



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs A (on behalf of A)  
**RESPONDENT:** B LLP  
**Heard at:** Leeds **On:** 24 and 25 January 2019

**Reserved Judgment 31 January and 27 February 2019**

**Before:** Employment Judge Trayler

## Representation

**Claimant:** Mr P Linstead, Counsel  
**Respondent:** Miss K Nowell, Counsel

# RESERVED JUDGMENT

1. The Respondent did not unfairly dismiss A.
2. The claim therefore fails and is dismissed.

# REASONS

1. The Claimant in this case is Mrs A on behalf of her late husband A. The complaint made is of unfair dismissal.
2. Mrs A brings this claim on behalf of her late husband as A died within half an hour of a decision made by the Respondent that he was dismissed from his employment.
3. A preliminary hearing took place on 12 July 2018 conducted by Employment Judge Jones. Within that hearing the issues to be determined in this case were discussed and reduced to writing. The issues arising in this case are:
  1. What was the reason, or if more than one the principal reason, for dismissal? Was it conduct as alleged by the Respondent?

2. Was dismissal for that reason reasonable in all the circumstances of the case having regard to the size and administration resources of the Respondent and as determined in accordance with equity and the substantial merits of the case?
  3. Did the Respondent's decision maker have a genuine and honest belief in the alleged misconduct?
  4. Was such a belief reasonably based and was a reasonable investigation undertaken?
  5. Did the decision and procedure fall within a reasonable range of decision making processes of a reasonable employer?
  6. Was the procedure fair having regard to industrial practice and the ACAS Code of Practice on Discipline and Grievance Procedures?
  7. If dismissal was unfair, should the Tribunal reduce or extinguish any compensatory award on the ground that A would or might have been dismissed in any event had alternative procedures been undertaken?
  8. Should the compensatory award be reduced or extinguished on the grounds of any conduct of A which contributed to or caused the dismissal.
  9. Should the basic award be reduced or extinguished on the grounds of any conduct of A prior to the dismissal?
4. In accordance with the directions made on that day the parties exchanged witness statements and agreed a single bundle of documents which runs to a total of 353 pages. I heard evidence from C, partner in B LLP and Mrs A. I read documents from the bundle to which I was referred by the parties. I make findings of fact in this matter on the balance of probabilities.
  5. The hearing took place on 24 and 25 January 2019 but did not finish until 6pm on 25 January. Accordingly I reserved Judgment to a date to be fixed. The date subsequently being confirmed to the parties as 31 January 2019 and 27 February 2019.
  6. When making findings of fact in this matter I am conscious that I do not have the benefit of hearing any evidence of A's version of events. Apparently A made no mention of any disciplinary action or grievance enquiry by the Respondent to his family. There are no written notes or statements by A of which I was made aware save for those produced by the Respondent.
  7. The B is a large firm of accountants with branches throughout the United Kingdom. It is accepted that so far as its size and administrative resources are concerned that it is a large employer. A was a director of the Respondent and a qualified accountant specialising in Derivatives and Corporate Tax advice.
  8. The Respondent has a number of written policies and procedures relevant to the issues in this case which were available for A to access. For example it has a written statement explaining the right of an employee to be accompanied in relation to disciplinary and grievance processes (pages 49 to 51), a bullying and harassment policy (pages 52 to 57), a disciplinary policy (pages 58 to 65), a grievance policy (pages 66 to 73) and a right to appeal document (pages 74 to 76). These documents include a definition of

harassment as unwanted conduct related to a relevant protected characteristic which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual. Protected characteristics are stated to include sex.

9. In relation to disciplinary proceedings it is stated (page 60) that at least 3 days' notice must be given of a hearing and also that detail of the allegations must be given together with any documents that may be referred to. The employee is encouraged to read it all carefully and if there is supporting evidence that the employee relies upon he is to send it to the manager in advance of the hearing. Gross misconduct, which may result in dismissal is stated to include harassment or discrimination, page 59.
10. The unhappy and ultimately tragic events of this case start with an annual general meeting of the Respondent followed by a dinner and dance event. The Respondent provided its employees attending that meeting with tokens for purchasing alcohol. I have no direct evidence of what transpired on the evening in question. Mrs A gave some evidence of what had transpired at a previous event. I am in no position however to find that for example any of those attending the event consumed more alcohol than was good for them. Neither can I find that the Respondent encouraged this by provision of tokens. The evidence I do have is that the Respondent intended to limit the consumption of employees at this event by the provision of tokens rather than having a "free bar".
11. On 30 November 2017 D made a grievance concerning the events of 31 August. The written form of this is at page 77 of the bundle and states that on 31 August "I was harassed by another member of staff, A at the party after the AGM. The harassment took the form of inappropriate touching as I was leaving the dancefloor". D says that she does not know if there were witnesses to the touching although a temporary receptionist from the Glasgow office who was also at the party had intervened to assist her from the dancefloor in her words "to get me away from A". Under a heading of "Steps to Resolve the Matter informally" it is recorded D saying that "given the nature of the harassment I did not say anything to A but removed myself from his presence and shortly afterwards left the party". D explains that two weeks later at a training conference in Birmingham she was told that another female member of staff had commented on A's inappropriate conduct towards her on the dancefloor. Although D had not spoken to that person she realised that other female staff members may have had a similar experience and she raised the issue with one of the partners Q who referred the matter to the People and Client Experience Team. A suggested resolution is put forward that if possible D's preference would be for this to be resolved informally. She states that "It may be that A is unaware of the impact of his behaviour and being made aware informally may help to ensure that it doesn't occur again". D concludes by saying that she had provided the information in the grievance in the event that it is decided that a formal process is required. A redacted version of that document is at page 78 in which the suggested resolution paragraph is blocked out. Attempts are made to contact D in early December and she is invited to a meeting on 12 December 2017 to discuss the grievance. The notes of that meeting are at pages 86 to 92. The meeting is conducted by O accompanied by P. D

attends alone. Within the notes it can be seen D explains that she was based in the same office as A on three days a week but that they had never been involved in project work together. At page 89 D explains that A had put his arms around her to lead her off the dancefloor in what she thought was a gentlemanly manner. However A had moved his hand up to her right breast and squeezed it hard. D says she was shocked at this and that A had carried on leading her off the dancefloor as if nothing had happened. D is noted to become upset during the meeting and being given short breaks during the rest of it. D says that next a receptionist from the Glasgow office whose name she cannot recall, she no longer working there, had come over to escort off the floor. D said that the lady had said to her that she had come to take her away from A and she did not know whether the receptionist had witnessed the incident. She felt however she must have given that she came over straight afterwards. D said she sat down on her own to collect her thoughts and then decided it was time to leave and retired to bed.

12. D was asked if she knew of any witnesses to the incident and says that some weeks later she had shared this with F. She did not know whether F actually witnessed the incident but she had made comments about A's behaviour on the dancefloor that evening. D could not recall any other witnesses. D was asked if she had spoken to anybody else about this and she said that she was new to the firm and so she had not spoken to A about it since the incident. She had decided the next morning to draw a line and pretend it had not happened and make an effort to avoid A. D is asked if she had a clear recollection of events and states that whilst she had had a drink she did have a clear recollection of what had happened. She was asked what state of mind A appeared to be in and she replies that A had also had a drink but she believed that A knew what he was doing. D is asked if A had behaved differently with her since the event and she confirms that she felt that he had been different, not saying hello and looking uncomfortable. D states that she understood that another lady, a senior manager, had a similar experience with A but did not know whether she will come forward. D said that the incident occurred between 10pm and midnight. She is asked why she had left it so long to bring the complaint forward. D replies that her immediate reaction had been to draw a line under it and imagine it had not happened and not to get herself into the situation again in A's company. D explains that she became aware travelling back from a meeting in Birmingham of another allegation against A by a senior employee who had laughed off the incident and got herself out of the situation as quickly as possible. D had felt that this made it more serious as A appeared to be tripping from one person to another, see page 90. D had discussions with Q about the success of the AGM and had brought the matter up at that point. D confirms the outcome that she seeks as A being spoken to about his conduct being unacceptable and maybe a verbal warning, page 91. It is confirmed that there are no issues concerning A being in proximity with D as they were not working in the same team.
13. On 13 December 2017 a letter is sent to A inviting him to a meeting to discuss D's allegations. The letter is at page 93 and it is pointed out that the meeting would be chaired by O. P would also attend. The issue to be discussed is in one sentence "The allegation we wish to discuss occurred at the party that followed the AGM on 31 August 2017 where it is claimed you sexually harassed D by placing your hand on her breast and squeezing

hard when escorting her from the dancefloor". A's right to have a companion with him in the meeting is pointed out and he is provided with guidance notes as to whom may accompany him. It is pointed that the grievance is being treated in the strictest confidence and A is asked to do the same". A is alerted to a copy of the Respondent's grievance procedure.

