



EMPLOYMENT TRIBUNALS

Claimant

Ms Raminder Kaur

Respondents

**v Sun Mark Ltd (1)
Lord Rami Ranger (2)
Mr Kapil Sharma (3)
Mr Ravi Gidar (4)
SARR Management Ltd (5)
Sea Air and Land Forwarding Ltd(6)
Mr Harmeet Ahuja (7)
Mr Nayaz Qazi (8)
Lady Renu Ranger (9)**

Heard at: Watford

On: 7-11,14-18 September 2020

Before: Employment Judge Smail
Mr P Hough
Mr C Surrey

Appearances

For the Claimant: Ms S Aly, Counsel
For the Respondents: Ms S McKie, QC
Interpreter: Ms S. Nagi

RESERVED JUDGMENT AND REASONS

The Claimant has waived her right to anonymity in respect of this matter on 10 March 2021 in proceedings before the Employment Appeal Tribunal

1. Mr Sharma, contrary to section 26(1) and or section 26(3) of the Equality Act 2010 subjected the Claimant to unwanted sexual attention, which had the effect of creating an offensive environment for her. This took the form of repeated requests for a sexual relationship from early July 2018 until the end of September 2018.
2. The Claimant does not establish that Mr Sharma threatened her job or immigration status if she declined to sleep with him. She does not establish that he threatened to rape her or that he assaulted her.

3. Mr Ahuja did victimise the Claimant contrary to section 27(1) of the Equality Act 2010 when on 1 October 2018 he sought to dissuade her from pursuing a complaint of sexual harassment, a protected act, by asking her to consider the implications for her job, visa and honour. This amounted to a detriment.
4. Lord Ranger did victimise the Claimant contrary to section 27(1) of the Equality Act 2010, harass her contrary to section 26(1) of the Act, and directly discriminate against her contrary to section 13(1) of the Act when, in an intemperate telephone call on 5 October 2018, the Claimant having informed him she was raising allegations of sexual harassment, he stated –
 - (a) he would not ‘spare her’;
 - (b) he would get the evidence together and see her in Court;
 - (c) she was insolent;
 - (d) she had no virtues and compared her to a female member of a non-elite peasant caste;
 - (e) she was silly and stupid;
 - (f) she was a liar;
 - (g) she was an absolute troublemaker;
 - (h) she was a horrible girl;
 - (i) she had ruined her parents’ honour.
5. The remainder of the Claimant’s claims are dismissed. There is no additional liability on the part of Mr Sharma, Mr Ahuja or Lord Ranger. There is no liability on the part of Mr Gidar, Mr Qazi, Lady Ranger or SARR Management Ltd.
6. Sun Mark Ltd and Sea Air and Land Forwarding Ltd are jointly and severally vicariously liable for the liability of Mr Sharma and Mr Ahuja found above.

REASONS

1. INTRODUCTION

- 1.1 By a claim form presented on 8 November 2018 the Claimant claims direct discrimination because of her sex; harassment related to her sex; sexual harassment; and victimisation. All claims are brought under the Equality Act 2010.
- 1.2 The specific allegations are set out in a detailed Scott Schedule, which is annexed hereto.

2. THE PARTIES

- 2.1 The Claimant was, and remains, an accounts manager employed by Sea Air and Land Forwarding Ltd (SALF). She started on 2 January 2018. She was seconded very early on to SARR Management Ltd (SARR) based in the Greenford office. She was then moved to the Holiday Inn in Watford. She returned to Greenford in April 2018. Her work was to be transferred to SALF towards the end of September 2018. In the event, she was signed off sick on 3 October 2018 and has not returned to work since.
- 2.2 The Greenford offices, as we understand it, are used to administer Sun Mark Ltd, SALF and SARR.
- 2.3 Sun Mark Ltd is an export company of fast moving consumer goods, in particular food and drink worldwide. It is owned by Lord Ranger, SALF and Lady Ranger. Lord Ranger and Mr Gidar are investors in SARR, which is a hotel management company. Lord Ranger was not an employee of any of the corporate Respondents but is chairman and co-owner of Sun Mark. He is regarded as the overall boss of Sun Mark and SALF. He has an interest in SARR only as an investor.
- 2.4 Mr Ahuja (whom we will refer to as Sunny as everyone else does) was director and group CEO of Sun Mark and SALF. He is also a director of SARR. He is Lord and Lady Ranger's son in law.
- 2.5 Ravinder Gidar is an investor in - and director of - SARR. His background is ownership of care homes.
- 2.6 Mr Nayaz Qazi holds himself out as head of legal at Sun Mark and as a special advisor to Lord Ranger. He claims to be a consultant rather than an employee. He undertook an investigation into the Claimant's claims.
- 2.7 Lady Ranger is to be regarded as an employee of Sun Mark in that she is head of human resources. Indeed, she tells us she is the only individual carrying out an HR role within the group of companies. She is co-owner of Sun Mark and SALF, and company secretary of both companies.
- 2.8 Mr Kapil Sharma is head of finance at Sun Mark. Between November 2017 and June 2018, he says, he was temporarily overseeing SARR's finance function. The Claimant makes allegations of sexual harassment against Mr Sharma.

3. THE LAW

- 3.1 By s.13(1) of the Equality Act 2010 direct discrimination is defined: "A person A discriminates against another B if because of a protected

characteristic A treats B less favourably than A treats or would treat others.” There are no actual comparators in this case. Instead a hypothetical comparator is relied upon on each occasion direct discrimination is alleged.

- 3.2 Harassment is defined under s.26 of the 2010 Act. By sub-section (1), a person A harasses another B if (a) A engages in unwanted conduct related to a relevant protected characteristic; and (b) the conduct has the purpose or effect of (i) violating B’s dignity or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
- 3.3 By sub-section (2), A also harasses B if (a) A engages in unwanted conduct of a sexual nature, and (b) the conduct has the purpose or effect referred to in sub-section 1(b).
- 3.4 By sub-section (3), A also harasses B if (a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender re-assignment or sex, (b) the conduct has the purpose or effect referred to in sub-section 1(b), and (c) because of B’s rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.
- 3.5 By sub-section (4), in deciding whether conduct has the effect referred to in sub-section 1(b), each of the following must be taken into account: (a) the perception of B; (b) the other circumstances of the case; (c) whether it is reasonable for the conduct to have that effect. Sub-section (5) confirms that sex is a relevant protected characteristic for this cause of action.
- 3.6 By s.27 victimisation is defined: (1) A person A victimises another person B if A subjects B to a detriment because (a) B does a protected act, or (b) A believes that B has done or may do a protected act.
- 3.7 By sub-section (2) each of the following is a protected act: (a) bringing proceedings under this Act; (b) giving evidence or information in connection with proceedings under this act; (c) doing any other thing for the purposes of or in connection with this Act; (d) making an allegation (whether or not express) that A or another person has contravened this act.
- 3.8 By sub-section (3) giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.
- 3.9 Sub-section (4) confirms that this section applies only when the person subjected to a detriment is an individual.
- 3.10 The burden of proof is important in discrimination cases. By s.136(2) if there are facts from which the court could decide in the absence of

any other explanation, that a person A contravened the provision concerned, the court must hold that the contravention occurred. However, by sub-section (3) sub-section (2) does not apply if A shows that A did not contravene the provision. What this means in practice is that the Claimant has to show a prima facie case that discrimination has occurred. If that happens, the burden is transferred on to the Respondents to show that discrimination played no role whatsoever. Igen v Wong Court of Appeal 2005 EWCA CIV 142.

4. FINDINGS OF FACT

- 4.1 There are findings throughout this document. The majority of factual ones are set out under this section.
- 4.2 The Claimant's witness statement supports the allegations in the Scott Schedule. What then is the corroboration?

