EMPLOYMENT TRIBUNALS

Claimant: JKL

Respondent: Comfort Care Recruitment & Training Ltd

Heard at: Watford Employment Tribunal (In public; In person)

On: **20, 21, 22 September 2023**

Before: Employment Judge Quill; Ms J Hancock; Mr D Wharton

Appearances
For the claimant: In person
For the respondent: Mrs Singh, solicitor

RESERVED JUDGMENT

(1) The complaint of breach of contract succeeds.
   (i) An email purporting to terminate the Claimant's employment with immediate effect was sent so late on 13 September 2022 that the Claimant did not have an opportunity to read it until 14 September 2022.
   (ii) The Claimant was entitled to one week's written notice of dismissal, and it was therefore a breach of contract for the employer to terminate the contract any earlier than 21 September 2022.

(2) The following incidents did occur:
   (i) Some time in August 2022, when the claimant was making a cup of tea in Mr Ozour's office, he touched her on her bottom.
   (ii) On 18 August 2022, in the basement at 310 High Street Croydon, Mr Ozour grabbed the claimant from behind and touched her on her bottom and on her breast.
   (iii) On 2 September, in his office, Mr Ozour pulled the office window closed and then slapped the claimant on the bottom whilst she tried to reopen it.

(3) Each of the three acts mentioned in paragraph 2 was an act of harassment related to the Claimant's sex (which is female). That is, it was harassment within the definition in section 26(1) of the Equality Act 2010 ("EQA").

(4) Each of the three acts mentioned in paragraph 2 was an act of harassment of a sexual nature. That is, it was harassment within the definition in section 26(2) EQA.

(5) The Claimant's dismissal was harassment within the definition in section 26(3). That is, she was subjected to harassment of a sexual nature, and the dismissal was less favourable treatment than had she not rejected the conduct.

(6) Each of the acts of harassment mentioned above was a contravention of section 40 EQA.

(7) The Claimant's dismissal was a contravention of section 39(4)(c) EQA, because it was an act of victimisation (as defined in section 27 EQA).

REASONS

Introduction

1. The Claimant is a former employee of the Respondent. It is common ground that her employment lasted from early July to mid-September 2022, and ended when the Respondent dismissed her.

2. An order has been made under Rule 50 of the Employment Tribunals Rules of Procedure that she be referred to JKL in any documents published by the Tribunal.

3. Nothing in this document is intended to make any decisions that any person has committed any criminal offence of any description. We have to make various decisions on various matters as they are relevant to the claims before us. The criminal standard of proof has not been applied

4. It is the panel's opinion that the provisions of the Sexual Offences (Amendment) Act 1992 (as amended by the Youth Justice and Criminal Evidence Act 1999 and the Sexual Offences Act 2003) are likely to apply in relation to the Claimant's identity. The Claimant has not waived any rights to anonymity granted by that legislation.

5. We have decided that the name and address of her employer and the names of her colleagues do not need to be redacted in order to avoid disclosing the Claimant's identity. Her exact job title will be anonymised to "JOB XYZ".

The Claims and Issues

6. At a preliminary hearing on 7 March 2023, it was decided that this final hearing (Wednesday to Friday, 19 to 22 September 2023) would be for liability only.

7. A list of issues was produced at that hearing. We produce it below - as it relates to the liability issues only - as sent to parties on 26 March 2023.

1. Wrongful dismissal / Notice pay

1.1 What was the claimant's notice period?

1.2 Was the claimant paid for that notice period?

1.3 If not, was the claimant guilty of gross misconduct?

2. Harassment related to sex (Equality Act 2010 section 26)

2.1 Did the respondent do the following things:

2.1.1 Some time in August 2022, when the claimant was making a cup of tea in Mr Ozour's office, he touched her on her bottom;

2.1.2 On 18 August 2022, in the basement at 310 High Street Croydon, Mr Ozour grabbed the claimant from behind and touched her on her bottom and on her breast.

2.1.3 On 2 September, in his office, Mr Ozour pulled the office window blinds down and then slapped the claimant on the bottom whilst she tried to pull the blinds back up.

2.2 If so, was that unwanted conduct?

2.3 Did it relate to sex?

2.4 Alternatively was it of a sexual nature?

2.5 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

2.6 If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

2.7 Did the respondent treat the claimant less favourably because the claimant rejected or submitted to the conduct? The less favourable treatment relied on by the claimant is her dismissal.

3. Victimisation (Equality Act 2010 section 27)

3.1 Did the claimant do a protected act as follows:

3.1.1 In an email of 6 or 7 September in which she raised the conduct of Mr Ozour.

3.2 Did the respondent do the following things:

3.2.1 Dismiss the claimant by email dated 13 September 2022 (that stated the dismissal was with effect from 10 September 2022).

3.3 By doing so, did it subject the claimant to detriment?

3.4 If so, was it because the claimant did a protected act?

3.5 Was it because the respondent believed the claimant had done, or might do, a protected act?

8. In relation to the issue of whether the Claimant did a protected act, in closing submissions, the Respondent, through its legal representatives, expressly conceded that, in fact, there were not one, but two, protected acts, and that we should address issues 3.2 to 3.5 on that basis (the Respondent's position being that the dismissal was not victimisation because it was not because of either protected act).

9. We asked for express confirmation from the Respondent's solicitor that, on instructions, she was expressly conceding that all the parts of the definition of a protected act in section 27 EQA had been considered, and that the Respondent was conceding that the acts in question did satisfy all elements of the definition. That confirmation was supplied. (We do, of course, also take into account that the Respondent made very clear throughout the litigation, and repeated emphatically during closing submissions, that its position is that the incidents described in paragraph 2.1 the list of issues did not occur.)

10. The history of how that position was reached was as follows.

10.1 We did have an email in the bundle (page 123) from the Claimant to the Respondent timed at 00:10 on 12 September 2022. (We quote it in full below). This potentially matched the description in paragraph 3.1.1 of the list of issues save for the fact that it was not dated 6 or 7 September 2022.

10.2 We did not have any email in the bundle from 6 (or 7) September 2022 that matched the description in paragraph 3.1.1 of the list of issues. On each day of the hearing, we asked each party to produce the item and neither side did (each of them saying that they had searched and could trace no copy; in the Claimant's case she suggested it was likely to have been sent from her work email account to which she no longer had access).

10.3 It was effectively common ground between the parties that an email had been sent on 6 September 2022 (at 2.30pm, according to the termination letter) which matched the description in paragraph 3.1.1 of the list of issues and whose contents were very similar (perhaps even identical) to the 12 September email (page 123 of bundle).

10.4 We had informed the parties that, for the purposes of our findings of fact, we might have to consider the possibility that, in fact, the (alleged) protected act identified at paragraph 3.1.1 and the (alleged) email of 2.30pm on 6 September 2023 were simply incorrectly dated and that – in each case – were incorrectly dated references to the 12 September email (page 123).

10.5 On Day 3, it was suggested by the Respondent that possibly the 6 September email was sent to the Respondent by ACAS, rather than directly by the Claimant. The Claimant did not agree with this suggestion. The Respondent confirmed that, even if the email was sent from ACAS, the position should be that both parties had waived any "without prejudice privilege" that might otherwise apply to it.

10.6 The Tribunal thinks that it is unlikely that the email was actually sent by ACAS (in all the circumstances, including that early conciliation did not commence until 14 September 2022), but we do not ultimately need to resolve that matter given that the Respondent expressly concedes that (i) the 6 September email was a protected act and (ii) we can treat its contents as being – so far as is relevant – effectively identical to the 12 September email.

10.7 As will be mentioned in more detail in the findings of fact below, we ultimately decided to accept that the two parties were correct in their joint position that there was an email sent on 6 September 2022 that was similar to the one on 12 September 2022.

11. Although there was never any request by the Claimant that paragraph 2.1.3 should be amended, we take account of the fact that the Claimant is a litigant in person and of the fact that she mentioned to us at various points during the three days that she was finding things difficult.

12. There was no mention of "window blind" in the claim form. The relevant extract read that Mr Ozour: "full his office window down and slap my bum again while I pull the office window back up". The first word of that extract is clearly meant to refer to "pull" or "pulled". The actual allegation refers to the window (which the evidence revealed was a tinted window) not a window blind, and the Claimant made that clear in the email of 12 September 2022 [Bundle 123], in the statement relied on as evidence in chief [Bundle 72], and in the statement sent to the Respondent prior the preliminary hearing and sent to the Tribunal electronically before the final hearing [page 10 of document headed Victim Statement (Appendix 3: 7.2)]. Her position that she had been referring to a tinted window is also consistent with what she said in closing submissions when we invited her to comment on that aspect of the matter.

13. Having heard the evidence and submissions, it is clear to the Tribunal that the list of issues at the preliminary hearing was based on a misunderstanding or miscommunication in that the judge did not realise that the Claimant was referring to closing a tinted window rather than closing some sort of window covering. We are therefore addressing paragraph 2.1.3 in the way it is described in the claim form rather than in the list produced in March 2023. Our decision is that paragraph 2.1.3 should correctly read:

2.1.3 On 2 September, in his office, Mr Ozour pulled the office window closed and then slapped the claimant on the bottom whilst she tried to reopen it.

The Hearing and the Evidence

14. The hearing took place entirely in person, save for one witness who gave evidence by video on Day 3.

15. The Claimant was late on Days 1 and Day 3. She said that her lateness on Day 3 (which caused a delay to the start of proceedings that day) was for a combination of a health issue (which she described) delaying her leaving her home, and then transport problems after that.

16. The Claimant's lateness on Day 1 did not delay the start of the hearing because the Respondent had breached the order (paragraph 14 of the orders from the preliminary hearing) which said: "*The respondent must bring four more copies of the file to the hearing for the Tribunal to use by 9.30 am on the first morning*." Although the Respondent's witnesses and representative were in the building before the 10am start time, the documents were not. The Respondent's representative left the building to create the copies and did not return until well after the Claimant had arrived.

Document Bundle

17. The Respondent provided a chronology, a cast list and a reading list. We had these electronically and in hard copy format.

18. The Respondent provided a bundle numbered up to page 139 both electronically and (at about 11.30am on Day 1) in hard copy. At the same time as it supplied the paper bundle to the Tribunal, the Respondent asked to add some documents and we agreed to that. They were added (without numbers) before the oral evidence got underway. Some were duplicates of items already in the bundle. These pages were (in the order in which they were arranged):

    18.1 A document which appeared to be identical to [Bundle 61-62] and which we were told should be treated as a witness statement from Nasro Moallim (instead of the proposed witness statement sent to the Tribunal in July 2023). It was unsigned and bore the date of 18.04.23 at the top of each page.

    18.2 A document which did not appear to otherwise be in the bundle and which we were told should be treated as a witness statement from Sarah Bynoe (instead of the proposed witness statement sent to the Tribunal in July 2023). It was signed and bore the date of 19.04.23 at the top of the page.

    18.3 A document which appeared to be identical to [Bundle 63] and which we were told should be treated as a witness statement from Lucy Prempeh (instead of

the proposed witness statement sent to the Tribunal in July 2023). It was signed and bore the date of 19.04.23 at the top of the page.

18.4 A document which appeared to be identical to [Bundle 64] and which we were told should be treated as a witness statement from Annet Nalukenge (instead of the proposed witness statement – which was unsigned and had spelling "Nalukenga" - sent to the Tribunal in July 2023). It was signed and bore the date of 20.04.23 at the top of the page

18.5 A document which seemed very similar to [Bundle 58 to 60], the termination letter. Some minor differences (not to wording, but to formatting) were pointed out by the Tribunal to parties on Day 1. Neither side made any further comment or submissions based on those differences, and this item was not referred to again in the evidence, as witnesses were instead asked about [Bundle 58 to 60].

18.6 A document bearing the date 31 August 2022 and, on the face it, purporting to be a letter from the Respondent (unsigned, but ending "yours sincerely Ben Ozour") to the Claimant headed "Re: Lateness and Absenteeism". When we were asked to admit the document, it was on the basis that the document was not already included in the bundle, and questions to witnesses were on that basis too. In actual fact, our decision is that it is identical to the document at page 65 of the bundle, and was already in the bundle sent to the Claimant.

18.7 Further copy of Annet Nalukenge item.

18.8 Item bearing date 5 September 2022, which stated it was invitation to "fact finding" meeting on 6 September 2022.

18.9 Copy of [Bundle 68] which was unsigned and undated, and said to contain Honour Oladele's account of "Incident of 02/09/2022".

19. The Claimant maintained that she had sent various items to the Respondent's previous solicitors (there being a change in representation very close to the hearing dates, from what we were told) which she had asked to have added to the bundle.

20. There was only one item that she was able to demonstrate to us (by producing a copy of the email) that had been sent to the solicitor without having been included in the bundle, and that was a video. (There was also another item which the Tribunal could not open, and – we infer – nor could the Respondent's previous solicitor, and so that may well not have been in the bundle either).