14. The meeting does take place on 15 December 2017 and the notes are within the bundle at pages 98 to 102. A confirms he had received the letter and enclosures in advance of the meeting and it is pointed out that he can have a companion with him. A enquires whether, if there is a disciplinary process, then the conclusion of the investigation was not the end of the process for him which is confirmed by P. The structure of the team working in Edinburgh office is discussed. Also discussed is the contact between A and D in every day work within the office. A is asked to talk through his reaction to the allegations that D had made in her letter. It is noted that A denied that it had happened and stated that he would never do anything like touch D. A stated that what worried him more was the comment about inappropriately touching other people on the dancefloor. A said that when he had been told of the allegations he had been in complete shock and he had thought about the 31 August 2017, what he may have done and what might have caused a problem. A says he could not think of anything at the AGM or dinner afterwards that he might have done and had wondered whether the issue may have to do with something he may have said. A explains that he tried to be "Mr Fun" and not his normal "Mr Grumpy" at the AGM and dinner. He states that what he had done as an attempt had fun had done little more than make him feel a fool and made other people uncomfortable. A says he is horrified by it and that he had decided regardless that he would not go on to a Respondent dancefloor again. A says he tried to be different that evening and that whilst dancing he would be physical for example by throwing his partner around, being tactile with some physical contact. A stated that there would have been no way in the world that he would have caught hold of a breast and squeezed it. A is asked if he was out of his comfort zone when dancing which A confirms and that he probably would have chosen not to be there at all. A says that in his view the purpose of the event was to socialise and mix for the benefit of the business. A states that he made a comment to J the next day that he had been really pleased with himself and not gone to the bar after the band had finished and also that he still had two of his drinks tokens left at the end of the evening and had not overindulged in alcohol. A says that he had had a reasonable amount to drink and that whilst he did not have a full recollection of events this was due to it being some three months ago and his memory not being what it used to be. A explains that he would need to check his diary before being able to comment on what had occurred, for example in work meetings and so on. A is asked if he remembers any interaction with D when leaving the dancefloor and he responds that he would have escorted her from the dancefloor in the same way as he would have escorted anyone that he danced with, but beyond that he did not have any interaction. A stated that an allegation of this nature would be a prompt to his memory to come flooding back and that he had no recollection of this. A stated that he could not believe he would have done anything like the allegation whatever state he was in, whether 100% sober or 100% drunk. A's response to being asked about his style of escorting someone off the dancefloor is that he

would expect some form of physical contact on the dancefloor as that is how he dances and would probably be behind or slightly to the side of his partner when escorting her off the dancefloor. When asked if he could have escorted D off the dancefloor in the manner described A agreed that he could see that scenario with his hands on either a shoulder or waist easing her off the dancefloor. A adds that he had tried to play back the evening and speculated whether he could have accidentally touched D's breast but A did not think so. It is clarified that D was describing a deliberate act not an accidental encounter.

15. O clarifies that A was saying that if it happened A would remember it and A agrees with that and states that it was not something that he would do to anyone in any circumstances. A stated he did not know what D had described and he is told that D had said that A had escorted her off the dancefloor at an actual break in the music. D stated that A had had his hand on her waist and moved it up and squeezed her breast hard. O reiterated that it was not a hand on the shoulder that had fallen down. D had described his hand as moving up and squeezing in a deliberate action.
16. A stated he did not believe that he had done that and added that he did not know how to prove it but would be happy to take a lie detector test. A stated he regarded this as a horrendous allegation and recognised he could be dismissed and he needed to do everything he could to defend himself.
17. O continues that D had also said that she believed that there was another individual who may have witnessed this who had helped D to find somewhere to sit after the incident. A stated he did not have any recollection of that at all.
18. A was asked to explain in more detail what type of physical contact took place when he was dancing. A stated that he would be holding hands, pulling his partner towards him or pushing them away. A added that he may use ballroom style dancing if it was appropriate with his hands on his partner's shoulders or waist but nowhere else. A confirmed that he had danced with a number of different partners that evening and that he was not aware of anyone responding that made him think that he had behaved inappropriately. A says that the evening ended when the band had finished and that had been an actual point to either go to bed or the bar and A had sensibly decided to go to his room. A was asked whether the atmosphere in the office or his engagement with D had changed since the AGM. A describes not having a great deal of contact with D but of speaking to her when she was around the office and that he had tried to be friendly when she had been sitting on her own. A added that the only time he had noticed a change was since the previous Wednesday.
19. O asked A if there was anyone specifically that he suggested the panel should speak to concerning the investigation. A states that he had tried to draw up a list of people that had attended the AGM and the evening event but could not be sure anyone saw anything or not. A named G, H, N, D, J, R (who had now left), E, K, S and Q. O commented that it was unlikely that the panel would speak to all of them and asks A if there was anyone that stood out as someone the panel ought to speak to. A replies by naming G, H and E.

20. A could not recall anyone who he had spent a long time with that evening and although he had hosted a dinner table could not say who had been on the table.
21. A is asked if there is anything else he would like to raise and in reply notes that the process was strictly confidential. O replies that it needed to remain confidential and that only the panel and his people manager were aware. A comments that if the panel did not speak to all of the people that he had named there could be the danger that the ones not spoken to might be the right person to support him. O replies that the panel would make a decision who they would need to speak to and that A should not speak to anyone regarding the process. A is provided with notes of the meeting.
22. On 18 December O and P meet E. The notes of their meeting are at pages 110 to 114 of the bundle. E worked with D and A. She states that something had happened to her but did not know if anything had happened to D (page 111). E continued that she had made comments to others but it had gone out of her head. It had only been when HR had spoken to her that it had triggered her thoughts again. E states that F had spoken to her about whether she wanted to make a formal grievance and E had stated that she had not known what to do as she had been thinking to herself “was it that bad”. E continued that she was very conscious of the issue but that as she and A knew each other well she thought that A might take the view that “why [did E] not say something to me”. E said that on reflection the incident should not have happened and now she was aware that it may have happened to others not just her E was more comfortable to speak up. E stated that she did not think about the implications on her career as she raised it. E repeated that she does know A and that she could just walk away and deal with it on her own but that she kept thinking that what if it was someone half her age who is not able to walk away. On clarifying what had occurred on 31 August the work of the day was briefly discussed and that A had not been at her table. E states that there had been a band and a disco and she had interacted with both D and A at some stage during the evening. E stated that she thought that A had been the first person on the dancefloor with another girl from tax and she had been surprised at this. She had not seen A at an event since 2012 when A had been very drunk and there had been concern over his well-being.
23. E continues that on the evening of 31 August A had been dancing with E sometime between 10 or 11pm. E stated that A’s hands had gone places that they should not have. Initially she stated that his hands were on her waist and hips but then she felt his hands on her breast then going a bit lower down her body. E said she had felt really really uncomfortable and that A had tried to do this again and it was at that point she moved away from A and left the dancefloor. E stated that she remembered thinking that she had been violated and had removed herself from A but had not said anything to him.
24. E is asked if anyone had witnessed this and confirms that there had been people hovering about and sitting around the dancefloor but she did not know if they had seen anything as it was dark. O clarifies if she had been dancing with just A or as a group and says that she had been dancing with friends but had ended up dancing with A which was nothing unusual. E described A as groping her and when she had felt his hand on her where

she had not expected it she had got off the dancefloor. She is asked how long this had lasted and replies that she had not put up with it for very long and when she had felt he was starting to get too familiar she had removed herself. Following leaving A on the dancefloor E says that she had gone outside and stated that she had commented at breakfast to some colleagues that A had been “an absolute sleaze bag” and that she had felt uncomfortable and had not liked it. E added that she thought A’s behaviour had been unacceptable but she had not thought that it was enough to raise a grievance. O states that E should not have been carrying this herself and should have said something. E agrees that she should have said something three months ago but it had only been because she was made aware of something else that had happened that she would now follow this up as she would not wish it to happen to anyone else who was not strong enough to walk away. E said that A must have read between the lines because she had not said anything to him but had just removed herself from the dancefloor. There appears to be nothing of significance after the incident but on the morning after she had told K, T and I over breakfast. She said that she had also spoken to U about a week later. E repeats that she felt that A had been out of order. E could not remember whether she told I what had happened the same night or the next morning. I had confirmed to E that nothing inappropriate had happened to her. When asked if she is aware of anything else or wanted to say anything else E says that she had heard rumours that A was a “sleaze bag”. She said she had not been upset and crying although she had felt uncomfortable. She had not gone home and told her parents as she had not wanted people to think anything. E said that whilst she thought this type of behaviour had been acceptable in the past, on reflection she should have said something. E confirmed she stayed away from A that evening, that she had seen A with I. E is asked about the comment about A being a sleaze bag and replies that she believed there had been an incident when A had made an inappropriate comment which a partner had said was out of order and a couple of stories about inappropriate comments. E said there had been nothing of concern with A for some time although there had been some incident at a 2012 Christmas party when A had been drinking all afternoon.