Meeting with Sunny on 10 September 2018

- 4.3 The allegations against Mr Sharma start in early July 2018. Sunny accepts that the Claimant came to see him on 10 September 2018. He records the incident as involving the Claimant coming to see him to raise a "small matter". She sat with him for a few minutes and told him that she thought her friendship with Mr Sharma was being misconstrued by him as something more serious. She said it was unwelcome, but on a minor level. She said in Punjabi that he was interested in her, but she was not interested in him. She seemed embarrassed but did not give Sunny the impression that she felt threatened. Sunny refutes the Claimant's claims that she approached him in July or August 2018.
- 4.4 The Claimant claims at paragraph 138 of her witness statement that she approached Sunny in late July and told him about the sexual harassment. She says he said, "Don't worry, I will talk to him". She goes on to say that she approached Sunny frequently throughout July and August. Sunny denies that. He does accept the discussion on 10 September, but he asserts she expressly did not want to make a complaint formally. He then arranged for Mr Manning to take over the supervision, which Mr Sharma had been doing up to then informally, as the go to person.

Medical records

- 4.5 There is a visit to the GP on 29 August 2018 where the Claimant records falling at home and sustaining a wound and bruising. There is no reference to any issues at work.

- 4.6 There is a visit on 10 September 2018, which involved seeing two doctors. She presented with a history of low abdominal pain for which she had called an ambulance the previous night but cancelled it because there was a 2 hour wait.
- 4.7 In the course of the second appointment that day, which seems to have started with discussion of the abdominal pain, the Claimant stated that she had stress at work, her manager had been asking her to meet outside and threatening her. She was planning to speak to senior managers at work.
- 4.8 There was a visit on 3 October 2018 when the Claimant reported a 5 day headache. She reported being under a lot of stress at work, being bullied at work, being sexually harassed at work and being threatened with verbal sexual abuse by a colleague. She was prescribed pain relief and advised that she should report the matter to her bosses or the police.
- 4.9 She was then seen on 9 October 2018 when she said she had reported her work colleagues to the police. She was described to be of low mood and not suicidal.
- 4.10 On 17 October 2018, in a long consultation, she was described as being of low mood concerning sexual harassment and assault at work. It is recorded that the Claimant informed the doctor that the Claimant did try to start taking sleeping tablets as though in a suicide attempt but stopped and forced herself to vomit. She said she was now hearing his voice and threats and quoted the phrase:
- “What’s the big issue over a few drops of liquid to come out”
- A reference to ejaculation. She had been called a prostitute by the boss, she reported. The doctor suggested the possibility of post-traumatic stress disorder.
- 4.11 On 30 October 2018 she attended by way of a follow-up. There was on-going stress and anxiety related to her ex-boss making sexual remarks and threats. It was recorded that she has had suicidal thoughts but would not act on those.
- 4.12 There followed repeated appointments in which the Claimant gives information consistent with her case.

Mr Sharma’s phone records

- 4.13 These list calls to the Claimant. We have these between April and September 2018.
- 4.14 It is significant that Mr Sharma called the Claimant outside working hours as follows:

<u>Date</u>	<u>Time</u>	<u>Duration</u>
23 July	19:02	20 minutes 51 seconds
23 July	19:31	6 minutes 39 seconds
25 July	18:20	33 seconds
25 July	19:02	9 minutes 30 seconds
25 July	20:05	3 seconds
25 July	20:08	3 seconds
3 August	18:31	31 seconds
6 August	18:10	3 seconds
6 August	18:11	4 seconds
6 August	18:12	3 seconds
7 August	12:07	9 minutes 22 seconds
7 August	18:18	3 minutes 9 seconds
10 August	18:39	8 minutes 33 seconds
10 August	18:55	13 seconds
15 August	18:27	22 minutes 38 seconds
15 August	18:52	3 seconds
16 August	18:17	1 minute 40 seconds
7 September	18:33	3 seconds
7 September	18:38	16 minutes 43 seconds
10 September	18:16	6 seconds
10 September	18:18	3 seconds

- 4.15 Mr Sharma gave no details about any of these conversations or attempted conversations either in his witness statement or in his evidence in the Tribunal. His cross-examination position was that he could not now remember what they involved; they would have been about work.

Report to Gauri Narang

- 4.16 On 29 September 2018 the Claimant spoke to Gauri Narang, who was a consultant with SARR in a management position, about her alleged problems with Mr Sharma. That caused Ms Narang to email Sunny, copying in Mr Gidar. She wrote that she wanted to bring to their notice that the Claimant had been experiencing sexual harassment from Mr Sharma for the last three months. Last Friday, she reported the allegation, Mr Sharma had blocked her way in the staircase and did not allow her to leave the building. She had threatened him several times that she would go to the police if he did not stop. The situation had become unbearable and had led her to take legal advice from a solicitor.
- 4.17 According to her, Mr Sharma had been making sexual advances towards her at the workplace for at least three months and using work as an excuse to come down to her office and spend all day sitting next to her. When she tried to stop him and rebuked him

several times, and told him not to enter into her office, he had been claiming that he is a SARR management manager and has all the rights to be in her office. Her job and salary review were dependent on his decision, he stated. His wife was fully aware of the whole situation, apparently.

- 4.18 The Claimant had been under a lot of stress because her visa relied on her position at SALF, continued Ms Narang, and if she reported against him, she was concerned she would end up losing her visa. She had been keeping quiet about the whole situation. If she complains her concern was that he would report her to UKBA about her visa status. She was in debt because of her father's heart problem. She had apparently lent her passport to a friend of Mr Sharma for £1,000. She claimed that she had already spoken to her peers about complaining about Mr Sharma to higher authority. She was warned that a similar incident happened in Sun Mark before and the girl was asked to leave instead of the guy.
- 4.19 Further to Friday's incident on 28 September she had been to see a solicitor and was considering going to court against Mr Sharma. The solicitor had advised her to speak to her manager.
- 4.20 Ms Narang advised her that it was best to speak to the directors. She had mentioned that she had reported Mr Sharma's behaviour to Sunny a few weeks before. Mr Sharma was asked not to interfere in her work as Richard Manning was working for SARR. She claims that he had been more aggressive in his approach and was finding every reason to humiliate or insult her in front of others and threatening her that she will lose her job if she does not do what he is asking her to do. He kept mentioning to her, it was alleged, that he had enough power in Sun Mark to fire people. She was concerned that she would end up losing her job. She had been feeling suicidal because of the on-going harassment at work. She did not feel safe in the office environment and wants to move away from the building in which Mr Sharma worked.
- 4.21 Ms Narang went on to describe operational difficulties at SAAR. She concluded that if they did not control the Claimant's situation, knowing how unpredictable she is, going through emotional mental stress; the Claimant flared up easily. If the situation became sour, it would impact on SARR's management stability to the core
- 4.22 Sunny confirmed receipt of the email. He would speak to the Claimant himself to understand this fully the following day.
- 4.23 He recorded that the Claimant had spoken to him once before, but it was not stated as Ms Narang had described it.
- 4.24 Ms Narang had a telephone discussion with Sunny following this email. She told us in evidence that she had been told by Sunny that

Lord Ranger was unhappy that he had not been approached on the matter.

- 4.25 Ms Narang emailed on 1 October at 13:33. Ms Narang appears to backpedal somewhat in this email. She says that she had already made it clear to the Claimant that Sunny had been informed and was looking into the case in the morning. She did not need to go to anyone else but was to have patience. Ms Narang said that her involvement was not required anymore when the directors were looking into it. If she intends to go for legal help after the meeting with Sunny on the 1st, Ms Narang said she would not pick up her calls and would maintain distance because -

“I don’t support behaviour like this. Please treat this email as confidential. I don’t have any intentions to get involved. I would like this situation to be resolved without having any serious implication for SARR and Sun Mark”.

- 4.26 As we say, Ms Narang had been told that Lord Ranger was unhappy about this matter developing without reference to him.

Meeting with Sunny on 1 October 2018

- 4.27 The meeting is not minuted. A meeting did however take place. Sunny’s account is in his witness statement. He spoke to Lord and Lady Ranger in advance. It was agreed that the Claimant would move office to the interlocking building outside Lord Ranger’s office. This was through a number of sets of doors separating the location where Mr Sharma worked.
- 4.28 Sunny tells us that the Claimant alleged she had been sexually harassed by Mr Sharma for three to four months but said that she was not sure that she wanted to file a complaint.
- 4.29 When asked, according to Sunny, why she had not made these allegations earlier, she said, according to him, that she did not know how to raise the matter. His stance in his witness statement was that whether or not she wanted to file a complaint, the matter would be investigated.
- 4.30 There is a significant contrast in this position compared to an email written by the Claimant on 4 October 2018. It is right that she clearly had legal support at this stage and she writes in the email of 4 October 2018 at 14:43:

“When we met on Monday you told me that if I pursued this matter maybe I would lose my job, visa and honour. I told you that the situation was intolerable and having a negative effect on my health and work”.

