



EMPLOYMENT TRIBUNALS

Claimant: Ms L Shotton

Respondent: Mark Harris Upholstery Limited (1) Leonard Mark Harris (2)

Heard at: Exeter **On:** Monday 20, Wednesday 22, Thursday 23 and Friday 24 May 2019

Before: Employment Judge Matthews

Members: Ms S Christison & Mr I Ley

Representation:
Claimant: Mrs C Trueman - CAB
Respondent: Mr M Harris

RESERVED UNANIMOUS JUDGMENT

1. Ms Shotton's complaint of harassment by reference to section 26 of the Equality Act 2010 succeeds.
2. The Respondents are ordered, jointly and severally, to pay to Ms Shotton £25,000 as compensation in respect of the harassment together with interest on that sum of £2,728.77.
3. Ms Shotton's complaint of direct discrimination because of her sex by reference to section 13 of the Equality Act 2010 succeeds. No additional award of compensation is made in respect of this, it being taken into account in the above award.
4. Ms Shotton was unfairly constructively dismissed by the first Respondent.
5. Ms Shotton was wrongfully dismissed by the first Respondent.

6. Ms Shotton's claim under Regulation 30(1) of the Working Time Regulations 1998 that the first Respondent has failed to pay Ms Shotton an amount due under Regulation 14(2) of those Regulations (holiday pay) is well founded.

7. In respect of paragraphs 4, 5 and 6 above the parties have agreed the sum payable to Ms Shotton by the first Respondent at £7,220. Any amount which the first Respondent deducts from the amount due in respect of holiday pay by way of income tax, national insurance contributions or otherwise shall be treated to that extent as in payment of this Order. In the absence of evidence to substantiate the lawfulness and amount of such a deduction, the gross amount specified shall be due under this Judgment to Ms Shotton.

8. The Recoupment Regulations do not apply.

9. Ms Shotton's claim under section 23 of the Employment Rights Act 1996, that the first Respondent has failed to pay wages due to Ms Shotton (a bonus), is dismissed by consent on withdrawal.

REASONS

INTRODUCTION

1. Ms Lorraine Shotton makes a number of claims in these proceedings.
2. First, Ms Shotton claims that she was harassed by Mr Harris (and thereby, by the first Respondent) by reference to section 26 Equality Act 2010 (the "EA"). Ms Shotton says that Mr Harris engaged in unwanted conduct of a sexual nature and that conduct had the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. Ms Shotton also makes a claim of direct discrimination by reference to section 13 EA. In essence, Ms Shotton claims that the Respondents, because of her sex, treated her less favourably than they treated or would treat a man. This relates to one particular set of circumstances that we will come to in our findings of fact.
3. Second, Ms Shotton claims that she was unfairly constructively dismissed by the first Respondent (the "Company"). Ms Shotton says that Mr Harris's conduct and the Company's later conduct in dealing with a grievance she lodged and subsequent disciplinary proceedings amounted to a fundamental breach of the implied term of trust and confidence in the employment contract entitling her to resign and treat herself as unfairly constructively dismissed.

4. Third and fourth, Ms Shotton claims she was wrongfully dismissed (a claim for notice pay) and is owed holiday pay. Fifth, Ms Shotton claimed that Company wrongfully reclaimed a bonus from her pay. That fifth claim was withdrawn during the course of the Hearing and is dismissed by consent.
5. Mr Harris and the Company defend the claims. They say, in essence, that there was no conduct of the sort alleged by Ms Shotton and, in any event, any relevant conduct was not unwanted by Ms Shotton and did not have the required purpose or effect to amount to harassment under section 26 EA. Turning to the claim of unfair constructive dismissal the Company says that there was no fundamental breach of contract. Further, there was no wrongful dismissal. During the course of the proceedings the parties agreed a sum owing in respect of holiday pay.
6. Ms Shotton gave evidence supported by a written statement. Mr David Nightingill (we believe, a friend of Ms Shotton), Mr Mark Wonnacott (a boiler engineer and plumber) and Mr Paul Smith (at the relevant time a Supervisor with the McColl's Retail Group in Taunton) were called by Ms Shotton and gave evidence supported by written statements. In addition, Ms Shotton produced a statement from Mr Simon Vrij (a friend of Ms Shotton). Mr Vrij did not appear (we understand he is in Australia). We explained to the parties that we would read Mr Vrij's statement but attach no weight to it. We have, however, taken note of the contemporaneous text and e-mail traffic between Ms Shotton and Mr Vrij attached to Mr Vrij's statement (it also appears to be in the agreed bundle). Mr Harris gave evidence on behalf of himself and the Company supported by a written statement. On their behalves we also heard evidence from Mr Nigel Morris (Consultant to the Company), Ms Alix Roscoe (Trade Sales Executive with the Company), Mr Cy Rich (at the relevant times, Dispatch Supervisor with the Company), Mr David Adley (Production Supervisor/Manager with the Company), Mr Joshua Enright (at the relevant times, General Manager with the Company), Mr Mark Seagrave (at the relevant times, a Production Operative with the Company), Mr Robin Foster (at the relevant times, a Sales Executive with the Company) and Ms Yvonne Roscoe (an Upholsterer/Seamstress with the Company). Each produced a written statement.
7. There was an agreed bundle of documentation. This was supplemented by a plan of the Company's offices, which was not entirely agreed by Mr Harris. References in this Judgment to pages are to pages in the bundle unless otherwise specified. Mrs Trueman produced a List of Issues, a Schedule of Loss, a Suggested Reading List and an agreed Suggested Hearing Timetable.

8. We reserved judgment to better consider the evidence and issues.

FACTS

9. The events dealt with in the witness statements cover the period from 2012 almost to date. We will not record them all. Rather, we will confine ourselves to the specific findings of fact required to reach Judgment in the case together with necessary background. In particular, there are many alleged incidents of conduct by Mr Harris, Ms Shotton and others that are in dispute. It is not necessary for us to make findings of fact in relation to all these. We have confined ourselves to those which are relevant and which we find to be tolerably clear.
10. The Company is a small business reporting 10 employees in its response in these proceedings. It sells foam and re-upholstery supplies and operates from Taunton in Somerset. Mr Harris is the Managing Director and the sole Director of the Company.
11. Ms Shotton was employed by the Company from 7 May 2013 until her resignation effective on 16 April 2018, a period of nearly 5 years.
12. Ms Shotton tells us that in October 2012 she relocated from Devon to Taunton. Ms Shotton had given up her career in the Police and, following the break up of her marriage, was left caring for her children. Apparently, Ms Shotton had a mental breakdown and had been prescribed anti-depressants. Ms Shotton says that she has been dependant on anti-depressants for many years to manage debilitating anxiety/depression. Ms Shotton tells us that she has a history of mental illness stemming from an abusive childhood and domestic violence which led to eating disorders and attempted suicide. Ms Shotton reports that she has undergone counselling for PTSD. Ms Shotton says that one of the results of her life experiences and medical history is that she can be submissive in her approach.
13. Following an interview on 30 April 2013, Ms Shotton started work with the Company as a part-time Clerical Assistant on 7 May 2013. The 5 hours a day suited Ms Shotton's childcare responsibilities and, by her account, she was pleased and grateful to be given the job. Because Ms Shotton had stayed at home to look after her young children, this was Ms Shotton's first job in 10 years (WS3). There is no doubt that keeping her job with the Company was a priority for Ms Shotton throughout her employment with it.
14. In an appraisal dated 18 June 2014 Ms Shotton recorded some issues (103-106). The Production Manager (Mr Adley) was described as "sometimes awkward and unresponsive in his approach of dealing

