EMPLOYMENT TRIBUNALS

Claimant: Miss L Hayman

Respondents: Pall-Ex (UK) Ltd (1)
Mr Christopher Tancock (2)

Heard at: Leicester

On: 8, 9, 10, 11 and 12 January 2018
15 March 2018 (in chambers)

Before: Employment Judge Ahmed

Members: Mr M E Robbins
Ms K McLeod

Representation
Claimant: Mr Anthony Korn of Counsel
Respondents: Mr Christopher Kisby, Solicitor

RESERVED JUDGMENT

The unanimous judgment of the tribunal is that:

1. The Claimant was constructively and unfairly dismissed.

2. The complaints of sexual harassment and less favourable treatment contrary to the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 are all dismissed.

3. The complaints of direct sex discrimination and harassment based on the protected characteristic are upheld in respect of:

3.1 the allegation that Mr David Gannon made a remark directed at the Claimant referring to her as a "*baby farmer*";

3.2 the treatment of the Claimant on 9 June 2016 relating to an incident in a car park in Milton Keynes,

4. All the remaining complaints of direct sex discrimination and harassment based on the protected characteristic of sex are dismissed.

5. The issue of remedy is adjourned.

6. The complaints against the Second Respondent are dismissed upon withdrawal.

REASONS

1. In a Claim Form presented to the Tribunal on 5 November 2016 Ms Lucinda Hayman brings the following complaints:

1.1 Direct sex discrimination;
1.2 Sexual harassment;
1.3 Harassment (based on the protected characteristic of sex);
1.4 Constructive unfair dismissal;
1.5 Less favourable treatment contrary to Regulation 5 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 ("PTW 2000").

2. At the hearing the Claimant, who has been legally represented throughout, was represented by Mr Korn of Counsel and the Respondents were represented by Mr Kisby, Solicitor. We are grateful to them for their assistance to the tribunal.

3. In coming to our decision we have taken into consideration the evidence given of all the witnesses including the contents of their witness statements, the documents in the agreed bundle and closing submissions. This decision represents the views of all the members of the tribunal.

4. During the course of the hearing, Mr Korn on behalf of the Claimant confirmed that the claim against the Second Respondent personally was withdrawn and was therefore dismissed.

5. We heard oral evidence from the following on behalf of the Claimant:

5.1 Miss Hayman, the Claimant.

5.2 Mr Jason Ward, former Business Development Manager with the Respondent and the Claimant's former colleague. Mr Ward is relied upon, where necessary, as the male comparator.

5.3 Miss Lynne Tanner, former Sales Support Executive. Miss Tanner gave evidence following a witness order on behalf of the Claimant. Miss Tanner left the Respondent's employ in September 2016

6. The Respondent's witnesses were:

6.1 Mr Christopher Tancock, currently Director of Owned Operations. He was previously the Network Director until November 2004 and Group Sales Director from November 2011 until he took up his present role in or about June 2016.

6.2 Mr Kevin Buchanan, Group Managing Director;

6.3 Mr Mark Steel, who took over the management of the sales team from Mr Tancock. He joined the Respondent in June 2016;

6.4 Miss Kelly Gibbs who joined the Respondent as HR Manager also in June 2016;

6.5 Mr David Gannon, formerly UK Finance Director until his retirement in June 2017.

6.6 Miss Abby Langley, Marketing Manager since December 2017.

7. We also took into consideration witness statements without oral evidence from Mr Adrian Russell and Miss Karolina Thompson on behalf of the Respondent. It was agreed that their statements should be admitted into evidence with appropriate weight being attached. Mr Russell was unable to attend on grounds of ill-health. He was the Managing Director and later Group Managing Director between 2011 and 2014. Miss Karolina Thompson was at the material time the International Development Manager. She is currently on maternity leave.

THE FACTS

8. Pall-Ex (UK) Ltd ("Pall-Ex") is a highly successful freight distribution business having been founded by well-known businesswoman, Miss Hilary Devey. Miss Devey is better known for her role as one of the 'Dragons' on the television programme 'Dragon's Den'. Having established the business as a major player in the haulage industry, her involvement in day to day matters is now significantly reduced and has been so for some time. Miss Devey was not called to give evidence at this hearing. Pall-Ex has a membership of approximately 90 of the country's leading independent Hauliers and employs 350 staff at several sites.

9. The Claimant has undoubtedly been a factor in the early success of the business. At an early stage she formed a strong and lasting friendship with Ms Devey. Despite the fact that the Claimant was not part of senior management team, her willingness to be frank on business issues and her involvement at the coal face no doubt endeared her to the founder. There is no dispute that the Claimant was highly regarded and hugely respected for her contribution by all her colleagues.

10. Miss Hayman initially began working for the Respondent in May 2000 as a Key Account Manager. She was previously working for a rival logistics company when she met Miss Devey. The two of them got to know each other and became good friends after the Claimant decided to join the company. At that time there were some 15 or so employees but it was growing rapidly. The Claimant was then single and prepared to put in the hours. Both the Claimant and Miss Devey arrived at work very early and frequently stayed late. They often met on social occasions with their respective family members.

11. Shortly after the business moved to new premises in March 2003, Miss Hayman was promoted to the role of Customer Service Manager. She was given a department of five customer service advisers to manage and was tasked with looking after some of the Company's key corporate clients.

12. Despite various pay increases as time went on the Claimant discovered that she was being paid less than a male manager on the same grade. She was very disappointed to discover this and decided to leave. Miss Devey made it clear to the Claimant though that if she chose to return the door was always open.

13. In March 2007, Miss Hayman did indeed agree to return and was welcomed back. On her return she was appointed to the role of Key Account Manager. Her salary and remuneration package reflected the high esteem in which she was held by the business then and thereafter.

14. In August 2008, the Claimant's eldest child was born. Miss Devey was one of the first few the Claimant called to break the news. Miss Devey asked for a

picture of Miss Hayman's child which she then framed and placed in her office. The Claimant says it has stayed there ever since. Later that year, Miss Devey's mother died and the Claimant attended the funeral.