21. Pages 81 to 117 were all screenshots of WhatsApp (or similar) messages, and all were screenshots which the Claimant had taken. There were none from the Respondent's side. The Claimant's claim was that she had sent others too (to the

former solicitor) and they had not been included. Whether or not that was true [and the Claimant was unable to supply evidence, and the Respondent's new solicitor was not in a position to confirm or deny, beyond saying that the Respondent believed that everything from the Claimant had been included], it was fair and reasonable to add the extra messages, given that Mr Ozour's witness statement expressly asserted that the WhatsApp traffic supported his position rather than the Claimant's in relation to certain disputes. On Day 2, the further screenshots (which the Claimant had supplied to the Respondent's representative pursuant to our orders made on Day 1) were added to the bundle.

22. At the same time, we added three emails which the Claimant had been able to locate:

    22.1 A 3 June 2022 email from the Respondent to the Claimant with blank application form

    22.2 A 17 June 2022 email from the Respondent to the Claimant with offer letter and contract

    22.3 An email of 13 September 2022 at 23:56:21 BST email from the Respondent to the Claimant. Unlike the other two items, this was the covering email only, with no attachment. However, it is common ground that the attachment was the document at [Bundle 58 to 60]; that is, the dismissal letter.

23. Thus that bundle of 46 extra pages was available before the Respondent's witnesses were cross-examined. We asked if either side was going to apply for the Claimant to be recalled to give further evidence. There was no such application, and nor did the panel think it necessary to recall her of our own initiative.

24. On Day 3, various further items were supplied. None of them were actually in our possession until after the close of witness evidence (though some were discussed earlier in the day, being the items which we had ordered be produced).

25. We did not, in fact, receive any item relating to the training course (though we had been told one item was going to be sent).

26. The documents that we did receive, and that we confirmed to the parties that we had received, were as follows.

    26.1 From the Respondent, three pdfs each said to be a scan of attendance records for, respectively: July, August September 2022.

    26.2 From the Respondent, a pdf of the document at [Bundle 58 to 60]; that is, the dismissal letter. This was without the covering email, and the document

properties showed it was created at 13/09/2022, 23:48:34. (The "author" attribute said "Ben Ozour").

26.3 From the Respondent, a jpg image file of the document at [Bundle 122]. This was the Claimant's sick note. We had not requested it, and we did not understand there to be a dispute over it, but the metadata appears to show that the photo was taken at 11:18am on 6 September 2022.

26.4 From the Claimant, a pdf showing photos of a credit card, and a WhatsApp exchange about a payment made using it.

26.5 From the Claimant, a pdf of images which she said were photos of her, taken with her phone, at her request, by police officers on 2 September 2022. We did not have the image files, but the Claimant showed her phone to the Claimant's representative and there is no dispute that the metadata appeared consistent with their having been taken on 2 September 2022.

Witness Evidence

27. Prior to the parties' coming into the room on Day 1 (which was delayed until around 11.30am because of the Respondent's breach of the orders in relation to bringing the bundle) we had read what we had understood to be the parties' respective witness statements for the hearing.

28. For the Claimant, we had read a document headed "Victim Statement (Appendix 3: 7.2)" which had been attached to an email sent to the Respondent's representative and the Tribunal on 10 June 2023 at 14:09. It transpired that this was a document that she had (first) sent to the Respondent's representative much earlier (she thinks it was prior to the preliminary hearing, but we do not have confirmation of that) and was not her intended witness statement. Her intended witness statement was pages 70 to 80 of the bundle. We therefore read that, and she swore to its accuracy and answered questions from the Respondent's representative and panel.

29. The Respondent's previous representative had sent an email to the Tribunal on 21 July which asserted it was lodging witness statements, being:

29.1 Witness statement of Benson Ozour dated 21.07.2023

29.2 Witness Statement of Ugochukwu Ozour dated 19.07.2023

29.3 Witness Statement of Nasro Moallim dated 19.07.2023

29.4 Witness Statement of Lucy Florence Prempeh dated 20.07.2023

29.5 Witness Statement of Sarah Bynoe dated 19.07.2023

29.6 Witness Statement of Annet Sarah Nalukenga (unsigned and undated)

30. Those were the documents which we had read before the parties first joined us. However, at that stage, the Respondent confirmed that the only witnesses were to be Mr Benson Ozour ("Mr Ozour"), and his daughter Ugochukwu Ozour ("Ugo"). Ugo's statement was the same as the one we had read. Mr Ozour's was slightly different. It was confirmed that the Respondent was not seeking that we take into account the evidence in statements 3 to 6 from the list above (albeit, in some cases, there were different documents which were said to represent the person's account, and which we were asked to take into account). There was no objection from the Claimant to the change in Mr Ozour's statement and therefore we used the versions of his and Ugo's statements which were supplied to us in hard copy form.

31. The timetable which we fixed on Day 1 had to be different from that set out in the preliminary hearing orders because of the late start. For the reasons that we gave at the time, we refused the Respondent's representative application that we would not start the evidence until Day 2. The timetable we gave was for the Claimant's evidence to be concluded by the end of Day 1 (but on the basis that she could potentially be recalled, if necessary, once the Respondent's representative had considered the further pages that were to be added to the bundle). It was for the Respondent's witness evidence to start at 10am on Day 2 and be finished by 3pm, with submissions after that on Day 2. Day 3 was for deliberations to finish, and for a liability decision with reasons to be given orally.

32. The evidence could not start promptly on Day 2 because we had to deal with the addition of further documents. The tribunal clerk kindly assisted the parties by arranging for copies of the 46 additional pages to be created, and it was just after 11.25am that Mr Ozour took the oath. The Respondent's representative insisted that it was essential to have permission to ask supplementary questions and argued that it would not be a fair trial if this was not allowed. We made clear that it was necessary to justify, on a case-by-case basis, that each set of questions genuinely arose from something that could not have been anticipated as relevant by the time that written statements had been supposed to be sent to be exchanged. The Respondent's representative made clear that she did not agree with that. Ultimately, there was no set of questions that was disallowed, even those which were directly commenting on matters set out clearly in the list of issues and/or which invited the witness to simply repeat orally things which were already written in the statement. This, combined with the fact that we needed to take a break of around 15 minutes because the Claimant was unwell, meant that Mr Ozour's evidence in chief was not concluded until 1pm. We took lunch until 2pm and cross-examination started at 2pm. In order to try to make up for some of the lost time, we sat until 5pm, by which time Mr Ozour's evidence had concluded.

33. Ugo had been perfectly willing to attend in person, but, for the reasons that were discussed at the time, it had been agreed on Day 1 that Ugo would give evidence by video. At the end of Day 2, we had informed the Claimant that we would allow her a maximum of 45 minutes to cross-examine Ugo. We said the intention was that the submissions would be made as early as possible in the morning on Day 3, with the decision and reasons in the afternoon.

34. Because of the Claimant's late arrival, and further discussions about documents, Ugo's evidence started around 11am. The Claimant had made clear to the panel that she did not wish us to take Ugo's evidence as read, and did dispute the contents of the written statement. However, she did not believe that she would be able to put questions to Ugo. The judge therefore put the Claimant's version of events (from the Claimant's written statement) to Ugo to give the witness a chance to comment on it. Following that, there were panel questions and the opportunity for any re-examination.

Orders for Documents

35. On Day 1, we ordered both parties to attempt to locate, and supply to the Tribunal, the item potentially being referred to in paragraph 3.1.1 of the list of issues. We also ordered the Respondent that (whether it was the same item or not), it must find and supply a copy of the 6 September email (from the Claimant to it) that was mentioned in the dismissal letter. We also asked for a copy of the 13 September 2022 email which (as both parties agreed) had been sent from the Respondent to the Tribunal attaching the document at [Bundle 58 to 60].

36. On Day 2, we repeated that our orders for the above remained in existence, and, in addition, we asked for:

    36.1 Electronic copy of the document with the date 31 August which had been added to the bundle on Day 1;

    36.2 Copies of the attendance records mentioned by Mr Ozour in oral evidence;

    36.3 Copies of all correspondence back and forth between the trainer (whose name was "Grace" we were told) in relation to the course which the Claimant had been attending, its (temporary) cessation (due to Grace's incapacity, according to the Respondent), its cancellation, and any attempts by the Respondent to recover its fees.

Reserved Judgment

37. Following some further delays/technical problems with the Respondent's attempts to supply the documents which we had ordered, and following the Tribunal's sending copies to the Respondent's new representative of the Claimant's email of 10 June 2023 at 1409 and the previous representative's email of 21 July 2023 (in

other words, the emails that had attached the electronic statements that we had read on Day 1), submissions got underway at 12:45pm. That part of the hearing (which included discussions and supply of further documents from the Claimant, and discussion of anonymity issues) lasted for just over an hour.

38. We therefore decided that it was necessary to reserve our decision.

The Findings of Fact

39. The Respondent was formed in 2016, and Benson Ozour ("Mr Ozour") has been a director throughout its existence. It typically has around 8 office-based employees, with the remainder of its approximately 125 employees working "in the field" in the care industry.

40. One of Mr Benson's daughters is Ugochukwu Ozour ("Ugo"). She has been employed by the Respondent since around 10 February 2018. At the times relevant to this dispute, her job title was Operations Manager and Care Coordinator. She is one of the office based employees.

41. We were told by Mr Benson that another daughter, Anita, was also employed by the Respondent at the relevant times, and was responsible for Human Resources. She worked mainly from home. We have seen no written policies, and the Claimant was never informed that she should contact Anita if she wished to bring any grievance or complaint.

Offer / Contract / Start of Employment

42. The Claimant and Mr Benson did not know each other before the Claimant was interviewed (by video) as part of the process for seeking work with the Respondent. Mr Ozour and the Claimant had not met in person prior to the Claimant's first day in the office, when she started work (in July 2022).

43. We infer the interview was on (or around) 2 June 2022 from the 3 June email which invited her to supply a completed application form, and various documents.

44. On 17 June 2022, the Claimant received an offer letter and contract. The covering email, offer letter and contract are all consistent that the job title was to be "JOB XYZ". Although there is mention of a job description being attached, such a document was not attached with the electronic version of the item which we received, and nor was a copy included in the hearing bundle, and nor was there any mention of the Claimant's duties in either of the two versions of Mr Ozour's written statement.

45. The Claimant's account of her duties was set out in both versions of the Claimant's witness statement; in other words, it was included in the version which had been sent to the Respondent's representative by no later than 10 June. In answer to

supplementary questions from the Respondent's new representative, Mr Ozour stated that he did not agree with the Claimant's account of her duties on the basis that he asserted that the Claimant had been given a written job description and that what she had written went beyond that. However, in the main, he accepted that she did, in fact, carry out most or all of the duties mentioned; he said that she had done so because she had voluntarily assumed various duties, and not because he had instructed her that she was required to do them.

46. We will discuss this difference of opinion about the Claimant's duties as it relates to other matters below. In brief, we are satisfied that the Claimant was brought in to have a senior management role, and effectively to be "number two" to Mr Ozour's "number one".

47. The Claimant accepted the employment on the terms offered on 17 June 2022. The contract included the following terms:

    47.1 40 hours per week

    47.2 On call requirement for some weekends

    47.3 6 months probation period during which the Respondent had the right to "terminate employment giving one week's notice in writing".

48. There is reference to induction pack, and policies, and other documents which we have not seen. There is no specified start time, finish time, or days of work. In relation to breaks, there is an error in that we infer that, instead of saying "Break: One hour thirty minutes daily", either "one hour" or "thirty minutes" was supposed to be deleted. Mr Ozour may well be correct that it was supposed to have said "thirty minutes", but nothing turns on this.

49. The offer and contract specify start date of 1 July 2022 (which was a Friday).

    49.1 On Mr Ozour's account, the Claimant did not turn up on that date, and provided no explanation, so he phoned her and she told him she was not well, and her first day actually was Thursday 7 July 2022.

    49.2 On the Claimant's account, she was ready to go to work on Friday 1 July 2022 and received a call from Mr Ozour. She was unsure of the exact time, but believed it was well before 8am and was early enough for her to be at work on time. Mr Ozour told her that she did not need to come in that day, and should come in on the Monday instead. Her account is that she did so, and her first day at work was Monday 4 July 2023.

50. We will discuss credibility issues in more detail below, but, in brief, we accept that the Claimant's account is truthful and accurate. The attendance records produced on Day 3 do not cause us to doubt her recollection that she started on Monday 4

July, or her account of the reason she did not start on 1 July. Apart from anything else, we accept her evidence that she was never asked to, and never did, complete an attendance register.

51. Furthermore, and in any event, there was no issue or complaint raised with the Claimant at the time about her start date. Even if (contrary to our finding) she was actually on sick leave on 1 July and on 4, 5, 6 July 2022, she was not criticised for this at the time, or asked to provide any documentation to support the reasons for her (on the Respondent's account) absence for those dates. The first time any issue or query about an alleged failure to attend the workplace for the first time on 1 July (and subsequently) was in the dismissal letter.