with me as a female.” Ms Shotton also commented *“I feel the attitudes of the male employees towards women in authority is possibly pre-historic!!!”* and *“Swearing from male employees stamped out, to assist in male/female employee integration”*. There was no other mention of unwelcome treatment.

15. Ms Shotton says that *“At first Mr Harris was charming, funny, complimentary and we became friends”* (WS4). However, Ms Shotton says, Mr Harris *“gradually introduced sexually abusive acts. He would spontaneously kiss me, stroke/sniff my hair, put his hands inside my clothes, sexually hug me, sit me on his knee, ask for sex/sexual favours – my protests were futile. He coerced me to accept cash gifts/bonuses/lunches and demanded a kiss/hug in return. When I refused him he became sulky, aggressive and threatening.”* (WS5).
16. Having heard and considered all the evidence, in particular specifics, which we will come to, we accept Ms Shotton’s evidence summarised in paragraph 15 above. What we remain unclear about is the degree to which Ms Shotton found this treatment unwelcome, especially before her meeting with Mr Harris on 18 November 2016 (the significance of which is explained below). Before that date we think that what happened was probably this. Ms Shotton, grateful to have the job, was initially flattered by Mr Harris’s attentions. Whilst they were not particularly welcome (Ms Shotton’s evidence is that she did not find Mr Harris physically attractive), Ms Shotton made some protest but more or less put up with them. In the period before 18 November 2016 Ms Shotton was not above flirting with Mr Harris. This relationship gave Ms Shotton some convenient power over Mr Harris and in the workplace generally. Over time and certainly by 18 November 2016 Ms Shotton realised that she had got herself into a very difficult position, which by then she found unwelcome and Ms Shotton sought to extricate herself from it.
17. On 15 November 2014 Mr Harris wrote to Ms Shotton confirming her appointment as Company General Manager (116).
18. Although it took place a relatively long time ago, we note that several witnesses report an incident at the Company Christmas party in 2014. Mr Harris’s account of this is in his witness statement at paragraphs 26-29. Ms Shotton’s version of events is in her statement at paragraph 13 (although Ms Shotton gives the year as 2015, which seems to be a mistake). It seems that Ms Shotton had drunk too much. Mr Adley reports (WS6):

“During the course of the evening the Claimant told me and Aca she was not wearing any knickers. I observed the Claimant dancing in a provocative manner at the end of the

VIP area. There was an upright banister. The Claimant was gyrating and grinding up against the upright of the banister. The Claimant had once told me she was a cage dancer in Ibiza when she was younger. My partner and I, together with Aca Read's girlfriend, Jemima, watched the Claimant dance with Mr Harris. The Claimant was pushing herself into Mr Harris in a very provocative manor at which point Jemima, Aca's partner, danced her way across the dance floor and pushed in between the Claimant and Mr Harris then started to jokingly mimic the Claimant's dancing style."

19. The exact events of that evening are in dispute but we have little doubt that this was an example of Ms Shotton (albeit drunk) flirting with Mr Harris.
20. On 1 June 2015 Mr Harris wrote to Ms Shotton (122-123). It seems Ms Shotton's duties as Company General Manager were reduced by agreement.
21. Ms Shotton has produced copies of entries in her diaries from July 2016 through until December 2017 (445-461). Mr Harris believes these to be post event forgeries. Given the other contextual evidence, we find the entries to be more or less contemporaneous notes of events that took place.
22. The following entries in the diaries give a flavour of the overall content for the period running up to 18 November 2016. The dates are not necessarily accurate as some of the narrative runs over different dates:

(443) 4 July 2016 *"Lifted my shirt at back & said bum looked good in my jeans."* [Mr Harris says he was on holiday on 4 July 2016 – WS7. Whether or not this was so, we accept that the diary reflects something that happened. As noted above, the dates may be imprecise.]

5 July 2016 *"Walked into office, straight up to me put his arm around me whilst sat at my desk & kiss side of my head – saying "I just felt like doing that!"*

6 July 2016 *"came over to where sitting & started stroking my neck & put his hand down back of top, pulling top of" [off] "shoulder & said "oh 2 bra straps!". Asked if could come round tomorrow night & give me one! Everyone should get some on their b'day!"*

8 July 2016 *“Day, after B’day – I thanked him for the b’day money, he grabbed me & said I owed him a kiss & [illegible] had to give him quick peck on lips – wouldn’t let me go.”*

9 and 10 July 2016 *“Driving in car said – he wouldn’t give up trying with me – sorry, but he just wouldn’t – could even imagine the court room now but I am like a drug!”*

(444) 30 July 2016 *“He grabbed me in kitchen & tried to hug me. I said no, but he wouldn’t let go, so I just gave in to him again, but he is getting very full on now! HELP ME!!!”*

23. We have little doubt that these entries and those that follow reflect a continuing pattern of such behaviour by Mr Harris.
24. In October 2016 Mr Harris was introduced to Mr Morris who was looking to make an investment in a local business. Mr Harris saw this as an opportunity to sell his controlling interest in the business.
25. We come now to the meeting on 18 November 2016 between Mr Harris and Ms Shotton we have referred to above. Leading up to this meeting Ms Shotton’s diary entries and messages passing between Ms Shotton and Mr Vrij show that Ms Shotton had determined to challenge Mr Harris’s behaviour in a way that would leave no room for misunderstanding. Ms Shotton had been asking for advice from Mr Vrij on how to do this (see pages 27-28 in the bundle of witness statements).
26. Unbeknown to Mr Harris (although he later expressed suspicions) Ms Shotton recorded the meeting on her phone. There is a transcript at 462-470. This is an important document and should be read in full. From it a number of things are clear to us. The references are to paragraphs within the transcript.
27. First, the immediate reason Ms Shotton asked for the meeting was an incident a few days before in which she says that Mr Harris, when offered a bacon bap, had replied *“No, I want you”* and lunged at her (para 14).
28. Second, Ms Shotton mentioned Mr Harris’s demands for physical contacts between the two of them, or actual physical contacts, on a number of occasions. Mr Harris did not deny them. These included hugs (paras 24 and 82), grabbing Ms Shotton’s waist whilst going up the stairs (para 28), kisses (paras 80, 110 and 114), a request to accompany Mr Harris to a hotel room (para 96) and Mr Harris’s requests to *“squeeze your tits”* (para 114). During the Hearing Mr Harris argued that nowhere in the transcript had he admitted to any such conduct. However, a fair-minded reading of the transcript leaves

no room for doubt that there was an implicit admission throughout. Even if we were to be wrong about that, the diary entries speak for themselves.