25. Returning to the incident E states that she believed the incident lasted about a minute or so as she does not take well to people touching her generally and someone getting that close to her was not right for her. E states that A did not know her well enough to be that close. O suggested A may have been hugging her but E says that A had not been hugging her as she had worn a long dress and she could see where his hands had been going. E states that A had taken advantage of her as they knew each other well and explains that A had been holding on to her with his hands moving from her being ok with her shoulder and waist but not on her breasts and moving further down.
26. E went on to state that she did remember telling people at the time. She now wishes she had spoken to HR sooner. She repeats that she had not thought that her incident in isolation would be enough and that everyone was more aware of it now. She recounted an incident that happened to her when she had been more junior when a manager had bruised her arm when insisting that she dance with him. E also referred to other inappropriate behaviour by people now retired. E was asked if becoming aware of another



allegation had made her feel more comfortable about coming forward. E states that F had told her that she had heard about her incident with DH and I. E stated that she had told "PF" a week after the AGM and was aware that PF may have told I or F and that F had come back to her. E says that she had not forgotten the incident but had put it to the back of her mind. F had told her that another incident may have happened to someone else and E had thought she would not want it to happen to someone younger. E added that the teams were a lot younger crowd and were more aware of what is right and wrong. E confirms that A had not come after her as she left the situation and that she did not see him again that evening.

27. O and P see F on 18 December. The notes of that meeting are at pages 115 to 117. F confirms she was at the same table as A for lunch and had first noticed him when she had been talking to someone. A had interjected making a sexual innuendo. F states that she had seen A approaching females on a one to one basis whilst dancing or talking. She felt A was invading their personal space as he had been talking whilst being very close to them, dancing with his hands on their body and she could tell by their faces that they were uncomfortable. F continues that A had been holding their torso area and she could see people backing off a bit but that A would continue to be in their face. F commented that having observed this A appeared to her as being on the prowl and when he was pushed off by one person he just moved on to the next one. F states that on one occasion A was headed towards her table but she had moved away before he arrived.
28. F confirms that she had seen A and E dancing together and that she could tell by E's reactions that she was uncomfortable. She says that she saw E back away a bit and when asked if they were physically touching and if that could be normal behaviour whilst dancing F repeated that E looked uncomfortable. When asked if she saw where A's hands were she says that she saw his hands on E's torso area. She repeated that she could see E's reactions and that she looked uncomfortable. F confirms E had moved off after this and she had not spoken to her.
29. F says she saw A talking to I but did not know whether they had danced. Although she had noted a number of individuals she felt A had got close to the only one she had really noticed was E. F says that she first became aware of an issue from the evening when Q had spoken to her as I had spoken to him about A being inappropriate at the AGM. F had had a word with D at Q's request and that D had explained to her that A had been inappropriate and provided further details. D told F that when coming off the dancefloor A had clamped her breast and not brushed it. F had advised D of the options including raising a formal grievance and D had said that she had not thought to do that as she was new to the firm and had not wanted to make a fuss. F also said that D had heard that something had happened to E. F says that she had heard about E from someone else but F did not know who it was. F had advised D that she had the option to raise a grievance. She also spoke with E and asked if she felt anything inappropriate had happened. E had replied that she felt uncomfortable and had not wanted to be the one to instigate a complaint. F says that she was concerned of risk to younger members of the team.
30. Next within the bundle are notes of an interview with G on 21 December 2017 at pages 123 to 125. She describes A as being in high spirits but not

appearing inebriated and that A was quirky but she had not seen anything untoward.

31. Also on 21 December 2017 O and P saw I. The notes are at pages 128 to 131 of the bundle. She recounts that E told her on 1 September that A's hands had been where they should not have been on the day previous, page 128. She states that E had told her at breakfast the following morning in a throwaway comment that A's hands had not been where they should have been. She reports dancing the Gay Gordons with A at some point during the evening. On the next day E had said that A's hands had been in places where they should not have been and that she had walked away from him. E had not appeared or seemed upset or distressed. I said that she had asked E a couple of weeks previously where A had put his hands and E had told her that she had said he had put them on her front and her bust. I stated that she had previously thought that A's hand had been on E's bum but when E had indicated her chest I had been surprised that E had not said anything on the night. I added that she would have been upset if she had been touched there. I confirmed and was told that the panel will advise her if a statement is required and that they may come back to her.
32. M is interviewed over the telephone on 3 January 2018, page 138/9. M explains that during the disco she saw A and D dancing on the dancefloor and that A was in D's personal space and trying to "dirty dance" with her. M says that she could see that D was uncomfortable so walked over to them. M says that she took D's hand as if she wanted to dance with her and moved away from A. She describes hugging D as she was clearly shaken and says that she had a brief laugh with D about the situation and saying that she will be there if she wanted to talk about it later.
33. O and V then held a meeting by Skype with H the notes of which are at page 145 to 147 of the bundle. H says that she believed A was over familiar with L and had noticed L giving her the eye to say that it was awkward and that she wanted to get this guy off her. H says that she believed A was being overly familiar with L and likely had his arms around her waist or dancing inappropriately with her. H had stepped in to provide girlfriend support. She confirms that she did not see A being overfamiliar or inappropriate but simply L's reaction. L had not raised being touched with H at the time and thought that if he had done L would have spoken to her.
34. On 3 January O and V hold a meeting by Skype with J the notes of which are page 152 to 155. Nothing stands out as out of the ordinary in J's recollection and other questions of him reveal nothing of any weight. He expressed the opinion that he would be surprised if A had been physically inappropriate with a colleague.
35. On 4 January 2018 O and V have a meeting with K the notes of which are at pages 162 to 164. She has no recall of anything untoward, page 162. She was aware that A had been on the dancefloor but that K did not dance with him. She did not hear any comments by E. She did recall A dancing with people but could not recall who it was, nor could she recall any inappropriate behaviour. K says she did not recall any comments at breakfast the following day. However it was a busy breakfast style buffet with people joining the table and leaving it regularly.

36. On 5 January O and V meet with L by Skype, the notes of the meeting being at pages 172 to 174. L recalls standing by a photo booth talking to colleagues and A had been standing nearby. A had moved and made an attempt to speak with her and stood very close to her at which point she felt that he was invading her personal space but that she was not uncomfortable with him being so close. L says that she believed A was just being a nuisance and wanted to be involved in the group's discussions. L confirms dancing during the evening and that she did have an encounter with A on the dancefloor. She explained she was dancing with a group of colleagues and was aware that A was nearby. A had approached her from behind and put his hands on her waist shortly followed by wrapping his arms in front of her and moving his hands up and down her torso. She says this made her feel very uncomfortable so she immediately moved away from the dancefloor. It is pointed out that she needs to be clear as to where A had placed his hands and she explains that her back was turned to A and he initially put his hands on the side of her ribs moving down to her waist. L then said that A moved his hands up from his waist/stomach up towards her breasts but clarifies that he did not put his hands on her breasts. She explains that the incident happened in a split second and that she moved away immediately and confirms his actions were not invited and there would have been no action from her to suggest this. L explains that she did not believe A meant any malice by his actions and that she was dancing with friends and A could have misinterpreted that. Her impression was that A was an older man who had consumed alcohol and that boundaries may have been different from that which is acceptable to a younger generation. L said that she was not upset by the incident but she had changed her behaviour towards A in the office. L says that she was tipsy but believed A to be drunk. She says she had been dancing with W, M (a practice assistant no longer employed, X and H. She says that she spoke with "HM" afterwards. L explains that whilst A had his hands on her she had been looking at H trying to tell her that something was not right and that she felt uncomfortable. It is confirmed to her that they had spoken to H. L says she did not witness anything further that was inappropriate in A's behaviour and that she had a catch-up meeting with HM and Y.
37. O and V speak with M by telephone on 5 January 2018. At page 178 it is noted that she explained that she was stood at the side of the dancefloor with L and Z when she witnessed A dancing inappropriately with D. She says A had his hands on D, that she looked uncomfortable and that she walked over to D and took her away from A, gave her a hug and asked if she was fine. She says that D looked a bit shaken but was fine so they went their separate ways. She is asked to be clear about what she saw of A's hand movements and explains that she saw A dancing very close D and grabbing her body. She said that A was being handsy and when asked to clarify where she saw A grabbing D she said that she saw him grabbing her waist and bum, that D kept trying to move away but A was not taking the hint. She explains that D was shuffling in a manner that suggested she was trying to move away from A but that she was unsuccessful on a busy dancefloor and that A kept following when she moved slightly. M says that the easiest way she could describe it was when a female gets unwanted attention in a nightclub that makes you feel uncomfortable and that was why she stepped in to support D. Being "handsy" she explained as A touching

D's waist and pulling her close to him and she confirms that she did not see him touch anywhere other than her waist and bum. She says that D was focused on what A was doing and that she appeared shaken after the incident. She did not dance with A during the evening. M explained that L had informed her that A had danced with her and touched her inappropriately and that she had used words such as "sleazy" and "handsy" and that L said she could not believe A had done it. M's perception was that A was going for girls on the dancefloor.

