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EMPLOYMENT TRIBUNALS

Claimant: **Miss S Marwick**

Respondent: **J D McDougall Ltd**

Heard at: **East London Hearing Centre**

On: **14, 15, 21, 22, 23, 24 November 2017,**
26, 27, 28 February 2018 & 1-2 March 2018

Before: **Employment Judge Jones**

Members: **Mr S Dugmore**
Mrs G Everett

Representation

Claimant: In person

Respondent: Mr C Adjei (Counsel)

RESERVED JUDGMENT

The unanimous judgment of the Employment Tribunal is that:-

(1) The Claimant's complaints of sex discrimination, sex harassment and sex victimisation fail and are dismissed.

(2) The Claimant's complaint of breach of contract fails and is dismissed.

(3) The Claimant was fairly dismissed on 4 January 2017. Her complaint of unfair dismissal is dismissed.

(4) The Tribunal had no jurisdiction to hear the complaint of unlawful deductions of wages as it was issued out of time.

(5) The complaint of a failure to pay holiday pay fails and is dismissed.

REASONS

1 This was a reserved decision from a Hearing that began last year and continued in February this year. The Tribunal apologises to both parties for the delay in the production of this judgment and reasons. The judgment and reasons were agreed between the members of the Tribunal in March and pressure of work on the Judge and the number of issues involved has resulted in a delay in these written reasons being produced.

2 The Claimant brought complaints of direct sex discrimination, sex harassment and sex victimisation against the Respondent. She also alleged that she had been unfairly dismissed, that her contract had been breached and that the Respondent had failed to pay her properly and that she was owed holiday money.

3 The Respondent resisted her claim.

4 The matter was considered at a preliminary hearing on the 27 July 2017 before EJ Brown where these hearing days were set and the issues agreed. The Claimant's allegations of sex discrimination, harassment and victimisation were set out in a Scott Schedule. The issues relating to her other claims were also set out in the list of issues. The Tribunal will refer to the specific allegations in the judgment section of these reasons.

Law

5 The Claimant brought complaints of direct sex discrimination, sex related harassment, sexual conduct harassment and victimisation. She also brought complaints of unlawful deductions of wages and breach of contract as well as a complaint of a failure to pay holiday pay.

6 There are 32 alleged instances of direct sex discrimination. Some of those allegations are also alleged to be instances of sex related harassment or sexual conduct harassment and/or victimisation and/or unlawful deduction of wages/breach of contract. The Claimant alleges that her dismissal was also an act of direct sex discrimination and/or sex related harassment.

Direct sex discrimination

7 Section 39(2(c) and (d) of the Equality Act 2010 (EA) sets out that and employer must not discriminate by dismissing or subjecting an employee to any other detriment. What is a detriment? The term was defined in the case of *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] IRLR 285 where it was stated that the test is whether a reasonable worker would or might take the view that the treatment accorded to them had in all the circumstances been to their detriment.

8 Direct discrimination happens (section 13 of the EA) when the Claimant's employer, because of the Claimant's protected characteristic of sex, treats him/her less favourably than it treated or would treat others. Who are the appropriate comparators in a direct discrimination complaint? Section 23 of the EA states that on a comparison of cases for the purposes of section 13, there must be no material difference between

the circumstances of the Claimant and the comparator. The comparator may be an actual person or a hypothetical person but in each case that person must be in the same circumstances of the Claimant apart from her protected characteristic.

9 In every case the Tribunal has to determine the reason why the Claimant was treated as s/he was. As Lord Nicholls put it in *Nagarajan v London Regional Transport* [1999] IRLR 572 *"this is the crucial question. Was it on the* grounds *of race? Or was it for some other reason, for instance, because the complainant was not so well qualified for the job?"* he stated that in most cases this will call for some consideration of the mental processes (conscious or subconscious) of the alleged discriminator. If the Tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reasons. It is sufficient that it is significant in the sense of being more than trivial.

10 Although the cases referred to above talk about 'race', the Claimant should note that those cases and the law apply equally to other protected characteristics such as sex.

Harassment

11 The Claimant also brings a complaint that the Respondent had harassed her in two ways: sex-related harassment and sexual conduct harassment personally by Mr McDougall. In determining whether or not there has been sex-related harassment, the Tribunal will apply the statutory definition of harassment set out in Section 26(1) of the Equality Act which states as follows:

> "(a) A person (A) harasses another (B) if A engages in unwanted conduct related to a relevant protected characteristic, and
>
> (b) the conduct had the purpose or effect of -
>
> (i) violating that person's dignity, or
>
> (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for him.
>
> (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken account B's perception, the other circumstances of the case, whether it is reasonable for the conduct to have that effect."

12 The conduct complained of must be related to the protected characteristic in order for it to be considered as a sex-related harassment. The Tribunal must look at the context in which the conduct occurred. The Respondent submitted and the Tribunal agrees that this means that the section would not protect anyone from general bullying and harassment, in the colloquial sense, as protection will only arise if the conduct is related in some way to a protected characteristic.

13 The Respondent referred the Tribunal to the case of *Richmond Pharmacology v Dhaliwal* [2009] IRLR 336. In that case Underhill P gave guidance to tribunals on assessing a case brought under section 26 EA. He reformulated that guidance in the case of *Pemberton v Inwood* [2018] IRLR 542 as follows: in order to decide whether any conduct falling within sub-paragraph (1)(a) has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider *both* (by reason of sub-section (4)(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) *and* (by reason of sub-section (4)(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question).

14 As the court said in *Richmond Pharmacology*:

> *"we accept that not every racially slanted adverse comment or conduct may constitute a violation of a person's dignity. Dignity is not necessarily violated by things that are said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers and the tribunals are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase".*

15 The separate complaint of sexual conduct harassment was a complaint about Mr McDougall's conduct. Here the Tribunal has to assess whether he engaged in unwanted conduct of a sexual nature, and, that the conduct has the purpose or effect of violating her dignity; or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

16 In the case of *Driskel v Peninsula Business Services Ltd* [2000] IRLR 151, the EAT stated that sexual harassment should be defined on a common-sense basis by reference to the facts of each case. The EAT gave the following guidance to tribunals. It stated that the tribunal should not carve up the case into a series of specific incidents and try to measure the harm or detriment in relation to each as this may reduce the cumulative impact of the totality of successive incidents. Instead, it should find the facts, without making judgments as to the true significance of individual incidents; then make a judgment as to whether there was apparent less favourable treatment of the complainant on the law; and finally, consider the employer's explanation and in the light of that, determine whether there was harassment, taking into account the guidance set out above. The court also stated that although the ultimate judgment as to whether there is sex discrimination reflects an objective assessment of the Tribunal of all the facts, the applicant's subjective perception and the understanding, motive and intention of the alleged discriminator should also be considered.

17 In the case of *Grant v HM Land Registry* [2011] EWCA Civ. 769 Elias LJ stated that with regard to the words "intimidating, hostile, degrading, humiliating or offensive" Employment Tribunals should not cheapen the significance of these words, as they are an important control to prevent trivial acts causing minor upsets being caught up in the concept of harassment.

18 Section 212 of the EA provides that ”detriment” does not include conduct which amounted to harassment which means that it is not possible to have the same conduct defined as direct discrimination, or victimisation and harassment.

Victimisation

19 The Claimant brought a complaint of victimisation on the grounds of sex. Section 27 of the Equality Act defines victimisation as subjecting someone to a detriment because they have done or are believed to have done or may do a protected act. The burden of proving a complaint of victimisation is covered by the principle of the reversal of the burden of proof provisions set out below.

20 The Claimant relied on statements she made in meetings with Mr McDougall and others as being protected acts. The Respondent denied that such statements were made. The Tribunal will need to determine whether the Claimant did protected acts before it can go on to consider her complaint of victimisation.

21 If she has done a protected act then, in considering whether a particular act amounts to victimisation, the Tribunal has to judge the act primarily from a subjective viewpoint. In the case of *St Helens MBC v Derbyshire* [2007] IRLR 540 (House of Lords), it was held *that:*

> *“under the victimisation provisions, it is primarily from the perspective of the alleged victim that one determines the question of whether or not any ‘detriment’ had been suffered. However, an alleged victim cannot establish ‘detriment’ merely by showing that she had suffered mental distress before she could succeed; it would have to be objectively reasonable in all the circumstances. Distress and worry which may be induced by the employer’s honest and reasonable conduct cannot (save possibly in the most unusual circumstances) constitute ‘detriment’ for the purposes of the complaint of victimisation*”

An unjustified sense of grievance cannot amount to a detriment.

Burden of proof

22 The burden of proving the discrimination complaint rests on the employee bringing the complaint. Section 136 of the Equality Act applies to the burden of proof in all the above complaints and states that in assessing them:

> *“if there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred. If A is able to show that it did not contravene the provision then this would not apply”.*

23 The case of *Igen v Wong* [2005] IRLR 258 provides useful guidance and further discussion on the burden of proof is found in subsequent cases including *Madarassay v Nomura International plc* [2007] IRLR 246*.*

24 In the case of *Laing v Manchester City Council* [2006] IRLR tribunals were cautioned against taking a mechanistic approach to the proof of discrimination by reference to the Act and when following the guidance set out above. In essence, the claimant must prove facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent had committed an unlawful act of discrimination against the complainant. The tribunal can consider all evidence before it in coming to the conclusion as to whether or not a claimant has made a prima facie case of discrimination (*Madarassay*).

25 The Court of Appeal in *Igen Ltd v Wong* (a sex discrimination complaint) specifically endorsed the principles set out in *Barton v Investec Securities Ltd* [2003] IRLR 332 which Mr Adjei set out in his submissions. In essence, the principles confirm that it is for the Claimant who complains of discrimination to prove it, on the balance of probabilities and if she fails to do that; she will fail. The tribunal will firstly look to draw inferences from findings of fact which the tribunal come to after consideration of all the evidence in the case. When the claimant has proved facts from which inferences can be drawn that the respondent has treated the claimant less favourably on the grounds of sex, then the burden shifts to the respondent to prove, on the balance of probabilities, that the prohibited ground in no sense whatsoever, influenced the claimant's treatment.

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

Unfair Dismissal

31 The Claimant brought a complaint of unfair dismissal. Section 98(1) Employment Rights Act 1996 ("ERA") provides that it is for the employer to show the reason for the employee's dismissal. The law sets out some reasons for dismissals that could be fair; one of which is conduct. The Respondent's case was that the Claimant had been dismissed for misconduct.

32 If the employer persuades the Tribunal that the dismissal was for a reason falling within Section 98(1) or (2) ERA, the Tribunal will go on to consider Section 98(4) – that is - whether the dismissal is fair or unfair. The burden of proof in considering Section 98(4) is neutral.

33 In the case of *British Home Stores v Burchell* [1980] ICR 303, the test was described as follows: the employer must show that he believed that the employee was

guilty of misconduct; that he had in his mind reasonable grounds which could sustain that belief; and at stage at which he formed that belief on those grounds, he had carried out as much investigation into the matter as was reasonable in the circumstances. If the tribunal concludes from the evidence that this is the case; then the third stage is for the tribunal to decide whether, taking into account all relevant circumstances, including the size of the employer's undertaking and the substantial merits of the case, the employer has acted reasonably in treating it as a sufficient reason to dismiss the employee.

34 In considering Section 98(4) ERA a tribunal will usually consider the fairness both of the procedures adopted by the employer and the substantive decision to dismiss the employee. In both these tasks the function of the tribunal is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair.

35 The Claimant appeared to be suggesting that it was unfair for her to be dismissed whereas Ms Koutsompina, who she considered it to have had many conduct issues, was retained in employment albeit with a warning. The Tribunal considered the case of *Hadjioannou v Coral Casinos* [1981] IRLR 362 in which the EAT stated that there were three potential situations in which disparate treatment would be relevant in an unfair dismissal claim and those were:-

35.1 If treatment of others has led the Claimant to think that particular behaviour will be tolerated. *(The Claimant's case does not appear to relate to this ground).*

35.2 Where evidence of treatment of others is evidence that the reason put forward by the employer is not the real reason*. (The Claimant could be relying on this and she submitted that the real reason for her dismissal was her gender rather than the incidents on the 17th and 18th of November 2016).*

35.3 Where there are "truly parallel" circumstances and disparate treatment - that may support an argument that dismissal was outside the range of reasonable responses. *(It was not clear to the Tribunal whether the Claimant relied on this ground in her case as she did not accept that she had been violent to Ms Koutsompina).*

Unlawful deduction of wages

36 The Claimant relied on her right under section 13 of the Employment Rights Act 1996 not to suffer unauthorised deductions from her wages. An employer shall not make deductions from a worker's wages unless the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract; or the worker has previously signified in writing his agreement or consent to the making of the deduction. The Claimant also complained that the Respondent breached her contract by failing to pay her for overtime on Saturday, 6 August 2011. The Respondent conceded that this amount had not been paid to the Claimant and its

position was it was ready to pay her that amount but contended that the complaint had been brought out of time. It resisted her complaint in relation to the bonuses of 2015 and 2016, and the pay rise in 2016.

37 Under the Working Time Regulations and the Claimant's contract, she was entitled to be paid for holidays.

38 The Claimant has the burden of proving that the Respondent has not paid her holiday pay which accrued before her dismissal. It is also her burden to prove that the Respondent has unlawfully deducted her wages. The Respondent resisted both complaints. Its case was that there was no holiday pay outstanding at the termination of her employment and that in fact, she was overpaid in the sum of £79.02 in respect of holiday pay.

Time

39 The Claimant's allegations range from 2005 to her dismissal on 4 January 2017. Her claim was issued on 28 April 2017. The Claimant benefited from the extension of time afforded from the ACAS conciliation process in relation to her unfair dismissal complaint. The Respondent contended that a number of her Equality Act claims were out of time and outside of the Tribunal's jurisdiction. The Tribunal has to first determine whether or not the Claimant was subjected to a continuing act as set out in section 123(3) of the Equality Act 2010. If not, the Tribunal will need to consider whether it is just and equitable to use its discretion to extend time to enable the late complaints to be considered in accordance with Section 123(1)(b) (EA).

40 Firstly, in considering whether the act complained of could be considered as conduct extending over a period of time making it one continuing act, the Tribunal considered the guidance set out in the case of *Hendricks v Metropolitan Police Commissioner* [2003] IRLR 96.

41 In order to establish a continuing act, the claimant would have to show that (a) the incidents are linked to each other, and (b) that they are evidence of a 'continuing state of affairs'. This could constitute an act extending over a period. In deciding whether a particular situation gives rise to an act extending over time it will also be appropriate to have regard to (a) the nature of the discriminatory conduct of which complaint is made, and (b) the status or position of the person responsible for it. A single person being responsible for discriminatory acts is a relevant, but not conclusive factor in deciding whether an act has extended over a period. In assessing whether the incidents are linked to each other, significant periods of time between them will be a factor that a tribunal should also take into account.

42 If the tribunal's decision is that the allegations are not part of a continuing act but instead, are to be treated as separate acts then it will need to consider whether it is just and equitable to extend time to consider them.

43 The Respondent submitted that the Tribunal should not extend time on a just and equitable basis because the Claimant did not contend that she was unaware of her

rights or was engaged in trying to resolve the alleged issues with the Respondent. Also, the Claimant did not submit any reasons why she had left it until her dismissal to raise issues of discrimination that she says occurred quite early on in her employment.

44 The words 'just and equitable' give tribunals a wide discretion to take into account any matter that it judges to be relevant, in deciding whether to extend time when considering complaints under the Equality Act where they have been brought outside of the statutory time limits and are judged not to be part of any continuing act. Time limits are to be exercised strictly in the Employment Tribunal. There is no presumption that a tribunal should exercise its discretion to extend time on the 'just and equitable' basis unless it can justify failure to exercise the discretion. The burden is always on the claimant to convince the tribunal that it is just and equitable to extend time as, "the exercise of discretion is the exception rather than the rule" (*Robertson v Bexley Community Centre* [2003] IRLR 434).

45 In the case of *British Coal Corporation v Keeble* [1997] IRLR 336 the EAT held that the discretion to grant an extension of time under the "just and equitable" formula is as wide as that given to the civil courts by section 33 of the Limitation Act 1980 to determine whether to extend time in personal injury cases. The tribunal should consider the prejudice that each party would suffer as a result of granting or refusing an extension, and have regard to all the other circumstances, in particular (a) the length of and reasons for the delay; (b) the extent to which the cogency of the evidence is likely to be affected by the delay; (c) the extent to which the parties sued had cooperated with any requests for information; (d) the promptness with which the claimant acted once s/he knew of the facts giving rise to the cause of action; and (e) the steps taken by the claimant to obtain appropriate professional advice when he or she knew of the possibility of taking action. There is no legal requirement on the tribunal to go through such a list in every case provided of course, that no significant factor has been left out of account by the Employment Tribunal in considering whether to exercise its discretion. (*London Borough of Southwark v Afolabi* [2003] IRLR 220). There is no requirement for a tribunal to expressly rehearse these factors and "balance them off".

46 In relation to the complaints of breach of contract and unlawful deductions of wages the law is different. The claims must be brought within 3 months of the last deduction or the breach of contract. The Tribunal can only consider a claim brought outside of that time limit if it is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months.

Evidence

47 The Tribunal heard from the Claimant in evidence on her behalf. On behalf of the Respondent the Tribunal heard from Mr Ian McDougall (Company Director), Mr A Monk (Manager), Ms T Hornsby (Workshop Supervisor), Mr N Hancock (former General Manager now retired), Mr S Robinson (investigating officer), Ms Kim Sands (HR Consultant and dismissing officer), and Ms E Melville (Appeal officer). The witnesses also provided the Tribunal with signed witness statements. We had a signed witness statement from Ms Rafiq but she did not attend the hearing to give evidence

and we have therefore given her witness statement less weight where it differed from the evidence we heard.

