



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Madeline Luckham

**Respondents:** (1) HSBC Bank Plc  
(2) Robert Clegg

**Heard at:** East London Hearing Centre

**On:** 15 – 17; 21 – 24; 28 & 29 January and (in chambers)  
30 & 31 January 2020

**Before:** Employment Judge C Lewis

**Members:** Mr T Burrows  
Dr L Rylah

**Representation**  
Claimant: Mr A Francis - Counsel  
Respondents: Ms J McCafferty QC and Ms K Taunton – Leading and Junior  
Counsel

## RESERVED JUDGMENT

The unanimous judgment of the Employment Tribunal is that:-

1. The Claimant's claims against the First and Second Respondent for direct sex discrimination contrary to Section 13 of the Equality Act 2010 fail and are dismissed.
2. The claims against the First and Second Respondent for harassment related to sex contrary Section 26 of the Equality Act 2010 fail and are dismissed.
3. The claims against the First and Second Respondent for victimisation contrary to Section 27 of the Equality Act 2010 fail and are dismissed.

## REASONS

1 The hearing took place on 15 – 17, 21 – 24 and 28 – 29 January 2020 and in

chambers on 30 and 31 January 2020.

### **Applications at the outset of the hearing**

2 On the first day of the hearing applications were made for an anonymity orders and restrictive reporting orders in respect of three individuals who are not the parties to the proceedings but who had been named as a result of allegations made in the proceedings. The applications under Rule 50 were not opposed by the Claimant's Counsel. A detailed skeleton argument was prepared by Ms McCafferty QC and Ms Taunton on behalf of the First and Second Respondent. They set out the relevant legal principles and the basis for seeking the restricted reporting orders and anonymity orders, referring to the Article 8 rights (of the ECHR) of the individuals in question who were not the parties but who nevertheless had been drawn into the proceedings as a result of the allegations made by the Claimant.

3 Having carefully considered the application and the basis for it the Tribunal concluded that it was necessary to give effect to those three individuals' Article 8 rights to protect their identities and granted both orders. We are satisfied that whilst this was a restriction on open justice it was limited and specifically targeted to the names of these individuals who are not parties. It did not prevent members of the public and the press reporting the proceedings themselves, or understanding the nature of the proceedings and the allegations, the restriction involved simply the identities of three individuals and we found that the balancing exercise in respect of Article 8 and Article 10 required those orders to be granted, in order to protect the Convention rights of those three individuals and being in the interests of justice. The individuals are not to be named and are to be known as Female 1, Female 2 and Complainant 1.

4 Complainant 1's name had been anonymised and her name redacted from any documents seen either by the Tribunal or available in the bundles and her name did not form part of the proceedings. The person identified as 'Female 2' in the Respondents' respective Responses (ET3s) and witness statements is now to be known as Female 1 and the witness previously identified as Female 3 is to be known as Female 2.

5 The Tribunal made a Restricting Reporting Order and Anonymity Orders in respect of those individuals and the Restricting Reporting Order was published on the door of the Tribunal. As a result any identification of those individuals in publications is prohibited: a breach of the order amounts to a criminal offence.

### **The Claimant's application to amend her claim.**

6 The second application the Tribunal had to consider was an application to amend the Claimant's claim to rely on the acts relied on under section 13 the Equality Act as direct discrimination, in the alternative as instances of harassment related to her sex under section 26.

7 By a claim issued on 10 October 2018 the Claimant had brought claims of sex discrimination, harassment related to sex, harassment of a sexual nature and victimisation against her former employer HSBC Bank and her former line manager Mr Robert Clegg. In her claim form the Claimant refers to various acts of direct discrimination: at paragraph

32 of the particulars of claim she relied on a number of instances relating to her exit from the First Respondent, paragraph 32a – e; and at paragraph 32g to Mr Clegg's conduct following the end of their sexual relationship. The Claimant had pleaded these as acts of direct discrimination. She sought leave to amend her claim to allege in the alternative that the same acts form part of a campaign of harassment related to her sex orchestrated by the Second Respondent.

8 The First and Second Respondents were both represented by the same legal team and Ms McCafferty QC resisted the application on their behalf. The Claimant's submission in support of the application was set out in a written skeleton argument. The Claimant's submitted that this was a relabelling exercise, by reference to *Selkent* principles, and did not involve any new factual allegations. The Claimant acknowledged that the statutory time limits applied to the new claim and that the existing claim for direct discrimination and the claim of harassment related to sex contained different elements and the outcome in respect of each may be different. However it was submitted that the new claims depended entirely on the facts already alleged and that the proposed amendment was introduced on the basis of precisely the same facts and matters relied on under the Section 13 claims; the scope of enquiry is almost identical, requiring the Tribunal to draw inferences as to the reasons for treatment and are alternative possibilities arising from the same factual matrix and lastly that the balance of prejudice fell in favour of the Claimant. The timing itself was not decisive. It is noted that no explanation had been put forward for the timing.

9 The Respondents' Counsel had prepared a skeleton argument in response. Counsel were agreed as to the applicable law, not surprisingly as it is well rehearsed. The Respondents' Counsel in particular relied on *Unite the Union v Nailard [2019] ICR 28* and sought to suggest that the Respondent would be denied a fair trial by the amendment being allowed at this late stage; that the further elements introduced under the statutory tort of harassment would need to be properly explored and responded to with the Respondents' witnesses; that this was another example of the Claimant seeking to expand the scope of her claim incrementally via documents related to disclosure and the list of issues; and illustrated a recognition of the causation difficulties in the Claimant's claim, having been brought at the point when the Claimant had over a month to consider the Respondents' witnesses evidence, it was effectively an ambush to introduce a new claim for which the Respondents had no opportunity to prepare. The submissions also addressed the substance, or merits, of the claim of harassment behind the application to amend and took issue with the description of it as a relabelling exercise.

10 The Tribunal carefully considered the skeleton arguments and the oral submissions by respective Counsel and the respective bundle of authorities provided by each side. It was accepted that whilst time limits were of relevance the case of *Galilee v Commissioner of Police for the Metropolis [2018] ICR 634* held that the Tribunal would be able to allow the amendment but leave the question of whether it is just and equitable to extend time until the determination of the issues itself.

11 The Tribunal indicated to the parties that they would consider the application and the other matters that have been raised and give their ruling the following day when the parties returned.

12 On day two the Tribunal gave its ruling in respect of the Restricted Reported

Orders and Anonymity Order and the Restricted Reported Order was placed on the door for the hearing. The Tribunal informed the parties that it had decided to allow the application to amend.

### **Reasons for allowing the application**

13 The Tribunal was satisfied that although the amendment would introduce a new statutory label and new cause of action, containing different elements to it, the claim of harassment rather than going from the general to the particular, as had been suggested, was framed so as to go from the particular to the general. We had been referred to parts of the witness statements which traversed the question of harassment in general terms and the specific denials of any bullying or harassment by the Second Respondent, against whom the allegations were directed, in his statement. The Respondent can be afforded the opportunity to introduce further evidence during the course of the hearing which is listed over a the course of 3 weeks and we gave leave to serve any supplemental witness statements that the Respondent considers necessary as a result of the amendment being granted, (in the event no further witness statements were provided or sought and no supplemental questions were asked in respect of harassment to address the additional matters).

### **The Issues**

14 The List of issues, as agreed by the parties, (consisting of some 13 pages) was provided to the Tribunal on the first day of the hearing. The Claimant brought claims of direct sex discrimination under s 13, harassment under sections 26(1) and 26(2) and victimisation under Section 27 of the Equality Act 2010. The parties agreed that the Claimant was employed as a contract worker by the First Respondent and fell within Section 41 of the Equality Act 2010. The list of issues which had been put forward as an agreed list was revisited on day two, Ms McCafferty pointed out that the additions in blue had not appeared in the original list of issues, however there was no objection to treating those as particularisation of how the Claimant put her claim subject to those particulars properly falling within the ambit of the pleaded case.

### **Witnesses**

15 The Claimant produced a witness statement dated 19 November 2019 and a supplemental witness statement dated 10 January 2020 and had provided witness statements from 7 further witnesses namely Charles Eklund, Rory Watts, Judy Stonebridge-Dunne, Alan Guerin, Angela Iglio, Michael Gagg and Ety Thomas (together with 3 supplemental witness statements). The Respondents provided witness statements from the following witnesses: Robert Clegg (the Second Respondent), Josh Bottomley, Lloyd Robson, Tim Miller (and supplemental witness statement), Carmen Hickers, Jessica Ayuya, Ricky Constantinides, Melvina Metochi, Female 1, Kate Thompson (Rodrigues), Alastair Satterley, Chris Marshall, Ian Martin, Female 2.

16 In order to complete her cross examination in the time available Ms McCafferty QC chose not to cross-examine any of the Claimant's witnesses other than the Claimant. The Respondents did not call Female 2, Chris Marshall or Jessica Ayuya to give evidence but tendered their witness statements.

## Written submissions

17 The Tribunal was provided with an agreed chronology, agreed cast list, an opening note from Claimant's Counsel and written closing submissions from both parties. The Respondents' counsel also provided a cross-reference of their submissions to the list of issues. The Tribunal considered the written and oral submissions and supporting documents during their deliberations.

## Findings of fact

18 The Tribunal made the following findings of fact based on the evidence that we heard, so far as is relevant to the issues we had to decide.

19 On 2 December 2015 the Claimant was engaged by HSBC via Resource Solutions, on a fixed term for 12 months, as a contractor under a contract for services with her company MVP Consultants Limited, at a daily rate of £500. Prior to this engagement with HSBC the Claimant had worked in project management, product delivery and digital for over ten years. The Claimant was recruited by and reported into Charles Eklund as a Digital Project Manager in his Credit Card team. Charles Eklund was the Global Head of Retail Products for HSBC bank. He joined HSBC in February 2015 and was a senior manager at GCB Grade 3 within the Digital department. He had been recruited to lead the Digital Retail Originations team. The organisation was going through a transformation and required strong product leaders in a digital industry to drive the organisation forward in their effort to move customers away from physical channels to self-serve digitally. When Mr Eklund joined in February 2015 it was possible to count the number of people in Digital on one hand. His boss was Rohit Agrawal and together they set about a significant recruitment drive to get the teams up and running. His recruits were responsible for redefining and delivering the digital journeys for customers who were looking to apply for a product online such as a credit card, mortgage, unsecured loan and a current account. When the Claimant joined she was the only person on the Global Credit Card project within the Digital team. Over the course of the next year the product team membership increased until each Digital Project Manager was leading a team of between 10 – 20 people and they were then re-titled and elevated to Head of Product in their respective teams. The Claimant became Head of Product for Credit Cards in the Originations team in September 2016. The teams began to discuss permanent roles for the contractors in or around late 2016 and Mr Eklund actively pushed for all his product leads to be taken on at GCB3 Level.

20 The Claimant described the working environment at the time she started in Digital as being the best she had ever worked in, with a positive energy and good fun. The Claimant's contract was extended for a further 12 months in December 2016. In late 2016 Mr Eklund moved out to California and initially continued to manage the team remotely from the USA but in January 2017 it was decided that Lloyd Robson would take up day-to-day oversight of the Originations team and Mr Eklund would refocus day-to-day on developing retail business banking and international customer onboarding.

21 Mr Eklund found the Claimant to be very receptive to feedback. He acknowledged that she was "no shrinking violet" but never witnessed her attack or bully anyone. His witness statement was unchallenged.

22 Mr Robson's experience of the Claimant was somewhat different. Mr Robson described the Claimant as a competent product owner, who understood what digital project management required, understood customers' needs and user experience, and appeared to have a particular passion for delivery. However he observed some worrying behaviours in the way she interacted with others, particularly with juniors in the team and stakeholders across the wider business. He recalls a number of people raising concerns about the Claimant's behaviour and it seemed to him that throughout 2017 he regularly had to defuse conflicts or clashes which centred around the Claimant and that there was a theme in feedback of challenges for the Claimant's ways of working. Ricky Constantinides, Discipline Lead for Business Analysis, raised concerns with Mr Robson about the Claimant's working style on a number of occasions. In an email to Mr Robson [156] on 21 April 2017 he gave examples of what he described as 'aggressiveness' towards his business analysts, stating:

"As advised at our last meeting I have refrained from responding to Mad's email. To keep you informed I have escalated this matter and the other incidences that have occurred over the last few months. The aggressiveness and mannerism of which some of these conversations were held and in front of others won't be tolerated, and not expected by anyone at HSBC or in line with our values. I appreciate that in our delivery mode and stressful environment tensions can be stretched. I have on a number of occasions tried to be amicable and educate on how things work in HDS and with our colleagues we provide. As always I am here to support Originations as well as drive and grow a successful digital environment for HSBC. I would not expect anyone working for me to be spoken to in this manner or undermined in such a way. Happy to take your advice on how to rectify and return back to professional setting."

23 Mr Robson also gave other examples in his written statement (see paragraphs 12 13 and 14) where similar issues had been raised by other colleagues and stakeholders, including complaints in March 2017 from markets that the Claimant was involved in, and a complaint from the Chief Delivery Officer of a third party in around February 2017. In his oral evidence Mr Robson explained that there were regular instances of similar issues being raised, it did not occur often but his concern was that they were recurring. Contractors working at HSBC had raised concerns about continuing to work with the Claimant in light of her behaviours, in particular there were concerns about the Claimant trying to force things through in an unrealistic and pressurised way, being dismissive, argumentative and confrontational, often in front of other team members, demonstrating a lack of communication, attempting to exercise authority which she did not have and ignoring the views of others.

24 Mr Robson noted that the Claimant was very amenable outside the office and seemed to get on well with people in a social setting, including some of those who complained about her behaviour at work. He considered that the issues appeared to typically arise around her interactions with people in a professional setting and her attempts to exercise control over delivery. He noted that there were some recurring themes and they seemed to him to be around petulant behaviour and a competitive and inflammatory approach, creating a more stressful and unpleasant environment for others as a result. He did give feedback to the Claimant but he was cautious about naming any individuals as he was conscious the Claimant could be overbearing and direct with more junior members and did not want things to backfire on them. He told us that he tried to

give balanced feedback despite the Claimant being defensive.

25 The Claimant denied receiving negative feedback during her time in Originations. However we were taken to an email that she sent to Charles Eklund on 14 March 2017 [page 120 – 126] updating him on the conversation with Lloyd (Mr Robson). It is clear that there had been some negative feedback. The Claimant expressed the view generally that Lloyd was very quick to tell her when he feels she is going wrong, often without examples or specifics.

26 Mr Robson spent more time managing and coaching the Claimant and dealing with issues and complaints caused by her behaviour than he would ever normally expect to have to do with a contractor of her seniority and experience. He found the Claimant was generally defensive in the discussions.