- 4.31 That contention was not answered by Sunny in writing at the time. He did not email back, for example, saying ‘what on earth are you

talking about. I never said such a thing.’ He did decide to not involve himself in the investigation which Mr Qazi undertook.

The termination of the SARR secondment on 15 September 2018 as victimisation?

- 4.32 The decision to terminate her secondment with SARR, pushed for by Mr Gidar, was taken in ignorance of her claims of discrimination. Mr Gidar did not know about her claims and so this decision cannot be said to be an actionable detriment or act of discrimination or harassment. Similarly, Sunny did not have the amount of knowledge, at this point, as he did on 29-30 September 2018.
- 4.33 Whilst the decision had been taken in that way, there was an intention to hold a two-week handover. It seems that the Claimant was not told of the decision to transfer her from SARR until after the events of early October 2018 and her repositioning in the office; by which time, of course, she had been signed off. The email trail however is an accurate record of the decisions taken by management in terms of terminating the secondment and the reasons for that decision.
- 4.34 It seems that the Claimant’s email access to the SARR email account was blocked on 5 October 2018. That seems consistent with the decision to terminate her secondment. There is not a prima facie case of discrimination in respect of this. It is explained. It is further explained that she would be given access to the SALF email account when she returned to the office. The Tribunal does not see a prima facie case of discrimination in any of that.

The telephone conversation with Lord Ranger on 5 October 2018

- 4.35 We have listened to the tone of this conversation on several occasions, reading at the same time the jointly instructed translator’s translation. The Claimant started to record her conversation with Lord Ranger some minutes into the conversation. She recorded it on a second mobile phone, we understand. No point has been taken about admissibility. The Claimant was speaking in a very fast and loud fashion. Lord Ranger is plainly angered by what she is saying. They speak over one another. Bits of the translation were put to Lord Ranger. Where he disagreed with the translation, he gave his version. Lord Ranger says at five seconds into the recording:

“Listen, there is no point in trying to act too smart... I won’t spare you... because don’t you ever think that you are the only one who is capable of defaming someone.”

The Claimant says: "This is very wrong sir... that man had blocked my way sir that man started saying insulting things against my honour. He grabbed my hand."

Lord Ranger says: "Tell me something you are such an intelligent girl why then didn't you write to me. You approach me right at the end."

Lord Ranger says at 32 seconds: "I do not want to talk to you any further I will meet you in court."

He goes on at 35 seconds: "I want to meet you in court. I will tell them exactly what your capabilities are." He says he has Gauri as a witness by which we understand a witness as to her capabilities.

The Claimant replies that Gauri herself had sent an email to him. "I had told Gauri" she says, "that this man is ruining my life... he touches me here and there here on different parts of the body."

Lord Ranger replies at 48 seconds: "Stop your nonsense stop talking rubbish don't talk nonsense fear God!"

He continues at 50 seconds: "So you have spread your vulgarity" at 52 seconds: "One vulgar thing has spread her vulgarity all around."

At 54 seconds the Claimant says: "You also have daughters in your family too. He would molest someone else's daughter tomorrow".

At 59 seconds Lord Ranger says: "Hey stop talking rubbish".

The Claimant says: "Like he had molested me today".

4.36 At 1 minute and 2 seconds Lord Ranger says: "Stop your rubbish. You have created such a mess in the entire company."

The Claimant replies: "So it's not me who has created this mess. His behaviour had pushed me to the limit that I even attempted suicide. I did say to him you don't harass me right".

Lord Ranger says: "You suicide. Listen if you suicide listen listen."

4.37 At 1 minute 11 the Claimant says: "I had asked him so many times not to harass me. He had blocked my way so many times sir."

4.38 At 1 minute 13 Lord Ranger refers to the CCTV that we have seen. He says he had watched her arguing with men in such an insolent way. "You are arguing with men like a proper quarrelsome woman."

4.39 At 1 minute 22 the Claimant says: "That man was calling me a slut. He was calling me a prostitute and you expect me to take that all in from that man."

- 4.40 Lord Ranger replies at 1 minute 28: "You have no virtues whatsoever. You are a policewoman and coming over from Punjab you are behaving exactly like Jatts do with men." We note that the translator describes a Jatt as non-elite peasant class of the Punjab.
- 4.41 At 1 minute 34 the Claimant says: "Sir you shouldn't be saying wrong things against me. You should be asking to that man too. No woman could be safe over there."
- 4.42 Lord Ranger replies: "If you are use a little bit of sense you should've approached me earlier. You are calling me today. You should have called me before on the day that it happened to you."
- 4.43 At 1 minute 45 the Claimant says: "I have been approaching Sunny sir every day and he himself had told me you mustn't go to Rami sir" (i.e. Lord Ranger)
- 4.44 Lord Ranger says at 1 minute 49: "If a man was harassing you, you should have told me on the same very day." She replies: "I did approach Sunny sir every day and told him that this man has been harassing me."
- 4.45 Lord Ranger replies at 1 minute 56: "How much more are you going to lie?" She says at 1 minute 57: "He is making threats to me, he has been threatening me and saying that he will get me sacked from the company."
- 4.46 Lord Ranger says at 2 minutes: "From now onwards for the rest of your life you will be lying." At 2 minutes 6 Lord Ranger says: "You are a big time lying woman".
- 4.47 At 2 minutes 10 making reference to the fact that he had taken the Claimant on Lord Ranger said: "I tell you what I have made a mistake by doing a good deed but from now onwards I will never help anyone."
- 4.48 At 2 minutes 16 the Claimant suggests that if he were to appoint a woman her vulnerability would be taken advantage of. She would be harassed and bad things would be said against her honour.
- 4.49 At 2 minutes 21 Lord Ranger asks: "What is your helplessness?" He describes her as a silly girl. He specifically created a job for her. He describes her as an insolent girl at 2 minutes and 33 seconds.
- 4.50 At 2 minutes 35: "You are such an insolent girl I am going to take you to court you wait and see." At 2 minutes 36 the Claimant says: "Yes sir you drag me to court. I really want you to drag me to court and take this man to court as well."
- 4.51 At 2 minutes 41 Lord Ranger says: "Insolent woman get lost you stupid girl I do not want to talk to you. You are such a horrible girl." At 2 minutes 42 the Claimant says: "Take this man to court as well."

- 4.52 At 2 minutes 47 Lord Ranger describes her in the translator's words as an absolute scumbag or absolute garbage. Lord Ranger contests that translation. 'Insolent girl' is the translation that he prefers.
- 4.53 At 2 minutes 50 he says: "Absolute troublemaker" or words to that effect. At 2 minutes 52 she says: "Sir he had said to me that: "I'll get you sacked from the company". He harassed me by surrounding/blocking my way in the street."
- 4.54 At 2 minutes 58 Lord Ranger says: "Listen I had mercy on you in the name of God because you were begging me but what a scumbag (insolent girl) you have turned out to be." At 3 minutes 6 he says that she has ruined her parents' honour.
- 4.55 At 3 minutes 8 the Claimant retorts that "He is the one who is determined to ruin parents' honour". At 3 minutes 9 he tells the Claimant to "Shut up you bloody fool. Get lost and don't call me again. I want to see you in court."
- 4.56 At 3 minutes 14 the Claimant says: "Don't you employ any girls anymore because this man will molest their honour too". Lord Ranger replies at 3 minutes 20: "There are a lot of other girls working for me over there you stupid girl. Gauri is working there."
- 4.57 At 3 minutes 26 the Claimant says: "Don't take advantage of any girl's vulnerability." At 3 minutes 27 Lord Ranger says: "Gauri told me that you are a rude girl. You are insolent. You have no sense."
- 4.58 At 3 minutes 35 he says: "You don't know how to talk to people." At 3 minutes 40 he says: "I will produce all the evidence and witnesses in court." At 3 minutes 43 the Claimant says: "Yes of course sir you can create a witness because you have the power to do so."
- 4.59 At 3 minutes 49 he says: "Shut up you stupid girl carrying on talking rubbish."
- 4.60 We have taken some of the alternatives given by the translator in her translation, ones we think best reflect Lord Ranger's position, as he tells us he intended it.