48 The Tribunal will now set out the findings of fact that it found from the evidence before it. The Tribunal will then apply the law above to the facts and set out its judgment on the allegations. The numbered allegations referred to in these reasons correspond to the list of allegations contained in the Claimant's Scott Schedule that was in the bundle of documents at pages 91-101.

Findings of Fact

49 The Claimant was employed in 2005. She was employed as a cutter to work in the Respondent's workshop. It is likely that Mr McDougall interviewed the Claimant with Nick Hancock, his General Manager. It is also likely that at that time Mr McDougall considered the Claimant to be bright and capable and someone who he could train to work in various parts of the business.

50 We find that as well as working in the workshop, the Claimant was trained in the office and eventually moved to work there as part of the sales/administration team. She also continued to work in the workshop. She sometimes covered for Tara as workshop manager when Tara went on holiday. She was someone who was confident at cutting the more difficult 'shape' jobs and would go down to the workshop to do those when they came in.

51 We find that the Claimant did some health and safety training and took responsibility for health and safety in the business. The Health and Safety Induction Programme and Record show that she completed the training in early 2006.

52 The Respondent's business is privately owned and Mr McDougall is the sole director. The company specialises in the manufacture of large commercial curtains and theatrical drapes and the production and supply of flame retardant textiles. It is a small company with about 25 employees. According to Mr McDougall it operates from a single location that is divided physically into office accommodation, which included an open plan general office and his office; a workshop and warehouse. Mr McDougall's father first owned the business and he stated in evidence that he had been working there all his working life.

53 A number of the Respondent's employees had been employed for significant periods of time. We were told that Surinder Parveen had been employed for at least 13 years and left on her retirement, Tara Hornsby is still employed and has worked there for 26 years; Nick Hancock worked there until his retirement and had been employed for 34 years. Mrs Rafiq had been employed for 20 years when she retired.

54 Nick Hancock was employed as general manager until his retirement on 31 March 2016. His unchallenged evidence was that members of staff would go to him as their first port of call if there were any problems – either with a customer or internally. We find that the Respondent's clients were high profile in the entertainment world. We heard about curtains/drapes that were made for a performance by the pop

singer Paloma Faith. It is likely that the company's business would depend heavily on reputation in what is likely to be a small field where everyone knew everyone. Mr McDougall took a lot of pride in the company's work and wanted the work done to a high standard.

55 We find it likely that Mr McDougall would grow impatient if he considered that work was not being done to a high standard or when he believed that his instructions were not being or had not been followed. It is likely that on occasion he would bang a workbench or desk when he was particularly frustrated at an error or a failure by someone to do the work as directed. We find that he was impatient with errors especially if he thought that it might affect his business reputation. However, we find that it was unlikely that he held grudges. We say this because the evidence was that even though Kevin Walker had given evidence against the company in another colleague's Employment Tribunal case; he was re-employed by the Respondent sometime later.

56 We find that Andrew Monk's evidence was that Mr McDougall was focused on the timely delivery of a quality product and that this was of paramount importance to him. He would rather that the company did not take on the job in the first place if it could not fulfil the customer's specific requirements.

57 We find that the Claimant was a confident person who prided herself on speaking her mind and standing up for herself. The evidence was that she frequently spoke up for herself in the workplace.

Allegation 1

58 (December 2005) The Claimant produced a witness statement from Perveen Rafiq who worked mostly in the workshop and who retired in 2015. As we did not have the opportunity of hearing her give evidence we have given little weight to the statement. In the Hearing the Claimant spoke about a colleague called Surinder Aujila who also worked with her in the workshop. Surinder had trained the Claimant on cutting fabric for curtains when she first started working at the Respondent. As already stated, Surinder had been employed by the Respondent for 13 years. When she was leaving she informed Mr McDougall and Mr Hancock that the reason for her resignation was that her sister had found her a job as a teaching assistant in a school where her sister worked. She was concerned about her hands and whether she could maintain the accuracy of cutting the fabrics as she got older as well as the amount of standing required at the Respondent to do the cutting and to operate the sewing machines. She also wanted to take the job in the school as it would give her longer holidays and therefore more time to herself.

59 Mr McDougall and Ms Hornsby confirmed that Surinder sometimes got upset at work but they did not believe that this was due to Mr McDougall shouting at her. Apart from the Claimant's allegation, we did not have evidence of Mr McDougall shouting at her or pointing his finger in her face. We find it unlikely that Surinder said to Mr McDougall that she was leaving because he had mistreated her. Mr McDougall was concerned to lose such an experienced member of staff but understood her reasons for leaving. We did not hear from Surinder in evidence.

60 We find that Tara Hornsby was the workshop manager.

Allegation 2

61 (January 2006) We find that smoking breaks were taken at set times at the Respondent but that when he was a smoker, Mr McDougall did not usually take his smoking breaks with the workshop staff but would take them at other times in the day. He stopped smoking in 2007. The Claimant, Tara Hornsby and Dave Yates and a number of other members of workshop staff also smoked. The Claimant would go outside for a smoking break along with other members of staff.

62 We find that it is unlikely that Mr McDougall was alone with her or that he timed his smoking breaks to coincide with hers as she has alleged. Even if there were occasions when his smoking break did coincide with hers we find it unlikely that he asked her about personal matters more than would be usual with an employer trying to get to know a new employee. If his conduct during smoking breaks made her feel uncomfortable we find it odd that she did not excuse herself and return to the workshop or that she did not make a formal complaint to Mr McDougall about his conduct. If she did confide in Ms Hornsby or Ms Rafiq about this, neither witness referred to this in their witness statement and Ms Hornsby denied that had been aware of such conduct from Mr McDougall.

63 We find it unlikely that Mr McDougall said to the Claimant that she was a young, fit, athletic girl at all or in a suggestive or improper way.

64 We find that Mr McDougall had long standing employees and would have known them and it is likely that at the start of her employment he was trying to get to know the Claimant.

Allegations 3 and 4

65 (2005 – 2007) We find that it is unlikely that Mr McDougall purposely brushed against her when he went into the workshop. We find it unlikely that Mr McDougall was flirtatious or overly friendly with the Claimant. She did not give us any examples of things that he said that she would consider to be overly friendly and flirtatious. We find that there was an occasion when he asked her about her holiday to Egypt and he readily admitted that in the Hearing. There was no evidence that this was more than the sort of conversation that colleagues would have on a regular basis. We find no evidence of any ulterior motive in such enquiries and consider that they were innocuous.

66 We find from the photograph of Mr McDougall's office in the bundle of documents that it would not have been possible for him to stare at the Claimant from his desk while she was in the workshop. The window pane in his office door is above his head height when he is sitting at his desk. At the Hearing she changed this to allege instead that he looked at her through a crack in the door, but it was not evident to us that he could do this from his desk or that he did so.

67 (May 2006) We find that it was unlikely that he was overly friendly or that he made unwanted advances to the Claimant. He asked her about how she spent her spare time and whether she had a boyfriend, but we find that those were likely to be innocent queries that could all be put under the heading of trying to get to know a new member of staff.

Allegation 5

68 (August 2006) We find it unlikely that early in her employment Mr McDougall said to the Claimant that he was going to take her on a business trip. We find that she did not tell us what business trip this was or where he had suggested that he would take her. We find that at the beginning of her employment he had high hopes for the Claimant in the business and it is likely that he took her to the Royal Opera House to meet his contact there and drove them there and back to the office. He may also have said that it might be appropriate at some stage in the future for her to accompany him on a business trip but we find it highly unlikely that at this early stage of her employment that he would have asked her to accompany him on a trip abroad. We find that he employed Sophie Chamberlain because she could speak French and although he had managed up until then without being able to speak French there were some problems with the French suppliers which led him to decide that he needed to have a French speaker in the company. He took another employee called Sheree to France with him as she dealt with the fabric dyers.

Allegation 6

69 (October 2006) When the Claimant first moved to the office she worked in a seemingly haphazard way as she had a number of post-it notes all over her desk. It may well be that she had a system that worked for her, but Mr McDougall saw her desk in a state and spoke to her about it. He told her that he thought that it was dangerous to work in this way as if she was sick or unable to come to work for any reason, no-one would be able to understand what was going on with the orders she was dealing with. She was offended that he spoke to her about it. Mr Monk who also worked in the office recalled Mr McDougall speaking to her about the post-it notes on her desk but does not recall him swiping them off the desk with his forearm so that they went up in the air. We find it unlikely that this happened as if it did it is likely that the Claimant would have complained to someone about it at the time and we were not told that she did so.

Allegation 7

70 (January 2007) We find it unlikely that Mr McDougall often appeared beside the Claimant and made contact with her with either his hand or arm. We find it unlikely that while she was working on her hands and knees, he would look at her in a way which made her feel uncomfortable or that he made comments like ‘you look like an agile healthy girl I’m confident you can handle this’. We find it is unlikely that he would touch her hand or arm if she was holding stationery like a ruler or scissors or would occupy her personal space. We say this because the Claimant was assertive and was able to stand up for herself and if Mr McDougall had behaved towards her in this way so early in her employment, it is likely that she would have complained to Mr McDougall and to Mr Hancock and/or Tara Hornsby. Also, as Ms Hornsby worked in the workshop and Mr Hancock across the business, it is likely that they would have noticed such

behaviour. Their evidence was that they had not. These matters were not mentioned in Ms Rafiq's witness statement. Instead, Ms Rafiq stated that Mr McDougall treated the Claimant like a queen and *'spoke to her like a nice lady, he was very respectful to her'*. That does not accord with the Claimant's allegations that Mr McDougall behaved inappropriately towards her, in the way set out in this allegation and those above.

71 On 1 September 2009, Mr McDougall wrote to the Claimant following a discussion he had with her that day. He did not consider this to be a disciplinary meeting as he later informed his solicitors that there had been no formal proceedings against either the Claimant or Ms Koutsompina before the events that led to the Claimant's dismissal. However, he did say in this letter that the matters they discussed were serious, that he considered that there had been a catalogue of errors that all related to her performance and that if she did not improve over the next two months, he would have to dismiss her. He referred to errors in her work and stated that her timekeeping was poor as she was arriving late on most mornings. He reminded her that she needed to be at work ready to start at 8am and that she needed to have higher levels of concentration in her work. We find that there had been problems with the Claimant's performance as early as 2009.

Allegation 8

72 The Claimant referred to an incident in September 2009 where she was asked to give her opinion on a piece of faulty cloth but when she tried to do so Mr McDougall shut her down and shouted at her. We find it likely that she was not asked for her opinion about what should be done as it is likely that Mr McDougall knew exactly what he wanted done with the cloth. It is likely that she tried to give her opinion and he made it clear that it was not welcomed. Mr McDougall may also have tried to use it as a training opportunity. The Claimant was unhappy with the way that she had been spoken to by him. She walked back to the office and declared that she was not going to be spoken to in that way. We find it unlikely that he shouted after her that she should not walk out of the door and that if she did, she should not come back. However, she was unhappy with the way he spoke to her and the evidence was that she did walk out of the workshop and into the office. There were no consequences to her for doing so. The Claimant's evidence was that she was congratulated by members of staff for standing up to Mr McDougall. We find that she was not afraid to speak up for herself if she considered that she had been unfairly treated.

73 We find that it is likely that Mr McDougall dealt with mistakes in the workshop by confronting staff there and then, in the presence of others. He did not have a practice of taking members of staff aside and speaking to them in private. Speaking to them in the presence of other staff about their mistakes may have caused some embarrassment and was unlikely to be the most tactful way to deal with such issues. Tara confirmed that he would often gather everyone around when someone had made a mistake and address the employee concerned, the mistake and how he wanted the work done. That was likely to have been difficult for the member of staff who had made the mistake. However, we had no evidence that this only happened to the Claimant or only to women. The Respondent had men working in the workshop as well as female members of staff and the evidence indicated that Mr McDougall would have responded in the same way if they made a mistake.

Allegation 9

74 (October 2009) We find that Mr McDougall may have occasionally sworn as part of his reaction to mistakes or if he was frustrated. The Claimant's allegation that he swore at her or called her names was not supported by the evidence. The evidence was that he would sometimes use the F word *(Fuck)* but that he never used it as a direct insult to another member of staff. We find that staff in the workshop would use the F word on occasion between themselves. The witnesses all confirmed that Mr McDougall had not used the word '*cunt*' (the C word) at work. Ms Hornsby, Mr Monk and Mr Hancock gave evidence that they had never heard him use the C word at all in the workplace or while addressing an employee. They had never heard him call the Claimant names such as *'a stupid bitch', 'an incompetent idiot'* or *'a stupid tart'*. We find it unlikely that he used those words to describe or speak to the Claimant.

75 We find it unlikely, that the religious members of staff would have heard Mr McDougall using offensive language as there is no evidence that he used offensive language. As already stated, staff did swear in the workshop, using the F word occasionally, although not directly towards each other. The evidence was that no-one was offended by this. It is unlikely that members of staff would have remained in the Respondent's employment for as many years as they did if they were offended by the work environment.

76 In 2010 Mr McDougall conducted another meeting with the Claimant about her performance. There was a note in the bundle of documents recording a discussion between them on 10 February 2010 about 2 tasks that he had asked her to do while he was away in India which had not been done to his satisfaction. Mr McDougall noted his unhappiness about this, but no further action was taken. The Claimant confirmed in the Hearing that there had been an issue with the mail-shot and that she had apologised for using the wrong postage. The Claimant confirmed in her evidence that Mr McDougall had not shouted at her in this meeting.

Allegation 10

77 We find that the Claimant worked overtime on one occasion on Saturday 6 August 2011. It was unclear why the Claimant was not paid for that shift. The Respondent confirmed that she worked the shift and the records also showed that she has not been paid for it. The Respondent disputed the Claimant's recall of her conversations with Mr Wells about this and we did not hear from him. We find that if the Claimant believed that the payment for the overtime had been deliberately withheld, it is likely that she would have spoken to Mr McDougall about it. We find that Mr Wells may well have believed that the Claimant was being treated as a manager but that did not mean that Mr McDougall had instructed him not to pay her. The Claimant confirmed that she had been paid for working on previous Saturdays. We find that because she had not been paid on this occasion, the Claimant made a decision that she was not going to work overtime on Saturdays anymore and she kept to that decision. There were no consequences to the Claimant for refusing to work overtime on a Saturday after August 2011.

78 We find that as well as being the health and safety officer, the Claimant, along with the others in the office, dealt with customer queries over the telephone and gave

quotations for jobs. She continued to work in the workshop and to step in for Tara Hornsby when she was on holiday. She also did the difficult shape jobs that Ms Hornsby was not confident in doing. However, the Claimant, had not been a manager, had no management title or responsibilities and was not responsible for supervising anyone.

79 Some employees may have spoken to her about things that were happening in the workplace in the belief that she had the power or authority to deal with it. She was confident and conducted herself as though she had that authority. She was also friendly with staff and supportive. However, she was not someone with actual authority. When someone did come to speak to her, she did not refer them to Ms Hornsby or to Mr Hancock. We find that Mr McDougall may not have known that this was happening or may have been content for her to be a listening ear for staff especially if it resolved matters and could have the potential to save him having to get involved. We find that Mr McDougall was frequently away from the office on business or on holiday.

Allegation 11

80 (October 2011) We find that it is possible that Mr McDougall came into the office shouting the Claimant's name in relation to a piece of work. The Claimant confirmed in evidence that he often shouted Tara's name and that she complained to him about this in 2015. Mr McDougall would shout to be heard over machinery and would sometimes shout with frustration about how work was being done properly or because he was concerned that they were not going to be able to fulfil a customer's order. We find it unlikely that Mr McDougall ridiculed or patronised the Claimant. As already stated he would become frustrated and annoyed if he thought that work was being done on time or that the customer's specifications may not be met. He would sometimes display that frustration vocally but apart from the Claimant, none of the other witnesses recalled Mr McDougall ridiculing or patronising her.

Allegation 12

81 (2013 – 2014) In relation to the allegation that the Claimant overheard Mr McDougall speaking to a personal friend about her in a disparaging way and referring to her as a *'stupid girl'* and *'silly tart'*, we find that the Claimant's evidence about this was inconsistent. Initially, she did not say the name of Mr McDougall's friend that she alleged that he was speaking to at the time. In the Hearing, when her memory was likely to have faded further, her evidence was that the name of the person that he had been speaking to him was Peter Kerr. We found this evidence unreliable as it is unlikely that she was able to remember more details later than she had earlier in time. None of the other witnesses recalled this incident or the Claimant telling them about. The Claimant did not speak to Mr McDougall about it at the time. We find it unlikely that this occurred.

Allegation 13

82 We find that Mr McDougall would tell the Claimant and others off, but he did not ridicule them. The Tribunal takes judicial notice of the definition of the word 'ridicule' in the dictionary – *'the subjection of someone to contemptuous and dismissive language*

or behaviour'. It is synonymous with mockery, derision or contempt. We find that the Claimant's allegation was that this happened in the presence of her colleagues but those colleagues who gave evidence in the Hearing, did not recall Mr McDougall ever ridiculing her. We find that Mr McDougall may have criticised the Claimant's work and she would frequently argue with him about his criticisms when she did not accept or agree with them. There was no evidence that he mocked or derided her.

Allegation 14

83 Mr McDougall did not remember that the Claimant supervised his daughter while she was in the business on work experience sometime in 2014/5. We find that as Tara was on holiday it is likely that the Claimant was involved in supervising his daughter if she was in the workshop during her work experience, but it may not have been a formal arrangement. In the hearing the Claimant provided more details of her allegation. She alleged that Mr McDougall shouted at her in front of his daughter and that this was embarrassing for her. We find it likely that although she supervised the workshop when Tara was absent on holiday, the Claimant would sometimes feel overwhelmed by the many demands on her time. Supervising Mr McDougall's daughter would have been another thing for her to do while also dealing with staff, with customers and their orders. There was evidence from Tara Hornsby that things sometimes went wrong when the Claimant was in charge. As already stated Mr McDougall was not a subtle manager. It is likely that if she had made an error or it looked as though an error had been made when he looked at the work, he would have been unhappy and would have had no hesitation in letting her know that he was upset about it. We find that this was not unusual. However, it is unlikely that he would have shouted at the Claimant on this particular occasion as his daughter would have been present. Mr McDougall did not recall the incident and that could be because it did not stand out in his memory as an incident. We find it unlikely that he ridiculed her.

