

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12355-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

OLIVER EDWARD BRETHERTON Respondent

Before:

Mr G Sydenham (in the chair)
Mrs L Boyce
Dr S Bown

Dates of Hearing: 27 and 28 February 2023;
1, 2, 3, 6, 8, 9 and 10 March 2023;
4, 5, 10, 11 and 12 May 2023;
12 and 13 June 2023.

Appearances

Nimi Bruce, Counsel, of Capsticks LLP, 1 St George's Road, London, SW19 4DR, for the Applicant.

James Counsell KC (11 May 2023) and Louis Weston (12 June 2023) of Outer Temple Chambers, The Outer Temple, 222 Strand, London, WC2R 1BA.

Chloe Carpenter KC, of Fountain Court, Temple, London, EC4Y 9DH, for the Respondent.

JUDGMENT

The identities of Persons A, B and C were known to all lawyers acting for the parties, to the Tribunal and to all factual witnesses. Save as aforesaid, the publication in connection with these proceedings by any person of Persons A, B, and C's name or any matters personal to Persons A, B, and C which might lead to identification of Persons A, B, and C (including any still or moving picture of Persons A, B, and C) is prohibited.

Allegations

1. The allegations against the Respondent, Oliver Bretherton made by the SRA are that, while in practice as a Director at Gowling WLG (UK) LLP (“the Firm”) he:

Person A

- 1.1 Between around October 2017 and December 2018, when in a position of seniority in respect of Person A:

Proved.

- 1.1.1 Used any or all of the inappropriate words as set out in Schedule 1; and/or

Proved.

- 1.1.2 Sent any or all of the e-messages to Person A which contained inappropriate content as set out in Schedule 2; and/or

Proved.

- 1.1.3 Asked and/or directed Person A to engage in any or all of the inappropriate activity as set out in Schedule 3; and/or

Proved.

- 1.1.4 Touched Person A in a way that was inappropriate on any or all of the occasions as set out in Schedule 4; and/or

Proved.

- 1.1.5 Engaged in conduct towards Person A that was unreasonable and/or controlling on any or all of the occasions as set out in Schedule 5; and/or

Proved.

- 1.1.6 Asked and/or required Person A to conceal and/or not disclose his conduct as described at one or more of paragraphs 1.1.1 to 1.1.5 above on any or all of the occasions as set out in Schedule 6;

Proved.

and in so doing breached Principles 2 and/or 6 of the SRA Principles 2011 (“the Principles”) and failed to achieve Outcome 11.1 of the SRA Code of Conduct 2011 (“the 2011 Code”).

Proved.

- 1.2 Your conduct as described at each or any of allegations 1.1.1 to 1.1.5 above was sexualised and/or sexually motivated and/or your conduct as described at each or any

of allegations 1.1.1 to 1.1.6 amounted to an abuse of your position and/or taking unfair advantage of Person A.

[Proved.](#)

Person B

- 1.3 Between March 2017 and July 2018, when in a position of seniority in respect of Person B:

[Proved.](#)

- 1.3.1 Used any or all of the inappropriate words as set out in Schedule 7 and/or;

[Proved.](#)

- 1.3.2 Sent some or all of the e-messages which were inappropriate in both volume and/or content as set out in Schedule 8;

[Proved.](#)

and in so doing breached Principles 2 and/or 6 of the Principles and failed to achieve Outcome 11.1 of the 2011 Code.

[Proved.](#)

- 1.4 Your conduct as described at each or any of allegations 1.3.1 to 1.3.2 above was sexualised and/or sexually motivated and/or your conduct as described at each or any of allegations 1.1.1 to 1.1.6 amounted to an abuse of your position and/or taking unfair advantage of Person B.

[Not Proved](#) in relation to sexualised and/or sexually motivated.

[Proved](#) in terms of abuse of position and/or taking unfair advantage.

Person C

- 1.5 In January 2019, when in a position of seniority in relation to her, behaved inappropriately to Person C including using any or all of the inappropriate words as set out in Schedule 9 and in so doing breached Principles 2 and/or 6 of the Principles and failed to achieve Outcome 11.1 of the 2011 Code.

[Proved](#) save for Principle 2.

- 1.6 Your conduct as described at allegation 1.5 above was sexualised and/or sexually motivated and/or your conduct as described at each or any of allegations 1.1.1 to 1.1.6 amounted to an abuse of your position and/or taking unfair advantage of Person C.

[Not Proved](#) in relation to sexualised and/or sexually motivated.

[Proved](#) in terms of abuse of position and/or taking unfair advantage.

Executive Summary

2. The allegations levelled against Mr Bretherton related to sexual misconduct as regards three complainants aged between 18 and 23 years at the material time. Mr Bretherton was in a position of seniority over the complainants both in terms of age and position within the Firm.
3. The sexual misconduct took place both inside and outside of the office. It took the form of e-messages, verbal comments and physical acts. Full particulars of the acts and/or incidents complained of, which amounted to 77 in total, were set out in schedules appended to the Rule 12 Statement. The Tribunal found 70 acts and/or incidents proved on a balance of probabilities.

Sanction

4. Mr Bretherton was sanctioned to an [Order](#) Striking him from the Roll of Solicitors. The Applicant applied for costs in the sum of £23,500.00. Mr Bretherton did not oppose the application, and indeed consented to it. The Tribunal therefore granted the application for costs in the sum sought by the Applicant.

Documents

5. The Tribunal considered all of the documents contained within an electronic hearing bundle which included:
 - Amended Rule 12 Statement and Exhibit NXB1 (28 November 2022).
 - Respondent's Final Answer to the Amended Rule 12 Statement and supporting documents (23 September 2022).
 - Witness statement of Person A dated 29 March 2021.
 - Witness statement of Person B dated 10 February 2021.
 - Witness statement of Person C dated 26 February 2021.
 - Witness statement of Colleague 1 dated 22 April 2021.
 - Witness statement of Colleague 2 dated 1 March 2021.
 - Witness statement of Colleague 3 dated 22 December 2020.
 - Witness statement of Colleague 4 dated 28 December 2020.
 - Witness statement of Colleague 5 dated 15 February 2021.
 - Witness statement of Colleague 6 dated 8 March 2021.
 - Witness statement of Colleague 7 dated 4 November 2022.
 - Mr Bretherton's witness statements dated 9 April 2020 and 4 November 2022.
 - Laura Bretherton's witness statement dated 3 November 2022.
 - Character reference of Sarah Gilbourne dated 24 October 2022.
 - Character reference of Colin Morgan dated 1 November 2022.

Agreed Facts

6. Mr Bretherton was admitted to the Roll of Solicitors in September 2007. At all material times he was a Director at the London Offices of Gowling WLG (UK) LLP ("the Firm") within the Real Estate Finance ("REF") team.

7. **Person A**

- 7.1 Mr Bretherton and a member of the Human Resources department at the Firm interviewed Person A for a Legal Apprentice Role at the Firm in the Summer of 2017. Person A was 18 years old at that time and studying for her A Levels.
- 7.2 Person A was successful in her application and joined the Firm as a Legal Apprentice in September 2017. Person A was placed in the REF Team and her supervisor was Colleague 3. Given that Mr Bretherton was a Legal Director in the REF team, he held a position of seniority over Person A. There was, therefore, an imbalance of power between him and Person A.
- 7.3 Between October 2017 and October 2018, Mr Bretherton and Person A sent each other e-messages over WhatsApp. They both deleted the messages at the time, therefore neither was able to produce the original messages sent and received. However, Person A was able to produce screenshots of certain messages between her and Mr Bretherton that she had sent to her girlfriend at the material time.
- 7.4 On 28 October 2018 Person A sent Mr Bretherton a message on WhatsApp in the following terms:
- “.. Hi Oli, this was fun to start with, but I would like to stop now. I’m starting to feel a bit uncomfortable. I still really enjoy being friends with you and working with you is great - I just want to stop this part...”
- 7.5 On 28 October 2018 Mr Bretherton responded to that message in the following terms:
- “...Yeah totally not a problem. Never want you feeling uncomfortable which I have always said. Last night also didn’t get out of hand so sorry if you felt that...”
- 7.6 Sexual messaging stopped on 26 October 2018 and Person A made a complaint to the Firm in September 2019.
- 7.7 Mr Bretherton’s broad position was that the relationship between himself and Person A was a “consensual sexual fantasy” which was not physical save for on one occasion when they kissed.

8. **Person B**

- 8.1 Person B joined the Firm in September 2016 as a trainee. Person B was 23 years old at that time. Between March 2017 to September 2017 Person B sat in the REF team and Mr Bretherton was Person B’s training supervisor. From October 2017 to August 2018 Person B was a trainee in different departments and Mr Bretherton was no longer her training supervisor.
- 8.2 At all times during the period relevant to the allegations Mr Bretherton was in a position of seniority over Person B in circumstances where he was a Director and she was a trainee. There was, therefore, an imbalance of power between him and Person B.

8.3 Mr Bretherton's broad position was that the relationship between himself and Person B was a consensual friendship which was not sexual at any time.

9. **Person C**

9.1 Person C was employed at the Firm as a Legal Apprentice. Person C was 19 years old at that time. Person C worked in a different department to Mr Bretherton (in the litigation department) and they never worked together. There was, therefore, an imbalance of power between him and Person C.

9.2 Mr Bretherton's broad position was that the incident with Person CA was isolated and could be categorised as "high jinks" at a work social event which had no sexual connotations.

Witnesses

10. The written and oral evidence of witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence of all witnesses. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence. The following witnesses gave oral evidence:

- Person A; complainant.
- Person B; complainant.
- Person C; complainant.
- Colleague 1; Senior manager of the REF Team and involved in the recruitment of Mr Bretherton.
- Colleague 2; Paralegal within the REF Team.
- Colleague 3; Senior Associate within REF at all material times.
- Colleague 4; Trainee Solicitor within the REF Team from September 2019.
- Colleague 5; Solicitor within the REF Team at all material times.
- Colleague 6; Trainee at the Firm (2016) qualified into the Firm (2018).
- Oliver Bretherton; Respondent, Director of the REF Team at all material times.
- Laura Bretherton; Respondent's wife.
- Colleague 7; Partner in the REF Team at all material times.

