He considered that as Mr Roberts' peer, he was best placed to do so and that it should not be heard by someone below board level.

254 On 22 June, DO sent the grievance to Mr Roberts to ask him to provide a response to it and the chronology by Friday 30 June.

255 The Respondent raised with the Claimant the possibility of her doing some limited project work from home whilst she was signed off. After trying and failing to get an appointment with her GP to get approval to allow her to do work, the Claimant declined the offer.

256 The Claimant discussed with DO the possibility of an informal investigation meeting prior to the formal grievance meeting. The Claimant also emailed to say that with the end of her sick leave coming up, she was anxious about returning to work with the grievance still unresolved. They discussed whether the Claimant could be located elsewhere in the office. She also proposed that Ian Barr should manage her Greek fleets in the interim period and she set out in an email dated 28 June how she thought that would work. She did not think that he would need to visit Greece while managing her as she could not recall Mr Roberts visiting the fleets since before 2012. She did not envisage that members of the London Club would leave because of a change in supervisory responsibility for her and her work as she believed that a number of the accounts were familiar with Mr Barr as he was once an associate director for the Greek team.

257 On 30 June the Claimant's GP signed her off because of stress at work for a further 4 weeks. The certificate stated that she was allowed to work from home. The Claimant sent the certificate off to Mr Barr as DO was away. Mr Barr agreed that she could work from home but limited it to project work. The Claimant protested at that and stated that she considered that she was being penalised for raising a complaint of sex discrimination against a senior male director and that by informing her that the grievance was unlikely to deal with the reallocation of her fleets, the Respondent had indicated that it had already made a decision on the grievance. The Claimant started working from home on 4 July under protest. The Claimant did some work but was concerned that as her fleets had been taken away, there was not much else that she could do. Mr Barr considered that they were building up to a body of work for her and that initially, he wanted to protect her by not giving her too much. He wanted to judge for himself whether she was fully recovered before giving her more.

258 In June, the Claimant's solicitor wrote to the Respondent. as a result, the Claimant was discussed at a board meeting. Mr Jones confirmed in live evidence that from then on, the discussions were a standing item on the board meeting agenda, under the heading of personnel issues. His evidence was also that from June he began to

conclude that the Claimant did not want to come back to work or that it would not work. At a later date, he decided that he did not want her working for him.

259 The Claimant was distressed to receive emails from Mr Roberts after his return from holiday. She believed that her grievance and her other emails should have made it clear to the Respondent that she wanted to be safeguarded from him and she was surprised to receive emails direct from him. She also had a strong negative reaction to seeing emails from him. It upset her and on 5 July, she raised this issue with Messrs Jones and Barr.

260 The Respondent took her distress into account and Mr Roberts was asked to stop sending emails to the Claimant. It is likely that they were mainly a case of Mr Roberts hitting the '*reply all'* button to various emails and the Claimant being copied in to his responses where she had been involved in the initial discussion and was therefore part of the original thread. It is likely that there were less than 10 occasions when the Claimant was copied in to emails that Mr Roberts sent out or directly received a message from him.

261 On 6 July the Claimant stated that she could not continue to work from home if it resulted in bringing her into contact with Steve Roberts. The Claimant obtained another sick certificate from her GP, which stated that she was not fit for work. The certificate was for stress at work and it was to last until 31 July.

262 On 12 July, the Claimant received Steve Roberts' response to the grievance. Arrangements were made for the grievance meeting which was due to take place on 18 July. DO assisted the Claimant in printing off, copying and preparing a bundle of all the emails and documents she wanted to have at the grievance hearing.

263 The Claimant had access to her email inbox in order to prepare for the grievance hearing and was able to forward emails to DO for copying and inclusion in the grievance bundle. On 10 July, Mr Barr decided that the most effective way of preventing any emails from Mr Roberts going to the Claimant was to change her password on Citrix which meant that she would not be able to access her work emails via laptop and phone. In his live evidence he stated that he did not recall the Claimant's email about a month earlier that if her access to her emails was going to be restricted, the Respondent should give her some notice before doing so. He stated that the decision to lock her out of her emails was because of her extreme reaction to seeing Mr Roberts' name on emails, which he thought he should accommodate. He expressed frustration with Mr Roberts and his inability to stop copying the Claimant in to emails that did not concern her and to take her off his distribution lists but as that had not been completely successful, he thought that this was the only effective way to address the issue. He denied that he was trying to shut the Claimant down.

264 Mr Barr considered that the Claimant's correspondence in June/July was increasingly confrontational.

265 Mr Barr proposed that there should be a brief given to the claims team about her extended sick leave. He proposed a form of words. The Claimant stated that she was puzzled by the need to have a message for the claims team as that had not been a requirement when she was ill previously or when other members of staff were sick. She stated that she was suspicious of any of the Respondent's actions that appear to treat her differently from the norm. She asked why this was proposed on this occasion. In relation

to her email access, she did not complain but pointed out that she had not had prior notice to her access being cut off and asked if IT could reroute emails from ParentMail to her personal email address. She agreed that the Respondent's actions in changing the password on the account was the sensible thing to do where Mr Roberts had been unable to stop emails going to her.

266 When the Claimant saw Mr Roberts' response to her grievance she was shocked to see that he confirmed that he inserted into her appraisal the comment that the mistake she made in the draft article was risking the Club's reputation for service – as a retaliation for her refusal to accept his point that she had an 'inability to carry people" – in the appraisal discussion. He confirmed that at the time she made the error he did not mention it but simply edited the first paragraph of the article and sent it on. In his comments on her grievance he confirmed that because she refused to accept the comment that she had difficulty carrying people with her, without him providing an example, he decided to insert the error with the article into her appraisal. He stated that it was acceptable to do this because the Claimant considered the error with the article to be trivial and he did not agree with that categorisation. The Claimant considered that this was an admission by Mr Roberts that he had added that comment in to her appraisal as retaliation for daring to challenge him.

267 The Claimant attended her grievance hearing on 18 June with Mr Barr and DO. The Claimant was also accompanied by a colleague. There were minutes of the meeting in the bundle. Prior to the hearing, DO had gone through Mr Roberts' response to the grievance and categorised his response under the headings in the Claimant's grievance so that his response to each point was clear to see. The notes of the grievance hearing show that the all the issues were discussed. They discussed the Claimant's allegations of gender discrimination. They discussed the historical inequality of pay between the Claimant and KH, management of PS, the flexible working application and all the other aspects of her grievance.

268 It is the Claimant's case that she raised the issue of the *Esteem C* with Mr Barr during a break in the grievance hearing when they were alone in the room. In both of his witness statements, Mr Barr stated that he did not recall having a conversation with the Claimant about the *Esteem C* during the grievance hearing. In her first witness statement, the Claimant said that when she spoke to him about it on 18 July, he made no comment in response.

269 In live evidence, Mr Barr confirmed that they had spoken about the Esteem C earlier in the year and that the Claimant had expressed her concerns about the way in which Mr Roberts was going to present the issue to the committee. He recalled that the Claimant told him later that the hatch covers had been left open by the crew and the rain came in and destroyed the cargo. To him, that was the issue rather than the condition of the hatch covers.

270 We find that on conclusion of the grievance meeting Mr Barr did not conduct any other interviews as he considered that he had all the information he needed. After some delay as he was on leave, he wrote the Claimant a grievance outcome letter dated 4 August 2017.

271 The letter was at pages 1242 – 1251 of the trial bundle. Mr Barr upheld parts the complaints but did not agree that they were discriminatory or that they showed Mr Roberts misusing his power or were examples of intimidating or demeaning behaviour.

272 For example, in the letter, he explained the difference in pay between the Claimant and KH to be due to the Claimant working reduced hours for one month between February and March 2012 and her request to defer her salary review in April 2012. He stated the Claimant's salary was equalised in October 2015 and was now greater than her comparator's salary. He also stated that the fact that the Respondent had agreed to fund her MBA, which amounted to a total of £16,602, was an important factor to consider. This part of her complaint was partially upheld. However, he did not state whether he considered that to be unfair treatment on the grounds of gender. Mr Barr calculated that the pay differential over the years caused the Claimant to suffer a loss of pay in the sum of £5, 274 but *"consider that this is due to the favourable terms offered to you under the provision of the MBA placing you on preferential terms to other AD's."*

273 Although Mr Barr did not uphold the Claimant's complaint about Mr Roberts' handling of the management of PS's performance, he did agree that it could have been managed differently. He did not agree that what happened constituted intimidating or demeaning behaviour. He also stated that in future, the Respondent will enter into an agreed action plan in these sorts of instances.

274 The next part of the complaint that was partly upheld was in relation to the delay in conducting the Claimant's appraisal and the further delay in having the discussion post-appraisal. He confirmed that the Claimant was not the only one of Mr Roberts' reports whose appraisal had been delayed. This was due to him being one of the busiest managers in the business. He stated that the fact Mr Roberts made the Claimant's appraisal a priority was a demonstration of the faith and confidence he had in the Claimant as a team member. It may have also been due to the fact that the Claimant asked repeatedly for an appraisal. Mr Barr did not consider this delay to be intimidating or demeaning.

275 He upheld the Claimant's complaint that there were few opportunities for discussion on her career prospects. He noted that the Claimant tried to discuss her career prospects on many occasions and he agreed that in 2015, Steve should have made a more concerted effort to discuss these matters with her. He did not consider that this was intentional on Mr Roberts' part but an unfortunate consequence of him being busy. He confirmed that Mr Roberts had discouraged the Claimant from participating on a subcommittee and that this was just the way he managed. Mr Barr confirmed the Respondent's proposal for the Claimant to work towards replacing him on the Pollution Sub-Committee and that the difference between that and Mr Roberts' approach was due to different priorities as opposed to anything else.

276 In relation to the complaint about the allocation of work on the *Benita*, he accepted that the Claimant was right about what happened but decided that this was a management decision open to Mr Roberts and was not evidence of him intentionally blocking her from training opportunities.

277 The fact that Mr Roberts failed to address her complaint about unequal pay until she raised it with the Respondent's CEO was upheld in part as it should have been addressed earlier.

278 He also upheld the complaint that the record of the appraisal was inaccurate as it recorded matters that had not been discussed during the appraisal. He did not agree that it was an example of Mr Roberts misuse of his position and power.

279 All other parts of the grievance were mentioned in the letter but were not upheld.

280 In relation to her complaint that Steve Roberts had failed to meet his managerial responsibilities towards her, he accepted that some things could have been done differently but put that down to Mr Roberts' management style. He apologised if that caused her upset but was confident that it was not Mr Roberts intention to upset her or to victimise her because of her complaint of unequal pay.

281 The Claimant was unhappy about her grievance outcome and upon receipt confirmed that she intended to appeal the outcome. One of her points of concern was that Mr Barr did not indicate in the grievance outcome what her future role was going to be with the business as this had been unclear. Another was that he omitted to say whether he considered that Mr Roberts had treated her unfairly based on her gender, as she had alleged.

282 While waiting for the grievance outcome and even after receiving it the Claimant suffered from the effects of stress in the form of disturbed sleep, anxiety dreams when she was asleep and finding it difficult to relax even though she was not at work. She found that she was waking several times during the night and shouting in her sleep. She had night swears and would wake up convinced that she was having a heart attack. She received the grievance outcome while on holiday. During the holiday she found it difficult to relax as she was preoccupied with thoughts of work and the grievance. She was agitated and restless and irritable with her children.

283 On 11 August the Claimant emailed Mr Barr to ask for clarification of her job role and duties as the grievance outcome had confirmed that supervisory responsibility for her fleets were not going to transfer to him. Did the Respondent want her to continue to work on the fleets under Mr Roberts' supervision? Would this be on a temporary or permanent basis? Mr Barr's response was that since he had not upheld the Claimant's complaints that Mr Robert's had been intimidating or demeaning towards her and he had decided that there had not been a misuse of power or position; there was nothing preventing her from returning to her duties and fleets as soon as she felt able to do so. Mr Barr confirmed that he would be the Claimant's line manager and that there were projects that they could work on together. He would conduct her appraisal. But as far as work on the Greek fleets were concerned, those would remain Steve Roberts' fleets and any claims work on them would be overseen by Mr Roberts.

284 In his email of 21 August, Mr Barr also stated that the Respondent would take a proactive approach in facilitating her return to working with Mr Roberts by offering mediation to ensure that she was comfortable with the situation, that service levels were maintained and that the needs of the business could be properly met.

285 The Claimant returned to her GP on 30 August for an extension to her sick certificate. She was worried for her mental health and had started to think of death as a possible solution to her problems. Whenever these thoughts came up, she would usually focus on the children and the fact that they needed her. She did not have a well-developed suicide ideation but the direction of her thoughts did alarm her and she alluded

to it in her consultation with her GP. The Claimant's GP said that she was happy to support a self-referral for counselling. She suggested anti-depressants which the Claimant refused as she wanted to try counselling first. The Claimant also noticed that although she was still able to drive, her focus sometimes drifted while she was driving and she often felt unsafe. It was her evidence that by the end of August she had stopped doing non-essential driving journeys. She would walk into town to shop and carry her shopping back home in a rucksack.

286 On 25 August the Claimant submitted her grievance appeal. She appealed against the decision that the funding of the MBA was in any way linked to her salary. Her recollection was that the Respondent agreed to fund the MBA as it had previously refused her management training and she requested training to support her in managing PS. When the funding was considered the Respondent did not tell her that it would be in lieu of a review of salary or of equal pay.

287 The Claimant wanted the Respondent to consider the examples of unfair treatment based on gender that she raised, which had been discussed in the grievance hearing but about which there was no comment in the outcome letter. The rest of her appeal was a response to some of the other outcomes that she did not agree with, including a query as to whether the decision that she should not take her fleets with her was a decision made by the board or by Mr Roberts. The Claimant asked for her appeal to be dealt with by ACAS.

288 Mr Jones' evidence at the hearing was that having seen what the Claimant had put Mr Roberts through in the grievance, he did not relish taking her on himself. This was before the grievance appeal. He considered that it was an unpleasant process for Mr Roberts which had been unnecessarily drawn out. He had not yet reached the conclusion that he could not work with her but from June onwards he had serious reservations as to whether the Claimant could or wanted to work for the Respondent.

289 On 8 September, Mr Barr responded to the Claimant's request for clarification on her job role. he stated that the key point was for her to get better and return to work. If the Respondent was unable to rebuild her relationship with Mr Roberts then it would seek to work her out of the Greek market and into other markets so that she could continue to have responsibility for both claims and projects. The speed of transition and where the other accounts would come from were both unknowable factors in the equation.

290 Later, on the same day, the Claimant and Mr Barr spoke on the telephone. Mr Barr was struck by the strength of feeling the Claimant displayed towards Mr Roberts. Although there was a dispute between the parties about the exact words used, it is largely agreed that the Claimant used strong words when she referred to Mr Roberts, as she expressed her frustration. Mr Barr considered that the Claimant had lost all sense of rationality. He did not consider her mental health at this point but concluded from this conversation that there would be real problems integrating her back into the workplace. He reported on the contents of his conversation to Mr Jones and DO.

291 On 11 September the Claimant wrote to Mr Barr to inform him that Mr Roberts was going to be the subject of her forthcoming employment tribunal claim. she stated that she considered that he had treated her badly and that she could not work with him in the future. She stated that she considered that she had been treated badly by the Respondent and by Mr Roberts and that the conduct amounted to sex discrimination,

harassment and victimisation. In the circumstances, she did not believe that she was able to work with him. She did not accept the Respondent's decision about not permitting her to continue with her work on the Greek fleet and felt that she had no alternative but to pursue this matter in the employment tribunal. She said that she would let the Respondent know when she intended to return to work.

292 Mr Barr believed that it was the Claimant who was making decisions as to whether she was fit to return to work rather than her GP. The Tribunal takes judicial notice that although not specialists, GPs are professionals. If a person reports ill-health to a GP, they do not simply do that person's bidding. The Tribunal has had experience of a GP refusing to give a medical certificate and of another issuing a certificate for a shorter period than the patient requested. It is not the individual writing out their own certificate. Usually, a fit note is issued by the GP, after a consultation with the patient and having made a decision as to what would be the best outcome for them.

293 It was around this time that Mr Barr decided that whenever the Claimant indicated that she is ready to return to work, he would need to be reassured by an independent expert that she is indeed fit to return. This indicated that he recognised that the Claimant was most likely unwell at the time.

294 The Claimant's grievance appeal was conducted by Anthony Jones on 15 September. In her witness statement, the Claimant commented that Mr Jones handled the process well and the hearing was quite amicable and friendly. Although Mr Jones did not uphold any of the Claimant's points of appeal, she found that receiving the decision did not have the same emotional impact as the grievance.

295 On 18 September the Claimant was assessed by Mindmatters, an NHS service, as having severe anxiety and severe depression. The Claimant started a weekly course of cognitive behavioural therapy with Mindmatters which concluded on 16 November.

296 On 3 October the Claimant emailed Ian Barr and DO to ask whether it was possible for her to have access to the computer system for the purposes of her MBA. She had tried to defer the final year as it had been difficult to generate any evidence for an evidence-based project as she was out of the office. It was not possible to defer it so she was trying to complete it as best as she could. DO considered that the Claimant should have downloaded anything she needed to complete her MBA before access to the system was removed on 10 July.

297 On 4 October the Claimant wrote to Mr Jones to raise the issues she had around the Esteem C. This is the Claimant's first alleged protected disclosure. The Claimant did this after seeking legal advice. She also issued her tribunal claim on the same day.

298 In the letter, she traced the history of the matter relating how the ship had been identified as suffering from a lack of maintenance which resulted in it having many inspections over an extended period. Ian Barr confirmed this in his live evidence. He stated that it was regularly inspected. There was particular concern over hold number 6 of the vessel and the Claimant alleged that there were exchanges on the Loss Prevention files, in which Steve Roberts suggested that there should be a warranty to the effect that no moisture sensitive cargo should be carried in hold number 6. As far as the Claimant was aware, nothing had been done about that and she saw nothing on the file to indicate that she was wrong about that. She alleged that she had repeatedly expressed her

concerns to Ian Barr orally that there was a potential cover issue as a result of Steve Roberts' handling of the matter and that Steve had told her that he did not want to expose the ship's owner to criticism by the committee.

299 Although she believed that there were standing instructions that the vessel should not load cargo in the hold, there was no note of the meeting on file and no note could be located. She set out in the email that she had told Ian Barr that there were potential cover issues as a result of Mr Roberts' handling of the case. Also, that Mr Roberts had not informed the committee of all of this and that she had only written the report as instructed but he had been responsible for presenting the report to them. She stated that if he had implemented the warranty as discussed, the damaged cargo would not have been covered and there would only have been a modest claim on the Club. She referred to a conversation that she had with Mr Barr during the interval at the grievance hearing when only they were in the room. She informed him that she had spoken to the Solicitors' Regulation Authority (SRA) as she was worried about her part in the whole issue and they had advised her that it was unlikely that she would be implicated in any conduct issue as she had not been asked to advise on the presentation of the claim to the committee.

300 The Claimant stated that as far as she was aware, Ian Barr had done nothing about the concerns she expressed. It was causing her considerable stress as she thought that she would have to deal with the file on her return to work as it was still technically in her name.

301 She asked for the complaint to be considered anonymously and wished for her identity to be protected. She asked whether MB from the claims and loss prevention files would be able to look at the issues raised in the letter to see if there was a conduct issue.

302 Mr Jones asked the Claimant whether she wished the issue to be considered under the Respondent's whistleblowing policy and she confirmed that she did. The policy advised that the complaint should be dealt with by the company secretary and Mr Jones forwarded it to DO. However, DO felt that she did not have the necessary expertise to deal with the issue. Instead of seeking outside assistance or considering using MB as the Claimant had suggested, she asked Mr Barr to deal with the matter on her behalf. On 9 October, DO anonymised the Claimant's email and sent it on to Mr Barr for him to investigate and provide a report. Mr Barr had been named by the Claimant in the 4 October email as someone to whom she had already raised the issue but who had done nothing about it. the Claimant had therefore made an allegation against Mr Barr in relation to the Esteem C.

303 We find it likely that the Respondent was concerned about the Claimant's access to documents about the case as Mr Jones stated in live evidence that the fact that she knew the settlement funds were available meant that it was likely that she was keeping tabs on the file from home. In the letter of 4 October, the Claimant referred to *'correspondence which I saw after being signed off sick'.*

304 DO offered to find the information that the Claimant needed from her emails and send them to her. The Claimant needed the GDPR documents. DO offered to arrange for her Open University and Data Protection folders to be zipped and sent to her but the Claimant wanted access to the whole work system. She sent the Respondent information of alternative ways to limit her contact with Mr Roberts so that she could have access to

her entire inbox. DO did send her a memory stick with the zipped files on it to her home address.

305 On 11 October the Claimant emailed DO and Mr Barr to let them know that the emails had arrived too late for her to incorporate them into her dissertation. The Claimant also informed the Respondent of her intention to return to work. She believed that returning to work was the only way to resolve the uncertainty surrounding her role.

306 Mr Barr recognised the matters raised in the written allegations surrounding the Esteem C as concerns the Claimant has raised with him in more than one conversation. He guessed that it was likely that the Claimant was the whistle-blower.

307 Mr Barr confirmed in live evidence that he had been aware of the Esteem C. It was an old ship that came into the Club in 2008. It was broken up in 2012, not long after the incident that was the subject of the litigation in which the Claimant was involved.