The personal notebook

- 4.61 On the first day of her evidence the Claimant was asked whether she kept a diary. No diary had been disclosed. The Claimant responded that she did keep personal notes. That was a matter of surprise to all in the Tribunal because nothing had been disclosed. The Claimant was resistant to the idea that she should produce it because as far as she was concerned it was personal to her and not meant for public consumption. The Tribunal finds as a fact that this was a genuine position on her part. She had no intention of producing what was in the notebook to anyone. Nonetheless, we ordered its production. She asked whether she could edit the amount disclosed by taking

pages out. We made it clear that this was not possible and on day 2 of her evidence she produced the notebook, which is a 200 page Pukka Jotter Pad. Not all 200 pages remain but there were a number of pages written in Punjabi in different coloured inks suggesting they were written at different times containing material relevant to the allegations the Claimant makes.

- 4.62 As far as we can tell, the entries were not in chronological order. Some of the entries were irrelevant being shopping lists and the like but otherwise there was relevant material in it. We do not know precisely when the entries were made. It is not a diary, it is a notebook with observations made in it, but we are clear on the balance of probability that this document was not manipulated by the Claimant for the purposes of these Tribunal proceedings. It amounts to a genuine notebook in which she has recorded her thoughts. To that extent there is some evidential value in what she has said. Some of the entries are addressed to the Claimant's mother, not perhaps with the intention her mother reading them but in terms of the mode of dialogue adopted by the Claimant. Some passages are consistent with the Claimant's evidence that she considered suicide. The entries are frequently poetic in quality. So, for example, at page 9 of the translation we have the following:

“Mummy, he told me today that I will die if you do not go to the hotel. Mummy, I feel like crying a lot. What can I say on the phone? Mummy, God is also not removing him. He says that my breasts are very beautiful. He held my breast tightly. He says that my body is very beautiful. I wish to cut off my hand and breasts and throw those somewhere. I feel hatred of my body.

Mummy, he says to wear Indian dresses, take scarf and keep my breasts out all the time. You lie like a fish and you are fish. Mummy, no-one has ever made me so mad with such a strength. His boss is just like him. He says that my eyes are brown, also look around. Evil eyes are everywhere. I wish to die. Mummy, he is making me mad by saying such dirty things. My brain has blown. I may die by hitting the wall. Tell me? What to do?

Where is that God, tell me where is he? He has thrown me on earth with these dirty people. Take me God, take me today, he has made the body given by you a piece of shit. By touching. The breasts which represent the motherly nature and make women beautiful, he has made them filthy by touching them with dirty hands. Oh God, oh God, I am destroyed. My figure, figure, figure, I only heard this from him. Raman is dead, I am destroyed ha ha ha ha laugh Kapil again laugh laugh laugh, how you laughed.”

- 4.63 It is not readily apparent from each entry to decide when it was written. Some of the entries could have been made sometime after the events described.

- 4.64 At page 7 of the translation we have the following passage:

“They made my life hell. I have a headache.

I wish I could die. What type of person is he?

He made his wife mad.

He will also make me mad. He does not care about his children. He is hungry for filth.

After seeing him, I think no-one is honest. All men might be like him. But no, my Raj loves me a lot.”

4.65 At page 10:

“Am I Sali?

Yes he is saying to me.

Kapil laugh laugh again, like every day you laugh on my compulsion.”

4.66 Page 12 of the translation is headed My Life

“What to write = shit that Kapil says to me daily.

What to do = dirty sex, that’s what he says? But why? Why?

I am not a bad girl, I belong to a good family.

Die = yes Raman, it is a very good way to leave daily abuse, but then, what will my parents do?”

4.67 There follow several references to death. At page 14 there is a suicide set of verses but as we know the Claimant did not pursue this, except by taking no more than four, as she told the doctors, sleeping pills. It appears that this suicide verse was written on 22 September 2018.

4.68 The Tribunal concludes that these verses provide some consistency of account on behalf of the Claimant. The Respondents pointed to one verse at page 34 of the translation, which seems to suggest that it was Raj, her fiancé, who told her that her job and visa would be taken. We accept the Claimant’s account that she was addressing Raj in this verse, not purporting to record what he said. The Claimant is clear that Mr Sharma and indeed Mr Ahuja mentioned to her that she could lose her job and visa if she pursued complaints.

Police statement 4 October 2018

4.69 The Claimant went to the police on 4 October 2018 and gave a statement signed by her. She gave the background to her appointment. She explained that whenever she spoke to Mr Sharma it would be in Punjabi or Hindi and that in the statement she gave a

translated version. She also gave the background to their relationship: that between April and July 2018 they became friends and that Mr Sharma was nice to her. She treated him as a brother and when she got her visa granted, she was thankful for his support. His wife also congratulated her. They exchanged numbers as friends, his wife and her, and one day, claims the Claimant Mr Sharma's wife called her to say that she was upset, believing he was having an affair and asked if he had tried anything with her. On 28 April 2018 she went for dinner at the Sharma's house. Everything was nice, she says, and she spent most of the evening with his wife in the kitchen.

- 4.70 In July 2018 the picture changed, and the Claimant alleges Mr Sharma declared his love for her. This made her think of what his wife had said to her. He would then repeat his affection for her on a regular basis. He would expand on that, she says, and ask for sex. She used to say to him, she says, that she was going to report it to a manager to which Mr Sharma suggested she be fired, would be out of the country and would not get a visa. He would then ask her to attend a hotel. She recites a version of the 7 August incident but she dates it as mid-July 2018. She says she had an appointment with the doctor in the afternoon, that Mr Sharma became unwell and she suggests that Rahul told her to take him to the hospital on the way to the doctor. She agreed eventually. As soon as he was in the car he recovered as if by magic and he asked her to move the car to one side and park it and he started talking about her top and her breasts. He then grabbed her left boob saying: "This ball is very nice". She says she instantly slapped him across his face and told him to get out of the car. He then started clapping his hands and laughing saying "Why are you making so much drama all I want to do is ejaculate". She says she turned the car around and started driving back. She says she missed her own doctor's appointment. She said to him that she would tell a manager to which he replied: "Do you want me to make you handicapped?" In the ensuing period he would come up to her every day asking for sex. She claims he said that he had so much power in the company that he could make her leave if he wanted to. He would make her handicapped. This happened every two to three days.
- 4.71 She says that on 10 September she told her manager, Sunny, everything that was happening and her manager responded by saying they would be separated for a week or so afterwards. She heard nothing from Mr Sharma. That changed. In the course of this period she made two suicide attempts by taking three or four tablets but not pursuing it because she did not want her family to suffer. She then describes the alleged incidents of Friday 28 September. She mentions a disagreement about an email. She says she was cleaning her desk getting ready to leave when Mr Sharma came over to her and asked why was she being such a whore. To which she said: "Mind your language", asked him to leave the office to which Mr

Sharma was persistent asking her to give him a few minutes and blocked her exit and asked her to stop making dramas saying he was going to feel her and have sex with her. He said: "I will cut your arm off, I will cut your leg off then you'll learn your lesson. When you lose your job you will learn".

- 4.72 On Sunday 30 September she says she called Sunny and told him what had happened. She emailed her manager also about what had happened. There was a meeting on 1 October 2018. She claims that Sunny said to her "If you report the matter to the police, what about your job, what about your visa?" This is why she was scared she would lose her job. She was then moved to a different department in a different building and by 5pm that same day she was moved. She said she did not feel safe to return to work.
- 4.73 The Tribunal has noted a few inconsistencies in the account. First, is the misdating of the 7 August incident as mid-July. We note that the Claimant had claimed she had informed Sunny earlier than 10 September in her witness statement for the Tribunal but that is not included in the police statement. She also claims to have told him the whole story on 10 September whereas he claims he had only a description of Mr Sharma liking the Claimant more than she liked him. We note the use of the word "whore" in the statement whereas some Respondents witnesses, including Mr Sharma, remember us hearing the word 'hoor pari', which is a Punjabi word for prima donna. She does not mention in this account Mr Sharma touching his penis over his trousers as a threat of rape. Those observations aside, she does make complaint in this police statement of many of the matters she raises before us.