Findings of Fact and Law

11. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the standard applicable in civil proceedings (on the balance of probabilities). The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent's rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

12. Allegation 1.1

12.1 Between around October 2017 and December 2018, when in a position of seniority in respect of Person A

Applicant's Case

Person A

- 12.1.1 Person A stated that she had been “doing her A Level’s” at the time when she was interviewed for a Legal Apprentice role at the Firm. She was interviewed by Mr Bretherton and a member of HR. She was successful and joined the Firm in late September 2017 and her first day in the office was 2 October 2017. Her supervisor was Colleague 3 and her “buddy” was Person B.
- 12.1.2 Person A stated that Mr Bretherton, from her appointment at the Firm, was “very friendly, caring and attentive”. She commented that he “really listened to what [she] had to say which [she] appreciated considering she was so young and did not know anyone else”. Person A stated that she trusted Mr Bretherton and felt very comfortable around him.
- 12.1.3 When her supervisor was on leave in October 2017, Person A sat in Mr Bretherton’s office, given the fact that she was new to the Firm. She undertook a piece of work for him which he was very impressed with and praised her for. Person A stated that shortly thereafter, Mr Bretherton commenced to ask her questions about her relationships which made her feel uncomfortable and “blush a lot” but she did not question it as she considered that they were friends although she “did not really understand what was happening”. When Mr Bretherton asked her what was the kinkiest thing she had ever done, Person A spoke to Colleague 2 about it. Colleague 2 was shocked and Person A was scared at her reaction that she herself had done something wrong.
- 12.1.4 Person A attended after work drinks for the first time on 1 November 2017 at a local public house. Mr Bretherton was teaching her how to play pool on that occasion. At the end of the night, he gave Person A his mobile telephone number so that she could let him know that she had arrived home safely. Person A stated that she “really liked that he did that” as “it was nice to know that someone cared and wanted [her to be safe]” in circumstances where her supervisor, Colleague 3, was on leave.
- 12.1.5 The e-messaging between Person A and Mr Bretherton commenced from that night. It was from that time that Person A recalled Mr Bretherton’s questions “started to become a bit more extreme” in terms of ranking colleagues in relation to their attractiveness and how kinky she believed that they were.
- 12.1.6 On 4 November 2017, Person A was on a night out with friends. She recalled that Mr Bretherton sent her around 30 - 40 e-messages that evening. One of those messages was a request that she send him a photograph of her in her underwear and culminated in Mr Bretherton texting about masturbation. On the next working day, 6 November 2017, Mr Bretherton took Person A into his office and stated, “I need to see that you have deleted those texts”.

- 12.1.7 Person A recalled an occasion when Mr Bretherton asked her to sit in a chair in his office after which he “went back and sat on his chair and he asked me to rotate mine so it faced his and told me to open my legs so he could look up my skirt and see my underwear”.
- 12.1.8 In the summer of 2018, Person A recalled an incident when Mr Bretherton called her into his office, asked her to take a ping pong ball out of a pack that he had on his desk, go to the toilet and insert it inside of her then give it back to him. Person A did this and after doing so observed Mr Bretherton “staring at [her] and then he put the ping pong ball in his mouth”.
- 12.1.9 Person A stated that thereafter, the inappropriate conduct of Mr Bretherton continued as particularised in Schedules 1 – 6. Person A’s evidence, Mr Bretherton’s position and the Tribunal findings have been set out in tabular form below.
- 12.1.10 Person A sent Mr Bretherton an e-message on 28 October 2018 in which she asked him to stop messaging as she was starting to feel uncomfortable. Mr Bretherton complied with her request and they “did not really talk until the Firm’s Annual Christmas Party in February 2019”. After the party, when Person A returned to the hotel, she received an e-message from Mr Bretherton stating that she “had missed out on a cuddle”.
- 12.1.11 Person A stated that when Person B returned to the Firm after her secondment, they went out for drinks on Friday 6 September 2019. Person B spoke of her “horrible experience” with Mr Bretherton which caused her to break down, cry and relay that she had a horrible experience with him also. Person A further stated that at that time she had not seen or heard from Mr Bretherton for four months and was feeling quite strong physically and mentally. She made some notes over the weekend, “told [Person B] everything”, took advice from a senior colleague and reported Mr Bretherton to HR.

Person B

- 12.1.12 Person B recalled Mr Bretherton was very involved in the interviewing process for legal apprentices. She further recalled him returning to the office afterwards and stating, as regards Person A, that he had “picked [the REF Team] the best one”.
- 12.1.13 Person B did not notice anything untoward between Person A and Mr Bretherton, nor did she notice any change in Person A’s demeanour. Person B did recall an incident shortly after Person A’s appointment (December 2017) at a work social event in a public house. Mr Bretherton was sitting on a stool at the Bar and Person A was standing between his legs. He had his hand on her bottom.
- 12.1.14 In September 2019 Person B recalled after work drinks with, amongst other, Person A, Colleague 2 and Colleague 5. Mr Bretherton’s name came up, in circumstances that Person B was unable to recall, at which point:

“... [Person A] started crying and shaking and she kept just repeating ‘it was horrible, it was so awkward, so horrible’ but she did not say anything else. I said to [Person A] that if she wanted to talk about something, I would cancel my

plans it would not be a problem, but [Person A] said she was fine she was going on to meet with some friends. I made sure that [Person A] was okay and said to her that if she wanted to speak to me over the weekend or at work, she could contact me. So, it got left there and we went our separate ways...”

Person C

- 12.1.15 Person C joined the Firm as an apprentice paralegal in late 2017 along with Person A. They were close friends. Person C recalled being told by Person A that Mr Bretherton had been sending her e-messages. Person A showed her some of those messages at the material time. They caused Person C alarm in terms of content and context which she considered to be sexual. However, Person C stated that she never directly witnessed anything inappropriate between Person A and Mr Bretherton.
- 12.1.16 The first that Person C became aware of the extent and impact of communications between Mr Bretherton and Person A was on 6 September 2019 when Person A relayed to her the extent of messaging between them. Person A told her of the videos and texts that passed between her and Mr Bretherton. Person C stated that Person A relayed the events in a very “matter of fact” manner in the sense that she presented as neither amused nor upset at the situation.

Colleague 1

- 12.1.17 Colleague 1 was involved in the recruitment of Mr Bretherton in 2015. His first impressions of Mr Bretherton were that he was smart and very professional. He was viewed as being a potential Partner in the REF Team. Colleague 1 and Mr Bretherton got on well professionally and personally. Colleague 1 was not aware of any office rumours or gossip about Mr Bretherton and he never witnessed any inappropriate behaviour on Mr Bretherton’s part.
- 12.1.18 Colleague 1 was first made aware of Person A’s allegations in September 2019 from a member of staff (who was not involved in the proceedings before the Tribunal). That member of staff reported the complaint to him and to a member of the Human Resources Department.
- 12.1.19 Colleague 1 spoke to Person A and he recalled that she presented as distressed but somewhat relieved. Mr Bretherton was made aware of the complaint a few days later. Colleague 1 stated that he presented as “shocked, surprised and dumbfounded” at the allegations. Colleague 1 was unable to share the source of the complaint at that time or the full extent of the same. Mr Bretherton was suspended from work pending investigation.

Colleague 2

- 12.1.20 Colleague 2 was a paralegal within the REF Team at the Firm at all material times. She could not recall hearing any gossip or rumours about Mr Bretherton being inappropriate in any way. Colleague 2 personally did not experience any inappropriate behaviour by Mr Bretherton. She shared an office with him at one point and never felt uncomfortable in his company.

- 12.1.21 Person A joined the Firm a couple of months after Colleague 2. They got on well despite the difference in age and Colleague 2 regarded Person A in the same manner as her own niece who was of a similar age.
- 12.1.22 Colleague 2 recalled that shortly after joining, Person A mentioned that Mr Bretherton had sent her a message to her personal mobile phone along the lines of “what's the most kinkiest thing you have ever done.” Colleague 2 was shocked and told Person A that neither Mr Bretherton, nor anyone else, should be sending her messages of that nature. Shortly after this conversation, Mr Bretherton approached Colleague 2 and said “I didn't say that and if people knew I had said something like that in the Team or in the firm, I would get fired, I wouldn't say something like that.” Colleague 2 recalled that Mr Bretherton appeared stressed, annoyed and frustrated. Colleague 2 said to Mr Bretherton that it was none of her business but that he should not be going around “saying things like that”.
- 12.1.23 Colleague 2 recalled a further incident at a work social event in a public house in December 2017. Colleague 2 was intoxicated and left early but before doing so she observed Mr Bretherton and Person A together at the bar. Person A was sitting on a bar stool and Mr Bretherton was “kind of between her legs or vice versa”. Their closeness was noted by other colleagues who were present but Person A looked “comfortable and happy”. Colleague 2 did not see Mr Bretherton put his hand up Person A's skirt but she was shocked at their “flirtiness in front of the Team”.
- 12.1.24 In cross examination, Colleague 2 accepted that she was not aware of Mr Bretherton withholding work from Person A, staring at Person A or ignoring Person A. Colleague 2 further accepted that Person A and Mr Bretherton got on very well and that she categorised their relationship as “flirty banter” up until 17 September 2019. Colleague 2 stated that the only conversation she could recall with Person A about the allegations was in relation to Mr Bretherton making Person A delete e-messages.

Colleague 3

- 12.1.25 Colleague 3 was a solicitor within the REF Team at all material times. She worked with Mr Bretherton from 2015 and they got on well as colleagues but were also friends. Colleague 3 considered Mr Bretherton to be a good friend, trustworthy and a good lawyer who had a genuine interest in the progression of female lawyers within the workplace. Colleague 3 considered him to have been a good example of equality in the workplace by virtue of the caring responsibilities he undertook in relation to his son from 2019 which included leaving work early twice a week to pick his son up from nursery and working from home one day a week to assist in childcare.
- 12.1.26 Colleague 3 was Person A's supervisor. Colleague 3 recalled that Mr Bretherton spoke of Person A highly upon recruitment. Colleague 3 stated that Person A was “initially not used to the office formalities” such that “you could tell that Person A had just come out of school and was not yet used to an office environment”.
- 12.1.27 Colleague 3 accepted that Person A was “quite informal” in the office and volunteered sexual conversations on a couple of occasions which was “shut down quite quickly” by Colleague 3. Colleague 3 formed the impression that Person A liked to “shock people”.

- 12.1.28 Colleague 3 returned from holiday at the end of October 2017 and learnt of the “kinkiest thing” comment. Colleague 3 she spoke to Mr Bretherton about it and he told her that “Person A had taken it out of context and that he would be careful to keep a lid on the type of comments he made because she was so junior”.
- 12.1.29 Colleague 3 became aware of comments being made by Person A at a work event in November 2017 pertaining to Mr Bretherton being “sleazy” and having “picked a blonde for the Team”. Colleague 3 stated that she, along with Person B, considered that Person A was “causing trouble”. She spoke to Mr Bretherton about it, he stated that messaging had taken place between him and Person A but Colleague 3 did not recall Mr Bretherton categorising those messages as “limited consensual sexual messages”. Mr Bretherton further stated that he “needed to make clear to Person A that everything was very professional and to stop spreading rumours that were not true”. Colleague 3 was aware from Mr Bretherton that he and Person A were exchanging messages but that it was “not very much”. Person A confirmed the same and Colleague 3 did not witness any inappropriate behaviour between them or know of any rumours about them. It was clear they were friendly with one another, but she did not think anybody had thought there was anything inappropriate going on. Person A appeared to be fine day to day.
- 12.1.30 Colleague 3 recalled the work social event in December 2017. She recollected that Mr Bretherton was “exceptionally drunk” on that occasion. Colleague 3 remembered that Mr Bretherton and Person A were sitting together at the bar and members of the Team were commenting on how close they were. Person A was staying with Colleague 3 that night. When Colleague 3 wanted to leave, she could not find Person A and Mr Bretherton was nowhere to be seen. At some point Person A returned. Colleague 3 asked where she had been and she said she had been out the back, she seemed fine, she did not appear distressed or upset, so they got a taxi and left. In the taxi home Colleague 3 asked Person A where she had been and where Mr Bretherton was. Person A told her that she had just been chatting out the back; she was giggling a bit, she was quite tipsy. Colleague 3 asked if she had had a good night and she said that she had and that it had been fun.
- 12.1.31 The following day Colleague 3 had a conversation with Mr Bretherton in the office. She recalled him saying that “he had a massive memory blank and he was worried that he might have said something stupid to somebody - he asked me if he had said anything embarrassing and I said not as far as I knew but I mentioned that he was at the bar with Person A for quite a long time and she had been pulled away a couple of times.” Colleague 3 stated that “it was not uncommon that Mr Bretherton would have memory blanks because often when had nights out he would drink quite a lot and the next day he would not remember anything.” Mr Bretherton stated to her that he “didn’t want to be left alone with Person A at the REF Christmas Party in light of what had happened ... where people had spotted them being close at the bar”.
- 12.1.32 There was a Christmas party in December 2017 at which Colleague 3 recalled Person A appeared upset. She spoke to her about it and was told that Mr Bretherton was not talking to her, had been distant with her and “she said something along the lines that he had been jealous because she had sided with Colleague 5 over something and for some reason it had irritated Mr Bretherton.” Colleague 3 further stated that “Mr Bretherton had that kind of personality that he could sometimes be possessive

over certain people he was closer to, but I do not remember having any concerns that that was the case at this time.”