Allegation 15

84 Although the Claimant refers to this matter taking place in 2014, we find that it took place in 2015. The Claimant was on holiday on 19 - 22 June 2015 and was unable to return to work at the end of the break as she was ill. The Claimant had an ovarian cyst which had been diagnosed in October 2014. She sent text messages to Mr Hancock notifying him of how she was feeling. Mr Hancock passed the text messages on to Mr McDougall. The text messages did not give any indication of when she was likely to return to work or how much time off she needed in order to be well enough to do so. The Respondent expected the Claimant, as its employee to give some indication of how long she would need before she was able to return to work so that it could make arrangements for the work to continue in the interim.

85 We find that there was a meeting on 5 August between Mr McDougall, the Claimant and Mr Hancock. A note of the meeting was in the bundle of documents. At the time, no-one was expecting this matter to come to a tribunal, so we find it likely that the note was contemporaneous and that its contents are an accurate account of what was discussed.

86 In that meeting, the Claimant was asked whether she had seen her GP regarding her recent absences. When she said that she had not, Mr McDougall was

concerned as she had been complaining of symptoms for some time. He suggested that she should go to her GP for help and further investigation. She informed him that she had been advised that it would take some time for things to settle down. Mr McDougall asked her if she knew how long that would be as he wished to understand the situation. The Claimant was unable to provide any further information. Mr McDougall offered to write to her GP if it would help her to obtain a satisfactory response. We find it unlikely that Mr McDougall stated to her *"I need you fighting fit firing on all cylinders otherwise you are no good to me at all"*. We find that the effect of what he said was that he wanted her to stay at home until she was well enough to return to work and to get some indication from the GP as to how the NHS could help her to get well. As the Claimant had been unwell for some time, Mr McDougall was simply trying to gauge whether she needed any assistance from him in getting a plan of action from her GP, and to assess the likely impact on her ability to attend work. The Claimant agreed to make another appointment with her GP and to advise the Respondent of the outcome. In addition to the file note, Mr Hancock's evidence supported Mr McDougall's version of the meeting.

87 We find that the note of the meeting makes no reference to a request by Mr McDougall for the Claimant to produce a medical certificate. We find that it is unlikely that he did so. He did want her to go to her GP for further information because the Claimant had not given any indication as to when she would return to work or what was being done to get her well. He would have needed to know when she was coming back to work in order to plan what resources he needed at the office.

Allegation 16

88 On 26 November 2014, Mr McDougall wrote to the Claimant again about her lateness. We find that the Claimant was regularly late to work. There were no medical notes in her personnel file relating to an absence of less than seven days in November 2014. Mr McDougall did not recall asking her for a medical certificate at that time and the 24 and 25 November 2014 are recorded as annual leave days in the Respondent's records. The Claimant did not produce a copy of the medical certificate that she alleged that she was obliged to provide. It is likely that if she had been made to produce such a medical certificate she would have complained to Mr Hancock about it and there was no evidence that she did do so. We find that it is unlikely that this occurred.

89 We find that towards the end of 2014, the Claimant took Mr Hancock into her confidence and told him that she applied for a job with one of the Respondent's customers. This shows that she trusted Mr Hancock. It is also around this time that she said that she had sought legal advice. It is likely that if she had been subjected to improper advances and comments from Mr McDougall that made her feel uncomfortable, she would have confided in Mr Hancock about it. Mr Hancock's live evidence was that she did not tell him about any such comments or improper advances. Ms Hornsby also denied knowing anything about any conduct by Mr McDougall towards the Claimant that could be considered to be improper.

90 In 2014 two new members of staff joined the business. They were Sophie Chamberlain and Argyro Koutsompina. It is the Claimant's case that she spoke to them regularly about Mr McDougall's 'abusive' treatment towards her and that they

offered her support and sympathy for her plight. The Tribunal was informed by the Respondent that Ms Chamberlain left the Respondent's employment in the summer of 2017. The Claimant did not call Ms Chamberlain as a witness in the Hearing.

Allegation 17

91 (January – March 2015) We find that Mr McDougall was unable to recall the incident regarding the sample the Claimant alleged that she was required to replicate in early January 2015. We find it unlikely that Mr McDougall patronised the Claimant, or said she was pathetic, dumb, stupid, or that she could not be trusted. If the Claimant had done a piece of work badly or not in accordance with his instructions, it is likely that he would be annoyed and would express his frustration, but we find that it was unlikely that he would include personal insults in doing so. In expressing his frustration, he had been heard to use the words 'no, no, no' to other staff, both male and female and it is possible that he used those words to the Claimant. We find that those words express frustration and annoyance but are not patronising and do not refer to the Claimant as stupid, dumb or pathetic.

Allegation 18

92 This allegation related to a job for the client Back2front, which the Claimant alleged occurred after March 2015. We find that her allegation was not substantiated by anyone else who we would have expected to have heard or witnessed it. Tara Hornsby and Mr Hancock both state that they did not recall the incident and neither did Mr McDougall. We also find that the job was not sabotaged as there was an email in the bundle from Back2front congratulating the Claimant, Mr McDougall and Mr Monk for a job well done and confirming that they were pleased with the result. The comment in the email that it was a *'hair pulling out'* job shows that it had been a difficult one. It was likely that there had been a lot of anxiety and stress around getting it done accurately and to the client's specifications.

93 It is likely that Mr McDougall would shout if he considered that work had not been done in the particular way he had instructed. The witnesses all confirmed that he liked the work to be done his way and he was impatient with anyone who decided to deviate from instructions. He would express his frustration in this way to whoever had done the work, whether they were male or female. He had been in the business for many years and as it is a small industry, the firm's reputation for doing good work, on time and to specification; was paramount to him. Although the Claimant was good at cutting the shape jobs she had not been given general authority to change his instructions or to do things her way. Mr McDougall would become particularly frustrated when the Claimant refused to accept that she made errors and instead, argued with him about how the work should be done. Mr Monk's evidence was that when this happened, what was said between the Claimant and Mr McDougall could be heard by other employees. We find it likely that on those occasions, Mr McDougall would not be ridiculing or patronising the Claimant but would be putting his points across quite bluntly and firmly. It is likely that he would have been annoyed if the Claimant had spotted an error in a job/drawing/sample but did not tell him.

Allegation 19

94 In or around February 2015 Andrew Monk did a quotation for a job for a client called Starlight. As he was not going to be there when the fabric was due to arrive, and the job had to be done; it was arranged that the box of fabric would be addressed to the Claimant. It is likely that the Claimant received the box in late March/early April as the order date was 10 April. She worked with Ms Hornsby and colleagues in the workshop to complete the job. The usual practice at the Respondent was that after a job is completed any remaining fabric should be returned to the customer. The fabrics that the Respondent usually worked with were often expensive and it was important to Mr McDougall that any remaining bits should not be left in the workshop.

95 There was a dispute between the parties over whether the box was empty or not when Mr McDougall saw it in the workshop some 9 months later, on 26 January 2016. We were not able to make a finding as to whether it was empty as the Claimant suggested. On balance, we find that it is likely that it had fabric in it, even if it was only scraps as it is unlikely that an empty box would be kept in the workshop or that Mr McDougall would have got so annoyed about an empty box. Also, at no time during their discussions about the box did the Claimant ever say to Mr McDougall or to anyone else that the box was empty. We find that Mr McDougall was furious when he discovered the box in the workshop. As the Claimant's name was on it, he went to the office to speak to her and get an explanation. When he found her, she was on the telephone and he left the box in the main office and went back to his office. He told Mr Monk to let the Claimant know once she had terminated her call, that he wanted to speak to her. After the call the Claimant was informed that Mr McDougall had been looking for her. She saw the box and instead of going to see him, she picked it up and went out to the workshop. She was angry that Ms Hornsby had not taken responsibility for the box being in the workshop. The Claimant left the box in the workshop. She did not go to see Mr McDougall. Later, Mr McDougall discovered that the box had re-appeared in the workshop. He was told that the Claimant had not left any instructions as to what to do with it. That further annoyed him. He went to look for the Claimant to speak to her about this. Mr McDougall and the Claimant went into his office, so they could discuss the matter. At some point during what was a heated exchange, the Claimant shouted at him *"you are too far up your own arsehole. I am not talking to you anymore until you calm down!"* We find it unlikely that he yelled at her or pointed his finger in her face and he did not have his fists clenched while they spoke in his office. Mr McDougall was annoyed but was not out of control. He found it difficult to finish what he was saying to the Claimant as she kept interrupting him. At some point during the conversation he asked her to go home. We find that she then left his office and went towards the kitchen and toilets. Mr McDougall went looking for her as he considered that they had not finished their conversation. He heard her talking to someone on the telephone in the ladies' toilet. We find that he tapped on the door to ask her to come out. It is unlikely that the Claimant feared for her safety as there were other people in the building and Mr McDougall had not physically threatened her and was not known for being violent.

96 When she came out of the toilet, the Claimant went into Mr McDougall's office and accused him of shouting at her in the open office. We find it unlikely that he lunged at her with clenched fists and shouted that she should grab her things and leave and not return. Such conduct would have been witnessed by the Claimant's

colleagues. The Claimant then left his office and went into the general office. Mr McDougall followed her there as they were still talking to each other. She continued to speak loudly to him in the general office. She shouted that Surinder had left because of him and accused him of reducing her bonus because of lateness. She informed him that she was trying to get another job.

97 It is likely that they then had a further discussion on the matter in his office. As she said that Tara Hornsby knew about the box, Mr McDougall called Tara into his office. Ms Hornsby stated that she did not know what to do with the box and confirmed that she had been aware of it when it arrived some months earlier. Mr McDougall informed the Claimant that as Managing Director and owner of the business, he expected that things should be done in the way that he specified. The Claimant left Mr McDougall's room and began packing up her belongings. He asked her if she was leaving and she stated that she was as he had told her to. Mr Monk recalled that Mr McDougall then told her that she could stay. We find it unlikely that he lunged at her with clenched fists or that he shouted at her that she should leave.

98 On the following morning, at around 7.45am, Mr McDougall heard raised voices in the building. He was later told by Ms Hornsby that the Claimant had sworn at her for having '*dropped her in it'* in relation to the customer's box on the previous day. The Claimant had been angry with her. It is likely that the Claimant expected Ms Hornsby to support what she had said or take responsibility for the box but was disappointed that she had not done so.

99 The Claimant was asked to meet with Mr McDougall and Mr Hancock and did so later that morning. We find that Mr McDougall made a note of that meeting shortly after it ended and we had a copy of that note in the bundle of documents. We find on balance, that the note is an accurate reflection of their discussion on the day. Mr McDougall went over the events of the previous day and then asked the Claimant why she had put the box back in the workshop. The Claimant confirmed that she was looking for another job.

100 The Claimant alleged that in this meeting she said to Mr McDougall that he was singling her out or treating her differently because of her sex. We find that in her further particulars on page 59-60 where this event is recalled, she does not say that she made any allegations of different treatment based on her gender in this meeting. She did not say so in her ET1 either. Both Mr McDougall and Mr Hancock deny hearing her make such an allegation in that meeting. They confirmed that they would have taken it seriously if she had made such an allegation. For all those reasons, we find it unlikely that she told Mr McDougall in that meeting that he was singling her out or treating her differently because of her sex.

101 This was not a disciplinary meeting. However, at no time during this meeting did the Claimant take any responsibility for leaving the box in the workshop or for not returning it to the customer. She continued to deny all responsibility for it at the Hearing.

102 A further meeting was held between the Claimant, Mr McDougall and Mr Hancock on 23 February 2016. The meeting was arranged to try and clear the air between them. At that meeting, the Claimant referred to a number of previous

incidents which she said showed that Mr McDougall did not like her. We find that she did not allege that it was anything to do with her gender and did not complain about discrimination in this meeting. She stated that Mr McDougall should not speak to her when she was angry because she was likely to react badly. Mr McDougall wrote to the Claimant on 9 March 2016. In that letter, Mr McDougall made it clear that neither the meeting nor the letter constituted a formal approach to the matters discussed, or a disciplinary outcome. However, he did inform the Claimant that her conduct, such as taking unauthorised breaks from work - whether to smoke or for any other reason - speaking to him in the way that she did on 27 January - or leaving items on the workbench with no instructions as to what to do with them; were all unacceptable. He invited her to discuss any aspect of the letter that she did not agree with and informed her that as a Director of her employer, he expected her to accept and discharge any and all lawful and reasonable instructions that he gave her. The Claimant did not challenge the contents of this letter and did not take up the offer to discuss any aspect of it with him.

103 Sometime after the meeting on 23 February the Claimant made some notes to herself. She made further notes on 24, 25 February and 4 March. We find that the Claimant's personal notes were in the bundle of documents in the Hearing. We find that they were not contemporaneous but were written after the events they refer to. They contained added commentary on the narrative, which appeared to be what the Claimant would have liked to have said rather than what she actually said or what actually occurred. She also noted her thoughts on what had occurred. We found the notes unreliable as they did not just recount what occurred and could not be described as contemporaneous. It was also unclear when they were written.

104 In her notes about the meeting on 23 February there are two places where she mentions the word 'discrimination'. However, the notes to not record that this was something she said that to Mr McDougall in the meeting. In the note she did not define what type of discrimination she was referring to. She referred to '*bullying and harassment'*. In the note dated 24 February, she referred to been singled out. She noted that she had the feeling that Mr McDougall perhaps did not like her because she could stand up for herself and that he was using his best bullying tactics in order to drive her towards quitting her job. We find that it is likely that she considered that this was the reason for her being singled out. That was not related to her gender. In her note of 4 March, there is a reference to Mr McDougall being a bully and always seeming to discriminate against her. Once again, it is not recorded in the note that she told him that he had discriminated against her or that she told him that he was a bully.

Allegation 20

105 (Spring/Summer 2015) We find that there was no evidence that Mr McDougall ridiculed the Claimant's work. We find it unlikely that there was much conversation between them after the incident with the box because it had been upsetting for them both. We were not given any examples of what was described as patronising or ridiculing. Mr Hancock and Mr Hornsby both confirm that they did not hear Mr McDougall patronise or ridicule the Claimant.

Allegation 21

106 (July 2015) We find that there was a sort of gantry called a 'theatre curtain track' in the workshop that was used to put up curtains and display them while they were being made. This was a heavy piece of equipment that could be dangerous if it came loose. The Claimant accepted that she was the last person to tie the knot when Mr McDougall pointed out that it had been tied incorrectly. We find that he demonstrated how it should have been done and did so in front of all the staff. After he did it, he made everyone else do it. The Claimant took this as a personal attack on her, but it is unlikely that it was. Mr McDougall's intention was to speak to everyone and to ensure that they all could tie the knot properly and that it would not cause any injury to any of them. It is possible that he said that the Claimant's knot looked like it had been done by a 2-year old and that it was terrible, but he did not talk to her like she was an infant or tell her that she could not be trusted to do anything by herself. Ms Hornsby's evidence was that Mr McDougall's demonstration was done in a cool and collected manner. She did not recall there being any ridiculing of the Claimant or any other members of staff.

Allegation 22

107 We find that sometime in October 2015 the Claimant was asked by Mr McDougall to prepare a scaled down version of a very large swagged drape. Mr McDougall had already produced an AutoCad drawing on 6 October for the drapes. The scaled down version needed to be cut out and sewn. The person who created the scaled down version would then need to make adjustments until the required shape is achieved. In making the sample, the Claimant would not follow Mr McDougall's instructions. She kept trying to find alternative ways to do the job. This annoyed Mr McDougall as he considered that she was wasting time. He asked her to just do it the way he wanted. Once the sample was made he explained to her what was required by way of adjustment, but she began to argue about it as she did not agree. Mr McDougall became frustrated and called Mr Hancock out of the office as he could not get her to accept his instructions and carry them out. In frustration he banged his head on a work bench for dramatic effect and to get the Claimant's attention because she was not listening to him. However, we find it unlikely that he banged his head a dozen times as it is likely that this would have made him ill. We also find it unlikely that he snatched the material from her hands, yelled that she was pathetic, and lost his temper for no reason. Ms Hornsby recalled the incident and she did not recall Mr McDougall hitting his office door with clenched fists or slamming his door shut. We find that Mr McDougall left Mr Hancock to tell the Claimant what to do and went back to his office. The drapes were finally constructed according to Mr McDougall's instructions.

Allegation 23

108 We find that the AutoCAD was a computer programme which could be used to do a technical drawing for drapes before they are made; showing all the specifications. The actual drapes would then be made up following the drawing. When the Claimant was first employed in 2005 she was offered the opportunity to go to night school to train on the AutoCAD program as Mr McDougall had done. She refused and instead, Mr McDougall trained her on it. It was her evidence that she was good at the

programme and had been doing drawings on it for some time. She never asked for more training.

109 The parties conflicted on the facts that relate to this allegation which the Claimant alleged occurred in November 2016. The Claimant's version is that they were discussing curtains and that she was working on the drawings at the time that he made the complaint that she was incompetent and could not be trusted to do drawings. However, Mr McDougall's version is that she produced a mirror image drawing for Selfridges' Christmas window drapes which meant that they were made incorrectly. It is likely that Mr McDougall did not discover this until the drapes were made up and delivered to Selfridges. We prefer Mr McDougall's version of the event because it is likely that if he had discovered that the drawing was wrong while she was working on it, he would have corrected it and the drapes would have been correctly made. It is likely that he did tell her that she should be more careful. It is likely that they had arguments about AutoCAD drawings for projects. This was confirmed in Mr Monk's evidence. We find it likely that there was occasionally a difference of opinion between them about what drawings should look like.

