



EMPLOYMENT TRIBUNALS

Claimant: Miss Megan Bratt

Respondent: JGQC Solicitors Limited

Heard at: Lincoln Employment Tribunal
On: 15 May 2023, 17 May 2023, 18 May 2023, 30 August 2023
and 31 August 2023, 15 November 2023)

Before: Employment Judge N Wilson
Ms D Newton
Mr J D Hill (present for first 3 days and unavailable due to
Covid on the 30 and 31 August 23)

Appearances

Claimant: Mr O Tahzib (counsel)
Respondent: Ms J Veimou (litigation consultant)

JUDGMENT

1. The claimant's complaint of sexual harassment under section 26 (2) of the Equality Act 2010 is well founded and succeeds.
2. The parties having agreed the terms of settlement between them following Judgment being handed down, the claim is stayed for 40 days from the date of this Judgment to allow the terms to take effect. Unless the parties write to the Tribunal in relation to remedy within this 40-day period the Tribunal will assume remedy has been resolved between the parties accordingly.

REASONS

This decision was handed down and explained orally to the parties on 15 November 2023. Regrettably the request for written reasons was delayed in being passed on to the Judge and I therefore apologise for the delay in providing these written reasons.

Background

1. The claimant was employed by the respondent as a legal secretary from 4 January 2022 until her resignation on 21 February 2022.
2. The respondent is a firm of Solicitors. Marcus Hall is an owner of the respondent business.
3. The claimant initially brought a claim for unfair constructive dismissal and sexual harassment. The claim for unfair constructive dismissal was withdrawn and the matter proceeds as a complaint of sexual harassment only.
4. We had a 331-page bundle and an agreed list of issues.
5. The claimant was represented by Mr. Tahzib (counsel) and the respondent was represented by Ms Veymoo (legal representative).
6. The parties gave express consent to proceeding with one Tribunal member being absent due to Covid as they did not want the hearing to be adjourned. The decision was therefore made by the Employment Judge sitting with one member.
7. We heard sworn evidence from:
 - Megan Bratt
 - Marcus Hall
 - Caroline Batchelor
 - Justine Fletcher
 - Sally Marsden
 - Kevin Salter
8. Shona Nelson's witness statement was in the bundle before us but due to personal circumstances she was unable to attend to give evidence. We advised the parties in the circumstances The Tribunal will be able to apply limited weight to her statement as her evidence was not able to be tested.

Claims and Issues

9. The claimant pursues a claim of sexual harassment under section 26 (2) of the Equality Act 2010. The claimant makes a number of allegations of unwanted conduct which were set out in an agreed list of issues.

Overview of the legal framework.

10. The claimant pursues a claim of sexual harassment under section 26 (2) of the Equality Act 2010.
11. Three forms of behaviour are prohibited under s.26 of the Equality Act (EQA) 2010
 - General harassment ie conduct that violates a person's dignity or creates an intimidating hostile degrading humiliating or offensive environment (s.26(1))
 - Sexual harassment under s.26 (2) and
 - Less favourable treatment following harassment under s.26 (3)
12. The claimant's complaint is brought under s.26(2) of the EQA 2010
13. The definition of harassment is set out in s.26 (1) of the EQA 2010.
14. The definition of sexual harassment is similar to that of general harassment except that the unwanted conduct in question is of a sexual nature.
15. The first limb of the test; 'unwanted conduct' includes a wide range of behaviour including spoken or written words or abuse, physical gestures, facial expressions, jokes and gossip.
16. Unwanted conduct will often arise from a series of events, but a single incident can amount to unwanted conduct and a complaint of harassment if sufficiently serious, but it has to have the purpose, or the effect proscribed by s.26 (1) (b)
17. The second limb of test; the unwanted conduct in question has the purpose or effect of
 - Violating person B's dignity OR
 - creating an intimidating hostile degrading humiliating or offensive environment for him or her (section 26 (1) (b) of the EQA)
18. There are therefore 3 essential elements of a sexual harassment claim under s.26 (2) of the ERA
 - a) Unwanted conduct
 - b) That has the proscribed purpose or effect and
 - c) The unwanted conduct is of a sexual nature

19. The Tribunal takes into consideration the EHRC (Equality and Human Rights Commission) code of practice which states that unwanted conduct can include a wide range of behaviour including spoken or written words or abuse, imagery, physical gestures, facial expressions, jokes, gossip.

20. 1st limb: unwanted conduct.

- Unwanted for the purpose of the relevant statutory provision is essentially the same as 'unwelcome' or 'uninvited'. Whether conduct is unwanted is subjective ie whether it is unwanted from the employees' point of view.

21. 2nd limb: purpose or effect

The statutory definition requires the unwanted conduct has the purpose or effect of:

- Violating B's dignity OR (s.26(1) (b) (i) **or**
- Creating an intimidating hostile degrading humiliating or offensive environment for him or her (s.26 (1) (b) (ii) (the claimant does not have to show both)

22. It is clear from case law that where there are single or multiple events the Tribunal should adopt a cumulative approach rather than measure the effect of each individual incident.

23. In deciding whether the conduct has the effect referred to in s.26 (1) (b) EQA 2010 (ie of violating a person's dignity or creating a hostile environment for person B) each of the following **MUST** be taken into account:

- The perception of B
- The other circumstances of the case

and

- Whether it is reasonable for the conduct to have that effect (s.26 (4))

24. The test therefore has both subjective and objective elements to it.

Findings of fact:

25. The relevant facts are as follows. Where we have had to resolve any conflict of evidence, I indicate how we have done so at the material point. References to page numbers are to the agreed bundle of documents. We have carefully considered all the evidence referred to in the bundle and the oral evidence given at the hearing even if I do not mention it. I will only refer to such of the oral evidence as is necessary to explain our decision. Save for the claimant and Mr Salter all other witnesses who gave oral evidence were employees of the respondent firm of solicitors. All witnesses gave sworn evidence.

26. The claimant commenced her employment with the respondent (a law firm) as a legal secretary on 4 January 2022 until her resignation on 21 February 2022. There was much made of whether she was a paralegal or Mr Hall's secretary. We find she was not Mr Hall's personal secretary. She was interviewed for the role by Caroline Batchelor who is the firm's Office Manager. She produced a reference from her former employer a firm called Milners by way of letter dated 15 August 2022 which was also provided to the respondent before her employment commenced. This letter raised no performance issues and was a very positive reference. At Milners Miss Bratt was employed as a paralegal.
27. The claimant said in evidence initially she thought the respondent's Mr Hall was 'just being nice' to her.
28. Mr Hall's 60th birthday was on 22 January 2022 and the claimant sent him a what's app message with a picture of a pub because he was looking for a nice place to go for a family meal for his birthday. She gifted him a bottle of gin and gave him a birthday card for his birthday. She also stated in evidence the message she sent to Mr Hall with the pub recommendation was sent before he made her feel uncomfortable. This message was sent on 21 January 2022 (page 78 of the bundle is not clear but the date was confirmed and agreed by the parties at the hearing).
29. The first complaint of unwanted conduct is that Mr Hall boasted about the value of his car saying he was 'romantic and would drive it with the top down'. We take note that Miss Bratt in her witness statement (paragraph 10) refers to this comment as an example of Mr Hall trying to make a good impression of himself. We are not satisfied this comment (if said which Mr Hall denies and Ms Bratt was unable to be clear about insofar as when the alleged comment was made) is unwanted conduct of a sexual nature and we therefore have not considered it as part of the course of conduct when making our decision.
30. The claimant also states Mr Hall said to her that they should go out and get drunk and she felt uncomfortable by this comment. However she was also unable to be clear as to a date or any context to this conversation and therefore we do not find this comment was made to her. In her witness statement she says that she thought Mr Hall was trying to make her feel comfortable when he made the comment about going out and getting drunk although she goes onto say it made her feel uncomfortable. In her oral evidence she stated she could not give dates (when asked about this incident) because it was not until a few weeks into her employment when she realised 'how bad it was'. We are not satisfied there was sufficient clarity in the claimant's evidence about this allegation to support this comment was made directly to her by Mr Hall and notably we heard no clear evidence that it was made before the period she states she started to feel uncomfortable.