308 There were 17 loss prevention files on this ship. Two types of inspections had been done on the ship in 2008, 2009, 2010 and 2011. Condition inspections related to the condition of the ship and pre-load steel surveys were done in relation to the quality of the cargo as this ship sometimes carried steel. Those inspections would have included tests of the hatch covers. Mr Barr agreed that there were problems with the water integrity of the hatch covers at hold number 6. The client used tarpaulin to protect the cargo. As far as he was concerned, the evidence showed that the protective steps taken by the client was sufficient.

309 Mr Barr remembered the case and the report that was brought to the board about it. He also remembered discussing it with the Claimant at that time and her expressing her concerns about how the matter was going to be presented to the committee. He was not aware when they talked that the Claimant was going to say that he and Mr Roberts knew that there were issues with the hold which led to the damaged cargo in April 2011.

310 In his investigation of the complaint he clicked through the loss prevention files looking for any information that showed that there was prior knowledge that moisture sensitive cargo should not be carried in hold number 6 and he could not find any such information. He found it implausible that such an issue had not been identified in the inspections that had been carried out. Although he could not recall the date on when he started looking at the evidence, he was adamant that he was extremely thorough in going through the information and the files that the Respondent kept. He made sure that he looked at all the relevant information.

311 He confirmed that he had been travelling to Shanghai during that time but that he would have been able to access the files from anywhere. He went through 1150 emails and saw the paper files which included correspondence between Mr Roberts and others about what happened on the ship.

312 He stated that the Respondent had a total of 41 electronic files on this ship and that he read all of them. He went through 7 FDD files. Although the Tribunal did not know what FDD stood for, we noted it here as that was his evidence and it is likely that the parties are familiar with the term and know what it means. He asked IT for assistance in retrieving all emails which had been saved into the ship's file but had been subsequently deleted. Sometime in October, he asked IT to give him access to the Claimant's inbox

and her Outlook folders to read all documents related to the *Esteem C* to see whether there was an email in relation to the warranty she mentioned. As far as he was aware, the reports showed that although there were problems with the hatch covers and their ability to keep water out, the cause of the damage to the cargo was that the crew left the hatches open and the rain came in. He found no evidence in the Claimant's files that showed that she raised with Steve Roberts the matter that she was now raising in the complaint.

313 At the end of the investigation, Mr Barr concluded that the cause of the damage to the cargo was rainfall rather than anything to do with the condition of the hatches and therefore, the committee had not been misled by anything in the report. The report concluded that the crew did not do their job as they failed to close the hatches. This allowed rainwater to come into the hold and damage the cargo. That was the cause of the damage to the cargo rather than the poor insulation on the hatches. The owner had insurance to cover damage arising from the negligence of the crew.

314 By letter dated 20 October, the Respondent replied to the Claimant with the outcome on the investigation on her complaint. She was horrified that Mr Barr had been asked to investigate it. The result of Mr Barr's investigation was that there was no conduct issue to address. He confirmed that a colleague, who was likely to have been the Claimant, had raised this matter with him at the time and that they had discussed the issue and the report that was going to be submitted to the committee. In the letter, he outlined the conversations he had had with that colleague. He referred to his initial understanding that the cargo had been damaged because of ventilation issues rather than rainfall. He then referred to the email from the surveyor that suggested that opening and closing the covers on the pontoons was a slow business which meant that if there was a sudden shower of rain, there could be considerable ingress of water into the hold before the crew are able to close the hold. The suggestion was that the damage to the cargo was a result of rain water ingress rather than a ventilation issue, as he had first thought. He did not refer to a discussion with Mr Roberts as part of his investigation to ascertain his knowledge of a warranty or his knowledge of the condition of the ship prior to the incident. Yet, Mr Barr concluded the letter by exonerating him and the report that went to committee.

315 In an email DO confirmed that the Claimant's position working with Steve Roberts was open for her to return to. Otherwise, she was referred to the contents of Mr Barr's letter dated 8 September, referred to above. This was the same response the Respondent gave when the Claimant asked again in November for clarification of her job duties.

316 On 16 October DO wrote to the Claimant on Mr Barr's instruction to ask her to agree to an independent medical examination to be funded by the Respondent to assess her fitness to work and to ascertain any reasonable adjustments that were required to assist her return to the office. In response, the Claimant asked the Respondent to confirm that two other male colleagues (MB and AB) who had previously been off from work, sick with stress for a period of time, had been subject to the same requirement when they proposed returning to work. The Claimant wanted to be reassured that this was standard practice. When DO said that there were confidentiality issues which made it impossible for her to comment on individual situations, the Claimant asked her to confirm the numbers of male and female staff who had been off sick for a comparable period of time and had the same request made of them when they attempted to return to work. The

Respondent initially refused to provide that information but after further correspondence, in an email dated 25 October, DO confirmed that the Claimant was not the only employee who had been requested to attend an occupational health assessment.

317 DO referred to section 7(j) of the Respondent's staff handbook which stated that if it is unsure about a member of staff's fitness to return to work after a period of sick absence, it reserved the right to require that person to undergo an independent medical assessment at its expense. The section also stated that the Respondent had no obligation to provide the employee with work or remuneration until it was satisfied that she was fit to return to work.

318 The Claimant emailed a copy of her fit note on 27 October. This recommended that she was fit to return to work. Canada Life who provide the Respondent's cover also provided a report to the Respondent. Both reports recommended reasonable adjustments to enable the Claimant to return to work. The Claimant's GP recommended a phased return to work – building up from part-time to full-time hours, with an initial period of working from home to be reviewed on a 4-weekly basis. Canada Life made an additional recommendation that the Respondent hold a return to work meeting between the Claimant, Mr Barr and DO.

319 The Respondent insisted that it still required the Claimant to undergo a medical assessment. In her email of 30 October, DO clarified that the Respondent required her to undergo a psychiatric assessment so that it can confirm her present state of health, which was already covered by the reports referred to above; ascertain whether she was disabled under the Equality Act, work out a return to work plan and assess the level of support she required when back at work.

320 The Claimant complained that the Respondent, having contributed to the length of time that she had been off work by the time it took for it to address and finalise her grievance; was now requiring her to undergo this medical assessment because of the length of time that she had been off.

321 On 27 October the Claimant wrote again to the Respondent about the *Esteem C.* The letter was also addressed to Anthony Jones. This was an appeal against Mr Barr's findings. In the letter the Claimant raised the issue of Ian Barr's involvement with the file and his failure to report the warranty issue to the insurers once he knew a claim had been submitted. She asked why the investigation had not been done by MB as she suggested or if it had to be done by a director, why had Ian Gooch not done it. She complained that Ian Barr's report sought to justify why he had previously taken the view that there was no conduct issue but failed to address her concern that Mr Roberts did not take any steps to implement the warranty before the incident happened.

322 She set out what she considered to be the Respondent's legal duties to the Club and how she considered that Mr Roberts' actions and omissions with regard to the ship breached those duties. She suggested that Mr Roberts' close relationship with the fleet's owner meant that he let himself be unduly influenced by that relationship to the detriment of the Club and the Respondent. She said that she believed that the report that was made to the committee was misleading but allowed for the possibility that she could be wrong and that Mr Roberts dealt with the other issues in his covering emails or verbally. She also alleged that what happened was a breach of fiduciary duty towards the Club. She asked

that the issues raised in this second letter could be investigated by Ian Gooch or by MB, or if those options were not possible, then by an external adviser.

323 The Respondent accepted that this letter contained protected disclosures.

324 Mr Jones asked Mr Gooch to assist him in reviewing the Claimant's second letter on the *Esteem C*. Mr Gooch considered that it was entirely appropriate for the Claimant to raise this issue if she genuinely considered that there were issues that needed to be looked at. Messrs Jones and Gooch interviewed Mr Barr as part of their investigation. We were not told when they met and there were no notes produced.

325 Mr Barr commented in his witness statement that although he had spoken with the Claimant about the ship on more than one occasion before she went off sick at no time did she suggest to him that he had been involved or that he had been guilty of any misconduct. He was surprised and disappointed that some months later, she had chosen to do so, in this way. At the hearing he stated that the Claimant had been involved in the case for 6 years which meant that she had ample time and opportunity to raise this with Mr Roberts and to satisfy herself as to what happened. It was only when he was interviewed on this second complaint that he realised that the Claimant was alleging that he had known about the recommended warranty since 2010 and had to take joint responsibility for failing to implement the warranty. He denied that there was any evidence of this and that even though the Claimant had stated that this was evidenced by correspondence between Mr Roberts, himself and the current loss prevention manager; there was no such correspondence and that person had not been employed by the Respondent at the time.

326 On 9 November, DO responded to the Claimant by email to reiterate the Respondent's position that Mr Barr had already addressed the work issue in his email of 8 September. She also informed the Claimant that the GDPR work had been reallocated in her absence and that the QSC role was being caretaken by others.

327 On 10 November, the Claimant attended the appointment with Dr Drever who was the independent medical assessor appointed by the Respondent to interview her and write a report. Dr Drever produced his report on the same day.

328 In his report Dr Drever confirmed that the Claimant had a medical condition that affected her attendance at work. She had an adjustment disorder with a range of depressive and anxious features. This was a response to various issues at work which led to depressive and anxious features such as palpitations, sleep problems and difficulty with memory and concentration. This constituted a mental impairment which had an adverse impact on short-term memory and concentration and caused diminished ability to socialise, decreased levels of physical energy and stamina and sleep difficulties. He commented that the effect of the illness had been significant to necessitate the Claimant to withdraw from work in June 2017.

329 Dr Drever went on to say that the illness would not be long-term if the underlying causes are addressed and resolved and the demands which triggered it in the first place are minimised or removed. He was confident of the Claimant being able to secure a lasting long-term recovery with the various changes he suggested.

330 He recommended the following adjustments: that there should be a phased return to work with a new line manager and with the Claimant working from home for the first 4 weeks and then building up to working at the office for part of the week and the rest from home. He asked that the requirement to take calls out of office hours be suspended for the time being.

331 Dr Drever considered that the Claimant was ready to return to work straightaway, with the outlined adjustments being put in place for the short-term and a mix of home working and office working being implemented for the long-term. He stated that he believed that the Claimant had recovered from her illness and that a return to work should be expedited as soon as possible. He did not foresee any other medical or psychological intervention being necessary other than the completion of the CBT sessions with the NHS provider, of which the Claimant had two further sessions to attend; and a monthly visit to her GP for a review.

332 Dr Drever concluded his report by stating that he believed that it was quite unlikely that this health problem would recur in the future if the recommendations were implemented. He believed that it would be detrimental for her to come into contact with her former director which is likely to be a reference to Steve Roberts; and he recommended that email contact with him should be minimised and the seating arrangements be changed so that she could sit at a different desk or a different floor.

333 The Claimant sent the report to the Respondent and suggested that she return to work on the following Tuesday so that the Respondent could use Monday to sort out her IT access and possibly the seating arrangements.

334 Mr Barr told us that he was surprised that the Claimant was diagnosed as fit to return to work. He had expected her to fail the assessment.

335 He replied to the Claimant on 22 November to say that he was happy with the seating arrangements on the third floor as they were and was not prepared to change it. The Respondent had hired two new claims managers since her sick leave. More significantly, he stated that since the Respondent's conclusion to the Claimant's grievance was that Steve Roberts had not exhibited bullying and intimidating behaviour towards her, it could not be compelled to rearrange the seating arrangements in the office to accommodate her return. He therefore suggested that the appropriate desk for her to sit in on her return was the desk she sat on when she was last at work, which was not in a room with Mr Roberts.

336 The Claimant did not accept that and responded to point out that this would not be in keeping with the Respondent's obligations to make reasonable adjustments and would go against the recommendations made by the doctor engaged by the Respondent. The Claimant pointed out that as the return to work was supposed to start with a period of working from home it did not all need to be sorted it out at the start and that the Respondent should get her back on to the system so she could start working, in the interim period.

337 Contrary to what was recommended in Dr Drever's report, Mr Barr indicated in his email of 23 November that the Claimant needed to be in the office in order to be reintegrated back into the office. He would not agree to her starting with working from home. He stated that she could make an application to work from home in due course.

This was against the advice of the Claimant's GP, Canada Life and the independent medical expert who the Respondent engaged.

338 The Claimant wrote to Mr Barr to ask him to correspond with her during usual office hours and to not send emails to her personal account on work matters outside of those hours; both as per Dr Drever's recommendation. Mr Barr considered that in doing so she was being awkward and difficult.

339 Mr Barr was concerned that the correspondence he was having with the Claimant was becoming increasingly difficult. He envisaged that there would be problems integrating the Claimant back into the office. He was concerned to not do anything that could affect Mr Roberts' reputation, especially when he had been found not to have behaved unlawfully towards the Claimant. Mr Barr was particularly concerned about the telephone call he had with the Claimant back in September in which he remembered her being frank about her feelings towards Mr Roberts.

340 Mr Barr did not want to give the Claimant access to Citrix. His evidence was that he was daunted by the thought of reintegrating her back into the office. It was at this point that Mr Barr decided to speak to some of the claims team about the Claimant coming back to work. We were not told that this had been done in previous situations when someone had been away from the office on sick leave. There were no complaints from staff about the Claimant and the only matter at this point was that the Claimant did not want to sit near to Mr Roberts.

341 In the hearing, Mr Barr agreed with the Mr Lockley that the Claimant's suggestions about seating in her email of 1 December were perfectly practical and that the tone of the email was constructive. In that email she referred to the adjustments recommended by the medical professionals. She asked to be allowed to work at a desk on another floor and identified a couple of places where she could sit when it came time for her to return to the office. She asked to be allowed to work from home straightaway. She anticipated that there might be some email contact with Mr Roberts. She asked what was the Respondent's position on a phased return. Mr Barr did not respond to this email. Instead, he took the unusual step of speaking to the Claimant's colleagues about the Claimant's return to work.

342 Mr Barr decision on who he would speak to about the Claimant's return was not guided by their proximity to where the Claimant wanted to sit in the office. His live evidence was that he looked at the folders in the Claimant's Outlook documents and spoke to those people in the claims team with whom she had correspondence that he described as '*spiky'*. These were people that she had had difficult management conversations or meetings/interactions with. When he saw the correspondence in the folders it would have occurred to him that those people, whether justified or not; were unlikely to be enthusiastic about the Claimant's return to the office.

343 To find out what he said to those colleagues we looked at some of the statements and the evidence they gave to TT when she interviewed them. In CB's interview, she stated that Mr Barr told her that he had access to the Claimant's inbox, that he noticed that the Claimant had been overly harsh and aggressive to a number of people on occasions and that she was one of them. He stated that he was looking to bring the Claimant back to work in a different role and asked her whether she considered that it would be a positive, negative or neutral thing. She was recorded as saying that it would

be a negative thing. Mr Barr spoke to 6 colleagues in total. It is likely he spoke to 4 in December and 2 in January. The statements that were produced were anonymised and were almost identical. In his interview with TT, he stated that he opened each conversation with the witnesses by telling them that the Claimant had requested a change in her working arrangements i.e. more homeworking, different office in the building and a change to her line management; and he was asking each person what they thought of that, what they would say about going to find her elsewhere in a hot desking capacity.

344 Of the 4 statements taken in December, they all noted that it would be negative if the Claimant returned to the office, and that she had a negative impact upon the team due to being unfairly critical of her colleagues, delivering unwarranted criticism in an unnecessarily confrontational style and had unrealistic expectations of them. It was unusual that they would all use the same words. When asked if they could give examples, they were all recorded as refusing to do so because of the possibility of the Claimant returning to the office. It was recorded that each person stated that they reserved the right to amend the statement should the need arise.

345 We were not told of any other time when the Respondent did this before bringing someone back to work after a period of sick leave. It is unlikely that the Claimant is the only person who has been off sick from work at the Respondent.

346 On 18 December Canada Life informed the Claimant that it was not going to pay her claim under the Respondent's Group income protection policy because in the claims manager's opinion, the Claimant was not considered to be incapacitated from performing her normal job throughout her absence from work. This was the requirement that needed to be satisfied for payment. Canada Life concluded after considering all the evidence that the Claimant's absence from work was due to the Respondent's failure to make reasonable adjustments as recommended by Dr Drever rather than because of her incapacity and that was why the claim was rejected.

347 Also in mid-December, the Claimant heard from Mr Jones with the outcome of her appeal in the *Esteem C*. matter. He decided that her concerns were unfounded. In investigating her concerns, Messrs Jones and Gooch had spoken to Mr Barr about the conversation she stated that they had in the interval during her grievance meeting. In doing so they would have revealed that the Claimant was the whistle-blower. Even if Mr Barr had already guessed that the concerns were raised by the Claimant, Mr Jones did not have her consent to make that plain to Mr Barr. Mr Jones did not refer to all the other conversations that both the Claimant and Mr Barr agree that they had about the *Esteem C*. The letter referred to Mr Roberts and that there was evidence that he had not been aware of the unusual design of hold number 6. Mr Jones also stated that there was no evidence that the imposition of a warranty had been considered prior to the claim. Again, there was no mention of a conversation with Mr Roberts to ascertain what he remembered about the matter.

348 On 19 December the Respondent wrote to Dr Drever's assistant to ask what evidence he had regarding the adjustment disorder he referred to in his report and whether he had any medical evidence/confirmation that the disorder was diagnosed in February 2016. If there was a diagnosis in February 2016, he was asked to identify who made it. Dr Drever replied to the Respondent to provide an addendum to his report. He stated that the diagnosis of the adjustment disorder was based on the information the Claimant gave him during his consultation. He stated that she displayed a range of

depressive and anxious features that had arisen as a result of various life stresses. It was his professional opinion that the disorder had started sometime around February 2016 as the Claimant was under significant pressure at the time and had to take time off work. He also confirmed that when he met the Claimant in November 2017, his feeling was that the features of the adjustment disorder had resolved.

349 On 20 December, the Respondent wrote to the Claimant to invite her to a meeting on 8 January to consider her dismissal due to "*some other substantial reason*". She was told that the purpose of the meeting was to consider the smooth running of the business and referred to '*issues'* between herself and the directors. There was a need to review the apparent breakdown in trust and confidence between the Claimant and Mr Roberts. She was told that her behaviour was akin to a hostile employee, acting litigiously in all respects. She was also advised that members of the claims team had expressed serious discontent over her return to work. The Respondent was concerned about maintaining team spirit and over how many key employees it would lose if she were to return to work due to her demeanour and general style of micro-managing.

350 The Claimant was advised that the meeting would consider terminating her employment due to "*some other substantial reason"* and that she had the right to be accompanied. She was told that the evidence was being collated and would be sent to her within good time. The Claimant was shocked to receive the letter. She wrote to the Respondent and asked for a response to her letter dated 1 December.

351 On 29 December, DO wrote to the Claimant to claim that the meeting was not a disciplinary meeting as "some other substantial reason" falls outside of the scope of the ACAS Code of Practice. She stated that the Respondent's internal procedures did not apply. The Claimant was refused access to the work system to retrieve evidence that might contradict the evidence the Respondent was going to rely on at the meeting. DO stated that the Respondent considered that the tone and content of the Claimant's recent communication with Ian Barr indicated a clear lack of respect towards him and that the Respondent would have to consider whether this was evidence of a breakdown in their relationship which could affect any future working relationship.

352 In her response, the Claimant expressed surprise that her working relationship with Mr Barr had been affected and confirmed that she was happy to enter in to mediation to repair it. She asked whether Mr Jones would be prepared to accept line management responsibility for her.

353 We could see how this latest development was confusing to the Claimant as she had been sent the invitation letter to the meeting with no prior warning that there were any issues between her and her colleagues and no evidence of such issues was enclosed with the letter. The last thing the Claimant recalled was correspondence with Mr Barr about where she would sit and the implementation of Dr Drever's other recommendations. There had been no disciplinary issues beforehand and no complaints that she had been aware of. It is surprising that the Respondent had not expected her to react strongly to being told of the upcoming meeting to consider her dismissal. The Claimant reminded the Respondent that Dr Drever's recommendation was to minimise contact with Mr Roberts and she had not expected that there would be no contact with him whatsoever.

354 The Respondent confirmed that Mr Barr would chair the disciplinary hearing. DO stated that Mr Roberts was now considered to be the Claimant's line manager. She also

stated that the Respondent felt it would be difficult for the Claimant to perform any project work that may be identifiable in the future since it would be challenging for her to engage with at least 2 senior people (and some junior) in the business. It is likely that the senior people referred to were Ian Barr and Steven Roberts. The junior people were not named. DO stated that they would discuss mediation at the meeting.

355 The Claimant did not receive the Respondent's evidence for the disciplinary meeting until 5 January. They were the 4 identical witness statements referred to above. In addition, Mr Barr made a personal note in which he categorised the Claimant's emails as aggressive and overly demanding in their tone and that he felt that he was corresponding with someone who saw him as an opponent in litigation. As the employment tribunal claim had been underway for months at this point, the Claimant and the Respondent were parties in litigation.

356 Mr Barr also referred to the without prejudice telephone call back in September and stated that in it the Claimant had been belligerent and verbally abusive about a director.

357 These were stated as the reasons for consideration of the Claimant's dismissal for some other substantial reason.

358 In his live evidence, he stated that when they started discussing her return to work, he came to the view that the Claimant would disagree with whatever he said and that whenever there was a disagreement, she was likely to tag it as victimisation.