29. Third, Ms Shotton had protested against the demands and contacts (paras 148 and 149) and was now doing so again (paras 22, 24, 26, 27, 32, 38, 144, 168 and 200).
30. Fourth, rather than denying the demands and contacts, Mr Harris ventured that they had been invited (paras 23, 39, 43, 73, 79, 151, 159 and 167)
31. Fifth, in response Ms Shotton argued that they had not been invited (paras 24, 44 and 152), although she allowed that she had gone along with it at times for a quiet life (para 182).
32. Sixth, Mr Harris recognised that the meeting represented some sort of change in Ms Shotton (paras 47, 63, 105, 107, 109, 128 and 219).
33. Seventh, Ms Shotton was worried that her rejection of Mr Harris's physical advances would affect her working relationship with him and even her job (paras 52, 53, 72, 180, 222 and 244).
34. Eighth, that the expressed outcome was that what had happened would be put in the past (paras 91, 92, 121, 122 and 145), although Mr Harris showed reluctance in that respect (para 93). Mr Harris, echoing Ms Shotton's concerns about the working relationship, told Ms Shotton that there would be changes (paras 95, 163, 167, 233, 241, 245 and 247).
35. An enlightening exchange in the transcript is this (paras 195-198):

"MH: So now you're saying then that our relationship over the last couple of years has been nothing more than me sexually harassing you

LS: I haven't said that

MH: I'm asking you

LS: Well....it's been getting, it gets to a point, when it gets, you, you – uh, what's the words, it just builds up and you're just pushing it a bit further every time and it's like you said, you used to say you know "I'm not going to give up" and "I'm gonna keep trying until you give in" and it's that kind of thing that I'm thinking it doesn't matter whether I say no because it's like you've said, because you've already said "I'm gonna keep going and not take no for an answer."

36. On 22 November 2016, no doubt having had an opportunity to think about the meeting on 18 November, Mr Harris held a further meeting with Ms Shotton. Again, Ms Shotton, recorded it and the transcript is at 471-478. This time Mr Harris had clear suspicions that the meetings were being recorded. We understand the transcript is not a complete recording of the meeting as Ms Shotton's phone "died" before the meeting ended. The transcript can be read for its full content but, in essence, it covered the same ground as the earlier meeting. Much of it is Mr Harris reflecting on what he thought his relationship with Ms Shotton had been. In paragraph 142 Mr Harris comments that "...we are the most loved up non lovers I've ever met in my life,..." and "I honestly thought we would end up together, that was my plan, it's the only reason I come to work in the mornings....".
37. From the Tribunal's perspective, the meeting on 18 November 2016 saw Ms Shotton drawing a clear line. From then on Ms Shotton did not want any physical contact with Mr Harris. Ms Shotton wanted to be left alone in that respect and allowed to get on with her job. Had those things come about, all may have been well. What happened, however, as the facts we will come to demonstrate, is that Mr Harris could not overcome his infatuation with Ms Shotton, could not change his behaviours in any significant way and, as Ms Shotton feared, took his frustrations out on Ms Shotton in the workplace.
38. Ms Shotton's diary extracts begin again at 451. They include:

(451) 26 June 2017 *"Stood by coffee machine, whilst I made coffee, he said "I've missed you" & pulled me over towards him & put his arms around my waist – I said "ooh, don't, that hurts my back" he said, "Oh where" & put his hands under my clothes & touched my lower back - I pulled my shirt back onto my jeans & he continued to cuddle me & said "just stay like this for a while"! Later he said he to come round my house for tea when his wife away - [illegible] bring a takeaway – [illegible] & cuddle on the sofa – I said "No" – the next few hours he was quiet. Wed (28th) he sulked, was angry and aggressive towards everyone – ignored me, shouted at me to answer the phone after one ring! He is sulking"*

(455) 19 September 2017 *"apologised for being in a bad mood, stroked my hand & ran his hand down my back in my office – said he had been stressed."*

(456) 25 September 2017 *"MH called me into office & said I was on his mind & if he ever meant anything to me, I wouldn't treat him like this! Said he didn't like me as a*

person, but still loved me. Said no wonder I had no friends as not a giving person. Said I would fuck up my relationship.”

(458) 3 November 2017 “Hit me around back of head with a piece of foam.”

39. In July 2017 Mr Morris had started work for the Company on a part time basis to help sort out its financial management. Mr Morris also provided support in a number of other areas such as HR and strategic planning. As a result of what he found, Mr Morris decided he did not wish to invest in the Company. Mr Morris ceased to be an employee of the Company on 31 October 2017 but has continued to work for it on a consultancy basis since.
40. On 7 November 2017 there was a meeting between Mr Harris and Ms Shotton. The transcript of Ms Shotton’s recording is at 481-501. Again, the transcript can be read for its full content. In summary, however, the discussion was about how Mr Harris’s and Ms Shotton’s working relationship was being affected by the discussion they had had nearly a year ago on 18 November 2016. Ms Shotton complained of intimidatory behaviour by Mr Harris. Incidents included a slap on the hand (paras 24, 225, 394 and 446), being hit around the back of the head with a piece of foam (paras 34, 225 and 393 and see the diary entry referred to in paragraph 38 above), being referred to as a “*skinny bitch*”, snatching coffee, name calling and being pushed around (paras 50 and 389) and physical contact (para 451).
41. Mr Harris’s view can be seen in this exchange (para 464 at 500):