31. The claimant's own evidence was that it was not until a few weeks into her employment when she realised in her own words 'how bad it was after speaking to my boyfriend and his mum'. Given she accepts she had not begun to feel uncomfortable at the time she sent a message regarding Mr Hall's birthday and the pub recommendation the relevant date for any unwanted conduct to meet the requirements of the subjective test cannot have been before 22 January 2022. In this regard we take note of the text message Miss Bratt sent to Mr Hall on 22 January 2022 saying 'thanks for being a great boss'.
32. On 11 January 2022 the claimant says Mr Hall questioned her about her private life and whether she was in a relationship. Mr Hall denied in oral evidence and in his statement and in his response to the claimant's grievance that he had questioned the claimant about whether she was in a relationship. When asked in evidence he denied being in the room during the interview when she mentioned moving because of her relationship. It is apparent from his evidence that Mr Hall did know she was in a relationship from his evidence about the claimant's boyfriend Josh calling into the office to ask for a day off for her birthday. Mr Hall also states at paragraph 33 page 140 of the bundle that the claimant would often mention her partner in fond terms. Whilst it is denied by Mr Hall that he questioned her relationship status on 11 January 2022 we find it is more likely than not that Mr Hall when getting to know a new employee may have asked such a question. We do not find asking if you are in a relationship in and of itself constitutes unwanted conduct of a sexual nature. This comment is also alleged to have taken place before the period the claimant states she began to feel uncomfortable and therefore we find this does not meet the subjective part of the statutory test.
33. On 25 January 2022 Mr Hall sent the claimant a text which said '*Hi sweetheart see you in the morning*' with two kisses at the end of the message before deleting it. We find the content of the message was not able to be challenged by Mr Hall as when questioned he accepted, he deleted it because he did not know what he had sent. However, his evidence as to how he came to send the message was plausible; he was having a bottle of wine, was speaking to several people at the same time via what's app messages. He had opened up the claimant's what's app message to look at the pub she had sent details of in relation to his forthcoming birthday and he accidentally sent a message which was meant for someone else. When he deleted the message he also sent a message to the claimant saying it may have been 'a bit naughty for a lady'. We were satisfied with his explanation as to what he was doing that evening and find that he sent a message to the claimant inadvertently which he panicked about thinking he had sent a message that was intended for his girlfriend which is why he made the comment about it being 'naughty for a lady'. We do not accept the claimant's proposition that this was a message intended to test the water with her. Mr Hall's explanation is supported by his instantly deleting the message to Miss Bratt apologising and reference to sending a message by mistake and we are satisfied this supports his explanation to the Tribunal. We

find the claimant was not offended at that time which is evidenced by her response to Mr Hall. In fact, she confirms *'oh don't worry at all I didn't think anything of it'* in her response with smiley face emojis.

34. On 26 January 2022 the claimant alleges Mr Hall belittled her in front of Shona Nelson in his office after she made a mistake. Ms Nelson was not available to give evidence and although the Tribunal takes note of her written statement, we are in difficulty in attaching much weight to it in the absence of her evidence being tested. However, we do note Ms Nelson refers to the meeting having taken place in her statement and says the meeting was held after a complaint was received from a client. Mr Hall's evidence was that he explained to the claimant the importance of not making mistakes, not feeling pressured and to take her time. Ms Nelson's statement at page 117-118 of the bundle states Mr Hall spoke nicely to the claimant and was kind throughout. Mr Hall in evidence gave an account consistent with this saying he had hoped things would improve when he was questioned about why no formal disciplinary action was taken. Miss Bratt in her evidence also stated that Ms Nelson was supportive. We find that given a mistake was made and a complaint was received (which was unchallenged evidence) Mr Hall will have had to address the importance of this with the claimant but we heard no real evidence to support the allegation of belittling. Miss Bratt alleges a comment was made by Mr Hall (as evidence of belittling) to the effect of *'maybe you're not as experienced as I thought'*. Mr Hall denies this. In any event we do not find even if this was said that this amounted to unwanted conduct of a sexual nature, nor do we find it meets any objective test as to the effect it had even if said.
35. The claimant alleges that Mr Hall referred to the what's app message sent the night before during this meeting, apologising and saying the message was intended for his daughter. Mr Hall when questioned about this apology said it did not happen and that he did not mention the message was for his daughter at this meeting on 26 January 2022. Mr Hall admits that before the claimant's performance and mistake was discussed he mentioned the message at the start of the meeting in front of Shona Nelson and Miss Bratt explaining that he had deleted it. When asked whether he had mentioned it was meant for his daughter Mr Hall responded no. He said he did not know the contents of the message until later when the grievance was raised by the claimant and that is when he thought it was a message for his daughter. Mr Hall therefore denied mentioning the message was for his daughter at this meeting, but he admits a discussion about the message being sent in error and to him deleting it with the claimant at the start of the meeting. It is a pity Ms Nelson was not present to give evidence as her statement is notably silent on what was said about the what's app message exchange. She notably does not refer to any such discussion having taken place (either in her witness statement or her grievance statement). We find the what's app message was referred to by Mr Hall at this meeting. Mr Hall's evidence is he did not mention it was a message to his daughter at this meeting on 26 January 2022, but he did discuss it in front of

Ms Nelson because he was anxious that he may have sent a message to Miss Bratt which was intended for his girlfriend. The claimant says he also mentioned the what's app message in this meeting but says this is when he first refers to the message being intended for his daughter. Mr Hall says he did not know the content of the message until the claimant brought this claim which is when he realised given the words used it must have been one intended for his daughter. Given the dispute between them we have considered documentary evidence in the bundle including the fact that Ms Nelson makes no reference to this conversation in any of her statements (despite it being raised by the claimant as part of her grievance and Ms Nelson being a witness and present at this meeting so presumably she was in a position to corroborate Mr Hall's evidence that he made no mention of the message being for his daughter). Further the claimant's letter of claim from her solicitor dated 22 February 2022 is consistent with Miss Bratt's evidence that Mr Hall mentioned the what's app message was for his daughter in the meeting on 26 January 2022. Whilst he denied in evidence knowing the contents of the message until after the claimant presented her claim and denied referring to the message being from his daughter in that meeting it is difficult to see how the claimant would know to refer to the message being from his daughter (which in fact Mr Hall later admits to saying but not until after the grievances have been raised by her) in the letter from her solicitors unless this is something which was actually said by Mr Hall before she resigned. We therefore find the comment made about the what's app message being for his daughter was made about the message Mr Hall sent on 25 January 2022 during the meeting on 26 January 2022. Does this as the claimant seeks to persuade the Tribunal represent a shifting account which puts Mr Hall's credibility into question given, he specifically refers to the message being 'naughty for a lady' on the evening he sent it. It is entirely feasible he initially thought he had sent a message intended for his girlfriend and deleted it. It is also entirely feasible that he panicked about the contents given he admitted in evidence the messages between him and his girlfriend that evening were of an intimate nature. It is troubling why the following day he chose not to clarify this in front of a witness namely Ms Nelson (ie make it clear he thought he may have sent a personal message intended for his girlfriend) as opposed to saying it was for his daughter. It is also notable if he thought it was for his girlfriend and was concerned about the contents, he chose not to provide this explanation when he discussed the message in this meeting.