15. In November 2010, the Claimant went on maternity leave for her second child. She returned to work in November 2011 on part-time hours. Upon her return Mr Tancock became her line manager. Expecting to pick up where she left off she was surprised to find Mr Tancock saying to her:

"*You will have to prove yourself first, the Company will not up your hours and pay you more until you prove yourself.*"

16. In her absence, a new role of Key Account Director had been created which had been filled by Mr Paul Reynolds. The post does not seem to have been advertised. The Claimant was disappointed that she did not have the opportunity to apply. When she mentioned this to Mr Tancock he said:

"*Why should the Company consider you? "*

17. In November 2011, at the Company annual dinner dance, Mr Reynolds was sat at the same table as the Claimant and some clients. He spent most of the evening ignoring the clients turning his attentions instead to the Claimant. At one point during the evening he asked Ms Hayman if she was 'available'. The Claimant understood it to mean (and it is not suggested that it meant anything else) whether she was willing to spend the night with him. Miss Hayman was deeply offended and told Mr Reynolds in no uncertain terms that she was not interested.

18. The next working day Ms Hayman reported the incident to Mr Tancock. Mr Tancock's reply was simply that the Claimant would have to 'get used to it'. The Claimant was not told, as we are now, that Mr Tancock went to see Mr Reynolds to 'nip it in the bud' and tell him that such behaviour was unacceptable. A year or so later Mr Reynolds was dismissed and brought an action against the Company. The Claimant was asked to write out a statement to confirm the incident with the Claimant, no doubt to bolster its case against Mr Reynolds. Miss Hayman refused on the grounds that the Respondent was not interested in her complaint when she raised it.

19. Mr Adrian Russell is a former Managing Director of the Respondent. The Claimant alleges that when she was single and without children he would regularly make remarks about when she was going to start a family. He is alleged to have commented on the Claimant's biological clock 'ticking away'. It is also alleged that he would frequently look at her chest when he spoke to her and play with her chair. After the Claimant was pregnant with her third child in 2012, Mr Russell said to the Claimant:

"*I know I told you you'd better get on with it but do you know when to stop?*"

20. In August 2012, the Company lost one of its major customers, Unidrug. The Claimant had spent some time developing a business relationship with them but when they indicated they were moving their business to a competitor, Mr Tancock sent Mr Reynolds instead of the Claimant to ascertain the reason. The Claimant felt that not only she being scapegoated for the loss of the customer but also humiliated by not being given the opportunity to recover the situation.

21. In July 2013, following the Claimant's return to work after her third period of maternity leave, she noticed references to her parental responsibilities. In particular on 7 March 2017 she received an email from Mr Tancock in which he said, inter alia:

"*Can you tell me when you get a moment in between nappy changing …*"

22. After the third period of maternity leave the Claimant was told that there was no longer a requirement for a Key Account Manager and that her job title would now be 'Business Development Manager'. This would require her to seek new business as well as looking after the existing client base. A few weeks after starting her new role, the Claimant left the office to attend a meeting in Kibworth, Leicestershire. Whilst she was travelling, Mr Tancock telephoned to say that he had emailed a spreadsheet to her. Miss Hayman said that she could not open the files on her mobile phone and would have to return back to the office to print it. She asked why she could not have an iPad as Mr Ward had been supplied with one. The Claimant says she was not given any explanation for the absence of parity in treatment.

23. In October or November 2013, the Claimant had a meeting with Mr David Gannon then Finance Director on various outstanding debt matters. She asked what the position was in relation to one particular customer to which Mr Gannon replied:

"*Nothing has happened since you've been busy being a baby farmer*".

24. Between November 2013 and early 2014, the Claimant was able to secure approximately £2m worth of new business which was significantly higher than anyone else in the sales team. However, she felt that the Company was under-performing in terms of customer service and this threatened the retention of existing customers. Mr Tancock was spending approximately three days a week looking after business interests in the South West and the Claimant was therefore effectively without any line management. Miss Hayman decided that it was necessary to turn her efforts to retention of customers rather than spending the majority of her time seeking new business. Mr Tancock did not agree. The Claimant says she was unfairly criticised by Mr Tancock over her approach.

25. In January 2015, the Company appointed Mr Kevin Buchanan as the Managing Director and Miss Sue Hodgson as Network Director. Miss Hodgson was the only senior female employee in management. She was also Mr Buchanan's partner. Shortly after his arrival Mr Buchanan began his introductory meeting with the staff saying:

"*You are all welcome on this boat [or ship] but you might not all be staying.*"

26. Miss Hayman regarded this as a veiled threat about job security and that she could be at risk. Mr Bowden's tenure was however short-lived and in September 2015 he was dismissed and replaced by Mr Tapper on an interim basis. In December 2015, Mr Tancock was brought back to the role of Sales Director. The Claimant was not actually placed at risk at any stage or involved in a selection pool for redundancy.

27. From 2016 onwards the Claimant alleges that Mr Tancock was regularly rude and abrupt towards her. He also belittled her by frequently asked her to make tea or coffee for everyone instead of distributing the task to others never asking Mr Ward who was no less senior than the Claimant. Miss Hayman also alleges that

she would receive telephone calls and emails late into the evening on a regular basis.

28. In November/December 2014 the Claimant was asked to visit various customers such as 'Simply Paving' and 'Aggregate Industries'. These customers had previously been managed by Mr Ward and Mr Tancock. There were a number of issues that required a personal meeting and the Claimant was sent to see these customers. Miss Hayman attended but felt she had not been fully briefed beforehand as to the nature of the issues. When she arrived she found that the customers had been made unachievable promises by Mr Tancock. She claims she was put in an embarrassing situation in having to report back that the problem was Mr Tancock himself.

29. In November 2015 (erroneously referred to as November 2014 in the further and better particulars) Mr Tancock offered the Claimant a new position as Senior Sales Manager but added that the Claimant would only be able to take on the role if she worked full-time hours. In the course of the discussion Mr Tancock is alleged to have said to the Claimant: "You know I don't like part-time workers"

30. On a Friday evening sometime in January 2016, the Claimant received a telephone call from Mr Tancock telling her that Mr Ward and herself would be going through a process of redundancy beginning the following Monday. Miss Hayman says she spent a restless weekend upset and concerned. However, on Monday when she went to Mr Tancock's office he said that he had had a change of heart and that there would be no redundancies taking place after all. The Claimant says this caused her needless concern and worry.

31. In January 2016, Mr Tancock is alleged to have asked the Claimant: "Why on earth are you working part-time again?" At the time he Claimant was working 32½ hours a week. She told Mr Tancock that she had applied for such hours through the flexible working process and they had been granted. Mr Tancock's response was: "Well, we will see about that, but there are more important issues that I need to deal with now."