38. On 8 January 2018 O and V speak to N via Skype and the notes of the meeting are at pages 183 to 184. She could not recall seeing A on the dancefloor and states that nobody spoke to her about it.
39. On 9 January O and V meet with A, the notes are at pages 195 to 203 of the bundle. These are provided to A later. A was advised of his right to be accompanied at the meeting and it is noted that he was believed to have considered inviting AA to attend with him. A had chosen not to invite AA. A said he felt isolated as he was restricted to speaking with the grievance investigation panel and that most of the Scottish practice were likely to know about the investigation as the panel had spoken with a significant number of individuals. A said that he believed as the panel had spoken to E it was likely a lot more people were aware of the allegations as she was the main source of gossip. A is asked if he is comfortable continuing unaccompanied and A confirms that he is. It is pointed out he could request an adjournment at any point. O advises that there are two new allegations he wished to raise with A, the first in relation to his behaviour when dancing with E and the second relating to his behaviour when dancing with L. A said that he was shocked by the allegation from E and that the allegation in relation to L was not different to his style of dancing as already explained during the initial investigation meeting. A asks how he can manage his diary and it is confirmed he should conduct business with clients as usual. A asks if O also completed disciplinary processes which he confirms that he does. A asks about the likely outcome of the grievance investigation. O says they are at the fact finding stage and he could not say. An expected date for conclusion of the grievance is said to be 19 January and they would meet with A to confirm the outcome.
40. Thereafter a date is canvassed and A requests that all future meetings are held in London. O explained that the allegations from E and L were not new grievances but they had arisen during the investigation of the allegations by D. A is informed that there had been attempts to meet with M a former employee. A asks how long the next stage of the process would take and confirms that the possibility of a disciplinary process was on his mind. A two week timescale is given for a disciplinary process where appropriate.
41. A says that in D's initial grievance she refers to talking to somebody about the incident whilst at a tax conference which he assumes was E as E often "dished the dirt" in the Scottish practice and she would tell him what was happening in the office. Thereafter A's working relationship with E is explored and A is asked if he recalls dancing with E. A says he did not really recall dancing with her specifically as he danced with a lot of people at the AGM. A says that he probably did dance with her but he could not recall the specifics. He did however say that if there were no memorable events the encounter would have likely fallen away from his memory. A says that

the allegations were horrendous and if they had occurred it was likely that they would have stuck in his mind.

42. O explains that he felt it important to relay what E had said about the incident making him fully aware of the allegations and also to help him recall. O then reads statements by E during the investigation meeting including his hands being initially on her waist and hips and then his hand on her breast and then going a bit lower down her body. After the allegations by E had been read out O reads statements by witnesses whose identity is anonymised. He refers to witness A that they had seen A approaching females on a one to one basis whilst dancing or talking and that the witness felt that A was invading their personal space. The reason for this was that he was physically very close to them dancing with his hands on their body and they could tell by their faces that they were uncomfortable. The witness had also said that A had been holding her torso area and they could see people backing off again but that A continued to be in their faces. The witness commented that having observed this A appeared to her as “being on the prowl” and when he was brushed off by one person he just moved on to the next one. It had been confirmed that A had been seen dancing with E and that from her reaction she was seen to be uncomfortable. The witness had seen E back away a bit and when asked if the witness had seen touching when dancing and whether this could be seen as normal the witness had repeated that E had looked uncomfortable. The witness had seen A’s hands on E’s torso area and that she looked uncomfortable.
43. Thereafter a statement by witness Respondent is read out namely that she has seen E the next morning and in a throwaway comment had said that A’s hands had been places where they should not have been. That witness had asked E a couple of weeks before where A’s hands had been and she had replied on her front and on her bust. A is asked if he has any further comments in relation to the allegation and he reiterates that when he dances he would hold and touch people. He added that the term torso is mentioned within the statement and he would define this as any part of the body except the sexual organs and that sexual organs were “out of play”. A says that E liked to talk to people about office matters but he was not questioning the validity of her version of events. He says that she liked to sensationalise stories and that you never got a dull story from E. A is asked if he is suggesting E was not telling a truth and he says that he had no reason to believe E was not telling a truth as there would be nothing for her to gain as a result. It is summarised to A that he had no specific recollection of events that may have happened whilst dancing with which he agreed and also that he had no reason to believe E was not telling the truth which again A agreed. As there was no recall of her dancing on A’s part O says he has no further questions on that. A says that he has a bad memory and refers to an incident involving BB and his failure to recall details. The meeting then moved on to the allegations by L.
44. A was asked if he recalls dancing with her and he confirms that he did not. A statement is read out to him setting out the allegation made by L that he had approached her near the photo booth and stood very close to her which A attributes to the loud dancefloor music. There is then an explanation of the allegations that L said she had been dancing with a group of colleagues and was aware that A was close and that he had approached her from

behind and placed his hands on her waist followed by wrapping his arms in front of her and moving his hands up and down which had made her feel very uncomfortable as she immediately moving from the dancefloor. It is pointed out that L had been told she needed to be very clear as to where the hands were and she had confirmed the position of them as being on the side of her ribs moving down to her waist and then moving up from her waist/stomach up towards her breasts but not putting his hands on her breast. A responded by saying he probably did have physical contact with L while dancing.

45. A is read the statement by witness C who had seen L giving her the eye to say the situation was awkward and to get this guy off her. The witness has also said that it is likely he had his arms round L's waist or danced inappropriately with her. A makes the point that the allegations are fundamentally different in L's case and that she was a young personal assistant and that as an old man he should not have been dancing with her. A said he could understand why L had made her statements. It was put to A that there is a theme of A approaching individuals when dancing in a group. A stated he would sometimes approach the dancefloor with a partner or sometimes in a group in which he would often focus his attention on one individual. A says he will be speculating but believed he had only danced with people he got on well from the Scottish practice. A said he would no longer go on a dancefloor at a Respondent event and that the investigation process had been the worst experience of his life. Then a version of events from M is read to A and that she saw A dancing very close and grabbing her body and that A was being handsy. A offered no further comment on this but after he had been told that M saw him grabbing A's waist and bum. It is explained to A that the majority of individuals the panel had spoken to could not recall or had not witnessed any specific incidents but some had provided the panel with witness statements. O confirmed that the panel had been balanced and were keen to obtain the most rounded view and A when asked cannot recall any further information. A is asked to return notes of the previous meeting and told that he will also receive notes of this meeting also.
46. O produced a report on the grievance raised by D which is in the bundle at pages 214 to 221. Within that is a summary of the interviews to date and the list of those interviewed.
47. The grievance report runs to eight pages. In it the Respondent includes three sections numbered 3 to 5 in which the information gathered in relation to each allegation is set out. There is no significant difference in the accounts given when compared with those in the minutes of the meetings These include the details of the allegations themselves as recounted by the three complainants. Each section includes A's comments on the allegations. This again does not differ significantly from the information already disclosed to A.
48. In respect of each allegation the information by each witness who had an input as to what had occurred ie had noticed anything untoward is set out. There was no witness who either contradicted the events on the dancefloor or said that they would have seen such events if they had occurred. So, in relation to D's allegations M's input is summarised; in respect of E the input

of F, K and I's input is summarised and in respect of L's allegations the input of H, and M is summarised.