27 Mr Robson, along with a number of other of the Respondent's witnesses, gave evidence that by early 2017 HSBC had a specific drive to reduce the number of contractors in Digital by moving people into permanent roles. There was a large number of contractors in the business because HSBC had been investing in a transformation programme which meant there was a need to get resources on board quickly and the recruitment of contractors was quicker than that of permanent employees. Mr Robson had therefore inherited a team with a lot of contractors and was starting at this time to convert roles to permanent roles. He considered whether to propose converting the Claimant to a permanent role in his Originations team as Head of Digital Management for Credit Cards, as she was the incumbent in the role, however his feedback to the Claimant was that he would only consider her for it if she could improve her style and ways of working to match HSBC's values. He also recalled that the Claimant's salary expectations for the role were higher than the scope of the role allowed at that time. The Claimant was looking for at least £125,000 which was not something that could be offered for a role at the GCB 4 level at which she was operating, while he did talk to her about the possibility of moving up to GCB 3 in the future, in his view she was not at that level at that stage. He ultimately concluded that converting the Claimant to a permanent role was not in the interests of his team and the timing and salary were not right. He therefore continued to search for a permanent incumbent and kept the Claimant in post as a contractor in the meantime. He also recalled having an exploratory conversation about the possibility of a role in Asia, specifically in Hong Kong, but no specific role had been created at that time and he did not offer anything to the Claimant, he was very clear that he did not offer her a position there as Head of Originations.

28 We accept Mr Robson's evidence which we have found is consistent with the contemporaneous documents and is corroborated by Mr Constantinides, and is also consistent with a number of the Respondents' other witnesses experience of the Claimant.

29 Mr Robson disputes that he had the Claimant on a list of key hires in March 2017 and that he fought for her to get an increased day rate. Both of those things he says are only partially true. He accepted that he was hiring for a permanent Senior Digital Product Manager role with the title Head of Digital Management for Credit Cards and he had considered the Claimant for that role but the role itself was not on the list of key hires. He accepted that she was on the list of contractors that he needed to have the ability to move on at the time an email was sent to Phil Thornley and Arturo Aldana on 16 March 2017 [111 – 112]. By that time the Claimant had started discussions with Rob Clegg in Staff

Digitisation about possibly moving into a delivery role in his team and by late April or May Mr Robson had concluded that the Claimant was not suitable for a longer term future in his team. Mr Robson accepted that he secured an increase in the Claimant's day rate, he explained that this was because the Claimant had found out that another contractor had been given a day rate increase and she had asked Charles Eklund to address this before he left. When Mr Robson took over the Claimant's line management she told him she was considering leaving HSBC if her day rate was not matched to the other contractor's and at that point she was heavily involved in a strategic project and he needed her to stay.

### **Women in Digital Leadership programme**

30 The Claimant took part in a Women in Digital Leadership programme during 2017 this was a network for women in Digital, created as part of a drive to increase the number of women in leadership in the business recognising that the technology industry is male dominated. Part of the aim was to recognise and provide exceptional women with assistance to move into senior leadership roles driving them from GCB4 to GCB3 and from GCB3 to GCB2. The Claimant had approached Elaine Safia, Global Head of Digital Operations, who was leading the programme, asking whether she should participate; Mr Robson was supportive in that he thought it might help with leadership and management skills which could improve behaviours in the workplace and he had no concerns about the Claimant's technical ability. Mr Eklund considered the Claimant to be worthy of a GCB3 role which is why he nominated her for the Women in Leadership programme. The Claimant was in fact nominated by both Mr Eklund and Mr Clegg to take part in this programme and she describes the role of Elaine Safia as being a mentor.

### **Move to Staff Digitisation.**

31 Mr Clegg joined HSBC in January 2015 as Global Head of Staff Digitisation, which was part of HSBC's Digital division, HSBC Digital Solutions (known as 'Digital' or 'HDS'). Prior to joining HSBC his experience was primarily in small technology businesses. He joined HSBC as a contractor, in September 2016 he got into discussions about taking a permanent role and ultimately became a permanent employee after a lengthy conversion process in December 2017.

32 All roles in HSBC are banded according to a global career banding, GCB, which amongst other things dictates compensation levels. As Global Head of Staff Digitisation Mr Clegg's role was at GCB level 3 although at the time of his conversion to permanent he was expressing his desire for a GCB2 level role. Mr Clegg described Digital as being responsible for creating digital solutions for HSBC's main banking businesses including products which assist staff to do their jobs and products to benefit customers. Teams in Digital are responsible for HSBC's website design, for its mobile banking smartphone and tablet apps and for its security access products.

33 During Mr Clegg's time at HSBC Digital was made up of 9 cross functional teams which worked on different digital products for HSBC alongside a number of clusters which were effectively support functions; these included the COO office, HR, Delivery/IT and Legal. Digital was led by Josh Bottomley, Global Head of Digital and during most of his time Mr Clegg reported to Mr Bottomley who was promoted to GCB1 halfway through Mr Clegg's tenure.



34 In around Spring 2017 Mr Clegg urgently needed someone to come in to Staff Digitisation in product delivery. By March 2017 the Claimant was in discussions with Mr Clegg about moving into his team. The Claimant had worked with Mr Clegg on various projects since she had joined HSBC and she described them as getting to know each other really well socially and becoming good friends. During conversations on a few occasions the Claimant had told him that she was not enjoying her time in Originations any longer and would be interested in moving to his team. He knew that the team she came from had been delivering with moderate success in a difficult environment where many barriers and difficulties had been in their way and he understood she had been involved in those deliveries but wanted to see more delivery work. It appeared to him that she had the sort of skills and experience that he was looking for. Also he was aware that it was much faster and easier to find someone to fill a gap in a team internally, from one team to another, than going through the long process of bringing in an external recruit. Mr Clegg sought feedback from the Claimant's line manager, Mr Robson in around May or June 2017. He described the feedback as being quite negative and basically advising him not to hire her into the team. He recalled Mr Robson telling him there were no issues with the Claimant's competence to do the role, that she was bright and capable, but that he should be careful if he decided to put the Claimant in his team. Mr Robson told him that there had been complaints made against the Claimant whilst she had been working in Originations, although he did not tell Mr Clegg which individuals had made those complaints. He did say that they were about the Claimant's working style which could be perceived by some to be overly aggressive, that she could become fixated on doing something, or doing something a particular way, which would be a distraction from the direction of the project and that her behaviour had become obstructive to the team's work output. Mr Robson was frank in telling Mr Clegg he thought the Claimant should not be renewed as a contractor and he would not recommend that he took her into the team.

35 Mr Clegg also spoke to Billy Wright who worked in an operations function with oversight responsibilities across Originations, Mr Wright echoed what Mr Robson had told him and strongly cautioned Mr Clegg against bringing the Claimant into his team. He told Mr Clegg that the Claimant had been a disruptive and damaging influence in this teams and created problems with colleagues for the projects she was involved in as a result.

36 Mr Eklund told Mr Clegg he understood Mr Robson had found the Claimant difficult to manage and was aware of feedback and issues that he had experienced, but he had no first-hand experience of this. He also expressed his willingness to mentor the Claimant in spite of those issues and appeared to appreciate that Mr Clegg wanted to give her a chance in a different team. Mr Eklund reminded Mr Clegg that the Claimant was still a contractor on a six month contract, with a one month's notice period, and should the move not work out he could serve notice or decide not to renew her contract. On Mr Robson's suggestion Mr Clegg also spoke to Ricky Constantinides who told him that some of his direct reports, including some of the more junior analysts in the Originations team, had made numerous complaints to him about the Claimant's behaviour including complaints of bullying, poor people management skills and lack of willingness to listen to feedback or alternative points of view.

37 Despite this feedback Mr Clegg decided to go ahead with transferring the Claimant into his team and she joined Staff Digitisation in July 2017 as Global Head of Product Delivery for Staff Digitisation. This was one of a number of second tier management roles within the team. Each role took care of a particular part of the product

management cycle. The Claimant owned the software side of Product Delivery, the hardware side was owned by Damian Smith; Operations was owned by Carmen Hickers; IT Architecture was owned by Mike Ferris; and Mr Clegg owned Product Management itself. The Claimant's role looked after the process of building and delivering the software side of the product into production ready for use by HSBC's customers.

38 Mr Clegg explained his decision to go ahead with taking the Claimant into his team in the following way: he considered it to be a low risk if the move did not work out because the Claimant was a contractor on a short notice period; the team needed someone quickly and recruiting externally would have taken too long; security clearances for work in the bank would take around two months and that would only start once a suitable candidate had been identified; also he thought the robust side of the Claimant's personality could be channelled in a positive way in a team which needed someone to drive projects forward. There was no HR involvement at the time of the Claimant's move to his team, which was the norm at that point in time. Later HR started to become more formalised and embedded in Digital but until Melvina Metochi joined in February 2018 Mr Clegg had little assistance from HR. Mr Clegg's evidence [contained in his witness statements at paragraphs 27 – 30] setting out the discussions he had and efforts made to convert the Claimant and others from contractual roles to permanent employees in the period from September 2017 was not challenged.

39 We find that as part of an effort to increase the grading for his role to GCB2 Mr Clegg put forward the roles below him as being at GCB3 level. Digital had a Resource Planning Forum chaired by Josh Bottomley which usually met weekly for the approval or new roles and hires with Mr Bottomley making the ultimate decision. Mr Clegg was told that the salaries that had been requested (£145,000) for the roles had been too high and following a discussion with Jessica Potter in HR he resubmitted the roles for approval, still at GCB3 but with lower salaries. On 6 October 2017 the weekly Finance and Recruitment meeting approved the proposed permanent role for the Claimant of Global Staff Delivery Lead at GCB4 on a maximum salary of £130,000; along with permanent roles for Carmen Hickers (at a salary of £130,000); Damian Smith (at £125,000) and Jess Ayuya (at £100,000).

40 Mr Clegg was concerned that the role at GCB4 would not be attractive enough to the Claimant because she had told him she had a particular focus on getting GCB3 rather than a particular salary level. We accept Mr Clegg's evidence [at paragraph 38 and 39 of his statement], which is also consistent with Mr Bottomley's evidence [paragraphs 18 and 19 of his statement], that Mr Bottomley was trying to keep some control on the grading and salaries and he did not consider the roles to be GCB3 level. Mr Clegg had discussions with Josh Bottomley on 10 October 2017 from which became clear to him that Mr Bottomley had no interest in approving the roles at GCB3 or in appointing him to GCB2. The Claimant was disappointed and it appeared to Mr Clegg she was more interested in getting a higher GCB grade and he suspected that she might try and hold out by not accepting the offer although she did not say that to him.

41 In the meantime Mr Clegg requested a contract extension for the Claimant, Carmen Hickers and Damian Smith. The request was approved for six months and the Claimant was re-engaged on 1 December 2017 for a further six months for which meant that her contract would expire on 31 May 2018.

### **The relationship between the Claimant and the Second Respondent.**

42 The Claimant and the Second Respondent agree as to the circumstances of the start of their relationship. They were both present at drinks after work on 12 October 2017 with the Staff Digitisation team. The Second Respondent was staying in a hotel across the road and after the drinks venue closed they went to the bar at his hotel and carried on talking, they kissed and then the Claimant went home. Three days later the Second Respondent invited the Claimant to dinner. They went out for dinner on 19 October 2017. The Second Respondent describes that night as the start of an intermittent sexual relationship between himself and the Claimant which went on to last for around three months. He was married at the time but his marriage had broken down and he described himself as lonely and unhappy. Neither he nor the Claimant were aware at that time of the HSBC policy in respect of relationships with colleagues, which was that relationships had to be declared. The Claimant described in her evidence [paragraph 37 of her witness statement] how she came to realise that she had strong feelings for Mr Clegg. She also states that around Christmas she knew that they could not continue their relationship despite her feelings and that it had to end on account of Mr Clegg's family life. The Claimant described this as a challenge as they saw each other every day at work. She also described the relationship as being back on one minute and over the next.

43 The Claimant was off work for an extended period in December 2017, during which time she did not see the Second Respondent. The Claimant and Mr Clegg were both on a work trip to Hong Kong at the end of January 2018. Initially when asked about the Hong Kong trip Mr Clegg had been unsure about the date, as he had been on a number of trips to Hong Kong, and, at the time he was first asked about it some months later, he had thought that it could have been the trip in March 2018, however having seen photographs of the Claimant and other members of the team in a bar he recalled that this was the trip in January 2018. Towards the end of the trip the Claimant and Mr Clegg were together with the team in a bar and Mr Clegg left early, he says because he wanted to get away and the Claimant had been sniping at him all evening. The Claimant followed him to his hotel, she was angry and upset and they ended up having a long conversation about their relationship and agreed that it was not going to work. Mr Clegg told the Claimant that his wife had agreed to go to marriage counselling. He believed that following the conversation, which was painful for both of them, it was clear that the relationship was over. However they had sex that night one last time (which he described as 'goodbye sex'). The Claimant however places the end of their relationship in April 2018 and describes their relationship as on and off throughout the period from December through to April.

44 The date of the end of their relationship is significant because the Claimant's case is that as a result of the end of the relationship in April the Second Respondent's attitude towards her changed significantly. We were taken to a number of WhatsApp/text messages between the Claimant and a friend of hers before and after the trip to Hong Kong in January [volume 2, page 590.1, 592.32, 598.1, 612.1] and text and WhatsApp messages between the Claimant and the Second Respondent including some in April [765-769] and a print out of text messages between the Claimant and Second Respondent [vol 2 pages 443 – 449]. The Tribunal found that messages sent on 24 January 2018 and 27 January 2018 between the Claimant and her friend [590.1, 592.32, 598.1], and during drinks after work for Katie's birthday on 28 January 2018, including advising the Claimant "You'll only be hurting yourself if you go there again", are consistent with the relationship

already being over by this time: the Claimant's friend is apparently encouraging the Claimant not to let her feelings for the Second Respondent get the better of her and not to sleep with him again.

45 Having heard from the Claimant and the Second Respondent and seen the evidence in the text messages we are satisfied that the relationship ended in December 2017 and was over by January 2018. We accept Mr Clegg's account as to what happened in January on the Hong Kong trip, that the relationship was over and did not continue afterwards. We find that this is also consistent with there being no further personal WhatsApp messages between the two of them between 31 January and 9 April, the texts that there were work-related.

46 The Claimant was cross-examined extensively about the relationship, its duration and how and when it came to an end. We find that the Claimant had come to feel more for the Second Respondent than she had anticipated when she entered into the relationship and that she was struggling with her feelings for him, and about their relationship and its break up, throughout the period from January 2018 onwards. We are satisfied that there was no 'on-and-off relationship' as she seeks to describe it throughout that time. The Claimant accepted in cross examination that there was no sexual relationship between them after the trip to Hong Kong in January and described their relationship after that time as being an emotional relationship. We find that there was emotion between them but that this was the fallout from their former relationship which by January had come to an end.

47 On 22 February 2018 there was a drink after work for a colleague (Katie) who was leaving. At some point on that evening the Claimant and Mr Clegg were in deep conversation. The Claimant told her friend Emma, in WhatsApp messages on 23 February 2018, [vol 3 / 662.1 – 662.2] that, "nothing on the personal front happened before last night" (i.e. 22 February 2018), which we also find to be consistent with the relationship having ended in December and having been drawn to a final close in January on the trip to Hong Kong. The Claimant, however, told her friend that they had kissed the night before (on 22 February) and had a meaningful discussion and that the Second Respondent had told her that he loved her. Mr Clegg strongly disputes this. We find it unlikely that he would have said this in the circumstances. Mr Clegg later accepted that he did say things to the Claimant in and order to show empathy and sometimes trying to soften the blow in difficult conversations. We find that whatever he did say to the Claimant, he had not intended it to be interpreted as rekindling their relationship and we do not find this to be evidence of an ongoing relationship between them as at 22 or 23 February 2018. We accept Mr Clegg's evidence that the discussion was in the context of a relationship that was over and that he did repeat that it was over. We are satisfied that they both went their separate ways after the drinks and it is inherently unlikely that they would have kissed in public in front of their colleagues on this occasion when they had not done so at any time previously.