32. It is alleged that in January 2016 Mr Tancock asked the Claimant, when she mentioned she was feeling tired, how she could be tired as she was only working part-time and that a 'real' working day began at 5.00 am and did not finish until 10.00 pm.

33. On 6 February 2016, the Claimant arrived late to a meeting in Kegworth as she had been setting up a new customer in Manchester. Mr Tancock had left the meeting early to drive back down to his home in Exeter. Before he left he had a missed call on his mobile with a 01604 number. The Claimant wrote down the number and thought it might be from one of two customers in that area. The Claimant rang the number to check who it was. She discovered who it was and rang Mr Tancock to tell him. Mr Tancock said to her: "I know it was I was just checking that you'd do it." The Claimant says that there was no reason for Mr Tancock to treat the Claimant this way and he would not have treated a man in this way.

34. On a date in April 2016, the Claimant telephoned Mr Tancock to let him know that she had a flat tyre and could find no tyre key to remove the locking wheel nut. She was concerned that she may not be able to turn up for work the following day. She managed to find a suitable key from a neighbour and arrived for work on time. When she arrived at work Mr Tancock demanded that Miss Hayman gave him the car keys so that he could search for the wheel locking nut.

The Claimant says that this was very humiliating for her and displayed a stereotypical attitude towards her as a woman. She argues that Mr Tancock would not have treated Mr Ward or a male colleague in the same way.

35. Shortly after the so-called 'locking nut' incident, the Claimant telephoned Miss Devey to say that she was unhappy and thinking of leaving. She said it had taken her several days to pluck up the courage to call her and did not want her to think that she was taking advantage of their friendship but she felt bullied and harassed. Ms Devey was upset with personal issues of her own at the time and the Claimant felt that it was not appropriate to dwell on her difficulties and she left it there.

36. In May 2016, the Claimant was speaking to Mr Mark Steel who worked for a local delivery member before he had joined the Respondent. He often had business dealings with Pall-Ex and the Claimant. On 2 May 2016, she received an email from Mr Steel giving details of a business lead. However, she found his tone to be different than usual and not as cordial. When she asked what the reason was Mr Steel simply said that it would all become clear in a couple of weeks. The Claimant did not understand the significance of the remark at the time but shortly afterwards a vacancy for Head of Sales arose. The Claimant was interested in applying. However in a private discussion with a colleague the Claimant discovered that business cards for Mr Steel as Head of Sales had already been ordered even before the date for applications for the vacancy had closed. The Claimant did not consider that it was worth applying for the role in the circumstances.

37. On 26 May 2016 at approximately 7.25am, the Claimant emailed Mr Tancock to say that she was not feeling well but would nevertheless deal with the items necessary for that day. Mr Tancock then telephoned the Claimant on at least six occasions. He sent two emails asking her to contact him when he could not reach her by telephone. When the Claimant rang back at 2.00 pm to find out what was urgent, Mr Tancock's tone was unfriendly asking: "What's up, flu or something?"

38. In June 2016, there were issues concerning outstanding invoices with a customer, Clark-Drain. Mr Tancock was concerned that customer queries from Clark-Drain were holding up substantial payments to the Respondent. Some invoices had been outstanding for several months. The customer had complained about freight damage, bad labelling and packaging and was citing these as reasons for not paying the outstanding invoices. Mr Tancock asked Miss Hayman to book an appointment with Clark-Drain to resolve these issues. The meeting had taken some time to be arranged and was eventually fixed for 13 June 2016.

39. On 6 June 2016, a week before the meeting date, Mr Tancock met with Miss Hayman to discuss preparation and strategy for the meeting. He wanted two significant pieces of information which he felt would help their cause. The first was to gather data on the customer trailers arriving on site. It was agreed that Miss Hayman would arrange for Operations and Customer Services to take photographs of all Clark-Drain trailers arriving on site containing goods before Pall-Ex had even handled the freight. At that point in time there would be the opportunity to photograph of around 25 trailers. The second was to analyse damaged goods data and identify trends. It was agreed that Miss Hayman and Mr Tancock would meet on Friday 10 June 2016 to review the information gathered.

40. In the meantime, on unrelated matters the Claimant was walking through the

reception area one day when she met Mr Partington, then Head of HR. He told the Claimant that in his first conversation with Mr Steel (who by this point had been formally appointed Head of Sales) that there would be "casualties in the Sales Department". He also told her that Mr Steel was looking to bring his former Sales Manager to the Company. The Claimant says she became concerned about her position in the business.

41. On 7 June 2016, the Claimant received a call whilst at work from Leicestershire Police relating to an attempted break in at her home a week or so earlier. She took the call on her mobile phone. When she returned to her desk Mr Tancock asked the Claimant where she had been as he had been waiting by her desk for the last 20 minutes. The Claimant says she had no choice but to take the call, was unaware of any planned meeting with Mr Tancock and after speaking to a colleague she discovered that Mr Tancock had not in fact been waiting at all. It is alleged that on the same day Mr Tancock told Mr Steel to call the Claimant at home knowing that she would not be at work in an effort to harass her.

42. On 9 June 2016, the Claimant was scheduled to attend a customer meeting in Milton Keynes. It was agreed that the Claimant would drive down in her own car and Mr Tancock and Mr Steel would drive down together in another car. They all agreed to meet at the client's premises. Mr Steel and Mr Tancock arrived first, some 20 minutes before the meeting was due to take place but the Claimant had not yet arrived. Mr Tancock then telephoned the Claimant and asked her where she was. She replied that she was around the corner and she would be there in a minute. She arrived at the customer's car park several minutes later. When she eventually arrived Mr Tancock asked where she had been. She said that she was in the Tesco car park around the corner to which Mr Tancock asked in a sarcastic tone: "Where? In Nottingham?" It is agreed that Mr Tancock's then laughed and that this comment also prompted laughter from Mr Steel. The Claimant says she felt belittled in front of her new manager and this was both an act of sex discrimination and harassment.

43. On Friday 10 June, the Claimant had a meeting with Mr Tancock to discuss preparation for the Clark-Drain meeting. Her evidence is that when Mr Tancock discovered there were no photographs on Clark-Drain trailers and that the Claimant was still waiting for information from the Customer Service team, Mr Tancock became very angry and started shouting at her. Mr Tancock denies shouting but admits that he raised his voice as he was 'extremely disappointed' at the Claimant's lack of ownership of the problem. He felt that the opportunity to prepare for the meeting had gone. The Claimant says that she left the meeting in tears and went to the ladies toilets where she met Miss Thompson who consoled her with Miss Thompson saying she knew what a horrible man Mr Tancock was and that she had also complained about his behaviour in the past. In her witness statement Miss Thompson accepts that she met Miss Hayman in the toilets but denies ever having made the comments about Mr Tancock.