49. By letter of 19 January 2018 page 244 to 245 a grievance outcome letter is sent to D confirming her grievance has been upheld. The investigation report is enclosed with the letter and it is pointed out that harassment as defined within the company's bullying and harassment policy had been found against A towards D and two other individuals during the evening of 31 August 2017. There had been a meeting with A and D concerning the outcome of the grievance. A report is also sent to A on 18 January 2018 following the outcome meeting with A on 17 January.
50. By letter dated 18 January 2018 which is at page 241/2 of the bundle it is confirmed that the grievance investigation had concluded and as a result A is invited to attend a disciplinary meeting to discuss the allegations. It is specified that what is to be discussed is his conduct during the evening of 31 August towards D, E and L as he had engaged in unwanted and unwelcome physical contact with each of the named individuals. It is pointed out that when considering his actions in relation to the firm's definition of harassment as detailed within a copy policy enclosed the grievance investigation panel concluded that he had sexually harassed D, E and L during the evening of 31 August 2017. The meeting is confirmed to take place on 24 January in London to be chaired by C who will be accompanied by CC from the employee relations department. He is invited to suggest an alternative time within five working days if he is unable to attend on that date. A is also advised that he can bring a companion with him to the meeting and that guidance notes are included. It is pointed out that the issues are potentially extremely serious and if proven could result in a sanction being issued or his employment being terminated in line with the company's disciplinary policy. For that reason A is encouraged to prepare his response to the issues thoroughly. It is pointed out that no further action will be taken if it was not proven, that the company treat the matter in the strictest confidence and that they ask A to do the same. It is pointed out that discussion should only involve CC his chosen companion and C. A copy of the disciplinary policy is enclosed together with a grievance investigation report, the right to be accompanied guidance notes and the bullying and harassment policy.
51. The meeting did take place in London on 24 January 2018 conducted by C who is accompanied by employee relations senior manager CC. A attended unaccompanied. A had travelled down to London from Edinburgh and stayed in a hotel where he had apparently used a gym the night before the meeting. This was confirmed as likely by Mrs A. The notes of the meeting are at page 256 to 262.
52. A says that he had been unwell recently and apologised that he still feels unwell. A break is offered but not taken. A says that one of his difficulties was that he could not talk to anyone in advance of the meeting, page 256. A is asked for his reflections on the grievance report and it being upheld. A replies that he is not surprised to be invited to a disciplinary meeting, page 256. At page 257 A is recorded as wondering if anyone had slipped something in his drink that evening but that he had no memory of what had happened and could not defend himself. A said that he stood too close L because the music was loud and he could not hear what she was saying

but reiterated that he was shocked and in total horror of the whole situation. A accepts that he did not say earlier that someone might have put something in his drink.

53. A refers to wanting to be Mr Fun and throwing his partner around, page 257. A says he understands the seriousness and the allegations could result in dismissal. A says that he hoped for mitigation in the outcome given his 10 years good employment record, page 257. C acknowledges that there was no corroboration of A or squeezing D's breast but that there was corroboration that he had touched D which was not just in a traditional dance hold and that his hands were touching her. C also refers to the second aspect that E had used the phrase that A had groped her and she felt violated. A's drinking is explored in response to which he says he had a whisky most days and that he had stopped drinking recently due to taking antibiotics recently without any problems. A says he has very little recall dancing with other individuals, page 258. C specifically asks A if his defence was a lack of being able to recall what had happened rather than A had done it and did not realise what he had been doing. A responded that this was not correct. C asked A if he was not saying that he did not do it and A responded that he could not say that he did not do it. A confirms that no allegations of this nature had ever arisen previously and A says that he feels like a central character in a horror story and not having any recollection of being there.
54. A confirms that he tried to look at the definition of misconduct and gross misconduct but struggled to understand where the allegations would fall. A explained that he had read the disciplinary policy and spoken to V during the meeting on 17 January to understand the potential sanction. A said he assumed that the matter was serious and a decision would be taken to dismiss him. However he hoped this would not be the case. He continued that he realised he was "in the s\*\*t" and that he could not believe he was in this situation. A said that he remembered the dinner including the table he was sat at and who had been sat at the table. He remembered not going to the bar when the band had finished playing and that he had two drink tokens left over at the end of the evening. C put to A that he remembered he had two drink tokens left and that he could recall what happened before and after the dancefloor but not when he was dancing with the three complainants and questioned why A responded that things did drop from his memory and he would ask people to remind him of something. That is to tell him facts and memories would come back to him. A stated that this had not happened with this matter. C says that he found it hard to understand how A could remember what had happened before and after the dancefloor but not on it.
55. C asks if he did recall what he had done. However A was in denial. A responded that he could not remember what he had done and made reference to the first meeting where he had offered to take a lie detector test which he was still happy to do. C asks A if he believed that his best defence was to say he could not remember which A denies. It is put to A that it was evident from the grievance investigation meeting notes that A did not recall the alleged events. However he appeared to accept what may have happened. CC refers to the statement he had made that he probably had physical contact with L and A was asked to explain. A refers to holding



hands and pulling his partner towards him or pushing them away and being physical by for example throwing his partner around and being tactile. A stated he may use ballroom style dancing if it was appropriate with his hands on his partner's shoulders or waist and that he would expect some form of contact on the dancefloor. C says that this was not a Strictly Come Dancing situation and therefore there would not be any need for A to touch his partner and therefore asked why A did it. A responded that he could not comment otherwise he will be making it up.

56. A is asked to explain why he felt there were fundamental differences between the allegations of D and E compared with that of L. A says that he believed the loud room made it necessary to go close to them. A says his previous comment about L being a young person and he was an old man was a rubbish statement and he should not have said it. A continued that he believed it was appropriate to dance and touch people of a similar age but that he should not dance or touch a young administrator. A said he did not really recall dancing with L and that he did not really recall dancing with anybody but there is a list of people that were likely candidates. C pointed out that of the three people A had danced with all three have raised identical allegations. A had responded that his dancing had probably always been inappropriate and C explores that there is an appropriate and an acceptable way of dancing and touching and engaging and A responded that he was not sure if his dance style had got worse. CC refers to a comment in the grievance investigation meeting by A that he was not questioning the validity of what E had said that there was no reason why she should not be telling the truth. A responded that he was not questioning the validity of what anyone had said but that E always tells a good story and had kept him up to date on gossip. A is asked specifically if he believed the allegations that E had raised against him had been made up and A responded that he had no grounds to question that. C asks if he accepted what had happened and A responded that he is a logical person and therefore he had no basis to say that it had not happened. C asked A if he believed that the allegations raised against him were harassment and A responded that he could not defend himself against it and it was totally unacceptable behaviour.
57. C refers A to a comment he had made that he had a clean record and that he worked in technical niche but that his unblemished record need to be weighed against the seriousness of the allegations. C explained that all of the factors needed to be weighed against the allegations by the three individuals and taken into consideration for potential future victims. C points out he was struggling to understand how A was finding it hard to find any rational explanation of what had happened, what had been said, what had been investigated and the fact that the grievance had been upheld.
58. C explained that if A had no recollection of what had happened then he had no recollection. C continued that he had asked A if there was any history in relation to drinks and drugs and A had confirmed not. C said to A the only possible explanation could be that his drink had been spiked and A responded that this was not an explanation, that was purely an attempt to rationalise the allegations raised against him. C says that he had heard what A said in terms of mitigation and that he had to apply the rules when making a decision on the outcome of the formal meeting. A confirmed he had not spoken to his wife and stated that she would divorce him on the

spot and if the outcome was dismissal he would be straight into divorce proceedings. A is asked why and not spoken to his wife and A explains that his wife was preoccupied with looking after her elderly mother and she was having difficulties with her mother's previous financial advisor and brand her brother. A says his wife was stressed and that he did not talk to her about anything related to work. A said nobody supported him and that he had buried his mother 12 months ago, she being the person he used to talk to. A was asked if he was aware of the employee assistant programme which he confirms that he was but that he had only spoken to Mr Lambert. A is asked if he has anything to add to the meeting and he says not. The meeting adjourns for some 20 to 25 minutes, no timings are kept of any of the meetings by the Respondent after which C and Ms Thomas returned to A.

59. A is thanked for waiting and that C had considered all the information provided and his response to the questions raised. C confirms he concluded A was guilty of harassment and read out the definition from the firm's bullying and harassment policy namely that "it was unwanted conducted related to relevant protected characteristic, which has the purpose or effect of violating and of individuals' dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual". C explained that unnecessary touching is specifically mentioned as a form of harassment and is one of the key characteristics. C stated that he was not saying that pestering was involved in this situation but having looked at the definition of harassment and where someone is found guilty of harassment then this leads to the disciplinary sanction relating to gross misconduct. C confirms he had no conclusion but to apply the sanction of dismissal without notice and that his employment would end with immediate effect, 24 January 2018.
60. C explained that he had reflected on what A had said in relation to his technical skills and helping the firm to manage risks and confirmed that the firm would move on. C asked A if he had anything he wanted to say and A responded that he was very sad and that he still had no memory of what had happened and that he was sorry to be leaving B LLP under these circumstances.
61. CC explains A's right of appeal and that he would be sent a letter confirming the outcome of the meeting, a copy of the meeting notes and the appeal policy. A returned his laptop and other property and made arrangements to return his telephones. It is pointed out he could still contact the EAP helpline. There being no further questions from A the meeting closed.
62. As referred to above A was in London alone and was discovered within half an hour of the ending of the meeting on the pavement. A had died. Reference is made to him falling from a building. As I pointed out to the parties I can make no findings as to the reason A died or what was in his mind at the time of his death. My findings of fact extend only to the disciplinary hearing and the result of that disciplinary hearing whilst acknowledging the sad and devastating fact of A's death at this time.
63. I explained to Mrs A at the outset of the hearing there was little I could do to make the hearing easy for her, noting as I had that the hearing took place on the anniversary of A's death.