- 12.1.33 Colleague 3 never noticed Mr Bretherton staring at Person A, he was always supportive of her professionally, never changed the type of work he allocated to her and complimented her openly on good work and never shouted at her in Colleague 3’s presence. Colleague 3 never noticed Person A being uncomfortable or scared in Mr Bretherton’s presence, she had a clear line of sight from her office into Mr Bretherton’s office both of which had glass walls.
- 12.1.34 Colleague 3 only noticed a change in Person A’s demeanour after she made her complaint on 9 September 2019 which, to her mind “came completely out of the blue” and after which Person A was showing a lot of animosity to Mr Bretherton.

Colleague 4

- 12.1.35 Colleague 4 joined the Firm as a trainee on 2 September 2019 in the REF Team. She was supervised by Colleague 5 and worked with Mr Bretherton for approximately a month prior to his suspension and departure from the Firm.
- 12.1.36 Colleague 4 stated that within her first days, Mr Bretherton made plain that he wanted to take an active role in her supervision. She recalled that on her first day he spoke to her for approximately an hour regarding others that he had supervised, his pro gender-equality views and the success of his wife who was also a lawyer. Colleague 4 stated that Mr Bretherton assumed the role of an “informal supervisor” to her. She did not recall Mr Bretherton asking for her personal mobile telephone number and she never received any e-messages from him.
- 12.1.37 Colleague 4 stated that she could not remember any specific time that she felt uncomfortable around him but that she “probably did not feel totally comfortable around him either ... because he was much more senior than I was and I was new and keen to impress, not because he had ever said or done anything to me that I thought was inappropriate.”
- 12.1.38 Colleague 4 stated that she was not aware of any specific rumours regarding Person A and Mr Bretherton and did not know any details of what happened between them.

Colleague 5

- 12.1.39 Colleague 5 worked with Mr Bretherton in the REF Team as a solicitor at all material times. He got on well with him throughout and had no issues with him as a colleague. However, he was aware of office jokes concerning Mr Bretherton preferring young female trainees to whom he would rather give work. Mr Bretherton was concerned about his reputation amongst other teams particularly after certain work social events.
- 12.1.40 Colleague 5 was aware that Mr Bretherton had been involved in the recruitment of Person A. He recalled Mr Bretherton saying that Person A “was very confident and smart and who had got good grades ... was the “fittest” or most attractive of the apprentices who was joining, and she was blonde/tall.” He further recalled office jokes

to the effect that Person A was a “direct replacement for Person B” who was moving from the REF Team as part of her training contract.

- 12.1.41 Colleague 5 described Person A as confident but potentially naive as regards the professional working environment. Colleague 5 made plain that he never noticed any inappropriate conduct between Mr Bretherton and Person A whom he never saw in an upset or distressed state. Colleague 5 qualified that statement with the assertion that he “had a reputation for not being the most socially observant person in the team (and during the period [he] sat in a number of different offices where I would not have been able to directly see any comings and goings between Mr Bretherton and Person A’s offices).”
- 12.1.42 In cross examination, Colleague 5 did not accept that Graduate Recruitment allocated apprentices to Teams within the Firm. Colleague 5’s recollection was that he thought “Mr Bretherton actually might’ve spoken to HR and had indicated that [Person A] would be a good fit [for the REF Team].” Colleague 5 accepted that Person A was flirtatious and that he found it strange/uncomfortable in social settings. Colleague 5 accepted that he never saw Mr Bretherton staring or shouting at Person A.

Colleague 7

- 12.1.43 Colleague 7 confirmed that he worked with Mr Bretherton in the REF Team from 2015. Colleague 7 stated that Mr Bretherton got on well with his colleagues and socialised with members of the REF Team outside of office social events. Colleague 7 stated that he was not aware that Mr Bretherton socialised outside of work with Person A.
- 12.1.44 Colleague 7 stated that Person A integrated well into the REF Team from appointment in October 2017. He considered her to be “mature and socially comfortable”. Colleague 6 relayed that “the fact that Person A, to [his] knowledge, hadn’t had any experience in an office environment, was not readily apparent and she settled in well”.
- 12.1.45 Colleague 7 recalled that as regards the relationship between Mr Bretherton and Person A, he “did not observe any awkwardness in the social or professional interactions between them”, “their relationship seemed relaxed and easy going, characterised with good humour and banter” and he “didn’t observe anything that appeared out of the ordinary”.
- 12.1.46 Colleague 7 was aware of office gossip that, at the work social event in December 2017, Mr Bretherton and Person A were considerably drunk and that Person A was standing between Mr Bretherton’s legs as he sat on a bar stool.

Respondent’s Position

- 12.1.47 Mr Bretherton stated that his relationship with Person A between October 2017 and February 2018 then June and October 2018 was a “fantasy sexual relationship between two consenting adults”. Save for one kiss in December 2017 which he admitted, the relationship was entirely non-physical. It involved sexual discussions and sexual e-messages via WhatsApp.

- 12.1.48 Mr Bretherton stated that the messaging stopped completely in February 2018 by him as he focused on his family life at Person A's request. Mr Bretherton commented that in producing screenshots of that e-message exchange, Person A cropped out the opening line which stated "this was fun to start with". They resumed, he stated, in June 2018 when Person A had started a relationship with another woman which she spoke of graphically with him and Colleague 3. Mr Bretherton believed that she did this in order to sexually arouse him and that it was instigated by Person A.
- 12.1.49 Mr Bretherton considered at the material time that his conduct was appropriate given that Person A consented to it and "she enjoyed the relationship as much as I did". Mr Bretherton made plain that he believed her to be participating in the "fantasy sexual relationship" because she enthusiastically wanted to and her behaviour did not indicate otherwise. Mr Bretherton stated that not only did Person A consent to the "fantasy sexual relationship" but to a large extent she instigated it.
- 12.1.50 Mr Bretherton recognised, with the benefit of hindsight and distance of time, that given his position of seniority relative to Person A, he had the potential even if only indirectly to influence her job. Mr Bretherton accepted that there was a power imbalance and that their "fantasy sexual relationship" was inappropriate "regardless of how willing and sexually experienced" Person A presented herself to him.

The Tribunal's Findings

- 12.1.51 The uncontested evidence before the Tribunal was that Mr Bretherton (a) was a Legal Director within the REF Team and (b) was integral in the recruitment of Person A in that he interviewed her. On the basis of the evidence before it and the partial admission which was properly made, the Tribunal found Allegation 1.1 **proved** on a balance of probabilities.

12.2 **Allegation 1.1.1: Used any or all of the inappropriate words as set out in Schedule 1;**

Applicant's Case

- 12.2.1 The Applicant's case as to the particulars of each incident was predominantly predicated on the evidence of Person A. Person A's evidence as to each incident has been summarised below, alongside the Respondent's position and the Tribunal's findings in tabular form. Any relevant evidence of other witnesses who spoke to the allegation generally or specifically in relation to any particular is summarised above.

Respondent's Position

- 12.2.2 Mr Bretherton's position as to the particular incidents alleged have been summarised below alongside the Applicant's case and the Tribunal's findings in tabular form. In broad terms, where Mr Bretherton either admitted an incident (on the basis that the exact words were used or words to the effect of what was alleged), denied (in that Mr Bretherton was clear that the incident as alleged did not happen) or not admitted (where Mr Bretherton had no recollection of the specific incident alleged but accepted that it could have).

The Tribunal's Findings

- 12.2.3 The Tribunal carefully considered each particular alleged in its determination in order to ascertain whether, on a balance of probabilities, it was found proved. Given the number of particulars pleaded and the vast amount of evidence received, a summary of the parties' positions and the Tribunal's findings have been set out below in tabular form.

Schedule 1				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
Around October 2017				
1.	Go through members of the team and tell him who I thought was the most attractive.	Person A stated that around this time Mr Bretherton's questions became a bit more extreme.	Admitted in that it was a mutually jovial game in which Person A "ranked the boys and [he] ranked the girls" but excluded each other from the rankings.	The Tribunal found the particular proved on a balance of probabilities given the evidence before it and the admission which was found to have been properly made.
2.	Go through (names of colleagues) and rank them in terms of who I thought would be the best in bed and [who] I thought the kinkiest would be.	<p>Person A stated that whilst she did not say that Mr Bretherton had made her top three, he said that she had made his.</p> <p>Colleague 2 confirmed that Person A mentioned this incident to her at the material time.</p> <p>Colleague 3 confirmed that this incident was relayed to her and she had spoken to Mr Bretherton about it and he stated that Person A had taken it out of context.</p>	Denied in that the conversation did not extend to this topic.	The Tribunal considered and preferred the evidence of Person A, Colleague 2 and 3 over that of Mr Bretherton. In so doing, it found the particular proved on a balance of probabilities.
3.	He said I made his top three.	Person A stated that after having ranked her colleagues as requested, Mr Bretherton made the comment alleged.	Denied in that the conversation did not extend to this topic in that the "ranking" related to external people.	The Tribunal considered the conflict in evidence and exercised any doubt in favour of Mr Bretherton. In so doing it found the particular not proved on a balance of probabilities.

Schedule 1				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
Around November 2017				
4.	He asked me to go through to his office, again he would ask me to bring my notepad with me and he was verbally telling me how he would "fuck me" and do it around the office and he did not care that there was a glass wall and that he would not care who saw.	Person A remembered "zoning out" and she would "sit and look out of the windows and switch off listening to him".	Mr Bretherton denied this incident and asserted that it was Person A who stated that her fantasy was for him to "fuck her against the window or over the desk".	The Tribunal considered the conflict in evidence and exercised any doubt in favour of Mr Bretherton. In so doing it found the particular not proved on a balance of probabilities.
5.	He would ask me about the sex lives of my friends ... he told me I should meet up with [a friend] and have sex with her. He bet me that I would not send him a picture of [the friend] and I kissing ... Mr Bretherton said he loved the photo and he had been masturbating to it.	Person A stated that she met up with her friend after work one day and sent a picture of them kissing to Mr Bretherton.	It was admitted by Mr Bretherton that Person A volunteered details about the sex lives of her friends to him which they discussed. In response to Person A having sent him the picture of her kissing her friend, Mr Bretherton told Person A that it turned him on. Mr Bretherton denied any suggestion that he was directing or pressurising Person A to do what was alleged.	The Tribunal considered the conflict of evidence before it and the partial admission, which it found to have been properly made. In so doing, it found the particular proved on a balance of probabilities.
6.	By this time he was telling me to wear skirts and dresses to work and not trousers.	Person A stated that Mr Bretherton would "get cross" and she would "get very embarrassed.	Mr Bretherton did not admit this in terms that he had no recollection of having discussed Person A's outfits with her.	The Tribunal considered the conflict of evidence before it and the partial admission, which it found to have been properly made.