Training

52. It was mutually agreed that the Claimant would undertake training (to be paid for by the Respondent, and done in work time) which would ultimately lead to her becoming (or, at least, being eligible to be appointed as) a Registered Manager.

52.1 For the avoidance of doubt, this training was agreed from the outset of her employment. It was not arranged because Nasro Moallim (or any other employee) had complained about the Claimant's management style, and/or because Mr Ozour decided (after the Claimant had been employed for a while) that she needed management skills training.

52.2 It was agreed that the training would take place on each Wednesday, and that the Claimant did not need to attend the office that day. For the parts of the day when she was not training, she would work from home.

53. There is a dispute between the parties about why the training did not take place on Wednesday 31 August 2022.

53.1 On the Claimant's case, she had complained to Mr Ozour the previous day about an inappropriate video which he had sent to her on WhatsApp and she infers he might have withdrawn her from the course as retaliation because of that.

53.2 Mr Ozour's account is that the trainer was involved in an accident of some sort, and the training had to be put on hold for that reason.

53.3 We ordered production of emails and other documents on this topic, and received nothing. (We were told that one email within the terms of our orders was available, and that, other than that one item, the discussions had been oral; however, we did not even receive the one email that we were told was available.)

53.4 We accept Mr Ozour's evidence that he had not cancelled the course by 31 August 2022, and that he did not seek to cancel it until after the Claimant's employment was terminated. In other words, we accept that, as of 31 August, it was his intention that the Claimant would resume the course once the trainer became well enough to deliver it.

53.5 The evidence which the Claimant gave to us was her honest recollection about what happened, and what she was told. It seems that she was never given any written information about the reasons that the course could not take place on 31 August. However, our finding is that the Claimant is mistaken in her recollection of some of the details. She told us what she thinks Mr Ozour said to the trainer, and that she thinks the comments were the Respondent's reasons to the trainer that the Claimant was being taken off the course. However, Mr Ozour's alleged remarks to trainer include comments that (in our judgment) relate to the events of 2 September. Therefore, the Claimant is (in our judgment) wrong to think that he had made such comments to the trainer on 30 or 31 August, and wrong to think that she was told (on 31 August) that any such comments or opinions (expressed by Mr Ozour) had been the reason for the training being put on hold.

The Claimant's working hours and duties in practice

54. The Claimant's duties included, from time to time, attending premises with Mr Ozour. They used the Claimant's car, and the Respondent reimbursed her for petrol. To the extent that Mr Ozour argues that the Claimant was not supposed to be doing this, and her duties were supposed to be entirely office-based, we reject that. She was a newly appointed employee, and could not have assumed that her duties included going to properties with Mr Ozour unless he had told her that they did. In any event, if she had mistakenly assumed that such things were part of her duties, it would have been simple, straightforward, and extremely obvious that he could tell her that she was wrong and tell her what her actual duties were, and what she should be doing in his absence while he was visiting the sites by himself.

55. Although Mr Ozour's witness statement stated "*The Claimant's working hours under the Contract of employment was 9am to 5pm Monday to Friday every week*", as mentioned above, there was no set start time mentioned in the documents supplied to us. Further, such hours would amount to 40 per week, only if no breaks were allowed, or else if the breaks were counted as part of the 40.

56. There was no discussion in the witness statement about any changes to the Claimant's start time. In oral evidence, Mr Ozour referred to the Claimant's being required to work Monday to Thursday, with Wednesday being the day she attended training/worked from home. He said in oral evidence that the earliest she had ever got to the office was 9.30am and so he had "changed" her start time from 9am to 10am on the basis that this was supposed to be a hard deadline, and she must not

come later than that, but that, in fact, she still arrived after that. We have been provided with no contemporaneous written documents referring to either an alleged start time of 9am or a change to a start time of 10am. The alleged letter on Bundle 65 refers to the start time having been supposed to be 8.45am, and having been allegedly changed to 9.30am. Furthermore, subject to the contents of that document (bearing the date 31 August), and of the termination letter, there are no contemporaneous documents referring to the Claimant's timekeeping being an issue.

57. All the office employees, including the Claimant, had their own key so that the first person there could open up and let themselves in, and the last person to leave could lock up.

58. Our finding is that Mr Ozour had not imposed any specific deadline by which the Claimant was required to be at the office. He did expect her to be monitoring other employees in his absence, but more generally, she had wide ranging managerial duties which sometimes required working late in the evenings, and the expectation was that she both do things on her own initiative, as well as completing specific tasks that he gave her from time to time. There was to be flexibility about the exact time at which she arrived in the office (on days other than Wednesdays when she worked from home).

59. We think it is factually accurate that there were some days on which the Claimant arrived later than Mr Ozour might have expected, even with the ambit of flexibility that he was permitting to her. He says that sometimes she was much later than 10am, and the panel thinks he is probably right about that. Even on the Claimant's own case (as put to Mr Ozour in cross-examination), she does not deny sometimes arriving later than 10am, but argues that this was either because of express permission given in advance by Mr Ozour due to finishing as late the day before (Mr Ozour says this was only once) or else was when she was delayed in traffic, and phoned to explain.

60. The WhatsApp exchanges contain some information about the type of thing that the Claimant was doing, and the type of thing that Mr Ozour asked/expected her to do. Each of them sent the other messages late in the evening (including after 10pm), though not necessarily messages that required immediate action/response.

61. Mr Ozour was in the office most/all days from the start of the Claimant's employment up to 3 August 2022. From 4 August onwards, he was on holiday in France. He returned to the UK on 16 August.

62. According to his oral evidence, and to the attendance records supplied on Day 3, Mr Ozour was in the office the following day, Wednesday 17 August. (The attendance records show an arrival time for 16 August too, but crossed out.) That

day the Claimant was not there as it was her day for training/working from home. The first day they were both back in the office was Thursday 18 August 2022. In fact, the contemporaneous WhatsApp messages show that Mr Ozour was planning to have his first day back as Thursday 18 August and that only the Claimant was to know this in advance, with its being intended as a surprise for the others.

63. During the period in which Mr Ozour was absent in France, there were discussions between him and the Claimant by WhatsApp on several issues, including staff members Honour and Charles. Mr Ozour wrote to each of Honour and Charles instructing them that they needed to be following the Claimant's instructions in his absence, and she was keeping him informed. To the Claimant, having forwarded copies of the messages he sent to Charles and Honour, he wrote:

> Keep your head high as this is one of the challenges in management. Staff resist challenges and where you're not strong, to stand up to them, you fail. Stand by what you say as authorised by me. Hearing I don't want to deal with them sounds to me like a defeat. I run an organisation that runs whether am there or not

64. The Claimant had sought Mr Ozour's assistance with dealing with employees who were reluctant to follow her instructions, and he provided that, but at the same time, he told the Claimant to be firmer herself in her dealings with the staff. On this point, we accept the Claimant's account, and reject Mr Ozour's denials.

65. Honour responded to Mr Ozour disputing some of what the Claimant had said (about not answering calls) and Mr Ozour forwarded the exchange to the Claimant, adding:

> If she is going to be obstinate whuch I have observed she is, I will do away with her and get a male staff. She feels too big to listen and answerable to [the Claimant's post title]? She is not helping me.

66. The Claimant responded with further details of her exchanges with Honour, to which Mr Ozour replied:

> Have made my mind. I will get Samuel Nwanka to replace her but will get her and Samuel in on same day at least twice and then get her back on field as she is not being respectful and show commitment

67. The Claimant also asked Mr Ozour to read messages Ugo had posted, and said that Ugo was seeking to make things difficult for the Claimant. Mr Ozour replied to say:

> Ignore Ugo until I get back. She will not get her way when it please her. Thank God you are all seeing what I am going through.

68. The Claimant and Mr Ozour and Ugo gave oral evidence that the Claimant worked late in the evenings (without necessarily being in agreement about how often).

Ugo's evidence was that she thought this was suspicious (and was evidence that the Claimant and Mr Ozour were in a "boyfriend-girlfriend relationship"). Mr Ozour denied that there was a relationship, but implied that the Claimant's reasons for staying later might have been because the Claimant was seeking to start a relationship with him. The panel is satisfied that the Claimant's account is reliable and truthful, and that she worked late when the volume of work (or urgency of a particular task) required that she do so, and/or when Mr Ozour specifically asked her to stay to help him with something.

The Claimant's interaction with Mr Ozour prior to 2 September 2022

69. In supplementary questions, Mr Ozour was asked to comment on the passage in the Claimant's statement which read:

> Before [alleged 18 August 2022 incident described in paragraph 2.1.2 of the list of issues] Mr Benson did ask me for a relationship which I did turn him down and did mention to Mr Benson that he is a married man, and that I cannot date him and that was around first week in August 2022.

70. His answer was that "in a way that is not true". When asked to clarify what he meant by that, he said that the Claimant was "making advances" on him, and asking him many questions. He was asked to clarify why he had said "in a way" it was not true, and said that he and the Claimant had had a "brief relationship that was not healthy", but he had reflected on matters during his time in France, and decided to end the relationship, and he had told the Claimant of that decision on 18 August 2022 (which was the first day they were both in the office after his return from France). When asked to clarify what he meant by "relationship", he said that it did not involve sexual intercourse or sexual touching. He said that the Claimant used to ask him why he worked so late, and whether things were OK at home, and that she put her leg or legs on his desk when they were talking in his office. He said that the Claimant had sent him a number of pictures on WhatsApp. The Respondent's solicitor asked "would you say it was a flirtation" and he answered that he would say that.

71. In response to later questions, he asserted that he had deleted the WhatsApp messages from the Claimant around the same time as he terminated her employment. He said it was because he decided that he did not want anything more to do with the Claimant. He confirmed that the pictures that she had sent to him, which were part of what he asserted was flirtatious behaviour by the Claimant, were not pictures of the Claimant.

72. Mr Ozour accepts that he sent a video to the Claimant of three scantily clad women dancing suggestively. He is unsure of the date (having deleted his WhatsApp exchanges, according to his evidence to the Tribunal). The Claimant is sure it was on or around 30 August, and we accept that she is correct. It was not, in other words, sent prior to the alleged conversation which Mr Ozour claimed took place

on 18 August in which he - according to his oral evidence – "ended" the relationship with the Claimant.

73. The panel has noted the exchange of messages on [Bundle 85] from 22 August 2022:

    Mr Ozour: Love you and missing you. [Heart emoji] u

    The Claimant: Awwww! Miss you more.

74. On 23 August, Mr Ozour had a hospital appointment which he had earlier asked the Claimant to diarise for him and remind him about. As per [Bundle 83], she wrote:

    > Good morning my lovely! I bless Lord Jesus, thanks for all your support. Trust you slept well too Pls, don't forget your appointment this morning and I also pray all goes well. Love you more

75. Mr Ozour replied to say:

    > Good morning and how are you my love
    >
    > I will be going and about to have my shower now. Stay blessed. Love you.

76. We have taken these exchanges into account and discuss them in the analysis.

77. In August, the Claimant also had to have some emergency dental treatment, and there was a day which she spent in hospital, from where she sent a video message to Mr Ozour, and exchanged messages with him about work issues.

78. Two of the alleged incidents of harassment were in August and we will discuss those in the analysis.

    <u>Friday 2 September 2022</u>

79. The third alleged incident of harassment was 2 September and we will discuss it further in the analysis.

80. This was also the date of an incident between the Claimant and Ugo which each of them claims was a physical attack on them by the other. They each deny throwing any blows themselves, and each claim to have acted purely defensively. We will discuss in more detail what the witnesses say about the incident in our analysis below.

81. After the incident, the Claimant had visible facial injuries and a ripped ear lobe, and some of the Claimant's blood had dripped onto her clothing. We base this finding on the Claimant's own description and on the photos of her taken shortly after the incident.

82. The Claimant's hospital discharge form indicates that she arrived at A&E approximately 22:21 (so around 7 hours after the incident) on 22 September 2022, having previously been seen at an Urgent Care Centre. She was discharged from the hospital at around 5:10am on 3 September. The triage notes refer to "small laceration under left eye" and "tenderness over left zygoma" and the doctor's notes, as per the letter to the Claimant's GP, said: "small scratch under the left eye, scratch on the left arm" and "normal eye movement In all directions, no double vision, no c-spine tenderness, no focal neurology" and "superficial scratch under left eye, tenderness in the left zygomatic bone" and "Xray facial bones: No fractures seen". The GP notes for 6 September 2022 add: "She has ripped L ear lobe – not infected."

83. During the incident, the Claimant called the police. Ugo was arrested. The Claimant gave a statement to police. We accept the Claimant's evidence that the statement was written in the police van rather than at the police station. It was signed by her on each page. [Bundle 132 to 134]

84. Ugo was released later the same day without charge or bail conditions. This was after she had been interviewed under caution with her solicitor present. She was told on the day that there would be no further action, and there has not been.