Allegation 24

110 (November 2015) It is unlikely that, early one morning in November while they were in the kitchen, Mr McDougall told the Claimant with intense disgust that she should not talk to Ryan Riberio and questioned her in an aggressive tone when he mistook the cleaner speaking to herself as a comment from the Claimant. We find that the cleaner did not hear what had been said. Mr McDougall did not recall the incident. We find that it is unlikely that the incident happened at all or as set out by the Claimant.

Allegation 25

111 (End of November 2015) We find that there was no contractual entitlement to a bonus at the Respondent. The company operated a discretionary bonus system. At the appropriate time, Mr McDougall would review the company's performance figures from the previous year and on the basis of the health of the business and his opinion of the personal performances of the individual members of staff; he would allocate the bonus which he deemed appropriate to each individual members of staff. In 2014, the Claimant had been awarded a bonus of £1,600. In the following year, 2015, Mr McDougall considered that her performance had not been up to the same standard and so her bonus was reduced to £1,300. We find that the Claimant was not the only one to have her bonus changed in that year as Mr Wells who was the in-house bookkeeper/accountant was not paid any bonus at all. The Claimant was clearly unhappy about Mr McDougall's decision to reduce her bonus and went to speak to him about it. This shows that she was not fearful of him and was ready to challenge him directly.

112 Mr McDougall explained to her that her bonus was not contractual and was a gift from the company. As she was leaving his office, he referred to her tardiness over the previous month. We find that as company director, it would have been good practice if Mr McDougall had informed his employees beforehand that issues such as lateness and capability were matters that could affect their bonus. However, Mr McDougall had written to the Claimant on two occasions previously about her tardiness and about

performance matters. Mr McDougall considered that as the bonus is a gift from the company, he did not need to explain to her the reasons for its reduction. The Claimant was not told that the reduction of the bonus was due to an earlier incident when she had been caught smoking during work time rather than at a set smoking break time. She had been caught smoking in the loading bay on more than one occasion and more frequently than the others. Tara and Dave Yates had also been caught doing that and had been told off for doing so. Staff had been told that they should only smoke at the front of the building.

113 Apart from Mr Wells, it is likely that other people of both genders were paid bonuses in that year.

Allegation 26

114 We find that Mr McDougall would normally review pay levels each year and if he decided to increase wages, he would do so in February. In February 2016, he adjusted the salaries of some members of staff. His evidence was that the majority of staff received an increase of approximately 1.25%. Mr McDougall based his decision on those individual pay rises on his view of each member of staff's value to the business, their individual performances and what he considered to be the going rate for their job descriptions. Once again, we find that the Claimant was not the only person who did not get a pay rise as Alan Wells also did not get a pay rise. We were told that everyone else received a pay rise which would also have included the female members of staff.

115 The Claimant was not given a pay rise because Mr McDougall decided that her performance did not warrant it. He considered that she had a poor work attitude as she was argumentative and had poor timekeeping. The Claimant compared herself to Ms Richardson in her note of 23 February and noted that despite her poor performance and the mistake she made by sending out the goods before taking payment, Ms Richardson had been awarded a pay rise as well as her full bonus.

116 The Claimant was upset about this and Mr Hancock made a note of a conversation she had with him on 25 February in which she informed him that she was no longer going to give 100% effort to the Respondent but would instead give '*more like the bare minimum'.*

Allegation 27

117 Mr McDougall did not remember the incident referred by the Claimant in this allegation. In the Claimant's personal note of 4 March 2016, she wrote that he had made eye contact with her when speaking directly to her and said that he would be really angry with her if she had let the item be sent out as it was. She also stated that she was not surprised that he looked so mad with her but that she would never have let the item go out to the customer in that way. We find that it is unlikely that this was different from any other time. Her note does not refer to him holding her gaze in an aggressive way while speaking to all workshop staff. This is likely to be a detail in the notes that the Claimant has subsequently added on. We find it likely that he would have got annoyed if a poorly constructed cloth needed to be reconstructed as it would have resulted in wasted time and effort.

Allegation 28

118 (July 2016) We find that there was an incident over an order for painted cloths for a project in New Zealand for a relatively new customer. The Claimant had been responsible for this job. The cloth had been accidentally torn in the Respondent's workshop while the job was being done. The cloth was expensive. The Claimant arranged for the tear to be repaired by workshop staff. A colleague photographed the tear for her and the Claimant supervised the photograph been attached to an email and sent to the customer to see whether the repairs were acceptable. Mr McDougall found out about the incident after the client rejected the cloths.

119 In Mr McDougall's opinion, the repair was of poor quality. Also, the photograph that had been sent to the customer did not show any measurements which meant that the customer could not see or assess the length of the tear in the photograph and the extent of the damage. This was a serious matter as if the customer insisted on rejecting the cloths, the Respondent would have had to replace them and cover the cost of having the artwork redone on the new cloths. Mr McDougall was also annoyed because the matter should have been reported to him as soon as the damage had been discovered. His evidence was he had issued firm instructions on numerous previous occasions that he was to be informed immediately of any such problems.

120 Mr McDougall inspected the cloth and called Ms Hornsby, the Claimant and other members of the team into the workshop and told them all off. He was annoyed that the cloth had been damaged and that he had not been informed of the problem immediately. He was also concerned that the Claimant had tried to deal with the problem and the client herself in what he considered to be unsatisfactory manner. Ms Hornsby confirmed that Mr McDougall told the group that the handling of the matter had been entirely unacceptable and that more care should be given to the process to ensure that similar problems did not arise again in the future. He also told them that any similar problems arising in the future must be reported to him immediately before the repairs are attempted. It is likely that they all felt bad about this matter.

121 In the Hearing, the Claimant's focus was on the fact that she had not taken the photograph of the tear and therefore she should not have been held responsible for this incident. The Claimant did not seem to have appreciated that there was more to this matter than the accuracy of the photograph or who had taken it. The Claimant had been in charge of the job. Mr McDougall considered that there had been a group failure for which they were all responsible and which could have cost the company several thousands of pounds. As the Claimant was leading on the job it was appropriate that she take some responsibility for what had happened. Mr McDougall personally oversaw the process of repair of the item and personally delivered the repaired cloths to the customer in an effort to smooth things over with them.

Allegation 29

122 We find that Mr McDougall decided, on or around 8 December 2016 to give the responsibility for health and safety matters to Dave Yates. He made a note of the Claimant's personnel file and a corresponding note in Mr Yates' file also. He did not write down the reasons for the decision. When he told the Claimant, she did not ask

him why he made this decision and he did not feel that he had to give her a reason. At the time, the Respondent's external health and safety adviser had indicated his desire to reduce his workload and had also indicated to Mr McDougall that he needed to find someone who could develop significant expertise in this area over time. When he informed the Claimant of his decision, their conversation about it had not been unpleasant and there was no allegation that Mr McDougall instructed her to hand over her health and safety responsibility in an inappropriate or aggressive manner.

123 We find that it is likely that there were multiple reasons for his decision. We find that Mr McDougall had in mind the Claimant's repeated statement that she was looking for employment elsewhere. There was no doubt in his mind that she was leaving. Mr Hancock told him that the Claimant had made an unsuccessful application for work to True Staging, which was one of the Respondent's customers. Mr McDougall was aware that he needed to appoint people to take on some of the responsibilities that the Claimant had at the time. Mr Yates had previously worked in the warehouse and workshop, was a qualified forklift truck driver and was well respected by staff. As most health and safety issues occurred in the workshop and warehouse, Mr McDougall considered that his recent experience in both these areas would give him a good insight into potential health and safety issues. The Claimant did not complain to Mr McDougall about having the responsibility for health and safety taken away from her. There were no increments in salary or any other benefit attached to the responsibility for health and safety within the business.

Allegation 30

124 This allegation was that at the end of November 2016 the Claimant received a small annual bonus in comparison with everyone else. We find that there continued to be no entitlement to a bonus within the Respondent. Mr McDougall always considered that the award of a bonus and the amount of any bonus was entirely in his discretion and was based on the profitability of the company and his assessment of the performance of the individual members of staff. It was his opinion that the Claimant's performance and attitude in 2016 meant that she merited only a token bonus. In her live evidence, the Claimant accepted that the bonus was based on performance. The Claimant's lateness continued to be an issue for the Respondent. Also, and more seriously, Mr Hancock had told Mr McDougall that the Claimant had said that she would not be giving the Respondent 100% from February onwards but would instead only be giving the bare minimum. We find it unlikely that he would have been influenced by any future disciplinary action against the Claimant because at the time he made the decision on bonuses there was no indication of disciplinary action. It is likely that Mr McDougall decided on bonuses much earlier than November as the instruction had to be given to payroll so that the paperwork could be done, and staff could receive it in their November pay. It is likely that at the time he made the decision on bonuses, the incidents that led to her dismissal had either not yet occurred or the outcome of the investigation was unknown. What Mr McDougall took into account in deciding on the Claimant's bonus were the following issues: her persistent lateness, her habits of being argumentative and failing to follow his instructions, her stated intention to leave the Respondent's employment and in the interim, to give the bare minimum effort to the job.

125 In the Hearing, the Claimant's complaint regarding the bonus was not just that it was less than she had been paid previously but also that it was much smaller than the bonus paid to Ms Koutsompina. We find that in this year Mr McDougall considered that it was appropriate to give Ms Koutsompina a larger bonus than the Claimant. There was no evidence that her bonus was a bribe, as the Claimant alleged. Mr McDougall decided that Ms Koutsompina's contribution to the business for that year warranted the bonus that she was paid. We had no evidence that any other matter was taken into account in setting the amount of the bonus that she was paid.

Allegation 31

126 We find that queries from customers about new jobs would come to the Respondent by way of email as well as telephone calls. Most of the queries from new customers came by email. Apart from Mr McDougall, the Claimant, Andrew Monk and Argyro Koutsompina were the members of staff with the responsibility of processing those orders, answering queries and quoting for jobs. They would print off the email queries and contact the customer for more details so that a quote could be given and they could try to secure the contract.

127 In November 2016 everyone in the office was busy dealing with orders and customers. The Claimant was concerned that the emails were not been shared equally between them. She spoke to Mr Monk to complain that in her view, Ms Koutsompina did not appear to have enough work to do. Mr Monk instituted a procedure for dealing with the emails to ensure fairness. The procedure was that Ms Koutsompina would print off the emails received at the Respondent's main email address, mail@mcdougall.co.uk and put them in the tray on the corner of the desk she shared with the Claimant. This was called the general tray. Anyone in the office would then take work from the tray and deal with it. If the work in the tray started to build up, Mr Monk would take them out and put them in equal piles, turning each pile upside down and naming each pile in accordance with the alphabet, beginning at the letter A. He would then ask one member of staff to choose a letter and then give that person a pile and move on to the next person. He would usually take the last pile. Each person would be expected to work through their pile. If anyone had any queries on the information requested by the email, the quotation or any other related matter they could ask Mr Monk or Ms Richardson as one or both of them were likely to be in the office.

128 We find that on 17 November 2016 one particular email was not printed off but was forwarded to the Claimant's work inbox. Although she stated in the investigation that she did not recall doing so, it is likely that Ms Koutsompina forwarded it to her. She had possibly looked at it and decided that she could not do it, so she decided to forward it to the Claimant. We find that Ms Koutsompina was less experienced than the Claimant at calculating and giving quotations to clients and may have felt unable to deal with this one. Whether the email been forwarded by Ms Koutsompina or not, it is evident that it was forwarded to the Claimant by someone in the office and the Claimant printed it off.

129 It was agreed between the parties that at the time, the Claimant was busy so after printing off the email she asked if someone in the office could look at it. Andrew Monk said that she should put it in the tray and that he would try and deal with it later. The Claimant did not do this but instead went over to Ms Koutsompina and asked

whether she could look at it. She said to Ms Koutsompina that she was the only one sitting there doing nothing. The Claimant told her that if she got stuck she should ask the others for help. Ms Koutsompina glanced at the document and stated that she did not know what to do with it and passed it back to the Claimant. The Claimant continued to insist that she should still do the piece of work. Ms Koutsompina found her tone to be aggressive and abrupt. Mr Monk's evidence was the Claimant's tone was *'perhaps a little firm'.*

130 It is unlikely that the Claimant offered to help her. She was busy and was trying to delegate the work. If she had offered to help Ms Koutsompina then that would have defeated the purpose of delegating the work to her. Instead she insisted that Ms Koutsompina should just do it. Ms Koutsompina put it back in the tray on the Claimant's desk and asked Mr Monk if he could look at it for her. When she came back after lunch she found that the email had been placed on her keyboard on her desk with a post-it note attached from the Claimant telling her to deal with it.

131 Later that day, Ms Koutsompina approached Andrew Monk in the kitchen to talk about what had happened and to ask for assistance. She spoke to him about the distribution of emails and complained about the way the Claimant had approached and spoken to her. She was unhappy about the Claimant's suggestion that she had nothing to do. Mr Monk asked her whether she wished to make a formal complaint and she declined. She stated that maybe the Claimant was having an 'off' day' and that she was prepared to leave it at that. We find that she knew that there were issues between the Claimant and Mr McDougall and did not want to make trouble for the Claimant. This contradicts the Claimant's assertion that Ms Koutsompina wanted to cause trouble for her.

132 On the following day, 18 November, the Claimant and Ms Koutsompina were both in the office. The Claimant alleges that while she was walking across the office she noticed Ms Koutsompina walking towards her and had the impression that she was going to walk straight into her, intentionally. She stated that to avoid this she paused and as she stopped, Ms Koutsompina continued walking but veered to her left slightly but still collided with her. Both the Claimant and Ms Koutsompina stated in their statements to the investigation that their clothes brushed on this occasion but that there was no bodily contact between them. They also did not speak to each other. Ms Koutsompina stated that she did not deliberately walk into the Claimant. The Claimant's version was different at the Hearing. At the Hearing the Claimant's evidence was that there had been physical contact between her and Ms Koutsompina on the morning of 18 November and that she believed that it was caught on the bit of CCTV footage missing from the footage disclosed by the Respondent and which was viewed by the disciplinary and appeals officers.

133 It is the Claimant's case that she spoke to Alan Wells and Sophie Chamberlain about the 'clothes brushing' incident that morning but the Tribunal did not hear from either of those individuals in this Hearing. However, both were interviewed by Mr Robinson as part of his investigation.

134 Later that day, the Claimant went into the print room to collect something. When she entered the room, she noticed that Ms Koutsompina was already in there. Ms Koutsompina was collecting something from the printer at the farthest end of the

room. The Claimant's case was that Ms Koutsompina's presence in the room made her feel uncomfortable and she decided to wait at the door for Ms Koutsompina to collect her ticket. The Claimant's case is that she decided to wait as she did not want to be alone in the room with Ms Koutsompina but she then changed her mind and went into the room before Ms Koutsompina left. Ms Koutsompina was not aware that the Claimant had entered the room as her back was to the Claimant. Ms Koutsompina's version of what happened next is that the Claimant deliberately pushed her hard with her shoulder or upper part of her arm. This shocked her. The Claimant's version was that as she was walking past Ms Koutsompina to collect her ticket their shoulders brushed, and it made her feel uncomfortable.

135 Ms Koutsompina stated that after she had been pushed by the Claimant she went to the door of the print room and held the door but as the Claimant was about to leave she let go of the door as she did not want to be nice to her and hold the door open for her. The Claimant's version was that Ms Koutsompina held the door with both hands and pushed it at her as she was leaving the print room. She confirmed that Ms Koutsompina said, 'don't push me' as she walked past her.

136 They continued arguing with each other on their way back to their desks. Mr Monk's note of the same day recorded that he heard the Claimant refer to Ms Koutsompina as a *'fucking bitch'*. Mr Monk tried to stop them from continuing to argue and stated that it was not appropriate for them to argue in the office. Their voices had been raised and he described it as a heated discussion. The Claimant told Ms Koutsompina that she knew that there were people in the warehouse and in the work room who disliked her attitude. Eventually Mr Monk called a halt to the argument and advised them both to stop. There had been no witnesses to what had happened between the Claimant and Ms Koutsompina in the print room.

137 Ms Koutsompina sent an email to Mr Monk in which she described the incident that had just occurred in the print room. She stated that the Claimant had pushed her and when she asked her not to push her, the Claimant stated that Ms Koutsompina had pushed her earlier and asked if she really wanted to take her on. She also stated that as she was walking out of the print room, the Claimant called her a *'bitch'*. In addition to sending the email, Ms Koutsompina also had a conversation with Mr Monk in which she referred to their conversation on the previous day and indicated that she now wished to make a formal complaint about the Claimant to Mr McDougall. She no longer cared whether this got the Claimant in trouble as this was more serious than the Claimant just being rude to her as she considered she had been on the previous day.

138 Mr Monk asked Ms Koutsompina if she wanted him to telephone Mr McDougall to let him know that she wished to make a formal complaint. She agreed and he telephoned Mr McDougall. She also sent him an email informing him that she wished to make a formal complaint about this matter. When Mr Monk spoke to him, Mr McDougall advised that both the Claimant and Ms Koutsompina should write down what had happened and Mr Monk passed on this instruction to both of them.

139 On the same day, 18 November, the Claimant wrote to one of the Respondent's customers to ask whether she had experienced problems with Ms Koutsompina's attitude. In the email, she stated that she knew that Ms Koutsompina had been particularly rude to the Respondent's staff members, delivery drivers and on the

telephone and that she was going to report back any issues to Mr McDougall for him to resolve. The Claimant had no authority to do this. She was not one of the Respondent's managers and had not been instructed by anyone at the Respondent to gather evidence from clients about Ms Koutsompina. The Claimant appeared to be seeking to build a case against Ms Koutsompina.

140 The Claimant may well have spoken to Ms Hornsby about the incident, but we find it likely that she was not making a formal complaint to her but was only seeking to let off steam about it. Ms Koutsompina made it clear to Mr Monk that she wanted to make a complaint about what had happened.

141 On 18 November, Ms Koutsompina sent an email attaching a written formal complaint to Mr McDougall about the incident. She alleged that the Claimant had assaulted her by pushing her in the print room and had threatened her by asking her if she really wanted to take her on and if she really wanted to go to war with her. Ms Koutsompina also set out the events of 17 November in her statement and alleged that the Claimant had spoken to her in the office in an aggressive manner.