44. When the Claimant returned to her desk, Mr Steel called the Claimant into his office and said to her:

"*Two things: You answer your phone when you are not at work, tick. I am always at my desk between 8 am and 8.30 am and I expect you to do the same. We need to show that we mean business*."

45. In the first of several conversations thereafter the Claimant telephoned and spoke to Miss Devey to say she was upset about what was happening at work and said that she was planning on leaving.

46. On Sunday 12 June, Miss Hayman typed up her resignation letter and emailed it to Mr Tancock. It was a very short letter giving notice to terminate employment on 12 July 2016. The Claimant received an email the same day though not from Mr Tancock but from Mr Buchanan to say that he was deeply saddened to receive the resignation and asked her to reconsider. In his email Mr Buchanan wrote:

"In terms of Chris [Tancock] *he will be moving into a new role in a few weeks time so any reporting issues with him will be resolved. In respect of Mark Steel I can assure you he has only ever spoken of you in positive terms and we agreed both before his appointment and after his first week in post that you were very much part of our plans to improve the sales structure.*"

47. In telephone conversations on or around 14 June between the Claimant and Miss Devey, there were concerted efforts to persuade the Claimant to stay. Miss Devey attempted to persuade the Claimant to stay. She said Mr Tancock had "Napoleon Syndrome", that if necessary she would sack Mr Tancock, Mr Steel and Mr Buchanan if that is what it took for the Claimant to stay and that Miss Hodgson would have to "sling her hook too". Later the Claimant entered Mr Tancock's office and overheard Miss Devey saying to him: "You've been bullying her haven't you?" which the Claimant understood to be a reference to her.

48. After these discussions the Claimant was still at work though by now the position in relation to her resignation was unclear. Mr Buchanan was of the view that if the Claimant was placed under less pressure the situation could be resolved. In a meeting with the Claimant on 15 June Miss Hayman repeated the difficulties she was having with Mr Tancock and said she had been shouted at by him. Mr Buchanan explained Mr Tancock was moving to a different role at a different location and tried to persuade her to stay. The Claimant said she would think about it.

49. A few days later the Claimant made an application for her working hours to be reduced to 21.5 hours per week. The application was considered by Mr Steel who refused the application. The Claimant says he told her:

"I already feel like I have one hand tied behind my back as you already work part-time, so reducing your hours further would make me feel like I have one and a half hands tied behind my back."

50. On 28 June the Claimant woke up in the middle of the night with severe chest pains. She sent an email to Mr Steel in the morning saying that she would not be in at work. Following discussions with Miss Gibbs of HR it was agreed that they would meet at the Claimant's home on 12 July. At the meeting Miss Hayman complained of Mr Tancock's behaviour and set out a number of incidents about the way she had been treated in the past by him. Miss Gibbs asked the Claimant if she still wanted to resign. The Claimant was uncertain. There was a discussion about reducing the Claimant's hours to 21.5 per week but nothing was formally agreed.

51. In what appears to have been an attempt to get his retaliation in first, Mr Tancock then wrote a long email to Ms Devey setting out his version of events. He explained that the Claimant's performance had not been what it once was. The Claimant was unaware of its contents at the time and therefore it had no bearing on her decision to resign. Whilst the Claimant deals with this at length in her witness statement, it has no bearing on these proceedings.

52. On 16 July 2016, Miss Hayman submitted a formal grievance in relation to

some of the matters which are the subject of these proceedings and other incidents which are not formally relied upon as allegations. The Claimant also indicated that she wished to "end her employment …as per the date on [her] resignation letter [namely 12 July 2016]". The letter was copied to Miss Devey. Miss Devey asked for Miss Hayman's contact details so that she could speak directly to the Claimant but it does not appear that ever happened. On 26 July Miss Gibbs wrote to the Claimant to say that the resignation was accepted.

53. The Claimant began the process of ACAS early conciliation on 16 November 2016 with the early conciliation certificate being issued the following day. On 5 November 2016 the Claimant submitted her claim to the employment tribunal.

54. THE ALLEGATIONS

Detriment by reason of being a part-time worker and/or direct sex discrimination and/or harassment

54.1 In October/November 2013 the Claimant was told (when she took 2 days annual leave after her uncle died) that this was "typical". The Claimant says this comment would not have been made if she was a woman or a full time worker.

54.2 That on unspecified dates she was regularly instructed by Mr Tancock (who at times shouted at her) to come into his office whereas others were not treated in this manner.

54.3 That (on unspecified dates) the Claimant was repeatedly asked/instructed to make tea and coffee and other refreshments when male or full time employees of an equivalent status such as Mr Ward were not so requested.

54.4 In October 2013, with regard to the Claimant offering to increase her hours, Mr Tancock told the Claimant that she would have to "*prove herself*". During the course of the hearing the Claimant corrected the date of the allegation to November 2011.

54.5 In November 2013, failing to provide the Claimant with an iPad to facilitate her work whilst an iPad was provided to Mr Ward.

54.6 Failing to properly brief the Claimant prior to client visits such as in October 2013 (a visit to Expeditors), in December 2014 (to Simply Paving) and in November 2014 (to Aggregate Industries).

54.7 Making regular, repeated and unreasonable requests to the Claimant to work outside her normal hours of work.

54.8 Repeatedly making derogatory and demeaning comments to the Claimant such as the locking nut incident, making the Claimant look small and incompetent in front of other members of the sales teams and being asked "are you available?"

54.9 The Respondent frequently making appointments with the Claimant outside her contracted hours.

54.10 Harassing the Claimant when she was off sick by repeatedly telephoning her.

54.11 Frequently shouting at the Claimant and treating her in a demeaning

manner and in particular the incident in Milton Keynes.

54.12 Repeatedly seeking to contact the Claimant outside her normal working hours to chase up calls when others were available.

54.13 Making the Claimant feel awkward by standing behind her, playing with her chair and making it difficult for her to concentrate on her work and looking at the Claimant's chest when speaking to her.

54.14 Constantly speaking to the Claimant in front of others in a way which made her views undervalued, blaming the Claimant for the loss of Unidrug.