48 We find that as a result of events in December 2017 Mr Clegg treated the Claimant cautiously at work; he tried not to upset her and was trying to be sympathetic towards her, which meant that he gave her a lot of leeway in terms of some of the behaviour she displayed towards her colleagues. We also find that as a result of the fact that they had had a relationship the Claimant had a lot of influence over him. We accept that Mr Clegg felt guilty and did not want to be the source of any further difficulties for the

Claimant.

### **The Claimant's working relationship with Carmen Hickers**

49 Carmen Hickers was Chief Operating Officer for the Staff Digitisation team and there were some crossover between her role and the Claimant's. We heard from Ms Hickers and we accept that she felt that she was being bullied by the Claimant. She told Mr Clegg this in January 2018, in response to him informing her that others in the team had raised concerns with him about the Claimant and her not getting on, and that it was impacting on the team. Following that discussion Ms Hickers reflected on what Mr Clegg had told her and emailed him on 5 January 2018 to ask for support in terms of resolving the conflict between her and the Claimant. Mr Clegg later spoke to her to let her know that he had discussed the confusion about their roles and responsibilities with the Claimant. Ms Hickers also told us that she was not the only person that was struggling working with the Claimant. She witnessed that Jessica (Ayuya) and Simon (Kilroy) in their team were also experiencing difficulties and that, James Brindley-Raynes, another member of the team had started to become withdrawn. James Brindley-Raynes later confirmed to her that he had been struggling in that period because of his difficulty working with the Claimant and he had felt that Mr Clegg was not listening to his concerns.

50 By February 2018 Ms Hickers had decided she did not want to be part of the Staff Digitisation team any more. We accept her evidence that the primary reason for that was the Claimant, together with Mr Clegg's failure to deal with the issues she had raised. Ms Hickers found the situation to have become untenable both personally and professionally and she decided to leave HSBC: this was despite the fact that she had been offered a permanent role in another team, HSBC Digital Value Added Services. She did not take that role up because she could not guarantee that she would not end up working with the Claimant again in the future. Ms Hickers did not give any detailed reasons when she resigned but she told Mr Clegg that she was leaving because she could not work with the Claimant any longer. She remembered saying something like, "She has a very domineering personality" but did not go into any detail. By that time she suspected that Mr Clegg and the Claimant had been engaged in some sort of personal relationship. She felt that the way Mr Clegg handled the difficulties between them had demonstrated some bias towards the Claimant and that he was incapable of resolving issues involving the Claimant. She saw no reason therefore to go into detail about her reasons.

51 We found Ms Hickers to be a straightforward witness and find that she had no reason to come to give evidence other than to give an accurate account of what she experienced. She had not particular loyalty to HSBC and certainly none to Mr Clegg. We also find that her evidence is corroborated by the email she sent at the time and consistent with evidence provided by other members of the team.

### **Offer of permanent role**

52 The permanent role at GCB4 at a salary of £130,000. was formally open for the Claimant to apply for on 19 January 2018 and the Claimant confirmed she would apply on 23 January 2018. Damian Smith went forward with his application at this time, Carmen Hickers told Mr Clegg that she was not pursuing the opportunity. In January 2018 Mr Clegg was under the impression that the Claimant would be accepting the permanent offer [2/565]. The Claimant told us that she wanted to buy herself some time as she was

struggling personally, she told Mr Clegg she was applying for the role when actually she had not finally made up her mind. We accept that she was struggling emotionally following the ending of her relationship with Mr Clegg. On 5 February Risha Popat chased the Claimant, for her application [3 / 615]. The Claimant decided she would not apply for the permanent role. She told Ms Popat that she had discussed this with Mr Clegg [3/630] but in fact she had not and Mr Clegg was understandably confused. During cross-examination the Claimant told us that she had not wanted to be kept on in the permanent role in the head space she was in. The Respondent's submission drew our attention to the fact that the Claimant did not mention in her statement or in her particulars of claim the fact that job had been opened for her to apply for in January and February and that she had declined to do so.

## **February 2018**

53 The Claimant turned down the role in an email on 13 February 2018 [3/630-631]. The formal requisition for the role was put on hold in late February and cancelled in March 2018 [9/2379]. Mr Smith had applied for his permanent role and an offer was made which he accepted on 19 January 2018 [2/580-582] and his employment was converted to permanent [3/744 – 747] at a salary of £125,000.

54 On 14 February 2018 the Claimant emailed Mr Clegg to inform him that she would not applying for the permanent role he had made available for her and that she would be taking some time out [7/1951]. He replied, "I am not entirely sure what has changed but please do whatever you need to and take the time you need." The Claimant responded by telling him that she would come in for a planned session the following Monday but would "keep him posted beyond that" [7/1952]. Mr Clegg asked whether she would still be doing other elements of her job but the Claimant did not give a direct answer, simply responding that they could discuss the way forward on Monday.

55 The Claimant returned to work on 21 February 2018 but on receiving an email from Ms Franicevic in the Wealth team the Claimant forwarded the email onto Mr Clegg saying "I'm done" [3/655]. Ms Franicevic was someone for whom Staff Digitisation were working on delivering a project and who was therefore effectively the Claimant's client. Mr Clegg suggested that the Claimant subsequently asked to 'check out of' working with Ms Franicevic altogether [4/1490] and we find that is a fair description of what happened.

56 Mr Clegg did not treat the Claimant's behaviour as a refusal to be managed or as a potential disciplinary matter but we accept that it was becoming difficult for him to manage the Claimant. We accept that her responses at that time were particularly volatile which is borne out by the contemporaneous emails. On 2 March 2018 in response to an email from Mr Clegg, about the team's conversations with Wealth, the Claimant sent an email saying that she resigned [7/1962]. The Claimant contacted Mr Clegg over the weekend to tell him it was time to move on and that she resigned and followed this up with a formal email of resignation [3/675]. The Claimant later accepted she had misread his email and overreacted. Following a conversation with Mr Clegg she withdrew her resignation.

57 The Claimant's evidence was that in this conversation Mr Clegg agreed to reopen the permanent role at GCB4 with a salary of £130,000. In cross-examination she told us that at this point she was more concerned with the salary than the grade. We find that

both the Claimant and Mr Clegg were aware that the salary and grade were not within Mr Clegg's gift and ultimately this was Mr Bottomley's decision. The Claimant wanted Mr Clegg to speak to Josh Bottomley about agreeing an adjustment to the role in the following September, once she had been made permanent. Mr Clegg contacted Ms Popat on 4 April to ask her to reopen the role so that the Claimant could apply [bundle 3/750 – 751, 3/800].

58 On 6 April Mr Clegg emailed Mr Bottomley [7/830 – 831] requesting an increase in the Claimant's daily rate in the interim, whilst the permanent conversion process took place. The Claimant had asked that her rate be increased from £600 to £750 per day. Mr Bottomley queried the increase stating that he would rather sort out the permanent rate, but also indicated that as long as the increase was directionally okay (meaning that it was in line with the permanent rate) then he had no problem. There was a series of emails between the Second Respondent, the Claimant, Mr Bottomley and Poorvi Muncke in respect of the increase to the day rate. We are satisfied from those that Mr Clegg was lobbying for an increase to £750 but given the resistance from Mr Bottomley and confirmation from Ms Muncke that this would be out of line with the Claimant's peers, the Claimant agreed that she would go for the £700 a day. This took place over the period 10 – 12 April 2018. On 12 April the Claimant confirmed that she was very happy with £700 [3/823, 3/824] and asked Mr Clegg to pass on her thanks to Josh Bottomley. We find that it is evident that during this time Mr Clegg thought that the renewal of the fixed term contract was in process and so was the conversion to permanent, [see for instance 3/842] and that is what he told the Claimant on 11 April.

59 On 11 April 2018, in response to a query from the PMO Manager, Tola Agbede, Mr Clegg stated that the Claimant was due to go permanent and that this would take time, so he had requested for renewal [of her fixed term contract] for three months and authorisation of the permanent role as soon as possible [3/810]. Also on 11 April HR flagged up that the salary being put forward was high for a GCB4 role. Mr Clegg was informed by Kate Young on 16 April, following the weekly resource meeting with Mr Bottomley [3/896 – 987], that a three-month extension had been approved at £700 per day. Ms Young informed Mr Clegg that,

“With regards to the perm role Josh has asked the you revisit the conversation about GCB4 for perm role as the GCB3 and associated pay rate is no longer approved and needs to be revised for GCB4.

The same comment was made in respect of Mr Smith, however Mr Smith's salary was later approved. We are satisfied that the reason Mr Smith's salary was approved was that it was pointed out that he had by this time already accepted an offer of employment at that salary level.

### **Discussions in March about moving teams**

60 We find that in March 2018 the Claimant and Mr Clegg had a discussion about the difficulty they were experiencing in carrying on working together in the same team. We find that they both agreed that they could not continue working together in the longer term. Following her conversation with Mr Bottomley on 17 January 2018, the Claimant understood that it was easier to move on and up in the organisation once a person was permanent (i.e. a permanent employee rather than a contractor) and she discussed with

Mr Clegg a plan of pursuing the conversion of her role to a permanent one so that she could then look to move to another team. We find that Mr Clegg was also looking to move to another team.

61 In cross-examination the Claimant accepted that Mr Clegg did everything he could to facilitate her move from contractor to permanent and that he did, as they had discussed, contact recruitment to re-raise the role that had been originally offered to the Claimant in January. The Claimant knew that that role would be offered at GCB4 and it was in that discussion that the Claimant asked Mr Clegg to speak to Mr Bottomley in September once she had been made permanent to discuss a promotion with increase in salary to £145,000. The Claimant told the Tribunal that Mr Clegg assured her he would ensure this happened but she accepted in cross-examination that this was actually a decision for Mr Bottomley and that Mr Clegg could only do his best to persuade him. The Claimant was taken to the emails between 6, 10 and 12 April and accepted that they showed that the Second Respondent was doing everything he could to get the Claimant what she wanted.

### **6 – 10 April 2018**

62 The Claimant alleged that on 4 or 5 April 2018 the Second Respondent was extremely flirtatious with someone from Somo (an external contractor) right in front of her eyes. She acknowledged that she still had feelings for him at this time. In her witness statement (paragraph 33) the Claimant described discussing some rumours about Mr Clegg with a colleague called Kai and how this left her feeling heartbroken, and that she decided to speak to Mr Clegg about it directly. On 5 April the Claimant told Mr Clegg that she had heard that the Somo consultant had been assigned to the project because she was attractive and it was hoped this would ingratiate Somo with him. Mr Clegg had no idea whether this was true but he was horrified and upset at the suggestion that he was perceived in that way. He felt from the discussion that the Claimant appeared furious about the thought that he might be attracted to someone else and it was clear to him that she had not let go of their relationship. The next day the Claimant sent Mr Clegg a picture by WhatsApp of Harvey Weinstein [3/764]. He understood the implication to be that he was like Mr Weinstein. He believed it was meant as a joke and he tried to take it in that way but he did not find it funny: he was absolutely mortified and extremely upset, and he also felt that there was an implied threat from the Claimant that she might make allegations about him.

63 The Claimant's case is that she understood herself still to be in a relationship with the Second Respondent at this time. She denied that the photo was implying a threat. The next day, Saturday 7<sup>th</sup> April the Claimant apologised to the Second Respondent by text stating:

“your private life is entirely your business ... as I said, as long as it is not in my face and you take it outside the office, which you are, I am happy for you.” [3/764]

We do not find that this is consistent with the Claimant's assertion that she considered they were still in a relationship.

64 We find that Mr Clegg's reply [3/765 – 766] is consistent with an exchange between two people whose relationship was in the past but who still needed to be able to



work together:

“I thought we were trying to move on and fix things”... “And you and I need to fix our situation. Can we focus on that pls and try in the same vein that Friday was running (more positive I felt)? I am not taking anything out of the office I can assure you and have learnt some pretty hard and personal lessons these past four months. I am just sorry the experiences have had the impacts on us both they have had but we did both go into eyes open I guess. Just not worked out as we would have hoped...”

65 We are satisfied the reference to ‘move on’ was a reference to the relationship having been over for some time, and ‘having learned some pretty hard and personal lessons the past four months’ was a reference to the difficulties they had experienced since the relationship had finished.

66 We find that the Claimant’s response [3/767]:

“on the broader stuff, leaving out the work elements for a moment, you have to understand that you really, really hurt me personally. You broke my heart in all honesty.”

reflects the Claimant’s feelings about a relationship that had already come to an end.

67 On 9 April the Claimant asked to speak to Mr Clegg in a meeting room at work. Mr Clegg told the Tribunal that the Claimant confronted him angrily, told him he was disgusting, and accused him of ogling the woman from Somo. She referred to the woman as “a trollop”, “eye-candy” and “pussy bait”. The Claimant’s account of that meeting is entirely different. In her witness statement [paragraph 44] she states that Mr Clegg asked her for another chance and she ‘stupidly’ agreed, however under cross-examination she told the Tribunal that Mr Clegg expressed a plea for her not to believe the rumours. We find that there is marked difference between the account in the Claimant’s witness statement and what she was prepared to say to the Tribunal under oath.

68 In her witness statement [paragraph 44] the Claimant alleges that, “in the blink of an eye” on 9 April she discovered the Second Respondent was sleeping with someone else [which Mr Clegg denies] and that she then sent him some quite angry messages via WhatsApp that evening which she deleted in time so they did not get through to his phone. The Claimant acknowledged that she was drunk when she sent the messages, having been to the pub with a colleague, and told the Tribunal that she does not remember what she said in those messages. The timings of the deleted text messages appear on a print out of all the text messages between the Claimant and the Second Respondent [2/ 443 – 449]. There were six messages sent between 8:05 pm and 9:18 pm on 9 April 2018, the content of the message is not visible having been deleted. At 9:58 pm the Claimant texted Mr Clegg’s work phone with the following message:

“Sorry to send this to your work phone but there is nothing left for you and I to discuss. I don’t want to meet with you or hear anything you have to say. As discussed, please just keep the sleaze out of the office from now on and please keep it all away from me. Your business is your business. Thanks”

69 The next morning the Claimant apologised to Mr Clegg when he queried what had happened to the WhatsApp messages, saying, “I’m sorry I’m not dealing with it very well”. In a series of messages on 10 April [2/443-444] Mr Clegg told the Claimant that, amongst other things, he was wary about her reaction to any explanation he may have and wary about how things are interpreted. In the course of these exchanges, which were lengthy and went backwards and forwards over the course of over an hour between 6.47 and 8.03 in the morning, the Claimant told the Second Respondent (at 07.38) [2/444]:

“I think you did reject my friendship and to be honest I just feel completely used. I’m not even sure what you mean when you say “our personal relationship” because ***I don’t think we have one or have had one since before Christmas.*** I think what we have is a fraught working relationship that we need to fix. The Somo thing definitely touched upon the personal element due and ***brought back quite a few feelings.***” [emphasis added]

We find this is not consistent with someone who believes they are still in a relationship and is more consistent with the relationship having finished in December.

70 The Claimant relies on the content of the Second Respondent’s text at 07.57 in support of her allegation that he indicated that he felt that she should be the one to leave HSBC. [2/444] In that text he states that because of his children and his impending divorce “I cannot afford to leave HSBC financially”. The Claimant’s response is “I fully understand and I don’t want anyone to leave HSBC”.