36. The significance of the daughter comment is first of all relevant to whether it affects the credibility of Mr Hall who denies this and many other comments being made as alleged by the claimant and secondly whether therefore the message sent the night before to the claimant was unwanted conduct of a sexual nature given the contents could be construed as an advance and was deleted and then followed up with it being 'naughty for a lady'. Initially it did not appear to make the claimant feel uncomfortable because she accepts his apology in the what's app exchange because she takes it at face value. However importantly the daughter comment, the next day could reasonably

result in the start of the claimant feeling uncomfortable about Mr Hall's intentions because he has changed his explanation from the explanation given in the what's app message, and saying it was a message for his daughter is incongruous with saying the night before that the message was 'naughty for a lady'. We find Mr Hall's comment saying the text message was meant for his daughter is what led the claimant to believe Mr Hall was trying to cover up something (ie saying one thing to her and one in front of witnesses). Following this conversation, it is clear Miss Bratt feels very uncomfortable regarding the message which was deleted and reasonably assumes it had indeed been intended for her. The timing of this message and the meeting is also consistent with her saying it was not until a few weeks into her employment that she started to feel Mr Hall's behaviour or conduct was making her feel uncomfortable. Whilst we find Mr Hall did not intend to send the message to Ms Bratt as an advance it was reasonable for this conduct to have the proscribed effect. Whilst the effect was not immediately after the message was sent (because she initially accepted Mr Hall's explanation that it had been sent by mistake was a reasonable one) it was only once he provided a different account inconsistent with what he had said to her that the proscribed effect took place. We find this effect was close enough to the conduct and linked to the inconsistency in explanation provided by Mr Hall so as to meet the subjective part of the statutory test. Given the reference to the message being meant for his daughter we find it reasonable for Miss Bratt to also then believe Mr Hall must have lied about the message not being intended for her and for her to reasonably assume it was meant for her and it was reasonable for her to feel in those circumstances that it was inappropriate. We find from this point (the conversation about the what's app message on 26 January 2022) Miss Bratt feels very uncomfortable about things she alleges Mr Hall subsequently says to her.

37. On 26 January 2022 (the same day as the daughter comment) the claimant says Mr Hall told her he was single and went into graphic detail about his ex partner who he caught cheating on him with a 22 year police officer and described how he had found a used condom on the floor. Mr Hall does not dispute this conversation took place and admitted in evidence he made the reference to the used condom which with the benefit of hindsight he regretted referring to. Much was made of Miss Bratt's use of the word 'graphic' and the respondent's representative made much of the fact that this was not something that could be considered to be 'graphic detail'. We find that discussing matters of one's private relationships in such detail to include reference to a used condom and details about his ex-partner cheating on him is sufficient to amount to unwanted conduct of a sexual nature. Mr Hall accepted in evidence he did refer to the used condom. The guidance to the EHRC code of practice specifically refers to an example of sexual harassment including a person discussing their own sex life. We also accept the claimant's evidence that she found this disgusting and we find that she felt offended uncomfortable and vulnerable because of the earlier conversation in the day, namely that Mr Hall had changed his account about the what's app message being meant for his

daughter. We find in those circumstances that the subjective part of the test is met. It is entirely reasonable for a junior and new member of staff to feel a conversation of this nature by a senior Partner in the respondent firm of solicitors created an offensive environment such that s.26 (1) (b) (ii) is met. Whilst Mr Hall denies this conversation took place on 26 January 2022, he admits he did say what the claimant alleges, and he was not able to say when this conversation took place. Further it is telling that his own statement for these proceedings omits to mention the detail of the conversation when he admits in oral evidence that he talked about his ex-girlfriend cheating on him and to finding a condom. It is also telling he has omitted to refer to this conversation when making his statement in response to the claimant's grievance/letter of claim from her solicitors given they specifically refer to this incident. This does call into question how candid he was prepared to be until under oath.

38. On the same date; 26 January 2022 the claimant says Mr Hall also talked about his ex wife. She says he referred to her as being beautiful and that she did not have fake breasts nor did she try to be like the girls on 'love island'. Miss Bratt said he was looking directly at her when making the breasts comment which she believed was aimed at her because she says it was obvious she has had plastic surgery. She says she found the comments degrading and humiliating. The claimant stated this conversation took place on 26 January 2022 but in oral evidence it was clear she was unable to be clear about all the dates of each alleged incident. She admitted it was hard to be clear as in her words there were 'so many incidents'. Mr Hall however was also unable to say what date a conversation about his ex wife took place albeit he has admitted in evidence and in his witness statement a conversation about their separation being amicable did take place. The claimant admitted she was not able to accurately recall the date of every conversation. Her initial letter of claim did not refer to this conversation being on the same date as the meeting on 26 January 2022. In the letter dated 23 March 2022 referring to 'for the avoidance of doubt' (page 156) the claimant alleges Mr Hall spoke to her on 2/3 occasions about his ex wife and we find insufficient evidence to support this conversation took place on 26 January 2022. However, we do find a conversation did take place where Mr Hall referred to him and his wife separating amicably. He denies referring to her breasts during that conversation. We looked to the contemporaneous letters from Miss Bratt's solicitors where notably no mention of this conversation is made. The mention of love island is made in the letter from the claimant's solicitors dated 3 March 2022 (page 131) with reference to her not having fake breasts or trying to be like the girls on love island. The respondent's witness statements were prepared on 23 February 2022 after the initial letter from the claimant's solicitors. We found Mr Hall on balance was clearer in his evidence about the context of this conversation and we are satisfied that he did not refer to his ex-wife's breasts nor compare her to a love island contestant. Had we found he did say it we cannot be satisfied it was a comment made before the period the claimant states she started to feel uncomfortable so as to meet the subjective part of the statutory test.