64. On 29 January C sends a letter to A with a result of the disciplinary enquiry. The letter is at pages 264 to 265 of the bundle. It is pointed out that A had attended a disciplinary meeting to discuss allegations which are set out within the letter namely that on 31 August at the AGM his conduct was inappropriate to D, L and E and that when considering his actions in relation to the firm's definition of harassment a grievance panel had concluded that he had sexually harassed those three named individuals during the evening of 31 August. It is pointed out that C chaired the meeting and CC was also present and that A had chosen not to be accompanied when reminded of his right to be so. The letter continues by setting out that A had been summarily dismissed without notice due to gross misconduct and the reasons for that dismissal are set out in seven bullet pointed paragraphs. These are as follows:

*"Even though you were shocked and horrified by the allegations raised against you, you provided no evidence or defence to support your denial of the allegations other than an inability to recollect the specifics of each encounter. In addition, you questioned if someone 'may have slipped something in your drink' or 'if you had been given something that was not intended for you'".*

*"Although you could not recall what had happened whilst you were on the dancefloor there were a number of witnesses who had corroborated a significant proportion of D, E and L's versions of events".*

*"Despite the fact that D's specific allegation that you had squeezed her breast while walking off the dancefloor had not been corroborated by witnesses, we have no reason not to believe D's version of events and therefore believe you did squeeze her breast whilst walking off the dancefloor".*

*"You engaged in unwanted and unwelcome physical contact with D, E and L. By way of example, E described your actions as groping and leaving her feeling violated".*

*"When considering the firm's definition of harassment as detailed within the bullying and harassment policy it has been concluded that you did sexually harass D, E and L during the evening of 31 August 2017".*

*"The business has a duty of care to D, E and L and any potential future victims".*

*"Your actions of unwanted and unwelcome physical contact which tantamount to sexual harassment are extremely serious".*

65. The letter continues that as a result of the points detailed above it is believed that he did sexually harass the three named individuals. C states "we therefore believe that we have no other option other than to summarily dismiss you, without notice, for reasons of gross misconduct. Your employment contract is therefore ended with effect from 24 January 2018, without any payment as compensation for loss of notice".
66. A's right to appeal is pointed out and it is confirmed that no recoupment of overpaid salary will be made by the Respondent.
67. Thereafter Mrs A confirms the death of her husband to the Respondent and she received the letter informing him of the decision to dismiss him.

68. Mrs A makes an appeal against the dismissal. However, that is withdrawn and no further action is taken upon it by the Respondent.
69. On 24 January at 3.39pm, therefore not long after the conclusion of the disciplinary hearing, C tweeted a response to a tweet by DD that she had just caught up on the President's Club piece and that having worked in perfectly normal bars and restaurants in the city as an undergraduate the Financial Times article doesn't surprise her one jot. The grotesque demeaning way that men routinely treat young women isn't easily forgotten. C comments "sadly the behaviour is not just confined to bars or charity events. It is still prevalent in offices – often implicitly condoned. All businesses must confront these unacceptable behaviours – leading by example the only way".
70. C said that he possibly entered some 14,000 of tweets in his time. The second tweet I was referred to is at page 326 of the bundle and the first at page 312. On 4 June 2018 C comments about a restaurant "food good, service a wee bit indifferent. But tolerance of boorish males in group extolling virtues of young women who should only be seen as sex objects unbefitting of strong chain. Despite raising matter nothing done to control or eject them".
71. A service of thanksgiving for A's life took place. I was referred to the eulogy within the documentation for that service at pages 349 to 351 which is a sensitive reminder of the tragic events faced by Mrs A and their children.
72. A clearly left behind him apart from his close family people who viewed him fondly and it is clear from this that he will be missed by a great many.
73. I therefore have to reach conclusions in relation to the issues before the Tribunal as identified in the previous case management hearing. In doing so I have to apply the relevant law which I will refer to in these reasons as well as considering the evidence and the submissions of each party.
74. The first issue to be determined is what was the reason or is more than one the principal reason for the dismissal? Was it conduct as alleged by the Respondent?
75. This question arises from the application of section 98 Employment Rights Act 1996. By that it is for the Respondent employer in a complaint of unfair dismissal to show the reason for the dismissal and to show that it is a reason set out within section 98 of the Act. Within section 98(1) is the reason of conduct. Certainly the allegations in this matter made against A are of misconduct on his part. There is no dispute on behalf of A of the reasons for dismissal.
76. It is clear and I make the finding that dismissal was because of A's misconduct against the three named individuals D, E, and L. It serves little point in repeating those allegations here at this as they are already recited above and concern inappropriate touching of those individuals by A.
77. My finding of fact is that C did honestly believe in those allegations against A and that he made a finding that he had misconducted himself in the way alleged by those individuals.

78. The employer here therefore has satisfied the duty upon it of showing the reason for the dismissal and that it is a reason within section 98(1) Employment Rights Act.
79. The next issue is to determine whether dismissal for that reason is reasonable in all the circumstances of the case having regard to the size and administrative resources of the Respondent. I have to determine this in accordance with equity and the substantial merits of the case. This of course is a statement of the requirement of section 98(4) Employment Rights Act 1996 and I have to determine the fairness of the dismissal by answering that question.
80. I consider first of all whether dismissal for these reasons is within a range or band of reasonable responses open to a reasonable employer. This test propounded most notably within **Iceland Frozen Foods Limited v Jones[1982] IRLR 439 EAT** explains the proper application of whether dismissal for the reason given is potentially fair. The intention of the test is to ensure that Employment Tribunals, now most commonly as here conducted by an Employment Judge sitting alone, do not approach this test of reasonableness on a subjective basis. The test is there to ensure that a Tribunal does not simply ask the question as to whether it would or would not have dismissed an employee in these circumstances and find the dismissal fair or unfair in accordance with whether the employer has accorded with the Tribunal's assessment. Instead I have to determine objectively whether a reasonable employer could act reasonably in dismissing in these circumstances.
81. As a general proposition it is difficult to criticise an employer for investigating and taking seriously allegations of sexual harassment. In this particular case three specific allegations are relied upon. All three are said to have occurred on a dancefloor at a work event. All three involve touching during dancing, the allegations not being of accidental touching but inappropriate deliberate touching. There is a difference in the case of L's allegations in that she does not allege that A touched either of her breasts as it is alleged by E and D. E and D describe A putting his hands on to their bodies and then moving his hands up and squeezing or touching a breast. It is quite clear from the documentation that these are not allegations of accidental touching in the course of dancing. Neither is there any suggestion anywhere that some invitation has been misunderstood by A and he has overstepped the mark.
82. Against this one would have to take into account as a reasonable employer the circumstances of the employee. There are no health or other considerations at the time of the alleged conduct which impact upon this. A however was a gentleman of 55 years of age (having been born on 11 October 1961) at the time of the AGM in 2017. He was a senior employee as an accountant earning on a gross basis more than £12,500 per month.
83. There is nothing to suggest that A has had anything other than a clean employment record and certainly no disciplinary matters had been brought to my attention. It is clear within the meeting that A says that he will not go near a B LLP dancefloor event in the future. He has no negative disciplinary record.