The CCTV of 28 September 2018

- 4.74 We have carefully watched the CCTV on a number of occasions. It is agreed that the beginning of the argument that ensued between Mr Sharma and the Claimant was to do with the fact that the Claimant had copied Sunny into an email in which Mr Sharma had mistakenly put a wrong attachment to an email giving the appearance that he was seeking permission to pay a member of staff's private utility bill. Mr Sharma was offended that the Claimant had copied Sunny into this email making him look incompetent. He challenged the Claimant on the matter. He entered her office and spoke to her in a way that looks confrontational. The Claimant purported to switch off the office light and sought to exit her office. Mr Sharma was physically in the way and they have what looks to be a heated disagreement, which extends over a period. There is a 52 second missing piece of coverage. Mr Sharma has his back to the camera. He is the other side of two glass doors. Even if he touched his penis with one of his hands this would not immediately be apparent on the CCTV angle. The Claimant's behaviour after the 52 seconds does not seem

immediately consistent with her having been threatened with violence or rape. The Claimant looks as though she is holding her own in this argument. That said, it does not look like Mr Sharma is behaving professionally in challenging the Claimant in this manner. The Claimant clearly did not like what Mr Sharma had to say and she responded. There was a degree of familiarity, at least in appearance, from both their postures. The CCTV would corroborate an assertion that Mr Sharma was angry with her. It does no more than that. The Claimant's posture involves folded arms and an uncompromising retort.

- 4.75 We have carefully looked at extracts. It has been said to us that after a certain period during the day including this period the CCTV is motion triggered. It does not run constantly. It is triggered only if there is movement. There are 52 seconds of coverage missing. The Claimant says there would have been movement during this period and the Respondents have deleted a period of cover. The Respondents deny that. They say they have invited the Claimant's solicitor to examine the hard-drive to see if he could find any modifications, and the solicitor had not taken this offer up. The CCTV does not include audio, but we can see the demeanour of the protagonists to a degree.

Inconsistencies in the Claimant's account

- 4.76 Whilst the above matters provide a degree of corroboration for the Claimant's account much of it is corroboration generated from the Claimant's own words. There is corroboration in the record of phone calls made by Mr Sharma to the Claimant, which phone calls Mr Sharma has not clarified with the Tribunal in terms of their content. The Tribunal notes that 2018 is not actually that long ago. The Tribunal further notes that Mr Sharma will have been aware from October 2018 that there were allegations of harassment applying against him and he will have had plenty of opportunity to prepare an account of what happened. It is significant, in the Tribunal's view, that Mr Sharma has not said that there was any sort of consensual romance between him and the Claimant. The Tribunal itself raised that as a possibility for the evidence to address. There was no suggestion from Mr Sharma or on his behalf that the Claimant engaged in any romance or any sexual activity with him consensually. That opportunity was not taken by Mr Sharma.

7 August 2018

- 4.77 We were persuaded by the evidence of Ragini Khullar and Rahul Makwana that on 7 August 2018 in the early afternoon, at about half past 1, the Claimant insisted on taking Mr Sharma to hospital. She was not persuaded reluctantly. She herself insisted on taking him.

We note that the Claimant received a phone call from Mr Sharma at 12:07 that day and spoke to him for 9 minutes and 22 seconds. We note further that whilst the Claimant says that she had a blood test appointment, there is no corroboration for this in the medical records. We note further that she returned to work after abandoning the trip to take Mr Sharma to hospital without complaint, bearing in mind that she says she was sexually assaulted by him touching her left breast (according to the police report). Those matters concern the Tribunal.

28 September 2018

- 4.78 We are also concerned about the Claimant's suggestions as to what was done and said to her during the missing 52 seconds. We reject the suggestion that Mr Sharma touched his penis and threatened to rape her, as she asserted orally in evidence to us; her reactions are not consistent with something as serious as that happening. Admittedly, even if there had been a deletion of a 52 second recording, we would not have seen from the position Mr Sharma was standing in, that is to say with his back to the CCTV, any such behaviour from him. What we do see is her response to his behaviour and it is inconsistent with just having been threatened in that way. That said, Mr Sharma is behaving in a way suggestive of managerial harassment if nothing else, a matter Mr Makwana himself commented to Mr Sharma at the end of the episode. Mr Makwana told Mr Sharma that it was unbecoming, in effect, to hear raised voices between him and the Claimant.
- 4.79 The Tribunal is of the view that the Claimant can significantly exaggerate what she otherwise believes to be true.
- 4.80 We are also concerned by some of the things the Claimant said to Lord Ranger in their recorded conversation. She did not raise concerns with Sunny on a daily basis. She raised some concern on 10 September. We think it likely that she limited that concern along the lines Sunny suggests of being told that she was concerned that Mr Sharma had feelings for her, which she did not return. She did not mention the matter again further until sharing the matter with Gauri Narang (and the events following that including a phone call to Sunny and a meeting with him).
- 4.81 The Claimant is not entirely a reliable witness.
- 4.82 We reject the Claimant's account that she raised matters with Sunny more frequently than on 10 September and 29-30 September 2018.

Was the CCTV tampered with by the Respondents?

- 4.83 We conclude it was not. Whilst it is surprising that there is a 52 second gap, the Claimant's solicitor was invited to examine the hard drive. That invitation was not taken up. The before-and-after positions of the Claimant and Mr Sharma show that Mr Sharma was in exactly the same position so he would not have moved so as to trigger the sensor. The Claimant had moved two feet to her right and turned around. The light was switched off on that occasion in her office. We do not find on the balance of probability that she had triggered the CCTV at a point earlier.

The investigation

- 4.84 We understand that the Claimant's confidence in this investigation will have been significantly undermined by the words of Lord Ranger. Saying he will gather the evidence and see her in court is not a helpful way of introducing an investigation. Was it Mr Qazi's intention to reject the Claimant's allegations at all costs?
- 4.85 In his conclusions Mr Qazi focuses on 2 events: the visit to the hospital, said to be in July, and the incidents of 28 September. CCTV covered the latter, at least to a degree. In respect of July he observed that both the Claimant and Mr Sharma travelled back together to the office later that afternoon in the Claimant's car. The Claimant did not notify anyone on the day that there had been any difficulty, thereby undermining the reliability of her account.
- 4.86 As to 28 September. He concluded that the footage that can be seen did not show the Claimant seeming upset or fearful. The CCTV did show an argument without sound. Mr Qazi suggests that the CCTV does not show Mr Sharma blocking her in the room. In his concluding comments, Mr Qazi records that the allegations made by the Claimant are of a serious nature and he tried through repeated interviews with Mr Sharma to delve into facts to see if any inconsistencies appeared but there were no inconsistencies in Mr Sharma's recollection. Based on his investigation to date, he wrote, he could only conclude on the evidence and witness statements in his possession that he was not able to confirm that any sexual harassment or sexual assault had actually taken place on either of the alleged incidents or over the period of three to four months as mentioned by the Claimant.
- 4.87 It was clear to the Tribunal that Mr Qazi was not experienced in investigating matters of this sort. Notably, he did not keep a record of questions and answers he put and received from Mr Sharma.
- 4.88 The Claimant's responses were noted by Ms Perera, who to the best of her ability took notes of what the Claimant said. Ms Perera told us, however, that she does not understand Punjabi and many of the

answers of the Claimant were given in Punjabi. She was only able to note what was said in English. No similar notes were taken of interviews with Mr Sharma. Instead of noting questions and answers, Mr Qazi asked for statements from each of the Respondents' witnesses, including Mr Sharma, having had an initial meeting with them. That process did generate criticism from counsel for the Claimant suggesting that it was designed to prepare the Respondents' witnesses' answers to the Claimant's allegations. Mr Qazi told us that the Claimant did not also provide a statement to him, which he was waiting for.

