



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4121199/2018

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Held in Glasgow on 15, 16, 17 and 18 April 2019

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**Employment Judge S MacLean
Tribunal Member L M Millar
Tribunal Member A McMillan**

Miss S Hancock

**Claimant
In Person**

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STV Group Plc

**Respondent
Represented by:
Mr R Mackay
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the claimant's claims are dismissed.

REASONS

Introduction

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1. This is a claim of direct sex discrimination, harassment and victimisation under sections 13, 26 and 27 of the Equality Act 2010 (the EqA). The claimant seeks a recommendation and compensation.

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2. The claim was originally directed against the respondent and Rainer Ross. At the final hearing, the claimant withdrew the claim insofar as directed against Mr Ross and the claim against him has been dismissed.

3. Witness statements were produced, taken as read and formed the witnesses' examination in chief. The witnesses were then cross examined and re-examined in the normal way.

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4. The claimant gave evidence on her own account. Her partner Brian Limbert gave evidence on her behalf. For the respondent the Tribunal heard evidence from: Pamela Richardson, Sales Director for Scotland; Rainer Ross, former Senior Business Development Manager; Clark Semple, Business Development Manager; and Danielle Kelly, Director of Strategic Development.
5. The parties produced a joint set of productions and gave oral submissions a written copy of which was sent afterwards.

Relevant law

6. Section 13 of the EqA states that a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.
7. Section 23 of the EqA provides that on comparison of cases for the purposes of section 13, there must be no material difference between the circumstances relating to each case.
8. Section 26 of the EqA provides that a person (A) harasses another (B) if A engaged in unwanted conduct related to a relevant protected characteristic; and the conduct has the purpose or effect of (i) violating B's dignity; or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
9. Section 27 of the EqA provides that a person (A) victimises another person (B) if A subjects B to a detriment because (a) B does a protected act; or (b) A believes that B has done or may do a protected act.
10. Under section 27(2) of the EqA protected acts are: bringing proceedings under the EqA; giving evidence or information in connection with proceedings under EqA; doing any other thing for the purposes of the EqA; and making an allegation (whether or not expressed) that A or another person has contravened the EqA.

11. Section 123 of the EqA provides that a complaint under section 120 may not be brought after the end of (a) the period of three months starting with the date of the act to which the complaint relates; or (b) such other period as the employment tribunal thinks just and equitable.
- 5 12. Section 124 of the EqA provides that if an employment tribunal finds that there has been contravention of a provision referred to in section 120(1), it may make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate; (b) order the respondent to pay compensation to the complainant; (c) make an appropriate
10 recommendation.

The Issues

13. The Tribunal must determine the following issues:
- a. Are any of the claims time barred; if so is it just and equitable to consider them?
 - 15 b. Did the respondent treat the claimant less favourably because of her sex?
 - c. Did the respondent engage in unwanted conduct related to sex and did the conduct have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile degrading humiliating or
20 offensive environment for her?
 - d. Did the respondent subject the claimant to a detriment because she raised these proceedings or did any other thing (raise a grievance) under the EqA?
 - e. What award if any should the Tribunal make?

25 Findings in fact

14. The Tribunal makes the following findings in fact.
15. The respondent is a media company operating amongst other things in the television sector in Scotland.

16. The respondent has employed the claimant since 8 December 2014 initially in the role of account executive then business development executive. She is based in Edinburgh.
17. In 2014 the respondent employed Rainer Ross as a business development executive based in Glasgow. He had little contact with the claimant other than monthly sales team meetings.
18. The role of a business development executive is to be responsible for their own target and the day to day running of their own client portfolio.
19. In November 2015, the role of senior business development manager was created. It was based in Edinburgh with the remit to manage the Edinburgh sales team on a day to day basis, ensure targets were met, attend management meetings and run the day to day sales function. The role involved responsibility for the team's target and in addition to managing their own internal team, was required to contribute to that target by generating revenue and managing clients.
20. Pamela Richardson is Sales Director for Scotland reporting to Peter Reilly, Commercial Director. Ms Richardson is responsible for all the revenue that comes into Scotland and has a team of approximately 18 people reporting to her.
21. The claimant and Mr Ross were among the candidates who applied for the new role and were interviewed by Ms Richardson and Rebecca Boyce (Human Resources). Ms Richardson considered that the claimant was a good salesperson but not ready for promotion. Mr Ross had more experience and in previous employment had managed a team.
22. Mr Ross was appointed Senior Business Development Manager from December 2015. He had line management responsibility for the claimant and two other business development executives based in Edinburgh, Donny Hughes and Dawn McGill. He reported to Ms Richardson.
23. The claimant was disappointed and did not expect Mr Ross' appointment. While she acknowledged that he had worked in a direct sales role and

therefore understood the challenges involved their relationship was initially stained. The claimant felt Mr Ross was patronising.

24. During his first year as, Senior Business Development Manager Mr Ross had some difficult issues to manage in terms of sick absence which resulted in the claimant being in the Edinburgh office on her own. The claimant worked hard and brought in key customers and had good relationships with her clients.
25. Mr Ross acknowledged the claimant's commitment and hard work. He considered that she merited promotion, but promotions were not in his remit. Mr Ross spoke to Ms Richardson and Mr Reilly recommending that the claimant be promoted to Business Development Manager.
26. Ms Richardson did not consider that the claimant was ready for promotion although Mr Ross continued to make the case. The claimant was disappointed about the delay in her promotion and believed erroneously that Mr Ross was prevaricating.
27. In October 2016, Clark Semple replaced Ms McGill as a business development executive in Edinburgh. Before his appointment he had held a more senior role in another organisation and took a reduction in salary to work for the respondent on the understanding that he would be promoted if he managed to achieve certain objectives.
28. The claimant, Mr Ross, Mr Hughes and Mr Semple worked well. There were personal conversations from time to time. The environment was sales driven with pressure to achieve targets. Swearing was the norm. The claimant did not object and she habitually used offensive swear words.
29. In June 2017 the claimant was promoted to Business Development Manager. When she met with Ms Richardson, she was informed that she had not been promoted because of an audit that had taken place and budgets had been frozen. The claimant was given an additional £1,000 to her base salary which was as much as Ms Richardson could do within her budget.
30. Around October 2017, the claimant had significant issues to deal with in her personal life owing to the ill health of her parents. Ms Richardson and Mr Ross

told the claimant that she should take whatever time off she needed. The claimant was given paid leave when she needed time off to attend hospital appointments with her mother.

31. Around November 2017, the claimant recommended a female friend to Mr
5 Ross for a job as a business development executive. The claimant was keen for the prospective candidate to be recruited and passed her CV to Mr Ross. Ms Richardson and Mr Ross met with the prospective candidate. Afterwards in Mr Semple's presence the claimant asked about the meeting and during that conversation Mr Ross said that, "clients would like her" (the CV Incident).
- 10 32. The claimant knew from the personal conversations that took place in the office that Mr Ross was dating in circumstances where she believed him to be in a relationship.
33. The claimant felt that Mr Semple and Mr Ross had more in common; they discussed dating websites and were interested in football. The claimant felt
15 excluded from conversations and privately disapproved of Mr Ross' lifestyle. She did not voice her views to Mr Semple or Mr Ross.
34. In December 2017, Mr Semple achieved the objectives, which he had been set and indicated to the claimant that he was going to seek promotion. The claimant encouraged him to do so and was supportive. He was promoted in
20 January 2018. Mr Semple's starting salary was £500 more than the claimant's starting salary as a business development manager. It was a different budget and Ms Richardson spends what she is allocated. The claimant is on a higher salary than Mr Semple. The claimant was disappointed at the speed of Mr Semple's promotion.
- 25 35. At the start of 2018, the business development directors were asked at short notice to give a presentation to the wider sales team. Members of staff from other regions gave their presentation in a similar format. Mr Ross did not provide his team with a set format but asked them to present information which was readily available. The claimant's presentation focused on problems
30 that she had encountered and was perceived by those attending as a negative presentation.