71 Having heard from the Claimant and from the Second Respondent and having read the text exchanges in full we do not find that the Second Respondent intended the Claimant to understand from his text that she ought to leave HSBC and nor do we find that it is what she understood he meant at the time. When asked about this in cross-examination the Claimant said that she did not realise that was what he meant until later. It was submitted on behalf of the Respondents that it was only later when the Claimant decided to accuse the Second Respondent of forcing her out of HSBC because of a breakup on 10 April that she put a new spin on his words to fit her narrative. It was submitted that the Claimant overlooks the Second Respondent’s text at 07.45 in which he states,

“...As to work all I can say is that I am trying to help and do the right thing, get you the roles you want. Maybe it’s not been smooth sailing but the other stuff has just made it a lot worse and more difficult. That is probably why I cannot seem to communicate with you without being misinterpreted....”

We accept Ms McCafferty’s submission that the Claimant quotes selectively from the text messages both in her pleadings and in her grievance [6/1365 – 1637] and that the context does not support the interpretation placed on the words, “I cannot afford to leave HSBC financially”, as being an indication that one of them should leave and that it should be the Claimant. We do not find that is what Mr Clegg meant and nor do we find that was what the Claimant believed he meant at the time.

### Relationship break up on 10 April.

72 After they arrived at work on 10 April the Claimant and Second Respondent went to a meeting room to talk. It is the Claimant's case that it was in the meeting in the office on 10 April that the relationship between herself and the Second Respondent came to an end. She accuses the Second Respondent of being quite dismissive of her and her feelings in that meeting and belittling their relationship. She also alleges that in that meeting he intimated that it was true that he was sleeping with one of their colleagues and that he repeated that he could not afford to leave HSBC, with the clear inference that she should leave instead. The Claimant texted Mr Clegg about 6 o'clock that evening with the following message:

"Good to talk today and I'm sorry for my part in this and especially being so shitty over the Somo thing recently. It is not fair. Have a nice evening" [2/445].

The messages from 11 April onwards were about work.

73 We find that the content of the Claimant's text message at 6.00pm is inconsistent with her account that the meeting on 10 April was the point at which their relationship broke down and also inconsistent with her allegation that she found out the day before that the Second Respondent was sleeping with another colleague and that he intimated at that meeting that this was true. When pressed to explain in cross-examination what she alleged was the inappropriate comment made in the meeting of 10 April, the Claimant told the Tribunal that it was 'something like "we were never exclusive"'. There is no reference to this in any text or WhatsApp communications before or after the meeting. We have found that the only mention anywhere in writing of the Second Respondent's involvement with another woman is not until 12 June 2018 (apart from allegations of flirting with the consultant from Somo) when the Claimant started to text her friends with allegations about the Second Respondent and Female 1 [5/1333]. We are satisfied that if the Second Respondent had indicated to the Claimant that he was in a sexual relationship with someone else on 10 April the Claimant would have made reference to it and would not have sent the message quoted above to him that evening.

74 The Claimant alleges that on 13 April there was a conversation in which the Second Respondent informed her that he was no longer comfortable with her converting to a permanent role in his team. The Claimant alleges that in an emotional telephone conversation on 13 April the Second Respondent said something along the lines of them not being able to work together anymore and that the inference was that she should leave. However she accepted in evidence that both she and the Second Respondent had agreed in March that they could not work together in the longer term and they had agreed that a permanent role in Staff Digitisation would be a stepping stone to a new role somewhere else in HSBC. We also find that Mr Clegg was himself looking at ways to leave the team at this time. The Claimant accepted that the Second Respondent did not in fact say to her that he could not be the one to leave HSBC. We do not find that he said this.

75 When shown the documentary evidence of the Second Respondent's efforts to obtain a permanent role for her the Claimant acknowledged that he had done everything that he could but stated that at the time it felt to her that he wanted her to leave. We find that the Claimant's impression is not consistent with his actions between 10 and 16 April 2018.

76 On 16 April 2018 the Second Respondent challenged Mr Bottomley on his decision to revise down the salaries [3/904] telling him that he did not want to renege on the offer made to the Claimant earlier in the year. We were taken to the emails between the Second Respondent and others within HSBC which we are satisfied demonstrate that he was pursuing, and pressing for, both a pay rise for the Claimant and for her to be converted to permanent on the most favourable terms that he could secure. In cross-examination the Claimant accepted that she could not ask the Second Respondent to do any more. The Claimant accepted that Mr Clegg took active steps to push through her conversion to permanent and we have seen that from the emails.

### **The Claimant's relationship with her colleagues**

77 In the meantime a number of the Claimant's colleagues were expressing concerns or dissatisfaction in respect of their working relationship with her and how she behaved towards them. Simon Kilroy, Jessica Ayuya and James Brindley-Raynes had each been experiencing difficulties with working with the Claimant, as had James Taylor.

78 On 10 April 2018 Simon Kilroy resigned. Simon Kilroy had never made any formal complaints about the Claimant but, in a discussion after he had given his resignation Mr Clegg asked him about his reasons for leaving. The notes Mr Clegg made at that meeting [4/988] record the Claimant's disruptive style as being a factor, he told Mr Clegg that the team was no longer harmonious and that he had started to doubt his ability to do his job because of how the Claimant had belittled him.

79 Mr Clegg also gave evidence about a clash between the Claimant and James Taylor, who was a member of Lloyd Robson's team in Originations but who was working with the Claimant on some Originations journeys that were needed for Hong Kong. We accept Mr Clegg's account of the clash between the Claimant and James Taylor [set out at paragraphs 134 – 138 of his statement]; this is supported by the contemporaneous emails in which James Taylor described feeling under "daily attack" from the Claimant, which was forwarded onto the Mr Clegg from Lloyd Robson [4/926 – 927]. We accept that this was damaging to the team's productivity and output and that Mr Clegg was finding it very difficult to manage the situation with the Claimant. We also find that he tried to be publicly supportive of her in his email. We accept Mr Clegg's evidence that the Claimant shouted in a meeting room that James Taylor was incompetent and the instigator of all the problems.

80 On 17 April Jessica Ayuya resigned, citing the Claimant as her primary reason for leaving. By this point Mr Kilroy, Ms Ayuya and Mr Brindley-Raynes had all said that they did not want to report to the Claimant. Mr Clegg arranged a feedback session on 17 April with the Claimant and made himself some notes before that meeting [3/891] in which he noted that he wanted to give her feedback in good faith, for the right reasons, wanted to be positive and to help. We accept that he anticipated that the Claimant would react badly to the feedback. The Claimant became upset during the meeting and left work for the day immediately afterwards. The Claimant alleges that Mr Clegg seemed to enjoy seeing that she was upset and was taunting her. We have seen the text message that Mr Clegg sent very shortly after the meeting and we find that he was attempting to empathise with the Claimant and to let her know that he also found the situation upsetting [2/447]. After the meeting the Claimant sent the Second Respondent a WhatsApp messages accusing him of being an "ungrateful and nasty person".

81 The Claimant alleges that in this meeting Mr Clegg told her again he was not comfortable with her converting to a permanent position in his team, although this does not appear in her witness statement. We are satisfied that the Mr Clegg did not say this. We have found that he was trying to get the Claimant's contract converted to permanent with the intention that she could then move on to another team as they had discussed in March. We find that the Claimant's evidence is inconsistent with the contemporaneous emails, for instance on 24 April 2018 Mr Clegg advised the Claimant to "crack on" with her application [4/989].

82 We accept that the Second Respondent was worried about how the Claimant would react to the feedback that he had to give. The meeting took place at a time when he had been having a series of increasingly fraught dealings with her. We are satisfied that he was not smirking or enjoying the meeting, nor was he suggesting that she should resign. We accept Mr Clegg's evidence that he was trying to do what he had promised, which was to assist the Claimant with her plan to become permanent and move to another team.

## **HR Concerns**

### **Proposed salary**

83 Ms Metochi is a Global HR Partner at HSBC. In February 2018 she moved from the Asset Management arm of HSBC where she had worked for 6 years, to HSBC Digital. Ms Metochi understood that the Claimant had turned down the permanent role that had been made available for her before Ms Metochi started in Digital, because she was not willing to accept the lower GCB4 grade. On 11 April 2018 Kate Young flagged up the salary of the re-proposed role to Ms Metochi as it was a GCB4 role but with a proposed salary of £130,000 which was commensurate with a GCB3 role [3/883]. We accept Ms Metochi's evidence [paragraphs 15-36 of her witness statement] as to the advice she gave at the time, the decision of the finance and recruitment meeting on 13 April 2018 (chaired by Mr Bottomley) in respect of the salary level for the Claimant's proposed role and the reason for Mr Smith's salary remaining at £125,000 [see paragraphs 24, 25, 30 and 31]. Her evidence is consistent with the contemporaneous emails.

### **The impact of the Claimant's behaviour towards colleagues**

84 On 19 April 2018 Risha Popat emailed the Claimant to inform her that her role was now available to be applied to as a permanent position [4/990]. On 24 April the Second Respondent encouraged the Claimant to submit her application for the role [4/989].

85 In the afternoon of 24 April Ms Ayuya met with Ms Metochi of HR. Jess Ayuya had emailed Tim Miller on 27 March 2018 asking who she could speak to about something that had happened the previous week with a colleague within her team. Tim Miller had suggested that Ms Ayuya speak to Ms Metochi as one of the HR Business Partners for Digital. It was not apparent from Ms Ayuya's email that the issue related to another contractor, thus it potentially fell into Ms Metochi's remit as being a concern about people and behaviours, possibly relating to an employee in the Second Respondent's team. Ms Metochi was unable to meet with Ms Ayuya straight away because she was transitioning into her role in Digital from Asset Management and she also had a period of annual leave. They met on 24 April by which time Ms Ayuya had already resigned. At their meeting Ms

Ayuya informed Ms Metochi that she felt that she had to leave because she felt bullied by the Claimant, and that she had raised her concerns with the Second Respondent. Ms Ayuya described to Ms Metochi how the Claimant undermined juniors, cut in on conversations and micromanaged. She also informed Ms Metochi that other team members had left as a result of the Claimant's behaviour and specifically named Carmen Hickers. Ms Ayuya told Ms Metochi that she did not want to formally escalate her concerns as she was leaving but she felt it was right to raise the matter with HR.

86 Also on 24 April Ms Metochi was contacted by Ricky Constantinides who asked for a meeting with her. On 25 April he forwarded her an email which he had sent to Mr Clegg on 24 April and which referred to a conversation he had with Jess [Ayuya] and Simon [Kilroy] about the Claimant, commenting "it's definitely something we should pick up privately since it is all sounding very familiar to the incidences that occurred in Credit Cards and the Bas [business analysts] in the team. I presume you're leading the discussion with HR/ER to come to a resolution?" [4/995.2]. Ms Metochi spoke to Ricky Constantinides and he told her he was concerned about the Claimant's behaviour and the wider effects this was having on analysts in the team including Jess Ayuya and Simon Kilroy. He told Ms Metochi that the Claimant's behaviour had been an issue when she had been in Originations and that he was not comfortable with his reports continuing to be impacted by her behaviour when their work overlapped with hers. He was very annoyed and felt that the issue of the Claimant's behaviour should have been dealt with already. Ms Metochi described Mr Constantinides as particularly forcible, and appearing angry, he made clear to Ms Metochi that he wanted the Claimant out of the business.

87 Ms Metochi considered that what had been described to her about the Claimant's behaviour was totally unacceptable and it was not something that could be ignored; it had to be considered in the context of the Claimant having just been put forward for a contract extension and a permanent role. Mr Constantinides followed up in emails to Ms Metochi on 4 May [4/ 1032.18] asking for assurance that the Claimant would not just be moving to another team and stating that he needed to offer his staff the reassurance that they could work in a safe and bully free environment.

88 On 18 May [1136.1] Mr Constantinides followed up with Ms Metochi again, asking what was happening with the Claimant in terms of her time remaining with the business. He explained that the reason he was asking was that he had a number of roles to support staff tablet with, he was keen to provide support as fast as he could but he could not in all good conscience put people in the team to face a similar environment. We heard from Mr Constantinides and find that as a result of the complaints made to him by staff reporting to him and his own view of the Claimant's behaviour at work he had decided that he was not going to tolerate the Claimant's behaviour or expose his staff to it any longer and was not going to let the matter drop.

89 Ms Metochi told the Tribunal that the Claimant's role was put on hold from 26 April 2018. We accept her evidence that the reasons for this were to do with the discussions taking place at a senior level at that time about the organisational structure in Staff Digitisation and were not specific to the complaint about the Claimant [see paragraphs 34-35 of her witness statement].

90 On 26 April Ms Metochi discussed with Mr Clegg the issues that had started to come to light about the Claimant. They discussed Ms Ayuya's complaint, the fact that she

had resigned because of the Claimant's behaviour and Ms Metochi's concern on learning from Mr Constantinides that this was not a new issue. Ms Metochi asked Mr Clegg whether this had come out of the blue from his perspective and he acknowledged the issues had been bubbling under the surface for some time. Mr Clegg told Ms Metochi that Carmen Hickers had left the team because of the Claimant, (which Ms Metochi already knew from Ms Ayuya) and that the Claimant was beginning to have a corrosive effect on the team as shown by the resignations of Jess Ayuya and Simon Kilroy. Ms Metochi advised Mr Clegg that even though Ms Ayuya's complaint was not formal he needed to tell the Claimant that concerns had been raised. Ms Metochi asked Mr Clegg why, in the context of behavioural issues that had been raised, he had sought to extend the Claimant's contract, increase her day rate and make her permanent. She recalls him saying he thought it was the right thing to do. Ms Metochi absolutely disagreed with him and could not see how keeping an individual in the business who had been the subject of more than one complaint about behaviours and bullying could be the right thing to do. Ms Metochi made it clear to him those behaviours had no place in the business.

91 Ms Metochi told Mr Clegg she was not comfortable renewing the Claimant's contract and advised him to think carefully about whether he should in fact be releasing the Claimant early in the light of the issues she was causing and her behaviours which were contrary to HSBC values. She strongly challenged him on whether the Claimant was really the right fit for the business. Ms Metochi came away from the meeting thinking that Mr Clegg had acknowledged her concerns and understood that the Claimant's permanent role was not to be progressed and nor would her contract extension for three months, and that he would consider terminating her contract early. She understood from Mr Clegg that the requisition for the role was live, because the Claimant had been told she could apply for it. Ms Metochi considered that there must have been an error in communication as Ms Popat ought not to have indicated the role was live due to the ongoing higher level discussions about the organisational structure. Ms Metochi therefore told Mr Clegg that she would speak to Risha Popat about the permanent role and inform her that it was on hold (because of the organisational structure being under review) and was not being progressed at that time.

92 After the meeting Ms Metochi spoke to Risha Popat to ensure the status of the role was accurately recorded on the internal system and later that afternoon Ms Popat placed the role on hold with the note "on hold as per conversation with Business HR" [9/2384]. Ms Metochi had a conversation with Mr Constantinides the next day explaining what she understood had been agreed with Mr Clegg, he took issue with what he saw as taking an easy path (allowing the fixed term contract to run its course) and expressed the view that the contractor should be given notice. Ms Metochi thought there were crossed wires because she understood that they would be giving the Claimant notice and was not aware that Mr Clegg had decided not to do this. Mr Clegg continued with the process for extending the Claimant's contract until the end of August. We find that Mr Clegg did this, in the face of express opposition from Ms Metochi, in the hope that in this time the Claimant would be able to find another role within the organisation, as per their discussion in March.