85. Having given the statement to police, the Claimant returned to the office. (The parties do not agree about the time of day, or whether it was before or after other employees had gone home. The panel does not think it matters. It is common ground that it was while Ugo was still at the police station.) There was a discussion and Mr Ozour sought to persuade the Claimant to drop the charges. She declined. His recollection that he handed the Claimant a blank incident form and invited her to complete the form is incorrect; he did not do so.

Weekend: Saturday and Sunday 3 and 4 September 2022

86. The following day there were exchanges of WhatsApp messages. The latest we have appears to be at 8:34am from Mr Ozour to the Claimant. He appears to have tried to make voice calls after that which went unanswered. The 8:34am message reads:

> I am a man of my word and has never and will not offend anyone nor you in anyway. You will not take because of Ugo to pick up issues with me. I tried as much to avoid Ugo. You saw the way she was punching me and abusing to me. I pleaded with everyone to please ignore her just like I do. Please I beg of you to please forgive me.

87. Earlier, at 6:52am, he had written:

> Good morning …, I hope you are feeling better. I had to call the emergency line last night as where I was operated on was automatically became so hot and painful. I was

> taken to Purley Hospital and came back this morning. They said it was due to forceful pressure put on it. I will call later to know how you are. Sorry about yesterday.

88. And the last sentence of his 8:18 am message (so the last sentence sent before the 8:34 item mentioned above) read:

> I will transfer [the petrol money] but let me treat myself first as I am in pain from my surgery which was triggered..

89. We reject Mr Ozour's account that he never said that Ugo had punched him, and his account that he meant pushing, resisting and/or verbal abuse in his 8.34am message. In his messages to the Claimant that morning he was stating that he was also having medical treatment as a result of what Ugo had done the previous day and he was deliberately claiming that Ugo had punched him with the intention that the Claimant would believe him that had happened. Furthermore, we find that he was expressing his genuine opinion when he asserted that the Claimant must have seen with her own eyes that Ugo had actually been punching him.

90. After Mr Ozour's 6:52am message, there were 3 replies from the Claimant and a voice call between them (which we infer was the Claimant calling Mr Ozour since he told her that he could not take the call and would ring back) prior to Mr Ozour's 8:18am message. The Claimant told him (which does not tally with the discharge record) that she was still in A&E.

91. On the following day, the Sunday, Mr Ozour sent the following messages:

> If you don't want to work for me again please do let me know as I was really relaying on you to do the job and still do. If you want to part way, let it be on a very friendly way. We both went out for a meeting on Friday and even while I was in the car, I wasn't myself because of what you said despite you try to cheer me and asking what is wrong and I said nothing. Getting to the office this incident took place and you are blaming me and trying to say all this about me? I am shocked. **[12:16pm]**
>
> If I have spoken to you in any bad manner or offended you in any way which I know I haven't, though no one is perfect, I say sorry as I do not fight, quarel nor bear grudges. You ou are still the same person I respect **[12:19pm]**

<u>Monday 5 September to Sunday 11 September 2022</u>

92. The Claimant did not attend work on 5 September. She made a report to police that day of alleged sexual assault by Mr Ozour. We have not seen documents relating to exactly what allegations were made. Mr Ozour was contacted by police around 10 or 11 September, he believes (and again we have no documents). He attended an interview at police station (voluntarily) and about a month later was told that there would be no further action (we have not seen the letter). Mr Ozour said that by the time of his police interview (and we do not have a precise date for that) he had already deleted all of the Claimant's WhatsApp messages from his phone, and so could not, and did not, show any such messages to police.

93. There is a letter produced to us in the hearing bundle dated 5 September 2022, and purporting to be from Mr Ozour to the Claimant inviting the Claimant to a meeting on 6 September for "fact-finding". We do not accept that this letter was supplied to the Claimant. It cannot have been handed to her and there is no evidence that it was sent electronically (by either WhatsApp or email). Apart from having the Claimant's work email address, and work WhatsApp contact, the Respondent also had the Claimant's own email address and phone number from when she applied for the job. We think it implausible that the Respondent would have decided to post any letter to the Claimant, especially one which said she was required to attend a meeting the day after the date on the letter. The letter is not mentioned in the chronology prepared by the Respondent's representative (which claims that the Claimant was invited by telephone to a 6 September fact finding meeting).

94. The purported 5 September 2022 letter is also inconsistent with Mr Ozour's email to the Claimant at 19:37 on 5 September. In that, he said:

> Good evening, I hope you and family are fine? I tried reaching you yesterday with no response and your did not turn up for work today

and

> With regards to the incident that took place place on Friday 02/09/2022, I would to invite you for a formal meeting at 11am on Wednesday 07/09/2022. Please confirm your attendance …

95. It is implausible that he would have sent such an email (to the Claimant's personal email address) had he already, earlier the same day, sent a written invitation to a 6 September meeting. Further, the contents of the contemporaneous email are inconsistent with any claim that he had made an oral invitation to such a 6 September meeting (as implied by paragraph 20 of his witness statement).

96. The Claimant visited her GP on Tuesday 6 September 2022, and discussed both the Ugo incident and the alleged sexual harassment. The GP notes do not record that the GP was told that the Claimant had already been to police about the latter. A fit note was issued. This said the Claimant was unfit to attend work for a month, and gave the reason as "stress at work".

97. On 6 September 2022, the Claimant sent a copy of the sick note to the Respondent. We do not know the time, and do not have a copy of the email or message, but both parties accept she did so.

98. On 6 September 2022, the Claimant sent an email to the Respondent at about 2.30pm which contained allegations similar to those sent in the Claimant's later email at 00:10 on 12 September. We do not have the 2.30pm on 6 September

email, but both parties agree it exists and that it is similar to the 12 September item which is [Bundle 123].

99. The Claimant did not attend the 7 September meeting. However, the Respondent had received her fit note. Furthermore, 7 September was a Wednesday, which was the Claimant's day for working from home even if not sick.

100. The Respondent did not seek to re-arrange the meeting, or comment on the Claimant's fit note, or ask her about it. According to the dismissal letter the meeting went ahead in the Claimant's absence. According to Mr Ozour's oral evidence: the dismissal letter [Bundle 58 to 60] was drafted by his daughter Anita on Saturday 10 September 2022 and emailed to him that day; he emailed back some corrections; she emailed him the final version; he emailed her back to say the final version was agreed, and that was all on 10 September 2022. He said that it could not be sent to the Claimant the same day because it was too late, and he had internet connectivity issues, and he was on his phone only (rather than laptop) as he was in (or travelling to) Manchester.

12 and 13 September 2022.

101. The Claimant drafted an email which she sent to herself at 23:47 on 11 September and then, about 20 minutes later, at 00:10 on 12 September, she sent to the Respondent (to Mr Ozour, in particular). It read:

> In regards to the email dated 5th of February 2022 about the meeting for 7th of September 2022 alongside with the Doctor's sick note which I haven't receive any response from you as of yet.
>
> A formal grieveience in relation to breach of contract , breach of trust and confidence, failure in duty of care, sexual harrassememnt in the workplace, sex discrimination and physical assault and debone broke attempt to conceal all of the above.
>
> Bullet Points include:
>
> • On numerous occasions before the 1st of September and 2nd of September 2022 Mr Benson Ozour has laid hands on my personal body parts and on numerous occasions I have told him to stop this but he continued by byepass slapping on my bum escalating to the touching of breast. Immediately he came back from his family holiday from France on 18th of August that was when he came downstairs in the basement at 310 High street Croydon he entered my personal space outside of the ladies toilet use prepositioned and grabbed me from behind and touched me both on my bum and breast when I pleaded while crying shaking and begging you to stop while slide to go on my knees.
>
> On 2nd of September while I was in the office in the morning, Mr Benson you called me on my extension to come into your office shut the door and then full his office window down and slap my bum again while I pull the office window back up and shouted at him to stop that and he laughed then I left his office. Later on Mr Benson, Honour and Samuel was a witness to her daughter Ugo Ozour shouting screaming

> and physically attacking and assaulting me until I call emergency 999 , not until the incident was actually stopped by the police intervention with Case Reference NO: XXXXXXX/XX . I appreciate that the Police have closed the case but this is not about anything criminal this is about me pointing out everything that has happened. It has also be brought to my attention that there were other potential sexual harrassement instantances involving other member of staff who may be too scared to come forward to report it or who are too scared to report it for sake of retribution. All this resulted in both physical and mental injury .
>
> • I can only accept communication via email from yourself (comfort care recruitment and Training Limited)
>
> • Have attached a copy of Doctors note last week dated 7th of September, unsure if you got it or not
>
> In your failure to provide me with a safe place to work , I believe this is a Fundamental Breach of Health and Safety which has coursed suffering, stress and anxiety at the taught of returning to such a public workplace. Therefore as a resolution I am looking to seek and consider formal settlement to mutually end my contract.

102. There was no response prior to, at 23:56:21 on the following day, 13 September, an email with subject line “Termination letter” was sent.

103. The termination letter [Bundle 58 to 60] attached to the email bore the date 10 September. It said in the opening paragraph that it was in response to an email from the Claimant dated 6 September 2022. In the third paragraph, having referred to a meeting which the Claimant failed to attend (in context, the 7 September proposed meeting), the letter stated:

> … you failed to honour the invitation, and conveniently reverted to a sick note signing you off for a period of 1 month due ‘stress at work’ with an email containing false allegations and slander at 2.30pm on 06/09/2022 forgetting the fact we both went viewing at that time with your car and in the car together and not in the office.

104. The second paragraph referred to probation period and said:

> … following the previous verbal warning and written warning I handed over to you on 29/07/2022 before I travelled to France on 05/08/2022, about you attendance and punctuality. As you had turned up for work on several occasions late despite verbal warning.

105. There were paragraphs numbered “a” to “f”:

105.1 “a” asserted that the Claimant had been told to provided a sick note for alleged absence from 1 to 6 July 2022 and had failed to do so.

105.2 “b” said the Claimant had failed to provide medical evidence for an (alleged) absence 11/08/2022 - 17/08/2022

105.3 "c" said there had been a "thorough investigation" into the Claimant's attendance while Mr Ozour had been on holiday, which had decided that the Claimant had taken unauthorised absence

105.4 "d" said there had been complaints of bullying "in particular Nasra, Florence, Charles and Honour."

105.5 "e" said that the Claimant had started an argument with Ugo and then "*escalated this by punching her on the left side of her face and throwing yourself on top of her, in which she tried to defend herself*." It also spoke about her having "*failed to turn up for work on Monday 05/09/2022 and I sent you an email stating that you would need to attend a meeting on 06/09/2022*."

105.6 Paragraph "f" read in full:

> You are now making false allegations of sexual harassment against me. However, the inappropriate messages you had been sending me clearly evidence that these allegations are false. Upon me telling you that you need to stop behaving in such a way and just remain a professional relationship has now lead to you slandering me and making false allegations.

106. The Claimant was not asked questions on oath about when she read the letter. (Her evidence was concluded before the panel received a copy of the covering email demonstrating that it had been sent at 23:56, and neither party, nor the panel, thought it necessary to recall her). In closing submissions, she did not seek to argue that it was impossible for her to have read the email on the day that it was received. However, on the balance of probabilities, given how close to midnight it was sent, the panel's finding of fact is that she did not read it until 14 September.

Proceedings

107. ACAS early conciliation started on 14 September and finished on 16 September. The claim form was presented on 7 October 2022.

108. Thus complaints in relation to any acts or omissions during the Claimant's employment (or on termination) were in time.

The Law

Equality Act 2010 ("EQA")

109. The burden of proof provisions are codified in s136 EQA and s136 is applicable to all of the contraventions of the Equality Act which are alleged in these proceedings.

> (1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

110. It is a two stage approach.

110.1 At the first stage, the Tribunal considers whether the Tribunal has found facts - having assessed the totality of the evidence presented by either side and drawn any appropriate factual inferences from that evidence - from which the Tribunal could potentially conclude - in the absence of an adequate explanation - that a contravention has occurred.

At this first stage it is not sufficient for the claimant to simply prove that the alleged treatment did occur. There has to be some evidential basis from which the Tribunal could reasonably infer that there was a contravention of the act. The Tribunal can and should look at all the relevant facts and circumstances when considering this part of the burden of proof test.

110.2 If the claimant succeeds at the first stage then that means the burden of proof is shifted to the respondent and the claim is to be upheld unless the respondent proves the contravention did not occur.

111. In Efobi v Royal Mail Neutral citation: [2021] UKSC 33, the Supreme Court made clear that the changes to the wording of the burden of proof provision in EQA compared to the wording in earlier legislation do not represent a change in the law. Thus when assessing the evidence in a case and considering the burden of proof provisions, the Tribunal can have regard to the guidance given by the Court of Appeal in, for example, Igen v Wong Neutral citation: [2005] EWCA Civ 142 and Madarassy v Nomura International Neutral citation: [2007] EWCA Civ 33.