54.15 Undermining the way the Claimant dealt with customer complaints.

Detriment/less favourable treatment by reason of being a part-time worker

54.16 Comments by Mr Tancock that the Claimant was "*looking tired*".

54.17. Mr Tancock saying to the Claimant that he did not like part-time workers.

54.18 Mr Tancock saying that part-time workers "*did not know how good they had it*".

54.19 Comments about the Claimant's availability during normal working hours.

54.20 Mr Tancock questioning why the Claimant was working part-time.

54.21 Mr Tancock telling the Claimant that she would only be offered the position as Sales Manager if she worked full-time.

54.22 Alleged disparaging remarks by Mr Tancock.

54.23 Alleged derogatory and demeaning remarks to the Claimant regarding the locking nut wheel incident, comments about the Claimant's contracted hours.

54.24 Remarks by Mr Steel as to the Claimant telling her to answer her phone when she was not at work and to be at her desk between 8 am and 8.30 am.

55. THE ISSUES

Constructive dismissal

55.1 Did the allegations that the Claimant complains of take place? In particular, the Claimant relies upon the following allegations:

55.2 regular changes in her line managers;

55.3 repeatedly being made to feel that her employment was at risk and being undervalued, references to "*getting rid of the old guard"*, "*casualties in the workplace*", threats of redundancy and references to the 'previous regime'.

55.4 negative comments about the Claimant having to 'prove her worth'

55.5 allegedly ignoring the Claimant's concern about low staff morale

55.6 the conduct of Mr Tancock at the meeting on 10 June.

Sexual harassment

55.7 Did the conduct of Mr Reynolds, Mr Russell or Mr Tancock amount to unwanted conduct of a sexual nature?

Generally

55.8 Did the factual allegations actually occur?

55.9 If so, did they constitute conduct which amounted to direct sex discrimination and/or a breach of the implied term of trust and confidence which entitled the Claimant to resign?

55.10 Did the acts alleged, if they occurred, amount to less favourable treatment because the Claimant was a part-time worker?

55.11 Did the comments and acts amount to harassment, either within the meaning of Section 26(1) or Section 26(2) of the Equality Act 2010?

55.12 Have any of the allegations been presented out of time?

THE LAW

56. The relevant statutory provisions and Regulations are as follows:

Section 13 Equality Act 2010 ("EA 2010")

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

Section 26 EA 2010

"(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.

(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)."

Section 123 EA 2010

"(1) Subject to sections 140A and 140B proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it."

Section 39(2) EA 2010

(2) An employer (A) must not discriminate against an employee of A's (B)—

(a) as to B's terms of employment;

(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;

(c) by dismissing B;

(d) by subjecting B to any other detriment.

Regulation 5 PTW 2000

"(1) A part-time worker has the right not to be treated by his employer less favourably than the employer treats a comparable full-time worker—

(a) as regards the terms of his contract; or

(b) by being subjected to any other detriment by any act, or deliberate failure to act, of his employer.

(2) The right conferred by paragraph (1) applies only if—

(a) the treatment is on the ground that the worker is a part-time worker, and

(b) the treatment is not justified on objective grounds."

Section 95(1)(c) Employment Rights Act 1996 ("ERA 1996")

"(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2), only if)—

[(a) and (b) not relevant]

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."

Time limits

57. Time limits for bringing complaints of sex discrimination are dealt with at section 123 of the EA 2010. The same provisions apply to complaints of detriment for less favourable treatment under the PTW 2000. Regulation 8(2) is in materially identical terms to section 123 EA 2010.

58. Section 123 EA 2010 requires a complaint relating to sex discrimination to be brought within three months starting with the date of the act to which the complaint relates. Where the discriminatory conduct extends over a period of time, the discriminatory act is treated as being done at the end of that period. If there is no continuing conduct, the time limit begins to run when each act is completed. However if there is continuing discrimination, time only begins to run when the last act or conduct is completed.

59. The leading authority on continuing acts is **Barclays Bank plc v Kapoor** [1991] ICR 208. In that case the House of Lords held that where an employer operates a discriminatory regime, rule, practice or principle, then such a practice will amount to an act extending over a period.

60. In **Commissioner of Police of the Metropolis v Hendricks** [2003] ICR 530, Mummery LJ explained the above concepts. At paragraph 52 of the judgement he said:

"The concepts of policy, rule, practice, scheme or regime in the authority is where given as examples of when an act extends over a period. They should not be treated as a complete and constructing a statement of the indicia of " an act extending over a period"……. instead the focus should be on the substance of the complaint that the Commissioner was responsible for an ongoing situation or a continuing state of affairs in which female ethnic minority officers in the service were treated less favourably. The question is whether that is "an act extending over a period" as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed."

61. In **Aziz v FDA** [2010] EWCA Civ 304, the Court of Appeal said that one relevant (but not necessarily conclusive) factor in determining whether there was a continuing act was whether the same or different individuals were involved in the incidents.

62. In determining the out of time point the criteria contained in section 33 of the Limitation Act 1990 should be considered. These factors are sometimes referred to as the 'Keeble' factors (following the decision in ***British Coal Corporation v Keeble [1997]*** IRLR 336***.*** The Keeble factors require the tribunal to consider the following:

62.1 the length of and the reasons for the delay;

62.2 the extent to which the cogency of the evidence is likely to be affected by the delay;

62.3 the extent to which the parties had co-operated with any request for information;

62.4 the promptness with which the Claimant acted once she knew of the facts giving rise to the cause of action;

62.5 the steps taken by the Claimant to obtain appropriate professional advice once she knew of the possibility of taking action.

63. Whilst a tribunal is not required to go through the list in the manner of a tick box exercise, it is important not to leave out any significant factors (see ***Southwark London Borough Council v Afolabi [2003] ICR 800***.

64. In coming to our decision we also take into consideration the guidance of Auld LJ in ***Robertson v Bexley Community Centre [2003] IRLR 434***:

"It is also of importance to note that the time limits are exercised strictly on employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so until they can justify failure to exercise a discretion. Quite the reverse. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule."

65. In ***Chief Constable of Lincolnshire v Caston [2010] IRLR 327***, Sedley LJ in the Court of Appeal said:

"There is no principle of law which dictates how generously or sparingly the power to enlarge time is to be exercised. In certain fields (the lodging of notices of appeal at the EAT is a well-known example), policy has led to a consistently sparing use of the power. That has not happened, and ought not to happen, in relation to the power to enlarge the time for bringing employment tribunal proceedings, and Auld LJ is not to be read as having said in **Robertson** that it either had or should. He was drawing attention to the fact that limitation is not at large: there are statutory time limits which will shut out an otherwise valid claim unless the Claimant can displace them. Whether a Claimant has succeeded in doing so in any one case is not a question of either policy or law: it is a question of fact and judgement, to be answered case by case by the tribunal of first instance which is empowered to answer it."