93 We accept Mr Clegg's evidence that by the end of April 2018 he started to feel that he was losing control of the situation. We find that effectively matters had been taken out of his hands as a result of the complaints about the Claimant coming to the attention of Ms Metochi and Mr Constantinides.

94 On 1 May 2018 Mr Clegg met with Ms Metochi to discuss the Claimant's status and the issues that had been raised. They discussed Mr Constantinides' feedback and that it was not an isolated issue. Ms Metochi again advised Mr Clegg that he needed to raise the concerns with the Claimant; they talked through what he should tell her and that the Claimant should be informed that in the circumstances renewal was not something they could agree to. They also discussed the situation with the proposed permanent role which had been graded as a GCB4 role with a salary of £90,000.

95 Mr Clegg met with the Claimant later that day. The meeting started in the Blue Fin building but moved to Gail's Bakery around the corner. Mr Clegg had some notes, [page 1007 – 1008] from his meeting with Ms Metochi earlier which he used as a guide for his meeting with the Claimant. The Claimant produced her own notes of the meeting, [pages 1009 – 1012] these are disputed by the Respondents. Mr Clegg explained to the Claimant that the permanent role was a GCB4 role with a salary of £90 - £100,000, that the previous role no longer existed and there was nothing he could do to change that. He told the Claimant that he could not create a role with the salary the Claimant wanted as it would not be approved and that had been made clear to him by HR and Resources. He also told the Claimant that her contract would not be extended beyond the three month extension that he had progressed, (that is, to the end of August). He referred to a "two year backstop" policy which he had discussed with Ms Metochi. We accept that he did so because he felt that was an easier explanation to give to the Claimant, giving him something to point to other than the Claimant's behaviours as he knew the Claimant would not react well to the latter. We find that he used the backstop as an excuse in an attempt to depersonalise the decision and avoid confrontation. The Claimant took the news badly and told him she was not interested in the permanent role on offer.

96 Mr Clegg also discussed the complaint made by Jess Ayuya. He had a copy of Jess's resignation email on his laptop and he read the complaint to the Claimant. We do not find that Mr Clegg told the Claimant that he had only just seen it. He told the Claimant there was not a formal complaint but that there had been other complaints and negative feedback received from others including Carmen Hickers, Simon Kilroy and Ricky Constantinides and that these might jeopardise her ability to get a permanent role at HSBC given how seriously HR took those types of complaints. We do not find that he said this with the intention of harassing the Claimant. We do not find that he told the Claimant that it was best to resign, or that he did not want her in his team anymore. We do not find that Mr Clegg told the Claimant that he was going to tarnish her reputation. He did tell her that she needed to be aware that she had a reputation with certain people in Originations and now with other managers as a result of her time in his team. We find that was a fair reflection of the Claimant's position at that time. Mr Clegg told the Claimant that he would give true and fair feedback if he was asked, but would tell anyone who wanted to know that she could do a good job when it came to delivery, knew her topic and was effective at her job in the right circumstances. We find that Mr Clegg made clear that he had no intention of proactively giving negative feedback about the Claimant, and nor did he do so when he was subsequently approached by Ally Satterley. We find that Mr Clegg did say to the Claimant that their relationship had broken down to the point that it was clear they would not be able to work together in the long term but that this was not with the intention of forcing her out of HSBC. We find that this reflected their agreed position reached between them in March, that they would look for roles in other teams.

97 Following this meeting Mr Clegg sent the Claimant two emails summarising what



was discussed, [4/1013 and 4/1016]. The Claimant and the Second Respondent also exchange WhatsApp messages that evening [2/448 – 449]. We do not find that the Second Respondent was effectively telling the Claimant that her career was over. We find that he was trying to offer reassurance and to let her know that he was doing all the he could to help her.

98 The Claimant maintained that the drop in salary for the GCB4 role was a deliberate attempt by the Second Respondent to make it unattractive to her. However, when taken to the evidence she accepted that the decision about salary was made by Mr Bottomley and confirmed that she was not accusing Mr Bottomley of having harassed her. We find this to be an example of the Claimant maintaining an allegation against the Second Respondent in the face of undisputed evidence showing it not to be true.

### **The meeting on 10 May**

99 The Claimant produced typed notes of the meeting of 10 May [4/1063-1064]. We are satisfied that the typed notes were produced after the meeting and we do not find those notes to be an entirely accurate reflection of what was said. In particular, we do not find that the two paragraphs in the middle of the first page that refer to Mr Clegg 'changing' since a few weeks previously and linking that to their break up, was said at the meeting. [4/1063] We accept Mr Clegg's explanation for some of his comments in that meeting [RC: 205-219]: we find that he was trying to placate the Claimant and not to antagonise or upset her, so for instance, when she tried to get him to say that she was not to blame for Jess [Ayuya] or Simon [Kilroy]'s resignation he agreed with her. Mr Clegg acknowledged that this was weak of him, but we accept that he believed that disagreeing with the Claimant would just lead to further confrontation.

100 We find that Mr Clegg did say to the Claimant that the complaint about Jess had put her in a vulnerable position and that when she said she felt as though she was "guilty until proven guilty", he agreed and likened it to someone who is accused of rape or sexual harassment. We find that he said this, 'because the public often assume they are guilty before they are actually tried'. We do not find that the Claimant challenged him on this at the meeting. We find that this comment stemmed in large part from his own feelings of anxiety about the possibility of the Claimant making serious but untrue allegations about their relationship, by for instance alleging that it was not wholly consensual. The Second Respondent accepted that his choice of words was poor but we are satisfied that he did not make the statement with the intention or purpose of violating the Claimant's dignity intimidating the Claimant, or creating a hostile, degrading, humiliating or offensive environment for her. According to the Claimant's note her own reaction was not to challenge the comment but to say that he would get the benefit of a trial before being convicted. Having heard from the Claimant we do not find that she found the remark to have had that [harassive] effect at the time. We went on to consider whether, if the Claimant had genuinely found the comment to have had a harassive effect whether that would have been reasonable, we do not consider that would have been reasonable in the circumstances given the context.

101 The Claimant also alleges that in one of these meetings in early May when she mentioned that it was stressful waiting to hear from HR about Ms Ayuya's complaint the Second Respondent smirked and said, "I'm sure you're having physical responses and sweating as well". Mr Clegg denies making the comment and denies smirking We are

satisfied that he did not say those words. We accept the Respondents' written submission on this point, [paragraph 242 ]. There is no written record of the allegation in respect of the comment "You are having physical responses and sweating", in the particulars of claim, in the grievance, or mentioned in the Claimant's grievance interview, despite being prompted for examples of sexual harassment. We find that this was not said and nor did Mr Clegg smirk at the Claimant.

102 In May, June and July 2018 the Claimant made a number of covert recordings of meetings with the Second Respondent. During cross-examination she told the Tribunal that the purpose of those recordings was to create a record of Mr Clegg's answers, however she did not mention the recordings to Ms Marshall who investigated her grievance or provide her with copies of the transcripts.

103 We do not accept that the Claimant recorded the conversation because Mr Clegg was behaving inconsistently or being like Jekyll and Hyde. Having read the transcripts and heard from the Claimant, who knew the conversation was being recorded, and the Second Respondent, who did not, we have found that Mr Clegg was attempting to be straight with the Claimant about the difficulty he was in helping her get a permanent role now that the complaints about her had been made to HR. We accept the submission that the Claimant did not succeed in obtaining the answers that she appeared to be seeking to get on record from the Second Respondent. For instance, he told her that he could not bat away the complaints made to HR by saying they were utter rubbish because they were not. The Claimant tried to invite the Second Respondent to say that he wanted her to leave, saying "You are determined for me to leave aren't you, just be honest." But his response was that he did not want her to leave. Mr Clegg pointed out that he secured her a pay rise, a contract renewal and asked HR not formalise the complaints. We find that he did each of those three things.

104 We find that in the recording from 11 May 2018 [v/1072-1085] the reference to 'things being difficult for 4 to 5 months' was a reference to aftermath of the personal relationship which had ended 4 – 5 months previously. Towards the end of the conversation the Claimant alleged that the Second Respondent had changed and 'been acting coldly since the HR stuff'. The Claimant did not suggest that he had changed towards her since their break up on 10 April as she set out in her disputed notes from the day before, if this was her belief at the time it is likely that she would have 'repeated' this assertion.. We accept the Respondents' submissions at 244a –f on the facts of that was said.

### **Possibility of a wider role**

105 The Claimant had a meeting with Josh Bottomley on 7 June 2018 about the possibility of broadening out her role; she wanted to add what she had described as "bells and whistles" to the permanent role in an effort to increase the grade and salary. The transcript of the Claimant's meeting with the Second Respondent on 4 June 2018 shows that the Claimant asked the Second Respondent to commit to raising the role request with one job title and then later change it to another to give Mr Bottomley 'flex' on the salary and package [5/4310]. The Claimant's evidence in respect of her meeting with Mr Bottomley was that he agreed to speak to Ms Metochi about getting the Claimant on a development plan and that he would ask the Second Respondent to get her permanent role live again. Mr Bottomley denies that he said either of those things. We accept Mr

Bottomley's evidence. We are satisfied that the Claimant was selective as to either what she took away from that meeting or how she now portrays it. We find that Mr Bottomley's account is consistent with the Claimant's account set out in her draft grievance document which was drafted much closer to the time and described Mr Bottomley as 'non-committal' [5/1476]. It is also consistent with his email to the Claimant on 20 June 2018 [4/1407] in which he told her that the timing was not going to work for a broader Staff Digitisation team option. Mr Bottomley denied that he had been 'nobbled' by the Second Respondent and we accept his evidence.

### **Potential role in Ally Satterley's team**

106 The Claimant met Ally Satterley at a work drinks in mid to late May 2018, she told him she was looking for a new role. He was looking for someone in his team, Digital Production Support, and he considered that he needed someone with determination and drive to lead the delivery of a complex programme of work. He spoke to Mr Clegg to ask for feedback on the Claimant and found that he was supportive of the move. He considered Mr Clegg to have been professional and to the point about the Claimant's strength and weaknesses. Mr Clegg had told him the Claimant had some issues with his team but said he thought she had the right skill set for the role that Mr Satterley was trying to fill. Mr Satterley had been given the impression from the Claimant that she may not get good feedback from Mr Clegg and his feedback had been much more balanced than he had expected. He left his meeting with Mr Clegg thinking that it would be full steam ahead in bringing the Claimant into his team.

107 Mr Clegg told the Tribunal that he was positive about the Claimant taking up the role in Mr Satterley's team. He saw this as his last opportunity to help her obtain a role in HSBC and he wanted to do everything he could within his power to secure that for her, given his concerns as to what might happen, or how she might react, if she did not get what she wanted. We find that he was doing what he could to try to assist the Claimant to obtain a role that she wanted. We are satisfied that if he had been a more neutral manager, that is, if it had not been for the fact of their previous relationship, it is likely that he would have been more negative in his assessment of the Claimant, given the difficulties that had arisen in her working relationships with other team members.

108 The Tribunal heard from Kate Rodrigues the HR Business Partner for Mr Satterley's side of Digital (HOST). Mr Satterley approached Ms Rodrigues and she referred him to Ms Metochi as the HR Business Partner on the side of the business to which the Claimant was currently contracted. Ms Metochi explained to Ms Rodrigues the concerns that had been raised about the Claimant's bullying type behaviours, that these had first been raised in Originations, and her view that the Claimant should not remain at HSBC. Ms Metochi also spoke to Mr Satterley directly. Ms Rodrigues and Mr Satterley both told the Tribunal they thought that it was Ms Rodrigues who advised him to speak to Ms Metochi although at the time Ms Metochi wrote in an email that it was Mr Clegg. This email is dated 20 June 2018 and is at page [5/1409]. We find it likely that the Second Respondent did suggest Mr Satterley speak to Ms Metochi. We find that while the Second Respondent did not want to have to go into detail about the Claimant's behaviour and felt conflicted, we also find that he did not want to put forward a dishonest picture. However, we find that even after he had spoken to Ms Metochi, Mr Satterley still wanted to go ahead with recruiting the Claimant. Mr Satterley was of the view that it would be worth the risk in the short term for him to take the Claimant on as a contractor and if it did not work out her

contract could be terminated. Having spoken to Ms Metochi, Ms Rodrigues gave what she described as “very strong advice” to Mr Satterley and let him know that if he went ahead with the recruitment she would escalate the matter, she understood that following her advice he decided not to go forward with it.

109 Mr Satterley told the Tribunal that ultimately he decided against hiring the Claimant because HR informed him that serious behavioural concerns had been identified whilst the Claimant was in Mr Clegg’s team as well as in her previous team. He acknowledged that the decision was his to take but with HR strongly advising against the hire he had decided on reflection that it would be inappropriate for him to pursue it. We were given no reason to doubt Mr Satterley’s evidence.

110 We find that the involvement of HR meant that matters were taken out of the Second Respondent’s hands and that from the point at which Ms Ayuya and Ricky Constantinides went to Ms Metochi with concerns about the Claimant’s behaviour the Claimant’s future at HSBC was outside the influence of the Second Respondent.

### **Allegations that the Second Respondent subjected the Claimant to inappropriate conduct**

**On 10 April 2018 the Second Respondent made inappropriate comments to the Claimant about his (sexual) involvement with another female member of the Digital Team. [3 g(i)]**

111 We do not find that this happened.

**On 10 April 2018 the Second Respondent told the Claimant that he felt she should leave the First Respondent. [3 g (ii)]**

112 We have addressed this above. We do not find that this was said.

**On 13 and 18 April 2018 the Second Respondent informed the Claimant that he was no longer comfortable with converting her to a permanent role in Staff Digitisation team and that she should look for opportunities in other teams. He also stated that she had a bad reputation from her time with the Originations team. [3 g(iv)]**

113 We address this in our findings above. We do not find that this is what was said. We have found that the Claimant and Second Respondent both agreed in March that she would look for opportunities in other teams and that the Second Respondent had decided to do the same.

**On 30 April 2018 the Second Respondent informed the Claimant about a complaint made by Jess Ayuya and told her that she should resign the following day. The second Respondent told the Claimant that if she raised the matter with HR the complaint would be escalated to a formal complaint and result in her dismissal which would adversely affect her record and any employment reference. [3 g (iv)]**

114 We do not find that this is an accurate account of what was said. The Second Respondent did not tell the Claimant that she should resign. We are satisfied that Mr

Clegg discussed a number of options with the Claimant and gave his honest assessment of how different options might play out, and that he would have done the same with anyone else in the same situation. We do not find any evidence from which we could conclude that he would have behaved any differently to another member of his team who was in the same position as the Claimant and who was faced with similar allegations or complaints. Nor do we find that in giving his honest assessment of the situation he subjected the Claimant to a detriment.