“MH: When we were up here” (this is a reference to Ms Shotton’s move away from an upstairs office near Mr Harris to a downstairs office on 13 July 2017 - see the bundle of witness statements 28) “there was constant chat between us and in that chat, ok, that’s how we managed the business ok, because we would talk about the various issues, I would ask you what you thought, you’d say oh such and such said this or what should we do about this that and the other, that has all gone, ok, now why has that gone, it’s not because we’re not sitting opposite each other, it’s because you have decided, as you said, I just want to be quiet, I just want to be in my own space, you don’t have that luxury, you’re not a little shy and retiring mouse that can just sit in a corner and do nothing, you’re supposed to be my assistant, my expectation is, that you’re switched on, driven and you’re backing me up right, and that you’re, if you think that I’ve done something stupid or said something that’s inappropriate or accidentally touched your shoulder or your

elbow, rather than say “well that’s inappropriate” well just say at the time, don’t build it up into some fucking great big mountain which enables you to wallow in this bloody malasse you seem to have got yourself into, it’s just not fair, because I don’t know what the problems are with you, I don’t particularly like the way you are at the moment, but like you say you can do what you like it’s your life, yunno, if you want to throw away the friends that you’ve had in the past, ie. me and that’s up to you, I can’t help that that’s what you want to do, but you at least got to treat me with a bit of respect and decency when we’re at work and not suggest for one minute that when I said to you, went like that, slapped on the wrist, right, do you know what I mean, I thought we’d made friends the other day downstairs, right, but it’s every day it’s another mush, do you know what I mean and its kind of wearing and I don’t need it, you don’t need it, I don’t know why you need it, you don’t need it, you don’t need to read anything into it yunno, everything is good, no? yes?

LS: Yes

MH: *Right we’ll call it a day then....”*

42. What the Tribunal takes from the transcript is that Mr Harris was expressing the view that what was important was the working relationship they had shared and if that included some physical contact then Ms Shotton should put up with it. Mr Harris was trying to normalise the physical contacts and intimidatory treatment to which he was subjecting Ms Shotton and overcome Ms Shotton’s resistance to it.
43. Nothing much seems to have changed thereafter. This is exemplified by Ms Shotton’s diary entries which continue:

(460) 20 November 2017 “called sales mtg – kept calling me “MRS Shotton” & others as “Poppy” or “Alex”. When I asked why he kept calling me “Mrs” and said it sounded more respectful. Then asked everyone how to pronounce “Ms” & to whom it would apply.” [Mr Harris says the discussion was about “Mx” – WS61] “He said I suppose if you were a lesbian or transgender you would use title & then “Oh not saying you’re lesbian as well, even a transgender” – he thought this funny, bloody insulting disgusting pig!!” (In this respect see also the statement at 291a, paragraphs 505 and 543 of the transcript at 523 and 526, and Ms Alix Roscoe WS6).

(461) 6 December 2017 *“Had 2hr mtg in his office, whereby he admitted treating me badly as “you always trust the ones you love” & was disappointed at how things were between us. Wished we could go back to how things were as he missed our friendship.”*

8 December 2017 *“Mark asked to go back to cuddling because I laughed at his Joke!”*

44. Ms Alix Roscoe and Mr Rich report an incident in December 2017 (Alix Roscoe WS11):

“It was obvious to me that the Claimant was flirting with a customer.” [Mr Wonnacott] “She was telling him about the problem with her boiler. I took it that the Claimant was angling to get it looked at for free that evening. When the customer left, the Claimant said to me “a girl’s gotta do what a girl’s gotta do.”” (See also Rich WS10).

45. We have recorded our view that the meeting on 18 November 2016 was an important one in terms of the matters we must consider. We now come to another important meeting. This was between Mr Harris and Ms Shotton on 10 January 2018. The transcript of Ms Shotton’s incomplete recording is at 502-531. The meeting apparently continued for a short time after the transcript ends. We listened to the recording itself from around paragraph 625 to the end. (We had been invited to listen to all the recordings of the transcripts but declined to do so on the ground that we doubted that this would add to our understanding. This was borne out by listening to this extract from which we learned nothing that was not apparent from the transcript.)
46. The reason for the meeting was Ms Shotton’s performance appraisal. Much of the transcript is taken up by discussions about the state of the Company’s business. There was a discussion about how Mr Morris’s arrival at the Company and other factors had changed Ms Shotton’s role. Mr Harris now wanted Ms Shotton to focus more on sales and managing the sales team. A lengthy discussion about pay followed. The subject of Ms Shotton’s private use of the Company’s internet systems came up and Mr Harris assured her it was not a problem (paras 435, 437 and 439). Ms Shotton was clearly very concerned about any threat to her job. At 527 (para 563), in the context of a discussion about whether or not Ms Shotton could commit to standing in for Mr Harris, Mr Harris says this:

“Well, that’s, that’s, that’s the trade off, because yunno, I’ve got to have somebody that I can rely upon right and you’ve got commitments with kids and what have you and I

understand that that's difficult for you, so yunno, that's part of my role."

47. From around paragraph 403 (of 679 paragraphs) the discussion occasionally moved more towards Ms Shotton being "off her game" and relations between the two. This gradually became the focus of the conversation. We note the following:

(522 para 493) "MH: I've got no option but to trust people, but I trust you particularly and I've told you a thousands of time, ok, that it'll be me and you the last ones standing in this place, I don't know how many more times I can say it, right, yunno, there is no element of mistrust but the, the, problem for you is though, that when you start being a bit difficult sometimes, because you are much more prickly with me these days, back in the old days, when we were all matey, matey and everything you were a lot easier to deal with because you didn't you didn't think I was trying to nitpick you just thought I was trying to get with you, yunno...."

(525 para 543) "MH: Yunno, you have an option don't you, we can't really go back to being up here and having a laugh and joke like we used to, it just doesn't work, it's too, it's too complicated, but because of yunno of all the connotations that come with it and everything, but I want me mate back, do you know what I mean, I wanna, I wanna be able to have a, I wanna be able to touch you on the arm without thinking that "fuck me, I'm Harvey Weinsteining the poor woman", yunno, I wanna be able to sort of yunno, mess about, have a laugh, you know what I mean, I must confess, I find um Alex," [in fact Ms "Alix" Roscoe] "too in my space, right like she'll give me a cup of coffee and she kind of unnecessary body contact, just makes me feel a little bit, cos you know we're both a bit the same, like when I used to stand behind you, you know what I mean...."

(529-531 para 639 ff) "MH:Lorraine I wanna get back to where we were, come on, can't we be pals again, yunno people when they're angry lash out and fuck me you know how to lash out

LS: So do you.