112. The burden of proof does not shift simply because, for example, the claimant proves that there was unwanted conduct and/or that there was a protected act. Those things only indicate the possibility of harassment or victimisation. They are not sufficient in themselves to shift the burden of proof; something more is needed.

113. It does not necessarily have to be a great deal more and it could in an appropriate case be a non-response from a respondent or an evasive or untruthful answer from an important witness.

Harassment – section 26 EQA

114. Harassment is defined in s.26 of the Act.

(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

115. Sex is a "relevant protected characteristic".

116. It needs to be established on the balance of probabilities that the claimant has been subjected to unwanted conduct which had the prohibited purpose or effect. However, to succeed in a claim of harassment, it is not sufficient for a claimant to prove that the conduct was unwanted or that it had the purpose or effect described in s.26(1)(b). The conduct also has to be related to the particular characteristic.

117. Section 136 EQA applies and so the claimant does not necessarily need to prove on the balance of probabilities that the conduct was related to the protected characteristic. If the tribunal finds facts from which it could conclude that the conduct was related to the protected characteristic then the burden of proof shifts.

118. The use of the word "or" in s26(1)(b) (twice) is important.

119. "Purpose" and "effect" are two different things, and must be considered separately. Where it was the wrongdoer's "purpose" to do the things listed in s26(1)(b), then the complaint can succeed even if the conduct did not successfully have that effect. Correspondingly, where the conduct does have the effect described in s26(1)(b), then the complaint can succeed even if the Respondent (or the person whose conduct it was) did not have the intention of causing that effect.

120. In Land Registry v Grant Neutral citation [2011] EWCA Civ 769, the Court of Appeal said that when considering the effect of the unwanted conduct, and when analysing s.26(4), it is important not to cheapen the words used in s.26(1).

> Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment. The claimant was no doubt upset … but that is far from attracting the epithets required to constitute harassment. In my view, to describe this incident as the Tribunal did as subjecting the claimant to a "humiliating environment" when he heard of it some months later is a distortion of language which brings discrimination law into disrepute.

121. When assessing the effects of any one incident of several alleged acts of harassment then it is not sufficient really to consider each instant by itself. We obviously must consider each incident by itself, but, in addition, we must stand back and look at the impact of the alleged incidents as a whole.

122. Subsections 26(2) and (3) EQA state:

> (2) A also harasses B if—
> (a) A engages in unwanted conduct of a sexual nature, and
> (b) the conduct has the purpose or effect referred to in subsection (1)(b).
>
> (3) A also harasses B if—
> (a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,
> (b) the conduct has the purpose or effect referred to in subsection (1)(b), and
> (c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

123. It is possible for the same conduct to fall within both Section 26(1) and 26(2).

124. In most cases, whether or not the conduct in question can be categorised as "of a sexual nature" will be self-evident. This is something which should be decided on a common-sense basis by reference to the facts of each particular case, including the intentions of the person making the contact and the perception of the recipient of the conduct.

125. The following examples of sexual harassment are given in the EHRC's Employment Code: unwelcome sexual advances, touching, sexual assault. Other conduct could amount to conduct of a sexual nature, depending on the circumstances. The EHRC's 2020 guidance points out that conduct "of a sexual nature" includes a wide range of behaviour, such as: sexual comments or jokes; displaying sexually graphic pictures, posters or photos; suggestive looks, staring or leering; propositions and sexual advances; making promises in return for sexual favours; sexual gestures; intrusive questions about a person's private or sex life or a person discussing their own sex life; sexual posts or contact on social media; spreading sexual rumours about a person; sending sexually explicit emails or text messages; unwelcome touching, hugging, massaging or kissing. Again, these are just examples of conduct which might fall within the definition, and not an exhaustive list.

126. The fact that alleged harasser did not regard the conduct as sexual harassment does not mean that it cannot be harassment contrary to section 26(2) and/or section 26(1).

127. In order for a harassment claim to succeed based on section 26(3), then it is a necessary condition that harassment contrary to section 26(1) or 26(2) is found to

have occurred. The perpetrator of the less favourable treatment does not have to be the same as the perpetrator of the harassment.

Victimisation

128. Victimisation is defined by s.27 EQA.

> **27 Victimisation**
> (1) A person (A) victimises another person (B) if A subjects B to a detriment because—
> (a) B does a protected act, or
> (b) A believes that B has done, or may do, a protected act.
> (2) Each of the following is a protected act—
> (a) bringing proceedings under this Act;
> (b) giving evidence or information in connection with proceedings under this Act;
> (c) doing any other thing for the purposes of or in connection with this Act;
> (d) making an allegation (whether or not express) that A or another person has contravened this Act.
> (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

129. There is an infringement if a claimant is subjected to a detriment and the claimant was subjected to that detriment because of a protected act.

130. The alleged victimiser's improper motivation could be conscious or it could be unconscious.

131. A person subjected to a detriment if they are placed at a disadvantage and there is no need for either claimant to prove that their treatment was less favourable than a comparator's treatment.

132. For the Claimant to succeed in a claim of victimisation, we must be satisfied (having taken into account the burden of proof provisions) that the claimant was subjected to the detriment because she did a protected act or because the employer believed that she had done or might do a protected act.

133. Where there is a detriment and a protected act, then those two things alone are not sufficient for the claimant to succeed. The Tribunal has to consider the reason for the treatment and decide what consciously or otherwise motivated the respondent. That requires identification of which decision makers made the relevant decisions as well as consideration of their mental processes.

134. The claimant does not have to demonstrate that the protected act was the only reason for the detriment. Furthermore, if the employer has more than one reason for subjecting the Claimant to the detriment, then the claimant does not have to establish that the protected act was the principal reason. The victimisation

complaint can succeed provided the protected act has a significant influence on the decision making. An influence can be significant even if it was not of huge importance to the decision maker. A significant influence is one which is more than trivial.

135. A victimisation complaint might fail where the reason for the detriment was not a protected act itself but something else which (while being in some way connected to the protected act) could properly be treated as separate. See Martin v Devonshires Solicitors [2010] UKEAT 0086/10.

136. S.136 applies and so the initial burden is on the claimant to demonstrate that there are facts from which the Tribunal might conclude that the detriment was because of the protected act.

Notice Pay claim

137. The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 gives the employment tribunal jurisdiction to consider (some) complaints of breach of contract. Amongst other requirements and exclusions, the claim must be one which arises or is outstanding on the termination of employment.

138. In accordance with the ordinary principles for breach of contract claims, this jurisdiction allows the tribunal to interpret the relevant contractual provisions and – for example – assess what the employee's contractual entitlement was to pay, notice, holiday and pay in lieu of holiday or notice.

139. When a tribunal is considering a wrongful dismissal claim (ie a claim that the dismissal was breach of contract) that requires an entirely separate, and different, analysis than the consideration of whether the dismissal was fair or unfair.

140. The amount of notice to which an employee is entitled is determined by the contract, subject to the statutory minimum.

141. Where the employer terminates the contract without good cause, and without providing the employee with sufficient notice, the Claimant may have grounds to succeed in a claim for wrongful dismissal. If the Respondent asserts that facts exist such that the Respondent was entitled to dismiss without notice, the Respondent must prove those facts to the Tribunal on balance of probabilities. It is an objective question for the Tribunal to consider whether the Respondent did, in fact, have good cause to dismiss the Claimant for committing a repudiatory breach of contract. Where there is a dispute about whether the Claimant did, in fact, commit certain acts (or make certain omissions) then the tribunal is required to make findings of fact about the Claimant's relevant conduct. In so doing, the tribunal is not limited to considering only the evidence which had been available to the Respondent when it made its decision to terminate. Any relevant evidence presented at the hearing can be taken into account.

142. To assess the seriousness of any breach which is found to have occurred, it is necessary for the Tribunal to consider all of the relevant circumstances including the nature of the employment contract, the nature of the term which was breached, the nature and degree of the breach, and also the nature of the Respondent's business and of the Claimant's position within that business. Having assessed the seriousness, the tribunal will decide if the breach was such that the Claimant had no entitlement to be given notice of dismissal (and no entitlement to a payment in lieu of notice).

143. To amount to conduct which entitles the employer to dismiss without notice, the conduct must be such that it "*must so undermine the trust and confidence which is inherent in the particular contract of employment that the master should no longer be required to retain the servant in his employment*" Neary v Dean of Westminster [1999] IRLR 288. So called "gross misconduct" may be established without proving dishonesty or wilful conduct and so called "gross negligence" that undermines trust and confidence may also suffice to justify summary dismissal. Whether it does so is a question of fact and judgment for the Tribunal, taking into account the damage that the acts/omissions caused to the employment relationship. Adesokan v Sainsbury's Supermarkets Ltd [2017] EWCA Civ 22.

144. In Hovis Ltd v Lowton, Case No: EA-2020-000973-LA, the EAT considered what type of evidence an employer might need to present at a Tribunal hearing, if seeking to persuade the Tribunal that the employee had, in fact, acted in the manner alleged (and thereby lost the entitlement to notice of dismissal). On the facts of that case, the Tribunal had not been obliged to accept the employee's denials (or decide that the employer had failed to prove that the misconduct had been committed) merely because the Respondent did not call a live witness to the (alleged) event who disputed the Claimant's version. The Tribunal can, and must, take account of all the evidence presented to it, including contemporaneous documents and/or hearsay accounts. It was noted that:

> The fact that a hearsay statement has not been given under oath, or tested … at trial, are considerations that may of course inform the judge's assessment of its reliability or credibility, or otherwise of what weight to attach to it, …. They are also not necessarily the only considerations that may affect the evaluation of hearsay evidence. The tribunal needs to consider all the relevant circumstances in the given case, such as the particular circumstances in which the statement was made, the nature of the record of that statement, and so forth.

Analysis and conclusions: Credibility Issues

145. We will start this analysis with our assessments relevant to credibility.

145.1 In doing so, we have taken into account that giving evidence in court or tribunal can be a stressful experience for anyone. In any event, we have not made

any adverse findings against any of the witnesses based on their demeanour or tone of voice while giving evidence.

145.2 We have taken into account that witnesses can make honest mistakes, and that evidence that is inconsistent with either what the witness themselves said on another occasion, or else what is shown by contemporaneous documents, does not necessarily imply that the witness was lying rather than making an honest mistake.

145.3 We have also taken into account that, if we find that, on one issue, Witness A is telling the truth and Witness B is lying, it does not automatically follow that Witness B should – therefore – be found to be lying whenever their evidence conflicts with Witness A's.

31 August document.

146. The Claimant denies receiving this, and denies even seeing it until Day 1 of the hearing. Since the parties and the panel all were under the impression that it was not within pages 1 to 139 of the bundle (and was only an extra page at the back, added on Day 1) she was not specifically asked why she had not noticed it in the bundle when it was sent to her by the Respondent's former solicitors. However, we note the absence of page numbers in the Claimant's witness evidence. We also note that she seemed to be under the impression that many of the documents that she had asked to be included had been left out (even though the panel found them at, for example, pages 124 to 139). We therefore do not find it implausible that the Claimant had simply not seen/read page 65 in the bundle before the hearing and/or simply did not recall doing so when she was being asked to look at what she was told was a new, additional page at the back of the bundle and confirm/deny receipt of it on (or around) 31 August 2022.

147. Mr Ozour said he believed a copy had been given to his solicitors and he therefore assumed that it had been sent to the Claimant. That evidence is consistent with the fact that the "new" document, as it turned out, actually was not "new" and was already at [Bundle 65].

148. Mr Ozour was asked when giving his evidence if he had the document electronically and he said "yes". He was ordered to provide the electronic copy, and never did. That includes that he never provided an electronic copy direct from his computer, or the Respondent's files, or from a copy of an email sent to the Respondent's former solicitors. It seems implausible that no electronic version at all of the document would be available.

149. Mr Ozour said that he typed the document and handed it to the Claimant without anyone else's involvement. That is not consistent with his evidence on other issues: that his daughter Anita handled HR matters and that (a) the Claimant would have known to make a complaint to Anita had the Claimant's allegations of

harassment been true and (b) Anita drafted the termination letter. Furthermore, on its face, the document says "cc: HR" at the bottom.

150. He claimed the chronology document prepared by his solicitors was a reliable document when he was referring to it to answer questions about the Claimant's attendance at work. He claimed, at that point, that it was based on careful discussions between him and his solicitors. The Chronology document does not mention a written warning being given on 31 August 2022.

151. He claimed that he printed the document and put it in an envelope and handed it to the Claimant on 31 August while she was seated at her desk. 31 August was a Wednesday and in his evidence he stated that the Claimant worked from home on Wednesdays.