**On 10 May 2018 when the Claimant commented (about Ms Ayuya’s complaint) that it was if she was “guilty until proven guilty”, the Second Respondent stated, “yes, its like rape isn’t it?” [3g(v)]**

115 We have set out our findings on this allegation above under the meeting on 10 May.

**On an unspecified date in early May 2018 when the Claimant observed that it was stressful to await the outcome from HR in relation to the complaint concerning Ms Ayuya, the Second respondent smirked and stated, “yes, I’m sure you’re having physical responses and sweating as well” [3g(vi)]**

116 We have set out our findings above, we do not find that this was said.

**On 1 May 2018 the Second Respondent repeated his accusation that the Claimant had a bad reputation; and he stated that, if she applied for other roles with the First Respondent, he would be forced to give negative feedback, admitting that he no longer wished to work with the Claimant. [3 g (vii)]**

117 We do not find that this an accurate representation of what was said. We have set out our findings above.

**On 1 May 2018 the Second Respondent told the Claimant that her contract would not be renewed as she had reached the “two year mark” [3 g (viii)]**

118 We have set out our findings above in respect of the reference to the “two year mark”.

### **Negative feedback from Sami Abouzhar [3g(ix)]**

119 Mr Abouzhar was a key senior individual involved with the Singapore Wealth project. It was not disputed that it was a difficult project which was trying to introduce new digital products into the market. The Claimant alleges that Mr Clegg told her that Mr Abouzhar had given seriously negative feedback about her but that when she spoke with Mr Abouzhar he denied this was the case. Mr Clegg denies this allegation. We find that Mr Abouzhar expressed clear dissatisfaction with the delivery of the project as a whole but did not give specific feedback on the Claimant and the criticisms were not a personal attack on the Claimant and Mr Clegg accepted that the buck stopped with him as the head of the team. We find that Mr Clegg told the Claimant that there had been negative feedback because it was relevant to her work but he did not tell the Claimant that Mr Abouzhar had given negative feedback about her personally.

**Allegation that on 31 May the Second Respondent told the Claimant that he was informing other members of staff that she was responsible for the resignations of Ms Ayuya and Mr Kilroy; and that the Claimant was a ‘bad people person’, while admitting that he did not hold her accountable but did not wish to work with her anymore [3 g (x)]**

120 We do not find that the Second Respondent said these things to the Claimant as she alleges. He did not say that she was a bad people person, or that he did not wish to work with her anymore, nor did he say that he was informing other members of staff she was responsible for the resignations of Ms Ayuya and Mr Kilroy.

121 The Claimant described herself as being ‘terrified’ of the Second Respondent by this time. We do not accept this to be an accurate description of how she felt. The Claimant was working on a different floor or away from the team to avoid seeing the Second Respondent but not because she was terrified of him. We find that she was highly emotional in her responses towards him but she was also capable of and demonstrated that she was prepared to stand up to the Second Respondent when she wanted to, for example in relation to insisting on being the person to decide who was leading the Singapore team whilst he was away.

**Allegation that on various occasions, including in or around mid-June 2018 the Second Respondent visited unisex toilets with a female member of staff (with whom he was having a sexual relationship) [3g(xi)]**

122 On 12 June 2018 the Claimant reports to her friend in a text message that the Second Respondent and Female 1 have had sex in the “secret loos” and that he has come back sweaty [5/1333]. Whilst is not spelled in the pleaded allegation it was not disputed that this is what the Claimant inferred and it is what she alleges in her witness statement [at paragraph 93] and reports to another friend [5/1336]. In cross examination the Claimant says that she knew the Second Respondent and Female 1 must have been having sex in the toilets because of the Respondent’s smell on his return. In her evidence she described seeing Female 1 knocking on a cubicle door and the Second Respondent opening it. We do not find that she could have seen this as she described. We heard detailed descriptions of the relative positions of the door to the stairs and the door to the toilets and were taken to photographs of the respective doors and the view of the toilet door from the other side of the door to the stairs [9/2416.1-2416.4]. We do not find that the Claimant could have seen what she described from where she claims to have been standing.

123 We heard from the Second Respondent and from Female 1 and we accept their evidence in respect of their visits to the stairwell, to have private conversations when Female 1 was upset at work due to difficult personal circumstances, and in respect of the circumstances in which they went in to the toilets together on two occasions: once to get cleaned up after Female 1 was sick, and the other when she was about to be sick, having received some very distressing messages on her phone.

124 We do not find that the Second Respondent and Female 1 went to the toilets to have sex. The Claimant does not make reference to the Second Respondent winking at her in her statement but instead alleges that he gave her “the most sinister smile I’ve ever seen in my life”. We do not find that the Second Respondent sat down and winked at the

Claimant on his return, nor do we find that he gave the Claimant a sinister smile. We do not find that the Second Respondent's conduct in meeting with Female 1 was directed at the Claimant in any way.

**Allegation that on 12 July the Second Respondent informed staff two male members would lead the Singapore delivery project when the Claimant had been the lead for this project, and he publicly stated that he had concerns about her performance [3 g(xii)]**

125 On 11 June the Claimant complained to Mr Clegg about Sumaira [5/1313] who was a key member of the Singapore Wealth team and asked him to deal with her directly. In July Mr Clegg was receiving reports from colleagues, including Jon Andrews who he described as an "amiable, unassuming man" [RC:256] that it was very difficult to work with the Claimant and he was considering leaving the Staff Digitisation team. On 10 July 2018 the Claimant made clear to Mr Clegg that she did not want to work with Sumaira and the Second Respondent sympathised with her. He acknowledged that the project was becoming a disaster but told the Claimant they had to work with what they had and we find the Second Respondent's assessment was that others in the team had been doing that. On 11 July Mr Clegg informed Mike Ferris that

"Mads appears to be semi on the job and has some work today on it. I challenged her and she didn't answer, walked out was clearly not prepared to say what the issue is. That is fine but I need to know what she is going to do or not and then fill the gaps."

Mike Ferris's response [6/1537 – 1538] was that what Mr Clegg had described was,

"...not fine and not acceptable. Walking out is also not acceptable. ...Let's assume that she is not coming back into the fold and move ahead appropriately. Can you also please address this F2F with Mads before you go on leave, or if not, I will do so. Delivery is non-functional right now. It needs to be fixed..."

126 Mr Clegg was due to go on two weeks leave in July. The Claimant was responsible for Delivery, which was being described by others as non-functional. We accept that Mr Clegg's assessment at that time was that the Claimant had withdrawn from dealing with Sumaira and that others in his team had better relationships with the team in Singapore. We find that is the why he decided that Mike Ferris and the Damian Smith would lead the project in his absence in July. He had discussed this with the Claimant on 12 July and described her as being the team quarterback, explaining that this meant that she would be directing the matters from London whilst Damian and Mike travelled to Singapore.

127 We find that the Claimant's conduct had become unpredictable and there was genuine and reasonable concern that she would not be the best person to send to Singapore to placate the team there. We have considered the emails at [6/1580-1590 and 1733] the transcript of the conversation between the Claimant and Mr Clegg on 10 and 12 July 2018 [ 1470-14976/1521-1533] and the emails at [6/1733-1736] and find that they are consistent with Mr Clegg's account of events, which we accept [RC: 252-267].

128 Mr Clegg stated in his email on 12 July 2018 [6/1582] what his concerns were but we do not find that this amounts to a public humiliation. The concerns were already known by the other team members who had raised them with Mr Clegg. We find that it was appropriate to make Mike Ferris and Damian Smith aware of what had been discussed and agreed in anticipation of Mr Clegg's absence for two weeks. We find that Mr Clegg also considered it necessary to line up Peter Taylor to make himself available as a point of contact in case there was further escalation with the situation of the Claimant. Whilst Mr Clegg was away he received a call from Ash asking where the Claimant was, saying she was not attending at work and he believed that some of his fears were borne out.

**Allegation that the Second Respondent failed to communicate her departure to the team or plan any social event [3 g (xii)]**

129 The Second Respondent accepted there was no announcement in respect of the Claimant's departure. The Claimant emailed him on 1 August [6/1808 -1809] asking him to send any communication in respect of her leaving to her first for approval. Mr Clegg responded [7/1858] offering to send something to the team and invited her suggestions as to the what she wanted to be said. The Claimant did not get back to him.

130 Mr Clegg did not plan a social event. We find that this was not something that he would normally be expected to do; his understanding was that usually a social event was organised by the person leaving or their friends in the team.

**Allegation that from April to 27 August the Second Respondent repeatedly bullied and intimidated her putting her down and suggesting that she resign. [3 g (xiv)]**

131 We do not find this took place.

**Allegations of sexual harassment**

132 Allegations 5 a-d repeat the allegations at 3 g (i),(v), (vi) and (xi) above as allegations of harassment related to sex. We have set out our factual findings in respect of those allegations above and do not repeat them here.

**Particulars of allegations at 5 e i – vi**

**(i) From May 2018 onwards the Second Respondent displayed extreme alternating behaviour towards the Claimant; stating on certain occasions that she was responsible for everything that had gone wrong in the team and on other occasions admitting that the Claimant was not responsible for said matters but that the Second respondent no longer wished to work with the Claimant due to their personal relationship ending, thus forcing her out of the First Respondent entirely.**

133 We do not find this is an accurate account of events. We do not find that the Second Respondent displayed extreme alternating behaviours towards the Claimant. He did not state the Claimant was responsible for everything that had gone wrong in the team nor did he try to force her out of the First Respondent.

**(ii) The Second Respondent regularly invented varying reasons as to why the**



**Claimant could not stay at the First Respondent. Whenever she would find a solution to any of the said reasons, the Second respondent would introduce a new reason or issue that never appeared to affect any of her colleagues.**

134 We do not find this accurately reflects what took place (see our findings above). We have found that the Second Respondent did point to the 'two-year rule' as an explanation for why the Claimant could not stay at the Respondent when this was not the real reason, however we have found that this was not done with the purpose of violating her dignity or otherwise creating an intimidating, hostile, degrading, humiliating or offensive environment for her, and nor do we find could it reasonably be perceived to have had that effect. It was an attempt by the Second Respondent to point to a neutral factor and thereby to avoid having a more difficult conversation about the Claimant's conduct towards her colleagues.

**(iii) Whilst exhibiting the above behaviour the Second Respondent made it clear to the Claimant that her reputation and future at the First Respondent was in his hands and that she needed [to] capitulate and submit to him and his narrative if she wanted any chance of staying with the First Respondent.**

135 We do not find this is an accurate or fair reflection of what took place. We are satisfied the Second Respondent did everything he could to try to secure the Claimant an extension and a permanent contract but that matters were taken out his hands by HR and this is what he told the Claimant.

**(iv) The Second Respondent abused his power and control over the Claimant. The Second Respondent stated that he would consider changing his mind about her staying (at the First Respondent) if the Claimant and he continued to "get along". The Respondent then set about doing utmost to provoke response or reaction from the Claimant.**

136 We do not find the Second Respondent abused his power or control over the Claimant or acted in the way she described. We find that he treated her more favourably than he would have done others in the same circumstances. He did not change his mind about her staying, we find that he consistently did what he could to secure her a permanent contract. We find that any reference to an improvement in getting along was in reference to the Claimant's unprofessional behaviour at work towards Mr Clegg and others in the team. We accept that Mr Clegg told the Claimant that if she was able to show, or maintain, an improvement in her behaviour at work then he would be able to go to HR to plead her case on the basis that she had changed; however we do not find this is the same as abusing his power and control over the Claimant, HR had formed its view of her behaviour independently of Mr Clegg based on reports by others and we are satisfied that Mr Clegg believed that HR would not change its view without clear evidence of a change in her behaviour. The Second Respondent had made it clear it was not within his power whether the Claimant could stay but was up to HR. We also find that the Second Respondent did everything he could to try to placate the Claimant and avoid provoking her as far as possible. We do not find that Mr Clegg acted with the purpose of violating the Claimant's dignity or otherwise creating an intimidating, hostile, degrading, humiliating or offensive environment for her, and nor do we find that his actions could reasonably be perceived to have that effect.

**(v) The Claimant was terrified and repulsed by the Second Respondent; she did not say something to the Second Respondent or others about his unwelcome, and often vile, behaviours, through fear that he would do anything in his power to jeopardise her career. As such, she remained quiet, submissive and conciliatory, enduring his torment, in an attempt to alleviate the situation, only to lose the job regardless.**

137 This is a description of what the Claimant allegedly felt, or did or did not do rather than particulars of actions by the Second Respondent. We do not find this to be an accurate reflection of what took place and are satisfied that this description bears no relation to the evidence before us. There is no evidence the Claimant remained quiet, submissive or conciliatory, nor do we find there is any credible evidence of any vile or other fear inducing behaviours by the Second Respondent (see our findings below). The Claimant's contention is that she was terrified of the Second Respondent, however when asked in cross examination she told the Tribunal that she did not mean she was actually frightened of the Second Respondent personally but rather that she was terrified of losing her job. We do not find that she was terrified of the Second Respondent. We do however find that this is an instance of the Claimant making very serious allegations about the Second Respondent which she resiled from when challenged in cross examination.

**vi specific examples of the Second Respondent conduct towards the Claimant after 10 April 2018**

**(i) 5 (a) to (e) above are repeated**

138 We have set out our findings on these allegations above. We have not found these to have taken place as described.

**(ii) In late April the Second Respondent falsely signalling to other team members that the Claimant was the cause of a very bad smell**

139 We do not find that this took place.

**(iii) The Second Respondent made it clear that if the Claimant spoke to HR or anyone else about him, it would not end well for her. He insinuated, without explicitly stating, that the HR and Josh Bottomley routes were closed to her.**

140 We do not find that this allegation to be an accurate description of events and find that it is not made out on the facts.

**(iv) The Second Respondent would often overtly stare at the Claimant's chest when talking to her**

141 Having heard from the Claimant and the Second Respondent we do not find that this took place.

**(v) The Second Respondent would unnecessarily touch the Claimant on the arm or from behind with both hands on her hips when moving past her**

142 The Claimant described two instances of unwanted and unnecessary touching [at paragraphs 61 and 84] in her witness statement. In her oral evidence she was vague and also could not explain why she had not mentioned any unwanted touching in her grievance document [6/1563, 6/1567]; in her grievance interview [6/1791], where she referred to the Second Respondent looking at her [chest] and looking her up and down; in commenting on the minutes of that interview [6/1688, 6/1707, 6/1768]; or in her Particulars of Claim, and why they did not appear until the amended particulars were added to the List of Issues on 28 August 2019. We are satisfied that if there had been unwanted touching the Claimant would have mentioned it in her grievance, or at the least at the interview when asked to give examples of sexual harassment. We find that these allegations have been added at a late stage as an embellishment to the claim. We do not find that this took place.

**(vi) The Second Respondent would switch from being aggressive with the Claimant in a 1:1 meeting to winking at her, or being generally jovial and flirtatious with her in public.**

143 We do not find that this is an accurate representation of what took place. We find that there were some 1:1 meetings in the workplace that were difficult and fraught however we are find that the Second Respondent was attempting to work professionally and positively with the Claimant.

**(vii) The Second Respondent would often make sexual comments about women in the office and leer at them if they walked by. The Claimant believes that this was intended directly at her to cheapen her worth as a female as merely a sexual object and to re-enforce that her value as such was spent after their relationship had ended.**

144 We do not find this took place. We do not find that the allegations of sexual comments having been made about women, or leering at them, to be substantiated on the evidence before us.

**(viii) The Second Respondent led a campaign of reputational damage against the Claimant. The Second Respondent stated on 1 May 2018 that he was going to tarnish the Claimant's reputation. No investigations into the allegations against her ever took place. She was never given the right of reply, yet, as per the Second Respondent's statements, he made sure that her reputation was destroyed**

145 We do not find the Second Respondent led a campaign of reputational damage against the Claimant. If anything we find the opposite to be true. The Second Respondent went out of his way to try to limit the damage caused by the Claimant's conduct and smooth over difficult relationships: complaints came from third parties and were outside of his control.