MH: Right, well

LS: Maybe we're too much alike

MH: Well fuck me we know this, that's been the problem from the get go, isn't it, right, yunno, we are, we are too much alike and I don't want, I've made a really massive mistake, I should never (whisper) fallen in love with you," [Mr Harris disputes this – he says he said "have got involved"] "I should never have had anything to do with you in that respect, but you just yunno, I just need to get me mate back

LS: I know I miss my mate, I don't have many mates

MH: I know and I'm the best one you've ever had, do you know what I mean, you know, fuck me, bloody old Psycho Simon wants to marry ya, all I ever wanted to do was have a kiss (laughs)" [Mr Harris says the comment about a kiss is inaudible – WS73]

"LS: Psycho's gone

MH: Gone back to Oz, look, can't we not just get back to where we were

LS: (Long pause)...Yeah, let's just do it" [Mr Harris says that, at this point, Ms Shotton placed her hand on his from across the desk, spoke these words and then held her arms out beckoning to him – WS74]

"MH: Ok, do you want to do it here

LS: What's the time

MH: I just wanna get back to where we were babe to be perfectly honest with you, come on, I'm gonna have one last hug (MH gets up from behind his desk and around to where LS sitting and sits on side of his desk)

LS: Oh, I'm gonna take my coat off

MH: Oh fair enough

LS: I'm sweltering in here, I thought it was gonna be freezing, is the heating on or something

MH: I don't know, yes it is, I told Nigel to leave it on

LS: Jesus Christ....are you sat on my pen

MH: Look

LS: Alright, but then Poppy's got to agree to it

MH: Yeah, course it's all part of Poppy's deal

LS: Yeah

MH: Is that ok, are we gonna be pals again

LS: Yes

MH: Do you promise

LS: Can you buy the coffee again

MH: Yeah give us a cuddle and I will

LS: Can you though,

MH: Yeah

LS: Because it's....

MH: Yeah

LS: Can we go back to some of the old ways" [at this point it is Ms Shotton's evidence that Mr Harris began to cuddle her]

"MH: Oh, what's some of the old ways

LS: Well not too many of the old ways

MH: Can I squeeze your bum, no, squeeze your tit, no, can I Harvey Weinstein your arse, this isn't as good a cuddle as it used to be anyway, this is a kind of fuck off cuddle

LS: Hey

MH: This is a fuck off cuddle, "Oh Lorraine Shotton you cause me so much aggravation, have you really missed me"

LS: Ummm

MH: Please...."

48. Given all that Ms Shotton says had gone before, the Tribunal is surprised that Ms Shotton engaged as much as the extract above shows she did. When asked by us about this Ms Shotton says that she was taken by surprise and shocked. Ms Shotton says she tried to divert the subject away to the time, how hot it was, Mr Harris sitting

on a clipboard, Poppy's agreement to revised job arrangements and coffee. The transcript does reflect these things and it may be that Ms Shotton was taken by surprise and shocked (see also WS43). In any event, whilst it is easy to say that Ms Shotton should have just said "No" to a cuddle, stood up and walked out, the counterweight is that she very much feared for her job.

49. Ms Shotton says *"I was left feeling dirty, violated and ashamed that he'd tricked me again. I felt complete hopelessness, realising he would never free me from this cycle."* (WS44)
50. Mr Seagrave told us about interactions he had with Ms Shotton in the period July 2017 to January 2018 (WS2-3). Mr Seagrave expanded on this in response to questions. In short, Mr Seagrave thought that Ms Shotton took a shine to him and often called him to the office to sort out bogus issues with her computer. Mr Seagrave felt that Ms Shotton was invading his personal space by her close proximity.
51. Ms Alix Roscoe and Mr Seagrave report an incident on or around 12 January 2018 (Alix Roscoe WS10):

"....Poppy Morris took out her phone and started to play music. The Claimant then started dancing in the middle of the open office. The Claimant asked us how much we would need to have been given to sleep with Nigel Morris (The Head of Finance). The Claimant commented on the size of his penis as she thought he had big feet and said she wondered if he folded up his trousers before he had sex."

(Seagrave WS5-6) *"I witnessed a conversation of a sexual nature between the claimant, Poppy Morris and Alix Roscoe."...."They were playing music on their phones. The Claimant was dancing around and talking to Poppy and Alix about when she was a dancer and also about being a former police officer. The Claimant said she owned a set of handcuffs and was talking about things she liked to do in the bedroom with the handcuffs and made comments about "liking it a bit rough". The Claimant tried to engage me in the conversation asking me what I liked but I didn't want to engage. The Claimant often had similar conversations with me in the office kitchen during the period July 2017 to January 2018.*

6. During the conversation, all three women were discussing sex. It is difficult to remember all the details however there were some sexual comments made about Nigel Morris, the Company's Head of Finance, and there was a discussion

about how much you would have to bet to sleep with Nigel and a comment was made about the size of his feet. The Claimant herself, I recall, made a point as to whether or not Nigel would fold up his trouser when he took them off prior to intercourse.”

52. About these events Mr Seagrave comments (WS 10):

“I was only recently made aware of the issues facing Mr Harris. In retrospect I should have complained about the Claimant’s conduct. I was asked by Mr Harris why I did not complain at the time. The simple truth is I was new to the company and I got on okay with the Claimant so I did not want to make a fuss.”

53. Ms Shotton prepared a letter to Mr Harris dated 17 January 2017, headed *“Informal Concerns”* (175-176). Ms Shotton summarised her understanding of the outcome of the appraisal meeting. Ms Shotton added this:

“At the end of the meeting you approached me and asked me for a hug, as you have done in previous meetings. Again, I felt I had no choice and when I did give in and comply, under duress, you told me that it was a “fuck off” hug and to do it properly. You then made lewd comments to me and said “can I Harvey Weinstein your ass”. I left the 2 hour meeting, once again feeling violated. I feel you used your position of power to engage in unwanted conduct and sexual remarks and I will not tolerate this behaviour towards me in future. I will request a third party to sit in on future meetings as a safeguarding measure for myself. If your inappropriate behaviour continues, I will have no other option but to make this a formal grievance.

I am keen to get our working relationship back on track and trust you will treat me with the respect I deserve moving forward.”

54. Also, on that day, 17 January 2018, Ms Shotton had a meeting with Mr Morris, at his instigation, to support Mr Harris’s wish to refocus Ms Shotton on sales. Ms Shotton took the opportunity to show the letter to Mr Morris who handed it back. Mr Morris says he was *“shocked but not surprised”* (answer to a question from Mrs Trueman). Ms Shotton then sent the letter to Mr Harris by e-mail.