142 The Claimant prepared a statement covering the 17 and 18 of November and sent it to Mr McDougall on Monday 21 November. In her statement, she also made various accusations against Ms Koutsompina: that she regularly swears in Greek in the office, that she clenches her knuckles when she is angry, that she had a confrontation with a TNT driver known as Jason and an altercation with someone called Beth at Firecracker. She alleged that Ms Koutsompina had deliberately walked into her that morning when she was walking past Andrew's desk and that later in the print room, their shoulders brushed and Ms Koutsompina then shoved the door towards her with anger and aggression. She stated that she did not classify this as an attack but more of an act to try and antagonise her and instigate a confrontation. She stated that she had asked Ms Koutsompina to pick and choose her fights more carefully. The Claimant alleged that Ms Koutsompina was trying to get a response from her in a form of confrontation or attack. The Claimant accused Ms Koutsompina of aggressive behaviour, having anger issues, temper tantrums, shouting and making foul mouthed attacks; and asked the Respondent to address it in the most professional, effective, reasonable manner possible.

143 Mr McDougall read both versions of the incident and considered that they were both making serious allegations against each other. Both accounts involved serious allegations of actual and/or threats of physical violence. At the time, the Respondent did not have an in-house legal or HR function, and Mr McDougall decided that he needed to take some advice on how to deal with this issue. He consulted his solicitors who advised him that both the Claimant and Ms Koutsompina should be suspended pending investigations into allegations of gross misconduct as both employees were making serious allegations against each other.

144 Mr McDougall instructed his solicitors to arrange for there to be an investigation into the allegations made by both employees. Mr McDougall decided to involve external parties to investigate the incident/s as he wanted the process to be as independent as possible. The Respondent was prepared to engage a professional investigator to ensure that the investigation would be done properly and professionally. Mr Paganuzzi, the Respondent's solicitor, recommended Mr Simon Robinson as an

appropriate person to conduct the investigation. Mr Robinson is an experienced, practising employment barrister. He was not employed by the Respondent but was contracted to conduct the investigation.

145 On 24 November, the Respondent's solicitor wrote to the clerk to Mr Simon Robinson's barrister's chambers to formally instruct him to carry out investigations into the respective allegations made by both employees. Mr Robinson was informed that both employees were likely to be suspended and that there would need to be arrangements made so that Mr Robinson could interview both of them as soon as possible

146 Later that day, the Respondent's solicitors confirmed Mr Robinson's terms of reference in relation to the investigation. He was to fairly and objectively undertake such a fact-finding exercise as he deemed appropriate to collect all of the relevant information and evidence to establish the essential facts of the matters, conduct and allegations raised in: (a) Ms Koutsompina's complaint dated 18 November, and (b) the Claimant's email of 21 November; so as to enable him to reach a conclusion on what did or did not occur on the dates in question. Mr Robinson was to obtain any verbal, written or visual (CCTV) evidence as he deemed appropriate, to assist him in his investigation; and prepare a written report setting out his findings, confirming whether there is a case to answer and whether either or both employees should be referred for disciplinary proceedings.

147 We find that those instructions to Mr Robinson were fair and even-handed. We find also that Mr Robinson was unknown to Mr McDougall and had not worked for the Respondent before. No further instructions were given to him and he was not given any indication of any particular result that the Respondent wanted from the investigation.

148 Mr Robinson was given the relevant emails from both employees as well as a note from Mr Monk setting out what he believed had occurred on 17 and 18 November. Both the Respondent's solicitor and Mr Robinson were keen to ensure that the Claimant and Ms Koutsompina did not get letters inviting them to an investigation meeting before they had received and considered the letters informing them of their suspension.

149 We find that on 25 November 2016 Mr McDougall wrote to both the Claimant and Ms Koutsompina informing them that they were suspended because of allegations of gross misconduct against them, which needed to be investigated. Both members of staff were informed that Simon Robinson would now conduct an investigation into the allegations against them and that in the interim, they should not communicate with any other employees, customers or suppliers or take any other paid employment during the period of suspension. They were each told that they had to be available to answer any work-related queries and should not attend the workplace unless authorised to do so by Mr McDougall. Both employees were informed that their suspension did not constitute disciplinary action or imply any assumption that they were guilty of misconduct. They were informed that they had been suspended to ensure that the investigation process was not impeded or interfered with and that it would be completely fair and impartial. The letter also informed them that once the investigation was completed, they would be informed as to whether they would be required to attend

disciplinary hearings. Both employees were told that no decision in respect of findings and/or sanctions would be taken until the process and any disciplinary hearing had concluded. They were informed that Mr Robinson would be in contact to progress the investigation and that if they knew of any documents, witnesses or information that might be relevant to the matters under investigation they should let Mr Robinson know as soon as possible. This included any information that may have been on the Respondent's premises or computer network to which access could be given, under supervision. Both employees were asked to keep the matters set out in the letter confidential. The content of the suspension letters to the Claimant and to Ms Koutsompina was identical.

150 The Claimant received the suspension letter on her birthday. Both the letter to her and the one to Ms Koutsompina were sent as attachments to emails and also by post. The emails were sent about two minutes apart. We find that neither the Claimant nor Ms Koutsompina were at work that day. We find it unlikely that the Claimant's birthday was at the forefront of Mr McDougall's mind at the time that the suspension letters were sent out. There was no evidence that he was thinking of it or that he instructed Mr Paganuzzi to send the letter to her to arrive on that day. The emails show that as soon as he was advised to suspend them, he decided to do so and the letters were sent out. We find that there was no evidence that the Respondent sent the letter of suspension to the Claimant to coincide with her birthday and to cause her distress.

151 We find that on 25 November Mr Robinson was given copies of the Respondent's Staff Handbook, copies of both employees' contracts of employment, suspension letters, contact details for witnesses and contact email addresses for both employees. Mr Paganuzzi confirmed that they had been suspended.

152 On 28 November, Mr Robinson sent letters to Alan Wells, Andrew Monk, Claudia Reid, Sophie Chamberlain, the Claimant and Argyro Koutsompina introducing himself and inviting each one to meet him at various times and dates to enable him to start the investigation. The Respondent confirmed to Mr Robinson that as part of his investigation he should include the additional allegations the Claimant made against Ms Koutsompina, including that regarding the TNT driver and Ms Koutsompina's conduct towards other staff.

153 The Claimant did not notify the Respondent or to Mr Robinson that she wished for the CCTV footage for the 17 and/or 18 November to be retained as evidence in the investigation.

154 On the morning of 29 November, Mr Robinson attended the Respondent's premises and asked to see the CCTV footage for the period 9:30am to 10am on 18 November 2016. He did so because the Claimant had referred to that time in her complaint dated 21 November. Mr McDougall had no prior notice Mr Robinson was going to ask for the CCTV footage or the date or time that he was likely to request although it is likely he saw the information in the Claimant's email complaint of 21 November, which had been sent to him.

155 Mr McDougall showed Mr Robinson to the PC in the general office which was connected to the Respondent's CCTV system and which was the only PC loaded with

the software to enable someone to view the footage. Mr Robinson stated that it was inappropriate for him to look at the CCTV in the general office in full view of all the Respondent's employees. However, there was no other computer connected to the system. They decided that Mr McDougall should download the footage from 9:25am to a USB stick which Mr Robinson could view on the PC in Mr McDougall's office. Mr McDougall began downloading the footage in Mr Robinson's presence. Mr Robinson's evidence at the Hearing was that he remembered having to show him where to find the USB stick in the 'file explorer' part of the computer's hard drive. Mr Robinson went into Mr McDougall's office, possibly to set up his computer, and about five minutes later Mr McDougall brought the USB stick into his office when Mr Robinson was waiting. Mr Robinson then viewed footage on the USB stick.

156 At that time, the Respondent's CCTV system recorded footage in separate files. It was not clear why this was so and the Respondent has since changed system to a more user-friendly and accessible system. Mr Robinson opened and reviewed each file to see whether he could find any evidence to support the Claimant's allegation. In her statement/email sent to Mr McDougall on 21 November, the Claimant stated that on 18 November, as she was walking past Andrew's desk, on the way back to her desk after scanning paperwork on the other side of the office, Ms Koutsompina deliberately walked into her. She stated that it happened between approximately 9.30 to 10am. As he could not see this on the footage he had been given, Mr Robinson decided to conduct a wider search of the CCTV recordings and he asked Mr McDougall to download a longer period of footage, from 9:15am to 10:15am as he considered that it was possible that the Claimant had incorrectly recollected the time. About 5 minutes later, Mr McDougall provided him with a USB stick containing the files covering the longer period that he had requested. Mr Robinson could not find the incident as set out by the Claimant in her complaint. Mr Robinson copied the files from the USB stick onto his laptop and returned the USB stick to Mr McDougall. We find it unlikely that Mr McDougall had sufficient time to tamper with the CCTV footage or that he had the knowledge or expertise to do so.

157 In relation to the complaints made against the Claimant, Mr Robinson conducted interviews with Ryan Riberio, Tara Hornsby, Claudia Reid, Dave Yates, Alan Wells and Sophie Chamberlain as well as the Claimant and Ms Koutsompina. Mr Robinson conducted those interviews on his own, made notes on this laptop and kept the notes of the interviews encrypted in a locked laptop to which only he had access. He would lock the laptop if he ever left the room while conducting interviews at the Respondent's office or at its solicitors' offices.

158 On 6 December, Mr Robinson conducted additional interviews in respect of the allegations which the Claimant made against Ms Koutsompina which were not part of the incidents on 17 and 18 November. He spoke to Ron Filtness, Faith Andrews Kudjoe, Sheree Richardson and Hollie Walsh. Those individuals had not been witnesses to the incidents that occurred on 17 and 18 November.

159 Mr Robinson interviewed the Claimant on 29 November 2016 and on the same day, in the afternoon, he interviewed Ms Koutsompina. Mr Robinson typed notes of each interview as the interview progressed and at the end of the interview, he went through the notes with the witness in order to ensure accuracy. Both the Claimant and Ms Koutsompina looked at the notes of the interview on Mr Robinson's laptop screen,

read it through to make sure that they agreed with it and had the opportunity to amend it, if necessary. Mr Robinson noted that the Claimant made some changes to the notes of her interview. He then immediately printed off the interview notes and asked her to sign it. Ms Koutsompina went through the same procedure at her interview.

160 At the end of the interviews, Mr Robinson considered that he needed more time to consider the evidence, reach a decision and prepare a written report. He asked the Respondent to arrange for letters to be sent to the Claimant and Ms Koutsompina to advise them that their suspensions would have to be extended pending receipt of his investigation reports.

161 On 7 December, the Respondent's solicitors telephoned Kim Sands to enquire whether, if the investigation reports recommended that either or both of the employees should face disciplinary proceeding, she would be prepared to chair those hearings. Ms Sands indicated that she was available and set out her charging rates in an email. Kim Sands is a self-employed HR consultant with considerable experience in conducting and taking part in disciplinary hearings. At the time, Ms Sands was not employed by the Respondent. Mr Paganuzzi was putting in contingency plans in case the Respondent was advised to conduct any disciplinary hearings arising from the investigation.

162 Mr Robinson's investigation reports were produced on 12 December 2016. It was Mr Robinson, after consultation with Mr Paganuzzi, who decided to create two separate reports, one for Ms Koutsompina and one for the Claimant. Mr Robnison did so because the allegations against the employees were not the same. He was investigating two separate sets of allegations. Ms Koutsompina's allegations against the Claimant arose from the events of 17 and 18 November. Some of the Claimant's allegations against Ms Koutsompina arose from the events of 17 and 18 November but she also made serious allegations relating to other incidents that involved Ms Koutsompina that she had heard about. Although the two investigation reports were connected as both individuals have been involved in the events of 17 and 18 November, they were also separate because they also covered the other allegations and incidents. The Respondent wanted a thorough investigation and that is what Mr Robinson had been instructed to conduct. The Claimant had asked that the allegations she made against Ms Koutsompina be investigated in the most professional, effective and reasonable manner possible. We find that this is what Mr Robinson sought to do.

163 Mr Robinson's investigation reports were clear, detailed and easy to follow. His conclusions and recommendations were clearly labelled and evidenced from the information gathered from witnesses and set out in the body of the report. The reports confirmed that there were cross allegations between the employees which he had taken into account in assessing the evidence.

164 At the end of both reports, Mr Robinson listed some key uncontested facts and also some facts that he was unable to establish. As he made no final decision on the issues raised in his report, all these matters were referred for further consideration at the disciplinary hearings for each employee. He came to the conclusion that both the Claimant and Ms Koutsompina should be invited to disciplinary hearings. Mr Robinson also recommended that the Respondent should review its staff contracts to ensure that

they reflected each individuals' current role and correctly identified their line manager. The Respondent was advised to review its Staff Handbook.

165 On 13 December, the Respondent's solicitor sent the investigation reports together with the supporting witness statements to Mr McDougall as the Respondent's Director, so he could decide how the company would like to proceed. The Respondent, as Ms Koutsompina and the Claimant's employer, had to decide whether to follow Mr Robinson's recommendation that both employees should be invited to a disciplinary hearing. Mr McDougall considered the investigation reports, the statements and accompanying information carefully and decided that the process should be followed and that they should be invited to disciplinary hearings. The investigation reports detailed serious allegations of aggression, assault and misconduct which Mr McDougall, as a responsible employer could not ignore.

166 We find that the Claimant and Ms Koutsompina were not the only people who Mr McDougall suspended that year. He gave unchallenged evidence about suspending a male employee on 8 December pending an investigation into serious allegations of gross misconduct and/or gross negligence. Mr McDougall also involved external independent parties to conduct the investigation for him in relation to that employee.

167 The Claimant and Ms Koutsompina were both invited to disciplinary hearings. Both invitation letters were sent out on 14 December and both employees were informed that they were facing allegations of gross misconduct which could result in dismissal, that they had a right to be accompanied by a colleague or trade union representative and that their suspension on full pay would continue pending the outcome of the disciplinary hearing. Both disciplinary hearings were organised for Wednesday 21 September. Ms Koutsompina's letter referred to the incidents on the 17 and 18 November and the allegations which arose out of that as well as an allegation that she has a history of rudeness towards colleagues and a separate allegation of rudeness towards the TNT driver on an unspecified date. The Claimant's invitation letter informed her that she would be facing allegations relating to the incidents on 17 and 18 November. The Respondent informed both employees that it did not intend to call any witnesses to the hearing but that if they wished to call any relevant witnesses, they should let the Respondent know by 19 December. They could also provide further documentation for consideration at the disciplinary hearing. They were advised that the disciplinary hearing will be conducted by Kim Sands with a note-taker. Those letters came from Mr McDougall.

168 Both employees were sent a copy of the investigation report that related to them. They were also sent copies of the witness statements obtained in the investigation, their original complaint, contractual documents and the Staff Handbook and the CD-Rom of relevant CCTV footage.

169 Once Mr Robinson's recommendation to proceed with disciplinary hearings was accepted by the Respondent, it formally engaged Ms Sands to conduct those hearings. We saw Mr McDougall's letter of instruction to Ms Sands, also dated 14 December in which he undertook to pay her fees for conducting the disciplinary hearings. He ensured that she had all the relevant documents which included a CD-ROM with the CCTV footage that Mr Robinson had obtained. She was instructed to treat each

hearing entirely separate and independent from the other as both employees faced separate and different allegations, although they clearly dovetailed in relation to the events on 17 and 18 November.

170 The Claimant indicated by email dated 17 December that she wanted the Respondent to speak to a colleague named Mahrnoush Mosleh-Abadi, who she believed could provide vital evidence in support of her case against Ms Koutsompina. She also indicated that she wanted to see the original CCTV footage, uncompressed. She requested video footage from 8am to 2 pm or 'perhaps the entire day' as she considered that it would support her case. She indicated that she would not be able to attend at a disciplinary hearing before having an opportunity to inspect the video footage. This was the first time the Claimant had requested the CCTV footage for the whole morning or the whole day. She also offered to take a polygraph test. Ms Sands replied to the Claimant on 19 December advising her that she was able to call witnesses to the hearing. She indicated that she would make enquiries about the CCTV footage and that she was not aware of how reliable a polygraph test would be.

171 The Respondent made arrangements for the Claimant's witness to attend the disciplinary hearing. In addition, the Respondent engaged a CCTV engineer to attend the office to obtain the footage that the Claimant requested. On 19 December, the Respondent's solicitor informed Ms Sands that the CCTV engineer had confirmed that the CCTV footage for 18 November had been irrevocably overwritten and was no longer available.

172 Although the Claimant was unhappy about proceeding with the hearing without the additional CCTV footage she requested and although she considered that she had been given insufficient notice; she did attend the disciplinary hearing on 21 December, unaccompanied. Earlier on that day, she had emailed the Respondent to say that she had previously asked Alan Wells to save a copy of the CCTV footage.

173 The Claimant did not ask for a copy of the investigation report produced on the allegations against Ms Koutsompina and which would have formed the basis of the allegations that were considered in Ms Koutsompina's disciplinary hearing. It is unlikely that the Respondent would have given her those documents had she asked for them as they related to Ms Koutsompina.

174 In preparation for the Hearing the Claimant had the CCTV footage analysed and there are gaps of seconds in it. The expert was unable to say how they were caused. The expert did not say that the footage had been tampered with. Once Mr McDougall became aware of how unsatisfactory the CCTV system was he had it replaced.

Allegation 32

175 At her disciplinary hearing Ms Sands gave the Claimant an opportunity to explain what happened on 17 and 18 November and to comment on the investigation report and statements. The Claimant confirmed that she had an opportunity to read all the documents before attending the disciplinary hearing and that she was happy to have the meeting without a companion. From the minutes of the disciplinary hearing that we had in the bundle, we find that the Claimant discussed each of the allegations against her and put forward her version of events to Ms Sands.