359 Mr Jones and DO worked quite closely together and Mr Jones formed an opinion that DO was at the 'sharp edge' or correspondence from the Claimant. We find that there was some terse correspondence between them as the Claimant, as might be expected of a lawyer, took every point and queried every issue with DO who was acting as the resident HR person, with Mr Jones' support. Some examples: the Claimant challenged the Respondent's request for her ID before it responded to her data subject access request. The Respondent rescinded that requirement. She challenged their request for her to see Dr Drever before she returned to work and she challenged the process that led to the SOSR meeting.

360 By letter dated 3 January DO confirmed that it was not possible for Mr Jones to assume line management responsibility for her. She also told the Claimant that the possibility of mediation would be discussed in the meeting with Mr Barr.

361 At the meeting on 10 January the Respondent did not provide the Claimant with any further details of the 4 complaints against her. She asked why the Respondent had felt it necessary to ask her colleagues about her reintegration back in to the office. She could not think of a comparable situation when this had been done. She had asked for copies of exit interviews where it had been said that she was the cause of someone leaving, as had been alleged. This was never provided. The Claimant pointed out that even if 4 people appeared to have issues with her, there were 22 people working in the London office and 6 in the Greek office so it did not seem like an insurmountable problem for her. She asked the Respondent to consider mediation to address any problem between her and Mr Jones, although she could not think what that would be.

362 In respect of her relationship with Mr Barr, she believed that it was still good and that it was likely that they could sort out anything between them with a visit to the pub. She believed that they had a personal friendship as well as a good working relationship. Mediation was not discussed.

363 The Claimant made it clear that she wanted an opportunity to try to rebuild relationships in the team. She wanted to tell them that her behaviour may have been affected by stress and she also wanted to apologise if she had acted adversely towards anyone. Mr Barr informed the Claimant that having had legal advice on the likely outcomes of the employment tribunal process if he dismissed her, when he spoke to at least 5 colleagues about her return, he told them that there could be a scenario in which a tribunal could overturn his decision and the Claimant return to the business. We could not understand why, if Mr Barr was trying to get a clear, unbiased opinion from the Claimant's colleagues as to whether they were okay with her sitting on this floor or at that desk in the office, he felt he needed to let them know that the Respondent was considering her dismissal.

364 We find that Mr Barr sent the contemporaneous notes of his discussions with the Claimant's colleagues to the Respondent's lawyers before they were turned into statements. He said that he did so to get advice on process. We find it likely that this was done after Mr Barr had decided that the Claimant's relationships with Mr Roberts and with himself were broken and constituted sufficient grounds for consideration of dismissal on the ground of some other substantial reason.

365 Although the Claimant recalled being told that none of the directors wanted to work with her, Ian Gooch was adamant at the hearing that he had never told anyone that he was unwilling to work with her.

366 At the end of the meeting Mr Barr indicated that he needed to get legal advice on the impact of the Claimant's illness and whether what he had amounted to grounds for dismissal under the heading of some other substantial reason.

367 In an email the following day the Claimant apologised to Mr Barr if the tone of her correspondence had caused him any distress.

368 Mr Barr spoke to Mr Roberts before he wrote to the Claimant with the outcome of her meeting. Mr Roberts thought that it might be difficult to reintegrate the Claimant back into the business. He thought that it would be difficult for her to come back, either in a claims role or in a project role because she would have to engage with him as well as the other directors who had expressed reservations about working with her.

369 A few days before the Respondent's decision was sent to the Claimant, DO spoke to TT about conducting an appeal hearing. TT sent DO her terms of business on 16 January 2018.

370 The letter notifying her of the outcome of the disciplinary meeting was dated 18 January. The Claimant was informed that the Respondent had decided that because the finding from the grievance was that Mr Roberts had not bullied her, the Respondent were not obliged to make any adjustments to relocate her away from him. Mr Barr stated that when looking to reintegrate her into his team, the strength of feeling from colleagues was very strong and negative towards her which he concluded meant that it was no longer

possible to mediate damaged relationships. He did not refer to specific relationships and it was not clear whether this was a reference to the Claimant's relationship with Mr Roberts or with someone else.

371 He also referred to their working relationship. He concluded that the Claimant's correspondence had been problematic in tone and content and that he considered that her approach had become more adversarial which had caused a clash of personalities between them.

372 He also referred to pressure from third parties although it was not clear who that was a reference to.

373 In the hearing he stated that the reason the Respondent considered dismissal on the ground of some other substantial reason was 40% related to the Claimant's toxic relationship with Mr Roberts, 20% from the relationship with Mr Barr and 20% with Mr Jones; and 40% from the depth of feeling from their professional colleagues. The witnesses in the claims team were mostly qualified solicitors.

374 His conclusion was that to continue to employ the Claimant would open the Respondent up to employment proceedings from others and result in the disruption to the business and its members. No specific instances or individuals were referred to except Mr Roberts and Mr Barr. He did not think that it was possible to reintegrate the Claimant into the office.

375 The Claimant was dismissed with immediate effect and she was paid in lieu of notice.

376 In the hearing Mr Barr confirmed that CB had made an allegation of physical assault from another colleague, GS. He also confirmed that there had never been any disciplinary proceedings brought against him as neither of them had developed the matter. The Claimant remembered CB complaining to her about the assault. Mr Barr confirmed that CB had shared information on a case when she should not have done and that Mr Roberts dealt with it.

377 He also confirmed that some people found KH difficult to deal with. He described him as contrary and that KH's habit was to disagree with everything said to him and then to come around later. The Respondent had never had anyone escalating any complaints about him. He confirmed that he had referred to KH as '*shouty'*.

378 On 23 January, the Claimant issued an application in the employment tribunal for interim relief on the basis that her dismissal had happened because she made protected disclosures. That application was unsuccessful. She also appealed against her dismissal. She disputed that she had personality clashes with directors and cited instances of working well with Mr Jones, Mr Gooch and Mr Barr. She also stated that she had worked well with Mr Roberts up until 2017. She alleged that it was likely that Mr Barr obtained statements from colleagues with the purpose of procuring her dismissal. She did not understand why, if colleagues had issues with her, they had not raised grievances or made any complaints while she was at work and before Mr Barr approached them.

379 The Claimant also alleged that the dismissal process had been unfair because the decision had been made prior to the meeting, had not complied with the staff handbook as

the Respondent had not followed any of the disciplinary or grievance procedures set out in it; and that dismissal was not a reasonable or proportionate response to what had happened. She stated that as far as she had been aware, Mr Roberts had not pressed for her dismissal and she had not publicly denigrated him. She cited other cases where a director and a direct report had not been getting on but that had not resulted in the report being dismissed. Although she was told that there was a risk of staff leaving if she were to return, she had not seen any evidence of that. The Claimant questioned how that could be since she was not shown any exit interviews that referred to her or anything else.

380 Lastly, she complained that in discussing her impending dismissal with others Mr Barr had breached the implied term of trust and confidence.

381 The Respondent engaged TT, who is an external consultant, a fellow of the Chartered Institute of Personnel and Development (CIPD) and a specialist in management development training, to deal with the Claimant's appeal against dismissal. She was asked to conduct a re-hearing of the dismissal.

382 The letter of instruction to TT was dated 14 February and advised her that she could either allow the appeal, uphold the decision to dismiss or impose some other sanction that she believed was appropriate.

383 TT met witnesses on various dates between February and April 2018. Her live evidence was that some people found the process difficult and were upset in front of her. Some asked her to delete the statements they gave her. Witness 1 stated that the difficulties with the Claimant started in 2014 when she took on much more responsibility. The Claimant's manner was described as abrasive, abrupt and her management style/technique was lacking. This was more obvious in emails where her style was described as '*more spiky'*. Witness 1 had not heard of anyone leaving the Respondent because of the Claimant.

384 Witness 2 did not want to be named as they did not want to get involved and talking about this was bringing up a difficult period that they would rather forget. This person stated that they did not find the Claimant supportive but did not find support from other managers either. She stated that the Claimant showed her best side to management and a different side to staff. She was very stressed when working with the Claimant and this upset her sleep and her personal life.

385 Witness 3 stated that she felt bullied by the Claimant. The Claimant guessed that this was CB. She came to the meeting with TT with notes. She stated that the Claimant made her cry at work but the Claimant's notation was that this witness was going through a personal crisis at the time and that may have been the reason for her getting upset. Witness 3 complained that when they shared a room together the Claimant would question her about work and that his was in her probation period. She complained that she would talk to others about the Claimant and that she would also talk about KH. She complained of the Claimant raising her voice to her. she stated that she had not raised a grievance because the senior managers valued the Claimant's input. She was also worried about her appraisal which she said that the Claimant weaponised against her. it was clear that the Claimant and CB had a difficult working relationship.

386 Mr Barr had said to CB that he was speaking to others who had also been targeted by the Claimant.

387 CB did not work for the Claimant as she was recruited to assist KH with a matter. However, they shared a room and the Claimant's evidence was that as one of the Respondent's managers, she took on the responsibility to monitor CB's performance and to keep an eye on what she was doing. KH and the Claimant were going to appraise her together but as he was busy with the *Benita*, the Claimant was going to do it. Page 1767 shows that the Claimant sought feedback from colleagues on their experiences of working with CB and CMcD to ensure that the appraisal reflected other people's opinion of their work. It is likely that she mentioned the forthcoming appraisal to CB.

388 CB complained about being set unnecessary deadlines. CB also complained that the Claimant did not allow her to get to Mr Roberts and that she always had to go through the Claimant first. It is likely that the Claimant's job along with the other associate directors was to address any concerns or issues that the claims had and only if they could not address them would they be referred to Mr Roberts and so on up the management chain. We find that one of the issues Mr Roberts raised with the Claimant in the appraisal was the need to reduce the demands on his time which included interfacing with junior staff so that only the really serious matters were referred to him.

389 CB confirmed that Mr Barr told her that he had access to the Claimant's emails and noticed that she had been overly harsh and aggressive to a number of people on occasions and that she was one of them. He said that he was considering bringing the Claimant back and wanted her opinion. She told him that she felt negative about the Claimant coming back. She did not say that she would leave if the Claimant came back but she would have to consider it. They spoke again in January. She mentioned people talking about the Claimant at work. She also confirmed that she was the person who kept a file on her dealings with the Claimant.

390 She later sent that file to TT and wrote in a further email that the Claimant could also be '*a nasty piece of work'* and that she was not putting up with it anymore. CB knew details of the Claimant's grievance and referred to knowing that it was not just her who had problems with the Claimant. She stated that she continued to feel '*uptight and upset'* even after the Claimant's dismissal because there was a chance that she could come back. This was likely to be a reference to Mr Barr's statement to those who gave witness statements that even after the Claimant is dismissed, an employment tribunal could order the Respondent to reinstate her. This confirmed that he disclosed those details when speaking to the witnesses.

391 Mr Barr confirmed in the hearing that he was aware that the Claimant and CB had issues in the past but denied that he had selected her to talk to because of that. CB also transferred to Mr Barr's team.

392 The fourth witness was likely to be CMcD. This witness told TT that Mr Barr only spoke to her in January 2018 which means that it is unlikely that what she had to say was considered when the Respondent decided to dismiss the Claimant as the pack with 4 statements was sent to the Claimant on 20 December. She referred to the Claimant making her life and that of other juniors difficult and that she fired a large number of them. That was inaccurate because the Claimant was not responsible for making decisions on dismissals. That was a decision that only the directors made. Her belief may have been a product of the gossip that CB referred to above.

393 CMcD stated that if she had been asked about mediation she would have refused it.

394 When the Claimant saw these statements in March, she was upset by them. This was especially the case in relation to statement from VP and RG as she thought that she got along well with both of them.

395 VP's comment to TT that the Claimant's style was dreadful and that she bullied people was at odds with her email to Mr Roberts on 9 May 2017 which the Claimant recalled asked about the Claimant's fleets because she wanted to continue marketing with the Claimant. Her statement was likely to have been about things she had been told by others about the Claimant and not about her personal experience. Her only personal comment was that she experienced the Claimant fielding queries so that everything did not have to go to Mr Roberts. She commented that KH was also a difficult manager. She recounted the exchange of emails between the Claimant and Rachel when the Claimant was asked to authorise Rachel's business trip when she knew nothing of it. VP accused the Claimant of not having good people skills and being mean.

396 VP confirmed that she had made a complaint about GS and that this was something that management were yet to deal with. She also confirmed that she had previously spoken to management about the Claimant.

397 In her statement, VP referred to the Claimant emailing colleagues at 3 or 4am. This is likely to have been a reference to an email that the Claimant sent to Ian Barr on 6 June. This demonstrated that VP knew about the Claimant's correspondence with the Respondent towards the end of her employment and it is likely that Mr Barr told her of it. in a later meeting with TT she altered that statement and said that it was CB who told her about the letter. There was no letter from the Claimant to CB, sent at 4am that was not produced to the Tribunal or in the dismissal meeting. VP also stated that she no longer wanted to do marketing with the Claimant.

398 Similarly, RG's statement portrayed the Claimant as a bully and someone who did not give her support but was overly critical of her. She stated that she did not receive much support from other managers either and that she kept a low profile. She referred to a strategy of avoidance and resilience. She said that she never raised a grievance or complained as she thought that it might backfire on her.

399 GI had previously spoken to Mr Barr about the Claimant. The Claimant was aware that he had asked to be transferred to Mr Barr's team as the next stage in his progression in the business rather than to get away from her. He did not complain about the Claimant and said that she had been supportive of him. He also stated that if she came back to work there he would survive but it is likely that he is the person Steve Roberts referred to as having described the Claimant to Mr Barr as a '*ballbreaker'*.

400 TT also interviewed Mr Barr. We have already referred above to some of the matters they discussed. He confirmed that he chose the individuals he spoke to from information in the Claimant's appraisal file some of which he thought to be surprisingly negative. He referred to her description of someone as '*vacant'* as being nonsense and un-nerving and what caused him to want to speak to those individuals. He had revised his view of her grievance since he did it and now considered it to be totally vexatious,

outrageous and fabricated. We were not clear which parts of the Claimant's grievance he was referring to.

401 In the hearing he referred to some of the people he spoke to, tearing up when they spoke about their interactions with the Claimant. He had not appreciated the strength of feeling against her in the company. Everyone knew that he was her sponsor in the company and he thought that was why they had not come to him before. He had been very protective of the Claimant. He confirmed that he had told them about the employment tribunal case and that if the Claimant successfully challenged her dismissal, she could be reinstated. That was why the witnesses asked to remain anonymous and why they talked about the concern about retaliation from someone who was most likely going to be dismissed.

402 When he spoke to TT, he referred to his conversation with the Claimant on 8 September and it is likely that it changed his view of the Claimant. He stated that the recent correspondence from the Claimant was aggressive. In relation to the concerns the Claimant raised about the handling of the Esteem C Mr Barr was scathing in his discussion with TT. He stated that he did not see how any reasonable person could believe that what the Claimant stated had been true. He stated that was the Claimant '*hunting'* Mr Roberts and that the allegations were completely fabricated and were lies. In the hearing he stated that he had believed, up until he heard the Claimant give evidence, that she had made up the allegations to get back at the Respondent but once he heard her, he became convinced that she did believe that there had been something wrong with the way the case had been handled.

403 TT also met with Mr Jones and Mr Gooch. The Claimant had the opportunity to raise queries on the statements given and to ask for further information. DO and Mr Jones refused to provide answers to the questions the Claimant asked TT to raise with them for clarification. CB refused to speak further to TT. The Respondent complained in the hearing that the Claimant took up a lot of TT and DO's time. As a solicitor, it was likely that the Claimant would fight hard to retain a job she had done for so long.

404 The appeal hearing took place on 25 June 2018. After the hearing, TT had a further telephone conversation with Mr Barr on 9 July. the Claimant was surprised by that and wrote a further note to TT about it. TT produced a report dated 2 August 2018 which ran to 75 pages.

405 In the findings and recommendations page at the end she stated that in her view, the key reason for dismissal was the loss of trust and confidence in the Claimant which began to solidify as a result of what was discovered when Mr Barr began speaking to staff. She stated that she believed all the witnesses she spoke to and that some would leave if the Claimant returned to the business and they had to work for her in claims. It was TT's opinion that the protected disclosure had become important to the Claimant since the litigation began but had not been so at the time of dismissal as it was not referred to in the disciplinary hearing or in her letter of appeal against her dismissal.

406 TT had also considered whether the Claimant's health or any discrimination had featured in the decision to dismiss her and had decided those factors had not featured in Mr Barr's decision and had not featured in her decision which was based on the evidence she heard.

407 Her decision to uphold the dismissal was based on the Claimant's behaviours at work and her treatment of junior staff and colleagues, the loss of relationships with management colleagues and the directors and the fact that there was no work other than claims that she could return to. It was her view that the Claimant could not return without severe damage and disruption to the organisation and teams. TT confirmed the dismissal.

408 In coming to her decision, TT considered the impact of the Claimant's health. She considered that even if the Claimant had been unwell, the negative effects seemed to have only surfaced in her dealings with junior colleagues. The staff she spoke to said that the Claimant behaved differently to them compared to how she was with managers. Her main concern was how the Claimant could return to work when 1/3 of the team that she had to work with had given her such a dreadful account of what it was like to work with her.

409 She did not see any flaws in Mr Barr's investigation but had nevertheless conducted her own.

410 There were no female directors in this business and there was no evidence that there had ever been any. There had been a senior female working in the Greek office, Joanna, but she had not been made a director and in discussing her, Mr Roberts stated that she came close. He was unable to confirm whether the Claimant was the first female associate director although he was unable to refer to any before her. in contrast, there were many female claims handlers.

411 Mr Roberts believed that the Claimant wanted clear progression to the board and all the directors in their evidence stated that there were no spaces on the board and that if a space came up the Claimant may have been considered but that there were lots of other people who would also have been up for consideration.

412 Following her dismissal, the Claimant found alternative employment. She started a new job on 16 April 2018 on what was described as a competitive salary. She remained employed at the time of the hearing.

Law

Equal Pay

413 Section 66 Equality Act 2010 implies an equality clause into every contract of employment. The effect of this is that where a woman is employed on like work with a man in the same employment, then, provided her employer has no material factor defence she has the right to have her contract modified so that none of her terms are less favourable than his.

414 The Respondent agreed that the Claimant and her comparator, KH were engaged in like work and that the Claimant was paid less than him during the period April 2010 to October 2015.

415 A rebuttable presumption of sex discrimination arises once the gender-based comparison shows, as in this case, that a woman, doing like work or work rates as equivalent is being paid or treated less favourably than the man. The variation between her contract and the man's contract is presumed to be due to the difference in sex. The

burden therefore passes to the employer to show that the explanation for the variation is not tainted by sex. The material factor defence is set out in section 69(1) of the Act.

416 Section 69 provides:

> "(1) The sex equality clause in A's terms has no effect in relation to a difference between A's terms and B's terms if the responsible person shows that the difference is because of a material factor reliance on which-
>
> a. does not involve treating A less favourably because of A's sex than the responsible person treats B, and
>
> b. if the factor is within subsection (2), is a proportionate means of achieving a legitimate aim.
>
> (2) A factor is within this subsection if A shows that, as a result of the factor, A and persons of the same sex doing work equal to A's are put at a particular disadvantage when compared with persons of the opposite sex doing work equal to A's."

417 In the case of *Glasgow City Council and others v Marshall* and others [2000] IRLR 272 HL 196 it was stated that the material factor defence will succeed if the employer can show that the factor put forward as the reason for the pay differential at issue is:

> 1 genuine and not a sham or pretence;
>
> 2 due to that reason. i.e. the factor relied on must be the cause of the disparity – a material factor – in the causative sense rather than in the justicatory sense;
>
> 3 not due to sex discrimination, whether direct or indirect, and
>
> 4 a material difference – i.e. a significant and relevant difference between the woman's case and man's case.
>
> If not, the Claimant's equal pay claim will succeed.

Unfair dismissal

418 The Respondent's case is that the Claimant was dismissed for some other substantial reason.

419 Section 98(1) of the Employment rights Act 1996 states as follows: -

> 'in determining whether the dismissal of an employee is fair or unfair, it is for the employer to show –
>
> - the reason (or if more than one, the principal reason) for the dismissal, and
> - that it is for a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

420 The burden of proving the reason for dismissal is therefore on the employer.

421 As stated in P*erkin v St George's Healthcare NHS Trust* [2005] IRLR 934, the Burchell test for a fair conduct dismissal is an appropriate way of testing the fairness of an SOSR dismissal. This means that the tribunal will be looking to see evidence that the Respondent had in his mind a belief that the employee was guilty of reasonable grounds which could sustain that belief, and at the stage at which he formed that belief on those grounds, he had carried out as much investigation into the matter as was reasonable in the circumstances.

422 Section 98(4) states that where the employer has done so, the determination of the question of whether the dismissal was fair or unfair (having regard to the reason shown by the employer) – depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and shall be determined in accordance with equity and the substantial merits of the case.

423 What types of circumstances come under the heading of 'some other substantial reason'?

424 The reason must be substantial and must be genuinely held. It does not have to be the same type of reason as those stipulated in section 98(2) i.e. conduct or redundancy or incapability. Provided the reason is not whimsical or capricious, if it is capable of being substantial and if, on the face of it, the reason could justify dismissal, then it will probably pass as a substantial reason.