152. In the Claimant's evidence, she alleged that on 30 August Mr Ozour sent her a video and she protested about the contents. (Mr Ozour admits this, albeit cannot confirm or deny the date). The Claimant claims that the following day, 31 August, should have been training but this was cancelled by the Respondent; the implication being that he cancelled it as a response to her complaint about the video. The Claimant did not complain that he also handed her a written warning the same day, 31 August. It would be odd to object to the (alleged) cancellation of the training course, and (alleged) suspicious timing of that, but not to receipt of this letter.

153. There is no mention in the contemporaneous WhatsApp messages that the Claimant had been given a written warning.

154. The termination letter specifically refers to a written warning being given on 29 July 2022. That cannot be a typo, because the sentence continues "before I travelled to France on 05/08/2022".

155. We have not received any copy of any such 29 July letter, nor is it mentioned in the chronology or any of the witness statements or (apart from the termination letter) any other document. It is not mentioned in the 31 August letter.

156. The purported 31 August letter says "I have altered your starting hour from 08:45 to 9:30". In oral evidence, Mr Ozour claimed to have altered the Claimant's start time from 9am to 10am. Paragraph 8 of his witness statement said that her contract required her to start 9am.

157. Mr Ozour gave, as part of the explanation for why he sent the video to the Claimant on 30 August, the answer that they had not had any problems or arguments by then and go on well. That is inconsistent with the state of affairs being that he had already given two informal warnings and was on the point of giving a formal warning (the next day). It is also inconsistent with any argument (which was not

put forward by the Respondent in any event) that [Bundle 65] simply had the wrong date on it, and was actually the 29 July letter mentioned in the dismissal letter.

158. Mr Ozour's written statement does not describe a written warning (on any date) having been issued to the Claimant.

159. Our finding is that we believe the Claimant and disbelieve Mr Ozour. This letter was not handed to the Claimant on 31 August (or any other date).

160. Furthermore, our finding is that there was no 29 July letter either.

161. We are also satisfied that there had been no informal warnings about lateness, attendance, failure to comply with sickness reporting procedures, etc. The tone of the WhatsApp messages up to and including Sunday 4 September 2022 is that Mr Ozour valued the Claimant and was keen to keep her as an employee.

162. We are sure that there were several occasions when the Claimant was either absent from work (eg for hospital check or dental procedures) or else arrived in the office after 9am, and probably sometimes after 10am. However, Mr Ozour had not objected to this or said that she was likely to be disciplined, or fail probation, because of it any earlier than (by implication) the email on 5 September [Bundle 121] and (expressly) the dismissal letter itself.

163. While we make this finding on the balance of probabilities, we are confident in it. We are also confident that there is no plausible explanation for how this error could be accidentally made. Mr Ozour claimed to have a clear memory of typing the letter himself, correctly dating it, and handing it to the Claimant on the date. It cannot, therefore, be a letter which he prepared and forgot to hand to the Claimant. Furthermore, when preparing the dismissal letter around two weeks later, he cannot have forgotten about this purported 31 August letter; especially not in the context of asserting in the termination letter that a written warning dated 29 July had been given. It is notable that on the Respondent's case as per Mr Ozour's witness statement, handing the Claimant a letter in the office on 29 July would also have been impossible, because he claimed that she was in the office on 26 and 27 July, but was off from 28 July until after his holiday absence had already commenced.

164. Our finding is that the Claimant was not given a written warning, but there came a time when the Respondent / Mr Ozour decided to falsely assert that there had been such a warning. At the time the termination letter was written, it was decided to falsely assert that the letter was dated (and supplied to the Claimant) on 29 July. For whatever reason, by the time the hearing bundle was being prepared, it was decided that the purported warning would be dated 31 August instead. Neither date is correct, and testimony that the Claimant was given a written warning was false in circumstances in which the witness must have known it was false.

Food / Whatsapp messages from the Claimant

165. In paragraph 36 of his witness statement, Mr Ozour claimed that the Claimant flirted with him and, as an example, stated that she "cooked food and brought It to the office and offered it to me and staff." In cross-examination, he confirmed that he ate it, and that it was not particularly unusual for any of the staff to bring in some food that they had cooked and share it with the colleagues.

166. Ugo, who had not been present for the earlier witnesses, gave evidence that the Claimant brought in food only for Mr Ozour and would not allow anyone else to share. She thought this was unusual behaviour, and also thought it out of the ordinary that her father would eat another woman's cooking (that is, someone's who was not his wife). Ugo suggested that this was part of her reasons (a big part in fact) for deciding that her father and the Claimant were in a "boyfriend-girlfriend relationship".

167. In the same paragraph 36 of Mr Ozour's witness statement, another of the examples of the Claimant's constant flirting was the Claimant's WhatsApp messages (these being the ones he said he deleted around the time of termination of employment). Ugo's oral evidence was that she could corroborate her father's account because she had also seen such messages. She said she had seen them on her father's phone when he had passed it to her for work reasons.

168. Ugo's evidence about the food is definitely wrong, in that both the Claimant and Mr Ozour claim that the Claimant shared food with other staff and not just with Mr Ozour. That is plausibly an honest mistake.

169. However, we find Mr Ozour's assertions about his reasons for deleting the (alleged) messages to be implausible. On his account, having received notifications from the Claimant about alleged harassment (and possibly after being contacted by police, though he is unsure of the date) he decided to delete messages which would have – he now claims – shown that the Claimant was pursuing him.

170. In Ugo's written statement, there was no suggestion that she believed that the Claimant and her father were in a relationship, and no discussion of food or WhatsApp either. This is not withstanding the fact that, at paragraphs 11 to 15 of her statement, she did address the harassment allegations. That is, her statement was not confined to her own dealings with the Claimant.

171. Taking the food allegations and the WhatsApp allegations together, it seems to us that Ugo's evidence was an attempt to support / agree with what her father had written in his statement rather than the product of a conscientious attempt to cast her mind back to the events of a year ago, and to recall them as accurately as possible.

"Relationship" and Video

172. The Claimant's account is that phrases such as "my lovely" and "love you more" and "love [emoji] you moooore" etc in her messages to Mr Ozour (and most of those quoted are from around 22 August 2022) is (i) not a sign that there was a relationship between her and Mr Ozour and (ii) not a sign that she was flirting with Mr Ozour or seeking to start a relationship with him and (iii) not inconsistent with her allegations as per paragraph 2.1 of the list of issues.

172.1 The panel has taken account of the phrases and the heart emojis. Both the Claimant and Mr Ozour have said that they never met (in person) before July 2022 and did not know each other before the Claimant applied for the post in June 2022. Neither of them suggest that there was any sexual or dating relationship. Thus these messages do not imply that that was any sexual or dating relationship.

172.2 The fact that the Claimant was content to use such phrases to her new boss does not imply that she was seeking to start a sexual or dating relationship.

172.3 We do not accept Mr Ozour's claim in oral evidence that there exists other messages from the Claimant that are either more flirtatious than the ones that we have seen, or more supportive of his account that the Claimant was seeking to start a relationship with him and he was seeking to avoid that.

172.4 In particular, we do not accept his account that – on 18 August 2022 – he told the Claimant that their previous relationship (which had not involved sex or touching) had to come to an end and that, henceforth, there would be a more professional, business only relationship.

172.5 Just as, after 18 August 2022, the Claimant sent messages of the type described at the start of this paragraph, so did Mr Ozour. Furthermore, and in particular, we accept the Claimant's account that the date he sent her the video of scantily clad women dancing was on 30 August 2022. These things are inconsistent with his account that 18 August marked some sort of change in the relationship (or his attitude towards it).

173. Separately and additionally, there is no hint in the messages that the employment relationship was such that Mr Ozour had issued a formal written warning to the Claimant on 29 July (as claimed in termination letter) or had given informal oral warnings, leading to a formal written warning on 31 August 2022 (as claimed in oral evidence, albeit not in written witness statement).

174. The Respondent's witness, Ugo, asserted that – in her opinion - her father, Mr Ozour, and the Claimant had been in a relationship. She did not claim that this was based on anything that either of them had said to her confirming her suspicion; she claimed that it was based on what she observed of their interactions, and on

what she saw on Mr Ozour's phone. One thing she mentioned was that the Claimant worked late into the evenings sometimes, and that Mr Ozour seemed to take the Claimant's side rather than Ugo's (or other staff's) in workplace issues. Ugo's account was that she was sure that this state of affairs continued up to and including 2 September 2022. She had not seen any change around 18 August.

175. Our finding is that the Claimant's working late in the office is consistent with the Claimant's own account of what her duties entailed and that, from time to time, she was specifically asked by Mr Ozour to do so.

176. Further, it is our opinion that all of Ugo's reliable recollections of the relationship between Mr Ozour and the Claimant are based on her father's attitude to the Claimant, and not the Claimant's attitude to her father.

176.1 We reject Ugo's evidence that the Claimant made food only for Mr Ozour. Her assumption that the Claimant was working late because of a sexual or dating relationship with her father is, in our judgment, factually incorrect.

176.2 So that leaves the facts that Ugo thought it suspicious that her father would eat the Claimant's food when usually he would refuse to eat the cooking of a woman to whom he was not married, and the fact that it was Ugo's perception that, up to 2 September, Mr Ozour took the Claimant's side. Neither of these things is inconsistent with the Claimant's version of events. They are, however, inconsistent with her father's.

176.3 We place little, if any, weight on the food issue in the grand scheme of things, and are addressing it because the Respondent's witnesses sought to argue that it was evidence of the Claimant's flirting with Mr Ozour; we find that it is no such thing.

176.4 However, Ugo's evidence that Mr Ozour treated the Claimant favourably up to 2 September is inconsistent with his claims that (i) he had been concerned that the Claimant was pursuing him sexually; (ii) there had been informal and formal warnings over lateness and attendance; (iii) he had received – and believed – complaints that the Claimant was bullying junior staff.

Bullying

177. In Mr Ozour's witness statement, at paragraph 14, he says he received complaints from Nasro Moallim on 15 July 2022 and 10 August 2022 that the Claimant was bullying her, Ms Moallim.

178. In Nasro Moallim's 18.04.23 document [Bundle 61-62 and additional page added at back of bundle on Day 1] she says that she became an employee of the Respondent on 1 August 2022 and that "When I started my employment at Comfort Care and Recruitment in august 2022, [the Claimant] was introduced to me as the

[JOB XYZ]". The written statement sent to the Tribunal and the Claimant in July 2023 gave a start date of August 2020 (rather than 2022) but still contained a sentence: " When I started work with the Respondent, the Claimant was introduced to me as a [JOB XYZ]".

179. Ms Moallim was not a witness in the Tribunal, and we were given no explanation for the reason.

179.1 If she did start in August 2022, then Mr Ozour's claim to have received a complaint from her in July 2022 cannot be true. (For completeness, Ms Moallim does not appear on the document described as attendance record for July 2022 that was submitted after oral evidence had concluded).

179.2 If she did start work in August 2020, then the reliability of the 18.04.23 document is undermined. (For completeness, Ms Moallim claimed in the signed July 2023 document to have worked for the Respondent for "almost 3 years").

180. On 10 August 2022, Mr Ozour was in France. No detailed account of how the 10 August complaint was conveyed to him as been supplied, and we have seen no documentation to support that there was such a complaint, or that – if there was – the Respondent regarded the Claimant as being at fault.

181. What Mr Ozour claims, and what Ms Moallim purports to corroborate, is:

> Due to the nature of the complaint, and to avoid Nasro resigning and potential complaint by her, I asked the Claimant to attend a leadership and Management training course to improve her management skills. The Claimant agreed to attend the course, and informed that she was attending the course. I subsequently discovered that she did not attend the Course and had lied about it.

182. None of this paragraph is true, in our judgment.

182.1 The training course mentioned is a course that the Respondent and the Claimant had spoken about at the start of her employment. The Claimant had wanted to do the course in any event, and the Respondent confirmed that she would take it, and the Respondent would pay. It is the course which she was to do on Wednesday's during her employment. It was not arranged because of any complaint by Nasro, and it was not arranged after 10 August 2022.

182.2 The training course was paused (according to Mr Ozour's oral evidence) when the trainer had an accident and could not do it. (He said this by way of denial to the Claimant's suggestion that he cancelled it after she complained about the video). We asked for all email exchanges and other documents between the Respondent and the trainer and did not receive any at all. We were told that only one document still existed, and that it was from a period after the end

of the Claimant's employment when there was a discussion about whether the Respondent could have a refund.

182.3 The Claimant did not lie about attending this course.

183. We also reject Mr Ozour's account of the reasons for Charles leaving. We consider the Claimant's opinion about his reasons for leaving to be more plausible, but, in any event, regardless of the precise reasons, we reject Mr Ozour's claim that he believed that the Claimant had been too strict with Charles.