Constructive dismissal

66. Section 95(1)(c) ERA 1996 describes dismissal which is commonly known as 'constructive dismissal'.

67. In accordance with the principles established in **Western Excavating v Sharp** [1978] IRLR 27, for an employee to succeed in demonstrating that he or she has been constructively dismissed, the Tribunal must be satisfied that the employer has either broken a principal term or terms of the contract or has evinced an intention to be no longer bound by one or more of those terms. The breach must be of such seriousness as to strike at the very root of the contract. The employee must resign in response to a breach.

68. The Claimant relies on a breach of the implied term of trust and confidence. In **Malik v BCCI** [1997] ICR 606, Lord Steyn in the House of Lords (at page 621) set out the definition of that term, which is that the employer must not:-

"without reasonable and proper cause conduct itself in a manner calculated and [or] likely to destroy or seriously damage the relationship of trust between employer and employee"

69. Bullying behaviour can amount to harassment. There is no definition of bullying under the EA 2010 or ERA 1996. ACAS defines it as any unwanted behaviour which makes an employee feel intimidated, degraded, humiliated or offended. An employer has a duty to take reasonable steps to protect an employee from bullying (see **Bracebridge Engineering Ltd v Darby** [1990] IRLR 3).

70. The Claimant relies on the 'last straw' doctrine in relation to her complaint of constructive dismissal. This doctrine was explained in **Lewis v Motorworld Garages Ltd** [1986] ICR 157, as being:

"…… the last action of the employer which leads to the employee leaving need not itself be a breach of contract; the question is, does the cumulative series of acts taken together amount to a breach of the implied term?"

71. In **Omilaju v Waltham Forest London Borough Council [**2005] IRLR 35, the Court of Appeal explained that where the whilst the final act in a series of other acts may not in itself be blameworthy or unreasonable, it had to contribute something to the breach even if relatively insignificant so long as it was not utterly trivial. The last straw does not have to be of the same character as the other acts. However, an entirely 'innocuous' act cannot be a final straw, even if the employee genuinely interprets it as hurtful and destructive of his or her trust and confidence in the employer. The test of whether the employee's trust and confidence has been undermined is ultimately an objective test.

72. It is enough that the repudiatory breach was *an* effective cause of the employee's resignation rather than being *the* effective cause – see **Wright v North Ayrshire Council** [2014] ICR 77.

CONCLUSIONS

73. The Claimant's allegations are both extensive and largely historical. Her ET1, combined with the first and second list of issues, the further and better particulars and her witness statement (which itself runs into 165 paragraphs) set out very many allegations which with the exception of events from January 2016 are all argued by the Respondent as having been made out of time. The Respondent accepts that anything from January 2016 is in time or that time should be extended.

The out of time issue

74. The position in relation to the effective date of termination is to some extent clouded by the fact that when the resignation was originally received Mr Buchanan's reaction appears to be one of acceptance, albeit with sadness. The resignation does not appear to have been 'refused' until Miss Devey discovered it. There is then a period of uncertainty when the Claimant is working but it is not clear whether she is working out her notice or whether the resignation has simply been rejected or withdrawn by agreement. Miss Hayman submits a further resignation which is eventually accepted by letter dated 26 July 2016. The effective date of termination is 'agreed' as 12 July 2016 which cannot be correct as the Claimant continued to work after that date and was treated as an employee until at least 26 July 2016. We therefore find that the 'effective date of termination' must be 26 July 2016 which is when the 'second' resignation was. The complaint of unfair dismissal is in time. The alleged acts of discrimination, less favourable treatment and harassment are however much earlier.

75. Mr Kisby's principal submission is that the Claimant did not submit a formal grievance at any stage and thus the Respondent could not have appreciated that the Claimant felt unhappy at the treatment. On that basis he argues it is not just and equitable to extend time.

76. The submission needs to be considered in its context. The culture of the business is that lodging grievances is not the done thing. The workplace is, on the evidence we have heard, a tough competitive environment dominated by male managers who expect that employees will tough it out. We do not therefore consider that a failure to lodge a grievance was fatal.

77. The allegations of direct sex discrimination do however back a long way to November 2011 beginning with the alleged act of sexual harassment by Mr Reynolds. The ET1 is not 'presented' until six years later. The allegations then span the next five and half years. It is sometimes difficult to make an obvious connection between the alleged act and the type of complaint.

78. Mr Korn submits that the allegations constitute 'conduct extending over a period'. He refers to **Hendricks v Commissioner of Police for the Metropolis** [2002] IRLR 96. We do not accept that there is any act (or conduct) extending over a period for these reasons:

78.1 The allegations involve a very large number of individuals;

78.2 The allegations have their own beginning and end – they do not naturally flow one into another;

78.3 There is no linkage between one incident and another.

78.4 There are long gaps between the acts or incidents

78.5 There is no policy, rule, practice, scheme or regime that existed or prevailed

79. We therefore conclude that with the exception of those incidents which occur after 26 January 2016 all other allegations are not an act or conduct extending over a period. It is then necessary to consider whether it is "just and equitable" that time should be extended.

80. In relation to the just and equitable issue, applying the Keeble factors, our findings are these:

80.1 The delay in bringing proceedings is lengthy. The earliest allegation goes back to November 2011, some six years ago.

80.2 The Claimant has given no satisfactory reason for the delay in bringing proceedings.

80.3 The extent to which cogency of the evidence is affected is severe. Whilst most of the Respondent's witnesses have denied the allegations, the reality probably is that they simply cannot remember and for good reason. Many of the allegations which the Claimant raises are comments and incidents which would have had very little significance at the time for those other than the Claimant. They are arguably fairly trivial matters which others are unlikely to remember. Mr Tancock is scarcely likely to remember whether in November 2011 he said that the Claimant would have to 'prove herself'. It would be difficult to remember the Claimant's visits to customers as they were probably routine so far as the Respondent was concerned and the Claimant did not raise any issue about them at the time. The Claimant has herself confused the date of at least one incident believing it to be October 2013 when it was actually November 2011.