55. Ms Shotton says that she went home and broke down.

56. Ms Shotton was signed off sick on 25 January 2018 and remained signed off until her resignation on 16 April 2018.
57. Mr Morris sent several e-mails to Ms Shotton enquiring whether or not she wished to make her grievance formal. On 26 January 2018 Ms Shotton replied by e-mail that she did and all future correspondence should be addressed to her trades' union representative, Mr Mark Richards, Regional Officer of UNITE, Taunton (208).
58. Two working weeks later, on 10 February 2018, Mr Harris sent Mr Morris an e-mail (235-236). It can be read for its full content. Following legal advice received, Mr Harris asked Mr Morris to invite Ms Shotton to an investigation meeting on five issues. The fact that Mr Harris had taken legal advice indicates that he had been thinking about this before 10 February. Mr Harris was asked by us whether or not he had taken this step as retaliation for Ms Shotton making her grievance formal. Mr Harris said he had not. When questioned about this Mr Morris allowed that he had told Mr Harris that it might be seen that way. The Tribunal has little doubt that is exactly what happened. This conclusion is supported by the subsequent history of the investigation and disciplinary procedure. That process was almost wholly spurious, although to be fair to Mr Morris, that was probably not entirely clear to him at the time.
59. This retaliatory action may well have amounted to victimisation by reference to section 27 of the EA. No victimisation claim has, however, been pleaded in this case. Rather, the retaliation is characterised as further harassment. (As to contemporaneous views, however, see 303 paragraph c., 320 penultimate paragraph and 384 second paragraph).
60. The Grievance was heard by Mr Morris on 23 February 2018 at the Taunton offices of Unite. Present were Mr Morris, Ms Yvonne Roscoe (who took a note), Mr Richards and Ms Shotton. Ms Shotton tabled a document headed "*Extracts taken from a schedule of less favourable treatment*" (259-260). Neither at this stage nor at any stage prior to delivering his findings on the grievance or the appeal did Mr Morris know of the recordings Ms Shotton had made of meetings with Mr Harris or see Ms Shotton's diary entries. Comparison, however, shows that several of the extracts in the document Ms Harris tabled reflected entries in the diaries. The only immediately apparent discrepancy is that the document records the "Ms" incident as being in December 2017 whilst the diary entry is the end of November.
61. The agreed notes of the hearing are at 297-300. The note reflects that Ms Yvonne Roscoe agreed that, at some stage in the past, she had told Mr Harris he was "obsessed" with Ms Shotton. (See also

Yvonne Roscoe WS7). When Mr Morris asked what resolution Ms Shotton sought, Ms Shotton replied that she could not return to work. Mr Richards said they would be looking for a settlement or the case would be pursued through ACAS and the Employment Tribunals.

62. At the end of the meeting Mr Morris handed Ms Shotton the letter we see at 246 dated 20 February 2018. The letter was a request to attend an investigatory meeting on 26 February, that is 3 days after the grievance hearing. It specified no issues other than “*your behaviour in the workplace*”. It is unsurprising that Mr Richards handed it back to Mr Morris asking for more detail.
63. The day after the meeting, 24 February 2018, Mr Harris sent an e-mail to Ms Shotton in response to the request for details of the issues to be investigated (261). The e-mail specified that the “*issues*” “*include but are not limited*”. There was now a matter additional to those listed in Mr Harris’s e-mail of 10 February to Mr Morris. That matter was “*Violations of our internet usage policy*”. After the assurances Mr Harris had given Ms Shotton on this subject on 10 January 2018, Mr Harris must have known that this was unfounded (see paragraph 46 above).
64. Ms Shotton replied on 26 February 2018 (271-272). We think Ms Shotton probably had some help with this and subsequent correspondence either from Mr Richards or Mr Vrij.
65. Mr Morris responded on 28 February 2018 (286-287). Mr Morris’s letter put the process back on track by setting out the detailed issues to be investigated.
66. On 8 March 2018 Ms Shotton responded (302-303). Mr Morris’s reply proposed an investigatory meeting on 15 March 2018 (305).
67. Whilst the exchanges on the disciplinary investigatory meeting had been going on Mr Morris had investigated Ms Shotton’s grievance. He spoke to Mr Harris (263-270, 273-275 and 279-285), Ms Poppy Morris (no relation – 291a), Mr Andy Horton (291b), Mr Adley (291c), Ms Yvonne Roscoe (291d), Mr Foster (288a), Mr Enright (285a) and Ms Alix Roscoe (285b).
68. Informed by the materials he had and the results of his interviews, Mr Morris did not uphold the grievance. Mr Morris says: “*The Claimant failed to provide any corroborating evidence and as a result of my investigations I could not substantiate the Claimant’s accusations. I decided on balance, that the incidents were either unfounded or she was not offended.*” (WS 20)

69. Mr Morris's letter to Ms Shotton of 9 March 2018 confirming the outcome is at 307-308. Mr Morris goes a little further than his witness statement: *"It is clear to me that a number of events did happen but I do not believe on balance that you were offended as you claim. I say this because it appears to me that the working relationship between Mark and yourself was for a long period not as professional as might be expected and the boundaries of your relationship were blurred."*
70. The investigatory meeting set for 15 March 2018 did not go ahead because Mr Richards was not available. Mr Morris suggested a new date of 19 March (316).
71. On 16 March Ms Shotton sent Mr Morris an e-mail explaining why she would not attend an investigatory meeting (320-321).
72. Ms Shotton appealed against the grievance finding in a letter to Mr Morris also dated 16 March 2018 (322-325).
73. On 21 March 2018 Mr Morris wrote to Ms Shotton about the investigation (339-340). The investigation was to go ahead in Ms Shotton's absence, although she could make comments in writing if she chose.
74. On 26 March 2018 Ms Shotton commented on the matters under investigation in a letter to Mr Morris (344-346).
75. Mr Morris rejected Ms Shotton's grievance appeal on the basis that it contained no new evidence. Mr Morris's letter of 28 March 2018 is at 333-337.
76. On 3 April 2018 Mr Morris interviewed both Mr Adley and Mr Rich in connection with his investigation into whether or not Ms Shotton had sought to undermine Mr Harris in the workplace (362-363).
77. Mr Morris decided he should drop most of the issues that were being investigated as possible disciplinaries against Ms Shotton. Mr Morris commented that *"some were just nonsense"* (answer to a question from Mrs Trueman). On 5 April 2018 Mr Morris detailed the remaining allegations in a letter to Ms Shotton, requiring her to attend a disciplinary hearing on 11 April (365-367). The two remaining charges related to internet usage and undermining Mr Harris in the workplace and were classified as charges of gross misconduct. Unbeknown to Mr Morris, because he had not heard the recordings or seen the transcripts, the first of these was farcical given the assurances Mr Harris had given Ms Shotton at their meeting on 10 January 2018 (see paragraph 46 above). The other charge had two limbs. The first limb was that Ms Shotton had tried to stir up Mr Adley about his pay. The Tribunal is puzzled that Mr Morris allowed this to be pursued

when it must have been self-evident from his own involvement in the Company that this sort of stirring was commonplace. That is so notwithstanding Mr Morris's later suggestion that a criminal offence had been committed (376). The second limb was that Ms Shotton had advised Mr Rich to check a holiday issue with ACAS. Again, the Tribunal is at somewhat of a loss to understand how an employer could reasonably classify that as gross misconduct.