184. Furthermore, Mr Ozour's claim that he believed that the Claimant was bullying Honour is inconsistent with his message to the Claimant which suggested that he thought Honour was being obstinate, and that he might need to replace her with "a male staff" if she, Honour, was not willing to follow the Claimant's instructions, nor with his later message that he had decided that he would, in fact, replace her with Samuel Nwanka.

Attendance Records

185. To some extent, all we need to say about these is that we have found that the Claimant was not instructed that she needed to enter any arrival time in these or any similar documents.

186. We would observe that – while we do not claim to be handwriting experts – all the entries appear – to the untrained eye, at least – to be have written by the same person. As an industrial jury, we are not unused to looking at sign in sheets, and similar. In our experience, a much greater variety is usually quite noticeable in the way that different people write the entries against their own name on these type of documents.

187. Since Mr Ozour was not in the office on 16 August, and since his entry for his first day back, 17 August (according to this document) is 08:15, there is no self-evident reason that an entry stating "08:00" would have been made for 16 August and then crossed-out, if this was a document created in "real-time" day by day, during August 2022.

188. Without claiming to be forensic experts, and without having seen the paper originals, to the naked eye, it appears that arrival times starting with the digit "9" have been entered for Ugo for 5 to 8 September 2022, and then crossed out. The Respondent's account has been that Ugo was suspended after the 2 September incident and her first day back working was 16 September (with only one day before that in which she attended the office for a fact finding meeting). The boxes filled in with black ink are different to her days of non-attendance in earlier months, which are just left as blank spaces (or sometimes two lines to indicate weekends).

189. On the September page, there are entries for Mr Ozour up to 27 September 2022, and so the item cannot have been photocopied any earlier than then. However, no-one else has purported entries any later than 16 September, and no self-evident explanation for why, if the document was photocopied on or after 27 September, and if everyone was supposed to fill it in every day, all the other entries from 17 September onwards would be blank.

190. We do not find these documents to be reliable corroboration of anything Mr Ozour has claimed about the Claimant's lateness or absenteeism, or to contradict what the Claimant has said.

"Fight" – 2 September 2022

191. We are obliged to make some findings about the incident as it is relevant to the Claimant's breach of contract claim.

192. Ugo was arrested and the Claimant was not. The Claimant had injuries and Ugo did not. These are relevant points, but are not determinative of what actually happened.

193. Ugo's account is that the oral argument commenced because the Claimant objected to the pronoun "her" being used in something Ugo had said. (In other words, the Claimant thought it was rude not to instead refer to her by name, or job title, etc.) The Claimant's statement to police mentions this too, and we accept Ugo is right that it was part of what started the oral argument.

194. The Claimant says that the main cause, from her point of view, was that Ugo had failed to pass on a message properly to the Claimant, despite knowing that the call was important, and that the caller was calling from abroad. We accept that that was the Claimant's perception of something that was bothering her, the Claimant, at the outset of the oral argument.

195. It is common ground that the Claimant went to Ugo's desk. As a result of both the matters mentioned in the two previous paragraphs, an argument started and then escalated. However, each of them claims to have been struck by the other, and each of them claims to have struck no blows themselves.

196. Ugo claims that she did not notice any injuries on the Claimant after the incident. She claims that having been hit by the Claimant, she pushed the Claimant back and then just held the Claimant off while the Claimant attempted to continue to try to hit Ugo. She denies dragging the Claimant to floor or throwing things at the Claimant.

197. Ugo's claim to have just been keeping the Claimant at arms length is contrary to the evidence of all the other witnesses, which was that Ugo had to be dragged away. Our finding of fact is that as Ugo's father was seeking to pull his daughter

off the Claimant, Ugo punched him, and Ugo resisted him to such an extent that (because of a recent procedure being affected by the violence) he required hospital treatment.

198. Furthermore, Ugo's denial of striking the Claimant at all is at odds with the incident form dated 5 September 2022 where she is recorded as saying "*I then hit her back and grabbed her*".

199. Furthermore, Honour's written account includes that the Claimant "*had also sustained some injuries to her body while Ugo proceeded to angrily throw office supplies around*." We accept the Claimant's evidence that even after the police had been called, Ugo continued to throw things at her.

200. We do not find either of Ugo or Mr Ozour to have given reliable accounts about the incident. Based on our analysis of the evidence as a whole, including what Mr Ozour said to the Claimant in messages over the weekend after the incident, we find that, on the balance of probabilities, Ugo struck the Claimant first. Furthermore, we find that – while any incident of this nature has the potential to be one which is mis-remembered afterwards – the Claimant is correct in her claims that she did not strike Ugo at all, and simply acted in self defence after she had been dragged to the floor with Ugo on top of her, and that she, the Claimant, called the police as soon as she could. We accept that it is not the case that the Claimant had to be dragged off Ugo by Samuel. Rather, Mr Ozour attempted to drag Ugo off the Claimant and required Samuel's assistance to do so.

The Respondent's attacks on the Claimant's plausibility

201. The Respondent claims that the fact that the Claimant was willing to visit properties with Mr Ozour (despite this not being part of her duties, according to the Respondent) up to and including the morning of 2 September 2022 is inconsistent with her claims about Mr Ozour's conduct.

202. The Respondent claims that the fact that the Claimant made some comment along the lines of "you are a married man; come back to me when you are divorced" (or something else which prompted him for telling her he could not get divorced, and offering reasons) is inconsistent with any claims that any conduct by Mr Ozour was unwanted, and is, in fact, supportive of Mr Ozour's claims that the Claimant was acting inappropriately towards him and/or seeking to instigate some sort of sexual relationship.

203. Our judgment on these points is that:

203.1 It is not true that the Claimant was "voluntarily" going to the properties with Mr Ozour. She did so because she believed it to be part of her duties, based on the information about her duties which Mr Ozour gave her. Mr Ozour's later claims that the Claimant was pursuing him, and he had sought to stop her

doing so, are inconsistent with his claims that there was no legitimate reason for the Claimant to come to the properties with him, but that they went together in the Claimant's car because she insisted on that, even though it was not part of her duties.

203.2 Since it was part of her duties, it would have been a major decision on the Claimant's part to refuse to do these visits. She would have had to do something akin to bringing a formal grievance to the Respondent (or at least to Mr Ozour) to formally allege that she did not feel safe. We accept the Claimant's account that her opinion (or hope, at least) was that if she was firm with Mr Ozour that she was not interested, he would get the message and modify his behaviour. That was the same reason that she referred to his marriage status. It was an attempt to diplomatically discourage him from his conduct to the Claimant and was not a serious suggestion that Mr Ozour should divorce his wife because the Claimant wanted to have a relationship with him.

204. For completeness, the Respondent did not seek to suggest (through Mr Ozour's evidence, or its representative's submissions) that the fact that the Claimant was authorised to use the company credit card undermined any of the Claimant's complaints. It was, however, put forward by the Respondent's witness, Ugo, as evidence that the Claimant and Mr Ozour were in a dating relationship and/or that the Claimant was not to be trusted (and that she had warned her father not to trust the Claimant). We do not agree with Ugo's assessment of the situation. If the Respondent wanted the Claimant to pay certain bills while Mr Ozour was in France, then that does nothing to contradict anything that the Claimant has said about her employment situation or her relationship with Mr Ozour. Ultimately, we find this fact to be neutral and irrelevant, and there is no criticism of Mr Ozour for not revealing it during his evidence. It does not, however, lend any corroboration to the claim in the dismissal letter that the situation with the new employee, the Claimant had reached the stage after the first 4 weeks of employment, such that, on 29 July, she had been issued with a written warning.

Analysis and conclusions: Liability Issues

205. By reference to the list of issues, our decisions are as follows.

Wrongful dismissal / Notice pay

1.1 What was the claimant's notice period?

206. The Claimant was entitled to one week's notice during probation, and her employment was terminated by the Respondent during probation.

1.2 Was the claimant paid for that notice period?

207. No, she was not. The Respondent does not claim to have paid her. It claims to have been entitled to dismiss without notice.

208. In fact, the Claimant alleged in closing submissions that she had not been paid at all for September, but we have made no decision on that factual assertion, nor on whether we would allow the Claimant to amend her claim (assuming an amendment would be required, which is also something that we have not decided).

1.3 If not, was the claimant guilty of gross misconduct?

209. The issue is whether the Claimant had breached the contract (whether by act or omission) in such a way as to entitle the Respondent to terminate without notice.

210. The Grounds of Resistance asserts:

> The Claimant was dismissed for physically attacking another member of staff and fighting her at the workplace/office during working hours. The Claimants actions or conduct was deemed to amount to gross misconduct, and this was the reason for her dismissal.

211. Mr Ozour's witness statement (paragraph 28) mentioned this as a dismissal reason, and in oral evidence he added that the Claimant's position as being higher in the hierarchy than Ugo was also an aggravating factor.

212. He also claimed that the Claimant had bullied other staff and been dishonest. By implication, the dishonesty is about absence from office when Mr Ozour was in France, and failure to attend training.

213. Our finding is that the Claimant did not bully other staff. Our finding is that she kept Mr Ozour informed of her whereabouts. There were times when she was not at the office, either because she was working from home or because she was in traffic or because she was having dental treatment or hospital check up. However, she kept Mr Ozour informed of those things and he did not allege otherwise prior to the dismissal letter.

214. Our finding is that the Claimant did not act violently to Ugo or anyone else, on 2 September, or at all. The Claimant had a significant role in starting the oral argument which escalated into the "fight". We are satisfied that she was angry when she went to speak to Ugo, and we infer that her anger escalated when she heard Ugo's replies. However, we are satisfied that Ugo not only struck the first blow, but she was the only one of them that hit the other, and that she, Ugo, continued to throw things at the Claimant even after she, Ugo, had been dragged off the Claimant.

215. Our decision is that while the Claimant spoke angrily to Ugo (as the conversation escalated) nothing that the Claimant did amounted to a fundamental breach of her contract of employment. She had been told by Mr Ozour that she was in charge

of Ugo and even if it was unprofessional to speak the way she did, and even if it was misconduct to speak the way she did (we have made no decisions on these points, and they can be decided at the remedy stage), it was not conduct which justified dismissal without notice.

Overall decision on breach of contract

216. The claim succeeds and remedy issues will be addressed in due course.

Harassment

2.1 Did the respondent do the following things:

2.1.1 Some time in August 2022, when the claimant was making a cup of tea in Mr Ozour's office, he touched her on her bottom;

2.1.2 On 18 August 2022, in the basement at 310 High Street Croydon, Mr Ozour grabbed the claimant from behind and touched her on her bottom and on her breast.

2.1.3 On 2 September, in his office, Mr Ozour pulled the office window ~~blinds down~~ closed and then slapped the claimant on the bottom whilst she tried to ~~pull the blinds back up~~. reopen it

217. Because each incident is one person's word against each other, we inevitably have to take account of our decisions on other matters, and consider how – if at all – that helps us to assess credibility, as well as considering the inherent plausibility or implausibility of the incidents and what, if any, contemporaneous records exist.

218. On the Claimant's own account, she would not have gone to police on 5 September 2022 to report sexual harassment but for (i) the Ugo incident the previous Friday, and, more significantly, (ii) her perception of Mr Ozour's response to the "fight" when they spoke face to face that evening, and in messages, and phone discussion(s) over the weekend.

219. She is not, of course:

219.1 Saying that she would never have gone to police, had the alleged behaviour continued. Just that she was not planning to go, as of 2 September, to report the incidents to date.

219.2 Saying that she had made up any incident to get back at Mr Ozour

219.3 Saying that she has exaggerated any incident to get back at Mr Ozour

219.4 Saying that she is pretending to have been more upset than she really was about any incident. Her account is that she was upset at the time, in each

case, but that, up to end of August, she thought that if she made clear to Mr Ozour that she did not want to be touched like that, he would get the message and eventually stop. (She claimed that, after the video incident, she thought it might be necessary to resign).

220. The Respondent argues that the Claimant would have reported these matters sooner and/or to Anita if they really occurred. We do not agree.

220.1 Firstly, we have seen no evidence that the Claimant had ever been told to report this type of thing to Anita, and the first mention of it appears to have been when the point was put to the Claimant in cross-examination.

220.2 Secondly, we agree with the Claimant that reporting such matters to Mr Ozour's daughter would have been difficult for the Claimant, even in theory.

220.3 Thirdly, we agree with the Claimant that – even if she had been told that such matters were supposed to be reported to Anita (which the Respondent has not proved) – she would have been likely to conclude that doing so would not necessarily be confidential and would not necessarily result in Mr Ozour's being disciplined by the Respondent or in the Respondent's insisting that he modify his behaviour.

220.4 Fourthly, the time lag from the first alleged incident until the actual report to the Respondent is not so long as to be suspicious. The Claimant only worked for the company for around two months in total (first day in the office 4 July, last day in the office 2 September). She reported the matter on 6 September (repeating the report on 12 September 2022).