425 If the employer can show that he had a fair reason in his mind at the time when he decided on dismissal and that he genuinely believed it to be fair this would bring the dismissal within the category of some other substantial reason. An employer can dismiss someone under this category for reasons such as protecting business interests by preventing someone from leaving to set up in competition or from divulging confidential information to a competitor.

426 The Respondent referred to an old case of *Treganowan v Robert Knee & Co. Ltd* [1975] IRLR 247 which provides an example of the type of situation. The employee had been working in an office with colleagues whom she had a serious disagreement about the way she lived her personal life which was affecting work. It was decided that she was to blame and she was dismissed. it was held that this constituted some other substantial reason for her dismissal.

427 In *Perkin* the Court of Appeal held that although personality could not of itself amount to a misconduct reason for dismissal it could manifest itself in such a way as to amount to a fair reason for dismissal such as where a personality clash had led to a breakdown in the functioning of the employer's operation.

428 An employer can also rely on the breakdown of trust and confidence as an example of a substantial reason justifying dismissal. It must be the act of the employee that leads to the breakdown and not that of a third party. The conduct must also be of sufficient seriousness to justify a dismissal. It needs to be the mirror of the sort of conduct that an employee would be able to rely on in order to justify a complaint of constructive

unfair dismissal. In such a case, the tribunal is entitled to look at the facts behind the loss of trust and determine whether on all the facts, the dismissal was unfair under section 98(4). It is at this point that the tribunal has to move on to the question of reasonableness.

429 In the case of *Ezsias v North Glamorgan NHS Trust* [2011] IRLR 550, the employer dismissed the employee because of the need to rectify a situation in the hospital that was affecting patients and for which the employee was held responsible. The EAT urged caution to employment tribunals in accepting some other substantial reason without due consideration. It stated that it relied on employment tribunals to be on the lookout, in cases of this kind, to see whether the employer is using the rubric of some other substantial reason as a pretext to conceal the real reason for the employee's dismissal.

430 The Claimant's primary case was that she was automatically unfairly dismissed under sections 103A Employment Rights Act because of protected disclosures, as an act of sex and/or an act of disability discrimination. We will set out any relevant law related to these additional dismissal complaints below.

Direct discrimination

431 The Claimant complained of direct discrimination which is prohibited by section 13 of the Equality Act (EA). If, because of a protected characteristic, A treats B less favourably than it would treat or treats others then that is direct discrimination.

432 In this case, the Claimant has relied on actual comparators for most of her complaints. She also complains that the Respondent treated her less favourably because of more than one protected characteristic as she relies on sex and disability.

Harassment

433 The law on harassment is contained in section 27 EA:

a. "A person (A) harasses another (B) if –

i. A engages in unwanted conduct related to a relevant protected characteristic, and

ii. the conduct has the purposes or effect of

violating B's dignity, or
creating an intimidating, hostile, degrading, humiliating or offensive environment for B".

b. A also harasses B if –

(a) A engages in unwanted conduct of a sexual nature, and

(b) the conduct has the purpose or effect referred to in subsection (1)(b).

434 Section 27(4) states that in deciding whether conduct has the effect referred to in subsection (1)(b) set out above, each of the following must be taken into account:

The perception of B

The other circumstances of the case

Whether it is reasonable for the conduct to have that effect.

435 The Tribunal was aware of the case of *Land Registry v Grant* [2011] EWCA Civ. 769 in which Elias LJ focused on the words "intimidating, hostile, degrading, humiliating or offensive" and observed that:

a. *"Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caused by the concept of harassment".*

436 In the case of *Richmond Pharmacology v Dhaliwal* [2009] IRLR 336 the EAT stated that the conduct that is treated as violating a complainant's dignity is not so merely because he thinks it does. It must be conduct which could reasonably be considered as having that effect. The Tribunal is obliged to take the complainant's perspective into account in making that assessment but must also consider the relevance of the intention of the alleged harasser in determining whether the conduct could reasonably be considered to violate a complainant's dignity.

437 It is also important where the language used by the alleged harasser is relied upon, to assess the words used in the context in which the use occurred.

438 The Respondent disputed that it had harassed the Claimant at all.

Victimisation

a. 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.

b. (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.

c. The first question for the Tribunal was whether the Claimant did protected acts.

d. The Tribunal also has to decide whether the Claimant was subjected to any detriment because she did a protected act/s.

Disability

439 It was the Claimant's case that she was a disabled person for the purposes of the Equality Act 2010 (the Act) by reason of an adjustment disorder between around February 2016 and November/December 2017. The Respondent disputed that the Claimant had a disability or that it had knowledge of a disability.

440 The Respondent did not accept that any condition the Claimant had, had a substantial effect on her ability to carry out day-to-day activities.

441 The burden of proving disability rests on the Claimant.

442 Section 6(1) of the Act defines disability as when a person (P) has a physical or mental impairment and the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities. In the case of *Aderemi v London and South-Eastern Railway* Ltd [2013] ICR 591, Langstaff P stated that when assessing whether the effect of the impairment is substantial the tribunal has to bear in mind the words of section 212(1) of the Act which confirm that it means more than minor or trivial. The Act does not create a spectrum running smoothly from those matters that are clearly of substantial effect to those matters that are clearly trivial. 'Unless a matter can be classed as within the heading "trivial" or "insubstantial" it must be treated as substantial. 'There is little room for any form of sliding scale between one and the other'.

443 It is the Respondent's case that although the Claimant could not be said to be symptom free and was clearly suffering from stress at various times; she was not suffering to the degree needed to be considered as having a substantial effect on her abilities are required by the Act.

444 The impairment needs to have had a long-term adverse effect on the Claimant's ability to carry out normal day-to-day activities. As set out in paragraph 2 of Schedule 2 of the Act, the effect of an impairment is long-term if it has lasted for at least 12 months, is likely to last for at least 12 months or it is likely to last for the rest of the life of the person affected. Subsection 2 states that if an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to do so if that effect is likely to recur.

445 What are day-to-day activities? The *Guidance* states that day-to-day activities are things people do on a regular or daily basis, and examples include shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities. Normal day-to-day activities can include general work-related activities, and study and education-related activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents, and keeping to a timetable or a shift pattern.

446 Where the tribunal is being asked to project forward to determine whether an impairment is long-term such as when deciding that it is likely to last 12 months, the tribunal considered the case *of SCA Packaging Ltd v Boyle* [2009] ICR 1056 HL in which Baroness Hale said that the correct approach to the interpretation of the word 'likely' is interpret it as meaning 'could well happen'. The Guidance Relating to the Definition of

Disability (2011) states that likely should be interpreted as meaning that '*it could well happen'*.

447 The assessment of whether an impairment is likely to last at least 12 months, or if its effect is likely to recur, requires the tribunal to make its decision on the basis of evidence as to the circumstances prevailing at the time of the relevant discriminatory act or decision (*McDougall v Richmond Adult Community College* [2008] ICR 431) and not at the time of the hearing.

Knowledge of disability

448 It was the Claimant's case that the Respondents should have known that she was disabled. Under the Equality Act 2010 Schedule 8 Part 3, para 20 it states that 'A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know….(b) that an interested disabled person has a disability and is likely to be placed at the substantial disadvantage referred to in the first, second or third requirement'.

449 What is meant by the phrase 'reasonably be expected to know'? In the case of *Gallop v Newport City Council* [2014] IRLR 211 the Court of Appeal held that it was essential for a reasonable employer to consider whether an employee is disabled, and form their own judgment. The employer should not rely solely on unreasoned advice from its OH provider, for example. The EHRC's Statutory Code of Practice on Employment states that if an employee's agent or employee (such as an occupational health adviser or an HR officer) knows, in that capacity, of a worker's disability, the employer will not usually be able to claim that they do of know of it. The tribunal is aware that this is only guidance. The claim in Gallop ultimately failed as the decision maker did not in fact have knowledge of the disability. It was held that the knowledge of others cannot be imputed to a sole decision maker

450 In the case of Jennings v Barts and The London NHS Trust UKEAT/0056/12 the EAT stated that the question of whether an employer could reasonably be expected to know of a person's disability is a question of fact for the tribunal. It further held that 'if a wrong label is attached to a mental impairment a later relabelling of that condition is not diagnosing it for the first time using the benefit of hindsight, it is giving the same mental impairment a different name'. Harvey commented that this would suggest that an employer ought to concentrate on the impact of the impairment, not on any particular diagnosis.

451 The Claimant submitted that the Respondent ought to have known that she was suffering from a disability from 30 March 2017 when she was extremely and uncharacteristically upset in front of DO and Mr Jones. In the alternative, it is submitted that the 1st Respondent ought to have known from the beginning of June 2017 when at least Mr Barr considered her to be ill.

The duty to make reasonable adjustments

452 The law is set out at Sections 19, 20 and 21 of the EA. Section 19 states that: -

a. "(1) A person (A) discriminates against another (B) if A applied to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

b. (2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's If –

(a) A applies, or would apply, it to persons with whom B does not share that characteristic,

(b) it puts, or would put persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim."

c. Disability is listed as being one of the protected characteristics.

d. Section 20 sets out the duty to make adjustments as follows:

e. "(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply…

f. The duty comprises the following three requirements,

453 The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

454 The second requirement is a requirement, where a physical feature puts the disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage,

455 The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid."

456 Section 21 deals with the consequences of a failure to comply with the duty:

a. "(1) A failure to comply with the first, second or third requirements is a failure to comply with a duty to make reasonable adjustments.

b. A discriminates against B if he fails to comply with that duty in relation to that person.

c. A provision of an applicable Schedule which imposes a duty to comply with the first, second and third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of another provision of this Act or otherwise."

457 In the case of *Environment Agency v Rowan* [2008] IRLR 20 the EAT set out Guidance on how an employment tribunal should approach a complaint of a failure to make reasonable adjustments under what was then section 3A(2) of the DDA (Disability Discrimination Act 1995) by failing to comply with the Section 4A duty. The tribunal must identify the following factors relevant to this case; (amended since the Equality Act 2010): -

the provision, criteria or practice applied by or on behalf of an employer, or;

the identity of non-disabled comparators (where appropriate); and

the nature and extent of the substantial disadvantage suffered by the employee in comparison to non-disabled persons

458 In assessing discrimination complaints tribunals would be expected to go through a staged process to determine whether the claim was proven in relation to the burden of proof. In the case of *Project Management Institute v Latif* [2007] IRLR 579 Mr Justice Elias expressly approved guidance on the application of the burden of proof in reasonable adjustment cases as contained in the Disability Rights Commission Code of Practice. He stated that:

459 "The key point is that the claimant must not only establish that the duty has arisen, but that there are facts from which it could reasonably be inferred, absent an explanation, that it has been breached. Demonstrating that there is an arrangement causing a substantial disadvantage engages the duty, but it provides no basis on which it could properly be inferred that there is a breach of duty. There must be evidence of some apparently reasonable adjustment which could be made …… we do think it would be necessary for the respondent to understand the broad nature of the adjustment proposed and to be given sufficient detail to enable him to engage with the question of whether it could reasonably be achieved or not".

460 If the Tribunal concludes, following application of that process, and with the burden on the Claimant, that there were steps which it would have been reasonable for the employer to take in order to prevent the Claimant from suffering from the disadvantage in question; then the burden would shift to the Respondent to seek to show that the disadvantage would not have been eliminated or reduced by the proposed adjustment and/or that another reasonable adjustment had been made or the adjustment identified by the Claimant was not a reasonable one to make.

Discrimination Arising from Disability

461 Section 15 of the Equality Act states that a person (A) discriminates against a disabled person (B) if A treats B unfavourably because of something arising in consequence of B's disability and A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

462 The tribunal considered the case of *Basildon & Thurrock NHS Foundation Trust v Weerasingh* UKEAT/0397/14(19 May 2015, unreported) in which it was confirmed that there are two stages to the process that a tribunal has to go through in assessing a complaint under this section. Firstly, it has to focus on the words "because of something" and therefore to identify "something"; and secondly, upon the fact that that "something"

must be "something arising in consequence of B's disability" which constitutes a second causative link. If a tribunal got to this point the employer would be able to defend the complaint if it was able to show that the unfavourable treatment was a proportionate means of achieving a legitimate aim.

463 The Tribunal was aware of the case of *Fareham College Corporation v Walters* UKEAT/0396/08 in which the EAT held that (as was suggested in the *Rowan* list) it is not always necessary for the Tribunal in a reasonable adjustment claim to specify the identity of the non-disabled comparator.

464 The Claimant submitted that the PCP's that were applied to her and which placed him at a disadvantage due to her disability were: -

the requirement to work with or near Mr Roberts, and
the general PCP of applying the ordinary working conditions that prevailed at the 1st Respondent which included the expectation that she would read emails outside normal working hours.

465 The Claimant submitted that the Respondent was under a duty to make such adjustments as were reasonable to avoid those disadvantages.

Discrimination because of something arising in consequence of the Claimant's disability

466 Section 15 of the Act states that: -

a. a person (A) discriminates against a disabled person (B) if
b. A treats B unfavourably because of something arising in consequence of B's disability
c. A cannot show that the treatment is a proportionate means of achieving a legitimate aim

d. Subsection (1) above does not apply if A shows that A did not know and could not reasonably have been expected to know that B had the disability

467 In dealing with this complaint the Tribunal must consider:

(a) whether the employer has treated the employee unfavourably
(b) whether the unfavourable treatment was because of something arsing in consequence of the employee's disability. In answering that question the tribunal must:

i) identify the something that is said to arise in consequence of the employee's disability (X)
ii) decide whether X arose in consequence of the employee's disability; and
b. decide whether the reason for the unfavourable treatment was because (i.e. to a significant extent per Underhill J in *IPC Media v Millar* [2013] IRLR 707] of X.

c. (C) whether the unfavourable treatment is a proportionate means of achieving a legitimate aim. That is, whether: (i) there is a legitimate aim which the

respondent was pursuing; and (ii) the treatment is a proportionate means of achieving it.

Burden of proof in relation to all the discrimination complaints

468 The burden of proving discrimination complaint rests on the employee bringing the complaint. However, it has been recognised that this may well be difficult for an employee who does not hold all the information and evidence that is in the possession of the employer and also because it relies on the drawing of inferences from evidence. The concept of the "shifting burden of proof" was developed to deal with this aspect. This concept is discussed in a number of cases and is set out in section 136 of the Equality Act which states that 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. If A is able to show that it did not contravene the provision then this would not apply. (See *Igen v Wong* [2005] IRLR and subsequent cases including Mad*arassay v Nomura International Plc* [2007] IRLR 246).

469 In the case of Laing v Manchester City Council [2006] IRLR tribunals were cautioned against taking a mechanistic approach to the proof of discrimination by reference to the Race Relations Act 1976 but which would also apply to the Equality Act, in following the guidance set out above. In essence, the employee must prove facts from which the tribunal could conclude, in the absence of an adequate explanation, that the employer had committed an unlawful act of discrimination against them. The tribunal can consider all evidence before it in coming to the conclusion as to whether or not a claimant has made a prima facie case of discrimination (see also *Madarassay v Nomura International Plc* [2007] IRLR 246).

470 In every case the tribunal has to determine the reason why the claimant was treated as she was. As Lord Nicholls put it in *Nagarajan v London Regional Transport* [1999] IRLR 572 "this is the crucial question". It was also his observation that in most cases this will call for some consideration of the mental processes (conscious or subconscious) of the alleged discriminator. If the tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reasons. It is sufficient that it is significant in the sense of being more than trivial.

471 In assessing the facts in this case, the tribunal is aware (*Bahl v The Law Society* [2003] IRLR 640) that simply showing that conduct is unreasonable and unfair would not, by itself, be enough to trigger the reversal of the burden of proof. Unreasonable conduct is not always discriminatory whereas discriminatory conduct is always unreasonable. It was also stated in the case of *Griffiths-Henry v Network Rail Infrastructure Ltd* [2006] IRLR 865 that an employer does not have to establish that he acted reasonably or fairly in order to avoid a finding of discrimination. He only has to establish that the true reason was not discriminatory. Obviously, if unreasonable conduct occurs alongside other factors which suggest that there is or might be discrimination, then the tribunal should find that the claimant had made a prima facie case and shift the burden on to the respondent to show that its treatment of the claimant had nothing to do with the claimant's gender or her status as a disabled person or the fact that she made protected disclosures (as applicable) and in so doing apply the burden of proof principle as set out above.

Protected Disclosures

472 The Claimant's case is that the reason for her dismissal was that she made protected disclosures. She also complained that she suffered detriment as a result of making protected disclosures.

473 In order for disclosures to be considered as protected in accordance with the Employment Rights Act 1996 (ERA) three requirements need to be satisfied. A 'qualifying disclosure' needs to be a disclosure of information, which the employee genuinely and reasonably believes discloses the information; is made in the public interest and is made by the worker in a manner which accords with the scheme set out in the ERA sections 43C-43H.

474 The worker must believe that the disclosure tends to show wrongdoing in one of five specified areas; or deliberate concealment of that wrongdoing. It is not necessary for the information to be true. However, determining whether they are true can assist the tribunal in their assessment of whether the worker held a reasonable belief that the disclosure in question tended to show a relevant failure. (*Darnton v University of Surrey* [2003] IRLR 133.)

475 What sort of information would satisfy the test? In the case of *Kilraine v London Borough of Wandsworth* [2018] ICR 1850 Sales LJ defined the test that had to be applied to determine whether the worker had provided information that complied with the section as whether the disclosure had sufficient factual content and specificity such as is capable of tending to show the wrongdoing alleged and not just a belief that there is wrongdoing. See also *Soh v Imperial College of Science and Technology and Medicine* EAT0350/14. A belief may be a reasonable belief even if it is wrong. See *Babula v Waltham Forest College* [2007] ICR 1026.

476 Disclosures can be made verbally, in writing or a combination of both. In this case, both disclosures relied on were in writing and the Respondent accepts that one was a protected disclosure but disputes the other. The other alleged verbal complaints are no longer relied on.

477 The ERA sets out 5 statutory categories to which the information must relate if the disclosure is to be one qualifying for protection. The Claimant relies on 43B(1)(b), that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject. The word 'legal' must be given its natural meaning.

478 Section 43(b) places two obligations on the employee. Firstly, the disclosure of information in question must have identified to the employer the breach of legal obligation concerned; although this does not have to be in strict legal language. Sometimes the breach complained is perfectly obvious (see *Bolton School v Evans* [2006] IRLR 500 EAT). But as Harvey commented, that may be the exception rather than the rule. B*lackbay Ventures Ltd v Gahir* [2014] IRLR 416, EAT, Judge Serota stated that outside of that category, the source of the obligation should be identified and capable of certification by reference for example to statute or regulation. (See *also Eiger Securities LLP v Korshunova* [2017] IRLR 115 EAT).

479 The test may have been less onerous in the case of *Fincham v HM Prison Service* UKEAT/0991/01 (3 December 2001, unreported), relied on by the Claimant in her submissions but that case was of an employee relying on disclosures related to breach of obligations related to health and safety in section 43(1)(d), which is different to the breach

of legal obligation at 43(1)(b). However, a similar situation arose in the case of *Western Union Payment Services UK Ltd v Anastasiou* UKEAT/0135/13 (21 February 2014, unreported) as there was no evidence that any particular statute or legal provision applied to the situation. But the EAT, approving both *Fincham* and *Bolton*, held that the legal obligation that was being asserted was clear and well known to both parties as they had a sophisticated understanding of the relevant legal obligations involved. The obligation was apparent to all involved as a matter of common sense.

480 Secondly, the employee bears the burden of proof of establishing that there was in fact a legal obligation on the employer and that the information disclosed tends to show that a person has failed, is failing or likely to fail to comply with any legal obligation to which he is subject.

481 The word 'likely' requires more than a possibility or a risk that the employer might fail to comply with a legal obligation to which he is subject. *Kraus v Penna* [2004] IRLR 260 EAT.

482 If a tribunal concludes that the worker is only motivated by self-interest and therefore had no reasonable belief in public interest – even if he could have had such a belief – then it is open to the tribunal to rule that the disclosure does not qualify for protection.

Detriment

483 It was the Claimant's case that she suffered detriments as a direct consequence of making three protected disclosures about health and safety. Section 47B(1) of the ERA states that a worker has the right not to be subject to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure. The term 'detriment' is not defined in the ERA. Detriment will be established if a reasonable worker would or might take the view that the treatment accorded to them had in all the circumstances been to their detriment.

484 In *Blackbay*, the court also made the following comments on dealing with complaints of detriment. Once a protected disclosure has been found to exist it needs to be shown that: - the worker has been subjected to a detriment; the detriment arose from an act or deliberate failure to act by the employer, other worker or agent; and the act or omission was done on the ground that the worker had made a protected disclosure.

485 The Tribunal must analyse the mental processes (conscious or unconscious) which caused the employer so to act. The tribunal considered the law in *Fecitt v NHS Manchester* [2012] ICR 372 in which the Court of Appeal stated that it is not necessary that the protected disclosure is the sole or principal reason for the treatment. Once the employee proves that there was a protected disclosure, that there was detriment and that the employer subjected her to that detriment, the burden shifts to the employer to show the ground on which the detrimental treatment was done. (Section 48(2) ERA). Causation will be established unless the employer can show that the protected disclosure played no part whatsoever in its acts or omissions. What was the reason for the treatment? The employer must prove on the balance of probabilities that the protected act did not materially influence (in the sense of being more than a trivial influence) the employer's treatment of the whistle-blower.