Schedule 1				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
			However, he accepted that he could have done but denied any suggestion that he was directing or pressurising Person A in so doing.	In so doing, it found the particular proved on a balance of probabilities.
7.	Mr Bretherton said he wanted to "fuck me over the pool table".	<p>Person A stated that on most Fridays the REF Team would go for after work drinks at a public house.</p> <p>Mr Bretherton was teaching her how to play pool against another colleague and was "very hands on, so he would be leaning over [her] and around [her]"</p> <p>Person A stated that when the other colleague went to the bar, Mr Bretherton made the comment alleged.</p>	Mr Bretherton did not admit this in terms that he had no recollection of having said what was alleged whilst accepting that he could have done.	<p>The Tribunal considered the conflict of evidence before it, Mr Bretherton's inability to recollect and partial acceptance that it could have occurred.</p> <p>In so doing, it found the particular proved on a balance of probabilities.</p>
8.	He described a time when he was [in ...] with his ex-girlfriend and said that my friend [Person C] should get the train because when he went he had non-stop sex the whole way there and it would be great if I could do the same.	When Person A told Mr Bretherton that she was going on holiday with Person C, he stated that he had been to that country also, gave recommendations and made the comments alleged.	Mr Bretherton denied this particular in terms that prior to Person A's holiday, they had been taking part in sexual discussions but not of the nature alleged in this particular.	The Tribunal considered the conflict of evidence before it, the partial admission made by Mr Bretherton as regards discussions that he admitted to have had with Person A prior to her holiday and the plausibility of his explanation.

Schedule 1				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
			Mr Bretherton denied telling Person A about his experience with an ex-girlfriend as it "was not true and clearly could not have happened" despite having been to that destination with an ex-girlfriend via train.	The Tribunal preferred the evidence of Person A and in so doing found the particular proved on a balance of probabilities.
9.	He asked me to think about having sex with [Person C] and reporting back to him as to what kind of underwear she wore.	Person A's evidence was as alleged in the particular.	Mr Bretherton denied this particular and asserted the converse namely that it was Person A who repeatedly told him (in conversations outside of the office) how attractive she found Person C and asked if him if the idea of her having sex with Person C would sexually arouse him.	The Tribunal considered the conflict of evidence before it and preferred the evidence of Person A In so doing, the Tribunal found the particular proved on a balance of probabilities.
Around December 2017				
10.	Mr Bretherton told me to bring a sex toy to the party.	Person A took the sex toy but left it at the hotel before going to the party.	Mr Bretherton denied this particular and asserted that Person A discussed the purchase of a sex toy with him and it was "very likely" that he encouraged her to do so.	The Tribunal considered the conflict of evidence before it in the context of the surrounding circumstances, namely that Person A's evidence that she took the sex toy to the hotel prior to attending the party and the admission by Mr Bretherton that it was highly likely he encouraged her to purchase the same.

Schedule 1				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
				In so doing, the Tribunal preferred the evidence of Person A and found the particular proved on a balance of probabilities.
11.	Mr Bretherton and I talked about how he would get a taxi to my hotel and we would have sex.	Person A stated that she told Colleague 3 not to let Mr Bretherton follow her to the hotel. Colleague 3 put Person A into an Uber alone.	Mr Bretherton denied this particular. It was alleged that this occurred a week after the kiss following which Mr Bretherton sought to "avoid being alone with [Person A]". Whilst he spoke to her at the event in a group situation, he denied having one to one conversations with Person A.	The Tribunal considered the conflict of evidence before it and preferred the evidence of Person A In so doing, the Tribunal found the particular proved on a balance of probabilities.
12.	Mr Bretherton told me to go into his office with it and he told me to go to the toilet and put it in me and then go back to his office and give him the remote.	Person A stated that Mr Bretherton thought "it would be a fun thing to do" when making the comment alleged.	Mr Bretherton denied this particular and found it "shocking". He commented that it had never been raised before, had been fabricated by Person A during the course of her subsequent therapy, that the sex toy was loud thus he would not have asked her to behave in the manner alleged in his glass office in front of a colleague who was not a witness in the proceedings.	The Tribunal considered the conflict of evidence before it, preferred the evidence of Person A. In so doing, the Tribunal found the particular proved on a balance of probabilities.
13.	Mr Bretherton would tell me about previous sex he had had and it would sometimes be very	Person A's evidence was as alleged in the particular.	Mr Bretherton denied this particular in terms that it was "absolutely not true".	The Tribunal considered the conflict in evidence, the lack of detail provided by Person A and

Schedule 1				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
	violent and aggressive descriptions.			exercised any doubt in favour of Mr Bretherton. In so doing it found the particular not proved on a balance of probabilities.
14.	He would make out that he was the best person to have sex with and anyone who had sex with him loved it.	Person A's evidence was as alleged in the particular.	Mr Bretherton denied this particular in terms that, whilst he accepted that they both discussed their sexual experiences, he "did not boast" as he "did not want to have a sexual relationship with [Person A]. He stated that it was a "new" allegation which was not mentioned in Person A's initial complaint to the Firm.	The Tribunal considered the conflict of evidence before it, determined that the fact that the particular was not in Person A's initial complaint was of limited relevance in circumstances where it was elicited during the course of the Applicant's investigation and tested under cross examination. The Tribunal preferred the evidence of Person A and in so doing, the Tribunal found the particular proved on a balance of probabilities.
15.	Mr Bretherton started to tell me that I was boring because I was not going out with anyone so I could not tell him about the sex I was having. So then he started to encourage me to start dating people.	Person A's evidence was as alleged in the particular.	Mr Bretherton denied this particular which, he contended rang true given that "it was crystal clear that Person A did not have a 'vanilla' sex life". He stated that it was a "new" allegation which was not mentioned in Person A's initial complaint to the Firm.	The Tribunal considered the conflict of evidence before it, determined that the fact that the particular was not in Person A's initial complaint was of limited relevance in circumstances where it was elicited during the course of the Applicant's investigation and tested under cross examination.

Schedule 1				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
				The Tribunal preferred the evidence of Person A and in so doing, the Tribunal found the particular proved on a balance of probabilities.
16.	He told me that on that date I should sleep with ... He also asked me to send pictures of me having sex with ... and that I was not allowed to use a condom or be on the pill because he enjoyed me taking risks.	<p>Person A did send pictures but not of her engaging in sex with ...</p> <p>She did so because she "knew that Mr Bretherton would be angry with her if she did not".</p>	<p>Mr Bretherton denied this particular in terms that in or around early 2018 Person A sent sexual messages to him about dating ... along whilst offering to send photographs to sexually arouse him.</p> <p>Mr Bretherton was on holiday with his wife at that time and "did not want to draw attention to [his] phone by not responding to Person A's messages" but the exchange was instigated by her.</p>	<p>The Tribunal considered the conflict of evidence before it in the context of admissions made by Mr Bretherton that sexual messages and graphic photos/videos were encouraged and sent between them.</p> <p>The Tribunal preferred the evidence of Person A and in so doing, the Tribunal found the particular proved on a balance of probabilities.</p>
17.	Mr Bretherton had asked me to take a picture of ... ejaculating inside me.	Person A "faked" a photograph in response to Mr Bretherton's request.	Mr Bretherton denied this particular in terms that Person A sent photographs purporting to be of ejaculation inside her vagina and on her face at her own instigation.	<p>The Tribunal considered the conflict of evidence before it in the context of admissions made by Mr Bretherton that sexual messages and graphic photos/videos were encouraged and sent between them.</p> <p>The Tribunal preferred the evidence of Person A and in so</p>

Schedule 1				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
				doing, the Tribunal found the particular proved on a balance of probabilities.
18.	<p>Mr Bretherton would say [the sex I was having with ...] was very boring.</p> <p>Mr Bretherton then started to use the term "vanilla" in the office in front of other people.</p>	<p>Person A stated that Mr Bretherton used this term because she drank vanilla latte which he would say that "vanilla" was boring.</p>	<p>Mr Bretherton denied this particular and noted that "none of the other witnesses corroborated this point".</p>	<p>The Tribunal considered the conflict of evidence before it in the context of admissions made by Mr Bretherton that sexual messages and graphic photos/videos were encouraged and sent between them.</p> <p>The Tribunal preferred the evidence of Person A and in so doing, the Tribunal found the particular proved on a balance of probabilities.</p>
19.	<p>After I stopped seeing ..., Mr Bretherton asked me to start dating a girl, which I did.</p> <p>He would ask me for photos and detailed explicit descriptions of what sex was like ... Mr Bretherton would give me tips as to what to try in bed and he told me things that he did with his wife</p>	<p>Person A's evidence was as alleged in the particular and that she found it tough as she really liked the girl and felt that she was being dishonest with her.</p>	<p>Mr Bretherton denied this particular in terms that whilst he did engage in sexual messages and conversations from around June 2018 in relation to dating a girl which involved him asking her to send photographs.</p> <p>The sexual conversations between Mr Bretherton and Person A stopped between</p>	<p>The Tribunal considered the conflict of evidence before it, preferred the evidence of Person A.</p> <p>In so doing, the Tribunal found the particular proved on a balance of probabilities.</p>

Schedule 1				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
	which she enjoyed and to report back what my experience was.		February and June 2018 but started again when Person A indicated to him that she was having sex with the girl she was dating during lunch breaks. Mr Bretherton denied having asked Person A to start dating a girl.	
20.	Mr Bretherton would tell me how he fancied her. He told me that he had the perfect trio ... her, [Person B] and I. He told me that I could easily be his favourite if I would "play" with him over "WhatsApp".	Person A's evidence was as alleged in the particular.	Mr Bretherton denied this particular and denied having ever "encouraged any competition between Person A and others, particularly Person B with whom [he] had a very different relationship". He accepted the feasibility of him having commented that on the attractiveness of the summer student referred to in the particular but "Person A would have done the same". Mr Bretherton commented that this is a "new" allegation that was made to the Applicant and not during the course of the Firm's investigation and he considered it not to be "co-incidental that	The Tribunal considered the conflict of evidence before it, determined that the fact that the particular was not in Person A's initial complaint was of limited relevance in circumstances where it was elicited during the course of the Applicant's investigation and tested under cross examination. The Tribunal preferred the evidence of Person A and in so doing, the Tribunal found the particular proved on a balance of probabilities.

Schedule 1				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
			having discussed her allegations in detail with Person B" this particular "dovetails into evidence" that Person B gave.	
21.	Mr Bretherton would tell me how he wanted to shave me and wanted me to send pictures of me shaving. He wanted me to get genital piercings.	Person A stated that she refused but sought a compromise which Mr Bretherton described as trashy.	Mr Bretherton denied this particular and had no recollection of it.	The Tribunal considered the conflict of evidence before it, Mr Bretherton's inability to recollect and partial acceptance that it could have occurred. In so doing, it found the particular proved on a balance of probabilities.