39. On 26 January 2022 Mr Hall is also alleged to have told the claimant whilst he was with his ex-wife, he was seeing younger women, and they would engage in threesomes, and this led to his divorce. The claimant referred to Mr Hall's ex wife meeting him at the train station to ask for a divorce. Mr Hall categorically denied a) having lived close to a station at that time and b) discussing having threesomes with the claimant. We find it is quite feasible in an office environment such as this the claimant could have overheard or been part of a different conversation where Mr Hall's marriage/divorce was mentioned and discussed. It is clear from the witness evidence as a whole that there were discussions about individuals' private lives. We were not satisfied by Miss Bratt's evidence in relation these comments. There was no real detail or context provided by her of how this conversation arose and when and where this conversation took place and we find she could very well be mistaken that this was something Mr Hall had directly said to her. We find a more general conversation about him having amicably divorced from his ex-wife had taken place on some occasion. Mr Hall admitted this. We also took note of the other evidence and that the initial letter of claim does not refer to the date when this is alleged to have happened, and we are not satisfied the claimant has discharged her burden of proving when this alleged conversation took place and what was precisely said.
40. Miss Bratt alleges Mr Hall frequently suggested the claimant's boyfriend would cheat on her. We do not find this alleged comment about cheating constitutes unwanted conduct of a sexual nature. Even if we had found it satisfies this definition (which we do not) we find that the comments made about men cheating were made by Mr Hall in the context of his experience in a family law practice that it was usually the men that cheat. We accept Mr Hall's evidence that because the claimant then looked troubled by this and in light of Ms Nelson saying words to the effect of 'you cannot say that' he qualified this to reassure her and said to Miss Bratt *'don't worry I'm sure your partner wouldn't cheat not all men do'*. We find the comments were not unwanted conduct of a sexual nature. We do not find that this comment, which we find was a general assertion, was intended make her doubt her relationship with her partner as she contends, and we also do not find the objective part of the statutory test was met in relation to this allegation.
41. Miss Bratt alleges Mr Hall would stand close to her and comment on her appearance. There were a number of occasions the claimant alleges Mr Hall commented on her appearance. One was in the kitchen on 2 February 2022 where the claimant says Mr Hall leant against the wall with his arms folded and with a 'creepy smile' on his face commented that she looked nice and then asked if he was allowed to say it. The claimant says she found this violating (particularly in reference to the am I allowed to say it comment). She told him he needed to be careful about what he said and Miss Bratt then made reference to Mason Greenwood (a footballer who at that time was accused of attempted

rape and controlling and coercive behaviour)). The claimant says Mr Hall in response stated, 'yes *but* he was a rapist'. Mr Hall denies this conversation with the claimant and says that he said to another employee, Sally Marsden 'have you had your hair done you look nice -am I allowed to say that' and Ms Marsden responded, 'you are'. This however is inconsistent with Ms Marsden's witness statement where not only does she make no reference to this comment being made to her but she categorically says (para 5) '*I have never witnessed Mr Hall discussing the appearance of staff or women*' which is at direct odds with Mr Hall purporting to have made this comment about appearance to Ms Marsden and not Miss Bratt. Mr Hall in his grievance statement says he never commented on Miss Bratt's appearance (save in reference to her nails in the context of how she was able to type given their length). Notably he never mentioned until his oral testimony that he had made a comment about Ms Marsden's appearance. We take note of the contemporaneous what's app messages the claimant sent that day to her boyfriend (pages 83 and 84 of the bundle) and find that on this day Mr Hall did say to the claimant that she looked nice and followed this with; am I allowed to say this. We accept the claimant's evidence that she believed he had a 'creepy' smile on his face when making the comment. The claimant was consistent in evidence about this conversation, and we find it is more implausible that her and her boyfriend would have contrived the what's app messages about this comment between them. We have also taken account of the what's app messages as a whole following this comment being made by Mr Hall. It is clear from those contemporaneous messages the claimant stated she felt anxious about it and in her words '*.freeze and don't know what to say*'. In her oral evidence she stated she attempted to shut down the conversation by reference Mason Greenwood and her what's app messages to her boyfriend also say she referenced Mason Greenwood in response to which she alleges Mr Hall says *but* he was a rapist. Her witness statement notably says his response was that Mason Greenwood *is* a rapist [para 21]. We find in response to the comment Mr Hall made about her looking nice and whether he was allowed to say it, Miss Bratt asked the question '*you've got to be so careful these days did you read the news about Marcus Greenwood?*' (this is confirmed in the what's app message) and that Mr Hall said in response he *is* a rapist. There is no mention within these messages about Mr Hall standing too close to the claimant and given the detail the claimant is giving to her boyfriend at this time about what had happened to make her feel uncomfortable if Mr Hall had been standing too close to her we find it would have been included in the messages. We are satisfied from the evidence that given the size of the kitchen two people in the same space would have felt like you were in close proximity as distinct from him deliberately standing too close. We find the comment made about the claimant looking nice was made as was the question 'am I allowed to say that'. We believe the claimant did subjectively feel this was unwanted conduct as is evidenced by the contemporaneous what's app message to her boyfriend, however we do not find the comment about her looking nice meets the objective part of the statutory test.

42. I will deal with the allegations pertaining to Mr Hall's relationship with his girlfriend called Tanya together. Later the same day as the Mason Greenwood comment Mr Hall is alleged to have said he was seeing a young beautiful Spanish lady who was driving him crazy. He is also alleged to have said he wanted to be with someone young and beautiful. The claimant alleges these comments made her feel very uncomfortable. She concedes in her statement he would speak to others about Tanya but then alleges he did not call them into his office to speak to them about her and did not speak to them about Tanya in the same way he did to her. Miss Bratt says she found the comments unacceptable and inappropriate and was offended by them. She also alleges he showed her different photos on his phone of Tanya to those shown to other staff members. She refers to two alleged comments made on 16 and 17 February 2022.
43. On 16 February 2022 Mr Hall is alleged to have said he was falling for a Spanish lady saying she was beautiful and young enough for him but that she was too far away and on 17 February 2022 Miss Bratt says he said he wanted to be with someone young and beautiful and that he preferred women with dark hair showing her a picture of Tanya in a sexual position and a video of her bent over blowing a kiss .
44. The claimant's statement says he then started to talk about Tanya saying she was driving him crazy, and this made Miss Bratt feel uncomfortable. Mr Hall stated he could not recall the dates of the conversations about Tanya but he spoke to others not just the claimant about her. We find he therefore spoke about his girlfriend to Miss Bratt and others in the office. He denies saying she was driving him crazy but accepts he may have said she was beautiful and 'perhaps too young for me'. He also accepts showing Miss Bratt one or two photos and a video but says there was nothing untoward about them and he also showed them to others in the office and his daughter. He says the pictures were of his girlfriend in public so she was clothed. However, in relation to the video he accepted this was of her in a skirt leaning forwards in front of a mirror blowing him a kiss. Whilst he denies you could see her bottom as the claimant alleges it is entirely feasible given that she was by his own admission in front of a mirror leaning forward in a skirt some part of her body under the skirt may have been visible which the claimant saw (given there was a mirror behind her). It is noted he accepts in this video she was leant forwards and blowing him a kiss in a skirt. We are not persuaded that the video showed Tanya's bottom. We find the remaining photos were of Tanya in public and more likely than not she was clothed based on Mr Hall's and the other witnesses testimony as to what pictures and videos he shared. We find the claimant did find this uncomfortable at the time.
45. On 2 February 2022 there is an allegation made that Mr Hall said it must be difficult for her when men stare at her when Miss Bratt told him she was going

to the gym. The claimant in her statement says this happened after she helped Mr Hall book a game of tennis through an app on his phone as he was going to play tennis after work. It is notable this is alleged to have happened on the same day as the Mason Greenwood comment and the comment about Tanya driving Mr Hall crazy. We do not find the claimant has been able to establish that if this comment was made (which we heard no clear evidence to be satisfied that it did) that it was said on this date and after the time that she says she started to feel uncomfortable by Mr Hall's conduct. We do not find the claimant has discharged her burden of proof in relation to this alleged comment. Miss Bratt's evidence was unclear about this conversation and when it occurred.