- 4.89 Mr Qazi did not expressly address the question as to whether he should believe the Claimant on the balance of probabilities given the allegations that she made. He was hoping for some kind of neutral third-party resolution to what was otherwise the word of one person against another.
- 4.90 The experience of the Tribunal was that this was not a sophisticated investigation. It was undermined from the beginning by what Lord Ranger had said to the Claimant. The Tribunal is not surprised that the Claimant did not engage with the process more than she did by reason of what had been said to her. That said, we do not believe that Mr Qazi made it his purpose to reject at all costs her complaints. Whilst criticisms can be made of his investigation, the Tribunal rejects the suggestion that Mr Qazi victimised or discriminated against the Claimant in any way in the manner in which he conducted this investigation.
- 4.91 The Respondents would have generated more confidence in the Claimant and indeed any third party observers if they had appointed an outside body with genuine experience of conducting such investigations rather than appointing the head of legal and trusted advisor to Lord Ranger, bearing in mind the very difficult conversation that Lord Ranger had with the Claimant over the phone. Bearing in mind the resources of the Respondents companies, the Tribunal concludes it would not have been difficult to find a specialist HR consultant to do a full job. That said, we do not find that Mr Qazi is liable under the Equality Act 2010 for the conduct of this investigation.

Failure to investigate grievance at any earlier stage?

- 4.92 The Tribunal does not find there was any obligation on the Respondents to launch an investigation into the Claimant's grievance prior to her raising matters at the end of September 2018. We reject the suggestion that on 10 September 2018 she disclosed more than that there was an imbalance in feeling between Mr Sharma and herself.

Lady Ranger's letter informing the Claimant that she had appointed Mr Qazi to undertake an investigation was dated 8 October 2018

4.93 The letter records that Sunny had agreed to move the Claimant to another part of the building whilst matters were being investigated. She says she was led to believe that this arrangement worked well for 2 October, after which she describes the Claimant as having absented herself from the 3rd and sent the email on 4 October. She goes on to say that in the circumstances she had appointed Mr Qazi to undertake an investigation. She understood that the Claimant would meet Mr Qazi on 9 October at 2pm. She stated that the Claimant was entitled to bring a colleague to the meeting. Lady Ranger adds this sentence:

“No doubt he will want a detailed explanation for your unauthorised absence in the circumstances.”

4.94 The Claimant contends that this is an act of discrimination. It amounts to a detriment for having made a protected act, she claims. There had in fact been an absence certificate but Lady Ranger did not know of it. The criticism from the Claimant is that this was a gratuitous and insensitive comment in the circumstances, displaying an unsympathetic attitude. It is true that the letter reads as though Lady Ranger is a disinterested third party in the matter rather than the head of HR. Does this amount to an actionable detriment? Would a reasonable employee regard that this matter was detrimental in the circumstances? This is borderline. On one view it is insensitive. On another, no other action was taken against the Claimant for unauthorised absence. She had in fact a fit note to the effect that she could not attend. We do not think this at the time caused the Claimant any undue concern. On balance, this was not a detriment. The Claimant does not say in her witness statement that this caused her any distress. She does point out it was based on a false assumption that she did not have a sick note. In the Tribunal's judgment a reasonable employee would not regard this as being an actionable detriment. The tone of the letter could have been more sympathetic, however.

Claimant's alleged failure to produce her telephone records.

4.95 The Respondents obtained the Claimant's mobile phone records for September/October 2018 in relation to the phone she says she used generally. She has one other phone, with which she says she speaks solely with her mother in India. We have had no records from that phone. The Respondents make complaint that the Claimant has failed to disclose July and August 2018 records for the phone she received calls on from Mr Sharma. They wanted to know how often she called Mr Sharma. Apparently, the only records we have from Mr Sharma's phone are the calls made by him. That information has not

been disclosed. A third-party order was made against Telefonica in the course of the hearing; they felt unable to assist for technical reasons. It was too late to challenge that. In an apparent attempt to obtain the relevant records, the Claimant had records sent to her for July and August. Unfortunately, it was 2019 not 2018. We do not find that to have been a deliberate ploy by the Claimant.

- 4.96 There has been to an extent, then, a failure in disclosure. There is mitigation however for the Claimant, which is that it was not until August 2020 that the Respondents pushed this point. In other words, the Respondents left it until effectively the eleventh hour to pursue this matter.
- 4.97 Although we have concerns about this failure, we are not persuaded that it is deliberate. The Respondents should have been seeking this information long before one month before the hearing.

Would the Claimant have been dismissed by the Respondents at the conclusion of her probationary period by reason of performance?

- 4.98 The Claimant's probationary period was one year and so would have been up in January 2019. The Respondents in their submissions envisage the possibility of some extension to the probationary period but, nonetheless, submit that we have sufficient information to conclude that the Claimant would have been dismissed for lack of capability at the conclusion of her probationary period.
- 4.99 The Respondents Sun Mark and SALF have been clear to us in the evidence of Sunny and Lord Ranger that they are not in the business of hiring and firing. They put it forward as a virtue that they are able to find what employees are good at. They were clear that they were not moving the Claimant from SARR because she had made a complaint. Ms McKie's submissions before us that they would have dismissed her at the conclusion of her probationary period is in contrast to the Respondents' evidential position on those matters in the Tribunal. On the one hand, they were seeking to make a virtue of their policy of not firing people but getting the best out of them and giving this as the reason for moving the Claimant from SARR and, on the other, Counsel is inviting us to conclude that the Claimant would have been dismissed at the conclusion of her probationary period.
- 4.100 There were performance concerns and these were listed in an email from Gauri Narang, dated 14 September 2018. Ms Narang emailed Ravi Gidar, copying Sunny. They had discussed the Claimant that day and Ms Narang wrote that there had been occasions in the past where the Claimant had shown carelessness, lack of attention to detail, and absent-mindedness while making payments. There was no sign of improvements. Now it had started to affect Richard Manning's work. Nine matters were mentioned.

- 4.100.1 The Claimant was requested to refund money to a guest. However, she refunded the money to a sales manager because the sales manager requested her to pay it.
- 4.100.2 She had made duplicated payments to suppliers.
- 4.100.3 She had paid the wrong supplier and it had taken five weeks to get the money back.
- 4.100.4 She had posted invoices to the wrong hotel.
- 4.100.5 £3,000 had been paid to a wrong supplier.
- 4.100.6 VAT had not been claimed on £100,000 worth of invoices.
- 4.100.7 She was not in the habit of sending remittances as she should. An example was given.
- 4.100.8 She had mishandled the posting of an entry relating to a chair. And
- 4.100.9 She demonstrated a lack of understanding about when invoices needed paying and asked questions of Ms Narang to which she should have known the answer.
- 4.101 Other concerns were mentioned in respect of whether the Claimant could cope with the administration of payments for three hotels. They were proposing to take on two more hotels and Ms Narang was uncertain whether they could handle the amount of work given the Claimant struggling with her existing workload.
- 4.102 Mr Gidar in answer to Ms Narang's email forwarded it on to Lord Ranger stating that the Claimant could no longer work for SARR. He suggested that they terminate her engagement after two weeks handover. The word Mr Gidar used was "terminate".
- 4.103 On 15 September 2018, Lord Ranger instructed Sunny to transfer the Claimant immediately to SALF so that she could start doing export documentations.
- 4.104 We know that Lord Ranger had appointed the Claimant having been introduced to her by a trusted friend in the community. He told us that he would do everything to get the best out of those he recruited. We accept that.
- 4.105 We see from WhatsApp conversations between Ms Narang and the Claimant that Ms Narang was comfortable to make comments to the Claimant criticising the performance of Richard Manning and the new girl Renu. We see that on 14 November 2018 Ms Narang asked the Claimant "When will you be back?" She says:

“I told Sunny yesterday that Raman was really good in managing cashflow. It was getting too much here. We have this new girl Renu here. She does not know what she is doing. Richard is impossible SARR has become a headache for me.”