36. The claimant was discontented about revenue and the New Revenue Solutions (NRS) bonus scheme. She attended a meeting with Mr Ross and Ms Richardson during which the claimant asked if the NRS scheme would count towards revenue target and expressed her dissatisfaction with the respondent. Ms Richardson suggested that the claimant needed to adjust her thinking; if she did not trust the respondent she needed to consider if she wanted to continue working for it. The claimant was upset.
37. Around February 2018, Ms Richardson felt that she needed to be more involved in the management of the Edinburgh team; Mr Ross was also going through a difficult period in his personal life and the claimant also had significant pressures in her personal life.
38. Ms Richardson attended Monday morning sales meetings in Edinburgh. Her impression was that the claimant was insolent towards Mr Ross; she would respond with one-word answers. The atmosphere was poor.
39. On 11 May 2018, one of Mr Semple's clients was hosting a Champagne tasting hospitality evening. It was agreed the respondent would sponsor a page in the promotional booklet for the evening and host a table at the event. Mr Semple invited Mr Ross. Mr Ross made a comment to Mr Semple about who could bring the better-looking date to the event (the Date Incident). The claimant was not present when the comment was made. Mr Semple thought the remark was immature but reiterated the comment to the claimant.
40. On 14 May 2018, there was a Monday morning sales meeting attended by Mr Ross, Mr Semple and the claimant (the May Meeting). The claimant had been on leave the previous week. Mr Ross asked Mr Semple to give an update on his portfolio and asked a few questions about Mr Semple's account which he did the best to answer. Mr Ross then asked the claimant for an update. Her responses were short. Mr Ross asked the claimant about her client R whose advert had been put back on several occasions and was incurring time and resources in other teams. Mr Ross' questioning was excessive. Mr Semple felt awkward. He left the meeting and returned to his desk. The May Meeting

continued for some time. The claimant's responses inflamed Mr Ross and the discussion became heated. The claimant was visibly upset.

41. The claimant and Mr Semple has previously seen Mr Ross behave in the same way with men and women in his team in Edinburgh and Glasgow. Mr Semple suggested to the claimant that she should provide Mr Ross with as much information as he wanted so that he would not press for more.
42. On 18 May 2018, Mr Ross attempted to contact the claimant by telephone to discuss a work matter. When he rang one of her contact numbers, it inadvertently connected. He realised the claimant was in her car having a conversation on loudspeaker to an external advisor who works with the respondent. Mr Ross tried to make his presence known. The claimant did not hear him and carried on with her conversation. Mr Ross heard his name being mentioned. The claimant referred to Mr Ross as an "arsehole" and commented about his personal circumstances. Mr Ross listened in for about 13 minutes then hung up (the Telephone Incident). The claimant subsequently realised she had a missed call from Mr Ross.
43. Mr Ross spoke to Ms Boyce of HR for advice. She suggested that he speak to the claimant about what had happened. He did not have an opportunity to do so as the claimant went on sick leave from 21 May to 16 July 2018.
44. During the claimant's sick absence, Mr Ross followed the respondent's procedure and referred the claimant to occupational health.
45. Mr Semple was asked to deal with the claimant's client C with whom he established a good rapport and succeeded in having a contract signed and finalised. Mr Ross thought that it would be good for client C and for continuity of service for Mr Semple to retain the account and suggested this to Mr Semple. Mr Clark indicated that first Mr Ross should clear any move with the claimant. Ms Richardson thought Mr Semple should take care of client C but the claimant should continue receive the revenue from the account for a year.
46. Mr Ross asked Mr Semple and another colleague, Jill McLaughlin to visit the claimant's client E. Mr Ross was unaware that the claimant had been in

contact with client E while she was absent on sick leave. Mr Semple/Ms McLaughlin and the claimant quoted different rates to client E. Client E was upset about this. Mr Ross had difficulty understanding the claimant's methodology.

5 47. Mr Ross dealt with claimant's client A as an issue arose about the wrong copy being run which resulted in client A involving Mr Reilly. Mr Ross informed Mr Reilly about the background leading up to this and although Mr Ross took responsibility Mr Reilly said that the claimant had to come off the account as the respondent could not afford more mistakes. Ms Richardson knew about
10 this decision. She decided that the claimant should keep the revenue for client A on her account for a year as she had secured client A in the first place.

48. An issue arose about a music festival in July 2018. There was uncertainty over who had been invited as the claimant, rather than client services had been involved. Ms Richardson said that as this involved his team Mr Ross
15 was responsible which he accepted.

49. The claimant had telephone consultations with Liz McBride Occupational Health Nurse Consultant whose reports made no reference to work related stress. During the second telephone consultation the claimant confided in Ms McBride about the difficulty in returning to work. The claimant did not want
20 this mentioned in the report. The final report dated 11 July 2018 stated with the claimant's agreement that the claimant had a further fit note of one week "as she felt too anxious to return to work as she had felt stressed before this current absence. I have advised her to have a full discussion with her manager when she returns to work to discuss her issues. She states that she
25 plans to return to work on 16 July 2018."

50. The claimant returned to work on 17 July 2018. Mr Ross carried out a return to work interview with her (the July Meeting). Ms Richardson had advised him not to mention the Telephone Incident but ask the claimant about her mother and tell the claimant about what was happening with her clients.

30 51. The discussion at the July Meeting was strained. After initial pleasantries, the claimant said that their relationship and Mr Ross' treatment of her made her

worried and anxious about returning. Mr Ross said that he had been lenient about time off. He told the claimant that client C and client A were going to come out of her portfolio and the reasons for this. The claimant said that Mr Ross had done the same thing with Mr Hughes and Ms McGill upon their return to work from sick leave. Mr Ross said that the claimant had quoted prices to client E which were ridiculously low. The claimant maintained that any delay in having contracts written up for client C was due to the client being on holiday. She also maintained that while client A often threatened to cancel the account when sales were down, but she had a good relationship with the client and that the account grew year on year. The claimant did not accept any responsibility for the issues with the music festival which she said Mr Ross knew about for seven weeks. Mr Ross also referred to the claimant's management of client R. The Telephone Incident was raised. Mr Ross commented about what he had overheard. The claimant said that it was private, and Mr Ross had no right to listen to that conversation. The claimant became upset and left the room.

52. The claimant spoke to Ms Boyce. Attempts were made unsuccessfully to resolve issues informally and then by external mediation. The relationship between the claimant and Mr Ross had broken down irretrievably.

20 53. The claimant raised a formal grievance on 19 July 2018. Ms Richardson arranged for the claimant to work temporarily in the Glasgow office whilst the grievance was being investigated. Ms Richardson had wanted to relocate client C and client A permanently albeit that the claimant would be allowed to keep the revenue from these accounts for the year. However, on the advice of HR these accounts were returned to the claimant because of the grievance.

54. Danielle Kelly was asked to conduct the grievance hearing on 9 August 2018. Ms Boyce supported Ms Kelly. Lyndsay McPherson, a colleague accompanied the claimant. The claimant was composed and the grievance hearing lasted over an hour.