- 12.2.4 Having considered each particular in turn, the Tribunal determined that Person A was a credible, compelling and largely consistent witness. Minor inaccuracies in her evidence were unsurprising given the nature of the information in question as regards incidents that occurred in 2017, 2018 and 2019 some four years later in 2023. In circumstances where the Tribunal considered an inconsistency or lack of detail to be germane to the particular, it exercised any doubt in favour of Mr Bretherton. Person A was found to be a credible, persuasive and consistent witness.
- 12.2.5 The Tribunal considered the conduct which Mr Bretherton admitted to be extraordinary and, in the main, supportive of Person A's evidence. The admissions in and of themselves represented inappropriate words deployed by him in his interactions with an 18 year old Junior Legal Apprentice that he interviewed and who had very recently been appointed. The Tribunal considered his attempts to apportion blame onto Person A for instigating his misconduct and his categorisation of their interactions as a "consensual fantasy sexual relationship" as deeply unattractive. It was a disingenuous attempt to minimise his misconduct in a strategic and guarded, as opposed to candid, manner.
- 12.2.6 The Tribunal therefore found, for the reasons set out above and the findings made on each particular in Schedule 1, Allegation 1.1.1 **proved** on a balance of probabilities.
- 12.3 **Allegation 1.1.2: Sent any or all of the e-messages to Person A which contained inappropriate content as set out in Schedule 2; and/or**

Applicant's Case

- 12.3.1 The Applicant's case as to the particulars of each incident was predominantly predicated on the evidence of Person A. Person A's evidence as to each incident has been summarised below, alongside the Respondent's position and the Tribunal's findings in tabular form. Any relevant evidence of other witnesses who spoke to the allegation generally or specifically in relation to any particular is summarised above.

Respondent's Position

- 12.3.2 Mr Bretherton's position as to the particular incidents alleged have been summarised below alongside the Applicant's case and the Tribunal's findings in tabular form. In broad terms, where Mr Bretherton either admitted an incident (on the basis that the exact words were used or words to the effect of what was alleged), denied (in that Mr Bretherton was clear that the incident as alleged did not happen) or not admitted (where Mr Bretherton had no recollection of the specific incident alleged but accepted that it could have).

The Tribunal's Findings

- 12.3.3 The Tribunal carefully considered each particular alleged in its determination in order to ascertain whether, on a balance of probabilities, it was found proved. Given the number of particulars pleaded and the vast amount of evidence received, a summary of the parties' positions and the Tribunal's findings have been set out below in tabular form.

Schedule 2				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
Around November 2017				
22.	Treat them mean to keep them keen.	Person A's evidence was as alleged in the particular.	Mr Bretherton did not admit this particular in terms that he had no recollection of sending Person A a message stating this. He accepted, however, that he could have made such a comment to Person A when she was talking about the boys she was dating.	The Tribunal considered the conflict of evidence before it, Mr Bretherton's inability to recollect and partial acceptance that it could have occurred. In so doing, it found the particular proved on a balance of probabilities.
23.	[do you prefer] to give or receive	Person A's evidence was as alleged in the particular.	Mr Bretherton did not admit this particular in terms that he had no recollection of having sent such a message but accepts that he could have done.	The Tribunal considered the conflict of evidence before it, Mr Bretherton's inability to recollect and partial acceptance that it could have occurred. In so doing, it found the particular proved on a balance of probabilities.
24.	Mr Bretherton sent me a message asking me to take my underwear off and send him a picture.	Person A's evidence was as alleged in the particular.	Mr Bretherton admitted that on one occasion he did ask Person A to take sexual photos when she was on a night out with her friends in circumstances where Person A was reciprocating to every message he sent and his request was in the context of	The Tribunal found the particular proved on a balance of probabilities given the evidence before it and the admission which was found to have been properly made.

Schedule 2				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
			Person A sending him sexual images at that time.	
25.	Mr Bretherton asked me to have sex with her.	Person A's evidence was as alleged in the particular.	Mr Bretherton denied this particular and asserted that he did not know that she was sharing a bed with her friend that night hence he would not have asked her what was alleged.	<p>The Tribunal considered the conflict of evidence before it, determined that the fact that the particular was not in Person A's initial complaint was of limited relevance in circumstances where it was elicited during the course of the Applicant's investigation and tested under cross examination.</p> <p>The Tribunal preferred the evidence of Person A and in so doing, the Tribunal found the particular proved on a balance of probabilities.</p>
26.	Mr Bretherton's response was "well you will just have to make yourself cum if you are not going to do that" and to think of him whilst I was doing it. He told me that he was touching himself and thinking of me.	Person A's evidence was as alleged in the particular.	<p>Mr Bretherton denied this particular in terms that there was one occasion when Person A messaged him and said she was masturbating. Mr Bretherton touched himself at the same time.</p> <p>Mr Bretherton found it "incredulous that there [was] a</p>	<p>The Tribunal considered the conflict of evidence before it, determined that the fact that the particular was not in Person A's initial complaint was of limited relevance in circumstances where it was elicited during the course of the Applicant's investigation and tested under cross examination.</p>

Schedule 2				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
			suggestion that he made [Person A] masturbate against her will".	The Tribunal preferred the evidence of Person A and in so doing, the Tribunal found the particular proved on a balance of probabilities.
27.	Describing sex, what it would feel like and what it would taste like and different positions.	Person A stated that this entailed description of "things that she had not done before" and that she "found it quite funny at first and did not understand how serious it was, but it was very uncomfortable".	Mr Bretherton admitted that he exchanged messages with Person A that involved describing sex, what it would feel like, taste like and different positions but that these discussions took place outside of the office. Mr Bretherton asserted that this was entirely consensual and a two-way interaction and that Person A never suggested at the time that she was uncomfortable with them.	The Tribunal found the particular proved on a balance of probabilities given the evidence before it and the admission which was found to have been properly made.
28.	He would send me links to porn that he liked and erotic literature.	Person A stated that she did not know "that kind of thing existed" and that it was "a lot to cope with every day, it was relentless".	Mr Bretherton admitted that he discussed with Person A links to the leaked nudes of a TV Love Island star. He accepted that it was feasible that he could have sent her or told her about a link at her request and asserted that	The Tribunal found the particular proved on a balance of probabilities given the evidence before it and the admission which was found to have been properly made.

Schedule 2				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
			those exchanges took place outside of the office.	
29.	Mr Bretherton sent me a message which was a picture of me in my underwear.	Person A was upset as she believed that the messages between them were being deleted.	Mr Bretherton admitted this particular and asserted that it occurred outside of the office.	Proved on the evidence before the Tribunal and the admission which was found to have been properly made.
Summer 2018				
30.	He sent me a video of him masturbating under his pants.	Person A stated that she did not watch the video but told Mr Bretherton that she had.	Mr Bretherton admitted this particular and asserted that he did so at the request of Person A and it occurred outside of the office.	The Tribunal found the particular proved on a balance of probabilities given the evidence before it and the admission which was found to have been properly made.
August 2018				
31.	Mr Bretherton messaged me asking to send him photos of my tan lines.	Person A's evidence was as alleged in the particular.	Mr Bretherton did not admit this particular and asserted that he had no recollection of having sent such a message but accepts that he could have done.	The Tribunal considered the conflict of evidence before it, Mr Bretherton's inability to recollect and partial acceptance that it could have occurred. In so doing, it found the particular proved on a balance of probabilities.

Schedule 2				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
32.	Mr Bretherton messaged me saying is [Person C] down to see your tan lines.	Person A stated that she ignored Mr Bretherton's message.	Mr Bretherton admitted this particular which took place at work.	The Tribunal found the particular proved on a balance of probabilities given the evidence before it and the admission which was found to have been properly made.

12.3.4 The Tribunal therefore found, for the reasons set out above and the findings made on each particular in Schedule 2, Allegation 1.1.2 **proved** on a balance of probabilities.

12.4 **Allegation 1.1.3: Asked and/or directed Person A to engage in any or all of the inappropriate activity as set out in Schedule 3; and/or**

Applicant's Case

12.4.1 The Applicant's case as to the particulars of each incident was predominantly predicated on the evidence of Person A. Person A's evidence as to each incident has been summarised below, alongside the Respondent's position and the Tribunal's findings in tabular form. Any relevant evidence of other witnesses who spoke to the allegation generally or specifically in relation to any particular is summarised above.

Respondent's Position

12.4.2 Mr Bretherton's position as to the particular incidents alleged have been summarised below alongside the Applicant's case and the Tribunal's findings in tabular form. In broad terms, where Mr Bretherton either admitted an incident (on the basis that the exact words were used or words to the effect of what was alleged), denied (in that Mr Bretherton was clear that the incident as alleged did not happen) or not admitted (where Mr Bretherton had no recollection of the specific incident alleged but accepted that it could have).

The Tribunal's Findings

12.4.3 The Tribunal carefully consider each particular alleged in its determination, on a balance of probabilities, as to whether or not it was proved. Given the number of particulars pleaded and the vast amount of evidence received, a summary of the parties' positions and the Tribunal's findings have been set out below in tabular form.

Schedule 3				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
Around November 2017				
33.	<p>He started to throw the ping pong balls down the front of my dress and if they went down my dress he would go over to retrieve them.</p> <p>If he missed, he would make me bend over and pick the ping pong balls up.</p>	<p>Person A stated that at the time she just laughed about Mr Bretherton's behaviour as she "did not know how to react to it ... just went along with it.</p> <p>Colleague 3 was the only person in the firm that [she] had built up a working relationship with, so when Colleague 3 was not there, [she] did not know what to do so [she] went along with what Mr Bretherton said because [she] trusted him".</p>	<p>Mr Bretherton denied this particular in terms that it simply did not happen and that it could not have happened given the fact that the office had glass walls and anyone could see in.</p>	<p>The Tribunal considered the conflict of evidence before it and preferred the evidence of Person A.</p> <p>In so doing, the Tribunal found the particular proved on a balance of probabilities.</p>
34.	<p>Mr Bretherton then began to ask me to send him pictures and videos of me doing various things, just of me masturbating at first.</p>	<p>Person A stated that she could "remember the first time he asked me to do it, [she] was at [her] Nan's house and it just felt so wrong, but [she] had no option but to do it. Mr Bretherton was always so nice to [her] after [she] did what he said, he would complement [her] and say [she] looked great and it felt like it was worth it and [she] was pleasing him".</p>	<p>Mr Bretherton admitted this particular in terms that any suggestion that it was one sided or that it was always or usually at his instigation was denied.</p> <p>Mr Bretherton asserted that it was Person A who first raised the topic of her masturbating in the office and asked him if it would turn him on to see her doing so.</p>	<p>The Tribunal found the particular proved on a balance of probabilities given the evidence before it and the admission which was found to have been properly made.</p>

Schedule 3				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
			<p>Mr Bretherton stated that incident 34 was “a very good example of where the failure of Person A to provide any context (or indeed details of her actual involvement) to an allegation distorts the truth of what actually happened and creates a false impression”.</p> <p>Mr Bretherton asserted that messages of the nature set out in this particular predominantly occurred outside of the office albeit some pictures/videos did happen in the workplace.</p>	
35.	<p>Mr Bretherton went back and sat on his chair and he asked me to rotate mine so it faced his and told me to open my legs so he could look up my skirt and see my underwear ...</p> <p>He would ask me to open my legs wider until he was satisfied that he got a good view and then he would drop something on the floor so he could look up my skirt.</p>	<p>Person A recalled that after the incident she was “blushing so hard that when [she] went back into [her] office Colleague 3 and [her] would laugh about how red [she] was, but Colleague 3 did not ask [her] why”.</p>	<p>Mr Bretherton admitted this particular in terms that it was part of the consensual sexual fantasy relationship.</p> <p>Mr Bretherton denied any suggestion that he was directing or pressurising Person A to do so and asserted that she consensually chose to behave in that manner to sexually arouse him.</p>	<p>The Tribunal found the particular proved on a balance of probabilities given the evidence before it and the admission which was found to have been properly made.</p>