Automatic Unfair Dismissal – because of protected disclosures

486 The Claimant's case was also that she had been automatically unfairly dismissed because she made a protected disclosure. She makes a claim under Section 103A Employment Rights Act 1996. That section states that an employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

487 When an employee has over two years' service with the employer at the time of her dismissal, as in this case, the burden of proof is on the employer to prove the reason for dismissal but the employee will have to produce sufficient evidence to raise the question of whether the dismissal may have been for an automatically unfair reason.

488 In the case of *Salisbury NHS Foundation Trust v Wyeth* [2015] UKEAT/0061/15, it was held that the issue was whether the reason or principal reason for the dismissal was a protected disclosure, thus rendering the dismissal unfair. Judge Eady QC held that in its analysis of the case the employment tribunal must conduct the necessary critical assessment of the employer's reasons for its conduct and properly explain its findings and reasoning in that regard.

489 The reason for the dismissal is the factor or factors operating in the mind of the person making the decision to dismiss or which motivates them to do so.

Sex and disability discrimination dismissal

490 It is also the Claimant's case that contrary to section 39(2)(c) Equality Act 2010 (EA), the Respondent dismissed her as an act of direct discrimination and that her sex or something arising from her disability were the reasons of the principle reasons for her dismissal.

491 The Claimant relies on KH as a comparator in relation to the sex discrimination dismissal complaint or a hypothetical comparator relying on the way that KH was treated as informative in the creation of the comparator.

492 In relation to the disability dismissal, it is also the Claimant's case that the dismissal was a consequence of Mr Barr's failure to make reasonable adjustments i.e. to separate the Claimant from Mr Roberts.

Issues relating to remedy

The ACAS Code of Practice (2015); and
Discipline and Grievances at work: the ACAS Guide

493 The Code states that it provides basic practical guidance to employers, employees and their representatives and sets out principles for handling disciplinary and grievance situations in the workplace. A failure to follow the Code does not, by itself, make the organisation liable to proceedings however, the Tribunal must take the Code into account when considering relevant cases.

494 The Code states that whenever a disciplinary or grievance process is being followed it is important to deal with issues fairly. The Claimant's submitted that the decision to appoint Mr Jones to hear the Claimant's appeal breached the Code and the Respondent's internal grievance policy.

495 The Claimant submitted that both Messrs Barr and Jones had been involved with the decision not to backdate the Claimant pay to match that of KH and so they were not impartial and to appoint them was a breach of paragraph 43 of the Code which states that *"the appeal should be dealt with impartially and wherever possible by a manager who has not previously been involved in the case".*

496 Employment Tribunals are legally required to take the Code into account when considering relevant cases. Tribunals are also able to adjust any compensatory awards made in these cases by up to 25% for unreasonable failure to comply with any provision of the Code. This means that if a tribunal felt that an employer had unreasonably failed to follow the guidance set out in the Code they can increase any award they have made by up to 25%. Conversely, if they feel an employee has unreasonably failed to follow the guidance set out in the Code they can reduce any award they have made by up to 25%.

497 Both parties also made submissions as to contributory fault and POLKEY deductions.

Applying Law to Facts

498 The Tribunal will address the issues in the order set out in the amended list of issues.

Equal Pay

499 The Respondent conceded that the Claimant was engaged in like work to KH.

500 It was also agreed that the Claimant did not receive equal pay to KH between 2010 and 2015.

501 The claim was brought in time and that the Tribunal has jurisdiction to consider it.

502 The only issue for the Tribunal was whether there was a material factor that operated to disapply the sex equality clause in the Claimant's contract. The burden is the Respondent to prove the material factor.

503 The first fact we noted was that the Claimant was given different reasons for the inequality of pay between her and KH. The Respondent was not consistent. She was told at various times that it was because he was older, had been qualified for longer and stayed late at the office. None of those reasons have been relied on in this litigation. In our judgment, none of those were the reasons for the difference in pay. When the Claimant initially spoke to Mr Roberts about this he stated that he needed to assess what KH did and revert back to her to be able to make a comparison. There was no evidence that that ever happened.

504 In 2015 when the decision was taken to equalise their pay, there was no assessment of the Claimant and KH's work. The instruction to payroll was simply to equalise the Claimant's pay with KH's.

505 Mr Roberts and later DO referred to the effect of market forces on wages and that this was the reason for the difference in wage. It is our judgment that that would only be a relevant factor when the Respondent was recruiting KH. It would not be a material factor between them after they have both been employed for a considerable period. in addition, we were not shown any figures or information that would show that KH's market value as a lawyer in this field was greater than the Claimant's. The Claimant's complaint relates to the period after they were both promoted to the associate director post, at the same time. Whether he came from a leading firm and had been seconded to the Respondent prior to taking up his employment, as said by Mr Roberts, becomes less relevant at the time that they are both promoted many years later. After their promotion, they were both engaged in like work. Any difference in their market value at the point of promotion is likely to have been negligible.

506 When Mr Barr determined the Claimant's grievance he said that the difference was due to the Claimant having worked reduced hours and because she asked to defer her salary review. It was not clear to us how those factors, which were not of benefit and happened for a short period of time due to personal matters, could be reasons for the Respondent's failure to pay her equal pay with a comparator.

507 The last and main factor was that it was because the Respondent had spent over £16,000 on the Claimant's MBA. Was that a material factor related to the difference in pay? The Respondent agreed to fund the first part of the Claimant's course in 2014. The Respondent approved her request because she was taking on more responsibility for appraising and supervising junior staff and little or no other training had been provided to enable her to do so. The MBA was considered useful for her and for the Respondent. it is unlikely that the Respondent would have agreed to fund it if it did not believe that the company would have got some benefit from it. There was no discussion noted at the board meeting where the matter was discussed that this was related or tied to the Claimant's salary review. In our judgment, it was not.

508 The Respondent's defence to the claim seemed to be that as they had spent so much money on the Claimant, they did not think that it was fair to be asked to pay more. That is not a material factor defence. At the time that the Respondent agreed to fund the MBA there was no discussion or reference to it having any relationship to her salary review. There was no connection made in the board meeting or when the Respondent communicated to the Claimant that she would receive the funding.

509 It was only in 2016 when the Claimant expressed her unhappiness about the outcome of the grievance that Mr Jones asked the admin staff to let him know how much the Respondent had spent on the Claimant's courses. It was at that point that a connection was made between the two and that was more in relation to the Claimant's claim for the backpay rather than as an explanation of the difference in pay that existed on her promotion.

510 In those circumstances, is this Tribunal's judgment that the Respondent has failed to prove a material factor that explains the difference in pay that is not due to sex and that

is not a sham. The reasons put forward by the Respondent do not explain the inequality of pay between the Claimant and her comparator.

511 It is this Tribunal's judgment that the Respondent has failed to prove a material factor that operated to disapply the sex equality clause. The sex equality clause applied from the date of her promotion to the post of associate director in 2010 until her wage was equalised with that of KH in 2015.

The complaint in relation to equal pay succeeds.

Detriment claims

512 The Claimant alleges that she was subject to a series of detriments. There is overlap between those alleged to amount to direct discrimination on grounds of sex, harassment related to sex, victimisation for complaining about equal pay, discrimination arising from disability and detriment for making protected disclosures about Mr Roberts' handling of the Esteem C matter.

513 The Tribunal will address firstly the pre-conditions to the detriment claims and then give our judgment on the detriments claimed, in chronological order, as appropriate: -

Protected acts

514 The Claimant referred to unequal pay in her emails of 29 April 2015, 22 June, 5 and 8 September 2016, 30 March and 18 April 2017 and in her conversations with Mr Roberts on 29 April 2015 and Mr Gooch on 27 August 2015.

515 In these emails or conversations, the Claimant complained either that she was suffering unequal pay, that the gap in pay between her and KH bothered her and that she should be paid backpay back to the date on which she and KH were promoted to the post of associate director. At the same time she also complained about her lack of career prospects and opportunities. She complained both about unequal pay at the same time as she raised what she saw as a lack of appreciation of her contribution to the business. The two are not mutually exclusive. It is our judgment that the Claimant did complain about inequality of pay.

516 As she is not an employment lawyer and had not yet engaged one, she did not make a complaint about a breach of the equality clause but it was clear to Mr Roberts and to Mr Gooch that she was complaining that she was not paid the same as KH and that she should and that the failure to do so was because of her gender. Although the Respondent's witnesses say that they did not understand the Claimant to be complaining about unequal pay in comparison to KH's pay, it is our judgment that when the Respondent voted at the board meeting to review the Claimant's salary it was to increase it to the same as KH's salary rather than to increase it to reflect an assessment of her value or contribution to the business. It was changed in relation to KH's salary because the Respondent knew that this was her comparator and the issue she had brought to their attention was that he was paid more than her and that she believed that to be unfair.

517 It is our judgment that the Claimant raised the issue of unequal pay in comparison to a man, as an act of sex discrimination by the Respondent. This was also the case when she brought up the issue of the backpay. It was solely to equate her wages from the

date of their promotion to the associate director role. These complaints were technically about a breach of the equality clause which under section 27(2)(d) of the Equality Act makes them protected acts. In addition, the Claimant was doing something in connection with the Act by trying to secure her rights to equal pay.

518 It is therefore our judgment that the Claimant's complaints about unequal pay were protected acts under the Equality Act.

519 The Respondent has already agreed that the Claimant's grievance of 12 June 2017 and her employment tribunal claim of 4 October 2017 were protected acts.

Was the Claimant as disabled person for the purposes of the Equality Act 2010?

Did the Claimant have a mental impairment?

520 The Claimant relies on the condition of an adjustment disorder.

521 Dr Drever diagnosed the condition on 13 November 2017. As with most mental health impairments, the diagnosis is dependent on the symptoms that the patient reports to the doctor. This was not an issue for the Tribunal although the Respondent seemed to be sceptical that the Claimant's medical care was somehow dependent on her reporting her conditions to her GP or to the consultant. Both the Claimant's GP and Dr Drever are qualified professionals and made their diagnosis from the symptoms reported to them and their observations of the Claimant.

522 Although in November Dr Drever made recommendations of reasonable adjustments that the Respondent had to put in place to assist the Claimant's return to work, he also stated that he believed that the Claimant had recovered from her illness and that a return to work should be expedited as soon as possible. In our judgment, the adjustments were suggested as a way to ensure that her condition did not recur and that she was able to re-integrate into the workplace. It is also our judgment that Dr Drever's addendum in December was in keeping with what he had already stated in November 2017, which was that by the time he saw her, the Claimant had recovered from her illness and should return to work.

523 He recommended that the Claimant continue with the remaining 2 sessions of CBT that she had left from the course she was taking.

524 It is also our judgment that the Claimant had experience stress from sometime around 2014. The question for the Tribunal was to locate the point in time when her stress became a mental impairment as opposed to being manageable stress.

525 The Claimant's job is likely to have stressful. Even before the stress associated with her divorce, she was a mother to two young boys with a long commute into work and a job which required her to check emails in the evening and respond to them. In response to being called '*pushy'* the Claimant suffered some additional stress and complained about that to Mr Roberts but we judge that it was unlikely to have remained at that level from that time.

526 It is our judgment that it was from about February 2016 when she started to experience palpitations that the Claimant's stress became worse. That was when she

was referred to A&E by her GP. The way she was feeling also prompted her to ask whether she could work from home on one day a week. The palpitations came at the end of a set of migraine headaches.

527 Between February and March 2016, the Claimant went to her GP with chest pains, had palpitations at work, turned around and went back home during her travel to work one day because of how she was feeling and raised the issue of working home one day a week with Mr Roberts. Some of those matters were confirmed by the Claimant's GP records. It is likely that around February/March 2016 the Claimant's mental health had become impaired.

528 Unlike a physical impairment it is not always possible to pinpoint the day on which someone starts to suffer from a mental impairment and the Tribunal takes judicial notice of the fact that this is sometimes a retrospective diagnosis. In the addendum he produced after the Respondent asked him about the start of the Claimant's impairment, Dr Drever confirmed that from the information the Claimant gave him during their consultation that it was likely that it started in or around February 2016 when the Claimant had to take some time off due to stress. It is unclear whether it was a continuous period from then on. It is also a fact that the Claimant was able to put together a detailed and long grievance letter on 12 June.

529 When did it end? It is the Claimant's submission that it lasted up until the end of her employment. As stated above, Dr Drever's assessment was that by the time he saw her in November 2017, she had already recovered.

530 In this Tribunal's judgment it is likely that the Claimant suffered from a mental impairment, namely an adjustment disorder from around February 2016. It is unclear whether it lasted all the way through the interim period but according to expert medical opinion, it did not last beyond November 2017.

Did the Claimant's impairment have a significant adverse effect on her ability to carry out day-to-day activities?

531 As already stated, in 2014 and 2015 there were times when the Claimant had a strong reaction to for example, being told that she was *pushy*. The sustained symptoms that could be described as an impairment occurred in February/March 2016. Around the same time, she was sent for tests in Cardiology. In January 2017 she was suffering from painful joints in her hands and from memory problems. She had what could be described as a breakdown in DO's office on 30 March 2017. There was evidence that in June 2017 the Claimant was suffering from severe stress, difficulty sleeping and obsessing over her appraisal, the unequal pay issue and the backpay, her career and the general work situation to the extent that she became ill and unable to attend work. At the same time, she was able to write a long and detailed grievance letter to the Respondent. Up until then she had managed to go in to work and perform her day-to-day activities and work duties while suffering from a mental impairment.

532 In July/August 2017 while waiting for the outcome of the grievance the Claimant's condition worsened and she suffered from anxiety dreams, disturbed sleep and not being able to sleep throughout the night and being irritable with her children in the day. Even though she went on holiday she was unable to relax while there.

533 The Claimant's condition had a significant adverse effect on her ability to carry out day-to-day activities during the summer of 2017. Before that, there was a period in February/March 2016 when it had a significant impact and again when she spoke to Mr Barr on the telephone in September. There are pockets of time when the Claimant's condition had a significant - meaning more than minor or trivial adverse effect on her health and on her ability to function i.e. in February 2016, March 2017 when she broke down in DO's room and between June when she was signed off sick and November 2017. During those times the Claimant's sleep was either disturbed or she was not sleeping at all. She was unable to cope with the usual stresses at work and her travel to work. She was signed off from June. She was irritable, weepy, agitated, unable to relax even when on holiday. She had jaw problems in early 2017. It is likely that all of those factors affected her ability to carry out day-to-day activities during those times although we were not told exactly how they did so.

534 At the same time, in September 2017 the Claimant drafted and submitted her claim form to the employment tribunal, ran her grievance, prepared her complaint about the *Esteem C* and corresponded with the Respondent. Those documents were all complex, coherent and the Claimant relies on them in this case. Any impairment to her abilities did not affect her ability to undertake those complicated mental tasks.

535 It is our judgment that at the other times the Claimant was able to go to work and do her day-to-day activities. She looked after herself and her children. Although she may have suffered from memory problems before she mentioned them to her GP in January 2017, we were not able to conclude that they were having a significant impact on her ability to carry out day to day activities because if it was, it is likely that she would have gone to the GP earlier. Such a matter would worry her enough to make her go to the GP because as a single parent she would not want any memory problems to adversely affect her children. Even in January 2017 we did not know what significant adverse effect her memory issues were having on her ability to carry out day-to-day activities.

536 In our judgment, the Claimant suffered a mental impairment that had a more than minor adverse effect on her ability to carry out day -to-day activities in March and then from around June to November 2017. It is possible that what was happening in February/March 2016 was extreme stress rather than the mental impairment. Even if it was an impairment, it is our judgment that it did not continue from them on. In Dr Drever's assessment, the Claimant's condition was unlikely to recur if the recommendations were put in place. Unfortunately, those recommendations were not put in place by the Respondent and the Claimant was dismissed. The Claimant did not return to the workplace. As the workplace was her main stressor, the fact that she no longer works there means that it is unlikely to recur.

537 It is not our judgment that the Claimant used the sickness and grievance process to put pressure on the Respondent as suggested by the Respondent in its submissions. We did not have evidence to support that submission. As already stated, we did not have any issue with the Claimant stating to the Respondent that she was going to go to her GP to ask for a certificate. It was likely that she was feeling very ill at the time she said that. She was very self-aware and could feel that she had to refer herself for help. The GP made a professional diagnosis and whereas the Claimant thought that she needed a week to recover, the GP disagreed and signed her off for longer. It is correct that the Claimant referred herself for CBT but that was because the NHS wait list was long and this opportunity came up and she took it. That was eminently sensible and responsible.

538 Taking into account all the above, it is our judgment that the Claimant suffered from a mental impairment, namely an adjustment disorder. This impairment had a significant adverse effect on her ability to carry out day-to-day activities during certain periods of time while she was employed by the Respondent and consistently between June and November 2017.

539 It is our judgment that the significant adverse effect had not lasted a year and as it had come to an end by the time she saw Dr Drever, it was unlikely to last a year.

540 In all the circumstances, as we did not have evidence that the mental impairment had a significant adverse effect on her ability to carry out day-to-day activities for a year or that it was likely to last a year or recur; it is our judgment that the Claimant was not a disabled person at the material time.

Protected disclosures

541 The Respondent has conceded that the 2nd letter – dated 27 October 2017 was a protected disclosure as the Claimant

542 The Respondent conceded that the Claimant's second letter to Mr Jones dated 27 October was a protected disclosure. In that letter the Claimant provided the Respondent with information about what she believed Mr Roberts had failed to do on the *Esteem C* case which she considered to be a breach of his duty to the members of the Club. She believed that this may have resulted in the Club paying out more in the claim than it should have done and that Ian Barr had been aware of it and has, as far as she was aware, done nothing about.

543 She referred to her obligations as a qualified solicitor and that she was so concerned about this matter that she had been so concerned that she checked with the SRA as to whether her involvement could implicate her.

544 In our judgment, although there is no reference to a particular statue and the specific breach of legal duty is not identified, it would have been obvious to the Respondent, Mr Jones and Mr Barr that the Claimant was alleging that Steve Roberts had breached his fiduciary duty as a director and his legal duties to the members of the Club. The information provided in the letter was that Steve had not acted in the best interest of the Club.

545 It is our judgment that this letter falls into the type of disclosures referred to in *Anastasiou* in that the legal obligation the Claimant believed had been breached would have been obvious to those whom she made the complaint. Mr Jones immediately recognised this as a potential public interest disclosure and in our judgment, that is the reason why he asked the Claimant whether she wanted it considered under the Respondent's internal procedure. He would not have needed to make a decision as to whether it actually was a protected disclosure before dealing with it under the policy.

546 It is our judgment that the Claimant genuinely believed what was in this letter. Mr Barr confirmed that she had raised with him on many occasions before she put it in a letter to the Respondent. She did not concoct this letter to bolster her claim in the employment tribunal.

547 She had real concerns about whether there should have been a warranty on the hold and whether Mr Roberts had failed in his fiduciary and legal duty in failing to implement it and in not informing the committee of it.

548 It is also our judgment that both disclosures were made in the public interest. They were about the Respondent's legal obligations to the members of the Club as the Claimant feared that the compensation that it had to pay out was considerably more than it would have done had it known about the warranty. The implications for the owner of the ship, the crew and the Respondent were all serious and of concern to the Claimant.

549 It is our judgment that the Claimant made two protected disclosures, on 4 and 27 October 2017.

Detriments

550 *We now consider whether the alleged detriments were done to the Claimant because of her gender or because she made protected disclosures. Those claims were of direct discrimination, harassment and victimisation.*

551 *In her submissions, the Claimant divided the detriments between those she alleged were done by Mr Roberts and those by Mr Barr. We will assess them using those headings. The numbers used in discussing the various allegations below are taken from the agreed list of issues (as amended).*

Mr Roberts

552 It is our judgment that the Claimant and Mr Roberts got on well and worked well together. There are countless emails between her, Mr Roberts and KH that show them working well together as a team. The Claimant and KH's job as associate directors were to manage the claims team, field issues so that only the most serious were referred on to Mr Roberts, to work together as a team and to run cases under his direction/supervision.

553 There are emails showing discussions on individual members of the team, on cases, on matters personal to both the Claimant and Mr Roberts and of a comfortable, respectful relationship between them.

554 At the same time, it is also our judgment that the Mr Roberts did use sexist language when he referred to the Claimant as '*pushy'* during a discussion about bringing in KPI's into the business. It is likely that the Claimant was enthusiastic in her wish to implement in the business the things that she was learning on her course but in our judgment, it unlikely that a man displaying the same level of eagerness would be described as '*pushy'*. Inviting the Claimant to '*use her charms'* to persuade him to do some work that he had to do was clumsy and could be a reference to her gender since this is a comment often made to females in the media and in society. It is highly unusual to see a reference to an adult man using his charms and we were not shown any.

555 In addition, the references to being 'overly dominant' and 'incredibly ambitious' were negative statements about the Claimant's ambition, drive and hard-work, which the Respondent praised elsewhere in the documents. In our judgment these were judgments about the Claimant that would not have been made about a man who wanted to progress within the business and worked hard to achieve that. Mr Roberts described the Claimant

as 'overly ambitious' in the document he prepared for the appraisal. The Claimant's desire to have a seat on the board or to progress in other ways in the company was portrayed as a negative thing in this case whereas she had worked hard and was entitled to see a future for herself within the business or to enquire whether there was such a future. Most of the Respondent's directors started in the business as claims handlers and progressed over the years to become directors with seats on the board. There was precedent for this happening. The Claimant had been at the Respondent for 13 years at the time she had these conversations with Mr Roberts. It was not inappropriate, given their progression, for her to ask about her future in the business and in our judgment, not an example of excessive ambition.