80.4 The allegation as to Mr Russell playing with the Claimant's chair and looking at her chest while speaking to her is difficult for him to recall as nothing was said at the time. Whilst we can understand that Mr Russell is "absolutely devastated and incredibly hurt by the allegation", it is difficult to see how he can possibly remember playing with someone's chair and looking at their chest many several years ago. The Claimant does not give specific dates as to when this occurred.

80.5 There is no suggestion that the Respondent has failed to co-operate with any request for information.

80.6 The Claimant failed to act with promptness when she knew, or ought to have known, that the conduct of those (such as Mr Reynolds) was likely to give rise to the possibility of action. In the case of the allegation concerning Mr Reynolds the prejudice is severe because not only has Mr Reynolds now left the Respondent but has done so in circumstances where he later issued proceedings against the Respondent. He would thus be an unwilling witness. The passage of

time has therefore caused severe and substantial prejudice to the Respondent in being able to defend its position.

80.7 The Claimant could of course have obtained independent legal advice earlier than she did.

80.8 The Claimant's access to legal advice was apparently unimpeded. She was well remunerated and thus would have had greater access than those litigants unable to afford the cost of legal advice or representation.

80.9 The Claimant has given no satisfactory reason for the delays which ***Robertson*** suggests is necessary. Even if it is not necessary it would have been helpful.

<u>The complaints of sex discrimination where time is extended and upheld</u>

81. We turn to the comments by Mr Gannon and his remarks about the Claimant being a 'baby farmer'. Mr Gannon has given evidence to this tribunal and in his witness statement he says this about the allegation:

"… I categorically deny ever saying this during one of our meetings. I have never used terminology to describe a female, and I would never do so. At no time has anyone including Lucinda ever raised a complaint about my behaviour towards them at work."

82. In relation to this particular allegation we consider it appropriate to extend time for these reasons:

82.1 The Respondent has not been prejudiced by reason of any delay because it has been able to call Mr Gannon to give evidence, unlike the allegations against Mr Reynolds or Mr Russell.

82.2 It is a remark which both the Claimant and Mr Gannon are likely to have remembered given the context in circumstances where the Claimant had been questioned about whether she was thinking of beginning a family at all then going on her third period of maternity leave.

82.3 Whilst the length of the delay is considerable, the cogency of the evidence has not been affected.

83. Whilst Mr Gannon denies making the remark, we did not find his denial convincing. We recognise that the Claimant had given two conflicting dates for it – October 2013 in her further and better particulars and January 2013 in her ET1 - but whichever date it was Mr Gannon has, in our judgment, remembered the incident. We prefer the evidence of the Claimant over the evidence of Mr Gannon. It is an unusual comment to invent. It is likely that the two of them would have spoken of debt and credit matters on the Claimant's return from maternity leave and it is entirely plausible that in circumstances where others had spoken of the Claimant not starting a family for some time and then seen as on maternity leave three times thereafter that it is possible, indeed likely, that it was said.

84. We are satisfied that the baby farmer comment constitutes less favourable treatment and harassment. It less favourable treatment because of the Claimant's gender because is gender-specific. It would not have been made if the Claimant had been a man. Having been satisfied the remark was made, and the Respondent having failed to discharge its burden under section 136 EA 2010, that complaint must succeed as one of direct sex discrimination. It was also conduct

which would clearly create a humiliating environment. It would be reasonable for the conduct to have that effect.

85. We are also satisfied that the complaint in relation to the incident in Milton Keynes succeeds as a complaint of sex discrimination and harassment.

86. We consider it unlikely that Mr Tancock's remark would have been made if the Claimant was not a woman. It was demonstrative of a stereotypical attitude towards the Claimant as a woman that she was not competent to drive to a given destination and got lost. Mr Tancock and Ms Hayman did not enjoy the type of relationship where such a remark might have seemed as normal banter. It was a comment made by a male Director in front of the Claimant's new male manager, the latter not disassociating himself from the humiliating effect by joining in the 'joke'. It was clearly less favourable treatment as there is nothing to suggest that such behaviour was also rife towards men. We therefore uphold this complaint of direct sex discrimination and harassment. It was also conduct which would clearly create a humiliating environment. It would be reasonable for the conduct to have that effect.

87. All of the remaining complaints of sex discrimination and harassment are dismissed as out of time.

88. In relation to the complaints of direct sex discrimination and harassment based on the protected characteristic of sex that post-date January 2016, and are in time, we make the following findings:

88.1 The allegations as to the Claimant 'feeling tired' have no connection with her gender only her part time status and there is no evidence of any detriment or less favourable treatment in relation to a named comparator;

88.2 the comments as to a possible redundancy applied not just to the Claimant but to others too both of a different gender and of full time status;

88.3 The requests to work outside normal hours would have been the same if the Claimant had been a man. The Respondent repeatedly contacted the Claimant not because she was a part time worker but because the Respondent felt that the Claimant had given them a license to contact her at home. She had also never said that she was not willing to be contacted or to work outside her strict contractual hours.

88.4 the 'harassment' as to when the Claimant was off sick was not because of her gender or part time status but because the Respondent regarded the Claimant as being at work and contactable;

88.5 there is no evidence that the Claimant was specifically picked upon to chase calls when others were unavailable.

88.6 In relation to the 'locking nut' incident the Claimant was not treated the way she was because of her gender. Mr Tancock is a former vehicle mechanic and was curious as to where the locking nut might be as he had experienced similar problems with his own car. It was not intended to be harassment nor was it reasonable for the conduct to have that effect within the meaning of section 26(4) EA 2010.

88.7 The Claimant was not provided with an iPad because after Mr Ward had

received an iPad the company made a business decision not to provide iPads to any of the managers.

88.8 There is nothing to suggest that if the Claimant was not properly briefed for meetings with customers or made to feel embarrassed because she was a woman or a part-time worker.

88.9 We do not accept that the task of making refreshments fell on the Claimant alone. We accept Mr Tancock's evidence that he also asked others, including Miss Tanner and sometimes Mr Ward, to make tea or coffee.

88.10 It is not clear whether the Claimant is making any complaint as to the role Mr Steel was slotted into as an act of sex discrimination. If she is it is clear that no job application was made by the Claimant and thus it is difficult to see how the treatment can be compared.

88.11 The allegation that Mr Tancock told Mr Steel to telephone her at home simply to harass is simply not credible.

88.12 As to Mr Steel's conduct or comments on 9 June in the absence of any evidence of similar treatment to an actual comparator, this is dismissed.