176 The Claimant's witness, Mahrnoush Mosleh-Abadi attended the disciplinary hearing. Her evidence was that Ms Koutsompina had spoken to her in the toilets about the Claimant. It is likely that Ms Koutsompina spoke to Mahrnoush after the incident on 17 November. She recalled that Ms Koutsompina said to her that she was really upset about what had happened that day and that she had told Andrew Monk about what happened. Ms Koutsompina said that if it happens again she would complain to Mr McDougall and that she knew that Mr McDougall 'hates' the Claimant. The Claimant had also complained to Ms Mosleh-Abadi about Ms Koutsompina. Ms Mosleh-Abadi told Ms Sands that she listened to both her colleagues. She felt unable to say anything to either of them as she wished to maintain her friendship with both women. Ms Mosleh-Abadi then left the disciplinary hearing.

177 The Claimant explained to Ms Sands how she remembered the incident in the printer room and confirmed that she had asked Ms Koutsompina whether she wanted to take her on and that she should pick and choose her battles more carefully. The Claimant also admitted to calling her a '*bitch'* as they both left the print room. She confirmed that she had a heated discussion with Ms Koutsompina when they were back in the main office. In the Hearing, Ms Sands confirmed that the Claimant did not ask her for copies of the statements that were used in Ms Koutsompina's hearing.

178 In the minutes it was noted that the Claimant complained about the fact that she had not been given the CCTV footage that she wanted. She alleged that she has asked Mr Wells to save the CCTV footage for her and later in the hearing she alleged that she had also mentioned it to Mr Monk. She alleged that Mr McDougall had been quite volatile towards her on numerous occasions and that she had suspicions that this case would be turned against her. She indicated her intention to appeal, although at that stage Ms Sands had not yet made a decision and there was nothing to appeal. Ms Sands had however, outlined the appeal process to her. The Claimant confirmed that she was satisfied with the way that the meeting had been conducted and that she had bee able to put forward all the points she wanted.

179 Mr McDougall later confirmed in an email that as only he and Nick Hancock had the passwords to access the CCTV it would not have made sense for Mr Wells to have promised the Claimant that he would retain CCTV footage for her. He would not have been able to do so. Mr Wells had not told Mr McDougall about any conversation that he had with the Claimant about the CCTV footage. During the disciplinary hearing, the Claimant stated that she had sent a text message to Mr Wells to ask him to save the CCTV footage but that she no longer had that text message. We had no evidence of this in the Hearing. Also, that is different to her earlier recollection of speaking to him and asking her to keep a copy of the CCTV footage.

180 We find that Mr McDougall was away on business on the days of the incidents on 17 and 18 November. He was also away on business from 21 November until 29 November. The log-in and log-out records provided to us at the Hearing show that he did not come in to work again until 7.17am on 30 November. Mr Robinson viewed the CCTV on the morning of 30 November and we have set out our findings of that day above.

181 There were no CCTV cameras in the print room, which meant that the footage that the Claimant was asking for would not have assisted the Respondent in deciding what happened in the print room. It could only have related to the other incident that the Claimant stated occurred on the morning of 18 November. The Claimant had not informed the Respondent's solicitor or Mr Robinson that she wanted the CCTV retained and considered as part of the evidence in the investigation. In her complaint to the Respondent dated 21 November, the Claimant referred to CCTV and stated that the incident on the morning of 18 November would have been captured on it. In her interview by Mr Robinson she again referred to the CCTV of the morning of 18 November and stated that it should give a view of Ms Koutsompina walking towards her. Mr Robinson asked for and obtained from Mr McDougall CCTV footage from the times mentioned in the Claimant's email of 21 November and considered it as part of his investigation. She did not refer to footage for the whole day or the whole morning.

182 We find that it was not until 17 December, after she had received the invitation to the disciplinary hearing and viewed the enclosed footage that the Claimant wrote to the Ms Sands and requested CCTV footage. The Respondent immediately arranged for a CCTV engineer to attend the premises on 19 December. The engineer confirmed that day that the footage from 18 November had been irrevocably written over.

183 After considering all the evidence put before her at the disciplinary hearing, Ms Sands decided that Ms Koutsompina had not committed gross misconduct. She stated in a letter to Ms Koutsompina dated 4 January 2017 that she had not upheld the allegations against her, for the most part. She was informed that she was no longer suspended and could contact Mr McDougall with a view to making arrangements to return to work. The formal letter confirming the outcome of her disciplinary meeting was sent to Ms Koutsompina on 9 January. In that letter Ms Sands confirmed that the only allegation she upheld was that Ms Koutsompina had been rude to the TNT driver. She issued her with a first written warning because she considered that to be misconduct. Although she was advised of her right to appeal, Ms Koutsompina accepted her warning and returned to work.

184 Ms Sands also wrote to the Claimant on 4 January with the outcome of her disciplinary hearing. She informed the Claimant that she upheld that allegation that she had approached Ms Koutsompina on 17 November in an aggressive manner and that she had demeaned her in the way she referred to her lack of work in front of others. She also upheld the allegations related to 18 November which were that the Claimant had assaulted Ms Koutsompina by pushing her with her shoulder in the print room, she had spoken to her in a threatening manner and that whilst leaving the printer room she had called her a 'bitch'. Ms Sands referred to the Respondent's staff handbook in which violence or verbal abuse towards fellow employees is listed as an example of serious misconduct that would warrant summary dismissal. She considered that the allegations found against the Claimant fell within that category and informed the Claimant that her employment was terminated summarily because of her gross misconduct. The Claimant was advised of her right to appeal against the dismissal in writing, within 5 days of receipt of the letter, to the Board of Directors.

185 Although not referred to in the letter, Ms Sands' live evidence was that in deciding what would be an appropriate sanction for the Claimant; she weighed the Claimant's long service with the Respondent against what she considered was the lack

of remorse she had shown at the disciplinary hearing; the lack of recognition of wrongdoing and the severity of her actions as she had been violent to a colleague. She also thought that there was a strong likelihood that the Claimant would continue to behave in an aggressive manner towards Ms Koutsompina if she continued to be employed.

186 Ms Sands' evidence was that the Claimant had not informed her that she thought that the CCTV evidence had been tampered with, so she was unable to address that point in her hearing. She was unaware that Mr McDougall had replaced his security system. She confirmed that she also conducted a disciplinary for Mr McDougall in respect of Alan Wells. She had never met McDougall before she conducted the Claimant and Ms Koutsompina's disciplinary hearings. She spoke to Mr McDougall as part of further investigations connected with Mr Wells' disciplinary. She did not meet Mr McDougall until 30 March.

187 Ms Sands confirmed that she had been informed by Mr McDougall's solicitor that there had been no prior disciplinaries against either employee.

188 On 4 January Mr McDougall wrote to the Claimant confirming Ms Sands' decision that she was summarily dismissed for gross misconduct and would not be entitled to any notice pay.

189 The Claimant appealed against her dismissal by an email dated 6 January 2017. In her appeal she referred to a number of matters that had not been mentioned to Mr Robinson or Ms Sands. She accused Ms Sands of bias against her and referred to discrimination, work-related stress, whistleblowing, victimisation, exploitation and bullying and threatening behaviour. She also alleged that sections of the CCTV footage were missing and that the incident where Ms Koutsompina had walked into her had been deliberately removed from the footage. Ms Sands directed her to address her appeal to the Respondent.

190 The Claimant sent her appeal to Mr McDougall having added an allegation that the whole thing had been set up to find her guilty and to see her dismissed. She threatened legal proceedings and informed him that he would be hearing from her solicitor.

191 In an email dated 12 January Mr McDougall acknowledged her appeal. He told her that an appeal hearing before an independent person had been provisionally arranged for 26 April 2017. That was clearly an error which was corrected early the next day by another email in which he informed her that the appeal hearing would be conducted 26 January 2017.

192 The Respondent appointed an independent professional to conduct the hearing. Ms Melville is an experienced employment barrister in independent practice. She wrote to the Claimant on 19 January inviting her to the appeal hearing on 26 January 2017. The Claimant was told that Ms Sands would be there to answer any questions about her decision to dismiss the Claimant. The Claimant was reminded about her right to be accompanied. She was also informed that additional documents would be sent to her.

193 Ms Melville was instructed to chair and fairly, objectively and independently determine the Claimant's appeal against her dismissal. She was given all the relevant information and documents which she then sent to the Claimant.

194 The Claimant confirmed at the outset of the hearing that she was content to proceed without being accompanied. Ms Sands was called to give evidence at the appeal hearing. This was not meant to be a re-hearing but a review of the original decision. However, Ms Melville questioned Ms Sands on her conclusions and conducted a thorough and robust appeal. She challenged Ms Sands' conclusion that the Claimant had been aggressive on 17 November. She also questioned and challenged her on her conclusion that the Claimant spoke to Ms Koutsompina in a threatening manner in the printer room. She was also critical of how Ms Sands came to the decision that dismissal was an appropriate sanction.

195 During the appeal hearing, the Claimant stated that Ms Melville had been very thorough. Also, after the appeal she sent an email to Ms Melville on 31 January 2017 in which she stated that she appreciated that the matter was finally in professional hands.

196 Ms Melville considered all the documentation in the Claimant's case. She did not see the documents relating to Ms Koutsompina's disciplinary process but it was not necessary for her to do so in order to hear and decide on the Claimant's appeal. The Claimant did not ask her to look at those.

197 Ms Melville conducted her own further investigations following the appeal hearing into some of the matters the Claimant raised. She spoke to the manager of the company responsible for setting up and maintaining the CCTV system at the Respondent and enquired why the footage was recorded in files or 'bites' rather than in a continuous reel. She also had Mr Paganuzzi ask Mr McDougall about incidents in the workplace involving Ronald Filtness and Darren Clark who the Claimant alleged had been treated better than she had although they had committed acts of misconduct. Mr McDougall confirmed that Darren Clarke had been dismissed for misconduct, including abusive behaviour to another employee.

198 After due consideration of all the matters covered in the appeal hearing and the further information obtained through her investigations, Ms Melville wrote to the Claimant on 9 February setting out her decision on the Claimant's appeal.

199 She upheld Ms Sands' decision that the Claimant should be dismissed for gross misconduct. However, she differed from Ms Sands in a number of respects. She found that there had been insufficient evidence to conclude that the Claimant's tone had been aggressive when she initially spoke to Ms Koutsompina on 17 November when she asked her to look at the email. In her view, Ms Sands should not have taken Ms Koutsompina's evidence into account in deciding whether this allegation occurred. She concluded that in relation to the incident on 17 November, there were sufficient grounds for a finding of misconduct – at the lower end of the scale – as opposed to a finding of gross misconduct.

200 Also, although she agreed with the finding that the Claimant had spoken to Ms Koutsompina in a threatening manner when she was leaving the printer room and

had called her a *'bitch'*, she was also conscious that it had not been possible for Mr Robinson to prove or disprove the allegation that Ms Koutsompina had deliberately 'brushed' into the Claimant that morning. Instead she concluded that, even without the CCTV evidence, it was possible that it had happened as the Claimant said and if so, it could provide a context for the Claimant speaking to Ms Koutsompina in the way that she did when she asked her if she wanted to take her on. She decided that the way the Claimant spoke to Ms Koutsompina on that occasion was misconduct rather than gross misconduct.

201 In relation to the other allegations, Ms Melville agreed with Ms Sands that the Claimant's actions after the alleged pushing incident on 18 November had not been consistent with someone who had been the victim of attack by Ms Koutsompina and was more consistent with her having pushed Ms Koutsompina as alleged. She concluded on balance, that it was more than likely that the Claimant had pushed Ms Koutsompina in the printer room in retaliation for a perceived slight earlier that day. The Claimant is alleged to have responded to Ms Koutsompina's comment, *"don't push me",* with a reference to Ms Koutsompina pushing her earlier that day. Ms Melville's view was that such behaviour by the Claimant would not have been justified and would still have amounted to gross misconduct. If there was provocation, it could only be considered when it comes to deciding on the appropriate sanction. She did not find the Claimant's explanations of what had occurred to be credible and she did not believe her explanation. On this key finding, Ms Melville agreed with Ms Sands.

202 It was Ms Melville's conclusion that the Claimant did deliberately push Ms Koutsompina in the print room on 18 November 2018 and that this was an act of gross misconduct.

203 In relation to the Claimant's allegations about the CCTV footage Ms Melville concluded that there was no credible evidence to support the contention that it had been tampered with. She concluded after conducting her own investigations that the reason why the alleged incident on the morning of 18 November was not captured in the CCTV footage was either because it did not happen or because it happened at a different time than the one originally specified by the Claimant.

204 Ms Melville investigated and came to the conclusions on the other matters in the Claimant's appeal such as an allegation of bias in the process and various allegations against Mr McDougall personally such as discrimination on the ground of gender, verbal abuse and bullying/threatening behaviour. She decided that she either did not have sufficient information to be able to decide some of the issues or that far from victimising her – Mr McDougall had gone to great lengths to set up an independent, professional process and distance himself from it.

205 The only act of misconduct she upheld was the most serious one; pushing Ms Koutsompina in the print room on 18 July 2018. Unlike Ms Sands, Ms Melville had decided that other three charges were not gross misconduct. However, they were acts of misconduct that formed part of the same sequence of events. She went on to consider whether dismissal was still an appropriate sanction as she had come to a quite different conclusion on the charges from Ms Sands.

206 It was at this point that she looked at the 'comparators' that the Claimant had referred to in the appeal. Ms Melville considered the information she gleaned from her investigations into the way in which other employees at the Respondent had been treated when they assaulted or abused other colleagues. Darren Clark had been dismissed for misconduct which included abusive behaviour towards fellow employees. There was no evidence of any incident or altercation between female machinists and there was no evidence of an altercation between Darren Clark and Ron Filtness.

207 Ms Melville concluded that the Respondent had previously dismissed an employee for abusive behaviour to a colleague. She also considered that the Claimant had a clean disciplinary record during her employment at the Respondent. She considered that an employee can be dismissed for a first offence of gross misconduct – especially one involving physical violence. She concluded that even if Ms Koutsompina had been guilty of provocative behaviour herself that did not provide sufficient mitigation for the Claimant's conduct. Ms Melville took all of that into consideration when she confirmed that the appropriate sanction for the Claimant was dismissal. After due consideration of the facts, the evidence and any points in mitigation for the Claimant, Ms Melville came to the decision that the appropriate sanction was dismissal. This was confirmed in a letter to the Claimant dated 9 February 2017.

Allegation 33

208 The Claimant alleged that Dave Yates was given AutoCad training and she was not. We refer to our findings in relation to paragraph 107 above under allegation 23. The Claimant had not wanted to undergo the AutoCad training when first offered and Mr McDougall trained her on it. Her evidence was that her drawings were good and that she was quite capable of using it. She never asked for training.

209 The Respondent was training Mr Yates so that he could undertake a wider variety of work in the office, including using the AutoCad system. This occurred in 2016, which was over 10 years after the Claimant began working with the Respondent.

Applying law to facts

Time limits

210 The Tribunal will firstly address the time limits in this case as there are a number of allegations spanning 12 years. Does the Tribunal have jurisdiction to consider all the Claimant's complaints?

211 The Claimant's allegations span a period of time beginning in 2005 and leading to her dismissal in 2017. All 32 allegations are described as allegations of sex discrimination.

Allegations 1 – 9

212 Allegations 1 to 9 range from 2005 to 2009. The next allegation relates to the failure to pay the Claimant for the overtime worked on 6 August 2011. There were no allegations in 2010. There is one additional allegation in 2011, which is allegation 11.

After that, the Claimant's allegations begin again in 2013 and continue to the end of the Claimant's employment in 2017.

213 We have no evidence from the Claimant on why she did not issue proceedings if the serious allegation that she makes in 2005 and 2009 on sexual conduct harassment as well as direct sex discrimination and sex related harassment had actually occurred.

214 There was no explanation from the Claimant as to why she did not seek advice or complain or raise a grievance in relation to those serious allegations that she makes in allegations 1 to 9. The claim was brought in 2017 and these allegations date back to the period 2005 – 2009 and were therefore issued a number of years out of time.

215 In our findings set out above, we found it unlikely that the allegations numbers 1 to 9 occurred. It is this Tribunal's judgment that the Respondent did not act in the way set out in those allegations. Those allegations therefore cannot form part of any continuing act by the Respondent against the Claimant.

216 As it is our judgment that there was no continuing act in relation to allegations 1 – 9, we then considered whether it is just and equitable to extend the time to enable it to consider those allegations. The Tribunal considered the factors set out in the case of *Robertson* as outlined above. Also, the factors in *British Coal Corporation v Keeble*. These events are alleged to have occurred a very long time ago and the Claimant has delayed significantly in bringing her complaints. The Claimant has not given any reasons for the delay. The Respondent has to respond to allegations about events that are alleged to have occurred a very long time ago and is therefore prejudiced in doing so.

217 The Claimant's evidence was that she sought legal advice in 2014; however, she did not bring a complaint before the Tribunal until she was dismissed in 2017. The Tribunal conclude that she must have known or ought to have known of her rights when she received that advice. The Tribunal does not know why the Claimant did not take any steps to bring her complaint to the Employment Tribunal if she considered that she was subjected to sexual conduct harassment and sex related harassment and direct sex discrimination between 2005 and 2009.

218 In weighing up prejudice to both sides, we were aware that if we did not extend time, the Claimant will not be able to bring these claims and seek compensation in respect of them. If we did extend time the Respondent would be faced with allegations that it had not been told of at the time they occurred and would have difficulty responding to them given the time that has elapsed. Weighed against the Claimant was also our finding that those events did not occur or did not occur in the way as the Claimant has pleaded them.

219 In our judgment, the prejudice against the Respondent outweighs that to the Claimant. This is especially because in our judgment, those events did not occur in the way pleaded.

220 It is therefore this Tribunal's judgment that it is not just and equitable to extend the time to enable us to consider allegations 1 to 9. The Tribunal has no jurisdiction to consider those complaints. They are struck out as being out of time.