146 It was also suggested that he Second Respondent prevented the Claimant from getting a role in Ally Satterley's team by referring him to HR knowing they would give robust advice against hiring based on complaints that he knew to be exaggerated or untrue We are satisfied that Mr Clegg did not consider the complaints to be exaggerated or untrue.

- (ix) **The way in which the Claimant was ultimately ‘exited’ from the organisation was quite unique and only akin to somebody being fired. Contractor or perm, given her length of service and her achievements at the First Respondent, to be exited “immediately” as she was, was constructed deliberately by the Second Respondent, and enabled by the First, to deceive as to the reason for her departure. The Second Respondent ensured that the Claimant’s exit was set up to look like a firing, which it was not. At no point was any announcement given to the team to address the Claimant’s exit. The impression created has had a significantly negative effect to her reputation**

147 The Claimant was on a fixed term contract which was due to expire in August. There were concerns about her behaviour which were brought to the attention of Ms Metochi by Ms Ayuya and Mr Constantinides. By July 2018 the Claimant was not performing and not attending work. The Claimant did not come in to the office during the period while the Second Respondent was away: no explanation has been given for this, although the Claimant was still paid for the days that she did not turn up. The Claimant was insisting on communication by email only and refused to come in for meetings with the Second Respondent; we find this demonstrated that the working relationship had broken down and the situation had become unworkable. It was the Claimant who was saying that she was not going to come in for the rest of August and the Second Respondent gave the Claimant the option to stay at home and be paid. On 30 July 2018 the Second Respondent emailed Ms Metochi to inform her that he had offered to pay the Claimant for the rest of her contract without requiring her attendance [6/1795].

148 On 31 July the Claimant was sent an email confirming that her engagement would end on 27 August at the expiry of the fixed term and she would be paid up to the end of that period but would not be required to come in to work [6/1828]. We are satisfied that the Second Respondent did not set up the situation to look like a firing. We have found that the Second Respondent resisted the advice of Ms Metochi and the wishes of Mr Constantinides, which was to give the Claimant notice and terminate her contract before the end of the fixed term (in other words to fire her) and instead extended the Claimant’s contract to August and allowed the contract to run its course, continuing to pay the Claimant despite her not coming in to work.

149 We find that the Claimant’s insistence on blaming the Second Respondent for her reputational damage demonstrates a lack of self-awareness at the least, and indicated to the Tribunal a failure to acknowledge or accept responsibility for her own conduct and its role in the First Respondent’s decision not to renew or extend her contract any further.

#### **The Claimant’s pleaded comparators Andrew Beecham and Mike Ferris.**

150 We do not find the Claimant’s pleaded comparators assist her case.

151 In March 2018 Mr Ferris was also caught by the First Respondent’s desire to regularise salaries and establish a pay grade linked to GCB 4 that was lower than had been paid to contractors on day rates in respect of the proposed permanent role of Delivery Lead. The initial permanent role he was offered was not pursued and he did not take up a role at the salary quoted (£120,000) when Mr Jack Benny stepped in and pointed out the pay should never have been offered at that rate for the role. We find that is

not dissimilar to what happened with the Claimant's role and we accept that the governance within the discipline had been increased.

152 Mr Ferris did not secure a role at HSBC in 2018 but continued as a contractor and eventually took up a different permanent role Technical Product Owner in June 2019 at GCB4. We find that he is not directly comparable to the Claimant due to his hybrid skills and the need to compete with his existing salary when he was employed by Tata. We accept that Mr Ferris's role was different to that of the Claimant. He had a technical expertise as a solutions architect as well as being a delivery lead and his daily rate as an external consultant was high. The role that he took up in June 2019 was a hybrid role of Technical Product Owner for which he was uniquely qualified and for which he agreed to leave Tata and relocate from Sheffield to London; we accept that the GCB4 salary was adjusted to reflect this. We find it was still lower than that offered to the Claimant in January 2018, and that this was consistent with the First Respondent's tightened salary regime.

### **Andrew Beecham**

153 We are satisfied on the evidence before us that Mr Beecham was not offered a higher salary than the Claimant page [9/2378] the allegation that his contract was renewed beyond an arbitrary two-year rule. We accept the Second Respondent's evidence that he referred to this rule in order to avoid having to explain that the Claimant's behaviours were the real reason that her contract would not be renewed.

### **Other named comparators**

154 The Claimant also referred to the treatment of Damian Smith and Stuart Herron. We have already addressed Mr Smith's position in our findings above. He was offered a lower salary than that offered to the Claimant in January 2018, he accepted the role in February 2018 and it was a result of having accepted the role and signed a contract that his salary was honoured: if the Claimant had acted in the same way as Mr Smith at that time she would have secured a role at £130,000.

### **Stuart Herron**

155 Mr Herron was a contractor who converted to permanent role HSBC in 2018, he was subsequently dismissed for gross misconduct because of his behaviour. We accept Ms Metochi's evidence that he had signed a permanent contract with HSBC on 25 September 2018 before any concerns were formally raised with HR which meant that unlike with the Claimant, HSBC could not simply allow his contract to expire. Issues were first raised with Ms Metochi about him on 24 October 2018 but the complainant did not wish to make her complaint formal. Ms Metochi was not prepared to let it lie and persuaded the complainant to make her complaint formal which she did in March 2019, by which time Mr Herron was an employee. An investigation was commenced and Mr Herron was dismissed for gross misconduct in May 2019 within 2 months of the complaint having been made formal.

156 We are satisfied that Ms Metochi's approach to both the Claimant and Mr Herron was consistent and illustrated that she was not prepared to allow allegations of

unacceptable behaviour to be ignored or swept under the carpet whether they were against a contractor or an employee.

157 We do not find the Mr Beecham is a relevant comparator: the two-year rule was not an absolute rule and was not the reason for the refusal to extend the Claimant's contract beyond August 2018.

## **Victimisation**

### **The Claimant relies on her grievance as the protected act**

158 It was accepted that this is capable of amounting to a protected act under s 27 Equality Act 2010.

159 Ms Marshall did not attend to give evidence and so was not cross examined on her witness statement. An explanation for her absence was provided by the Respondents' Counsel, which is consistent with Ms Marshall's evidence at paragraph 2 of her statement. We note that Mr Martin, who did attend and was cross examined, was not seriously challenged on his evidence nor indeed on Ms Marshall's investigation. We also note that Ms Marshall was engaged by HSBC as a contractor from May 2018 to 31 December 2018. We find that she had no reason to act other than professionally in dealing with the Claimant's complaint.

160 The Claimant complains that she was denied the benefit of the grievance procedure, we find that as a contractor under HSBC's policies she was not entitled to the benefit of the grievance procedure, however we are satisfied from the documentary evidence that Ms Marshall conducted a very thorough investigation and we find that this is consistent with her having taken the complaint very seriously. We accept Ms Marshall's evidence that attaching the label 'grievance' would not have made any difference to her investigation. Volumes 6 – 8 of the trial bundles contain the documents from that investigation. We are satisfied that there was an extensive investigation into the Claimant's complaints.

## **Detriments alleged**

### **(i) The Claimant was not invited to a grievance meeting (after the investigatory meeting on 19 July 2018)**

161 We find that the reason the Claimant claim was not dealt with under the grievance procedure because the Claimant was a contractor [Ms Marshall's witness statement, paragraph 9 and 6/1629]. In any event the Claimant was invited to an investigatory meeting on 19 July and Ms Marshall took a very detailed account from the Claimant. The Claimant was given the opportunity to submit any documents she thought would support her complaint and she did so over the course of a number of weeks and Ms Marshall considered those documents asking a number of follow up questions with the Claimant about them [6/1769].

### **(ii) The First Respondent failed to interview key witnesses suggested by the Claimant**

162 Ms Marshall interviewed seven further witnesses in addition to the Claimant. She considered the email from the Claimant with a list of suggested witnesses and the names suggested by Mr Clegg: there was one common name suggested by both which was Lloyd Robson and Ms Marshall decided to speak to him as she considered that he would apparently be able to give a version from both sides. We are satisfied that it was up to Ms Marshall to decide who was relevant to the investigation. The Claimant had told her that there were no witnesses to the specific alleged acts of sexual harassment.

**(iii) The First Respondent failed to adhere to its Grievance Procedure and failed to conduct the grievance in a fair, reasonable and timely manner, and in particular: [particulars a-r]**

**Allegation (a) The claimant was specifically informed that her time in Originations was not relevant to the grievance but then Mr Lloyd Robson was interviewed in respect of the Claimant's grievance against the Second Respondent**

163 We do not find that the Claimant was specifically informed that her time in Originations was not relevant to the grievance. We find that this is taken out of context and misrepresents what was said. Mr Robson was interviewed because he was suggested by both the Claimant and Mr Clegg.

**(b) Mr Robson was incorrectly characterised as the person to whom the Claimant reported while in Originations. In fact the Claimant officially reported to Mr Charles Eklund from December 2015 until she transferred to the Second Respondent's team in July 2017**

**(c) When the Claimant suggested that Mr Eklund be interviewed as part of the investigation the First Respondent said he was irrelevant to the investigation without proper justification.**

164 We find that Mr Eckland did not have day-to-day management responsibilities for the Claimant after he moved to California in late 2016 and that Mr Robson was the person the Claimant reported to on a day to day basis for the period of time whilst she was in Originations immediately before her transfer to the Second Respondent's team. We find that Ms Marshall took the view that Mr Eckland was not an essential witness in relation to the allegations the Claimant had made. The Claimant did not suggest that Mr Eckland had witnessed any of the alleged sex discrimination or sexual harassment or bullying about which she had made complaint.

**(d) The Claimant provided details of colleagues who had given positive feedback about her, members of the team who had followed her across from Originations and those who had specific knowledge relevant to her grievance and, specifically, the issues with Simon Kilroy and Jess Ayuya but none of those individuals were interviewed;**

Otherwise put as failing to interview colleagues who could provide positive reports about the Claimant

165 Ms Marshall spoke to seven witnesses in carrying out her investigation, we are

satisfied that she spoke to those individuals whom she considered may have relevant knowledge of the matters that she was investigating. Similarly, she did not interview all the witnesses suggested by Mr Clegg. The Claimant had provided a document containing positive feedback from a number of individuals which Ms Marshall took into account. We accept that paragraph 23 of Ms Marshall's witness statement reflects her genuine assessment of the evidence before her.

**(e) On two separate occasions in the run up to raising her grievance the Claimant was advised by 'HSBC Confidential' (the First Respondent's internal whistleblowing line) and Employee Relations that the grievance process had been breached by the Second Respondent and there should have been interviews with the Claimant and other relevant witnesses with regard to Ms Ayuya's allegations against the Claimant;**

166 We find that this allegation is aimed at Ms Metochi's handling of Ms Ayuya's complaint and predates the protected act relied upon.

**(f) The Claimant raised her grievance through HSBC Confidential, having been advised to do so by a senior colleague, because if she went to HR directly, they would "bury it" and was assured at the outset of the investigation that she would be given prior notice by HR as to when the Second Respondent was to be made aware of the grievance. In the event the Second Respondent was "tipped off" informally by HR in or around the week commencing 30 July 2018 and had ample time to prepare his response, force the Claimant out of the First Respondent and manipulate individuals and evidence in his favour.**

167 There was no credible evidence to support this allegation. We do not find that HR buried her complaint (see our findings above in respect of the investigation and also bundle volumes 6-8). Nor do we find that the Second Respondent was "tipped off" as suggested. We do not find that Mr Clegg had been made aware of the contents of the Claimant's complaint (although Ms Metochi told him that a complaint had been made) or knew what Ms Marshall was going to ask him about and prepared his responses, we are satisfied from his and Ms Marshall's respective accounts and the minutes of his interview that he was not aware of the details of the allegations in advance. We do not find any evidence that he manipulated individuals or evidence in his favour.

**(g) When the Second Respondent approached HR to tell them that he feared the Claimant would raise a grievance against him their response was "she should be stopped immediately"**

168 We do not find that HR, i.e. Ms Metochi, advised the Second Respondent that the Claimant should be 'stopped immediately' from raising a grievance. We accept Ms Metochi's evidence and that of Mr Clegg as to what the comment was referring to and find that it was a reference to the Claimant being stopped from coming into work, in the context of her conduct and behaviour towards others, and was not related to the bringing her grievance. We find that it is unlikely that an experienced HR professional would advise Mr Clegg or any manager to try to stop a member of staff from bringing a complaint, nor do we find Ms Metochi would have done so given her response to the complaint about Mr Herron and to Ms Ayuya's and Mr Constantinides complaints about the Claimant.



**(h) The First Respondent's refusal to extract the Claimant from the Second Respondent's team**

169 We do not find that HSBC refused to extract the Claimant from the Second Respondent's team. The Claimant was interviewed on 19 July at which time the Second Respondent was on holiday for two weeks. She did not mention being extracted from the team. She raised it with Ms Marshall in an email on 25 July and Ms Marshall explained an extraction would usually only be done in exceptional circumstances and suggested a discussion on the following Monday, she also explained that an extraction would need to be handled carefully to preserve the Claimant's confidentiality. The Claimant had a conversation with the Second Respondent on that Monday following which she did not return to the office; the Claimant remained out of the office for the rest of her contract and we find that the issue of extraction was not raised again.

**(i) The Claimant's grievance interview with HR was conducted in a hostile atmosphere where she was treated with suspicion and was effectively grilled by HR. They also informed her that they would not be following the First Respondent's grievance process, and stated that the issues she had raised were "not really sexual harassment". When the Claimant wanted to raise a list of witnesses, she was informed that HR would only interview witnesses that they deemed appropriate.**

170 We have read the minutes of the interview and seen the Claimant's comments on and amendments to those minutes. We do not find that this allegation is a fair or accurate characterisation of how the interview was conducted. Ms Marshall had 32 years of experience in HR and ER and had led between 60-80 investigations. We do not accept the Claimant's evidence that the interview was conducted in a hostile atmosphere and she was treated with suspicion and effectively grilled. Having read the minutes of the interview we are satisfied that the comment in respect of one incident that it was 'not really sexual harassment' was made by Ms Marshall in respect of one specific matter raised by the Claimant, namely that Mr Clegg had sexually harassed her by making a comment about having been in Hong Kong with his new girlfriend, and has been taken out of context. [6/1790]

**(j) The (male) decision maker's approach to the Claimant's grievance**

171 The specific criticisms made in the allegations were not followed through in submissions. Having heard from Mr Martin in evidence we do not find that the particulars described at j are an accurate reflection of Mr Martin's approach to the Claimant's complaint. We accept Mr Martin's evidence as to his approach to the complaint and his reasons for the conclusions he reached [at paragraphs 33 and 34 of his witness statement he addresses these specific criticisms]. We accept Mr Martin's evidence that he was surprised as to the conclusion he came to, having started with an assumption that something must have happened and that he would find in her favour and with a sense of empathy for the Claimant [paragraphs 22, 23 and 24 of his statement]. We accept that the reason that he did not find in the Claimant's favour was because the allegations were not made out on the evidence that he had seen [paragraph 25].