84. It seems that A had little contact with all but E at work and the Respondent is a national firm with large resources.
85. I ask where myself whether a reasonable employer could act reasonably in the circumstances in dismissing the employee. Objectively I believe that an employer could so reasonably act. I recognise that in some circumstances an employer may feel it can manage a situation and issue a final warning for example whilst another quite reasonable for the same conduct impose a sanction of dismissal. However the Respondent has recorded to its employees a bullying and harassing policy which explains what should and shouldn't be done and it is not feasible that anyone in A's position could understand his behaviour not to be covered by the policy. There is also identification that sexual harassment would be viewed as gross misconduct which would ordinarily be met with dismissal.
86. As above my judgment is that, objectively, dismissal is within that range of reasonableness. I would add that A himself recognised the seriousness of the allegations when interviewed and anticipates disciplinary action and possible dismissal.
87. I am asked by the Claimant's representative to consider that C was not an appropriate person to make a judgment in this case because of his expressions and opinions within the tweets referred to above. Whilst I fully accept that there may be occasions when personal traits or beliefs may be such that they would preclude a person dealing even-handedly with a disciplinary process I find that this is not the case here. C's stated attitude is that sexual harassment has no place in the workplace and that employers should take steps to lead from above. This is really not much different to what is said within the Respondent's harassment policy. It is what is expected from employers if they are to avoid claims of failing to deal with allegations of harassment. I find therefore that there was no sensible objection which could be made to C dealing with these matters on the basis of those tweets nor the way that they were dealt with. C did not display any bias or preconceptions within the way he gave evidence to the Tribunal or in the disciplinary hearing.
88. The third issue to be determined is whether the decision maker had a genuine and honest belief in the alleged misconduct. This point essentially comes from the decision in **British Home Stores Limited v Burchell [1978] IRLR 379 EAT** and I have found that there was a genuine and honest belief in the alleged misconduct on the part of C.
89. The belief of C stems from two broad areas. Firstly, the investigation and findings of the grievance investigations. Prior to the disciplinary meeting C had considered the report and notes. Secondly, he also considered what was said to him by A within the disciplinary hearing. I have no doubts that A had an honestly held belief which was genuine that A had misconducted himself in the way alleged by the three named complainants.
90. I therefore move on to the next issue which again has its origins in the case of **British Home Stores Limited v Burchell** as to whether the belief in the misconduct was reasonably based and whether a reasonable investigation was undertaken. Within this I also consider whether the decision and procedure fall within a reasonable range of decision making processes of a reasonable employer. These two issues are essentially combined and

again have their origins within the case of **British Home Stores Limited v Burchell**.

91. I have to remind myself that what is expected of a reasonable employer is not the standards of a police investigation prior to trial and that no matter how sophisticated the employer I have to view them as accountants rather than police investigators.
92. A of course has no input into the criticisms of the Respondent's conduct in this matter save those which are alluded to within the grievance investigation notes and disciplinary hearing notes. I am therefore left with the task of assessing what the Respondent did without any explanation from A apart from what is in the notes of what may have disadvantaged him or made the dismissal unfair or unreasonable.
93. The principal criticism in respect of the decision to dismiss is that the B carried out a grievance investigation and made a number of findings. Thereafter the findings are not re-investigated or further investigated by C at the disciplinary stage other than by having a meeting with A.
94. This is alleged of itself to be unfair.
95. The unfairness is said to arise taking into account the delays which pertained following the AGM on 31 August through to a disciplinary investigation which did not commence until the beginning of December and a disciplinary hearing which ended in the third week of January.
96. In addition, I am asked to consider whether the fact that A saw only parts of the grievance investigation notes as they were referred to in meetings and the grievance report. He was thereby denied the opportunity of a fair trial and natural justice within the disciplinary hearing. I address these points below.
97. I am also to consider the fact that A was not afforded an adjournment of the disciplinary hearing (although it is acknowledged that he did not request one) because of a lack of representation or that he was feeling unwell. There is no request for an adjournment of the meeting nor any request to carry out other investigations. Given A's age, experience and qualifications and the fact that he had been alerted to the right to be accompanied and to request a postponement I would be surprised if A failed to ask for a postponement if he needed one. Similarly, if there were any other enquiries A felt the Respondent should have made because of the terms upon which he was suspended I would have expected him to have raised it. I am not aware that any person who A specifically identified in his early grievance meeting had any specific evidence and those which the Respondent approached brought forward more information against A. I take into account that although A had said he had been ill and was still ill he had been able to travel to London from Scotland to the meeting and attend a gym the night before. Also, as A did not disclose any of the allegations to his family nor knowingly to anyone else I do not consider it likely that it is unfair to him to proceed with the meeting without his being accompanied. I do not believe looked at objectively that I can say it caused unfairness to proceed with the hearing on that basis.
98. Given there is no evidence that there is any CCTV camera recording to gather I cannot find that it is outside a range of reasonableness in failing to

seek this from the owners of the hotel where the event took place. I cannot say such avenue has been ignored. The information gathered by B in this case does address the allegations made against A and that C did take into account his experience and service when deciding to impose the sanction of dismissal, such sanction being anticipated by the terms of the disciplinary policy and indeed A himself. The charges were properly framed and the evidence gathered addresses them as required by **Strothous v London Underground Ltd [2004] IRLR 402 EWCA**.

99. I am asked to criticise the Respondent for failing to investigate as to whether there were any CCTV recordings of the dancefloor on 31 August. In this respect it is not known even at the time of the hearing as to whether there was any CCTV recording made or if there was whether any was still in existence at the time of the disciplinary hearing.
100. I am also asked to find that there had been specific failures to consider conflicts of evidence and to make further investigations at the disciplinary stage. The Claimant also criticises the Respondent for failing to frame the disciplinary charges with sufficient precision and alleges that the decision was pre-determined and C biased. It is also suggested that C put emphasis on his misunderstanding that A did not deny the allegations. I will endeavour to address each of these points.
101. I afforded a substantial period of the tribunal hearing in allowing cross-examination of C concerning the conduct of the disciplinary investigation. I believe that was proper given that there were allegations, which A is now unable to backup, that he had been disadvantaged to the point of unfairness within the process. In particular only by detailed consideration of what was put to A and when it was put could I decide whether there had been any failure of natural justice so that the dismissal is unfair.
102. I have already made a finding that the actions of C do not in my view show any bias or pre-conceived ideas. Certainly a decision was made fairly promptly on 24 January and the decision to dismiss took some 20 to 25 minutes. I find that C, given that he was dismissing a director of the company, did have in mind that he had an option to dismiss A because of his gross misconduct or not but that he decided to dismiss taking into account the conduct and his previous good service.
103. Having said that the allegations had already been set out for A and were known to him and as can be seen from the notes C does not get very far with A when he asks him to say what had happened on the dancefloor on 31 August or to say whether or why any of the three complainants had told lies or sought to mislead the Respondent in any way. I believe that is a significant factor because C, having been presented with a lengthy investigation and detailed allegations would, I believe, need to have some signs of dispute on the part of A to suggest that he should investigate any further.
104. When making that judgment I believe it is pertinent that A was an individual in his fifties with a professional qualification and practice and not a younger person with less knowledge of the world or less experience of expressing himself than A would have had. Mrs A suggests that her husband may well in his character let things go by which he knew to be bad. Against this is a recall of A intervening at a training event when he felt that incorrect advice



or information was being given. I can make no assessment of A other than what I read about him but taking into account his professional background and experience having worked for at least two large accountancy firms I believe I can expect someone of his experience, education and training to speak up for himself and there is no evidence within the meetings of him being flummoxed or confused in any way.

105. In the absence therefore of any request by A to postpone the meeting due to illness or because he wanted his or any representative to attend with him I believe that C was entitled to take that at its face value. When A went ahead with attending the meeting he was aware of the seriousness with which the Respondent viewed it as this is explained in correspondence.
106. In my view it was not possible for C to go back to any of the three complainants with an alternative version from A or even to say that A says that this did not occur. It is true to say that A's versions vary. At one end is a statement that if it had have happened he would have remembered it and that he would remember doing such things as are alleged whether he was 100% sober or drunk. These vary towards the other end namely being unable to remember dancing with anybody or at least the complainants and statements that he could perceive of no reason why the three complainants should make complaints which were unfounded. I ask the question objectively as to what enquiry C could be expected to make in those circumstances.
107. Taking into account the totality of the notes of the disciplinary hearing I do not believe there was anything further C could have explored with the complainants themselves.
108. On behalf of the Claimant it is submitted that there is an obligation on the Respondent employer to provide natural justice to the Claimant reliant upon the decision in **A v B** [2003] IRLR 405 EAT. I accept that as a proposition. An employee is entitled to know what he is accused of and the evidence which is put forward in support of that together with an opportunity to challenge it. The Claimant submits that in this case what has been given to A is simply the inculpatory information and not the exculpatory. I do not agree.
109. As the Respondent says I need to apply the test as to whether the investigation carried out by the B is within a range of reasonableness taking into account all the circumstances relying upon the decision in **Sainsbury's Supermarket Limited v HITT** [2003] IRLR 23 CA.
110. That range of reasonable responses test is therefore the same reason as it is in relation for the reason for the dismissal. It is there to encourage Employment Tribunals to set an objective standard of reasonableness rather than a subjective one as to what the Tribunal would or would not have investigated. Such is apparent from the decision in **Hitt** where a large supermarket organisation was initially found to have acted unreasonably in failing to explore all possibilities in relation to keys fitting lockers in a building.
111. The issue of what was disclosed to A and what was not has taken up a good deal of the time of the hearing and is the most challenging of the issues to be determined in this case.