46. On 4 February 2022 the claimant says Mr Hall deliberately remained at his PC such that the claimant had to lean over him. She says in doing this she had to adverts from dating sites showing women in lingerie and provocative positions on his face book wall. It was accepted by Mr Hall that he did ask the claimant to set him up on Facebook. Mr Hall says she she did this on his phone and took his phone away. We find it more likely than not that installing a face book app will be done via your phone than on an office computer. Therefore, we are persuaded by Mr Hall's evidence in this regard and find that the claimant took his phone from him to do this and Miss Bratt may be mistaken in her recollection about the device she was using. Whilst doing this we accept Facebook adverts may have come up from dating sites containing pictures of women in lingerie and in provocative positions. Mr Hall simply denied this but he also admits Miss Bratt took his phone away and therefore we find he would not have known what images were therefore displayed. We do not find Mr Hall intended for the clamant to see any inappropriate images when asking for Miss Bratt to reactivate his Facebook account. We do find seeing images of scantily dressed women from dating sites on his Facebook profile amounts to unwanted conduct of a sexual nature. We find it made the claimant feel uncomfortable and she found it inappropriate and offensive.
47. The claimant says Mr Hall sent her a Facebook friend request on 5 February 2022 but then retracted it. Mr Hall gave evidence that he sent friend requests to all of the people in the office including the claimant and this was corroborated by the evidence of Sally Marsden Shona Nelson and Caroline Batchelor. We are not satisfied that this amounts to unwanted conduct of a sexual nature even within the context of the other conversations and allegations when considering them as a whole. The claimant was not the only one who was sent the request, and it was also not disputed that Mr Hall deleted the account 3 or 4 days later which is also corroborated by other witnesses. There was also notably no evidence that he had followed up the request sent in any way for example by asking the claimant why she had not accepted the request if the request was indeed meant specifically for her.

48. On 4 February 2022 Mr Hall is alleged to have told the claimant he had received a friend request from 'Leanne' and that he said to Miss Bratt that she looked nice 'just like you'. We accept Mr Hall's evidence that he commented that Leanne looked nice but did not say 'just like you' to the claimant. Mr Hall gave unchallenged evidence this conversation took place with Caroline Batchelor sitting opposite them, so it was not something he said while alone with the claimant. We are not persuaded that he said 'just like you' to the claimant in this context. We also do not find this was unwanted conduct of a sexual nature.
49. On 7 February 2022 Mr Hall is alleged to comment about watching Miss Bratt type all day. We accept Mr Hall's plausible explanation that his comment about Miss Bratt's nails was made when she had only typed 3 letters and he was concerned about her ability to type letters because of the size of her nails. It is feasible Miss Bratt felt Mr Hall was 'staring' at her because he was watching her type in order to bring up the concern regarding her nails affecting her ability to type. We also do not find this is unwanted conduct of a sexual nature.
50. On 7 February 2022 Miss Bratt says Mr Hall enquired whether she would continue working for him if she split up with her boyfriend. Mr Hall denied this conversation taking place. We did not hear any cogent evidence that Mr Hall would imply her relationship with her boyfriend would end. We find the claimant has attributed the more general conversations taking place in the context of a law practice regarding breakdown of relationships and men cheating to be personal about her own relationship. The claimant did not give any persuasive evidence about this, and we find these were general conversations about men and men cheating which were not directed to the claimant nor about her personal relationship. We are not satisfied that these more general comments constitute unwanted conduct of a sexual nature.
51. Miss Bratt says Mr Hall would ask the claimant about her type referring to what she found attractive. The claimant refers to 2 occasions where she is clear that he asked about her type. One occasion was when he pointed to a man with a beard at a bus stop outside the office. Mr Hall denies this saying you cannot see the bus stop from the window which is where the claimant in her evidence stated he pointed to someone being in this context. Much was made of the bus stop not being visible from the office and we note the claimant's evidence was clear about there being 2 occasions when he referred to her type. She said that *'one of them there is a bus top outside work and he asked me to look through the window and he asked me to look at the guy who was stood at the bus stop and said is that your type'* and *'another occasion I was working on a brief to counsel and there was a text or what's app exchange in the client's file and there was a picture of someone in the file, he was bald and Mr Hall pointed to his picture and said is that your type or is he too old for you and that was quite a contrast from the guy at the bus top who was younger and had a beard but the man in the picture was bald and about 50 years old'* She was very clear

and specific about the wording Mr Hall used and that she felt uncomfortable because she felt the questions were to find out about what her type was. We found Mr Hall's response to this allegation defensive as he responded with '*I have no interest in her type*'. In relation to the occasion when Miss Bratt was working on a file and she says he asked her if this was her type, we found Mr Hall's evidence unclear about this; saying he did not recall the occasion working on the file and he had no recall of the picture of Mr R (the client). It was put to Mr Hall the picture was of a bald man in his 50's and he accepted this described Mr R. We are persuaded by Miss Bratt's much clearer evidence about these 2 occasions and find Mr Hall did enquire about her type on two occasions although we cannot make a finding as to when these conversations happened as the claimant was unable to provide a date at all for when these comments were made. This is important for us to be able to make a finding that these comments meet the statutory test both subjectively and objectively. We find the claimant has not met the burden of proof about when these comments took place. Given Miss Bratt says she did not start to feel anything was unusual for a few weeks and certainly there were no issues before the 22 January 2022 the timing of these comments is important, and we are not satisfied there is sufficient evidence they were made after this date.

52. Miss Bratt states she felt she was 'paraded' in front of a friend of Mr Hall's (Kevin Salter) who also worked for the firm. We heard no evidence that anything inappropriate or unusual took place during this meeting. We find this was an ordinary usual introduction made to introduce Miss Bratt to someone who worked with the firm. We found Mr Salter to be a credible witness and his account is consistent with that of Mr Hall's in relation to what was said during this meeting.
53. Mr Hall is alleged to have told the claimant about the husband of a woman Mr Hall was in a relationship with confronting him saying '*that's my wife you've been fucking*'. The claimant says this conversation happened after Mr Hall's birthday and that Mr Hall told Miss Bratt the woman in question wanted to be with him while her husband was away because she '*couldn't help herself*'. We note the allegation was made in Miss Bratt's oral evidence in the same terms as was put by her solicitors in their letter dated 3 March 2022 [page 132]. Mr Hall's response was a denial that this ever happened both in terms of the affair and his mentioning it to Miss Bratt. We were troubled about the lack of context provided about how this conversation arose and found the evidence was unclear about this allegation. We were not persuaded that it was Mr Hall who discussed this with Miss Bratt (if it was indeed discussed) as opposed to office gossip Miss Bratt had heard. However unwanted conduct can be witnessed or overheard by a person and need not necessarily be directed at the claimant. We find this is likely to have been office gossip overheard by Miss Bratt and we accept she found this inappropriate however there was no clear evidence about the context of the conversation and when it took place for us to be satisfied, we could consider it as part of the course of conduct after the 22 January 2022.