220.5 Fifthly, according to Mr Ozour's oral evidence, Anita drafted the termination letter on 10 September 2022, and the termination letter referred to the Claimant's allegations of harassment. Thus, on the Respondent's case, Anita had seen the allegations prior to the Claimant's dismissal, and had not contacted the Claimant to discuss further, but had drafted a letter which alleged the allegations were "false allegations and slander"

221. The Claimant also reported the allegations to both police and her GP. These are not necessarily independent of her allegations to the Respondent since the timing is similar. However, again, on the Claimant's account the incidents did occur, and she had reported them to both police and GP no more than two months after the earliest possible date of any incident, and less than 3 weeks after allegation 2.1.2 and less than 1 week after allegation 2.1.3.

222. This is not a case where a claimant is required to account for any surprising delay. If the allegations are true, they were each reported promptly.

223. Our finding is that when the Claimant started working for the Respondent, Mr Ozour came to the opinion that (i) he might like to commence some sort of romantic or sexual relationship with the Claimant and that (ii) there might be a possibility that that would happen.

223.1 Our finding is that he did not reach that latter conclusion because the Claimant also wanted such a relationship, but because he misinterpreted her normal friendly and professional interactions.

223.2 He might have convinced himself that the Claimant's bringing in food was to try to entice him to be attracted to her, but that was not the case.

223.3 He might have convinced himself that the Claimant's friendly way of talking/messaging was her attempt to show him that she was interested in him romantically or sexually, but that was not the case; the Claimant spoke to him in the way that she often spoke to people.

223.4 He might have convinced himself that the Claimant's questions to him about his family was her way of scoping out whether he was open to an extra marital affair; but our finding is that she was just making normal conversation of the type that new employees are often likely to have with their "boss", especially if, like here, they are required to work closely with that "boss".

223.5 At its highest, Mr Ozour's claim is that by putting her feet up on his desk, the Claimant was signalling availability. Even if that happened (and it was not in Mr Ozour's written statement, or put to the Claimant specifically in cross-examination) it was – at most – disrespectful and too casual, but it was not, in our view, intended as an enticement to Mr Ozour. On the contrary, we find it to be significant that he (claims to have) thought it was.

224. On the balance of probabilities, we are satisfied that each of the alleged incidents did occur.

224.1 For 2.1.1, it is understandable that (if true) the Claimant would remember the incident itself, and not the date. We find that it is true. Mr Ozour touched her on the bottom while she was making tea. We are satisfied that the Claimant made it plain that she did not want to be touched like that again. We are also satisfied that she had done nothing to encourage him to think it was OK in the first place.

224.2 For 2.1.2, we are satisfied that the Claimant's recollection of the date is correct, and that all the facts as listed in the list of issues did occur. In one account, she also referred to his seeking to pull the zip of her dress. Since that is not in the list of issues, we do not need to decide if that (the zip) did occur or not. However, the fact that she mentioned that only once is not suspicious, and her overall account of the incident is consistent. We are satisfied that the Claimant

made it very plain indeed that she did not want to be touched like that. Her recollection now (and as early as 12 September 2022) is that she was shaking and crying. That is something that can be addressed at the remedy stage, but we are firmly convinced that she sought to get him away from her and that she left him in no doubt that his advances were unwelcome.

224.3 For 2.1.3, we accept the Claimant's account. She was called to the office on the internal phone. When she got there (for whatever reason, it does not matter to liability) Mr Ozour proceeded to close the tinted window and (for whatever reason, it does not matter to liability) the Claimant said that she did not want it closed, and sought to re-open it. While she was doing that, he slapped her on the bottom.

2.2 If so, was that unwanted conduct?

225. In each case, it was unwanted conduct. Furthermore, the Respondent has not sought to allege that the incidents did happen and that they were "wanted" by the Claimant. Its defence, which we have rejected, is that the Claimant invented these allegations and none of the touching occurred.

2.3 Did it relate to sex?

2.4 Alternatively was it of a sexual nature?

226. For each alleged incident, our answer to each of the questions is "yes".

227. If the Respondent had argued that any of the touching had occurred, and that there was an explanation for why it was not of a sexual nature, we would have considered that explanation. Similarly, had it been argued that Mr Ozour would have behaved the same way regardless of the sex of the person in JOB XYZ.

228. In relation to 2.1.1, had there been an explanation – say – that there was some accidental touching, we would have considered it. For the other two incidents, we find that it is implausible that there could have been any accident or mistake.

229. In each case, the Respondent argues that the touching did not occur, as opposed to arguing that it was not of a sexual nature. Applying our common sense, and the usual usage of the phrase, we are satisfied that the behaviour on each of 18 August and 2 September was very clearly of a sexual nature. That helps us to decide that, on balance of probabilities, the touching of the Claimant's bottom as per paragraph 2.1.1 was also of a sexual nature.

230. We are also satisfied that Mr Ozour's conduct towards the Claimant (as per paragraph 2.1 of the list of issues) was because she was a woman. (Specifically, it was because she was a woman to whom he was attracted, rather than solely because she was a woman). His conduct was related to the Claimant's sex.

2.5 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

231. It did not have that purpose. Mr Ozour's purpose was that he hoped the Claimant would respond favourably to what he did, and he hoped that, by being persistent, she would change her mind about her objections to his touching her in that manner.

2.6 If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

232. It did have the effect. The Claimant perceived Mr Ozour's conduct as violating her dignity and as creating an offensive environment for her. It was reasonable for her to have that perception.

233. We have not ignored the friendly tone of the messages prior to 2 September, but our finding is that the tone was because the Claimant was a new employee in a new job and (up to around 30 August, at least) was hoping that Mr Ozour's behaviour would change and she could keep the job. She was seeking to keep things cordial and to handle his behaviour diplomatically. Her messages do not demonstrate that she did not believe that his behaviour had created an offensive environment.

234. We deal with item 2.7 from the list of issues below.

Victimisation

3.1 Did the claimant do a protected act as follows:

3.1.1 In an email of 6 or 7 September in which she raised the conduct of Mr Ozour.

235. As discussed above, the Respondent concedes that there was a protected act on 6 September (in an email that we have not seen) and also a protected act on 12 September (the item on page 123 of the bundle).

236. Had the Respondent not conceded the point, we would have had to address in detail whether section 27(3) EQA applied, and whether, for that reason, there was no protected act. Since we have decided that the Claimant's information was accurate, we would have been unlikely to decide that section 27(3) prevented the emails being "protected acts". The emails fell within section 27(2)(d) EQA.

3.2 Did the respondent do the following things:

3.2.1 Dismiss the claimant by email dated 13 September 2022 (that stated the dismissal was with effect from 10 September 2022).

237. Yes, subject to the fact that our conclusion is that – on the balance of probabilities - the Claimant read the email on 14 September 2022, and that, therefore, was the last date of her employment.

3.3 By doing so, did it subject the claimant to detriment?

238. Yes. Our decision is that the dismissal of an employee is usually a detriment and that it was in this case.

3.4 If so, was it because the claimant did a protected act?

239. For the Claimant to succeed, she would not have to prove it was the only reason, or even the main reason, for her dismissal. For the various dismissal reasons put forward by the Respondent:

239.1 We not believe that it was because the Claimant's attendance was such that she had previously been given oral and written warnings for lateness or absenteeism. She had not been given such warnings.

239.2 We not believe that it was because the Claimant's attendance was such that Mr Ozour decided that she should fail probation. On 3 and 4 September 2022, he wanted her to continue as an employee, or else part amicably.

239.3 We not believe that it was because the Claimant had failed to attend on 1 July. We find that it was the Respondent's suggestion that she attend on the Monday even though her contract was to run from the Friday.

239.4 We not believe that it was because the Claimant had failed to supply sick notes for early July. Firstly, she had not been off sick and secondly she had not been asked for such notes.

239.5 We not believe that it was because of the Claimant's absence in August for dental work or hospital check up. Again, the messages as late as 3 and 4 September contradict that.

239.6 We do not believe that it was because of alleged unauthorised absence while Mr Ozour was in France or because of alleged dishonesty connected with that. According to the Attendance Records produced after oral evidence, Mr Ozour's name is at the top of the sheet, and the Claimant's is the next one down. It is not alleged by the Respondent that the Attendance Sheets were falsely completed by the Claimant, but rather that the fact that there are only two entry times shown for the Claimant (5 August, 10 August) while Mr Ozour was away shows that she was not in the office on the days which are left blank. If the Respondent's explanation for the Attendance Records is true, every day in August, from 17th onwards, when Mr Ozour signed in, he had the chance to see the blank spaces against the Claimant's name. We do not believe his

account that he got new information, after 4 September, about the Claimant's attendance in August.

239.7 We not believe that it was because the Claimant was believed to have bullied staff. On the contrary, these accusations – in our judgment – are false and were created as an excuse to justify dismissing the Claimant. She was not sent on a course to "improve" her managerial skills because of bullying, and, in fact, Mr Ozour had encouraged her to be firm with staff. No written complaint to Mr Ozour has been produced (and nor has any written complaint to Anita been produced, if that was supposed to be the proper procedure) and nor has any written response to the people who supposedly complained about the Claimant's bullying.

239.8 We not believe that it was because the Claimant was believed to have hit Ugo. We are satisfied that Mr Ozour believed that Ugo had been the aggressor and that the Claimant had not landed any blows.

239.9 The fact that Mr Ozour believed that the Claimant had started the argument with Ugo, which led to Ugo hitting the Claimant probably was part of the dismissal reason. Although there are some differences in nuance, each of the Claimant and Mr Ozour accept that Mr Ozour had told the Claimant to be careful about what she said to Ugo, and how she said it. Mr Ozour probably believed that if the Claimant had handled things differently, the fight would not have happened, and his daughter would not have been arrested.

239.10 The fact that the Claimant did not attend work, or the "formal meeting" in the week of 5 September 2022 might have influenced the dismissal. The Respondent did know that she had a fit note, and referred to that in the dismissal letter.

240. The fact that the Claimant had made allegations in the 6 September email was part of the dismissal reason. The termination letter says so. One of the Respondent's arguments is that the main reason for the dismissal was the Claimant's conduct on 2 September (coupled with her failures to attend any meeting to discuss). However, even on the face of the termination letter, the 6 September email is not a trivial part of the reason. It is mentioned both in the third paragraph and in paragraph "f" and is clearly a significant part of the overall argument for why dismissal (by cessation of probation) is said to be justified.

241. The Respondent seeks to argue that it is the fact that the allegations were false that led to the decision that this would be part of the dismissal reason, rather than the protected act itself. Even if we were otherwise willing to accept that could be valid argument for "separability", given concession that the email was a protected act, the short answer is that we have found the allegations were not false. Mr Ozour knew they were not false. Therefore, it cannot be true that the "real"

significance of the 6 September email is that the accusations were false. He knew that the touching did occur. (That would be so even if he believed that the incidents were consensual or that the Claimant was exaggerating about how upset she had been, which is not the argument presented to the Tribunal.)

242. Even if it were true, as Mr Ozour's claims that the decision was made on or before 10 September, and that the letter was finalised on 10 September and not changed later, then the dismissal was, at least in part, because of the Claimant's protected act on 6 September 2022.

243. On balance of probabilities, the decision was made after Mr Ozour had also seen the Claimant's 12 September email. Thus, on balance of probabilities, the dismissal was, at least in part, because of the Claimant's protected act on 12 September 2022 as well.

3.5 Was it because the respondent believed the claimant had done, or might do, a protected act?

244. We do not need to address this in light of the decisions that it was because she had, in fact, done protected acts.

245. Returning to the other harassment complaint:

2.7 Did the respondent treat the claimant less favourably because the claimant rejected or submitted to the conduct? The less favourable treatment relied on by the claimant is her dismissal.

246. Our decision is that the answer is "yes". Mr Ozour did not decide to dismiss the Claimant promptly after she rejected the conduct as per paragraphs 2.1.1 and 2.1.2 of the list of issues. As his conduct on 2 September (paragraph 2.1.3) demonstrated, he had not yet given up on the idea that the Claimant might be persuaded to change her mind.

247. He did not decide to dismiss her immediately after she objected to his conduct in his office on 2 September 2022 either. The messages he sent immediately afterwards (that is, after the "fight" later in the day) on 3 and 4 September show that he was not planning to dismiss the Claimant at that stage.

248. The Claimant's non-attendance at work and her emails complaining about his conduct changed things. It was no longer his opinion that if he persisted in unwanted conduct, there would come a time when the Claimant would stop rejecting his advances. It became clear to him that the Claimant's rejection of his conduct was a permanent state of affairs. This was part of his reason for deciding to dismiss the Claimant and to cease telling the Claimant that she could stay and Ugo could go.

249. Therefore the complaint of harassment within the definition in section 27(3) also succeeds.

Outcome and next steps

250. There will be a remedy hearing, and details will be sent separately.

Employment Judge Quill

Date: 16 October 2023

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

17 October 2023

FOR EMPLOYMENT TRIBUNALS