30 55. The key issues identified and discussed were:

- a. The bullying/harassment complaint focused on the May Meeting. The discussion focused on how the May Meeting had taken place and how those present conducted themselves.
 - b. The alleged sex discrimination by Mr Ross. The claimant did not provided examples. She focused on hospitality events and who had attended. There was reference to the Champagne event where Mr Semple and Mr Ross had attended with dates. She did not highlight any verbal or physical behaviour that demonstrated sex discrimination in respect of those events.
 - c. The invasion of privacy during the Telephone Incident when Mr ross listened to the conversation rather than disconnecting.
 - d. The claimant's portfolio of clients and the management of them during her absence.
 - e. Issues relating to the July Meeting. The crux of the claimant's complaint was that it had been poorly handled. She felt that Mr Ross had another agenda.
 - f. The informal mediation at which Mr Ross did not acknowledge the issues and smirked at her.
56. Following the grievance hearing, Ms Kelly interviewed Mr Semple, Mr Ross, Ms Richardson and Ms McLaughlin. She then considered all the evidence and concluded that the relationship between Mr Ross and the claimant had very much deteriorated. She believed that there was wrongdoing on Mr Ross' part but did not believe that there was any evidence to suggest that it was a result of the claimant's sex.
57. Ms Kelly found that Mr Ross' behaviour at the May Meeting amounted to bullying/harassment. While it was appropriate for Mr Ross to have probed for the information it was not right for him to do so to the extent that with Mr Semple felt unconformable and the claimant was visibly upset. Ms Kelly acknowledged that the relationship was already fractious; the claimant's responses to Mr Ross' questions had inflamed his approach to her. However,

as a manager his behaviour was excessive and inconsistent with the treatment of others. She did not however see that there was anything to suggest a longer-term campaign of bullying harassment inflicted on the claimant by Mr Ross.

5 58. In relation to the sex discrimination allegations, Ms Kelly could not find anything to suggest the claimant had been treated differently because of her sex. Ms Kelly concluded that there was evidence to suggest that Mr Ross had on more than one occasion viewed and discussed dating websites with Mr Semple within earshot of the claimant. This had the potential to cause offence
10 even if that was not the intended consequence.

59. Ms Kelly concluded that in relation to the Telephone Incident, Mr Ross' actions had constituted a breach of privacy and was upheld.

60. Ms Kelly concluded that the relationship remained fractured during the July Meeting. While the claimant had raised concerns about allocation of clients
15 whilst she was absent from work Ms Kelly concluded that there was a duty of care to clients and that it would be typical business practice that someone else would pick up the client accounts whilst another employee was absent due to sickness or annual leave.

61. Ms Kelly met with the claimant and Mr Ross separately and advised them of
20 the outcome which was confirmed in writing.

62. The claimant was informed of her right to appeal, which she exercised. Her appeal was not upheld.

63. Following the conclusion of the grievance process, Ms Richardson was engaged in a formal disciplinary process with Mr Ross who was suspended.

25 64. Ms Richardson did not consider that either Mr Ross or the claimant had behaved well in the circumstances. However, Ms Richardson felt that as a manager, any inappropriate behaviour on Mr Ross' part had to be addressed. Ms Richardson considered that Mr Ross should have been more measured in his dealings with the claimant and considered that some form of sanction
30 was necessary. She was mindful that both individuals had significant personal

issues, which were ongoing at the time. She believed that the antagonising behaviour of the claimant contributed to Mr Ross' behaviour.

- 5 65. The disciplinary outcome was that Mr Ross was issued with a written warning stage 2; demoted, moved back to Glasgow; and had all his management responsibility removed.
66. Mr Ross felt let down and that HR had not provided appropriate support to deal with the situation. He was disillusioned with the process. He did not appeal.
- 10 67. Around October 2018 the claimant met V, a direct customer of Mr Ross' client M. The claimant was aware of the relationship between V and client M and telephoned client M afterwards to say that she had done so. Client M was angry and complained to Ms Richardson. Mr Ross and Ms Richardson had to visit client M to apologise and provide reassurance.
- 15 68. On 26 November 2018 Mr Ross gave notice of his resignation. Before leaving the respondent in December 2018, Mr Ross met with client A because he had had direct dealing with the client. Ms Richardson was unaware of this until after the event when the claimant and then client A informed her.
- 20 69. In December 2018, Ms Richardson asked Mr Semple when he was next in Glasgow to get in touch with client C as there had been little activity with the account. It was intended to be a social call around Christmas. The claimant was annoyed about this. Mr Semple told her that the meeting did not proceed, and he would not pursue the matter as she was unhappy about it.
- 25 70. At the end of November 2018, Ms Richardson met the sales team to discuss their targets and revenue for the coming year. The claimant provided Ms Richardson with a document advising that she could bring in £432,000 based on her previous performance of £389,571 and projected spend. Mr Semple said that he could bring in £361,000 based on his past performance of £423,000 and his non-repeat business, which totalled £141,000. Initially both the claimant and Mr Semple were set an original target of £455,000.

71. Around mid-December 2018 Mr Ross' clients and prospects were shared among the claimant, Mr Semple and a new colleague, Jennifer Beattie. Mr Ross said that Mr Semple would be a better fit commercially with the client H given his selling style. Although a decision had been taken, Ms Richardson
5 agreed with it.
72. Ms Beattie was allocated two of Mr Ross' former clients, one of whom she had a prior connection.
73. The claimant was allocated two of Mr Ross' former clients. She specifically requested client M however Ms Richardson had some reservations given that
10 there had been an issue, which arose on October 2018. Ms Richardson decided having discussed the matter with Craig Lawson, the claimant's new line manager that client M would be allocated to the claimant as part of her ongoing development. Mr Semple considered that the allocation of Mr Ross' clients was done fairly.
- 15 74. As the claimant later inherited two clients from Mr Ross' portfolio: client M worth £64,000 and another client worth £2,000 Ms Richardson increased the claimant's initial target by £25,000 to £480,000 to reflect the value of the clients that she inherited. Mr Semple inherited client H worth about £30,000. Taking account of the high non-repeat element of his portfolio Ms Richardson
20 decided that his original target was fair.
75. The targets were based on various factors including: client opportunity and each portfolio in terms of both potential; any non-repeat business; market and conditions and scope for growth in that market. Each account manager is allocated targets accordingly. In 2018 the target range for business
25 development managers in Edinburgh and Glasgow were between £400,000 and £1,150,000.
76. In December 2018 there was little activity with client C. Ms Richardson suggested that Mr Semple, who had previously socialised with client C, that should make a social call when next in Glasgow. Ms Richardson
30 recommended that he tell the claimant. Mr Semple arranged to see client C for a coffee but did not pursue the matter as the claimant was unhappy about

it. Client C remains in the claimant's portfolio and Mr Semple has had no contact.

77. Mr Ross visited client A before leaving the respondent's employment. This was done without Ms Richardson's knowledge or approval.

5 *Observations on Witnesses and Conflict of Evidence*

78. The Tribunal listened to and considered the parties' submissions about the credibility and reliability of witnesses it was however for the Tribunal to assess the evidence and make findings in fact.

79. The Tribunal considered that Mr Limbert was an honest and credible witness.
10 His evidence was general, vague and mostly based on what the claimant told him. His witness statement made no reference to events before "the end of 2017" and referred to the claimant being "almost daily, upset distressed and angry" from April/May 2018 and how the claimant felt she was treated unfairly in comparison to Mr Semple, Mr Ross made "sexist and unprofessional
15 comments" in the claimant's presence and that the office environment changed drastically since Mr Ross' change in personal circumstances. Mr Limbert accepted in cross-examination that the claimant was quick to say if she was not happy about promotions and salary; she was not easily but can be offended; she gives as good as she gets; and regularly uses offensive
20 swear words. This supported the respondent's position in terms of the claimant's approach and attitude.