54. After Mr Hall's birthday party he is alleged to have told the claimant that his friend's wife had put her hand 'up his leg'. We find this conversation did take place, but we are not persuaded that he was talking only to Miss Bratt albeit this is how it is asserted in the list of issues. Miss Bratt's own witness statement says he mentioned this in the office in front of everyone. Mr Hall was clear in evidence that he was talking to Shona Nelson and that although the claimant was sat opposite typing she was not party to the discussion. Whilst we accept the claimant may have felt this was a personal conversation and felt uncomfortable, we do not find, taking into consideration evidence heard about the content and context of this discussion, that the objective part of the statutory test is met in relation to this conversation.
55. Mr Hall is alleged to have brought the claimant mini eggs and left them on the claimant's desk. We are not persuaded that Mr Hall bringing in sweet treats was specifically for the claimant as opposed to him bringing in chocolates for the entire office. We are persuaded by Mr Hall's and the other witnesses' evidence that he regularly did this for the office, and they were not bought specifically for Miss Bratt. In any event we do not find this would constitute unwanted conduct of a sexual nature.
56. On 16 February 2022, Mr Hall called into the office and asked if he had left a loaf of bread. On finding that, he had, Mr Hall shouted words which the claimant specifically says were 'fuck, shit, bastard wank, right ok'. We find a telephone call was made on this date by Mr Hall to the office which the claimant answered. In evidence he said he does not *think* he would have used that sequence of words, and it was clear that he thought about it later and decided that the likely words he used were '*shit bugger damn*'. It was clear that this is what he *thinks* he would have said as opposed to having a clear recollection of the actual words used. When pressed he admitted he may have said 'fuck'. The claimant on the contrary was very clear about the words he had used including the words 'fuck' and 'wank'. We preferred the clearer evidence of Miss Bratt as to this conversation and we find he did use the words alleged by the claimant including 'fuck' and 'wank'. We find that he did not swear at the claimant, but the words were said out of frustration for having left the bread in the office. He also says Shona Nelson and Caroline Batchelor told him Miss Bratt had laughed immediately after the conversation, but Ms Nelson's evidence was not able to be tested. Caroline Batchelor in evidence was not asked about this interaction and Justine Fletcher was questioned about it and said she did not hear the words used. We do not find Miss Bratt thought the comments were funny or appropriate. We find the words 'fuck' and 'wank' are sexual words. Was it sufficient in the context of this telephone call to meet the objective part of the test. We find the nature of the language used left Miss Bratt feeling very uncomfortable and she clearly found the language inappropriate, and we find this conduct satisfies the subjective part of the test in that it created an offensive environment for her.

Conclusion

57. Taking into consideration the subjective and objective parts of the statutory test we have looked at the incidents which we find did take place as part of our findings of fact and considered the conduct as a whole, the perception of the claimant, the other circumstances of the case and whether it was reasonable for the conduct to have that effect.

58. The conduct we found did amount to unwanted conduct of a sexual nature is:

- a) **The text message inadvertently sent to Miss Bratt on 25 January 2022** became an issue the next day when Mr Hall gave a different version in the meeting on 26 January 2022 to that which he sent to the claimant saying the message was 'a bit naughty for a lady'. Instead on this occasion he said in front of a witness that it was meant for his daughter. This contradiction reasonably led the claimant to believing the message had been intended for her and that by virtue of his comments that 'it was naughty for a lady' she felt it was inappropriate. The claimant's unchallenged evidence is the message said '*Hi Sweetheart see you in the morning*' with two kisses. At this point we accept the claimant, due this changing account, believed the message was intended for her and it was unwanted and unwelcome from her perspective. We find the message, given at this point the claimant believed it to be for her was unwanted conduct. We find given the reference to the words 'sweetheart' with the kisses and the follow up messages referring to it being 'naughty for a lady' does make the conduct of a sexual nature particularly where it was compounded by the differing account given by Mr Hall the following day that it was meant for his daughter. The conduct must however also have the purpose or effect of violating either the claimant's dignity or creating an intimidating hostile degrading humiliating or offensive environment. Given the content of the message and the fact she believed Mr Hall lied about it being intended for his daughter we find it had the effect of creating the requisite offensive environment when taken as part of the conduct as whole. We do find that this conduct meets the objective part of the test.
- b) **The second incident we find did happen was Mr Hall telling Ms Bratt about his ex partner whom he caught cheating on him** with a 22 year police officer and that he referred to there being a used condom on the floor. We find this was unwanted conduct of a sexual nature and that it had the effect of creating the requisite offensive environment because talking about one's own sexual relationships in this level of detail with someone who is a new and junior employee and not a friend of Mr Hall's would undoubtedly have the effect the claimant is alleging it had, namely that she found it offensive and uncomfortable. We find it had the proscribed effect of creating an offensive environment for her.

- c) **Mr Hall's comment about the claimant looking nice and 'am I allowed to say that'** is alleged to have been made on the 2 February 2022 but the contemporaneous what's app messages indicate this was a comment made on 1 February 2022. We find Miss Bratt felt it was uninvited conduct and we find it was of a sexual nature. We find it must have had the effect of creating the requisite intimidating or offensive environment for her especially because she refers to someone who was being investigated at that time about serious allegations about rape and controlling and coercive behaviour. To respond with this comparison demonstrates by this point how uncomfortable she was and that she found it offensive and inappropriate which is also supported by her contemporaneous what's app messages to her boyfriend about it.
- d) **On 4 February 2022 we found Miss Bratt saw adverts from dating sites which showed images of women dressed in lingerie in provocative poses on Mr Hall's Facebook** account when she was assisting him reinstall the app. We find Miss Bratt did find this inappropriate and was uncomfortable immediately. We find this this had the prescribed effect of creating an offensive environment for her and we find the effect was reasonable.
- e) **On 17 February 2022 we found Miss Bratt was shown a video of Mr Hall's girlfriend Tanya bent forwards/leaning towards the camera in a skirt blowing a kiss.** We find this did happen and she may have seen part of Tanya's body under the skirt given the admission that she was leaning forward and there was a mirror behind her. We do not find that her bottom was on display because the other witnesses saw the same video and we are not persuaded that she saw a different video to the others. There is no real evidence to support the assertion that she was shown a different video to the others. Whilst the other witnesses may not have found this offensive this is immaterial in so far as Miss Bratt's subjective feelings about being shown the video are concerned and we accept her evidence that she found the video inappropriate at the time. We do however take note that no one else gave evidence that the content of this video was deemed inappropriate when considering the conduct as a whole particularly the objective part of the statutory test.
- f) **We found Mr Hall did ask Miss Bratt about her type** but found she had not discharged the burden of proof as to when these comments took place which is important when looking at whether the conduct had the requisite effect . We are therefore not able to find that these comments formed part of the course of conduct we are considering as a whole.
- g) **We find Mr Hall did refer to someone having put their hand on his leg after his birthday party** but we did not find he had this conversation directly with Miss Bratt. We accept Mr Hall had the conversation with Shona Nelson. We do not think this conversation in isolation, had Miss Bratt overhead it or been told

about it, would have had the requisite prescribed effect. We do however note it for the purpose of considering the conduct as a whole.