- 4.106 That passage undoubtedly contradicts the suggestion that the Claimant was incompetent in all respects.
- 4.107 In some ways this is an artificial exercise because we have to put it in the context of all that was happening. That said, we note the Respondents did not dismiss her at the conclusion of her time with SARR. On the contrary, they transferred her to SALF to do export documentations. We do not know how that job would have gone. We cannot say that on the balance of probability the Claimant would have been dismissed at the conclusion of her probationary period for performance reasons. Likewise, we are in no position to say that the Claimant would have stayed long-term. As part of remedy considerations, the Tribunal will have to do the best it can in assessing on-going losses. We reserve that to the remedy hearing.

5. CONCLUSIONS

- 5.1 Neither the Claimant nor Mr Sharma told the whole truth in this case. That handicaps the Tribunal from making findings that would, for example, satisfy a criminal standard of proof. However, we are able to make findings, we believe, on the balance of probability. We reject Mr Sharma’s evidence that he is not able to recall the content of the phone calls. 2018 was not that long ago. He knew as from October 2018 that he was being accused of sexual harassment. He had ample opportunity to consider the nature of his communications with the Claimant and their content. We reject his evidence that the conversations we have listed above were wholly about work. That is not likely in respect of 23 July, 25 July, 7 August, 10 August, 15 August and 7 September entries. Those timings are consistent with the Claimant’s case that he was seeking an amorous sexual relationship with her.
- 5.2 The Claimant exaggerates considerably, in our judgment, what happened. She seeks to put a far more sinister interpretation on what happened, which is not credible. It is not credible because if the allegations happened as she said, she would have raised the problem much earlier than she did.
- 5.3 If there was no amorous pursuit on the part of Mr Sharma that would mean the Claimant has invented the entire story from start to finish. We do not think that is likely, either. That is implausible. She has however exaggerated matters considerably - exaggerated and

distorted matters. That may be because she felt vulnerable as an Indian person being in this country on a visa only, hoping, eventually, to receive indefinite leave to remain. That may well have been an element to her exaggerations. We find the following proved on the balance of probability.

Protected act

- 5.4 The Claimant clearly made several purported protected acts. She raised her allegations with Gauri Narang and repeated them to Sunny on 30 September 2018. She was plainly raising allegations under the Equality Act 2010. Were they made in good faith? The Respondents submit not. We have found a mixed picture in respect of this. We have found that the Claimant made a series of accurate allegations against Mr Sharma relating to his persistent sexual interest in her. We have also found that she exaggerated them by including references to physical threats of harm and threats to her visa and job status. We do not find, on the balance of probability, that she maliciously made these allegations. The Claimant's statements were made in an emotional state including some fact, some distortion and some exaggeration.
- 5.5 The picture is a mixed one, which makes it not entirely clear to the Tribunal as to where good and bad faith lie. There is, however, sufficient truth and sufficient belief in truth for these matters to amount to protected acts in the Tribunal's judgment. The Tribunal has found that many of her allegations are not sufficiently cogent in terms of supporting evidence to give rise to a prima facie case. It is clear to the Tribunal, however, that the Claimant believes what she asserts. Our difficulty is that some of the allegations were not sufficiently cogent and supported by evidence for us to find, on the balance of probability, that they happened.
- 5.6 The fact that the Tribunal finds some of her allegations unproven and rejects them does not mean to say she made them in bad faith. It seems to us she believes all of her allegations.
- 5.7 We cross-refer to the numbered allegations in the Scott Schedule.

Allegation 1

- 5.8 We find, on the balance of probably, that at some point in July 2018 Mr Sharma did declare his love for the Claimant and indicated he wanted a sexual relationship with her. We reject that he threatened her with dismissal and acting in such a way as to remove her visa. The evidence is not sufficiently cogent about that. The Claimant does not go so far as to say that in her confiding in Gauri Narang. She did not raise this on 10 September with Sunny. She would have

done if this behaviour had happened. We do accept that she told him that she did not want a sexual relationship with and his persistence was unwanted.

Allegation 2

- 5.9 We accept that Mr Sharma did pursue her persistently for a sexual relationship. This was unwanted by her. We reject on the balance of probability that he threatened her with the loss of her visa. The evidence is not sufficiently consistent to support that.

Allegation 4

- 5.10 We accept that Mr Sharma in August 2018 approached the Claimant maintaining his infatuation with her and persisted in seeking a sexual relationship. This was unwanted.

Allegations 5, 6 and 7

- 5.11 We think it likely that Mr Sharma invited the Claimant to a hotel room as alleged.
- 5.12 We think it likely also that on 7 August Mr Sharma expressed in dramatic terms his desire to have a sexual relationship with the Claimant saying that if she would not listen to him, he would die.
- 5.13 We accept that Mr Sharma felt unwell that day, he spoke to the Claimant that lunchtime. The Claimant volunteered to take him to hospital and, indeed insisted upon doing so. We think it likely that in the car he repeated his affection for her and his desire to pursue a sexual relationship. We think it likely also that the Claimant shared some personal matters with him. We find it likely that Mr Sharma complimented the Claimant's figure. The evidence is not sufficiently cogent for us to find that he assaulted her. We bear in mind that she came back to work with him and made no mention of any assault. She made no mention of any assault to Sunny on 10 September 2018.
- 5.14 In our judgment, the analysis is consistent with a man pursuing a woman for relationship and sex. We do not find the evidence sufficiently cogent to find abuse over and above that. That said, we accept from the Claimant, she did not want it. That is precisely what she said to Sunny on 10 September 2018.
- 5.15 We reject the Claimant's assertion that he threatened her by suggesting he would break her arms and legs and reduce her to beggar status. The evidence is not sufficiently cogent for us to find that, even on the balance of probability.

- 5.16 Put another way, we do not find that the evidence is sufficient to amount to any criminal-like conduct on the part of Mr Sharma. He was however pursuing her for a relationship, which she did not want and that amounts to unwanted harassment in breach of the civil law.

Allegation 9

- 5.17 Allegation 9 also is made out and is consistent with our findings on the balance of probability.

Allegation 8

- 5.18 We do not find allegation 8 proved on the balance of probability. Whilst the matter of two female colleagues having been sacked in the past for alleging sexual harassment was floated by the Claimant and her counsel, there was no corroboration for those assertions whether through disclosure or admission by the Respondents. There has been complete denial that anything like this has ever happened in the past. We have no basis to find otherwise.
- 5.19 The evidence is insufficiently cogent for us to find that the Claimant proves, on the balance of probability, that Mr Sharma called her a bitch and made an insulting comment by reference to dogs. It might have happened but we do not find so on the balance of probability, given the lack of cogency about it in this case.

Allegation 10

- 5.20 We accept from the Claimant that Mr Sharma was still pursuing her for sex. The evidence is not sufficiently cogent for us to find that he threatened her with her visa and her job.

Allegations 11 and 12

- 5.21 We reject the Claimant's suggestion that he called her a prostitute. We find he used the words "hoor pari" which is a Punjabi word for 'heavenly princess' or 'prima donna'. It does not mean prostitute. We have seen the CCTV: we do find on the balance of probability that Mr Sharma acted in a managerially harassing way in expressing his annoyance at the fact that the Claimant had copied in Sunny to an error made by Mr Sharma. We reject, on the balance of probability, that there was sexual harassment on that occasion. We specifically reject that Mr Sharma placed his hands directly on his penis through his trousers and said, "this I will put in you", which the Claimant puts forward as a threat of rape. He did not say that he would make her handicapped.

- 5.22 As stated above, we do not find that the Respondents have deliberately deleted a passage of CCTV coverage in which this could be seen. Given where Mr Sharma was stood, we would not have seen this, anyway. We did however see the Claimant's reaction at this point. She was holding her ground in the argument. She did not behave as though someone had just threatened rape.

Allegation 3

- 5.23 The Claimant did come to see Sunny on 10 September 2018. She told him that there was an imbalance in affection. Mr Sharma clearly liked her and she did not like him the same way. That is all the Claimant told him. She did not say there was anything more sinister than that. Sunny dealt with it in a skilful way by ensuring that Mr Manning had supervisory responsibility for the Claimant rather than Mr Sharma. We make no criticism of Sunny for his actions on 10 September.
- 5.24 Furthermore, we are clear that this was the first occasion that the Claimant raised the matter with Sunny. The Claimant has exaggerated considerably, also to Lord Ranger, the number of times she has raised this matter with Sunny.
- 5.25 We confine allegation 3 in the chronology to all matters up to 29 September 2018. We treat allegations 13 to 15 as relating to the second time that the Claimant raised concerns with Sunny directly and indirectly.