112. I therefore make findings as to what C did or did not see at the time of the disciplinary hearing and grievance and what would have (I cannot say that it did from A's point of view) meant that he had an unfair and unreasonable hearing.
113. It is clear that the allegations made against A were of a serious nature. The acts alleged clearly contravene the Respondent's bullying and harassment policy and can, regardless of that, be seen as objectively serious. A held a senior position with the Respondent, was a director and earned a substantial salary. A's professional reputation was at stake as was his future employment by the Respondent. I consider that as the claimant submits that this puts an onus on the Respondent to carefully investigate the matter whilst at the same time recognising the Respondent as lay people rather than lawyers, see generally **A v B [2003] IRLR 405**.
114. By the time of the disciplinary hearing A had received a number of documents from the Respondent and attended a number of meetings. The content of these is set out above and include the letter of 13 December 2017 setting out the grievance allegation, a meeting of 15 December to discuss it, the written notes of the meeting, a meeting on 9 January and the notes of it, the grievance outcome meeting and the letter inviting him to the disciplinary hearing of 18 January 2018 which enclosed the grievance report.
115. It will have been clear to A what he was accused of, namely three acts of misconduct in a single evening. It would have been clear who was accusing him and of what they accused him. There is a unifying factor that all occurred on a dance floor and include accusations of deliberate inappropriate touching. The allegations differ as to where the complainants allege they were touched. Not only the summary allegations in the letter will have been known to him but he also had notes of the discussions in the meetings with him. A therefore had a clear opportunity to consider the allegations and prepare his case. He had the chance to get help as advised by the Respondent and the opportunity to request additional investigations if he had a belief that other witnesses had specific knowledge of what had occurred and could contradict the version given to the Respondent. I take into account the fact that each allegation is spelled out in the report and had been explored with A. In accordance with the decision in **Bentley v Mistry [1978] ICR 47** A knew what he was accused of and was able to properly defend himself. As the claimant acknowledges there are no hard and fast rules as to what needs to be disclosed to employees in such cases. There is potential unfairness if matters are withheld which could have helped undermine the case against him as is clear from **A v B [2003] IRLR 405 EAT**. My finding is that this is not the case here. The delay in dealing with matters arises from the delay in reporting initially and thereafter a short delay over the Christmas and New Year period. It is clear that the complainants spoke to others before reporting. There is nothing concrete in my view which would or should lead a reasonable employer to disclose documents or statements in any further detail than the Respondent did here. The allegations are made clear. I do not believe that any of the matters put forward on behalf of the claimant are such that they suggest that an injustice is being done to A by failure to disclose. In my judgment disclosure is within a range of reasonableness and it cannot be said on balance that the

remaining information would have led A to be able to challenge the allegations any more than he did.

116. I considered the submissions on fairness on behalf of the claimant and find that the allegations were fully explained to A within the meaning of the requirement in that respect in **Louise v Coventry Hood and Seating Ltd [1990] ICR 54 EAT**. There was an adequate explanation of the evidence against him. I believe what was provided meets the test in **Sainsbury's Supermarkets Ltd v Hitt**. It is true that A was not provided with notes of interviews but it is equally true that none of these provided information that undermined what the complainants said. In relation to D's allegations it is said that she never suggested that A had danced with her. This seems of little relevance when it is accepted that both were on the dancefloor at the same time at what was an informal dance. It is also the case that he was not told that D preferred informal resolution of her grievance. However, that has little relevance as once the B is apprised of the complaint it has to make its own mind up as to how it will be resolved. I do not believe that A is deprived of an opportunity to defend himself thereby.
117. A was also unaware that of E statement that the incident had gone out of her head until her memory was triggered by being aware of an enquiry and that dancing with A would be nothing unusual. Neither would A have been aware of her comments the next day. I do not believe there is anything here which exculpates A nor could it be in the category that it could if unravelled contradict the other allegations. That is my view of all three complaints.
118. I find that sufficient of L's allegations have been given to A. I believe an enquiry was made as to the effect of drink on recollection and A makes no allegation of L. Given the event when these events were said to have occurred I find the Respondent to have made enquiries which are within a range of reasonableness. There can in my finding be no unfairness in failing to disclose information from those who have no evidence of anything untoward. There is nothing in the enquiries which in my view would undermine or enable A to challenge more effectively the allegations against him.
119. The investigation was very much guided in my finding on the response to the allegations by A. At the disciplinary hearing stage A saw no reason why the witnesses would lie neither does he say they are wrong in what they said. I have set out above in some detail the content of the interviews carried out by the Respondent. In this enquiry what is alleged is relatively brief touching on a crowded, noisy and ill lit dancefloor where people danced informally in groups. A accepted he was on the dancefloor dancing but couldn't say who he had danced with. He accepted that dancing with junior staff was inappropriate but he is quite equivocal in his denials nor is it clear that he disputes the veracity of the complainants. Although the delay in reporting and the discussions between various people between 31 August and December 2017 was obvious to A and commented on I do not believe that there is anything cogent in the evidence gathered to suggest that the process was unfair to A, whilst the Respondent did not interview all those he listed he does not identify anyone who he knew to have contradictory evidence. Those contacted which A did suggest revealed more detail against him than for him.

120. I make no criticism of the Respondent for concluding an investigation of a disciplinary matter using the information from the grievance. There is nothing to prevent the Respondent employer doing this either within the Respondent's disciplinary procedure nor specifically within the ACAS code of conduct. Whilst it is undoubtedly correct that it is possible and preferable in many cases to totally separate the two processes I do not believe that this is the case here. It is within the range of reasonableness for an employer to take the allegations found within a grievance process in which a large number of witnesses have been interviewed including the Claimant himself on a number of occasions and the allegations have been gone through with them. It then follows that it is reasonable to tailor what is required at the disciplinary stage to fit the circumstances presented by the employee against the allegations made against him. C had very little if anything from A at the disciplinary stage to justify any further investigation.
121. My conclusion is that the investigation carried out by the Respondent to include the grievance and the disciplinary investigation submitted to the disciplinary meeting is within a range or band of reasonable responses.
122. I need to go further than that and consider whether any injustice is caused to A by the documentation which was produced to him within the grievance and disciplinary process. My conclusions on this are that taken in the round the Respondent has done all that it could reasonably be expected to do in gathering the information from the complainants and any supporting evidence which was immediately suggested to them. A large number of people were interviewed concerning what on the face of it would have been, apart from the allegations made against A, an ordinary event at the end of a working day and dinner on a busy and noisy dancefloor which is ill lit. I believe that it is natural that there will be some minor inconsistencies in that such a situation all those present will not see everything that has occurred due to positioning or other matters and there is something encouraging in the notes which the Respondent took from the witnesses in that nobody seems to be eager to overstate any case and indeed there are occasions when the witnesses make clear as to what they did or did not see and this is checked with them in the grievance investigation. The complainants themselves appear to have reflected on matters before reporting and gave cogent reasons for this. Given that there is no indication from A as to what persons named by him in the grievance could add to the enquiry I do not believe it is outside a range of reasonableness to fail to interview them.
123. I have dealt with above the conclusions on the Claimant's submissions as to the injustice caused and found against any criticism of the Respondent.
124. My conclusion therefore is that the dismissal is not unfair.
125. However had I found in this case that the Respondent had acted unreasonably in limiting their investigation to the persons interviewed or by the release of information to A there are grounds and I do find that it is likely that there would have been a dismissal in any event. There is insufficient in the contradictions of the witnesses to raise any real doubts in this respect and the tone of the interviews as they are recorded leads to no objective doubts about the complainants' evidence and I find the allegations disclosed in the grievance investigation are such that it is unlikely that any glaring or other inconsistencies could truly be found. Dismissal if procedurally unfair

would almost certainly have occurred in any event had a fair procedure such as argued for the claimant been adopted.

126. There was also an expectation of dismissal on A's part. I would therefore have been faced with substantially reducing or more likely eliminating compensation given the likelihood of dismissal.
127. I would take a similar view as to conduct in that had there been a finding of unfair dismissal there would in all probability a finding of conduct on the part of A which is such that in relation to any basic award, as it would with any compensatory award if sought, eliminate the compensation that I would have ordered for unfair dismissal. The conduct is culpable and blameworthy and contributes to the dismissal in all respects and there is enough here given what was admitted and not admitted by A to say that the information given by the three complainants is persuasive. In this case I am making that judgment without hearing from the complainants themselves but of course I would not hear from A either and I can see little prospect of anybody being able to put to those witnesses an alternative version of events which emanates from A and therefore potentially means that the conduct did not take place.
128. I therefore dismiss the complaint of unfair dismissal and the claim fails. My sympathies are entirely with Mrs A whose last memories of her husband will be marred by the way his employment ended but I do not find the dismissal to be unfair.

**Employment Judge Trayler**

Date 18 March 2019