- h) **We find Mr Hall did use the words Miss Bratt alleges he used when he called the office having left the loaf of bread. We found Mr Hall did use the words ‘fuck’ and ‘wank’ and other expletives.** We accept the claimant’s clearer account of the words used. Whilst other testimony referred to her laughing it off, it is entirely feasible she may well have appeared to do so to her co workers, but this does not mean she did not find it inappropriate or uncomfortable or that it did not have the proscribed effect of creating an intimidating and/or offensive environment for her. We find this conversation took place of 16 February 2022. She went into work on 17 February 2022 which was her last day. Miss Bratt then called in sick on 18 February 2022 because she says she could not face going into work anymore and resigned on 21 February 2022. Her witness statement states that she did not feel safe, that the environment was one where they accepted the use of such language, and this was an example of Mr Hall’s behaviour and evidence of how it would be just laughed off by others. Her evidence is that she felt scared and intimidated to raise any concerns with him. It was put to her why did she not raise anything with the others, and much was made of her seemingly laughing or smiling and not showing any outward signs of distress. The contents of the respondent’s witnesses grievance statements are very telling as to the nature of the environment the claimant was working in. It must have similarly been evident to Miss Bratt that this was a group of people who had worked together for a very long time, were comfortable and familiar enough with each other to discuss their personal lives in detail, to use language that subjectively none of them seem to consider inappropriate in a workplace and we find it reasonable for the claimant to have not considered it a safe space for her to raise that she may not have held the same views about such topics of conversation, that they made her feel uncomfortable nor that she was offended and in some instances felt violated. It is all too easy for things to be said and given the label of ‘banter’ or that it was just a joke but this plainly cannot be right. It is immaterial whether the conduct is acceptable to others or is indeed common in the workplace.

59. The claimant by her what’s app message of 11 February 2022 clearly had already decided to leave. It is clear from a number of messages that by this date she found the environment unbearable. There is a very troubling message sent to her boyfriend saying she wished she was dead. Taking all the evidence as a whole including the documentary evidence it is clear that Miss Bratt became increasingly concerned, anxious and upset and that the environment had become unbearable for her.

60. The respondent seeks to persuade us that Miss Bratt had started to make mistakes at work and expects us to find that in response to her worrying she was not ‘up to the job’ and was at risk of losing the job she started to contrive what’s app messages between herself and her boyfriend. We find this a very

serious proposition which was not supported by any evidence. It is clear Mr Hall and his witnesses made much of him not being interested in Miss Bratt and took offence at the notion of 'grooming' (raised by Miss Bratt's boyfriend in a whats app message). However, in focusing on this they have failed to even contemplate (as is clear from their grievance investigation) that for conduct to amount to sexual harassment there does not need to be sexual motivation on the part of the alleged perpetrator. We were very troubled by the way in which Miss Bratt's allegations were investigated. The grievance statements and the comments made within them are telling of what was considered appropriate to say by the respondents witnesses and clearly go some way in supporting Miss Bratt as to what she alleges was said and how they all laughed at it and importantly what they all - including Mr Hall- would have believed was entirely appropriate in this workplace. The proposition Mr Hall was not making sexual advances nor was he grooming Miss Bratt (which we do not find he was) does not render the other conduct as not satisfying the statutory test. While the intent of Mr Hall is something we have taken into consideration this does not mean the conduct we find did take place when considered as a whole was not sufficient to meet both the subjective and objective elements of the statutory test.

61. Was it reasonable for the conduct that we have found took place to have the effect on the claimant so as to meet the objective test within s26 (4). When considering this we have to look at the conduct as a whole and take note of the EHRC's code of conduct which states unwanted conduct includes a wide range of behaviour and can include jokes and gossip.
62. Ms Veymoo in submissions seeks to persuade us that the conduct does not amount to conduct of a sexual nature. She goes onto say this was merely office banter and that they tried to simply include the claimant. We do not agree. What Mr Hall and the remainder of the respondents witnesses may have considered to be office banter does not make it nonetheless unwanted conduct of a sexual nature.
63. In order to make a finding as to whether it was reasonable for the conduct to have the effect we have to consider first of all whether the conduct had the effect of either violating Miss Bratt's dignity or creating an intimidating hostile degrading humiliating or offensive environment. The claimant does not have to establish both. When looking at the effect we have looked at the intent behind the conduct and we consider this is material to whether it should have reasonably have been apparent whether the conduct was or was not intended to cause offence (or more precisely to produce the proscribed consequences).
64. We do not find the comments made by Mr Hall notwithstanding the claimant's boyfriend's comment in the whats app messages we have seen to have been any attempt at grooming, nor do we find they were sexual advances towards Miss Bratt. Nonetheless flippant or light-hearted comments can constitute

harassment just as much as ones made aggressively. The conduct must be sexual in nature but it does not need to be sexually motivated. What is relevant is whether the things we find Mr Hall did, actually resulted in Miss Bratt perceiving her dignity to have been violated or an intimidating or offensive environment to have been created.

65. The claimant's initial reaction to the conduct is important as if she is not immediately offended but is so only after a period of reflection then the subjective part of the test is not met. It is clear in this case that some of the allegations were not able to be established to have taken place before the claimant states she began to think it was 'bad' and in her own words she did not immediately think this until her boyfriend and his mum raised this concern. She was happy to recommend Mr Hall a pub for his birthday. In her own evidence initially Miss Bratt thought Mr Hall was just trying to be nice and she was comfortable gifting him a present and card for his birthday so that we found before the text message which Mr Hall sent on 25 January 2022 neither the subjective part nor the objective parts of the statutory test was met for any conduct alleged prior to this date. Whilst we found Mr Hall did make the comments asking her 'is this your type' the claimant was not able to be clear as to when these comments were made and we are unable to find that they were made after the 25 January 2022.
66. It is important to consider the environment she was in and the evidence of Sally Marsden, Caroline Batchelor, Justine Fletcher and Shona Nelson (albeit we have placed limited weight on Ms Nelson's statement as her evidence was not able to be tested.). We find it is clear that this is a small workplace with these witnesses having worked with and known Mr Hall for a while. Some (like Caroline Batchelor and Justine Fletcher) have known him for 30 plus years. It is also clear, particularly from the way they conducted the investigation into the grievance raised by the claimant, that they were very protective of Mr Hall and tellingly did not believe anything Miss Bratt had raised by way of that grievance. It is evident that the investigation into the grievance was not impartial. I say this because of the wholesale personal attack of Miss Bratt in response to her grievances by the respondents witnesses in their responses. No proper regard was given to the specific allegations put by Miss Bratt and to properly investigating whether or not those things happened. We are very troubled by numerous comments made about Miss Bratt which the respondents' witnesses clearly thought were appropriate to put in a formal response to a serious grievance raising allegations of sexual harassment. This is demonstrative of the workplace environment Miss Bratt found herself in. In this regard we are mindful of the focus on the claimant's purported inexperience, the fact Sally Marsden says 'we work in an environment where we are able to make fun of things.... anyone is free to discuss any matters they see fit'. Ms Marsden also tellingly says it has never been a secret that she called Mr Hall a 'sexual predator' and then rather troublingly goes on to say this is known as banter and she is unclear as to why Miss Bratt would be aggrieved by this. Ms Marsden

tells Ms Bratt to 'grow up' in the context of colourful language being used in this environment. Justine Fletcher makes a personal attack on Miss Bratt with comments about how Miss Bratt in her social media 'is in a shocking state of attire' referring to her 'flaunting herself' and attending the office like she was dressed for a night out and offensively refers to Miss Bratt looking like a 'love island reject'. Miss Fletcher qualified this in her oral evidence as being 'just' her opinion. We consider not only putting this opinion in a formal response to a serious allegation of sexual harassment offensive, but it clearly demonstrates how the respondents' employees feel is an appropriate way to discuss their co workers which goes a considerable way to support the claimant's allegations about an offensive and intimidating environment. Shona Nelson's response was that Miss Bratt was 'faked up with fake tan and false eyelashes' and comments again about how she would dress for a night out rather than the office. She also mentions Miss Bratt's social media notably referring to 'she is a lot more revealing in her own photos than what was in the videos and pictures shown by Mr Hall'. We are troubled that the way Miss Bratt chooses to dress or what she chooses to post on her social media is advanced as evidence of Miss Bratt not possibly being able to be offended upset or made to feel uncomfortable or intimidated by the things we have found Mr Hall did say and do. The notion that the way someone chooses to dress means they cannot possibly take offence or be upset or offended by the matters Miss Bratt raised in the grievance is troubling particularly in a legal practice. The personal comments made in this regard about Miss Bratt by the respondents witnesses when investigating her grievances are wholly inappropriate and offensive.