556 It would also have been appropriate for the Respondent to let her know that there was no seat on the board, if that was the case and that if one came up, there were many people who would need to be considered or that she did not have the skills the Respondent needed her to have before she could get a seat on the board. Instead, in these instances, Mr Roberts disparaged her ambition which, in our judgment, was done on the basis that she was a woman.

557 It is our judgment that he made remarks on occasion that could be seen as derogatory and stereotyping in relation to the Claimant's gender.

558 KH was allowed to refuse to do certain tasks and it was unlikely that the Claimant was. The Claimant was expected to take on and did take on a lot of responsibility. She recognised that the Respondent had not been doing appraisals or documenting supervision sessions or following up with junior staff. When she decided that she needed to do these things in order to be an effective manager, the Respondent was happy for her to take on the bulk of that work. The evidence was that KH did manage some of the junior staff and that they discussed members of staff between them and with Mr Roberts but the Claimant had been active in formalising the appraisal process, in keeping records and in actively seeking feedback from colleagues that she could give to members of staff which at the time they appeared to appreciate. In our judgment, the Claimant wanted to do this work as part of her duties as associate director as she believed that it was what a good manager did and that it would assist her career at the Respondent and not because she enjoyed doing appraisals.

Allegation 6 (ii) and Allegation 7(iii)

559 It is our judgment, Mr Roberts actively discouraged the Claimant from putting herself forward for representing Respondent on an industry subcommittee. This would have been an opportunity for the Claimant to broaden her skills and represent the Respondent in a public-facing role. it was a detriment to be refused or discouraged from putting herself forward for this opportunity.

560 The Claimant's male peers, KH, SL and GS all represented the Respondent on subcommittees since they were at the same level in the organisation, doing like work and therefore with similar abilities. The burden therefore passed to the Respondent to provide a non-discriminatory reason for the treatment. We were not told of a material difference between the abilities or characteristics of her male peers that made them more suitable for seats at those subcommittees.

561 The explanation that Mr Roberts gave was that the Claimant tended to overcommit herself to work then it would have made sense to assist her in managing her work better so that this did not happen. It was not the Respondent's case that she was already too busy to sit on a subcommittee. In any event, in discussion about Mr Jones' request that she assist him in working on getting the business ready for the GDPR, Mr Roberts stated that he would ensure that she had space to do it and was prepared to take something away to enable her to.

562 In our judgment, the Respondent has failed to show a non-discriminatory reason why the Claimant was discouraged from seeking a place on a subcommittee. In our judgment, Mr Roberts decision to dissuade her from doing so was more than likely based on her gender.

563 In our judgment, this was also an act of harassment as it would have been obvious to the Claimant's peers that she was not on a subcommittee whereas they were. This would have caused an embarrassing environment for her.

564 This complaint succeeds as an act of harassment on the basis of sex and direct sex discrimination.

Allegation 6(iv), 7(xvii) and 14 (xv)

565 It is our judgment that Mr Roberts dissuaded the Claimant from making a formal application for flexible working.

566 It is our judgment that there were men at the Respondent who had flexible working arrangements and that the objection raised by HR to the Claimant's application was that it was likely to set a precedent.

567 In March 2015, the Claimant did not make an application but stated that she was thinking of doing so. Mr Roberts asked HR for advice stating that it looked ok to him. In our judgment, that indicates that he was all for it. He also stated that if it risked losing the Claimant, he would rather agree to her request. That is an indication to us that he valued the Claimant and certainly was not consciously treating her differently. Although direct discrimination does not need to be conscious.

568 The Respondent was not well disposed to women having flexible working arrangements as demonstrated by HR's response that a regular arrangement would set a precedent that they did not want. At the same time, the evidence showed that CD had an arrangement where he worked from home on set days every week on the basis of childcare and travel; which were the reasons that she had asked if she could apply for a similar arrangement in relation to one day a week.

569 It is our judgment that Mr Roberts' response that he did not want her to put a formal application in but that they should work it out just between them was because of the advice from HR. It was HR who raised the issue of wanting to avoid a precedent and that a formal arrangement was to be avoided.

570 In our judgment, the 1st Respondent treated women, the Claimant and Sharon Haliburton, differently by advising managers that they should dissuade them from making

applications for flexible working or refuse such applications, in situations where men had made successful applications for flexible working.

571 All 4 comparators that we heard of who had flexible working arrangements at the Respondent were male. CD was in the same department as the Claimant although we were not clear whether Mr Roberts was his manager. MB and RM also had flexible working arrangements as did SL. Both CD and SL's arrangement were related to childcare as well as other matters.

572 The burden shifts to the Respondent to prove a non-discriminatory reason for dissuading the Claimant from making an application for flexible working. The Respondent's case was that Mr Roberts did not make the decision in relation to MB and RMs applications. It is likely that HR advised their managers and that HR had a different attitude to the applications from men than it did from women.

573 Mr Roberts supported the Claimant in her day-to-day arrangements at work. Although he followed HR advice and persuaded her not to put in a formal application for flexible working, he did look favourably every time she emailed him to ask whether she could work from home on the following day. He readily agreed in the hearing that the burden of looking after children in society falls on women and that a refusal to work from home on one day a week for the reasons the Claimant outlined in her 2016 email was on the basis of her gender.

574 Mr Roberts agreed to 99% of her requests to work from home. He was happy for this to be done on an individual basis which meant that she had to email him every week with a different reason. This was cumbersome and potentially embarrassing for the Claimant to have to go through her personal details on every occasion.

575 In our judgment, she was not instructing him that she was taking the day off. As they already had an agreement in principle and all she had to do was make sure that it was ok and give him a reason, that was what she did. He retained the right to say no. He did this on one occasion. Otherwise she was able to work from home. The arrangement they had added to the Claimant's stress around work as she was a person who liked to have everything arranged and in order. The ad hoc arrangement where she had to ask every week introduced an element of uncertainty as to whether she would have the day on the following week.

576 It is our judgment that Mr Roberts did not dissuade the Claimant from making a flexible working application because she was a woman or because she raised the unequal pay issue or because of her protected disclosures.

577 However, it is our judgment that the 1st Respondent, in the form of HR, advised him to refuse the application or to persuade her not to make an application because of her gender. It is likely that the Respondent preferred not to allow women to have flexible working arrangements. This was done on the basis of the Claimant's gender.

578 The complaint of direct sex discrimination - complaint 6(iv) succeeds against the 1st Respondent. It was not an act of harassment or victimisation and those complaints fail.

Allegation 7(iv) and 14(iii)

579 The Claimant's complaint is a narrow issue within the handling of the *Benita* case. She accepted that Mr Roberts had the right to assign work as he saw fit. The particular circumstances surrounding the case are that casualty cases rarely come up, which meant that there were few opportunities to gain experience handling the sort of work that it involved. Also, the Claimant had been involved in dealing with the casualty over the weekend that it happened when it was an emergency. Mr Roberts asked her if she wanted to remain involved in the ongoing case. She said that she did. She picked an area that had not yet been allocated.

580 Having asked her if she wanted to continue to be involved, Mr Roberts then allocated the work elsewhere. When challenged, his explanation was that the Claimant was required to work elsewhere and that if both she and KH were working on the single casualty case that would reduce the senior personnel available to work on other matters.

581 It is this Tribunal's judgment that Mr Roberts did not handle this well. In an attempt to avoid a confrontation with the Claimant, he did not answer her in the pre-meeting when she stated that she would like to remain involved. Whether he had already decided before he asked her or he decided in the pre-meeting; at some point he decided that he was not going to appoint the Claimant to deal with any part of the casualty. It would have been a good idea to tell her that in the pre-meeting. That might have led to a difficult conversation but would have eliminated her surprise and her feeling unfairly treated once he made the announcement in the main meeting.

582 In our judgment, this was not a case of the Claimant making everything about her but of Mr Roberts being unclear and avoidant and therefore leaving matters cloudy which caused confusion and upset. In our judgment, his reasons as stated in his email for not appointing her to deal with personnel are reasonable. He needed her to be available to address other matters and assist junior staff dealing with other cases. This was an exciting piece of work but was not the only piece of work the Respondent had on at the time. it is our judgment that the reason the Claimant complains about this is the way it was handled which was not transparent. It is our judgment that Mr Roberts failed to tell her in the pre-meeting that he was not going to appoint her to deal with the personnel aspects of the case because he did not want to get into an argument with her and not because of her gender or her complaint about equal pay. At the time, they were working well together.

583 It is our judgment that the complaints of direct sex discrimination, harassment and victimisation in relation to this incident fail and are dismissed.

Allegation 14(ii)

584 It is our judgment that the issue of PS's performance had been a long-standing issue for the Respondent, which they had never grappled with. The decision between the team led by Mr Roberts was that they were ready to address this and they took advice from Mr Jones as to the potential employment law complications if PS was unhappy with any action taken.

585 The Respondent admits in its submissions that Mr Roberts was not keen to deal with the matter and this manifested when PS complained to him about the proposal to look at the emails in his inbox. In our judgment, Mr Roberts changed his mind about what they

should do and retreated. It had been agreed, given that the Respondent had complaints from clients about PS's work, that something had to be done.

586 It is our judgment that the Claimant did not go off on a frolic of her own in relation to PS. She did not charge in and start with the option that was most likely to upset PS as the Respondent submitted. In our judgment, the Claimant took the action agreed between her and KH and Mr Roberts. Firstly, in 2013, she put information that she could see on the system about PS's work on a spreadsheet and presented this to the Respondent. She was not aware of anything being done at that time. In 2016, after 2 clients complained about how he handled their matter, the Greek team discussed his performance again and the Claimant went off and counted up the number of emails that he had saved in Outlook to get a sense of the volume of work he did. Her analysis was that he was not as busy as some, yet was complaining of stress. The Claimant reported back on that. It was only at that time that the idea of monitoring PS's inbox was suggested and agreed as a way forward and she was going to speak to him first about that. Mr Roberts agreed to that course of action and they sought advice from Mr Jones on it.

587 It was only when PS stated that he would leave if they did it that Mr Roberts changed his mind and backtracked on the plan. This left the Claimant exposed as someone who had gone off on her own. PS stated that she had conducted the meeting constructively but it was the proposed action that he would not tolerate. It may well be that on reflection, it was not the right action to take and Mr Roberts was free to change his mind. But that is not what happened. Instead he pretended that what the Claimant proposed to PS had not been agreed and that the Claimant had decided to go charging in, without authorisation.

588 In our judgment, this did not happen because the Claimant had done a protected act. It is our judgment that Mr Roberts did not backtrack on the plan to monitor PS' email inbox because the Claimant complained about the lack of equal pay with KH. That is the only protected act that had happened by this time. Although Mr Roberts did not like the fact that the Claimant continually raised the issue of inequality of pay, we did not have evidence that the issue with PS happened because of her complaints.

589 In our judgment, there was ample evidence that Mr Roberts avoided appraisals and other forms of performance management. He was described in the hearing as a laid back, hands off manager. Even though there were performance issues here that needed to be addressed, he was not prepared to do it. He was happy for the Claimant to do it but when PS went to see him, that brought him into it and he did not want to be drawn in. It is our judgment that that is why he decided to end it.

590 That was a detriment to the Claimant as it left her looking as a manager who is eager to go charging in to someone's inbox without authorisation or good reason.

591 However, it is our judgment this happened because Mr Roberts did not want to confront PS's performance issues and did not want to address it.

592 The complaint of victimisation fails.

The Claimant's appraisal – Allegations 7(v) and 14(iv)

593 The Claimant placed great store by the appraisal as she had been told that any decisions about her future in the business could not happen until her work had been assessed. it is likely that she had learnt on her courses that appraisals can be an opportunity for an employee to get a sense of their place in an organisation and their future prospects. Since there was no set way to progress in the company, she was hoping that she could get an idea of what the Respondent saw for her, through the appraisal process.

594 Another part of the background to the Claimant's appraisal was that there had been no grievances raised against her and no issues seriously taken up with her about her performance. The Claimant knew that she was busy and she could see how much she was doing in comparison to her colleagues. She had been with the Respondent for 13 years by the time of the appraisal and the last appraisal had been many years before. There had been discussions between her and Mr Gooch as well as Mr Roberts about the operations role and it had been left to the appraisal to continue those discussions. There was therefore a lot riding on this appraisal. That was the responsibility of both parties.

595 It was therefore no surprise that the Claimant refused to accept a vague and unsubstantiated comment from Mr Roberts that she needed to prove that she could carry people with her and '*earn her stripes'*. This should have been unsurprising, especially when the Respondent was using that feedback as a reason for asking her to delay further any discussion of progression within the company. If there was no possibility of progression – whether to be a director or some other post – it would have within the Respondent's right to tell her so even though that was not the impression that she had been given in the discussions that had taken place a few months earlier, in June. Instead, the Respondent put another hurdle in front of her, which, as she was not given any examples of what the comments were based on, made it unlikely that she would be able to jump over it and her career in the company would stall.

596 Mr Roberts confirmed in his response to the Claimant's grievance that his criticism of the Claimant for a mistake in the first draft an article was added to the appraisal because the Claimant challenged his statement in the scoping meeting that she needed to develop the ability to carry people with her. This was a draft article, which she did to assist a colleague and which was always going to be checked by Mr Roberts and Mr Gooch before going to print. It was not the final article. The Claimant acknowledged that she had made an error but the decision to elevate that error to the level where Mr Roberts said that it risked endangering the reputation of the Club for service was excessive and detrimental to the Claimant.

597 The mistake in the article was not an example of the Claimant having difficulty carrying people with her. It was brought up in the appraisal meeting and put in the notes to humiliate her and make her feel bad and to pierce the bubble of her perception of her ability to do the job. This is the same appraisal that stated that she had strong claims ability, was strongly motivated, saw the Club as a business and was actively looking beyond a pure claims role. That last point is likely to be a reference to her management activities and her efforts to put procedures in place or to update procedures for KPIs, appraisals etc. That comment would appear to be at odds with the comment that she needed to show that she could effectively carry people with her. When challenged, Mr Roberts not only failed to provide examples of that but got irritated by the question and decided to elevate a simple mistake into a risk to the Club.

598 These were detriments to the Claimant. The comment that the article risked damaging the Club's reputation hurt her feelings, humiliated her and made her feel that she was incompetent as it elevated it to something that could hurt the Club rather than just an oversight, which is what it was. This was harassment.

599 It is our judgment that the fact that the Claimant recently raised the issues of unequal pay between her and KH and the backpay, thereby demonstrating that she was not prepared to let the matter lie; were the reasons for Mr Roberts to include this unfair criticism in the appraisal document and to conduct the appraisal in the way that he did. The directors were annoyed and irritated that the Claimant was not prepared to let go of it. In discussions leading up to the appraisal, Mr Jones stated referred to the amount of money that the Respondent had spent on her education although this had never been referred to in any discussion with her about her salary. Mr Roberts used the opportunity of the error in the article on 7 June to assert his authority over her as a woman who had challenged him and who continued to complain about historical equal pay. This was victimisation.

600 It is our judgment that Mr Roberts subjected the Claimant to unfair criticism in the appraisal document in November because the Claimant had recently renewed her complaints about unequal pay and because she was an ambitious woman.

601 The complaints of victimisation and harassment succeed.

Allegation 7(vi)

602 It is our judgment that Mr Roberts set many objectives for the Claimant as part of the appraisal process. He did not use the appraisal form to make a record of what had been discussed in the meeting but instead used it to record his latest thoughts on the Claimant's performance and what she had to do to get the Respondent to follow through on the discussions she had previously had with directors about the operations role or of any other role she could fill that would take her career further.

603 As the Claimant pointed out, the list of objectives was not a list of SMART objectives which is what managers are advised to do when they conduct appraisals. That way the employee has a chance of meeting them, there is a fair way of measuring whether the employee has met them and a way to address any issues that arise. For example, the Claimant had been interested in handling a casualty and had tried to get some involvement in the *Benita* when it happened. Mr Roberts decided not to directly involve her in that case. It was particularly galling to her to see that as an objective in her appraisal when not only had she not been given a part to play in the *Benita*, she had also not been involved in the *Lyric Poet* when that subsequently happened.

604 It is our judgment that Mr Roberts put this list of objectives together to overburden the Claimant, to give her goals that she could not achieve and to make it so that she never got to the point where she was ready to be a director or to be the operations person. By that time, Mr Jones had started to look at how much money the Respondent had spent on the Claimant and the Respondent considered that the Claimant was difficult as she refused to let go of her equal pay issue and had refused to accept the comment at the scoping meeting that she needed to show that she could carry people with her. This list of objectives was a retaliation for all of that. They were not objectives that had been

discussed and agreed at the appraisal meeting, as would be expected and were not objectives that were achievable.

605 In our judgment, the list of objectives amounted to an excessive and impossible workload and Mr Roberts put them together because of her gender and to create an oppressive environment for her.

606 The complaint of direct sex discrimination and harassment succeeds in relation to this matter.

Allegation 6(iii)

607 In this Tribunal's judgment the Respondent adopted a materially different approach to the Claimant's appraisal in October 2017 to that adopted in respect of PS in the way that complaints were relied on. In PS' case, the Respondent had complaints from two clients who wished to remain anonymous. Because of that, the Respondent did not tell PS about them and did not use them to take any action against PS. Even though there were real concerns about his performance, how he used his time, coupled with these complaints from clients; once he refused to allow the Respondent to monitor his inbox, the Respondent backed off and left him alone.

608 By contrast, the Respondent entertained complaints from colleagues about the Claimant who also wanted to remain anonymous and which were only brought forward after encouragement from a senior director. It is unlikely anyone approached the clients and invited comment about PS as they had done about the Claimant. The Respondent could have had no doubts that those clients complained about PS because they were genuinely unhappy about the service he provided. The Respondent did not appear to be concerned about the damage to its reputation if it retained PS in the face of those complaints. In contrast, vague and unspecified complaints from the Claimant's colleagues who wished to remain anonymous and had only been brought forward after encouragement from Mr Barr were treated as truth and actionable against the Claimant.

609 In our judgment, the difference in treatment is because of the Claimant's gender. The Respondent has failed to show that it had a non-discriminatory reason for doing so or why it failed to do something about PS who was known to have performance issues. The Respondent failed to grapple with it.

610 The Claimant's complaint in relation to this allegation succeeds.

Allegation 14(xii)

611 Mr Roberts was unwell just after the appraisal as he had broken his collarbone. The Claimant refrained from mentioning the appraisal to him during the period between November to February as he healed and addressed other matters.

612 He did find time to support CB and met with her on a fortnightly basis. He is the manager and it is up to him how he spends his time. However, the Claimant's feelings were hurt by that as she had been waiting until he had time to give her to complete the appraisal process which they both agreed was not finished. It is our judgment that Mr Roberts did not relish the idea of sitting down with the Claimant and discussing the appraisal. It is our judgment that he was putting off the meeting.

613 Mr Roberts did not want to meet with the Claimant to discuss the grievance as he assumed that it was going to be difficult, because he was fed up of going over the same matters and because he had no appetite for it.

614 This denied the Claimant a conclusion to her appraisal process. It was of detriment to her. Even Mr Jones recognised that it was important to complete the appraisal process and advised the Claimant to try to do so. In our judgment, Mr Roberts failed to do so as an act of victimisation because of the Claimant's insistence in continuing to raise the unequal pay issue and her refusal to accept the Respondent's categorisation of her performance as needing to prove that she could carry people with her or needing to earn her stripes.

615 The complaint of victimisation succeeds.

Allegation 7(viii) and 14(vii)

616 It is this Tribunal's judgment that Mr Roberts wanted the Claimant to hold on to those cases because they had been her cases and because he wanted her to continue to run them. The Claimant never complained that she had an excessive workload at the time. She also did not make any request for assistance in alleviating the same because of current workload.

617 In the contemporaneous emails, the Claimant demonstrated that she wanted her position resolved. The unresolved situation caused her some frustration with her work. We were not convinced that any frustration she felt around this time was because she was overloaded or because of her complaints. The Claimant had always been busy while working for the Respondent. We do not judge that Mr Roberts ignored any requests for assistance in alleviating the situation on April/May 2017.

618 The complaints of harassment and victimisation in relation to these allegations fail.

Allegations 6(v), 7(xviii) and 14(xvi)

619 This is the Claimant's allegation that the Respondent took away her fleets following her transfer to Mr Barr's line management in April 2017. Was there an agreement that her fleets would transfer with her? Mr Barr and Mr Roberts had differing recollections of their discussion about the Claimant's transfer. Mr Barr considered that the fleets were coming with the Claimant whereas Mr Roberts was certain that they were not but, in his usual way of avoiding conflict, failed to say so until some way into the discussion about her transfer.

620 When the Claimant returned from holiday, Mr Barr informed her of the Respondent's decision that she would transfer from Mr Roberts' line management to his and that she would bring her fleets with her. That was his understanding of the conversation that had occurred in the board meeting and subsequently between him and Mr Roberts. There was no date set for when the transfer would occur and no contract made about how exactly that would happen. Mr Barr was sceptical as to how that would work in practice although he was prepared to try to make it work. As Mr Roberts had a high profile in the Greek market and by contrast, Mr Barr had none; it was unlikely that the fleets would ever go to Mr Barr with the Claimant. It would not have been good for business.