78. Ms Shotton did not attend the disciplinary hearing.
79. On 16 April 2018 Ms Shotton wrote her letter of resignation to Mr Morris (383). The letter should be read for its full content. In summary, Ms Shotton gave her reasons for resigning as the harassing treatment she had received from Mr Harris at the meeting on 10 January, the way her grievances had been dealt with, the treatment she had received from Mr Harris over many years and the bringing of trumped up disciplinary charges against her. All this, Ms Shotton wrote, had caused her to have *"zero confidence and trust in you and Mr Harris as my employer"*.
80. Ms Shotton's letter of resignation was accompanied by her written case concerning the disciplinary charges (384-387). The disciplinary charges were, in any event, not pursued because of Ms Shotton's resignation.
81. Commenting on the effect all this has had on her, Ms Shotton says this (WS69):

"I am steadily rebuilding my life, but I am left traumatised, suffering nightmares and extreme stress. The psychological damage caused means I find it impossible to engage in an intimate relationship. I have become insular/isolate myself, profoundly affecting family life. I received NHS/CBT treatment and have resumed counselling."

APPLICABLE LAW

82. Section 4 of the EA, so far as it is relevant, provides as follows:

"4 The protected characteristics

The following characteristics are protected characteristics-

....

"sex;"

83. Section 13 of the EA, so far as it is relevant, provides as follows:

“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.”

84. Section 26 of the EA, so far as it is relevant, provides as follows:

“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).”....

“(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account –

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

(5) the relevant protected characteristics are -”....

“sex”.

85. Section 109(2) EA, so far as it is relevant, provides as follows:

“109 Liability of employers and principals”

(1) Anything done by a person (A) in the course of A's employment must be treated as also done by the employer."....

"(3) It does not matter whether that thing is done with the employer's"...."knowledge or approval."

86. Section 136 of the EA, so far as it is relevant, provides as follows:

"136 Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.

(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."....

"(6) A reference to a court includes a reference to-

(a) an employment tribunal;"

87. Section 94 of the Employment Rights Act 1996 (the "ERA") provides an employee with a right not to be unfairly dismissed by his employer. For this right to arise there must be a dismissal.

88. Section 95(1) of the ERA, so far as it is relevant, provides:

"95 Circumstances in which an employee is dismissed

(1) For the purposes of this Part an employee is dismissed by his employer if"....

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

89. The general principles relating to unfair constructive dismissal are well understood. An employee is entitled to treat himself or herself as constructively dismissed if the employer is guilty of conduct going to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract. The breach may be actual or

anticipatory. The employee in these circumstances is entitled to leave without notice or to give notice, but the conduct in either case must be sufficiently serious to entitle him or her to leave at once. The employee must act promptly in response to the employer's actions (and not for some other reason, although the employer's actions need not be the sole cause) or he risks waiving the breach and affirming the contract.

90. It is clearly established that there is implied in contracts of employment a term that employers will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. Any breach of this implied term is a fundamental breach amounting to repudiation since it necessarily goes to the root of the contract. Where a claim is founded on a breach of this implied term, the tribunal's function is to look at the employer's conduct as a whole and determine, objectively, if it is such that the employee cannot be expected to put up with it.

91. The burden of proving a breach of contract sufficient to support a finding of unfair constructive dismissal is on the claimant.

92. We were not referred to any case law.

CONCLUSIONS

93. The harassment claim

94. We will deal with this claim first since any act of harassment will almost certainly also be a fundamental breach of contract.

95. Did Mr Harris engage in unwanted conduct of a sexual nature?

96. This is a two-part test. Was there conduct of a sexual nature, if so, was it unwanted?

97. Our findings are that from the beginning of Ms Shotton's employment up to and including 10 January 2018 Mr Harris engaged in a continuous course of conduct of a sexual nature towards Ms Shotton. We are not going to repeat our findings of fact on this subject. They are all set out above. For the avoidance of doubt this included both the comments and the hug instigated by Mr Harris on 10 January 2018.

98. Was the conduct unwanted? We have considered this carefully. It was a question that Mr Morris answered in the negative but he did not have all the material, particularly the copy diary entries and the transcripts available to us. Prior to the 18 November 2016 meeting we

find that Ms Shotton, at the very least, displayed some ambivalence about whether the conduct was wanted or not. There is evidence both ways. We think, as we explain in paragraph 16 above, that at the start of the period before the meeting on 18 November 2016, Ms Shotton flirted with Mr Harris and probably put up with his conduct of a sexual nature as a convenient means of securing her job and influence. As time went on in this period, Ms Shotton changed her mind and started to protest. That protest culminated in the clear “warning off” delivered by Ms Shotton to Mr Harris at the meeting on 18 November 2016. Thereafter, we have no doubt that the conduct was unwanted.

99. Did the conduct have the purpose of violating Ms Shotton’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her? If not, did it have that effect, taking account of her perception, the other circumstances of the case and whether it was reasonable for the conduct to have that effect?

100. Mr Harris’s purpose behind the unwanted conduct of a sexual nature was probably not to violate Ms Shotton’s dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for her. The evidence is that Mr Harris was sexually infatuated with Ms Shotton and the purpose of his unwanted sexual conduct was sexual gratification. We can see the argument that Mr Harris’s sulking and intimidatory behaviour when his advances were rebuffed probably did have that purpose. We think it unsafe, however, to conflate the two.

101. Did, therefore, Mr Harris’s unwanted conduct of a sexual nature have that effect? On the evidence we have no doubt that it did. We do not doubt Ms Shotton’s evidence of her perception. As far as the other circumstances of the case are concerned, we take account of the fact that, prior to 18 November 2016, there was a degree of complicity by Ms Shotton in the conduct of a sexual nature. We also take account of the evidence that Ms Shotton engaged in sexual banter in the office and showed sexual interest in Mr Seagrave. None of that detracts from the fact that it was reasonable for Ms Shotton to find Mr Harris’s unwanted sexual conduct intimidating, hostile, degrading, humiliating and offensive.

102. Our conclusion is that Ms Shotton was harassed contrary to section 26 EA by Mr Harris’s conduct of a sexual nature after 18 November 2016.