Allegation 13

- 5.26 Turning then to allegation 13: there is a concerning piece of evidence against Sunny in respect of the meeting he had with her on 1 October 2018. The Claimant did email him on 4 October 2018, at 14:43, chasing a response to the meeting of 1 October. There is an express statement by her, and we have no doubt she had legal assistance at this point, to this effect:

“When we met on Monday you told me that if I pursued this matter maybe I would lose my job, visa and honour. I told you the situation was intolerable and having a negative effect on my health and work.”

- 5.27 It is surprising that if this was to have been said, Sunny does not contradict it upon receipt. We understand that he withdrew from the investigation of the matter and relied upon Mr Qazi but this was a contention of fact as to what was said by him. In his witness statement Sunny says that he was, “very shocked to read her email alleging that I had blackmailed her and threatened her that if she pursued the matter she may lose her job, visa and honour as she alleges”. He said that was completely untrue. Why then did he not immediately contradict it in writing?

- 5.28 We are assisted by the burden of proof here. There is prima facie evidence contained in the Claimant's email that there was an act of discrimination here. Sunny did not contradict it at the time. The Respondents fail to discharge their burden to show that this act of discrimination did not take place. We find, as we must pursuant to burden of proof rules, that it did.

Allegation 14

- 5.29 As to allegation 14 and the failure to suspend Mr Sharma and moving the Claimant to a different part of the office: we find that this was a judgment call on the part of the management. Suspension would have been justified but we do not regard it as the only reasonable response. The Claimant was moved to a location outside Lord Ranger's office with other female staff in the vicinity. She did not have to have contact with Mr Sharma at that location. The Respondents did not want to pre-judge the matter prior to the investigation. This may have not been an ideal response, but it was not a discriminatory response.

Allegation 15

- 5.30 The blocking of the Claimant's SARR email address was consistent with the decision that had been taken to transfer her back to SALF. It is true that that decision had not been communicated to the Claimant by the time she made her allegations against Mr Sharma to Gauri Narang. SARR was waiting for a suitable replacement to be in situ. That said, the reason for the closing of her SARR email account was the proposed transfer, it was not that she had raised allegations against Mr Sharma.

Allegation 16

- 5.31 There is no doubt that the conversation between Lord Ranger and the Claimant was unfortunate in the extreme. Lord Ranger lost his temper and his composure and insulted the Claimant in a way which related to her gender and the fact that she was raising an allegation of sexual harassment.
- 5.32 Lord Ranger felt upset that the Claimant had not approached him much earlier about this matter. He told us that if she had done so, we would not be sitting in the Tribunal. He may be right about that but that was not the situation he was presented with on the day. We have heard the Claimant's demeanour - she was not speaking in a controlled manner herself. Lord Ranger should have terminated the conversation and said the matter was subject to an internal enquiry. Instead, he lost his composure and insulted the Claimant in the ways set out. That amounted to unlawful discrimination.

- 5.33 Lord Ranger did victimise the Claimant contrary to section 27(1) of the Equality Act 2010, harass her contrary to section 26(1) of the Act, and directly discriminate against her contrary to section 13(1) of the Act when, in an intemperate telephone call on 5 October 2018, the Claimant having informed him she was raising allegations of sexual harassment, he stated –
- (a) he would not ‘spare her’;
 - (b) he would get the evidence together and see her in Court;
 - (c) she was insolent;
 - (d) she had no virtues and compared her to a female member of a non-elite peasant caste;
 - (e) she was silly and stupid;
 - (f) she was a liar;
 - (g) she was an absolute troublemaker;
 - (h) she was a horrible girl;
 - (i) she had ruined her parents’ honour.

5.34 This is victimisation because she was making a protected act by raising the issue of sexual harassment. The words and attitude represented by them amounted to detriments. It was harassment because the words and attitude represented by them were unwanted conduct relevant to her gender (the complaint of sexual harassment) and they had an effect of violating the Claimant’s dignity and creating an intimidating, hostile, degrading, humiliating and offensive environment for her. It was also direct discrimination although the other causes of action provide a better fit. He would not have treated a man in a hypothetically similar situation by the use of those words.

5.35 We do not find that Lord Ranger threatened to kill the Claimant. He did say he would ‘not spare her’ by which he meant he would not spare her from the consequences of, as he prejudged it, defaming his staff and his company. He did not call her a prostitute. He did call her the matters listed, however. He did compare her to a caste of peasant workers. He did say to her that he would see her in court. His comments inevitably undermined the efficacy of the investigation in terms of its perceived independence that followed.

Allegation 17

5.36 The Tribunal rejects the suggestion that Mr Qazi’s meeting with the Claimant on 10 October 2018 was in any sense discriminatory. He asked her for her version of events. That part of the conversation that was in English was recorded by Ms Perera. Mr Qazi did not listen to the recording of Lord Ranger’s telephone discussion with the Claimant. Ms Perera’s notes were not in pencil: they were in pen.

- 5.37 The Claimant did not wholly engage with Mr Qazi's investigation. That is not surprising following the conversation she had with Lord Ranger. The Claimant was not prepared to sign a witness statement; she did not submit any further information.

Allegation 18

- 5.38 As to allegation 18: it is right that Mr Qazi focussed upon the Claimant's allegations against Mr Sharma. He evaluated whether he was in a position to uphold one account as against the other. He concluded he could not. He did not look at any allegation against Sunny or against Lord Ranger. His terms of reference were to investigate the allegation of sexual harassment and assault made by the Claimant against Mr Sharma.
- 5.39 We do not criticise Mr Qazi for not investigating what he was not asked to investigate. In so far as there was a failure, it would be on the part of Sunny and Lord Ranger. It would have been for Sunny and/or Lord Ranger to report themselves for investigation if they felt that appropriate. We have looked carefully but we cannot find evidence to the effect that the Claimant raised with Mr Qazi complaints against Lord Ranger or Sunny.
- 5.40 It is not claimed that Lady Ranger, as the Head of HR, missed a point here as an act of discrimination either. That is to say, by failing to extend Mr Qazi's terms of reference.
- 5.41 We have already found that no criticism can be made of Sunny for failing to investigate matters prior to 30 September 2018 because, on 10 September 2018, the Claimant did not raise a grievance.
- 5.42 Mr Qazi did not know the content of the conversation between Lord Ranger and the Claimant as we know it now with the transcript and translation. He was aware that a heated conversation had taken place, Lord Ranger had told him that. No one had asked him to investigate it as a potential act of discrimination.

Allegation 19

- 5.43 The Claimant had not raised grievances prior to approaching Gauri Narang.
- 5.44 The second element of allegation 19 is criticism of Lady Ranger's mention in the letter of 8 October 2018 that the Claimant would have to explain her unauthorised absence to Mr Qazi. We deal with this above. It was a mistake made by Lady Ranger, as she herself acknowledged to us, in that there was a certificate in existence. Lady Ranger also regretted the use of that phrase in that letter. We find

above that the phrase did not amount to a detriment at the time. It was not pursued internally. It has, of course, been pursued before us. On balance, this could not be regarded by a reasonable employee as a detriment.

Allegation 20

- 5.45 The Respondents did want to discuss the findings of Mr Qazi with the Claimant in person when she returned to work. That was not an unreasonable position. As it transpired, she did not return to work because of on-going sick leave. The Respondents contacted the Claimant on 30 October 2018 indicating that the investigation had been completed and they wanted to consult her about it.
- 5.46 Mr Qazi did invite the Claimant to submit a written statement. The first such request was 16 October, repeated, we believe, on 30 October and on 7 November. We accept from Mr Qazi that it had been discussed at the interview on 10 October that the Claimant would provide a written statement. It seems she chose not to do so. As we say, we are not surprised she did not engage with this process given the discussion she had with Lord Ranger. There is however no discrimination in the conduct of Mr Qazi in trying to obtain her statement or in delaying sharing with her the outcome, hoping she would return to work.

Employment Judge Smail

Date: 27 November 2020

Sent to the parties on: ...12/4/2021.

.....
For the Tribunal Office