621 Mr Roberts initially agreed, that the fleets should transfer with the Claimant but when he started to think about the practicalities of it, he decided that he did not want to do it. Initially, he wanted a clean break from the Claimant. However, that attitude as demonstrated by the documents seems to have softened following the Claimant's return from holiday. In the written proposal he put forward on 1068, he had decided that she could continue to report to him on those files and therefore continue to work on them. In April he emailed her to say that there were files on which he would appreciate her input. Between April and May, Mr Roberts' position was that there some files on which he would appreciate her input, under his supervision. If she did not want to work with him on them, they would stay with him.

622 In our judgment, once he thought properly about it, Mr Roberts changed his mind about this because he did not want the work that he had spent many years building up, his reputation, his standing in the Greek market going to another director. The Claimant may not agree and it was her case that Mr Barr would not need to visit Greece and also had standing in the market. It is our judgment that this was not personal to the Claimant. Mr Roberts' decision that she should not take the Greek files away from him and to Mr Barr's line management was not done because of her sex or because of the complaints of unequal pay. Mr Barr expressed scepticism at the outset that this would work. The directors were willing to give it a go to try to support the Claimant and Mr Roberts but in the end, it could not be done. The reason was because of Mr Roberts' perception of his work and the desire to retain the work that he had spent years leading and building. The Claimant had also spent years working on those matters but they were Mr Roberts' files and not hers.

623 The Claimant's comparators had retained their work in completely different circumstances. They are not true comparators. SL and IC both continued working on matters that had transferred from the Far East to Greece under Mr Barr's line management or which had connections to the USA. The USA and Far East were Mr Barr's areas and so the work had not been taken from him elsewhere. Although those fleets were now in Greece, they had originally been based in Singapore or were connected through family to the USA.

624 It is our judgment that this was not direct sex discrimination, harassment or victimisation.

625 These complaints fail and are dismissed.

Mr Barr

626 Mr Barr made comments which we considered stereotyped women or were derogatory. Mr Barr showed no awareness of the offensive nature of his comments - to one colleague that she should keep her legs shut as the Claimant had just announced her pregnancy or to another that she looked like a dyke - and the likelihood that the women he made them to may have felt unable to challenge him about them at the time or since. What is described as 'banter' or jokes can still be offensive. Not all women want to or can get pregnant and it is stereotypical to assume so.

627 At the same time, he and the Claimant worked well together and socialised together. They had a good working relationship. The Claimant also confided in Mr Barr.

628 That all changed when the Claimant brought her grievance. Mr Barr upheld parts of the complaints the Claimant raised in her grievance and it is likely that he thought that that would be the end of it. It is our judgment that he was annoyed that the Claimant did not accept his decision on her grievance. He later categorised it as utterly vexatious, outrageous and fabricated. If he had thought that at the time, he would not have upheld the parts of the grievance that he did. That was a retrospective judgment that could only have come from annoyance at her refusal to accept his judgment about it.

Allegation 14(viii)

629 The Respondent restricted the Claimant's access to her work email during her absence from work on sick leave in June and in July 2017. Counsel refer to different months in their submissions. On both occasions this was a detriment to the Claimant.

630 It is our judgment that the Respondent restricted access in June when the Claimant first went off sick. The way she put it in her statement was that she was told by DO that this was being done as the Respondent were extremely concerned about her. It is our judgment that that was the reason for the decision to restrict access. This was restored when she complained. By the time access was restricted again in July, the Claimant had already accessed the information she needed to complete some work and had already sent the Respondent copies of the documents she wanted Mr Barr to look at in addressing her grievance.

631 It was only after the Claimant complained that receiving emails from Mr Roberts or being copied in to emails from him caused her distress and upset, that the Respondent decided to completely shut down her access to her emails. It may well have been a sledgehammer to crack a nut as the Claimant describes in her submissions but the Tribunal's job is not to decide whether this was the best way of addressing her desire not to receive any communication from Mr Roberts or with his name on it. The question is whether the Respondent's decision to shut down her access to her emails was because she had done protected acts.

632 In our judgment, the catalyst for the decision to shut down her access to her emails was her extreme discomfort at receiving any communication from Mr Roberts or being copied in to anything from him. Mr Barr had already spoken to him about it, after that the Claimant complained about another email from Mr Roberts coming through. But for whatever reason, emails kept coming through.

633 The Claimant had started working from home in early July and that arrangement was completely derailed by her receipt of emails from Mr Roberts or her being included in a chain of emails which came from him or of which he was a part. It is our judgment that the Respondent's action in shutting down her access to her inbox was because of that issue and unrelated to any protected acts.

634 In June the Claimant asked that she should be given a warning if the Respondent ever proposed to restrict her access again. Unfortunately, that did not happen in July. in our judgment, that was not deliberate but was an oversight on Mr Barr and DO's part.

635 In our judgment, this complaint fails and is dismissed.

Allegations 7(xii) and 14(xi)

636 It is our judgment that Mr Barr upheld some parts of the Claimant's grievance as stated above but he did not uphold the Claimant's allegations that Mr Roberts had demeaned, intimidated her or abused his power or deliberately done any of the things he had done.

637 In relation to the allegations he did uphold, Mr Barr decided that they had occurred because Mr Roberts had been busy, or had not meant it in the way the Claimant alleged.

638 The allegations we are considering here are whether Mr Barr victimised or harassed the Claimant by failing to clarify the Claimant's role once he had concluded his determination of the grievance. It is our judgment that having decided that the main allegations in the Claimant's grievance were unfounded, there was no basis on which Mr Barr could agree to the Claimant's wishes not to have to work with Mr Roberts on his fleets. To do so would have been to say to Mr Roberts that although he had not upheld the grievance, he was still going to take the fleets away from him.

639 If the Claimant's allegations had been upheld, then it would have been appropriate for Mr Barr to agree that she did not have to return to work with Mr Roberts.

640 Alternatively, if Mr Roberts had agreed that she could take the fleets with her to Mr Barr's team and continue to work on them under his supervision, then that would also have been a solution to the situation that existed in November 2017.

641 We do not agree with the Respondent's submissions that the Claimant was at all times building a case against the Respondent and that all her actions were calculated and designed to either induce a settlement from the Respondent or to bolster her legal case. In our judgment, those submissions stem from one statement the Claimant made during the conversation with DO on 30 March where in her distress she mentioned the words 'constructive dismissal'. We did not have evidence of a game plan. In our judgment, the Claimant was trying to hold on to a job that she loved in a business where she thought she had a future. It is understandable that the Claimant wanted to retain the fleets that she had worked on for a while and on which she evidently enjoyed working.

642 However, as the fleets belonged to Steve Roberts and she had always worked on them under his supervision, the only way they could transfer to Mr Barr's line management is if Mr Roberts agreed to allow that to happen.

643 Once the grievance was determined, the only reason for allowing her to keep them and report to someone else on them would be if the Respondent decided to take them away from Mr Roberts. As the allegations of intimidation, demeaning behaviour and discrimination against him had not been upheld, there was no reason to do so. If the Respondent had gone ahead and done this at the Claimant's request, Mr Roberts would have had a complaint against his employers as it would have been to his detriment to take the work away from him in a situation where the allegations against him had failed.

644 Mr Barr did clarify the Claimant's role after the grievance. His answer was not what the Claimant wanted but he stated that she had a choice, if she could work with Mr Roberts, she could continue with the Greek fleets; if not, she would be gradually worked out of the Greek market and other project work would be allocated as they became available.

645 It was not the answer the Claimant wanted but given the grievance outcome, it was an appropriate response from the Respondent.

646 It is our judgment that the allegations of harassment and victimisation in relation to this matter fail.

Allegations 7(xiv) and 14(xiii)

647 As has been pointed out in the Respondent's submissions, there is no discrimination alleged against the Respondent in relation to the conduct of the grievance and its outcome. These allegations and those above relate to the consequences of the grievance outcome. Once the Respondent's decided that the grievance was not upheld, the consequences of that decision were that the Respondent said to the Claimant – these are the terms on which your employment can continue. In our judgment, the Respondent stated to the Claimant that if she was fit to return to work then these were the terms on which she would be able to do so.

648 The Respondent could have allowed the Claimant to take the fleets with her to Mr Barr's line management but as we have already stated, that would have been a detriment to the business and to Mr Roberts, given his standing in the Greek markets and the personal connection he had with most of the clients there. The Respondent would only be able to do so if it had a good reason such as Mr Roberts being found to have intimidated a subordinate, or if it chose to do so.

649 It is our judgment that the Respondent did not pressure the Claimant to return to work with Mr Roberts but told her that if she wanted to continue to work on the fleets she would have to but with Mr Roberts continuing to manage them. Mr Barr would be her line manager and she would work with him on some projects.

650 Otherwise, she could return to work with Mr Barr only. To do so she would still need to gradually work her way out of the Greek market as she also had connections there and files that she had been working on. This would be for a short while – while the caseload was wound down. He stated that the speed of transition was unknowable. It is unlikely that it would have been possible to tell her at this stage, how long that transition would take as it would need someone to assess the files and the work that still needed to be done. The correspondence shows that there were some attempts to do so but it was not an easy task and it is unlikely that definite time frames could be given at this stage.

651 The Respondent's position at the end of the grievance, in relation to the Claimant's work and her line management arose from the outcome of the grievance and was not harassment or victimisation for doing protected acts. These claims fail.

Allegation 36 (vi)

652 Mr Barr accepted that he had accessed the Claimant's inbox. It was the Respondent's case that he did so in order to investigate the whistleblowing complaint. It is this Tribunal's judgment that although he stated that he gained access to her email inbox to look for evidence to assist him in dealing with the whistle-blowing complaint, there is no reference in the outcome letter to doing so. The outcome letter of 20 October makes no mention of going in to the Claimant's inbox or what was found in it that related to the *Esteem C*.

653 Mr Barr found emails/information in the Claimant's inbox and Outlook folders that had nothing to do with the *Esteem C* and which he used to decide who to talk to after she was declared fit to return to work.

654 It is our judgment that he looked in the Claimant's inbox to see if she had information in there that supported her whistle-blowing and at the same time, he looked to see if there was anything else there that was of interest or which the Claimant might use if she were to pursue the concern about the *Esteem C*.

655 It is our judgment that the decision to look in her inbox without informing her or getting her consent was a detriment to her and was done because the Claimant made the disclosure. It is likely that Mr Barr was annoyed and irritated by the Claimant making this disclosure. It is likely that he considered that she would accept the explanations or the reassurances he gave her when they conversed about the *Esteem C*. He had not been expecting her to raise a concern about it and was annoyed by her decision to blow the whistle on what she continued to believe was wrong doing on Mr Roberts' part. It is likely that he also believed that the Claimant was doing this to further complain about Mr Roberts rather than because of any real concern about the handling of this case. It is likely that this compounded the belief which had been forming since the conversation on 8 September that the Claimant held strong adverse feelings towards Mr Roberts and it might make it difficult for her to return to work.

656 It is our judgment that the Respondent accessed the Claimant's inbox in October 2017 without her knowledge or consent because she had made protected disclosures.

657 This claim succeeds.

Allegation 36(vii)

658 The Respondent maintained the restriction on the Claimant accessing her inbox and the Citrix in October 2017 despite her request that she be allowed to have access to complete her MBA. This was the MBA that the Respondent had invested in. The Claimant was clear that she needed access to the Citrix system as well as her inbox and the reason for that. The Respondent was also made aware that this was time sensitive. The Respondent continued to refuse her access.

659 This was a detriment to the Claimant.

660 The Respondent's stated reason for doing so related to the Claimant's objection to receiving emails from Mr Roberts way back in July. The Claimant was prepared to take the risk. Also, that did not address the access to Citrix. The Claimant was still an employee.

661 The suggestion that she should identify documents so that DO could send them over to her was not an effective or successful one and it relied on the Claimant remembering specifically what documents she had in the Respondent's system, exactly where they were saved and what was in them. It is unlikely that if one is unexpectedly away from work systems that one will be able to recall exactly where everything is saved or even what names documents/information had been given when saved in the system.

662 In this Tribunal's judgment, given that the Claimant stated that she was prepared to take the chance of an email from Mr Roberts slipping through and given that the access was for a stated reason which the Respondent was aware of and was not spurious, access should have been given in October. The Respondent failed to do so.

663 It is also our judgment that the Respondent were worried that the Claimant had something in her inbox that might assist her with the disclosure she had just made. In June, when she asked to be given access to her inbox for coursework purposes, that was given. In July, the issue was something she raised about her distress at receiving emails from Mr Roberts. She was not raising that issue any longer and some months had passed since she did so.

664 The Tribunal does not accept the Respondent's reason for not giving her access to her inbox and the Citrix system in October 2017. It is our judgment that the refusal had more to do with the protected disclosure that she had just brought rather than a need to protect her from Mr Roberts when the Respondent had also decided that there was nothing to protect her from as Mr Roberts was not guilty of the things of which she had accused him.

665 This allegation is successful.

Allegation 36 (x)

666 It is alleged that the Respondents failed to properly investigate the whistleblowing allegations. From the Claimant's submissions, this allegation applies to Mr Barr's investigation as well as the investigation conducted by Messrs Barr and Gooch on the Claimant's appeal.

667 It is this Tribunal's judgment that there may well have been a thorough investigation of this matter. The steps Mr Barr outlined in live evidence and which are set out above were thorough. It is likely that if he did as he said, he would have looked at every piece of information the Respondent had on the issue. He even asked IT to assist him in looking through emails/documents that might have been deleted to see if there had been a reference to the *Esteem C*.

668 However, it is also our judgment that the letter of 20 October does not demonstrate that there had been such an investigation. Most of the letter is Mr Barr's explanation of the conversations he had with the Claimant. At the end, he referred to the surveyor's email which did not answer the question of responsibility for the damage or address the question the Claimant raised in her disclosure of whether Mr Roberts knew of the susceptibility of the hold to moisture damage either because the pontoon covers closed slowly or because of poor ventilation. Mr Barr side-stepped the central issue of the Claimant's disclosure.

669 In dealing with her appeal it is likely that Mr Jones and Mr Gooch took their lead on the matter from Mr Barr. They knew even less about this issue than he did and it is likely that he led the discussion and decided on how the Respondent would deal with this. The Tribunal has no expertise in these matters and we do not know whether there was something that Mr Roberts should have reported to the committee, whether there should have been a warranty or whether it was perfectly in keeping with the Respondent's legal duties for the blame for the considerable damage to the cargo in hold 6 to be put down to

crew error. There were at least two possible explanations for the damage to the cargo. The issue the Claimant raised was whether the Respondent were sufficiently forewarned about the possibility of this so that they had a responsibility to limit the Committee's liability and failed to do so. This was a serious matter. This was not addressed in Mr Barr's outcome letter. It was addressed in Mr Jones' outcome letter when he stated that there was no evidence to show that the imposition of a warranty was considered prior to the claim. In doing so, he referred to Mr Roberts' question to the surveyor in the correspondence on 20 September 2011, which he relied on to show that Mr Roberts knew nothing of any suggested warranty. There was no record of a discussion with Mr Roberts as to what he knew or with RG, who apart from the Claimant was the other person who had been involved in the case.

670 The Respondent was aware that the Claimant was not going to let it go. She did not have documentary evidence but she had an unshakeable belief in her understanding of the history of this matter.

671 It is our judgment that the conduct of the whistle-blowing investigation was kept between the directors so that they did not have to answer any questions from junior staff about it. The matter had already been resolved as there had been a payout in relation to the claim. It could not be unpicked – as Mr Barr stated. The Claimant's actions in raising this as a disclosure threatened to unpick this matter and the Respondent did not want to risk that. it is our judgment that the way in which the investigation letters were written and the decision to deal with this between the directors and not to involve anyone else, was a result of the Respondents' desire to wrap it up as quickly as possible rather than find out what actually happened or what Mr Roberts knew or whether there was any basis to what the Claimant believed.

672 It is our judgment that this allegation succeeds.

Allegations 20 - 26

673 It is our judgment that the Claimant was not a disabled person for the purposes of the Equality Act 2010 at the material time.

674 We therefore make no judgment on allegations 20 – 26.

Allegation 14 (xxii)

675 After requesting that the Claimant attend an appointment with an expert of its choice so that she could be assessed as ready to return to work and so that the Respondent could obtain advice on adjustments it needed to make to assist her return to work; the Respondent then refused to implement those adjustments or allow the Claimant to return to work.

676 In this Tribunal's judgment, at the time the Respondent received the recommendations from Dr Drever, which were echoed by the advice from the Claimant's GP and Canada Life it did not know whether the Claimant would be judged to be disabled at the employment tribunal. Mr Barr frankly admitted at the hearing that he was surprised when the Claimant passed the test and was declared fit to return to work with adjustments. He had expected her to fail.

677 When the Respondent was faced with the recommended adjustments it resolutely refused to implement them. In our judgment, it did so because of the Claimant's grievance, her disclosures and her insistence in keeping the equal pay issue alive throughout the last year of her employment. The Respondent felt that it could not overcome those issues with her and it is more likely than not that it did not want to facilitate her return to work.

678 In our judgment the Respondent refused to implement those reasonable adjustments, not because they were impractical or because they were unreasonable. There was no correspondence from the Respondent to the Claimant advising her that it was unreasonable for her to work from home, given that she had done so on numerous occasions. In his discussions with the Claimant's colleagues Mr Barr did not really discuss where the Claimant could sit or who she could share a room with. His discussions were about other matters. There was no real consideration of the recommendations as the Respondent did not want the Claimant back at work.

679 It is our judgment that the reason the Respondent failed to implement the adjustments recommended by Dr Drever, the Claimant's GP and Canada Life was because of the Claimant's protected acts.

680 This allegation succeeds.

Allegations 7(xx) and 14(xviii)

681 It is this Tribunal's judgment that Mr Barr decided that his relationship with the Claimant no longer worked around the time that she refused to accept the outcome of the grievance and the protected disclosure investigation. He considered that the Claimant should have accepted his findings and his judgment on those issue.

682 He also had in mind the fact that the Claimant had brought proceedings in the employment tribunal. He referred on more than one occasion to the fact that he felt that he was being treated as an opponent in litigation. This was clearly a matter that weighed heavily on his mind as at the time, he actually was her opponent in these proceedings. Mr Jones had also been involved in the determination of the protected disclosure investigations and deliberations and had been the person who corresponded with the Claimant on the disclosure on the Respondent's behalf. He decided in August/September that he no longer wished to work with her on projects and the GDPR project was allocated to someone else without warning.

683 It is our judgment that both directors refused to work with the Claimant. Mr Gooch categorically denied that he had expressed any opinion on working with the Claimant and it is our judgment that he had not stated that he did not want to work with her. It is likely that if this was said in the 10 January meeting, it was to add strength to the Respondent's case rather than as a direct quote from Mr Gooch. The Claimant had done some work for him but the directors who needed to be willing to work with her if she was to come back to work would be Mr Jones and Mr Barr, as she was unable to work with Mr Roberts.

684 It is this Tribunal's judgment that the directors' decision was based on the Claimant's litigation in the employment tribunal, her insistence on pursing her complaint of unequal pay to a successful conclusion, her grievance and her protected disclosure. Apart from those issues, the Claimant had been off sick. She had had an episode in DO's

room on 30 March when Mr Jones was involved and he witnessed how upset she was. Within that upset she mentioned the words 'constructive dismissal'. Rather than put those words in the context of someone who was upset, the directors placed great emphasis on them as the Claimant's stated intention. They were still prepared to work with her at that point but that tearful discussion in DO's room marked a turning point in the Claimant's relationship with Mr Jones.

685 It is our judgment that Mr Barr decided that he could no longer work with the Claimant because of the protected disclosure and her decision to appeal his findings and her decision to bring and also her failure to accept his decision on her grievance. It was more difficult to pinpoint when Mr Jones decided that he could no longer work with the Claimant. After the conversation in DO's room in March and in June after receipt of a letter from her solicitors, he started to think that she did not want to come back to work for the Respondent and he believed that she had some sort of plan against the Respondent.

686 Mr Jones' decision that he could no longer work with her came later. Mr Jones reflected on what he considered to be the Claimant's decision to cause Mr Roberts distress by conducting what he referred to as a drawn out and unpleasant grievance process. She had raised discrimination complaints against Mr Roberts which he considered to be totally unfounded, even though he had not investigated them and it is likely that he thought that she might do so again. It is likely that his decision that he could not work with her was related to that and the protected disclosure and the Claimant's decision to appeal Mr Barr's findings on both.

687 The act of raising the grievance, making the protected disclosures and alleging sex discrimination in the form of unequal pay were all protected acts.

688 It is this Tribunal's judgment that the directors' decision that they could no longer work with the Claimant was because of her protected acts. Although Mr Barr denied that he was vindictive, it is our judgment that although he may not have seen it like that, it was unlawful victimisation to do so as it was as a result of her doing protected acts.

689 Their decisions not to work with her anymore on the basis of her protected acts were not reasonable. They could have warned her about her tone or arranged mediation or held a meeting with her to discuss the issues and her actions with her in a frank and honest way. They did not let her know their strength of feeling. Throughout December, the Respondent refused to correspond with the Claimant. This was the time when such a discussion could have taken place and the Respondent's fears be put to rest, or not, as the case may be. Instead, they concluded that it was no longer possible to work with her without any input from her and based on her protected acts.