80. The Tribunal was mindful that when making findings that the claimant, Ms Richardson and Mr Semple were giving evidence in difficult circumstances as the claimant was unrepresented and they continue to work together.

25 81. The Tribunal considered that the claimant believed what she said in evidence but tended to exaggerate. The claimant referred to bullying over 18 months and bullying daily. However, that was not the claim before the Tribunal nor was there evidence of that even from Mr Limbert. The claimant was reluctant to make any concessions even when the point was obvious such as it being
30 inappropriate to refer to manager an "arsehole" words and comparing the use

of the word c***t to swearing of a minor nature. The claimant was on occasion evasive and did not answer questions directly. The Tribunal's impression was that the claimant was unwilling to recognise that others had different perceptions of her and events.

5 82. The Tribunal thought that Ms Richardson and Mr Ross were selective in their memory of certain situations – specifically anything that may have assisted the claimant (whether that may have been the case or not) but were very communicative about her negative points. The Tribunal found that Ms Richardson was credible and reliable. The Tribunal's impression was that Ms
10 Richardson considered that she had been supportive of the claimant and acknowledged that there were issues Mr Ross' management style but that the claimant was not without some responsibility.

15 83. Mr Ross gave his evidence calmly in difficult circumstances given that claimant was unrepresented. His recollection was based on his perspective and was consistent with his position during the grievance process. The Tribunal felt that Mr Ross had tried to move on from what was a challenging time for him personally and professionally, but it was evident that the relationship between him and the claimant had irretrievably broken down.

20 84. The Tribunal found Mr Semple was honest, credible and reliable. Mr Semple candidly confirmed to the claimant during cross examination that he did not write his witness statement but answered questions asked of him and approved the statement before signing it and when asked under affirmation. The Tribunal found his evidence compelling and had no hesitation preferring it when it conflicted with the evidence of other witnesses.

25 85. Ms Kelly was also a credible and reliable witness whose evidence was not materially challenged.

30 86. The Tribunal heard conflicting evidence about the claimant's reaction to Mr Ross' promotion. The claimant said that she was relieved not to be appointed Senior Business Development Manager. She was shocked about Mr Ross' appointment. She referred to an incident when she told Mr Ross that the whole team felt he was patronising, and Mr Ross responded that he was the

manager and if the claimant could not accept it he would need to look for someone else. The claimant spoke to Ms Richardson who told her that Mr Ross was right. Ms Richardson said that the claimant was quite resentful of Mr Ross being promoted instead of her and it was irrelevant that the claimant thought she was a better salesperson. Mr Ross was now her manager. Mr Ross said that the claimant thought she was a better salesperson than him and was disappointed about not getting the role and having to report to him.

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87. In the Tribunal's view the evidence of the respondent's witnesses was more plausible. The Tribunal considered that the claimant was a successful salesperson who was surprised at Ms Richardson's appointment of Mr Ross who the claimant did not respect as a salesperson. The Tribunal thought it highly likely that the claimant resented being managed by him as she performed better in the role of business development executive. That said the Tribunal considered that after the initial difficulties the claimant was left to get on which her work which she able to do without input from Mr Ross whose management time was focused on other team members.

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88. There was conflicting evidence about the delay in the claimant's appointment as a business development manager. The claimant said Mr Ross said that she would be promoted by the end of 2016 and she believed that the delay was caused by him not supporting her. Ms Richardson said that Mr Ross was pushing for the claimant to be promoted but it was Ms Richardson's decision to delay this until June 2017. Mr Ross said that he put forward a business case for the claimant's promotion, but promotions were in Ms Richardson's remit.

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89. The Tribunal considered that the respondent's evidence was more plausible. The claimant was a high performer who was working very effectively. There was no suggestion that Mr Ross did not rate the claimant's work performance or had any reason to block her promotion. To the contrary her success reflected on him. The timing of the claimant's promotion was in Ms Richardson hands and she was aware that Mr Ross's recommendation.

90. In relation to the CV Incident the claimant's evidence was that Mr Ross said that a prospective female candidate recommended by the claimant was attractive and so male clients would like her. Mr Ross denied saying this and said that it was the claimant who mentioned the candidate's looks and said that she would get on well with clients. The Tribunal considered that it was highly likely that the claimant was keen for the candidate to be recruited and would emphasise the candidate's ability to build relationships with clients. The Tribunal felt it was more likely that not that during that conversation Mr Ross did say that male clients would like the candidate.
91. The claimant said that Mr Ross encouraged Mr Semple's promotion more than her own. Mr Ross said that when Mr Semple was recruited there was an understanding that he would be promoted when certain objectives were achieved. It was Ms Richardson rather than Mr Ross who had the remit to promote Mr Semple. Mr Semple's evidence supported Mr Ross' evidence and the claimant's evidence that she was supportive of Mr Semple to seeking promotion when he did. The circumstances of the claimant's promotion was different, and the Tribunal therefore could not find that Mr Ross was more supportive of Mr Semple's promotion than he was of the claimant's promotion.
92. The evidence was conflicting about the discussion at the May Meeting and the extent to which Mr Ross confided in the claimant about his personal circumstances. The Tribunal considered that little turned on this point; while the claimant was equivocal about whether she referred to Mr Ross as an "arsehole" during the Telephone Incident the Tribunal considered that it was highly likely that she did and it was entirely plausible that she would refer to his lifestyle of which she conceded she disapproved.
93. The Tribunal heard much evidence about clients in the claimant's portfolio, her relationship with them and what happened to those clients on her return from sick leave in July 2018. The Tribunal did not consider that to determine the issues it was unnecessary to make detailed findings about matters that arose with the clients. The Tribunal was satisfied that the claimant accepted that during her sick absence colleagues serviced the clients in her portfolio. The Tribunal considered that during this period matters arose which came to

attention of Mr Reilly and Ms Richardson mostly via the clients. Given that these matters also reflected badly on Mr Ross, the Tribunal considered it unlikely that Mr Ross deliberately tried to make the claimant look incompetent. The Tribunal also suspected that while the claimant had good relationships with the clients in her portfolio, it was a business relationship, so the clients would seek to maximise any commercial advantage they could.

The Respondent's Submissions

94. There are two parts to this claim: the alleged discrimination set out in the original claim are taken to be either direct discrimination or harassment on the grounds of sex under section 13 and section 26 of the EqA; and the victimisation claim under section 27 (1) of the EqA as set in the amendment.
95. In respect of the claims of direct discrimination and harassment time bar points have been reserved and that includes the alleged events introduced by amendment. The first early conciliation certificate was issued on 10 August 2018. The incidents that are out of time are: the CV Incident, which arose in November 2017; Mr Semple's promotion in January 2018, and the Date Incident in May 2018. Having been introduced by amendment, rather than the original claim, they are out of time.
96. The first question is whether those three claims should be permitted late. The test is whether it is just and equitable for this to happen see section 123(1) of the EqA. A complaint may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates, or such other period as the employment tribunal thinks just and equitable.
97. Guidance to what is just and equitable requires consideration of *the prejudice which each party would suffer as the result of the decision to be made and also to have regard to all the circumstances of the case and (a) the length of and reasons for the delay; (b) the extent to which the cogency of the evidence is likely to be affected by the delay; (c) the extent to which the party sued had co-operated with any requests for information; (d) the promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action; (e) the steps taken by the claimant to obtain appropriate professional*

advice once he or she knew of the possibility of taking action. See British Coal Corporation v Mrs J Keeble & Others EAT/496/96.