Schedule 3				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
36.	<p>It was at this time that Mr Bretherton persuaded me to buy a sex toy ...</p> <p>Mr Bretherton asked me to send him videos of me using it.</p> <p>He asked me to put it up my bum</p>	<p>Person A stated that Mr Bretherton gave her half of the cost of the sex toy.</p> <p>Person A's evidence was as alleged in the particular.</p> <p>Person A's evidence was as alleged in the particular.</p>	<p>Mr Bretherton admitted that he and Person A discussed her purchasing a sex toy but denied contributing to its purchase.</p> <p>Mr Bretherton could not recall having asked Person A to send him videos, he accepted that he could have done.</p> <p>Mr Bretherton denied any suggestion that he pressured or coerced Person A to send him videos or to insert the sex toy into her bottom.</p>	<p>The Tribunal preferred the evidence of Person A and in so doing, the Tribunal found the particular proved on a balance of probabilities.</p> <p>The Tribunal considered the conflict of evidence before it, Mr Bretherton's inability to recollect and partial acceptance that it could have occurred.</p> <p>In so doing, it found the particular proved on a balance of probabilities.</p> <p>The Tribunal preferred the evidence of Person A and in so doing, the Tribunal found the particular proved on a balance of probabilities.</p>
Around December 2017				
37.	<p>Whilst I was in the taxi back to my hotel, Mr Bretherton was messaging me saying that he was really disappointed in me that I</p>	<p>Person A's evidence was as alleged in the particular.</p>	<p>Mr Bretherton denied this particular and asserted that whilst he did engage in sexual messages with Person A whilst she was in</p>	<p>The Tribunal considered the conflict of evidence before it, preferred the evidence of Person A.</p>

Schedule 3				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
	had not taken the sex toy to the party and that he had been looking forward to using it, that I had upset him.		<p>the taxi, they were instigated by her.</p> <p>Mr Bretherton further asserted that Person A messaged him asking him to go to her hotel room to have sex and sent him photos of herself in various naked provocative poses.</p> <p>Mr Bretherton stated that he refused and went home.</p> <p>Mr Bretherton asserted that if she had been uncomfortable, as alleged, with the kiss a week earlier it was "remarkable that she was trying to encourage [him] to come to her hotel room to come and have sex with her".</p>	In so doing, the Tribunal found the particular proved on a balance of probabilities.
38.	<p>The next day, Mr Bretherton asked me to go into his office with it and he told me to go to the toilet and put it in me and then go back to the office and give him the remote.</p> <p>Whilst I was in the office with Mr Bretherton ... came in to speak to</p>	Person A stated that she "switched off emotionally" and that "it hurt quite a lot". It was a "very uncomfortable memory".	Mr Bretherton denied this particular and found it "shocking" in circumstances where the colleague in his office was an equity partner was in his office and "none of their consensual fantasy relationship was ever done in front of other people".	<p>The Tribunal considered the conflict of evidence before it and preferred the evidence of Person A.</p> <p>In so doing, the Tribunal found the particular proved on a balance of probabilities.</p>

Schedule 3				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
	Mr Bretherton and Mr Bretherton thought it would be a fun thing to use the remote whilst he was talking to ...		Mr Bretherton commented that this is a "new" allegation that was made to the Applicant and not during the course of the Firm's investigation. He asserted that if it were true, it would "have been in the forefront of her memory" and raised in her initial complaint to the Firm.	
Around Summer 2018				
39.	He asked me to close the door behind me and asked me to take a ping pong ball from a pack he had on his desk, to go to the toilet, put it inside of me and then take it back to him ... he told me I took too long when I gave it back to him ... I turned to look at him and he was staring at me and then he put the ping pong ball in his mouth.	<p>Person A's evidence was as alleged in the particular.</p> <p>Colleague 3 confirmed that Mr Bretherton had a bowl of ping pong bowls on his desk.</p> <p>Colleague 3 further confirmed that Person A would sometimes leave Mr Bretherton's office blushing.</p>	Mr Bretherton denied this particular in terms that, whilst he did have a conversation with Person A in the office in which Person A informed him that she had masturbated with the ping pong ball in the toilets and left it on his chair, it had been at her instigation as opposed to his request as alleged.	<p>The Tribunal considered the conflict of evidence before it and preferred the evidence of Person A which was supported to an extent by Colleague 3.</p> <p>In so doing, the Tribunal found the particular proved on a balance of probabilities.</p>
40.	When he would tell me to go to the toilet to masturbate, he would tell me that I had to do it within a certain time and if I did not, he	Person A's evidence was as alleged in the particular.	<p>Mr Bretherton denied this particular.</p> <p>He commented that it was a "new" allegation that was made</p>	The Tribunal considered the conflict of evidence before it, determined that the fact that the particular was not in Person A's initial complaint was of limited

Schedule 3				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
	would make me do it again until I did it within the time.		to the Applicant and not during the course of the Firm's investigation,	<p>relevance in circumstances where it was elicited during the course of the Applicant's investigation and tested under cross examination.</p> <p>The Tribunal preferred the evidence of Person A and in so doing, the Tribunal found the particular proved on a balance of probabilities.</p>
41.	He would ask me to send him pictures and videos of me weeing which I thought was odd.	Person A's evidence was as alleged in the particular.	Mr Bretherton denied this particular in terms that he had no recollection of it having occurred.	<p>The Tribunal considered the conflict of evidence before it, Mr Bretherton's inability to recollect and partial acceptance that it could have occurred.</p> <p>In so doing, it found the particular proved on a balance of probabilities.</p>
42.	Mr Bretherton would ask me to masturbate in the toilets every day and again before I went to sleep. Every time I did this, I would have to tell him about it.	Person A stated that she was doing this so frequently that it no longer gave her pleasure and that she "managed to train [herself] to orgasm really quickly so that [she] didn't have to spend long doing it".	Mr Bretherton denied this particular in terms that Person A "would often masturbate and tell [him] about it" but she willingly chose to do so. He asserted that he had no idea whether she actually was, given that he was	The Tribunal considered the conflict of evidence before it, determined that the fact that the particular was not in Person A's initial complaint was of limited relevance in circumstances where it was elicited during the course

Schedule 3				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
			not present, thus she "could have lied and told [him] that she had masturbated when she hadn't and [he] would have been none the wiser".	of the Applicant's investigation and tested under cross examination. The Tribunal preferred the evidence of Person A and in so doing, the Tribunal found the particular proved on a balance of probabilities.
43.	Mr Bretherton asked me to go into the toilets and masturbate into my knickers. He asked me to wipe myself clean with them ... he brought me back my knickers after masturbating into them and told me to go back into the toilets and taste them and masturbate again.	Person A's evidence was as alleged in the particular.	Mr Bretherton denied this particular in terms that he did participate in an exchange with Person A in which she came into his office and gave him her underwear before exposing herself to him. Mr Bretherton asserted that he did not pressure her to act in the manner described and denied having acted in the manner alleged.	The Tribunal considered the conflict of evidence before it and preferred the evidence of Person A. In so doing, the Tribunal found the particular proved on a balance of probabilities.

- 12.4.4 The Tribunal therefore found, for the reasons set out above and the findings made on each particular in Schedule 3, Allegation 1.1.3 **proved** on a balance of probabilities.
- 12.5 **Allegation 1.1.4: Touched Person A in a way that was inappropriate on any or all of the occasions as set out in Schedule 4; and/or**

Applicant's Case

- 12.5.1 The Applicant's case as to the particulars of each incident was predominantly predicated on the evidence of Person A. Person A's evidence as to each incident has been summarised below, alongside the Respondent's position and the Tribunal's findings in tabular form. Any relevant evidence of other witnesses who spoke to the allegation generally or specifically in relation to any particular is summarised above.

Respondent's Position

- 12.5.2 Mr Bretherton's position as to the particular incidents alleged have been summarised below alongside the Applicant's case and the Tribunal's findings in tabular form. In broad terms, where Mr Bretherton either admitted an incident (on the basis that the exact words were used or words to the effect of what was alleged), denied (in that Mr Bretherton was clear that the incident as alleged did not happen) or not admitted (where Mr Bretherton had no recollection of the specific incident alleged but accepted that it could have).

The Tribunal's Findings

- 12.5.3 The Tribunal carefully considered each particular alleged in its determination in order to ascertain whether, on a balance of probabilities, it was found proved. Given the number of particulars pleaded and the vast amount of evidence received, a summary of the parties' positions and the Tribunal's findings have been set out below in tabular form.

Schedule 4				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
Around November 2017				
44.	He stood behind me and touched my back and put his hand over mine on my mouse.	Person A stated that "It felt like [she] was in his office forever, like time had stopped. It felt like he was controlling [her]".	Mr Bretherton denied this incident and asserted that it made no sense as if he had gone into his office "to discuss work then she would have her notepad with her and she wouldn't have her computer and definitely not her mouse" thus the allegation "would not have been physically possible".	The Tribunal considered the conflict of evidence before it and preferred the evidence of Person A. In so doing, the Tribunal found the particular proved on a balance of probabilities.
45.	Mr Bretherton's teaching would be very hands on ... Mr Bretherton would come to the bar with me and put his hand on my back or my waist.	Person A's evidence was as alleged in the particular.	Mr Bretherton denied this allegation in that there would have been other colleagues at the public house who would've observed him acting in the manner alleged but did not.	The Tribunal considered the conflict of evidence before it and preferred the evidence of Person A. In so doing, the Tribunal found the particular proved on a balance of probabilities.

46.	I remember Mr Bretherton put his hand up my skirt.	Person A recalled this as she was menstruating at the time and found it unpleasant and uncomfortable.	Mr Bretherton denied this allegation and asserted that it did not occur and that Person A described this during the Firm's investigation as him having placed his hand between her leg "not in a sexual way".	<p>The Tribunal considered the conflict of evidence before it and determined that the difference in account by Person A to the Firm and to the Applicant was immaterial given the fact that both entailed Mr Bretherton placing his hand between her legs and was tested under cross examination.</p> <p>The Tribunal preferred the evidence of Person A and in so doing, the Tribunal found the particular proved on a balance of probabilities.</p>
47.	He put his hands in between my legs, not in a sexual way, but just holding my thigh and he kissed me on the lips. There was a lot of tongue, it was quite penetrating.	Person A stated that it was a horrible experience that made her feel sick and sobered her up quite quickly.	Mr Bretherton admitted this particular and asserted that it was the instigation of Person A when she sat on his lap and not in the manner alleged.	<p>The Tribunal considered the conflict of evidence before it and preferred the evidence of Person A.</p> <p>In so doing, the Tribunal found the particular proved on a balance of probabilities.</p>

- 12.5.4 The Tribunal therefore found, for the reasons set out above and the findings made on each particular in Schedule 4, Allegation 1.1.4 **proved** on a balance of probabilities.
- 12.6 **Allegation 1.1.5: Engaged in conduct towards Person A that was unreasonable and/or controlling on any or all of the occasions as set out in Schedule 5;**

Applicant's Case

- 12.6.1 The Applicant's case as to the particulars of each incident was predominantly predicated on the evidence of Person A. Person A's evidence as to each incident has been summarised below, alongside the Respondent's position and the Tribunal's findings in tabular form. Any relevant evidence of other witnesses who spoke to the allegation generally or specifically in relation to any particular is summarised above.
- 12.6.2 Ms Bruce submitted that the particulars, individually and cumulatively, demonstrated unreasonable and controlling behaviour.