690 These were acts of victimisation and these complaints succeed.

Allegations 7(xxi) and 14 (xix)

691 There were no set conflict management procedures in the Respondent's handbook or anywhere else that we were drawn to in the hearing. However, the Respondent did have grievance procedures that employees could use to complain about other employees. On completion of the Claimant's grievance, Ian Barr told the Claimant that the Respondent was prepared to fund mediation between her and Mr Roberts to enable them to move past it and for the good of the business.

692 This was before she appealed the grievance and before she raised her protected disclosures. There was also some protracted email correspondence between the Claimant and the Respondent in November and December about her return to work, where she would sit, restoring her access to Citrix and what work she would do once there. In December, when she was told that the Respondent considered that her correspondence to Mr Barr had been rude, she offered to go to mediation with him. The Respondent did not accept this offer. The Claimant discussed ways in which she could make amends at the meeting in January but the Respondent was not interested in following those up or in any consideration of mediation.

693 Even though members of the team to whom he had spoken never raised grievances against the Claimant or made any formal complaints to any of the directors, Mr Barr was prepared to act on those without giving the Claimant an opportunity to fix those relationships or to even properly respond to their complaints.

694 The Respondent took the issues which those junior members of staff raised in response to the information Mr Barr gave them and his questions as the truth and as serious matters. The 4 statements that were sent to the Claimant in preparation for the meeting provided no details of the incidents that led them to conclude that the Claimant's return to work would be a negative matter.

695 It is our judgment that it was a detriment to the Claimant that the Respondent did not consider any conflict management procedures in response to the position it found itself in at the end of October 2017 when the Claimant indicated that she was ready to return to work and the medical experts declared her fit to return to work.

696 Instead of working out where she could sit or how any working relationships that were damaged could be repaired, the Respondent decided to set in train a process that would inevitably result in the termination of her employment.

697 It is our judgment that the Respondent's failure to engage with mediation with the Claimant, to ensure that its solicitor employees and other professional staff made professional complaints that the Claimant could respond to instead of making vague allegations; was because the Claimant had made protected disclosures, complained about her unequal pay and issued a claim in the employment tribunal. The reference to her acting in a hostile and litigious way was a reference to the fact that she had brought a claim at the tribunal. Her correspondence was detailed and may have been annoying for DO to deal with but this was her job and in our judgment, the Claimant was not impolite, unprofessional or aggressive.

698 In our judgment, the allegation of victimisation by not following other conflict resolution procedures, succeeds.

Allegations 7(xxii), 14(xx) and 36(xiii)

699 These allegations are that the Respondent failed to keep the Claimant's grievances confidential.

700 It is this Tribunal's judgment that statements which various of the Respondent's witnesses gave to TT and to Mr Barr showed that they knew much more about the

Claimant's circumstances than they ought to since it did not relate to them and she had not been at work to confide in them.

701 VP indicated that she was aware of correspondence between the Claimant and the Respondent as she referred to a letter that the Claimant sent out at 4am which corresponds to a letter she sent to Mr Barr in June. CB referred to the possibility of the Respondent being ordered to reinstate the Claimant by the employment tribunal, which Mr Barr had clearly discussed with her.

702 It is our judgment that Mr Barr discussed elements of the Claimant's grievance with the people he chose to be witnesses. He also told them what was in the Claimant's notes of the appraisals and referred to her targeting individuals. We agree with the Claimant's submission that this suited the picture of the Claimant that he wanted to paint for the witnesses. It is likely that beginning around the 8 September, Mr Barr decided that it would be difficult for the Claimant to return to work at the Respondent because of the way in which she spoke about Mr Roberts. Once she was certified fit to return to work, Mr Barr decided that the Respondent had to ensure that she did not return.

703 At that point, Mr Barr decided that he could not have the Claimant back at work, given her dogged pursuit of her equal pay claim, the fact that she raised protected disclosures and appealed his decisions on both of those matters; and because of holding her own in correspondence with him. As there had been no substantial complaints about the Claimant from her colleagues, he chose to disclose some aspects of her grievance against Mr Roberts and details of her correspondence with the Respondent which in isolation would seem unreasonable – such as an email at 4am - to some of her colleagues, to get their reaction.

704 Mr Barr also discussed the Claimant's health issues and other personal matters with her colleagues. He freely discussed with junior colleagues the difficulties he foresaw in bringing an associate director back in to the business. It was unlikely to be appropriate to have that sort of discussion with junior colleagues. That was a detriment to the Claimant in that it made it impossible for her to re-integrate into the office. He conducted the discussions with her colleagues in an indiscrete way and in our judgment, it had not been necessary to do so in order to ascertain what they thought about where she should sit or even, if her return to work was a good idea.

705 It is also our judgment that Mr Barr informed colleagues that he had checked the Claimant's files and that she had been targeting certain individuals. The only reference he made in his statement was a comment the Claimant noted that someone was vacant. That was not targeting that person. The Claimant was tasked with the job of appraising colleagues who were ambitious, some of whom were solicitors and some, like CB with whom she did not get on. The way in which Mr Barr asked them about the Claimant was an open invitation to them to criticise her and lay any issues with their performance at her door.

706 In our judgment, the Respondent's breach of confidentiality in this process was victimisation because of the protected acts listed above as well as harassment as it was related to her sex – because of the unequal pay complaint – and created a hostile and humiliating environment for the Claimant.

707 These allegations of harassment, victimisation and detriment for making a protected disclosure succeed.

Allegations 36 (xiv) and (xv)

708 These are the same allegations which appear below in the dismissal complaint and will be addressed there.

Allegations 36 (xvi), (xvii) and (xviii)

709 These are allegations against DO. The Claimant withdrew her claim against DO as a named representative.

710 In our judgment, DO did these things but we did not have evidence that she did them on the instruction of Mr Jones or Mr Barr and it was not put to her in the hearing that she did. It is unlikely that she took it on herself to thwart the Claimant's attempts to appeal against her dismissal as victimisation for raising a concern in relation to the *Esteem C.*

711 DO had insufficient knowledge about the *Esteem C* to be able to conduct the investigation into the Claimant's disclosure. It is unlikely that she would set about interfering in the Claimant's appeal because she wanted the Claimant's appeal to fail because she had made protected disclosures.

712 These complaints fail and are dismissed.

Dismissal

713 The Claimant's allegation is that her dismissal was automatically unfair because she made protected disclosures and/or because of her gender or lastly, that her dismissal was ordinarily unfair.

What was the reason for dismissal?

714 The burden is on the Respondent to prove the reason for dismissal.

715 According to the law in *Salisbury* the Tribunal must critically assess the Respondent's reasons for the Claimant's dismissal. Also, as stated in *Ezsias*, the Tribunal has to be on the lookout to see whether the Respondent is using the 'some other substantial reason' rubric as a pretext to conceal the real reason for the Claimant's dismissal.

716 The Respondent submitted that the Claimant was dismissed because of personality clashes due to irreconcilable differences with Mr Roberts and with other colleagues which led it to consider dismissal under the heading of some other substantial reason.

717 The Respondent's case is that the Claimant's irreconcilable differences with Mr Roberts was the main reason for her dismissal. However, when discussing her return to work in November she refused to return to work with Mr Roberts and insisted on the implementation of Dr Drever's recommendations. She acknowledged that it was likely that she would have some contact with Mr Roberts but emphasised the need to minimise that

contact. The Respondent did speak to Mr Roberts about how he would feel if the Claimant came back and did no work for him. He had already agreed that she could come back and work for Mr Barr and as long as there was no attempt to take his Greek fleets elsewhere, he had no strong objection. He did believe that it would be difficult for her to avoid contact with him but by then, the Claimant was referring to Dr Drever's recommendation that there should be minimal contact between them – which she confirmed her agreement to in the 1 December email.

718 Instead, in response to the Claimant's request that the Respondent implement their doctor's recommendations, the Respondent refused to even allow her to work from home or allow her access to Citrix and instead, started an investigation into what people thought of her. Although Mr Barr's evidence was that he had to do that in order to decide on reintegrating her back into the office, we did not have evidence that it was necessary for him to conduct the investigation in the way he did or to only speak to the people he selected.

719 We were not told of any other situation where the Respondent canvassed the opinion of claims staff before bringing back someone to work once they have had some absence such as sick leave. The Claimant was not the only employee ever to have been off sick and yet, we were not told that this had been done with anyone else.

720 If the Respondent was genuinely interested in what reception the Claimant would get when she returned to work, it would have asked everyone in the claims teams about how they felt. It would also have asked other people with who she worked. Instead, Mr Barr looked through the Claimant's files and chose those individuals that it was likely would not be pleased to have the Claimant back at work because she had taken them to task about their performance in the past. The Respondent was aware that the Claimant had been their interface with a number of junior staff and that this had not always welcome. On one occasion Mr Roberts volunteered to give an unwelcome message to one member of staff because he said that he did not want the Claimant to be seen as the enforcer in that instance. There was an acknowledgment that this was the way that junior staff saw her because of the role the Respondent supported her to do.

721 At the same time the written communication between the Claimant and junior staff in the bundle shows that she was a conscientious manager who gave feedback, assisted them, asked questions of new staff about what they were doing and followed up with them on what they were working on. She always reported back to Mr Roberts on her work and agreed with him and KH on the next steps.

722 Although Mr Barr did not do appraisals with his staff and was sceptical of the benefit of doing so with others (his comments about the half-year appraisal above), it is likely that the Respondent as a whole appreciated the work the Claimant did setting up systems, following up with appraisals and feeding back to members of staff. That was why it had paid for her to study her MBA. Mr Roberts was appreciative of the work she did with GI and RG. They discussed how to proceed with PS and he was content for the Claimant to lead on that as well. There had been no formal complaints and no grievances raised against the Claimant in relation to her management style and no allegations of bullying had been raised by the staff. The Tribunal finds it hard to accept that all the junior staff, some of whom were solicitors, harboured these concerns but found it difficult or were scared to raise them with management – whether formally or otherwise – before being approached by Mr Barr about the Claimant.

723 It is our judgment that before approaching the members of staff, Mr Barr, had already decided that he could not work with the Claimant. He identified from the Claimant's records the people who were least likely to be pleased for her to be back at work as the people he would speak to about it, in the expectation that they would be unhappy and give him the information he needed.

724 He knew from the board meeting with Mr Jones that he also did not want to continue working with the Claimant. Mr Gooch made no comment in the meeting. Mr Barr's refusal to allow the Claimant to have access to Citrix so that she could at least sort through her emails was indicative of his decision that he did not want her back at work. This happened before he had taken any statements from junior members of staff.

725 Mr Barr also sought legal advice about the situation. It is right that the Respondent should engage legal representation to defend the claim at the employment tribunal but it is likely that he also sought advice about the Claimant's future with the business, which is why he was able to talk to the witnesses about what could happen in the event that the she was dismissed and was successful at the tribunal hearing. This would have let them know that the Respondent was considering dismissing the Claimant and that there was an employment tribunal claim. Ambitious staff could see this as their opportunity to vent any frustrations they had about their past working with the Claimant or any other resentments they had, on her as she was already on her way out.

726 He informed the witnesses that he could see from her records that the Claimant had been targeting some of her colleagues and that the witness was one of them. That statement would have suggested to them that the Respondent wanted certain information from them, which they duly gave.

727 There was no consideration as to whether the information given was true or could be true. The witnesses were not asked to provide details of the allegations against the Claimant until the appeal, by which time they had had sufficient opportunity to talk to each other about it and swap stories or come up with something. Mr Roberts supported the Claimant's appraisal with GI and he and Mr Barr agreed with the Claimant's suggestion that she should continue to appraise him once he transferred to Mr Barr's team. He was to transfer to Mr Barr's team as career progression for him and because Mr Barr's area of work was increasing. Later, his transfer was categorised as him requesting to move away from the Claimant and it is likely that he was the person who was allowed to refer to the Claimant as a *'ballbreaker',* which was then repeated by Mr Roberts as though it was the truth. There is clearly a contradiction in these accounts. There was conflict between the Claimant and CB but, the correspondence referred to by the Respondent as evidence of a problem on the Claimant's side, shows that she tried to build bridges with CB and that this was rebuffed. CB expressed such strong feeling towards the Claimant when she spoke to Mr Barr, that it was surprising that she had made no formal complaint about her issues beforehand, especially as she had apparently been keeping a folder of evidence.

728 The Claimant was not given the opportunity to respond or to defend herself from these allegations. She was only given the evidence on the 5 January for a meeting on 10 January. The Respondent did not require the witnesses to put the grievances in writing, in accordance with its handbook, to give the Claimant opportunity to challenge what was alleged. This was especially unfair when the Respondent reflected on the fact that it/Mr

Roberts had allowed the Claimant to deal with some of the difficult performance issues or to support staff who needed extra support, some of whom resented her for it.

729 In this Tribunal's judgment the Respondent failed to prove that it had a genuine belief that there were personality clashes between the Claimant and Mr Roberts or between her and junior staff such as demonstrated in the case of *Treganowan* set out above where there was a clear breakdown in relationships in the office and it was accepted that that employee had been the cause of it. in contrast, in this case, the Respondent created such evidence as it needed to support such a decision but that is not evidence of a genuine belief, supported by evidence from a thorough investigation.

730 The Respondent's case is that the junior staff had complained about her and that meant that it was impossible to reintegrate her back into the office. However, we had evidence of a few members of staff complaining about KH. As far as we were told, no action was taken against him. Dimitri asked to move out of KH's room. He also preferred to ask the Claimant about work rather than go to KH.

731 VP confirmed that she had complained about GS and the Claimant in the past. The Respondent took no action at the time as it usually did not do so when someone complained about a senior manager. The Respondent had a complaint about SL which they spoke to him about. No further action was taken. CB complained about GS and again, no discernible action had been taken. These are not actual comparators as we did not have sufficient evidence to decide whether they were similar in all respects apart from gender or the existence of protected acts. However, they are informative as they show that it was very unlikely that the Respondent would take formal action against a manager when a junior member of staff complained about style of management. The statements collated against the Claimant by Mr Barr are essentially complaints about style of management.

732 It is our judgment that the difference between the complaints that we were told about in relation to the male managers and the complaints given to Mr Barr about the Claimant was that they were given at his request and encouragement. The Respondent could not be sure that those witnesses would actually have been unhappy if the Claimant returned to work or if they were genuinely worried or upset. They were told that the Claimant was about to be dismissed, that she had targeted staff and that they might be one of those targeted or words to that effect. They were also aware that the Claimant had raised a grievance or complaint against Mr Roberts. If Mr Roberts was a popular manager, that would have also made junior staff take against her.

733 It is this Tribunal's judgment that the Respondent wanted to ensure that the Claimant did not return to work and the issues that Mr Barr could see in her stored appraisal and other files and about which it was already aware with some staff (VP and GI), provided the vehicle for her termination.

734 It is this Tribunal's judgment that the flaws in Mr Barr's process was not corrected by TT. Although she conducted a proper process and a rehearing, this judgment questions the premise on which the reason for the Claimant's dismissal had been based and Mr Barr's investigation started, rather than the dismissal process. It is our judgment that the Respondent did not have a genuine belief that there was a complete breakdown between the Claimant and junior staff because that did not exist until it was created by Mr Barr. Once it was created, the meetings were held, the Claimant was given an invitation and a

right to be accompanied, she had the papers and she was given a right to appeal; which meant that a fair process was followed. The breakdown in the relationships between the Claimant and the directors were as a result of her raising her grievance, making protected disclosures and complaining about unequal pay. In so doing, she may have annoyed and irritated them but she was doing protected acts. Mr Barr revised his opinion of the grievance and referred to it as complete fabrication after the Claimant appealed and submitted her disclosure. That is likely to be because she appealed and because she made the disclosures.

735 The Respondent have failed to prove that the Claimant was dismissed for some other substantial reason. In order for that to be the reason, the Respondent must have a genuine belief that there has been a breakdown in trust and confidence between the Claimant and the directors and junior staff and that must have been caused by her conduct. In our judgment, the breakdown that was in existence by the time of TT's appeal occurred because of the way in which Mr Barr conducted his investigation once the Claimant was declared fit enough to return to work. By the time of TTs appeal it was too late as the relationships were genuinely beyond repair but in our judgment, that was because of Mr Barr's actions and the Respondents' reactions to the Claimant's protected acts.

If some other substantial reason was not the reason for the Claimant's dismissal, was the reason?

736 The Claimant's decision to appeal against the outcome of her grievance and issue her employment tribunal claim, both happened at the end of August. Those factors coupled with the Claimant's conversation with Mr Barr on 8 September were important factors in Mr Barr beginning to seriously consider his future working relationship with the Claimant. Mr Jones did not work with the Claimant but it was his evidence at the hearing that what he described as having seen what the Claimant put Mr Roberts through with the grievance, he was not keen to take her on or to work with her. He came to that conclusion in or around June, which was quite early on in the process. The reference to what she had put Mr Roberts through was to her grievance which she raised after trying for a couple of years to have her complaint of unequal pay addressed. In 2015, the Respondent equalised her pay with KH but did not address the historical difference which was also part of the Claimant's complaint and which arose from the date on which they were both promoted to the same post in 2010. The grievance was not brought until June 2017. It is our judgment that the Claimant's complaints in the grievance were not vexatious. The Claimant utilised the procedure in the Respondent's contract in bringing the grievance.

737 Looking at the circumstances that existed at the time the Respondent decided to talk to members of staff who were unlikely to want her back; the Claimant had already issued her employment tribunal complaint, which named Messrs Jones, Barr, Gooch and Roberts as individual named Respondents. In the letter of invitation to the dismissal meeting, DO told the Claimant that she had been acting as a hostile employee, acting litigiously. It is our judgment that this is a reference to the employment tribunal claim rather than to any letter that the Claimant had sent to the Respondents when discussing her return to work. Also, by the time the investigation was started, the Claimant had already raised her concerns which we have judged were protected disclosures and appealed against Mr Barr's decision on those concerns.

738 Mr Barr took no action until the Claimant was given the all-clear by Dr Drever and her GP to return to work. Mr Barr thought it unlikely that the Claimant would be well enough to return. Once she was given the all clear and she insisted on the Respondent complying with the recommendations for reasonable adjustments from Dr Drever; it is our judgment that Mr Barr along with his fellow directors decided that they no longer wanted to work with her as she had challenged their authority and had caused them difficulties by raising her grievance which included her complaint of unequal pay; made protected disclosures and refused to accept Mr Barr's judgment on both. They were going to set in train a procedure that would end in her dismissal.

739 The Respondents submitted that there was no reason to engineer her dismissal as they had thoroughly investigated her concerns and found nothing there. We are not in a position to judge whether there was substance to the Claimant's complaint. It is our judgment that Mr Barr's decision on the disclosure was a defence of his actions and an explanation of the conversations he had with the Claimant about it rather than the results of his interrogation of the loss prevention files and other evidence. There was no report of any conversation he had with Mr Roberts about the matter. This was odd as the Claimant's concern was about what Mr Roberts knew and what action he had taken. On the Claimant's appeal, the Respondent's response still did not go into what Mr Roberts knew. In the hearing, the Respondent's explanation was that it had all been sorted and the Claimant's disclosure risked unpicking the whole thing. It is likely that the Claimant's actions jeopardised the case, the Respondent's reputation and that of the Club and its relationship with the principal ship owner. This was the main reason why the Claimant was dismissed. it is our judgment that her grievance and the sex discrimination allegation within it also formed part of the reason for her dismissal.

740 It is therefore our judgment that the Claimant's complaint of sex discrimination in the form of her complaint of unequal pay which she pursued between 2015 and 2017 and her protected disclosures which she raised in October 2017 were the real reasons for her dismissal.

741 The Claimant's dismissal was automatically unfair contrary to section 103A Employment Rights Act 1996 and a discriminatory dismissal sections 13 and 39 of the Equality Act 2010.

Judgment

742 It is this Tribunal's judgment that the Respondent has failed to prove a material factor that operated to disapply the sex equality clause. The sex equality clause applied from the date of the Claimant's promotion to the post of associate director in 2010 until her wage was equalised with that of KH in 2015.

743 The Claimant has succeeded in some of her complaints of sex discrimination, victimisation, harassment and of detriment following the making of protected disclosures against the 1st Respondent, Mr Roberts and Mr Barr. The only allegations that specifically referred to Mr Jones were 20 (x) and (xi) but as it is our judgment that the Claimant was not disabled, those allegations fail and are dismissed.

744 The Claimant was automatically unfairly dismissed on the grounds of her protected disclosures contrary to section 103A Employment Rights Act and sections 13 and 39 of the Equality Act 2010

745 There may well be issues of contributory fault that will need to be considered as part of any remedy hearing. It is our judgment that POLKEY is not relevant as our decision does not relate to process. As far as the ACAS code is concerned, there may well also be issues that have to be factored in at the remedy stage. Given the involvement of Mr Barr in the issues raised in the protected disclosure, it would have been appropriate for the Respondent to have used an external person to address the appeal, if not the actual initial investigation. However, both parties may want to make additional submissions on these issues, given the findings of fact set out above.

746 As some time has regrettably passed since this hearing, it is likely to be appropriate for parties to send in written submissions regarding remedy. Bearing in mind the costs to both parties of reconvening the hearing and the possibility of further delay, the Tribunal propose to meet in chambers to decide the remedy but will consider an attended hearing if the parties prefer.

747 The parties are to make written representations to the Tribunal about the remedy issues by 30 July 2020.

Employment Judge Jones
Date: 17 June 2020