98. In this case the alleged events are materially out of time. The claimant has not explained her reasons for the delay other than she did not appreciate as they related to others that they could be brought as part of her claim, which is an argument for two of the incidents. These events have become historical and the reliability of witness evidence is likely to be impaired. The respondent co-operated with requests for information. The claimant took legal advice prior to raising her claim. If she were advised that she could not put forward complaints, which did not relate to her, her remedy would lie elsewhere. It is not be just and equitable to extend the time limits in this case.
99. Turning to the substantive submissions the May Meeting is a claim of direct discrimination with Mr Semple as the comparator. The Tribunal was referred to section 13 of the EqA. The question is did the respondent treat the claimant less favourably because of her sex, and if she was treated less favourably than Mr Semple.
100. There was a difference in treatment at the May Meeting. However, the circumstances of the claimant and Mr Semple were quite different. The Tribunal was referred to section 23 of the EqA, which provides that there must be no material difference between the circumstances relating to each case and the case of *Shamoon v Chief Constable of the Royal Ulster Constabulary (Northern Ireland)* [2003] UKHL 11.
101. At the May Meeting the circumstances of the two individuals were quite different. The main thrust of this meeting was a discussion about client R – this project kept being shifted back, causing issues with other departments. The claimant was being short and uncooperative in her responses. There is evidence from all of the three main witnesses that this was her approach in the last few months before this. Mr Semple's approach of was quite different. He was open and helpful. There was no suggestion that at the May Meeting that there were issues with one of his clients on which he required to be questioned. The claim then would fall at this initial hurdle.

102. It would fall equally in terms of causation. Was this treatment because the claimant was a woman? There is no suggestion of that here whatsoever. It was because of problems with her client and her uncooperative approach in dealing with it. This could apply equally to a man or woman. Mr Semple said he has seen Mr Ross behaving like this with a man. The claimant said that she had seen such treatment directed towards Mr Hughes and Ms McGill – one male and one female. There is no inference of any sex bias here.
103. This is a case where there is clearly absent the “something more” which is required to shift the burden of proof (see *Madarassy v Nomura International Plc* [2007 EWCA Civ 33]). *Tribunals* are encouraged by the House of Lords in *Shamoon* (above) to avoiding getting bogged down in the technical aspects, and ask the question: “why did the respondent treat the claimant in the way it did?” It treated her this way because of the issues at work, which required to be dealt with and her refusal to cooperate. It may be that Mr Ross went too far. He may have pushed further than he should have but that is not a matter for the Tribunal.
104. The claimant has also attributed the deterioration in her relationship with Mr Ross to factors other than sex. In the grievance, she felt it was to do with the preferential treatment she was getting with work. She also accepted in cross-examination that the clash of personalities might well be the reason for the conduct at the May Meeting. This is supported by Mr Semple’s evidence that he encouraged the claimant to play the game and she refused that advice.
105. The second alleged act of direct discrimination is the handling of the claimant’s clients while she was off sick. This is nothing more than general business decision making.
106. There were issues with certain of the claimant’s clients while she was absent and there were mistakes, which had to be corrected. Much of the claimant’s questioning of others in this context seemed to be directed at evading her own responsibility for these errors. With clients such as client C there was the requirement to deal with licensing issues; on client E she created confusion when contacting the client while off sick; and with client A there were material

mistakes in an advert that resulted in Mr Reilly's involvement. It was he who wished this client A to be removed from the claimant's portfolio; and the proposed removal of client C was Ms Richardson's choice. So these alleged acts of discrimination focused against Mr Ross are not his decisions.

5 107. In any event, these clients were not removed. Even if they had been, the claimant would have kept the revenue.

108. Why did the respondent treat the claimant in the way it did? A range of concerns arose, she was not there to deal with them and they had to be dealt with. This was nothing whatsoever to do with sex. The suggestion that Mr
10 Ross created problems to make the claimant look bad is an allegation without any substantiation whatsoever. This would also make him look bad, and would result in him losing money given that his bonus is based on the target of his team.

109. Even without looking at other aspects of the test, this allegation has no
15 foundation. It is relevant to say however that on the particular issue of removing clients, the claimant sought to draw comparisons with two others – one of whom was a man and one a woman.

110. The July Meeting is the next alleged discrimination act. This is to some extent an extension of the last one in that it includes the proposed removal of clients
20 from the claimant. It was also the first meeting following the Telephone Incident and was naturally tense for that reason. The Tribunal was invited to accept Mr Ross' account of that meeting – the claimant became angry and stormed out. As Mr Ross saw it, the anger focused on being confronted with her mistakes and the Telephone Incident. The claimant puts forward a man
25 and woman being treated similarly which does not satisfy the test. There is no relevant comparator, there is no "something more" and this is nothing whatsoever to do with sex.

111. The next event is the informal mediation on 18 July 2018. It is unclear to what extent the claimant still relies on this. This was a well-intentioned attempt to
30 seek to resolve issues. As she said, neither party was in a mind to listen to

each other that day. There is no basis for any form of discrimination in that account.

112. The last of the “in time” complaints is the discussion of dating websites. Mr Ross and Mr Semple accept that, on occasion, they did discuss dating and dating websites. Although, these conversations were between those two individuals, there is no suggestion that these were being done so as to upset the claimant. The claimant also engaged in the conversations.

113. Taking this as a potential allegation of harassment, the nature of the conduct, it is understood to be a claim under section 26(1) of the EqA. However, the broad effects of these provisions are the same. First of all there must have been unwanted conduct, it must be related to sex and must have the purpose or effect as outlined in subsections (b)(i) and (b)(ii) of section 26.

114. In this case the conduct was not unwanted. The claimant engaged, she never complained and this is an environment where all of the team engaged in personal conversations from time to time.

115. If the conduct were to be found to be unwanted, the second question is: is it related to sex? The answer to that is no. Dating may be between members of either sex in any combination.

116. As to the third aspect of the test regarding purpose or effect, the answer to this is no. There was clearly no purpose. This was a light-hearted conversation between two people. Did it have the effect? The respondent says no. There is no violation of dignity and no intimidating, hostile, degrading, humiliating or offensive environment. For guidance the Tribunal was referred to *Weeks v Newham College of Further Education* UKEAT/0630/11.

117. Here the conduct was not directed at the claimant. She did not object until the grievance despite being someone who is very ready to complain and to do so in quite vociferous terms - not just to line manager but to more senior managers. The comments were made in the context of a claimant who is very robust, very vocal and not afraid to use extreme inappropriate language. The comments are limited in scope. She did not complain at the time and there is

no evidence of any environment of the necessary quality under the EqA having been created. There is nothing in this case which goes near satisfying the test of harassment.

- 5 118. If the Date incident is allowed. All of the same points apply. The claimant's delay is even more evident in that she did not introduce this by way of her originating claim for and the comment was not made in her presence.
- 10 119. It is relevant too in considering harassment to note that the claimant suggested in her evidence that any discomfort related to something else. On more than one occasion, she expressed what might be described as moral disapproval of what she saw to be Mr Ross as dating in circumstances where she believed him to be in a relationship. That is not a basis for a complaint of harassment. It has nothing to do with sex.
- 15 120. Turning to the other out of time aspects, the next is the alleged comment on the CV Incident. The Tribunal was invited to accept Mr Ross' the evidence. The claimant had been pushing for her friend to be promoted. She did this over a period of time. He had never met the friend until he ultimately interviewed her. I would invite the Tribunal to find that it was the claimant who referred to her looks, not the other way around. Even if this comment had been said, does it satisfy the test of harassment? It's not unwanted. It is not
20 on the basis of sex; the comment can be made that a man is good looking and it does not have the relevant purpose or effect as required in terms of the EqA.
- 25 121. Lastly there is Mr Semple's promotion. The claimant says that Mr Semple's promotion being faster than hers was unwarranted. Her evidence on this was somewhat contrived. She presents herself in her statement as having been happy and she disputes the evidence of Mr Ross and Ms Richardson that she vocally expressed her dissatisfaction to them about it. The Tribunal was invited to prefer their evidence of those witnesses – particularly the genuine business grounds for the decision wholly unconnected to sex.