Allegation 10

221 It is this Tribunal's judgment that the Claimant was not paid for overtime worked on Saturday 6 August 2011. However, we were not told why the Claimant did not bring a complaint about this matter to the Respondent or to the Employment Tribunal before 2017.

222 The Claimant did not provide any explanation as to why she did not bring the complaint in time.

223 This claim was also issued in 2017 having occurred in 2011.

224 This was a complaint of unlawful deduction of wages as well as of sex discrimination.

225 Complaints of unlawful deduction of wages have to be issued within 3 months from the date of the deduction unless it is not reasonably practicable to do so. Having not been given any reason why it was not brought in time, it is this Tribunal's judgment that it had been reasonably practicable for the Claimant to have brought her claim for outstanding overtime wages in time. The Claimant did not raise a grievance with the Respondent, did not write a letter about it and did not bring any complaint to the ET in that time. The Tribunal has no jurisdiction to hear this complaint.

226 The Tribunal considered whether it was just and equitable to extend time to enable this matter to be considered as an act of discrimination. This allegation is not part of a continuing act as there are two years between allegation 9 and allegation 10.

227 Again, the Respondent has been prejudiced in responding to this claim. Alan Wells no longer works for the Respondent and the Respondent had difficulty in addressing it fully although Mr McDougall was clear that he would never have given instructions for the Claimant not to be paid for overtime worked.

228 It is likely that if the Claimant had sought legal advice about allegation 10, she would have been advised to issue proceedings or take necessary action. The Claimant took no action.

229 It is this Tribunal's judgment that the claim for the overtime pay was issued out of time, was not part of a continuing act, that it was reasonably practicable for her to have issued it in time and lastly, that it is not just and equitable to extend time for this matter to be considered.

230 As we have no jurisdiction to consider it, allegation 10 is struck out.

Allegation 11

231 The Tribunal's judgment is that this is also an allegation that is out of time and is not part of any continuing act. It is not similar to the allegation number 10 which relates to the failure to pay overtime in August 2011 and is not part of a continuing act in

relation to that allegation or the allegation that follows it - allegation 12 which relates to 2013 to 2014.

232 The Tribunal then considered whether it is just and equitable to extend time for this allegation to be considered.

233 It is the Tribunal's judgment, that this matter did not occur and we refer the parties to the findings set out above on allegation 11.

234 There is no particular date on which this matter is alleged to have occurred and the Respondent would be prejudiced if the Tribunal had to consider whether or not this allegation amounted to sex discrimination or sex related harassment or sexual conduct harassment and victimisation as alleged.

235 The Tribunal was given no evidence as to why the Claimant did not seek legal advice or take legal action if she considered that she was being harassed in this way or treated unlawfully in this way.

236 In this Tribunal's judgment it is not just and equitable to extend time to consider this allegation.

Allegations 12 – 33

237 Allegations 12 to 33 cover the period 2013 to 2017.

238 The Tribunal considered whether these allegations could be part of a continuing act. As most of these allegations concerned Mr McDougall and his relationship with the Claimant, it could be said that these are part of a continuing act.

239 There are no large gaps of time between these allegations and there is continuity in that the incidents are alleged to have occurred between the Claimant and Mr McDougall.

240 Also, as these allegations were more recent, Mr McDougall and the Respondent were able to respond to these allegations better than the earlier ones, in the pleadings and the Hearing. The Respondent did have some difficulty in recalling the earlier incidents.

241 On balance it is this Tribunal's judgment that it can consider allegations 12 to 32 in this case.

242 ***The Tribunal will now set out its conclusions on the central allegations that form the Claimant's case in relation to each of the Claimant's claims.***

Direct sex discrimination and sex related harassment

243 The Claimant's complaint is that allegations 1 to 32 were acts of direct sex discrimination. The Tribunal's judgment is that it cannot consider allegations 1 – 11 as

they have been issues out of time and it is not just and equitable to extend time to consider them

Allegations 12, 13, 14 and 15

244 It is this Tribunal's judgment that allegations 12, 13 and 14 did not occur. It is the Tribunal's judgment that the Claimant was not ridiculed and patronised, insulted or spoken about by Mr McDougall as a "stupid girl" or "silly tart".

245 It is this Tribunal's judgment that Mr McDougall would sometimes lose his temper and sometimes shout and get annoyed at employees if he considered that they were not performing or doing their jobs properly or according to how he had instructed them. However, the evidence was that he did not subject staff to personal insults, name calling or ridicule.

246 It is this Tribunal's judgment that those allegations did not occur at all or in the way alleged.

247 In relation to allegation 15, it is the Tribunal's judgment that there was a conversation about the Claimant's health in November 2015 in a meeting between the Claimant, Mr McDougall and Mr Hancock in which Mr McDougall enquired as to how long it would be before she would be back to work. He indicated to her that she need not return to work until she was well enough to do so and that she ought to get communication from her GP as to how the NHS could help her get well. It is this Tribunal's judgment that Mr McDougall was trying to assist the Claimant in getting a plan of action from her GP and in making sure that she did not return to work until she was well enough to do so. The Claimant was not asked to produce a medical certificate but was asked to go her GP for further information.

248 It is this Tribunal's judgment that the Claimant misunderstood Mr Hancock and Mr McDougall's intentions in the meeting and misinterpreted efforts to support her and assist her in getting help from a GP and the NHS as harassment and less favourable treatment. There was no evidence that it was.

Allegation 16

249 It is our judgment that Mr McDougall did not compel the Claimant to obtain a medical certificate as set out in the allegation or at all. The Claimant did not bring in a medical certificate at this time. It is likely that she had been made to do so, there would have been a medical certificate in her personnel file. There was no evidence to support the Claimant's allegation and we find that it is unlikely that it occurred. It is the Tribunal's judgment that it did not occur.

250 It is this Tribunal's judgment that the Claimant has failed to prove facts in relation to allegations 12, 13, 14, 15 and 16 that could lead the Tribunal to infer that she had been subjected to less favourable treatment on the grounds of her gender.

251 In this Tribunal's judgment, allegations 12 - 16 did not occur. There was no sex-related conduct. The Respondent did not create a hostile, offensive, humiliating, degrading or intimidating environment for her in relation to those allegations.

Allegations 17 and 18

252 It is our judgment that Mr McDougall was the expert in relation to the work produced by the Respondent. Mr McDougall is likely to have critiqued the Claimant's work. However, it is our judgment that the Claimant mistook criticism of her work as ridicule and patronisation. There was no evidence that Mr McDougall patronised the Claimant or told her that she was incompetent and pathetic as alleged in allegation 17 or dumb and stupid or accused her of sabotaging the job as alleged in allegation 18.

253 The evidence was that they sometimes had heated discussions about work and that the Claimant pushed back and in the face of Mr McDougall's opinion, she held her own opinion about the work. If he had used any of those words in talking to the Claimant, it is our judgment that she would have immediately protested.

254 In our judgment, the Claimant was not treated less favourably because of her gender in those incidents but was treated as an equal and someone who could have an input into the work that was being done at the business. Mr McDougall had high hopes for the Claimant when she was first appointed and that is why she was trained in many areas of the business. The Claimant was allowed to create curtains for some of the Respondent's important clients, to work on the AutoCad system and to deal directly with clients. Mr McDougall took her to meet the client at the Royal Opera House. In those circumstances, in our judgment, it is highly unlikely that he treated her in the way alleged in allegations 17 and 18.

255 It is also our judgment, that if the Claimant had spotted an error in a job, whether a miscalculation or otherwise and had not told Mr McDougall, it is likely that he would have been annoyed because that could have had serious implications for the business.

256 It is our judgment, that such disagreements that they had or when Mr McDougall expressed his annoyance or frustration with the way in which the Claimant was operating or choosing not to follow his instructions, were not directed at her because of her gender. The evidence was that Mr McDougall would become particularly frustrated if members of staff refused to accept that they made errors or failed to follow his instructions. The Respondent's company depended on its reputation.

257 In relation to allegations 17 and 18, the Claimant has failed to prove facts from which the Tribunal could inter that she had been treated less favourably on the grounds of her gender. It is our judgment, these matters, were not examples of direct sex discrimination.

258 This was not sex-related conduct. It is also our judgment that the discussions, arguments or contentions that the Claimant had with Mr McDougall during her employment and including spring and summer 2015 did not create a hostile, intimidating or degrading, humiliating or offensive environment for her. The Claimant did not behave as though it had. The Claimant continued to work for the Respondent. She brought no grievance or complaint. Although she sought legal advice in 2014, she took no action about the incidents contained in allegations 17 and 18; which in our judgment she would have had she considered that a hostile working environment was being created by Mr McDougall.

259 Ii is our judgment that these incidents are not examples of harassment and direct sex discrimination.

Allegation 19

260 It is our judgment, that this was an unpleasant incident for all parties concerned. Mr McDougall was extremely annoyed at finding a box that had some pieces of a customer's material still in it some three or four months after the work had been done.

261 It is our judgment that the Claimant initially avoided him when she was told that he wanted to speak to her and then later, engaged in an argument with him in the office in which the Claimant insulted him and refused to talk to him until she felt he had calmed down.

262 It is this Tribunal's judgment that the Claimant was able to respond robustly to Mr McDougall and held her own. The Claimant did not feel intimidated, humiliated or harassed in any way on that day. She responded strongly to Mr McDougall. He found it difficult to continue speaking as she kept interrupting him. It is our judgment that Mr McDougall was not out of control although he was annoyed. It was the Claimant who spent some time speaking loudly at him in the general office and informed him and everyone else that Surinder had left because of him. She publicly accused him of reducing her bonus because of lateness. She also informed him that she was trying to get another job. The Claimant had clearly decided that she no longer wanted to continue to work with the Respondent and made that clear in the discussion.

263 It is this Tribunal's judgment that the Claimant was not subjected to direct sex discrimination or less favourable treatment on the grounds of her gender in relation to the box incident in February 2015. There are no facts from which the Tribunal could draw such an inference. This was not sex-related conduct. Mr McDougall did not create a hostile, intimidating, degrading, humiliating or offensive environment for her in trying to express his frustration at her refusal to take responsibility for the box and her refusal to talk constructively about it.

Allegations 20 to 22

264 It is this Tribunal's judgment that allegation 20 did not occur. It is our judgment that Mr McDougall would critique the Claimant's work as he did with other employees but that he did not patronise or ridicule her. We have no evidence that he ignored her.

265 In relation to allegation 21 and the suspended curtain track, it is this Tribunal's judgment that Mr McDougall showed everyone how to tie the knot and did not speak to the Claimant like an infant or ridicule her. He called everyone to see the demonstration of tying the knot on the curtain track and then made them all do it. All the Respondent's witnesses agreed in the Hearing, that if not done properly, the curtain track could be dangerous as it was a heavy device. In our judgment, it was appropriate for people to know how to do it properly. This was not solely directed at the Claimant and it is likely that there were men in the group that had to show that they could tie the knot properly.

266 In relation to allegation 22, the Claimant did not follow Mr McDougall's instructions. Instead, she kept trying to find alternative way to do the job and this annoyed Mr McDougall as he considered that she was wasting time. He did shout at her that she should just make the sample in the way that she had been instructed to. This was not patronising or ridiculing but simply Mr McDougall having to raise his voice to get his instructions heard as the Claimant continually refused to follow them as she believed that she knew better how to do the job. Mr McDougall did bang his head on the workbench for dramatic effect but did not continually do so. It is also our judgment that he did not snatch the material from her hands, yell that she was pathetic and lose his temper for no reason. It is our judgment that Mr McDougall found this incident to be frustrating.

267 It is our judgment that Mr McDougall became annoyed and shouted and banged his head on the workbench because the Claimant refused to do the job as instructed. It was because the Claimant refused to do the job as he had instructed and continued to refuse to do so that he lost his temper and passed the matter to Mr Hancock to conclude.

268 It is this Tribunal's judgment that the Claimant has failed to prove facts from which the Tribunal could infer that she was treated less favourably on the grounds of her gender in relation to allegations 20, 21 and 22. Also, it is this Tribunal's judgment that this was not sex-related conduct and the way that Mr McDougall behaved towards the Claimant in relations to these three allegations did not have the purpose, or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

Allegation 23

269 In our judgment, there were occasional disagreements between the Claimant and Mr McDougall about the AutoCad drawings. However, there is no evidence that this was related to the Claimant's gender as opposed to the quality of her work or tendency to sometimes do things according to her own opinion rather than Mr McDougall's instructions.

270 There was no evidence that the disagreement over the AutoCad drawing in November 2016 was related to the Claimant's gender rather than the quality of her work. There was ono evidence from which we could draw such an inference.

271 It is this Tribunal's judgment, that if Mr McDougall and the Claimant had an argument about a drawing on the AutoCad system this was not sex-related conduct and did not have the purpose or the effect of violating her dignity or creating an intimidating or hostile, degrading, humiliating or offensive environment.

Allegation 24

272 Mr McDougall could not recall this alleged incident in the Hearing. We did not hear from anyone else apart from the Claimant about this.

273 It is this Tribunal's judgment that it is unlikely that this incident occurred.

274 There are no facts from which the Tribunal could infer that the Claimant was treated less favourably here or that she was subjected to any harassment in relation to this allegation.

Allegation 25

275 It is our judgment that the Claimant did receive a smaller bonus in 2015 than she had in the previous year. The Claimant's bonus in 2015 was £1,300 as opposed to a bonus of £1,600 that she had been paid in 2014.

276 Mr Wells had not been paid a bonus in 2015 at all.

277 The Claimant spoke to Mr McDougall about his decision to reduce her bonus in 2015. It is our judgment that she was therefore not intimidated by the reduction in her bonus as she was able to confront him about it. It is likely that she was unhappy about it.

278 Was it reduced or at a lower level than the previous year because of her gender?

279 The Claimant had been paid a larger bonus n 2014. Mr Wells had not been paid any bonus in 2015 year.

280 The Claimant had been taken to task about her tardiness and about performance matters in two meetings with Mr McDougall and also in letters from the company. It is likely, since those were mentioned as she left his room after discussing the bonus, that those were some of the reasons why her bonus had been reduced.

281 In this Tribunal's judgment, women employed by the Respondent were paid their full bonus in 2015 and 2016. Another male colleague, was not paid any bonus. There is no evidence that the payment of bonuses was in any way related to an employee's gender and there was no evidence that the Claimant's bonus was reduced because of her gender.

282 The Claimant has failed to prove facts from which the Tribunal could infer that the reason why her bonus was less than the previous year was because of her gender.

283 The burden of proof does not shift to the Respondent. It is also our judgment that Mr McDougall paid the Claimant a smaller bonus in 2015 as compared to 2014 because of work-related matters. It was appropriate for Mr McDougall to set her bonus at a level that reflected his assessment of her performance.

Allegations 26 and 30

284 These allegations relate to the Claimant's being awarded a lower bonus than she expected and not receiving an annual pay rise in 2016.

285 We reiterate here that at the Respondent there was no entitlement to a bonus or pay rise. They were always paid at the Respondent's discretion.

286 It is our judgment, that the Respondent decided to that she would not be given a pay rise because of her poor work attitude, poor timekeeping and poor performance. The Claimant was frequently argumentative as found above with Mr McDougall and frequently failed to follow instructions. By February 2016 Mr McDougall was also aware that the Claimant had told Mr Hancock that she was not going to be giving the Respondent 100% of her effort at work. He took all of those facts into account when deciding on the level of bonus to pay the Claimant and when deciding whether or not to award her a pay rise.

287 There is no evidence that the Claimant's gender featured in his decision or the forthcoming disciplinary process. In our judgment, the Claimant's gender was not a factor in his decision to pay her a smaller bonus than previously or not to give her a pay rise. The Claimant was aware that Sheree Richardson also had a pay rise and her full bonus. Ms Koutsompina also had a bonus in 2026 and there was no evidence that this was a bribe or was in any way related to the Claimant's subsequent dismissal. Mr McDougall assessed her contribution to the business as warranting the bonus she was paid.

288 It is our judgment that the Respondent's decision in relation to the Claimant's pay rise and her bonus in 2016 was not conduct related to sex and did not have the purpose, or effect of violating her dignity or creating a hostile working environment for her.

Allegation 27

289 It is this Tribunal's judgment that it is unlikely that the incident occurred as the Claimant has described. There was no evidence that Mr McDougall held the Claimant's gaze in an aggressive way or maintained eye contact with her in the way alleged. In our judgment, Mr McDougall spoke to the whole team in the workshop. The Claimant was not singled out in the way alleged. In her note of the event, the Claimant did not say that he held her gaze or maintained eye contact with her while speaking to the rest of the workshop staff. In our judgment, the Claimant added this detail later possibly in an effort to bolster her case.

290 It is our judgment that this was not unwanted conduct related to sex. Mr McDougall did not intend it to nor did it have the effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant.

Allegation 28

291 It is our judgment, that the Claimant was responsible for managing the situation around this cloth and dealing with the consequence of it being damaged in the workshop. The Claimant would not accept responsibility and instead continued to argue that because she has not taken the photograph she should not be blamed for what had happened. This was frustrating to Mr McDougall and may have caused him to shout. Mr McDougall had to resolve the matter as set out in our findings above.

292 In our judgment, this did not occur because the Claimant is female but was because of the way in which she handled the matter.

293 Mr McDougall shouted at her, but it was not conduct related to her gender. It was not because he wished to create a hostile or intimidating environment for her or to violate her dignity but because he was annoyed at the way she continued to avoid taking responsibility for something that had happened within a job that she was managing. The Claimant had been responsible for the job. It was for a new customer. The Claimant should have made sure that the photograph that was attached to the email better represented the damage to the cloth so that the client could see whether the repair was acceptable. She also should have ensured that the matter was reported to Mr McDougall earlier so that he could have overseen the repair or at least delegate it to her with her having had that knowledge. None of this occurred. The Claimant had not done her job properly and that is what caused Mr McDougall to shout.