103. **The claim of direct discrimination**

104. This is founded on the remark Mr Harris made at the meeting on 10 January 2018 about Ms Shotton having children and the effect that

had on her ability to deputise in his absence (see paragraph 46 above). Mr Harris, in answer to questions from Mrs Trueman, accepted that he would not have made these remarks to a man. The remark was detrimental, it was less favourable treatment than Mr Harris would have afforded to a man on his own admission, it was because Ms Shotton was a woman and it was an act of direct discrimination.

105. **The unfair constructive dismissal claim**

106. Why did Ms Shotton resign?

107. It seems from the grievance meeting on 23 February 2018 that Ms Shotton had already determined that she could not go back to work (see paragraph 61 above). If that is right, the evidence is that the only event that was acting on her mind was Mr Harris's behaviour, in particular that at the meeting on 10 January 2018 that we have found to be harassment. Alternatively, if Ms Shotton did not make up her mind to resign until she wrote her resignation letter on 16 April 2018, the reasons were all those she expressed in that letter (see paragraph 79 above). These included the disciplinary investigatory process to which she had been subjected.

108. Did the acts complained of, individually or cumulatively, amount to a breach or breaches of the contract of employment by the Company going to the root of the contract of employment? In other words, was there a fundamental breach of contract entitling Ms Shotton to resign and treat herself as constructively dismissed?

109. On either basis set out in paragraph 107 there was such a breach or breaches of contract. The harassment alone was a fundamental breach of contract. The disciplinary investigatory process, even if it did not amount to victimisation within the EA, was a retaliation for a grievance, as such, it was a standalone fundamental breach of the implied term of trust and confidence.

110. No issues of subsequent affirmation of the contract by Ms Shotton have been raised, nor can we see that they should have been. Ms Shotton engaged in both the grievance and disciplinary investigatory processes and resigned as soon as it was clear to her that she could not go on.

111. It follows that Ms Shotton was unfairly constructively and wrongfully dismissed.

112. The parties have agreed that some holiday pay is owing and this is dealt with in the Judgment.

113. **Remedy**

114. Harassment and direct discrimination

115. Whilst it would be normal to consider remedy under each of these two heads, we think it right to combine them for this purpose in this case. The single act of direct discrimination would not attract a material award in context and it is really a subset of the harassment we have found.

116. The parties have agreed that Ms Shotton had some direct loss arising from the harassment, being the difference between sick pay and what would have been her earnings in the period of her sick leave in early 2018. That is dealt with in the agreed sum referred to in the Judgment. We will, therefore, confine ourselves to the question of compensation for injury to feelings.

117. Compensation under this heading is intended to compensate a victim of discrimination for the anger, distress and upset caused by the unlawful treatment they have received. It is compensatory, not punitive. The guidance offered by case law is that such awards should be considered in three bands. The bands themselves are the subject of guidance from the Presidents of the Employment Tribunals in England and Wales and Scotland. The top band of £25,700-£49,900 is appropriate in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment. The middle band of £8,600-£25,700 is appropriate for serious cases which do not merit an award in the highest band. The lower band of £900-£8,600 is appropriate for less serious cases, such as one-off occurrences.

118. We have considered the appropriate award to make in this case carefully. On the face of it, the case falls into the top band. There was, since 18 November 2016 a lengthy campaign of serious harassment by Mr Harris against Ms Shotton. We bear in mind, however, that awards are compensatory and not punitive and our attention must be on the injury to Ms Shotton's feelings. Here there are indicators pointing away from the top band. Only 2 days after the meeting between Mr Harris and Ms Shotton on 10 January 2018 Ms Shotton was engaged in sexual banter in the office. Around this time Ms Shotton was displaying sexual interest in Mr Seagrave. Whilst this did not include physical contact such as that attributable to Mr Harris, it was, nonetheless, wholly inappropriate in a workplace. We find it hard to accept that someone engaging in these activities experienced the level of upset that Ms Shotton claims. We know that Ms Shotton was signed off sick with anxiety but we believe the reasons for this included her fears for her job as well as the distress at the way she

had been treated. Taking all this into account the Tribunal's unanimous finding on the appropriate level of award is £25,000.

119. Interest is payable on this award calculated as follows:

Days between 10 January 2018 (that being taken as the day of the discriminatory act) and 24 May 2019 (the day of calculation):

Interest rate: 8%

$498 \text{ (days)} \times 0.08 \times 1/365 \times £25,000 = £2,728.77$

120. We see no basis which would justify an award of aggravated damages.

121. Compensation for the unfair constructive and wrongful dismissal has been agreed between the parties.

Employment Judge Matthews

Date: 4 June 2019

JUDGMENT & REASONS SENT TO THE PARTIES ON

24 June 2019

FOR THE TRIBUNAL OFFICE



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): **1401354/2018**

Name of case: **Ms L Shotton** v **1. Mark Harris Upholstery Limited**
2. Leonard Mark Harris

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: **24 June 2019**

"the calculation day" is: **25 June 2019**

"the stipulated rate of interest" is: **8%**

MISS Z KENT
For the Employment Tribunal Office

INTEREST ON TRIBUNAL AWARDS

GUIDANCE NOTE

1. This guidance note should be read in conjunction with the booklet, 'The Judgment' which can be found on our website at www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426

If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

2. The Employment Tribunals (Interest) Order 1990 provides for interest to be paid on employment tribunal awards (excluding sums representing costs or expenses) if they remain wholly or partly unpaid more than 14 days after the date on which the Tribunal's judgment is recorded as having been sent to the parties, which is known as "the relevant decision day".

3. The date from which interest starts to accrue is the day immediately following the relevant decision day and is called "the calculation day". The dates of both the relevant decision day and the calculation day that apply in your case are recorded on the Notice attached to the judgment. If you have received a judgment and subsequently request reasons (see 'The Judgment' booklet) the date of the relevant judgment day will remain unchanged.

4. "Interest" means simple interest accruing from day to day on such part of the sum of money awarded by the tribunal for the time being remaining unpaid. Interest does not accrue on deductions such as Tax and/or National Insurance Contributions that are to be paid to the appropriate authorities. Neither does interest accrue on any sums which the Secretary of State has claimed in a recoupment notice (see 'The Judgment' booklet).

5. Where the sum awarded is varied upon a review of the judgment by the Employment Tribunal or upon appeal to the Employment Appeal Tribunal or a higher appellate court, then interest will accrue in the same way (from "the calculation day"), but on the award as varied by the higher court and not on the sum originally awarded by the Tribunal.

6. 'The Judgment' booklet explains how employment tribunal awards are enforced. The interest element of an award is enforced in the same way.