67. These inappropriate comments about the claimant and their response to the allegations are indicative of the workplace culture and the personalities of the respondents witnesses who considered it perfectly acceptable to talk about the way a woman dresses and looks in response to a sexual harassment grievance being raised, and where calling a senior partner of a family law firm a sexual predator is just considered to be banter. This is important when considering the respondents' position that Miss Bratt failed to raise any complaints with any of them, never showed that she was uncomfortable and may even have laughed things off in front of others. It would be reasonable to assume that these witnesses who have known each other for a long time and would have had a familiarity with each other would have discussed each others personal lives and we find more likely than not personal details of their relationships. They all found this perfectly reasonable in a work environment – this does not mean the claimant did. We find it more likely than not they expressed and held strong opinions which is also evident from the comments made about the claimant in their response to the grievance. We find it troubling these women held such strong hostile personal views about the claimant that they were prepared to almost blindly overlook whether there could be any possibility of any of these allegations occurring which does affect the reliability of their evidence insofar as their total denial of Mr Hall having ever said or having been heard to say

some of the comments Miss Bratt complains of. We are then of course left with Mr Bratt's evidence as against Mr Halls.

68. When considering the objective part of the test an important relevant comment was the comment made by Sally Marsden about Mr Hall being a sexual predator. Mr Hall states she did say this to him but he contextualizes this comment and says it was a joke. Mr Hall said in evidence he was talking about his relationship with his ex-girlfriend which broke down in October 2021. He goes on to say that in November 2021 he went on 2 dating websites. One was Bumble and the other was an international one. As a consequence of those two dating sites he was messaging a lady from Spain called Tanya. He stated he was having telephone conversations with her in December 2021 on most evenings. He says he had mentioned her to everyone (at work) during January or February 2022 as he was arranging to go to meet Tanya in Spain. Sally Marsden saw a picture of Tanya and he says she had merely 'pulled his leg' that he liked 'dolly birds' and Ms Marsden said 'you will be like a sexual predator' but Mr Hall says she was mentioning it as a joke and that she told him afterwards she said she did not mean that; she actually meant sexual tourist. However, this is inconsistent with Ms Marsden's witness statement and response to the grievance. It is not until her later statement for these proceedings that she mentions that she meant to say sexual tourist. This is an important inconsistency. In her initial responses to the grievance, Ms Marsden clearly stated she called Mr Hall a sexual predator on several occasions to him and to others. The other witnesses reiterate the same words sexual predator – they refer to there being no malice and it being intended as a joke. Whilst it is clear from Mr Hall's evidence he did not in fact appear to date younger women and we accept his unchallenged evidence about the ages of the women he had past relationships with, the claimant clearly was told he was a sexual predator (it is raised in her first grievance letter). Notably Miss Bratt's evidence is that Sally Marsden called him this when he was not present which is also consistent with Ms Marsden saying that she referred to him being a sexual predator behind his back. Miss Bratt either overheard that comment or it was said to her by Sally Marsden. We do not find Ms Marsden meant to say sexual tourist. She does not provide this clarification in her grievance statement, and we find she has tried to explain it with the benefit of hindsight realising it looks bad to have described Mr Hall in this way given the nature of this claim.

69. Ms Veymou in closing submissions seeks to persuade us that this was 'innocent office banter' which the respondents employees tried to include her in. We accept there were a number of allegations Miss Bratt was unable to be clear about when it came to when they took place. We have addressed those earlier in this decision and they do not form part of the course of conduct we have considered as a whole. We found no evidence to support the respondent's defence that the claimant started to make mistakes at work and then contrived messages to her boyfriend because she thought her job was at risk. To the contrary the way in which the respondents' witnesses responded to the

claimant's grievance and the contents of their statements is clear evidence of the office culture.

70. We have to of course for the purpose of the statutory test only taken into consideration the conduct we find did occur and constitutes unwanted conduct of a sexual nature when arriving at our decision. Given the things we have found Mr Hall did say and within the context of someone who seemingly knows him well calling the person you feel is being inappropriate a sexual predator (which clearly by their own admissions Ms Marsden and Mr Hall thought was a funny rather than offensive comment) we find it was reasonable for the conduct as a whole to have the proscribed effect. It certainly was sufficient to have the proscribed effect of both creating an offensive environment and arguably an intimidating one.
71. When arriving our conclusion, we have taken into consideration Miss Bratt's junior position and that she was a new employee. She did not have the same longstanding friendships as others in this office. She is much younger than the respondent's employees and they were all more senior in role to her. Given the nature of the unwanted conduct includes language of a sexual nature and the discussion about Mr Hall's private life included sexual details it is reasonable that these comments would have the proscribed effect. This is clearly someone who was increasingly becoming distressed by the things we find Mr Hall did say. Miss Bratt's what's app messages to her boyfriend corroborate that distress and supports the finding that the proscribed effect of creating an offensive environment was met. We also find it was reasonable for the conduct when considered as a whole to have had this effect. We find the statutory test has been met and we find the claimant's complaint of sexual harassment to be well founded.
72. Given the respondent's position is that the claimant had been making mistakes at work and this is why she has contrived these allegations we consider it appropriate to address this specifically.
73. The respondent's case is that Miss Bratt had started to make mistakes and because they had cause to speak with her about them, she had started to worry about her position and suggest that either the allegations are all contrived or that she has attributed other people's comments to Mr Hall and left because she felt she would be sacked.
74. First mistake - 26 January 2022 – the claimant sent an email to a client with wrong enclosures.
75. Second mistake - 7 February 2022--the claimant sent an email to a client with the wrong notice of acting. The claimant says the wrong one was pinned to the front of the file.
76. Third mistake - 6 February 2022 – the claimant had not sent out letters on a new client file because she says she did not know how to open the file. The

respondent says she lied to Mr Hall when he asked her if she had done the dictation initially but then she admitted it.

77. It is not disputed by Miss Bratt that she made mistakes in the workplace as referred to. It is difficult to say whether these resulted from how she was being affected by the allegations she makes as no clear evidence was given about this. Miss Bratt simply accepts the mistakes were made by her. We do not accept the claimant contrived the allegations because she had been making mistakes and thought she was about to lose her job. The respondent's own evidence is no formal action was taken or was even being contemplated by them. What is evident from Miss Bratt's what's app messages is that she does become more anxious and upset and finds the situation increasingly unbearable. We are not satisfied with the respondent's proposition and heard no evidence to support this serious assertion of fabrication.

78. In arriving at this decision, we have taken into consideration the case law referred to in submissions by both parties' representatives.

79. The decision was a unanimous one.

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Employment Judge N Wilson
Dated: 24 June 2024

Sent to the parties on:

...26 June 2024
For the Tribunal Office:

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