122. As an aside, the claimant also complained about starting salaries. It is clear however that she has always been paid more than Mr Semple in terms of basic pay.
123. In terms of the first part of the claimant's claim all of the claims should be dismissed. Those out of time, on that basis and if not on that basis, by virtue of substantive failings.
124. For completeness in the list of complaints the claimant referred to a comment about lads on 29 June. This was not raised in her witness statement or brought out in evidence and should be dismissed.
125. The Tribunal was referred to Ms Richardson's evidence the statistical analysis of the respondent's approach to promotion and pay which shows a very balanced treatment of men and women in the organisation. This is not a case where inferences should be drawn.
126. The Tribunal was then referred to section 27 of the EqA. The protected act is the raising of these proceedings. It is a question of establishing if there is a detriment and if so was it done because of the claimant having raised these proceedings.
127. The alleged acts put forward by the claimant (a) the distribution of Mr Ross' clients on his departure; (b) the setting of targets; and (c) Mr Ross' visit to client A. The person the claimant alleged to be the discriminator is Ms Richardson, although the claimant became slightly more extravagant under questioning to say it may include those higher up in the business or HR but gave no detail of that.
128. The first question is whether there is any detriment. There is no definition of detriment in the EqA. However, the Tribunal was referred to the statutory code on discrimination provides some guidance: "Generally, a detriment is anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage. This could include being rejected for promotion, denied an opportunity to represent the organisation at

external events, excluded from opportunities to train, or overlooked in the allocation of discretionary bonuses or performance-related awards”.

129. There is no detriment in any of the three complaints. The first two are quite closely linked in that they feed into bonus entitlement. In terms of the allocation of clients Ms Richardson was clear as to the business decisions. No one else complained and, if anything, the claimant was treated more favourably. The claimant was given client M a valuable account – and this was despite her earlier unprofessional conduct in meeting one of its clients directly. Similarly, in terms of targets, she and Mr Semple were treated in same way. The claimant’s target was increased to a degree, but to a lesser degree in terms of value of that client. If anything, this is more favourable treatment rather than detriment. The best evidence here is in claimant’s performance. She is already in this calendar year nearly meeting her financial target. The suggestion that she’s been given punitive or detrimental targets is quite at odds with the facts.
130. In relation to the third victimisation claim, this is a complaint, which is directed against Ms Richardson. The claimant is suggesting that Ms Richardson was conspiring to remove this client A from her and the respondent. This is quite at odds with the evidence of Ms Richardson and Mr Ross. It would be absurd for Ms Richardson to seek to lose the revenue. The fact is that this client remains with the claimant and there is no detriment to her.
131. The absence of detriment alone means that the legal test is not satisfied. The claims are equally flawed, however, if we look at causation (see *Chief Constable of Greater Manchester Police v Paul Bailey*, which holds that causation is not a “but for” test. The Tribunal needs to look at the real reason for the detriment.
132. In terms of clients and targets, there is no evidence of more than sound day-to-day business decisions to keep clients happy and motivate the sales staff. In Mr Ross’ visit to client A the claimant’s real anger seems to be that Mr Ross was seeking to poach the client. This is not supported in evidence and is in no way connected to these proceedings, if it were the case. The suggestion

that Ms Richardson has conspired against the company of which she is a director has no foundation. Ms Richardson did not know about the meeting before it happened.

133. Even if the Tribunal looks beyond the test of detriment, there is no causation
5 and, for that reason too, these victimisation claims must all fail.

134. The Tribunal was invited to dismiss all of the claimant's complaints. If the Tribunal does not agree this is a case where claimant is still employed, so there is no question of financial loss. It is a case of injury to feelings only and I would invite the Tribunal to award no more than the minimum.

10 **The Claimant's Submissions**

135. The claimant accepted that her employment has its ups and downs. There have been days where she felt deflated or demotivated because for reasons such as the sales environment, misleading bonus structures, the loss of clients or clients being difficult. From her experience in a sales role this should
15 be expected. The Tribunal was invited to prefer her evidence.

136. The claimant says that the ill treatment received over the last 18 months or so has been horrific. She had no one to turn to and has felt unsupported by HR. It is misleading to say that the claimant has not complained when there is no one to whom to complain.

20 137. If being upfront and honest when asked is having a negative and challenging demeanour then the claimant acknowledged fault on her part; she does not believe in giving inaccurate or misleading information especially when asked for her honest opinion. She should be bullied or harassed because of it.

25 138. To be described as a challenge for having a few occasions where I was late into the office is unfair and misleading when there are occasion when the claimant works late, through my lunch breaks as well as entertaining clients in evenings. To say this is a challenge is an example of bad management and holding grudges over things that are unpredictable particularly when Mr Ross came into the office late most days.

139. The claimant says that she has been treated less favourably due to her sex and for bringing these proceedings. People tend not to admit to bullying and harassing someone due to their gender and sometimes they do not realise they are doing it, it is just the way they conduct themselves and see as an acceptable way to treat others however that does not mean it is not happening.
140. From the evidence the claimant says that Mr Ross fed Ms Richardson negative information about her. Ms Richardson mentioned she has sales managers who operate underneath her and report back to her so she should be able to trust those managers. She was given a false reputation of the claimant but has based her opinion of me on that. She also said that Mr Ross was doing a great job as was ticking all the boxes however at the end of the conversation agreed that she would not have promoted him to this position knowing what she knows now.
141. The claimant said that she was not told that she was difficult, hard to manage or negative until the start of the grievance procedure. This has not been documented anywhere and these comments have been made to try and justify the treatment she received. During the cross examination Mr Ross and Ms Richardson said the claimant's attitude was regularly brought up in management meeting, which Ms Kelly confirmed was not the case.
142. Mr Ross has consistently fabricated information to make the claimant look incompetent at my job whilst dismissing similar errors or mistakes made by my male colleague Mr Semple. The claimant says that this is due to gender. Mr Ross encouraged the attempted take client C and involved him with customer V after rejecting the claimant's request.
143. The claimant said that she felt uncomfortable in her working environment because of the Boys' club atmosphere created and led by Mr Ross. She said that Mr Ross repeatedly embarrassed and humiliated the claimant specifically in front of Mr Semple. Although Mr Ross denies treating the claimant less favourably this did happen and he admitted that he preferred Mr Semple to

the claimant. Mr Semple also confirmed Mr Ross treated the claimant differently to himself during cross-examination.

144. The Tribunal was invited to prefer the claimant's evidence that she did not resent Mr Ross' promotion.

5 145. The claimant said that Mr Ross discussed women and referred to them as "bits of kit" which she found offensive. Most women would find that uncomfortable especially when they know he is in a relationship. It was disrespectful. In cross-examination Ms Kelly confirmed she would find it offensive and would be a highly inappropriate comment to make within the
10 working environment. Mr Semple confirmed in his cross examination that these type of comments did made the claimant feel uncomfortable and recognised that in the claimant's opinion Mr Ross's attitude was sleazy and would cause offence.