Respondent's Position

- 12.6.3 Mr Bretherton's position as to the particular incidents alleged have been summarised below alongside the Applicant's case and the Tribunal's findings in tabular form. In broad terms, where Mr Bretherton either admitted an incident (on the basis that the exact words were used or words to the effect of what was alleged), denied (in that Mr Bretherton was clear that the incident as alleged did not happen) or not admitted (where Mr Bretherton had no recollection of the specific incident alleged but accepted that it could have).
- 12.6.4 Ms Carpenter KC submitted that the particulars, either individually or cumulatively did not demonstrate unreasonable and controlling behaviour in circumstances where (a) the factual allegations were not made out, (b) it was a "consensual sexual fantasy relationship" and (c) Person A's own behaviour in instigating and maintaining the same for the period that she did.

The Tribunal's Findings

- 12.6.5 The Tribunal carefully considered each particular alleged in its determination in order to ascertain whether, on a balance of probabilities, it was found proved. Given the number of particulars pleaded and the vast amount of evidence received, a summary of the parties' positions and the Tribunal's findings have been set out below in tabular form.

Schedule 5				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
November 2017				
48.	Mr Bretherton said to me that because I had been good all week I could have the radio on as a treat. He had a little speaker on his desk and he let me pick the music. It felt like a reward for being good.	Person A's evidence was as alleged in the particular.	Mr Bretherton denied this particular in terms that he regularly had music on in his office. It was possible that he let Person A choose some music when she was sitting with him, but he would not have framed it terms alleged as he was never patronising towards Person A. Mr Bretherton denied that he acted in an unreasonable and/or controlling manner towards Person A.	The Tribunal considered the conflict in evidence and exercised any doubt in favour of Mr Bretherton. In so doing it found the particular not proved on a balance of probabilities.
49.	Mr Bretherton would always watch me from across the corridor, I would feel him, I found it quite scary and unnerving.	Person A's evidence was as alleged in the particular.	Mr Bretherton denied this particular in terms that, had he done so, it would have been noticed by anyone in Colleague 3's office which was where Person A was located.	The Tribunal considered the conflict of evidence before it and preferred the evidence of Person A. In so doing, the Tribunal found the particular proved on a balance of probabilities.
50.	Mr Bretherton was messaging me constantly, asking me questions such as where are you, who are with (<i>sic</i>), what are you wearing, what are you drinking, what are	Person A stated that there were 30 – 40 e-messages and whilst she replied to some of them, she found it overwhelming.	Mr Bretherton denied this particular and the implication that he barraged Person A with constant unsolicited messages. Mr Bretherton did accept that on	The Tribunal considered the conflict of evidence before it and preferred the evidence of Person A.

Schedule 5				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
	you saying, who are you going to get with, who are you going to sleep with.		one Saturday evening in late 2017 he exchanged multiple messages with Person A regarding what she was doing but that was outside of work and only in response to Person A if she responded.	In so doing, the Tribunal found the particular proved on a balance of probabilities.
51.	Mr Bretherton said to me that he had annoyed [enjoyed] what happened at the weekend and that he was disappointed I did not send him a picture because he thought I would have done that for him.	<p>Person A accepted that Mr Bretherton told her that he did not want to make her uncomfortable but he had a great time and he wanted to do it [the e-messages referred to at particular 50] again.</p> <p>Person A could not recall how that made her feel at the time. She accepted that she “must have said that [she] had liked it too” as she didn't think it would have continued otherwise but that she “felt like it was just expected of me to do whatever Mr Bretherton wanted [her] to do”.</p>	<p>Mr Bretherton did not admit this particular in terms that he did not recall having any such conversation with Person A.</p> <p>Mr Bretherton was sure, however, that he did tell Person A that he enjoyed their messages but denied that in so doing he acted in an unreasonable and/or controlling manner towards Person A who told him she also liked their “consensual sexual fantasy relationship”.</p>	<p>The Tribunal considered the conflict of evidence before it, Mr Bretherton's inability to recollect and partial acceptance that it could have occurred.</p> <p>In so doing, it found the particular proved on a balance of probabilities.</p>
52.	The messages from Mr Bretherton would pretty much start first thing in the morning, so I would be travelling in on the train and tube knowing that when I got to ... I would have a stream of messages from Mr Bretherton.	Person A's evidence was as alleged in the particular.	Mr Bretherton denied this particular and the implication that he barraged Person A with constant unsolicited messages and would pressure her to respond.	The Tribunal considered the conflict of evidence before it and preferred the evidence of Person A.

Schedule 5				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
	<p>He would text me all day at work whilst he was sat opposite me and he would watch me receive the text and observe my reaction to it.</p> <p>If I did not answer him, he would send me a message on the firm's internal messaging system called Lync asking me why I had not replied to his messages.</p>		<p>Mr Bretherton accepted that sexual messages were mainly exchanged outside of work and occasionally whilst at work.</p> <p>Mr Bretherton asserted that if he had in the manner alleged, it would have been observed by others (in particular Colleague 3). Further that, upon the Firm's review of the Firms systems during the internal investigation, none of the relevant 950 emails corroborated Person A's allegation.</p> <p>Mr Bretherton denied that the messages exchanged supported that allegation that he acted in an unreasonable and/or controlling manner towards Person A.</p>	<p>In so doing, the Tribunal found the particular proved on a balance of probabilities.</p>
53.	<p>By this time he was telling me to wear skirts and dresses to work and not trousers. He would get cross if I wore trousers and said he wanted to see more of me.</p>	<p>Person A's evidence was as alleged in the particular.</p>	<p>Mr Bretherton denied this particular and asserted that he did not "tell" Person A what to wear or get cross with her if she wore trousers or otherwise in terms that, whilst he had no recollection of having discussed Person A's</p>	<p>The Tribunal considered the conflict of evidence before it and preferred the evidence of Person A.</p> <p>In so doing, the Tribunal found the particular proved on a balance of probabilities.</p>

Schedule 5				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
			outfits with her, he accepted that it was feasible that he did.	
54.	At this party I kissed one of the Trainees and somehow Mr Bretherton had found out about it. He got really angry with me and said he was the only one that I should feel that way about and that it was unprofessional for me and I should not have done it. Before I went to the party, he asked me to wear a skirt for him.	Person A's evidence was as alleged in the particular.	Mr Bretherton denied this particular and asserted that he did not get upset when he was later told by Person B that Person A had been found "taking her clothes off with a male trainee in a hotel bedroom".	The Tribunal considered the conflict in evidence and exercised any doubt in favour of Mr Bretherton. In so doing it found the particular not proved on a balance of probabilities.
55.	He would track my periods. Sometimes I would lie and say that I could not take pictures of myself or do what he wanted me to do because I was on my period. This always annoyed him but he accepted it. Sometimes I would lie that I was on my period when I was not so that I would not have to do what he wanted me to. He always knew when I was lying because he would say things like: "but you were on two weeks ago".	Person A's evidence was as alleged in the particular.	Mr Bretherton denied this particular in its entirety.	The Tribunal considered the conflict of evidence before it and preferred the evidence of Person A. In so doing, the Tribunal found the particular proved on a balance of probabilities.

Schedule 5				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
56.	Mr Bretherton would time my toilet breaks. I would have to tell him every time I went to the toilet. Frequently he said that I took too long, but he did not tell me how long I should take so was just another reason for him to have a go at me or to tell me that I was doing something wrong for him so I had to make it up to him.	Person A's evidence was as alleged in the particular.	Mr Bretherton denied this particular. Mr Bretherton commented that it was a "new" allegation that was made to the Applicant, not made during the course of the Firm's investigation and designed to support the untrue allegation of control and coercion which was not corroborated by any other witness.	The Tribunal considered the conflict in evidence and exercised any doubt in favour of Mr Bretherton. In so doing it found the particular not proved on a balance of probabilities.
Around October 2018				
57.	It was our Group Away Day and we had gone for drinks and Mr Bretherton had told me off for having sex in my bed at home because it was not what my parents wanted. By doing that I had disappointed everyone.	Person A stated that Mr Bretherton knew that she did not have a great relationship with her parents. She felt that he said what he did to bring that fact into the conversation.	Mr Bretherton denied this particular and asserted that it did not make sense in circumstances where he assumed that Person A's girlfriend had gone away to university at the material time so it did not make sense. Mr Bretherton asserted that had he acted in the manner alleged it would have been noticed by others.	The Tribunal considered the conflict of evidence before it and preferred the evidence of Person A. In so doing, the Tribunal found the particular proved on a balance of probabilities.
58.	He told me that I should not post anything on my Instagram page without running it by him first.	Person A's evidence was as alleged in the particular.	Mr Bretherton denied this particular and commented that this is a "new" allegation that was made to the Applicant and not during the course of the Firm's	The Tribunal considered the conflict of evidence before it, determined that the fact that the particular was not in Person A's initial complaint was of limited

Schedule 5				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
	He told me off for a post in which I referenced my dad.		investigation designed to support the untrue allegation of controlling and coercive behaviour.	<p>relevance in circumstances where it was elicited during the course of the Applicant's investigation and tested under cross examination.</p> <p>The Tribunal preferred the evidence of Person A and in so doing, the Tribunal found the particular proved on a balance of probabilities.</p>

- 12.6.7 The Tribunal considered whether watching, constantly messaging, expressing disappointment as regards the lack of a photograph, dictating clothing to wear for work, menstrual cycle tracking, directing social media posts and telling Person A that she should not tell anybody about their conversations was unreasonable and controlling.
- 12.6.8 The Tribunal therefore found, for the reasons set out above and the findings made on each particular in Schedule 5, Allegation 1.1.5 **proved** on a balance of probabilities.
- 12.7. **Allegation 1.1.6: Asked and/or required Person A to conceal and/or not disclose his conduct as described at one or more of paragraphs 1.1.1 to 1.1.5 above on any or all of the occasions as set out in Schedule 6;**

Applicant's Case

- 12.7.1 The Applicant's case as to the particulars of each incident was predominantly predicated on the evidence of Person A. Person A's evidence as to each incident has been summarised below, alongside the Respondent's position and the Tribunal's findings in tabular form. Any relevant evidence of other witnesses who spoke to the allegation generally or specifically in relation to any particular is summarised above.

Respondent's Position

- 12.7.2 Mr Bretherton's position as to the particular incidents alleged have been summarised below alongside the Applicant's case and the Tribunal's findings in tabular form. In broad terms, where Mr Bretherton either admitted an incident (on the basis that the exact words were used or words to the effect of what was alleged), denied (in that Mr Bretherton was clear that the incident as alleged did not happen) or not admitted (where Mr Bretherton had no recollection of the specific incident alleged but accepted that it could have).

The Tribunal's Findings

- 12.7.3 The Tribunal carefully considered each particular alleged in its determination in order to ascertain whether, on a balance of probabilities, it was found proved. Given the number of particulars pleaded and the vast amount of evidence received, a summary of the parties' positions and the Tribunal's findings have been set out below in tabular form.