88.13 The allegation that the Claimant was needlessly told her job was at risk is simply an example of poor management rather than discrimination, harassment or less favourable treatment.

Sexual harassment

89. The complaints of sexual harassment are dismissed as out of time for the same reasons as the dismissal of the sex discrimination complaints.

90. The complaints in relation to Mr Russell are also dismissed on the grounds that we do not find them factually established. Leaving aside the fact that they are only contained in the further and better particulars and have never the subject of any amendment, they are extremely vague. The Claimant is able to give dates on some very historical matters yet the allegations against Mr Russell are undated and unspecified.

Harassment based on the protected characteristic of sex

91. This allegation has not been seriously pursued as a separate stand-alone complaint save for the incident in Milton Keynes which succeeds under section 26(1)(a) as such conduct was clearly unwanted and would have created a humiliating environment for the Claimant and reasonably seen to have that effect.

92. It is difficult to see how any of the other alleged unwanted conduct which are said to have created an intimidating, hostile, degrading, humiliating or offensive environment were because the Claimant was a woman. The allegations against Mr Russell must be under section 26(2) EA 2010 and is dealt with above. The allegation that the Respondent (presumably via Mr Tancock) constantly spoke over the Claimant in front of clients and colleagues making her feel undervalued is unparticularised and vague as is the allegation as to the way in which customer complaints were dealt with. There is nothing to suggest the Respondent would have dealt with them any differently if the Claimant was a man. Subject to the previous paragraph this complaint is therefore dismissed.

Less favourable treatment by reason of being a part-time worker

93. The complaints of less favourable treatment by reason of the Claimant being a part-time worker before January 2016 are also dismissed as being out of time for the same reasons as the dismissal of the sex discrimination complaint.

94. In relation to the allegations after January 2016 they are dismissed (as PTW 2000 complaints) for the following reasons:

94.1 We are not satisfied that all of the alleged comments are made. They appear to lack context and seem to be isolated comments which do not fit into a plausible factual scenario.

94.2 The comments are unlikely to have been made as the Claimant was not always a part time worker. She had periods of employment as both a full time and part time worker.

94.3 The Claimant had been granted her requests for flexible working which were made under the Company's procedures.

95. Accordingly, the complaints under the Part-time Workers (Less Favourable Treatment) Regulations 2000 are all dismissed.

96. In addition to the above we would make the following observations and findings:

96.1 Whilst we accept that the Claimant was frequently telephoned at home she did agree to accept work calls at home. She did not at any point withdraw that invitation. Mr Steel was informed by Mr Tancock that the Claimant had agreed to be contactable at home.

96.2 The work pressures were not because the Claimant was a part-time worker but because of the demands of the job itself.

96.3 The Claimant has not established less favourable treatment in relation to any actual comparator.

97. In relation to the comments alleged to have been made by Mr Steel as to working with one and a half hands behind his back, there is no clear cut denial of the words used by Mr Steel. If the remarks were made they were simply a descriptive way of describing the difficulties the business would have if the Claimant further reduced her hours. There is no antipathy to part-time working in the business generally. There are a number of workers (both men and women) who work part-time. A list of these appears in the witness statement of Miss Gibbs. The Claimant has been allowed to alternate as a full time and part time worker.

98. In relation to the refusal by Mr Steel to allow the Claimant to work reduced hours, Miss Hayman gave no reasons for the request, she was performing a critical role in the sales team which was generally under-performing and a further reduction in hours would have impacted the business to its detriment. To that extent therefore the treatment was 'justified' within the meaning of Regulation 5 (2)(b) of the PTW 2000.

99. The Claimant had also made a previous request for flexible working in the previous 12 months and the Respondent's policy only permits one application in that period. We are satisfied that if the Claimant had set out her reasons the request may well have been considered but she did not give any reason. Insofar as this is a complaint of sex discrimination we are satisfied a man in the same or similar circumstances would have been treated the same.

Constructive dismissal

100. This complaint is based on a breach of the implied term of trust and confidence only. The Claimant does not rely on a breach of any other implied term or upon any express term.

101. We should add that whilst the Respondent argues that even if the dismissal was a constructive dismissal it was nevertheless 'fair'. However, it has failed to establish what a potentially fair reason might be.

102. We are satisfied that at the meeting on 10 June 2016 Mr Tancock shouted at the Claimant. This was not just a case of him raising his voice to be heard. His bullying behaviour was consistent with treatment on past occasions. He was angry that the Claimant had failed to make necessary preparations for an important meeting with Clark Drain.

103. We are also satisfied that his conduct objectively considered constituted 'bullying'. Shouting at an employee can constitute bullying behaviour. Mr Tancock's conduct was sufficiently severe for the Claimant to leave the room in tears. The bullying behaviour must therefore have been particularly severe on this occasion. In the ladies' toilet the Claimant met Miss Thompson who comforted her. It is highly unlikely that Miss Thompson would have needed to comfort the Claimant if she had not been very upset.

104. Bullying behaviour, which includes shouting, clearly constitutes conduct which is calculated or likely to damage or destroy trust and confidence. We are satisfied that this behaviour, in conjunction with the previous conduct and in particular the repeated attempts to contact the Claimant when she was off sick on 26 May 2016, all contributed to a breach of the implied term of trust and confidence. The Claimant resigned promptly thereafter. There was no waiver or affirmation of the breach. The incident on 10 June properly constituted the last straw. Shouting at an employee sufficient to leave them in tears cannot reasonably be considered as "innocuous". The act was the last line in a series of acts which had begun on 26 May with Mr Tancock harassing the Claimant (though not because of a protected characteristic) when she was sick and when she had made it clear she was unwell. We find it telling that Miss Devey should ask Mr Tancock if he had been "bullying the Claimant again". For Ms Devey to ask a senior employee whether he has been 'bullying again' implies not only that it has happened before but also the fact of its existence.

105. Mr Kisby suggests that the Claimant left because she wanted to start her own business. It is true that the Claimant ran a small business selling diet products but that was more in the nature of a hobby which she had undertaken for some time whilst with the Respondent and thereafter. The amount of income derived from it was fairly nominal then as it is now. We do not find that this was either a reason for the Claimant's resignation or that it was a factor.

106. For those reasons, we find that the Claimant was constructively and unfairly dismissed. The issue of remedy shall be dealt with in due course.

……..
Employment Judge Ahmed
Date: 10 May 2018

JUDGMENT SENT TO THE PARTIES ON

11 May 2018

FOR THE TRIBUNAL OFFICE