146. Mr Semple confirmed during cross-examination that it was unlikely for Mr
15 Ross to confide in the claimant at the May Meeting which contradicts what Mr Ross' evidence. The claimant said that Mr Ross sharing personal information, of which the claimant's family was an example of him being happy to share her personal information in order to violate her dignity.

147. The claimant said that Mr Ross bullied her because she is female, and her
20 personal circumstances made her vulnerable and an easy target. Mr Ross consistently from around October 2017 created a degrading hostile working environment. The claimant felt that Mr Ross telling her to leave the organisation was coaxing her to leave.

148. The respondent claims that the breakdown in relationship was due to clash of
25 personalities. The claimant said that this is misleading when claiming it was down to moral disapproval. The claimant did not disputing that there is moral disapproval. She said that the clash in personalities was due to Mr Ross' personality being disrespectful of women and this is an example of his disrespect, which she found offensive.

149. The claimant accepted that clients have to be looked after in a person's absence. It is not common practice in the industry except when working under Mr Ross for them to be removed from the person's management on their return. Mr Ross removed clients from the management of Ms McGill and Mr Hughes upon their return from sick leave. This was to indicate that this did in fact happen as denied by Mr Ross during cross-examination. Mr Semple confirmed he thought Mr Ross' attitude towards women had changed due to his personal circumstances during cross-examination.
150. The claimant said that she was unable to give examples of the daily comments and events that happened all that time ago when these issues started. It was the same when Ms Kelly interviewed her during the grievance. The claimant did not take notes of them at the time how. However Mr Limbert confirm that the claimant was coming home daily upset due to Mr Ross' treatment
151. The claimant is currently 90 percent to target for this year. The target that was originally given to her she believes was in hope for her to fail. The claimant said that she bad year last year based on the treatment she received. She believes that Ms Richardson possibly thought the claimant would carry on struggling. However when Mr Ross left the claimant says that she was able to revert to the more positive sales person she had been previously. Ms Richardson allowed Mr Ross to make decisions on the split of his portfolio despite the grievance having just taken place, she is the sales director and has the authority to have adjusted this, she chose not to.
152. The claimant said that it was her new manager's decision to allocate her client M with Ms Richardson's acceptance. The claimant had her target increased because client M spent around £60,000 previously but had only booked in for £13,000. There was no guarantee client M would rebook the same revenue. Mr Semple did not have his target adjusted when he was allocated client H which the claimant said was an actual booking of £30,000. Ms Richardson said they were treated the same and this was done fairly. That was not so as the claimant says she was the only one that had my target adjusted.

153. The claimant said that she had already brought in more revenue than she did the whole last year. This is not down to a repeat spend by client M but hard work, relationship building and determination.
- 5 154. The claimant said that she was not claiming Ms Richardson was conspiring against the respondent by allowing him to contact client A before leaving. The claimant said that Ms Richardson told me her had seen an appointment in his diary. Ms Richardson failed to do anything about it. This is another inaccurate suggestion made by the respondent.
- 10 155. The claimant said that the victimisation she received is punishment for drawing attention to Ms Richardson and her department. The claimant believes that when Ms Richardson decided to back a bully this has maybe reflected badly on her. The claimant also believes that Ms Richardson was quite friendly with Mr Ross, which has also left Ms Richardson with resentment towards the claimant. Although the victimisation the claimant says she received has come from Ms Richardson that did not mean the claimant found her to be the main discriminator. The claimant did not know if Ma Richardson was the one who made all of these decisions but she communicated then to the claimant.
- 15 20 156. Mr Ross sought advice on what could be done about the claimant regarding the Telephone Incident. He was then allowed to conduct the July Meeting. This was a failing by the respondent. The claimant says that there should have been a witness or an HR employee present given Mr Ross' ill feeling towards me about the Telephone Incident. If this had happened the claimant does not believe it would have escalated he way it did; and he would not have mentioned things he was told not to.
- 25 157. Ms Richardson said that the claimant has always been paid more than Mr Semple. The claimant said that the respondent provided no evidence of this despite her I did request details of the difference of pay increase between her and Mr Semple.
- 30 158. The claimant says her new manager treats her with respect and as an equal. She says that he told her that she performs at a much higher level. The

respondent's portrayal of her is untruthful and hurtful. The claimant said that she will be returning to work for Ms Richardson who that has supplied incorrect and false information. The claimant feeling anxious, and believes that the victimisation will continue and will most likely be worsened. She does not believe that anyone would put themselves through this if her claims were not the truth.

159. The claimant describes her target as an unfair. While she may be close to hitting and may exceed it she does not believe this was anticipated when it was given to me. The claimant says that she had been treated less favourably. Mr Ross and other members of the team have targeted her clients based on Ms Richardson's encouragement. The claimant has since been embarrassed and humiliated more in-front of the sales team.

160. The claimant says that the claim is not about compensation. She had been mentally and physically affected by the ill treatment. She does not want other employees of the respondent to have to go through what she been through. The claimant asked the Tribunal to consider the positive impact if her claim is successful that this could have on other members of the company going forward and not just myself.

Discussion and Deliberation

161. The Tribunal started its deliberation reminding itself that the three-month time limit for bringing a discrimination claim is not absolute and can be extended where the Tribunal thinks it is just and equitable. This discretion is the exception rather than the rule.

162. There was no dispute that the complaints which were where brought out of time were the CV Incident; Mr Semple's promotion; and the Date Incident.

163. The claimant had received legal advice when making her grievance and had gone over her grounds of a potential claim before sending her claim form to the Tribunal's office on 8 October 2018 having notified Acas of early conciliation on 10 August 2018. The original claim form referred to Mr Semple's promotion which took place in January 2018. The CV Incident

(November 2017) and the Date Incident (May 2018) were first raised in the claimant's amendment. None of these complaints were raised as part of the internal grievance.

164. The claimant said that she did not appreciate that she could refer to these complaints as they did not involve her. The Tribunal considered that this explanation was unconvincing in relation to the CV Incident and Mr Semple's promotion.
165. Having heard evidence from the claimant, Mr Ross and Mr Semple the Tribunal considered that the cogency of evidence was affected in relation to the CV incident. There was disputed evidence between the claimant and Mr Ross about the context of the discussion and who spoke about appearance. Mr Semple said in cross examination that he could not recall what was said; maybe there was reference to appearance but did not say by whom. He could not recall the exact words other than "clients would like her". All the witnesses could recall Mr Semple's promotion and the Date Incident. The Date Incident was not as historical as the other complaints and occurred before the May Meeting.
166. The Tribunal concluded that it was just and equitable to extend the time limit in respect of Mr Semple's promotion and the Date Incident but not the CV Incident.
167. The Tribunal then turned to consider the alleged discriminatory acts in chronological order.
168. The first alleged discriminatory act was the speed of Mr Semple's promotion. The Tribunal understood this to be an allegation of direct discrimination and asked if the claimant was treated less favourably because of her sex and if she was treated less favourably than Mr Semple.
169. The Tribunal considered that the circumstances of Mr Semple and the claimant were materially different. The respondent had employed claimant as a business development executive in 2014 and she was promoted in June 2017. Mr Semple joined the respondent in 2016 having taken a step down

from his previous employment on the understanding that if achieved certain objectives he would be promoted. Having done so he was promoted in 2018. There was also in the Tribunal's view no evidence to suggest that the timing of the promotions of the claimant or Mr Semple was influenced by Mr Ross. Promotions were Ms Richardson's remit and she made decisions based on genuine business reasons unconnected to sex.

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170. The next alleged discriminatory acts were the discussions between Mr Ross and Mr Semple about dating and dating websites. The Tribunal understood that these discussions were often in the context of what had happened at the weekend and the claimant would be present. Mr Ross' recollection was that the claimant would engaged in these conversations which the claimant disputed.