294 It is likely that the Claimant and the rest of the team who worked on the cloth and the repair would have been upset at this incident. However, it is our judgment, that there were no facts from which we could infer that Mr McDougall became annoyed and shouted at the Claimant as an act of less favourable treatment towards the Claimant on the grounds of her gender.

295 It is our judgment, that this was not an example of conduct that had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. This was not unwanted sex related conduct but related to the Claimant's performance of her job.

Allegations 29 and 33

296 It is our judgment that the Claimant stated to Mr McDougall that she was looking for another job. She also said this to Mr Hancock who notified Mr McDougall. There was a real possibility that she was leaving. She had made an application for work from a client. It is our judgment that it was appropriate for Mr McDougall to start to think about how he was going to replace the Claimant and delegate the jobs for which she was responsible. The Claimant was responsible for health and safety within the business and had also been responsible, along with Mr McDougall for doing drawings on the AutoCad system.

297 In our judgment, as Dave Yates was qualified in some matters within the business and was interested in many more, it was appropriate to train him on the AutoCad system and also to deal with health and safety matters.

298 At the time that the Claimant was informed that Mr Yates would be taking over her health and safety responsibilities she made no comment and it did not seem to be an issue for her.

299 It is our judgment, that Mr McDougall decided to train Mr Yates on the AutoCad system so that he could take over the responsibility of making drawings together with Mr McDougall, when the Claimant left.

300 When the Claimant was first learning to programme, she was offered the opportunity to undergo the AutoCad training at evening classes and she refused. Ten years later, by the time the Respondent is considering giving Dave Yates this training,

the courses are now available in the day time. Dave Yates took up the offer to have that training. The Claimant never asked for training on the AutoCad system. The Claimant's evidence was that she was confident and able on the AutoCad system. In our judgment, it was unlikely to have occurred to Mr McDougall that she required further training on the AutoCad system.

301 It is our judgment, that the Respondent's decision to hand over health and safety responsibilities to Dave Yates and to organise training for the AutoCad system also for Dave Yates, were not acts of less favourable treatment towards the Claimant. The Claimant had been trained on the AutoCad system by Mr McDougall. The Claimant strongly proposed that she was leaving the Respondent's employment and therefore the health and safety responsibilities would need to have been delegated to someone else upon her departure. It was appropriate to have a handover so that there was no abrupt change.

302 It is this Tribunal's judgment that the Respondent's decision to instruct the Claimant to hand over her health and safety responsibilities to Dave Yates and to offer Dave Yates AutoCad training was not sex related conduct and did not have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading or otherwise intimidating environment for her.

303 There are no facts from which the Tribunal could infer that these were acts of less favourable treatment towards the Claimant on the ground of her gender.

Allegations 31 and 32

304 The Claimant and Argyro Koutsompina were both female employees who had been involved in incidents at work on 17 and 18 November 2018. Mr McDougall was not in the office on either of those two days.

305 When Mr McDougall heard about the incidents, he asked that both employees make written reports of the incidents so that he could consider them and decide what actions are appropriate.

306 Because of his relationship with the Claimant and because of the seriousness of the allegations made by both employees; Mr McDougall decided that it would be appropriate for this matter to be handled by external professionals outside of the company and he immediately instructed his solicitors to take over the handling of the process. The Respondent's solicitors appointed the investigator who conducted an independent investigation and recommended that disciplinary proceedings should be brought against both the Claimant and Ms Koutsompina.

307 Independent professionals were engaged to conduct the disciplinary hearing and the appeal hearing. Those individuals were female. There was no evidence that Mr McDougall had any influence over Ms Sands or Ms Melville. There was also no evidence that he had any influence over Mr Robinson.

308 The Claimant was accused of physical violence against Ms Koutsompina and she made serious allegations against Ms Koutsompina. It was appropriate that both should be suspended. There was no evidence that the suspension of both her and

Ms Koutsompina were related to their gender or that it was intended or caused either of them to feel that their dignity had been violated or that it created an intimidating, hostile, degrading or humiliating environment for either of them.

309 Once Mr Robinson suggested that there should be disciplinary proceedings brought against both employees, Mr McDougall considered the investigation report and statements and concluded that this was a serious matter and that it was appropriate to take disciplinary action. The Respondent's solicitors then took over and ran the whole process.

310 It is our judgment that the process was not influenced by Mr McDougall and he had no input into the decision to dismiss the Claimant.

311 Once Ms Sands made the decision to dismiss the Claimant, it was right that Mr McDougall, as her employer should write the letter of dismissal and inform her of her right of appeal. Once she concluded her process, Ms Melville wrote to the Claimant with her decision on the appeal.

312 There was no evidence that Mr McDougall tampered with the CCTV footage. It was unlikely that he had the knowledge to be able to do so and he did not have sufficient time either to be able to do so considering that he was not at work until the morning on which he gave Mr Robinson the footage on the memory stick. There was no evidence that the CCTV footage had been cut and edited. There was no evidence that Mr McDougall had the inclination to do so or to have someone else do so. Mr McDougall was interested in having a clear, professional, impeccable process in relation to the serious allegations that both employees made against each other and it is our judgment, that he allowed the process to continue and did not interfere with it or seek to control it.

313 The evidence was that Mr Robinson, Ms Sands and Ms Melville had never worked for Mr McDougall before conducting these disciplinary procedures. Ms Sands has subsequently worked for Mr McDougall on other matters.

314 It is this Tribunal's judgment that the suspension, disciplinary process and appeal process and the decision to dismiss the Claimant were not acts of direct discrimination against her or acts of sex related harassment.

315 In our judgment the Claimant failed to prove facts from which the Tribunal could infer that her suspension or dismissal was in anyway related to her gender. The complaint that her suspension and dismissal were acts of less favourable treatment on the grounds of her gender fails and is dismissed.

316 The Claimant's complaints of direct sex discrimination and sex related harassment fail and are hereby dismissed.

Sexual conduct harassment

317 This complaint relates to allegations 2 – 5. It is this Tribunal's judgment that the allegations numbered 2 to 5 were brought out of time. They are alleged to have occurred between December 2005 and August 2006. The claims were brought in

February 2017. As already stated, the Claimant did not provide sufficient reasons as to why she delayed so many years before bringing these complaints.

318 In addition, when considering whether it is appropriate to extend time on a just and equitable basis, the Tribunal's judgment is that these incidents did not occur at all or in the way set out in this claim.

319 It is our judgment, that the Tribunal has no jurisdiction to consider the complaints of sexual conduct harassment as set out in allegations 2 to 5 of this claim and they are dismissed.

Victimisation

320 The Claimant's allegation is that she did a protected act as defined in section 27 of the Equality Act in February to April 2015 when she said to Mr McDougall that she believed that she was being singled out and that he was discriminatory towards her.

321 It is our judgment, that the Claimant did not make that statement to Mr McDougall between those dates or at all.

322 It is our judgment, that the Claimant's notes of 23 February 2015 are not contemporaneous and are unreliable. These are notes of what the Claimant would have liked to have said and a record of her thoughts on what occurred in the meeting, which she noted after the meeting had ended. The Claimant also noted that it is likely that Mr McDougall did not like her because she could stand up for herself and that he was using his best bullying tactics in order to drive her towards quitting her job. If that is true it would not be on the ground of her gender.

323 It is our judgment, that the Claimant did not tell Mr McDougall between February and April 2015 that she believed that she was being singled out or treated in a discriminatory fashion because she was female. She did not say to him at any other time that she believe that he was treating her in a discriminatory fashion.

324 Apart from Mr McDougall, the evidence from Mr Hancock who attended meetings with the Claimant and Mr McDougall; Ms Hornsby and Mr Monk was that they had never heard the Claimant tell Mr McDougall or anyone else that she believed that he was treating her badly because of her gender or that she was being discriminated against. It is our judgment, that the Claimant did not do a protected act between February and April 2015.

Unlawful deductions from wages in breach of contract

Allegations 10, 25, 26 and 30

325 In relation to allegation 10, it is the Tribunal's judgment that this claim has been brought approximately six years after the date upon which the Claimant was entitled to be paid for the overtime worked. The Tribunal was given no reason as to why the claim was brought so late. It is our judgment, that it was reasonably practicable for the Claimant to have been able to bring this claim on time.

326 The Tribunal has no jurisdiction to consider it.

327 The Claimant does not have a contractual right to a bonus in relation to allegation 25. There was no right to a bonus and this was a discretionary payment that the Respondent made to staff if he considered that they have made a contribution to the company and its profits of that year.

328 In our judgment, the decision not to pay the Claimant the same or an increased bonus from the previous year, was not a deduction from wages or a breach of contract.

329 The Claimant's claim fails.

330 Similarly, in relation to allegation 26, the Claimant was entitled to annual pay review. Mr McDougall on behalf of the Respondent reviewed her salary that year and decided not to increase it. The Claimant has failed to show that this is a deduction of her wages or a breach of contract.

331 In relation to her complaint that the Respondent has failed to pay her holiday pay, the Claimant has failed to prove that she is owed any holiday pay.

332 The Respondent's case was that she has been over paid holiday pay but there was no counterclaim.

333 The Claimant's claim fails.

334 Allegation 30 relates to the bonus in November 2016. There was no contractual right to a bonus. The Claimant has failed to show that a decision to pay her a smaller bonus is a breach of contract or a deduction from her wages.

335 The Claimant's complaints of unlawful deduction from wages, breach of contract and outstanding holiday pay fail and are dismissed.

336 The Claimant and Mr McDougall had many differences over work. The Claimant was very confident, had a strong opinion on her abilities and had her own ideas about how the work should be done. Much of the conflict that arose in this case between the Claimant and Mr McDougall arose from these facts. In this Tribunal's judgment, the Claimant was not subjected to discrimination on the grounds of her gender, was not harassed, victimised or subjected to unlawful deductions from wages or breaches of contract.

Unfair dismissal

337 In this Tribunal's judgment, given that both the Claimant and Ms Koutsompina were accused of serious misconduct, it was appropriate to suspend them while investigations were conducted. The Respondent had written complaints from both employees which it took seriously as they contained serious allegations of misconduct.

338 The next issue for the Tribunal is what was the reason for the Claimant's dismissal?

339 The Respondent has proved that the reason for the Claimant's dismissal was gross misconduct. That is a conclusion that Ms Sands arrived at and the conclusion that Ms Melville also arrived at even though she did so by a slightly different route to Ms Sands. Even though there had been disagreements between the Claimant and her employer, she was not subject to disciplinary action until there was a serious allegation that she had been violent to a colleague at work. It is our judgment that the Claimant was dismissed for gross misconduct.

340 Misconduct is a potentially fair reason for dismissal under section 94 of the Employment Rights Act 1996.

341 The next question for the Tribunal was whether the Claimant's dismissal for gross misconduct was fair and reasonable in all the circumstances. The Claimant contends that the dismissal was unfair because the Respondent did not carry out a reasonable investigation and did not have reasonable evidence upon which to decide that she was guilty of misconduct.

342 It is this Tribunal's judgment that Mr McDougall made the right decision in deciding to instruct independent professionals to conduct these proceedings rather than doing it himself. As soon as he was aware that this was a serious matter, he immediately instructed his solicitors to take over the matter on his behalf. In our judgment, he kept away from the investigation and the disciplinary process as much as possible.

343 Mr Robinson is an independent professional barrister specialising in employment law. Mr Robinson conducted a thorough investigation - attending at the Respondent's premises and taking evidence himself, including statements from all concerned. He took his cue from the Claimant's written complaint as to which bit of CCTV footage he needed to look at in relation to her complaint. Once he had considered all the evidence, he produced a comprehensive report highlighting the matters that he considered to be serious, those that he was unable to draw conclusions on and those which he was. He produced two reports. There was nothing inherently wrong or unfair in the production of two reports – one dealing with the allegations against each employee. The allegations against the Claimant were different from the allegations against Ms Koutsompina. The statements collected as part of the investigation into the allegations against Ms Koutsompina's were different from those collected in the Claimant's investigation. Some of the allegations were mirror images as they related to the incidents on 17 and 18 November. Mr Robinson recommended that separate disciplinary processes should be started against the Claimant and Ms Koutsompina. It was open to the Respondent to follow that recommendation and since the matters involved were quite serious, it was reasonable for Mr McDougall to indicate that he wanted the process to continue.

344 Ms Sands conducted a fair disciplinary process. The Claimant was able to attend the hearing and to make her representations on the allegations against her. The Claimant had not asked in time for the CCTV footage for the whole day/morning to be retained so that the incident which she alleged occurred on the morning of 18 November could be viewed. That was not the fault of Ms Sands or Mr McDougall.

345 There was no evidence that the CCTV footage had been cut or edited.

346 Ms Sands determined that it was likely that the Claimant had assaulted Ms Koutsompina in the print room as alleged and that she should be dismissed for gross misconduct. She also decided that the Claimant had also committed gross misconduct in the way she spoke to Ms Koutsompina in the office on 17 November, as an act of aggression and in the way she spoke to her in the print room and on the way back to the office on 18 November.

347 On the Claimant's appeal, the Respondent appointed another independent experienced barrister in employment law to conduct the appeal hearing. Although this was not a rehearing but was a review of Ms Sands' process; Ms Melville decided to conduct further investigation into the Claimant's allegations around the CCTV footage and on whether or not the decision to dismiss the Claimant was comparable to the way other similar conduct by others had been treated in the workplace. Ms Melville saw the full investigation report on the allegations against the Claimant. That was all she was required to see as she was only hearing the Claimant's appeal against dismissal.

348 She set out the findings from her further investigations in her letter to the Claimant confirming dismissal. It was her considered decision that the Respondent had dealt with Darren Clark in the same way as he had been dismissed for abusive behaviour towards another member of staff. She concluded that Mr McDougall had not been involved with the CCTV footage and that the fact that the footage had been written over, was not deliberate or aimed at covering up any evidence. Ms Melville differed from Ms Sands in her decision on the events that took place on 17 and 18 November 2016. She decided that although it was wrong it would not be correct to describe the way in which the Claimant had behaved towards Ms Koutsompina in the office on 17 November as aggressive and gross misconduct. She decided that it was more properly classed as misconduct. She determined that the conduct the Claimant displayed by calling Ms Koutsompina a *bitch* and the way she spoke to her in the print room was not gross misconduct but was misconduct. However, she found on balance that it was more likely than not that the Claimant had physically pushed Ms Koutsompina as an act of violence in the print room and that this was gross misconduct. On that basis, she confirmed the Claimant's dismissal when it was known that the Respondent had previously dismissed staff for physical violence.

349 In our judgment, it was fair and within the band of reasonable responses for the Respondent to come to the conclusion from the evidence that the Claimant had committed gross misconduct. As there were no other witnesses in the print room and no CCTV, the Respondent had to weigh up the Claimant's evidence against Ms Koutsompina's, look at what they both did after the alleged incident in the print room and come to a conclusion on balance, on what was likely to have occurred. That is what Ms Sands did and Ms Melville went through a similar process on appeal. They both concluded that the Claimant committed gross misconduct in the print room on 18 November. This was a reasonable conclusion for them to come to.

350 Was dismissal a fair sanction? Ms Sands was concerned that as the Claimant had not accepted that what she had done was wrong, there was a strong likelihood that she would repeat the conduct if she remained employed. Ms Melville considered the

Claimant's length of service and her record against the seriousness of the act of gross misconduct that she had done.

351 This was the Claimant's first offence of a physical altercation with another employee but since it was serious, she had no remorse and made no acknowledgment of wrongdoing; it was within the band of reasonable responses to consider summary dismissal. This was more so since violence was one of the grounds for summary dismissal in the Respondent's Handbook.

352 The Tribunal was unable to make findings on the following comparators that the Claimant refers to in the list of issues, Nav and Ron Filtness, Mehr Noush and either Suzie or Ghermit; as we did not have evidence of those matters. We also did not have evidence on Ryan Riberio swearing at the Claimant.

353 Nevertheless, it is the Tribunal's judgment that some people swore at each other in the workplace and especially in the workshop. That did not result in anybody being subject to disciplinary proceedings. We have also made findings above of when Mr McDougall swore although the evidence was that he did not use the more offensive swear words that the Claimant alleged that he had.

354 However, the Claimant was not dismissed for swearing. She was dismissed for physical violence.

355 A comparable situation would be one where a long-standing member of staff was dismissed for an act of violence. The evidence was that the Respondent had dismissed someone for violence in the past. In our judgment, the way in which Darren Clarke had been dealt with was comparable to the Claimant in that he too had been dismissed for violent conduct. It was reasonable for Ms Melville to consider it as a comparable situation.

356 We also note that Ms Koutsompina was disciplined for an unrelated incident which the Claimant complained of.

357 The Claimant's case was that as Ms Koutsompina was known for threatening behaviour and having the altercation with the TNT driver that it should be assumed that she had been the violent one in the print room on 18 November rather than the Claimant as she had a clean record. It is not impossible for someone who had a clean record to be violent. In this Tribunal's judgment, the Respondent treated both employees fairly and made no assumptions about what happened in the print room. The Respondent did not make an assumption that because Ms Koutsompina had been rude to the TNT driver that she was violent towards the Claimant in the print room. Those were separate incidents and the Respondent, Ms Sands and Ms Melville treated them as separate incidents.

358 Although, in her decision letter, Ms Sands did not show that she had considered that the Claimant's long service with the Respondent in deciding on the appropriate sanction for her gross misconduct; Ms Melville clearly did consider the Claimant's long service and weighed that against the seriousness of the act of gross misconduct that she had committed. The seriousness of the misconduct outweighed her length of service. The Claimant had done an act of gross misconduct. The decision to

terminate her employment was within the band of reasonable responses. In those circumstances, it was appropriate for Ms Melville to decide that the Claimant's dismissal should be confirmed.

359 It was within the band of reasonable responses for the Claimant to be dismissed for the act of gross misconduct against Argyro Koutsompina in the print room on 18 November 2016.

360 The Claimant's complaint of unfair dismissal fails and is dismissed.

361 The Claimant's claims are dismissed.

Employment Judge Jones

13 August 2018