172 We note that the allegations in the amended particulars in respect of Mr Martin's handling of the complaint go far beyond what was originally pleaded; we also note that in closing submissions Claimant's Counsel described Mr Martin as an honest witness who

acted in good faith to the best of his abilities, whilst inviting the tribunal to infer from alleged procedural defects, a culture of disbelief and failure to turn his mind to a definition of harassment, relied on as detriments, that he was driven by unconscious bias. We also remind ourselves that this is an allegation of victimisation.

**(k) The Claimant was not given right of appeal by the First Respondent against the grievance outcome**

173 We find that the reason the Claimant was not given a right of appeal was because she was a contractor and was not entitled to the benefit of the grievance procedure.

**(l) The First Respondent informed the Claimant that because she was a contractor, it would not be following the grievance process for her grievance against the Second Respondent. However this is not stated anywhere within the First Respondent's grievance policy, which refers only generally to 'Staff'.**

**(m) The First Respondent's website clearly states that it does not discriminate on the basis of employment status but in the Claimant's case her grievance was treated differently.**

**(o) The Claimant did not get the opportunity to meet or speak to the 'decision maker/hearing manager' contrary to the grievance procedure**

174 Ms Metochi's evidence that complaints from employees were dealt with by HR and from contractors were dealt with by ER was not challenged. We find that because she was a contractor the Claimant's complaint was referred to Ms Marshall in the ER function. Ms Marshall explained at the start of her meeting with the Claimant on 19 July 2018 that because the Claimant was a contractor the Grievance procedure did not apply [6/1629]. We find that the reason why the Respondent did not apply the Grievance Procedure was because the Claimant was a contractor and not an employee.

**(n) The Claimant did not have the opportunity to respond to any of the allegations the Second Respondent and Mr Robson made against her. Instead these statements were taken as fact by the First Respondent with no investigation into their validity**

**(p) The Second Respondent was interviewed on multiple occasions while the Claimant was only interviewed once and was never given the opportunity to respond to the allegations against her.**

**(r) The investigation by the First Respondent into the Claimant's grievance was not focused on her grievance at all but was rather focussed on supporting the Second Respondent**

175 We have found that Ms Marshall spoke to those individuals whom she considered may have relevant knowledge of the matters that she was investigating and we are satisfied that she conducted a thorough and fair investigation into the Claimant's complaints and produced a detailed report [8/2300-2317]. We do not find that the investigation was focussed on supporting the Second Respondent rather than on the Claimant's grievance.

176 We find that Mr Martin satisfied himself that all those who were interviewed, including the Claimant were given sufficient opportunity to set out their views on issues relevant to them with respect to the complaint [paragraph 19 of his statement] and that he carefully weighed the evidence presented to him and concluded that the Claimant's allegations were not made out on the evidence [paragraph 25 of his statement].

177 We heard from Mr Martin and we are satisfied that he thoroughly read the detailed report from Ms Marshall and formed his own view, set out his reasons for not upholding the Claimant's complaint at [8/2320]

**q) In the run up to raising the grievance, the Claimant was completely frozen out by the leadership team and despite attempts to reach out on multiple occasions to Charles Allen, Dan Phipps and Josh Bottomley the Claimant was ignored;**

178 The alleged conduct pre-dates the protected act. In any event we have not found any cogent evidence to suggest the Claimant was frozen out by the leadership team as alleged.

**(iv) The Claimant's grievance was not taken seriously**

**(v) The Claimant's grievance was rejected on 4 October 2018**

179 We have found that Ms Marshall conducted a very full investigation, and that both she and Mr Martin took the complaints very seriously. We have been provided with hundreds of pages of documents considered as part of the investigation and notes from interviews with seven witnesses as well as the Claimant.

180 We are satisfied that there was a thorough investigation and that the criticisms made by the Claimant are not well founded or supported by the evidence

**(vi) The Claimant's contract was not renewed.**

181 It was not disputed that the Claimant was told by the Second Respondent on 1 May 2018 that her contract would not be renewed beyond its expiry in August, the Claimant submitted her grievance (the protected act relied upon) on 12 July 2018, more than 2 months later. We do not find that the reason for deciding to not renew the Claimant's contract was because she had done a protected act, or in any way related to her having brought a grievance or complaint of sex discrimination and/or and sexual harassment.

## **The law**

182 **Equality Act 2010**

### **13 Direct discrimination**

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

**23 Comparison by reference to circumstances**

- (1) On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case.

**26 Harassment**

- (1) A person (A) harasses another (B) if—
- (a) A engages in unwanted conduct related to a relevant protected characteristic, and
  - (b) the conduct has the purpose or effect of—
    - (i) violating B's dignity, or
    - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
- (2) A also harasses B if—
- (a) A engages in unwanted conduct of a sexual nature, and
  - (b) the conduct has the purpose or effect referred to in subsection (1)(b).

**27 Victimisation**

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

**123 Time limits**

- (1) ... proceedings on a complaint within section 120 may not be brought after the end of—
- (a) the period of 3 months starting with the date of the act to which the complaint relates, or
  - (b) such other period as the employment tribunal thinks just and equitable.

...

- (3) For the purposes of this section—
- (a) conduct extending over a period is to be treated as done at the end of the period;
  - (b) failure to do something is to be treated as occurring when the person in question decided on it.
- (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
- (a) when P does an act inconsistent with doing it, or
  - (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

### **S 136 Burden of proof**

- (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
- (3) But subsection (2) does not apply if A shows that A did not contravene the provision.

### **Submissions**

183 Mr Francis produced a helpful opening note setting out the legal framework and a summary of the Claimant's case. The legal principles set out in paragraphs 4 to 24 of that note were not in dispute. Ms McCafferty QC and Ms Taunton expanded on those principles in their 76 page Written Closing Submissions. We were addressed in respect of the role of the Claimant's gender in the complaints she brought, referring to *Amnesty* Type 1 and Type 2 (*Amnesty International v Ahmed* [2009] ICR 1450) and *R (E) v Governing Body of JFS* [2010] 2 AC 728 (amongst other cases) in support of the submissions that the correct comparator for direct discrimination had been correctly identified in the Claimant's ET1 [para 33] and in the Agreed List of Issues [at 4b] as a homosexual male.

184 In relation to the harassment claims we were referred to *Unite the Union v Nailard* [2019] ICR 28 and *Bessong v Penine Care NHS Trust* [2020] IRLR 4 in support of the submission on behalf of the Respondents that it was not sufficient that some prior conduct which is inherently gender-specific or related to the protected characteristic has occurred in the background or history of the conduct. It is the alleged harasser's conduct which must have the necessary connection with the protected characteristic and that sexual jealousy and ending of a relationship were both gender neutral circumstances.

185 Mr Francis provided the tribunal with 34 page written Closing Submission in which he made number of submissions on behalf of the Claimant about the Second Respondent's conduct and attitude towards women: having heard the evidence and made the findings we have made we reject those submissions. We were told that about an allegation that formed part of the disciplinary proceedings against Mr Clegg, which was that he had told a female colleague (Complainant 1) that he wanted to 'tap [her] up', we

were told that this remark was found to have a sexual connotation. Mr Clegg denied using the phrase or indeed being aware of any sexual connotation, he told us that he had a conversation with complainant 1 about a possible move to his team, at time when there was a 'no poaching' policy in place. We accept Mr Clegg's evidence that he had not intended there to be any sexual connotation in his conversation with Complainant 1. We are satisfied that the phrase 'tapping up' more usually bears a meaning consistent with poaching or attempting to poach a professional from another team. We are not required to make findings as to the fairness or otherwise of his dismissal and do not intend to do so. We are also conscious that we have not heard from Complainant 1, but insofar as the matter is relied upon to suggest Mr Clegg had a disrespectful attitude towards women or sees them only as sex objects we reject that submission.

186 The fact of the Second Respondent's relationship with Female 1 was also pointed to as being indicative of his attitude towards women. We heard from Female 1 and find that she gave an honest account of their relationship in very difficult circumstances. Whilst we accept that the Claimant found it very upsetting when she became aware that Mr Clegg was seeing Female 1, we have not found the fact that he entered into that relationship to be indicative of a disrespectful or sexist attitude to women; we accept Mr Clegg's and Female 1's account of their relationship and also of the circumstances which led to Female 1 becoming distressed and seeking Mr Clegg's support at work.

187 We do not find that Mr Clegg exaggerated the Claimant's "behavioural issues". As we have set out above, we have found that he sought to downplay them.

188 Mr Francis submitted that the Claimant's live evidence was consistent with both her witness statement and with contemporaneous documents and statements made during her grievance process. We have not been able to accept that submission. We have found her evidence to be inconsistent with the documents in many respects as set out above. We accept the Respondents' submissions at paragraph 76 [of their Closing Submissions] as to the unsatisfactory nature of the Claimant's evidence. We also accept that in contrast the Second Respondent has been honest about his mistakes and tried to be balanced in his assessment of others, including the Claimant.

189 We were also addressed on the lack of opportunity to hear from Ms Ayuya, we are satisfied that the relevant question is what Mrs Metochi thought of Ms Ayuya's complaints rather than what we would have made of them, and that it was not just Ms Ayuya but also Mr Constantinides' reports that she had in mind. We did hear from Mr Constantinides and from Mr Robson are satisfied that they gave an honest account of his experience of working with the Claimant.

190 We have found that it was Ms Metochi's rather than Mr Clegg's assessment of the complaints by Ms Ayuya which were instrumental in the subsequent events leading to the termination of the Claimant's contract.

191 We considered the warning in *Alesco Risk Management Services Ltd and other companies v Bishopsgate Insurance Brokers Ltd and others* [2019] EWHC 2839 (QB) and the passage from *Gestmin* cited therein in respect of carefully crafted witness statements

192 While the term 'behaviours' or 'behavioural issues' may not have been used by the individuals concerned at the time they made complaints about the Claimant, terms such

as bullying, undermining and belittling were used- we find that 'behavioural issues' was the label attached by line managers and by HR once they became aware of the complaints.

193 The Claimant put forward a number of witness statements from former colleagues who enjoyed working with the Claimant and liked her and did not see her as a bully. The Respondents chose not to cross examine any of those witnesses. Other than Judy Stonebridge-Dunne who we were told no longer wished to give evidence, we have no reason to doubt that those individuals had a good or positive experience of working with the Claimant, as they described, however we find that their evidence does not assist the Claimant in the face of the complaints made to HR by other individuals who did have concerns about the Claimant's behaviour at work.

## **Conclusions**

### **Direct sex discrimination**

#### **Withdrawal of permanent role /preventing Claimant from applying for other roles April to August 2018/ role in Ally Satterley's team - List of Issues 3 a-f**

194 We have set out our findings in respect of the reasons for these acts alleged to be direct discrimination above. We do not find that the Claimant was exited from HSBC because she was a woman, or because of the ending of her relationship with the Second Respondent. The permanent role in Staff Digitisation was put on hold because of a higher level discussion about reorganisation. The reason why the Claimant's contract was not renewed and why Andy Satterley did not progress moving her to his team was because of the concerns raised by HR in very strong terms as a result of a number of complaints about her conduct towards colleagues and others she worked with (behaviours).

195 We are satisfied that a hypothetical male comparator in materially similar circumstances would have been treated in the same way. The Claimant points to Simon Herron as a comparator but we find that his treatment does not support her case, rather it demonstrates that a male comparator was 'exited', in his case dismissed from his permanent contract, as a result of concerns about his conduct (behaviours) towards a colleague. That this colleague was female also undermines the contention that HSBC valued male employees over female employees, as does the fact that the Second Respondent was also dismissed by the First Respondent in circumstances which included accepting a female colleague's word over his.

#### **Allegations of inappropriate conduct by Second Respondent List of issues 3 (g) (i)-(iv), (vi) (vii), (ix) -(xiv)**

196 We have not found that these alleged incidents of inappropriate conduct took place.

**Allegation 3 (g) (v) 5 (b)** In response to the Claimant remarking she felt "guilty until proven guilty" . "Yes it is like rape"-

197 No basis has been put forward to suggest that this comment would not have been

made to a man or from which we find we could infer that it would not have been. We do not find that Mr Clegg sought to sexualise the conversation by referring to allegations of rape.

**Allegation 3 (g) (viii) comment about 2 year mark**

198 We have found that this was an attempt by Mr Clegg to de-personalise the issue and to avoid having a difficult conversation. We have found no evidence from which we could conclude it was said because a woman or would not have been said to a man in the same situation, i.e a contractor who had not been taken on as permanent and about whom HR had made it clear they would not be kept on due to complaints having been received about them. We find that Mr Clegg avoided difficult conversations, not just with the Claimant.

**Harassment.**

**5 (a)(c) (d) and (e)**

199 We have not found that these incidents of inappropriate conduct took place as alleged.

200 We have not found any of the allegations of unwanted touching, overt staring or leering to be made out on the facts. Had we found any of the allegations to have had any substance we would have stepped back and looked at them in the round.

201 In respect of the allegations in respect of the Second Respondent's visits to the secret loos we noted that even the Closing submissions on behalf the Claimant did not go so far as to suggest that this was an act of sexual harassment, but simply suggested that it was possible to see how the Claimant could understand it to be an act of sexual harassment, without submitting that it was reasonable for her to do so in the circumstances.

**5 (b) In response to the Claimant remarking she felt "guilty until proven guilty" . "Yes it is like rape"-**

202 We have found that the comment was not made by Mr Clegg with the purpose of violating the Claimant's dignity or otherwise creating an intimidating, hostile, degrading, humiliating or offensive environment for her. We do not find that it had that effect at the time, had we found that it had that effect on the Claimant we are satisfied that in the circumstances it would not have been reasonable for it to do so.

**Victimisation**

203 The Claimant relied on her grievance as a protected act.

204 We were invited to infer that the Claimant was subjected to the alleged detriments consciously or subconsciously because of the nature of the complaints that she raised, that they were met with an atmosphere of hostility and disbelief. Whilst at the same time



accepting that Mr Martin was “clearly an honest witness who acted in good faith and to the best of his abilities when addressing the complaint” it was submitted that in the absence of a credible explanation for the treatment complained of he and or Ms Marshall were driven by unconscious bias – although bias of what sort – generally against women or against women who make complaints alleging harassment or discrimination it was not clear. We have not found that the Claimant was subjected to the detriments as she alleges.

205 For the avoidance of doubt we do not find that being treated in accordance with the policy applicable to contractors, when she was a contractor, amounts to a detriment.

206 We do not find the First Respondent would have handled the complaint any differently had the Claimant made a complaint that did not involve an allegation of sex discrimination or sexual harassment under the Equality Act 2010.

### **Burden of proof**

207 The Claimant has failed to establish facts from which we could decide in the absence of any other explanation that either of the Respondents have contravened the provisions of the Act. We have been faced with conflicting accounts of numerous events where we have unfortunately been drawn to the conclusion, having heard from a number of witnesses and having referred to the contemporaneous accounts in emails, notes and in the transcripts of recordings made by the Claimant, that the Claimant’s account of those events is unreliable and self-serving; in a large number of instances the allegations were based purely on the interpretation placed by the Claimant on events or action, which was not supported by any cogent evidence.

### **Time limits**

208 Having dismissed the claims on the facts we have not found it necessary to go on to consider the issue of time limits in respect of the amendments to the harassment claims.

### **Summary**

209 Having found against the Claimant in respect of each of her allegations we therefore dismiss her claims.

Employment Judge C Lewis  
Date: 22 June 2020