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171. The Tribunal considered whether there was unwanted conduct. There was no evidence that the claimant indicated to either Mr Ross or indeed Mr Semple with whom she had a good relationship that she did not want them to discuss their out of work arrangements with her. Also, the Tribunal did not consider that discussion about dating was necessarily related to gender. The Tribunal also felt that there was no evidence that these discussions had the purpose or the effect of violating the claimant's dignity and no intimidating, hostile, degrading, humiliating or offensive environment. The discussion was not directed at the claimant and she did not complain until raising the grievance months later.

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172. The Tribunal had the same conclusion in relation to the Date Incident which was not made in the claimant's presence but relayed to her by Mr Semple. The Tribunal was surprised that if Mr Semple genuinely thought that the comment made to him by Mr Ross was a poor attempt at humour which would have the effect of violating the claimant's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment Mr Semple repeated the comment to her.

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173. The next discriminatory act relates to the May Meeting which the claimant says amounted to less favourable treatment than Mr Semple. The Tribunal

considered that the claimant was treated less favourably than Mr Semple but the Tribunal felt that they were not in materially the same circumstances. Mr Semple was asked a few questions about his accounts which he did the best to answer. None of his accounts were raising issues with other teams. The claimant was asked for the same update but her responses were short. Mr Ross asked her about client R whose advert had been pushed back which impacted on other teams. The claimant's responses were again short.

174. In any event the Tribunal did not consider that there was evidence to support the claimant's position that this treatment was because she was a woman. To the contrary Mr Semple and the claimant said that they had heard Mr Ross treat both men and women in this way.

175. The Tribunal asked why Mr Ross treated the claimant in the way that he did at the May Meeting. The Tribunal's impression was that claimant did not respect Mr Ross on a personal or professional level which resulted in her being uncommunicative with him at meetings attended by colleagues and managers. Mr Ross interpreted this as the claimant being uncooperative, disrespectful and difficult to manage and unrelated to sex.

176. The next alleged act of discrimination (direct) is the handling of the claimant's clients while she was off sick. The Tribunal referred to its findings. The claimant accepted that it was not unfavourable treatment for colleagues to deal with clients which she was absent. The alleged less favourable treatment was the removal of client A and client C from her portfolio on her return. The claimant said that this was not normal practice but then suggested that this had also happened to Ms McGill and Mr Hughes when they returned from sick leave. This was disputed by Mr Ross.

177. The Tribunal approached this allegation by asking why the respondent treated the claimant in this way. While the claimant was absent from work Mr Reilly became involved in dealing with a complaint from client A arising from a mistake by the claimant. Ms Richardson decided that client C should be moved to Mr Semple because he had been involved in dealing with licensing issues and pulling the account over the line while the claimant was absent.

These decisions were taken by directors for business reasons that were unconnected with sex. The claimant was still to receive the client revenue and ultimately these clients were not removed from her.

5 178. The next alleged discrimination act is the July Meeting. The Tribunal understood this to be an allegation of unfavourable treatment because of sex. The claimant did not suggest a comparator and had referred to the treatment of Ms McGill and Mr Hughes. Again, the Tribunal found it simpler to ask why the claimant was treated in the way that she was by the respondent.

10 179. Although the July Meeting was some eight weeks after the Telephone Incident the claimant and Mr Ross were still aggrieved. While it was normal policy for Mr Ross to have conducted the claimant's return to work interview it was unfortunate given that HR were aware of the issue that the only support and advice that Mr Ross received from Ms Richardson was not to discuss the Telephone Incident at the July Meeting.

15 180. The Tribunal could understand that on her return to work the claimant needed to be updated on matters relating to her clients including the decisions taken by Mr Reilly and Ms Richardson. The treatment of the claimant at the July Meeting not related to her sex but due to the unresolved grievance of the claimant and Mr Ross in relation to the Telephone Incident and the decision
20 to remove some of her clients from her portfolio.

181. The Tribunal then turned to the claimant's victimisation claim. The respondent submitted that that the protected act was the raising of these proceedings in October 2018. The Tribunal noted that in the claimant's claim she refers to the grievance as the protected act. There was no dispute that there had been
25 a protected act and the alleged detriments took place in December 2018.

182. The Tribunal referred to the statutory employment code and noted that detriment is anything which the claimant could reasonably consider changed her position for the worse or put her at a disadvantage. There is no need to demonstrate physical or economic consequences. However, an unjustified
30 sense of grievance alone is not enough to establish detriment.

183. The claimant says that the detriments that she suffered were (a) the setting of targets; (b) the distribution of clients following Mr Ross' departure; and (c) others contacting her clients.
184. The Tribunal's understanding is that the claimant considered that the initial target of £455,000 was a detriment because it was based on 2018 performance and the claimant' 2018 performance (£389,571) was lower than Mr Semple's 2018 performance (£423,000). However, the Tribunal noted that the projected spend provided by the claimant and Mr Semple was also factored into target.
185. In terms of distributing Mr Ross' portfolio of clients the Tribunal noted that the claimant asked for and was allocated client M, a high value account. Mr Semple and Ms Beattie accepted their allocation and did not say that the process was unfair. The Tribunal did not consider that the distribution of Mr Ross' clients subjected the claimant to a detriment.
186. The Tribunal then considered if increasing the claimant's target by £25,000 after the redistribution of Mr Ross' clients was a detriment. Mr Semple's target was not increased despite inheriting a client worth £30,000. The Tribunal could understand why the claimant could reasonably consider put her at a disadvantage.
187. Turning to the last alleged detriment, the claimant said in December 2018 Mr Semple contacted client C and Mr Ross contacted client A. The Tribunal appreciated that it was not common practice for one sales person to speak to another sales person's client. It was not unheard of; the claimant spoke to V a direct customer of client M, when client M was part of Mr Ross' portfolio. Ms Richardson was not involved in Mr Ross' visit to client A and while she suggested Mr Semple make a social call to client C a social relationship already existed between client C and Mr Semple and there was no suggestion that client C was being removed from the claimant's portfolio. The Tribunal did not consider that there was a detriment suffered by the claimant.
188. In any event the Tribunal considered that if there was any detriment suffered by the claimant the reason was a business one. Ms Richardson had to set

5 targets which incentivised the team but were achievable. The claimant is a high performing, successful salesperson who has consistently met and exceeded targets. In the Tribunal's view it was not in the business interests of Ms Richardson or the respondent to set up the claimant to fail. While the claimant's target was increased it was to a small extent given the value of the historical spend of the clients that were reallocated to her. While the Tribunal had no doubt that the claimant is conscientious and hard-working she has already nearly met her annual target which would suggest that it was achievable.

10 189. The claimant's grievance was not directed against Ms Richardson and she was not involved in that process other than providing a statement to Ms Kelly. While Ms Richardson appointed Mr Ross to the role of Senior Business Development Manager, she conducted the disciplinary proceedings which resulted in a stage 2 written warning and Mr Ross' demotion. The Tribunal
15 did not doubt that Ms Richardson was disappointed in the deterioration in the working relationship between the claimant and Mr Ross. However, the Tribunal considered that Ms Richardson was an experienced manager accustomed to dealing with disciplinary and grievance procedures. The Tribunal was not convinced that Ms Richardson was punishing the claimant
20 for raising the grievance or these proceedings.

190. Having reached the conclusions that, it had the Tribunal did not need to consider remedy and dismissed the complaints.

25 **Employment Judge**

S MacLean

Date of Judgment

31 May 2019

30 **Date sent to parties**

03 June 2019