Schedule 6				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
Around October 2017				
59.	He said that I had taken what he said out of context and that I had disappointed him and breached his trust and that if we were going to have conversations like that in the future, I was not to go and tell anybody because it would not only impact his career it would impact my career too.	Person A's evidence was as alleged in the particular.	Mr Bretherton admitted this particular in terms that he told Person A she had taken what he had said out of context. The remainder of this particular was denied.	The Tribunal considered the conflict of evidence before it and the partial admission made by Mr Bretherton. In so doing, the Tribunal preferred the evidence of Person A and found the particular proved on a balance of probabilities.
60.	He called me into his office. He sat me down and he said to me, I need to see that you have deleted those texts, so I did. On WhatsApp there's an archive section and he made me delete them from that section too.	Person A's evidence was as alleged in the particular.	Mr Bretherton denied this particular in terms that they jointly agreed to delete the WhatsApp messages between them. Mr Bretherton asserted that there was a "factual inaccuracy" as regards the "archive section" in that, if messages were deleted, there would not be anything to delete from the archive folder.	The Tribunal considered the conflict of evidence before it and preferred the evidence of Person A. In so doing, the Tribunal found the particular proved on a balance of probabilities.
61.	Mr Bretherton was messaging me explicit sex on my phone. Then every night, Mr Bretherton would make me delete the message from that day, the whole thing was overwhelming.	Person A's evidence was as alleged in the particular.	Mr Bretherton denied this particular.	The Tribunal considered the conflict of evidence before it and preferred the evidence of Person A.

Schedule 6				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
				In so doing, the Tribunal found the particular proved on a balance of probabilities.
62.	Mr Bretherton used to call it our secret that no-one could ever know and that it would impact me more if anyone found out, he basically said to me that there was no proof and it was my word against his.	Person A's evidence was as alleged in the particular.	Mr Bretherton denied this particular. He accepted having told Person A that they needed to be discrete but asserted that he "would never have suggested that it would impact her more if anyone found out".	The Tribunal considered the conflict of evidence before it and preferred the evidence of Person A. In so doing, the Tribunal found the particular proved on a balance of probabilities.
63.	He would make me delete the conversations every night and I would have to send him proof that I had, and he would do spot checks of my phone to make sure I had deleted everything. Mr Bretherton would say because I was really good at deleting everything, we would be able to take it to the next level.	Person A's evidence was as alleged in the particular.	Mr Bretherton denied carrying out spot checks of Person A's mobile telephone.	The Tribunal considered the conflict of evidence before it and preferred the evidence of Person A. In so doing, the Tribunal found the particular proved on a balance of probabilities.
64.	He told me whilst I was there [on holiday with Person C] that I should not contact him and that I should change the contact information for him.	Person A's evidence was as alleged in the particular.	Mr Bretherton denied this particular and asserted that he did not contact Person A whilst she was on holiday and did not tell	The Tribunal considered the conflict of evidence before it and preferred the evidence of Person A.

Schedule 6				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
			her to change his contact information on her telephone.	In so doing, the Tribunal found the particular proved on a balance of probabilities.
Around December 2017				
65.	<p>He told me to say that if anyone asked me what our relationship was, I was to say that we were just friends.</p> <p>Mr Bretherton asked me what I would say to people if they asked what our relationship was ... He said that was too suspicious, I was to say we were friends.</p>	<p>Person A stated that the day after the kiss, Mr Bretherton told her he could not remember anything and denied it when she told him he had kissed her before saying that her behaviour the night before looked suspicious.</p>	<p>Mr Bretherton denied this particular and asserted that it had not been raised during the course of the Firm's investigation.</p>	<p>The Tribunal considered the conflict of evidence before it, determined that the fact that the particular was not in Person A's initial complaint was of limited relevance in circumstances where it was elicited during the course of the Applicant's investigation and tested under cross examination.</p> <p>The Tribunal preferred the evidence of Person A and in so doing, the Tribunal found the particular proved on a balance of probabilities.</p>

12.7.4 The Tribunal therefore found, for the reasons set out above and the findings made on each particular in Schedule 6, Allegation 1.1.6 **proved** on a balance of probabilities.

12.8 **Principle 2: (lack of integrity)**

Applicant's Case

12.8.1 Ms Bruce relied upon the principles promulgated in Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366 in submitting that Mr Bretherton failed to adhere to the ethical standards of the profession in that he failed to act with moral soundness, rectitude and steady adherence to a moral code.

12.8.2 Ms Bruce reminded the Tribunal that; (a) Mr Bretherton was 36 years old when he first met Person A who was an 18 year old A Level student when he interviewed and appointed her as a Junior Legal Apprentice at the Firm; (b) the nexus between Mr Bretherton's position and the alleged misconduct could not be clearer; (c) there was a very significant power imbalance between them; (d) Mr Bretherton made it clear to Person A that her position within the Firm would be impacted if she disclosed his conduct; (e) Mr Bretherton participated in sexual activity in the office and extensions of the same namely at work social events; and (f) Mr Bretherton involved himself in Person A's relationships within and outside of the office.

12.8.3 Ms Bruce submitted that Mr Bretheron's conduct included exploitation, threats, coercion, pressure, control, manipulation, intimidation and bullying. It included sexualised comments, activity and touching. He required Person A to carry out sexualised activities that she found to be demeaning and humiliating. His conduct was not only repeated, it was relentless and occurred over the period of around a year. It commenced almost immediately upon the appointment of Person A and continued even after he had been spoken to by a colleague within weeks of her appointment as regards his inappropriate "kinkiest" remarks.

12.8.4 Ms Bruce therefore concluded that, by virtue of his conduct, Mr Bretherton breached Principle 2 in his demonstrable lack of integrity.

Respondent's Position

12.8.5 Mr Bretherton denied having acted with a lack of integrity in that he (a) did not persuade, coerce, control or pressurise Person A into the relationship; (b) genuinely believed Person A actively wanted the "consensual fantasy sexual relationship" as an "equal, willing and sexually experienced adult"; (c) was not a Partner in the Firm; (d) was not Person A's supervisor; (e) was not in a position to favour or punish Person A; (f) did not appreciate any risk at the time that Person A was participating "for any reason connected to [his] relative seniority or out of concern for her position/career"; (g) noted that the Applicant did not allege, and he did not accept in any event, that he had intentionally taken advantage of Person A; and (h) "significant parts of the conduct of the consensual sexual fantasy relationship took place away from the office".

The Tribunal's Findings

- 12.8.6 The Tribunal applied the principles promulgated in Wingate when determining whether Mr Bretherton acted without integrity as regards Person A. In so doing, the Tribunal considered the nature of his conduct and the limited admissions which were designed to minimise the seriousness of his misconduct. The Tribunal rejected Mr Bretherton's evidence that, at the material time, he did not consider his seniority was relevant and only recognised the power imbalance in hindsight.
- 12.8.7 Mr Bretherton embarked on a course of conduct from the appointment of Person A as a Junior Legal Apprentice to the REF Team which was inappropriate, graphically sexualised, unreasonable and controlling in circumstances where she was half his age and it was her first experience of work having only just finished her A' Levels.
- 12.8.8 The Tribunal determined that no solicitor acting with integrity would have behaved in the manner Mr Bretherton was found to have done. The Tribunal therefore found the breach of Principle 2 **proved** on a balance of probabilities.

12.9 **Principle 6: (public trust)**

Applicant's Case

- 12.9.1 Ms Bruce submitted that Mr Bretherton failed to behave in a way that maintained the trust the public placed in the profession and the provision of legal services. Ms Bruce contended that the public would be appalled at the treatment Mr Bretherton, as a 36 year old Legal Director and prospective partner) meted out to an 18 year old Junior Legal Apprentice who had just finished her A' Levels and was taking her very first steps towards a career in law.
- 12.9.2 Ms Bruce therefore submitted that, by virtue of his conduct, Mr Bretherton breached Principle 6.

Respondent's Position

- 12.9.3 Mr Bretherton admitted that, as a consequence of his actions, he unintentionally undermined public trust in him, in the profession and in the provision of legal services contrary to Principle 6.

The Tribunal's Findings

- 12.9.4 On the basis of the proven particulars and the admission made, the Tribunal found the breach of Principle 6 **proved** on a balance of probabilities.

12.10 **Outcome 11.1 (unfair advantage)**

Applicant's Case

- 12.10.1 Ms Bruce submitted that Mr Bretherton took advantage of Person A both professionally and personally. In particular, he took advantage of her age, lack of experience and his position of authority over her.

12.10.2 Ms Bruce therefore contended that Mr Bretherton failed to achieve Outcome 11.1.

Respondent's Position

12.10.3 Mr Bretherton stated that “he never sought or intended to take unfair advantage of Person A”. At all material times he genuinely believed that she wanted to have the “consensual fantasy sexual relationship” given her instigation and encouragement of it.

12.10.4 Mr Bretherton subsequently “came to realise that” that his behaviour was inappropriate given his seniority thus he admitted that, as a consequence of his actions, he “unintentionally” took unfair advantage of Person A and in so doing failed to achieve Outcome 11.1.

The Tribunal's Findings

12.10.5 Outcome 11.1 mandates that solicitors “do not take unfair advantage of third parties in either [their] professional or personal capacity.” Given the findings as regards Allegations 1.1.1 – 1.1.6 and the fact that the Tribunal rejected Mr Bretherton’s evidence that he did not recognise the power imbalance that existed at the material time, the Tribunal determined that Mr Bretherton did take unfair advantage of Person A.

12.10.6 On the basis of the proven particulars and the admission made, the Tribunal found the failure to achieve Outcome 11.1 **proved** on a balance of probabilities.

13. **Allegation 1.2**

13.1 **Sexualised/sexual motivation; abuse of position; taking unfair advantage**

Applicant's Case

13.1.1 Over and above the submissions made as regards Allegation 1.1 and Allegation 1.1.6 Ms Bruce submitted that Mr Bretherton’s conduct as set out at Allegations 1.1.1 to 1.1.5 was sexually motivated insofar as they were carried out for the purposes of sexual gratification or in pursuit of a future sexual relationship.

Respondent's Position

13.1.2 Ms Carpenter KC submitted that sexual motivation had been erroneously pleaded as a stand-alone allegation rather than an aggravating factor of another breach. She further submitted that sexualised/sexual motivation did not apply to a consensual relationship.

The Tribunal's Findings

13.1.3 The Tribunal found that the misconduct found proved in Allegations 1.1.1 – 1.1.6 was plainly sexualised and/or sexually motivated in terms of verbal communication, e-messages, physical contact and the admitted kiss.

- 13.1.4 The Tribunal did not accept that the submission made on behalf of Mr Bretherton that the relationship was entirely consensual given the accepted and proven power imbalance between Person A and Mr Bretherton for the reasons set out in §12.1.51.
- 13.1.5 Given the findings set out above, the Tribunal found sexualised/sexual motivation **proved** on a balance of probabilities.
- 13.1.6 The Tribunal further found that abuse of position taking in unfair advantage **proved** for the reasons set out above at §12.10.5.

14. **Allegation 1.3:**

14.1 **Between March 2017 and July 2018, when in a position of seniority of Person B**

Applicant's Case

- 14.1.1 Person B joined the Firm in September 2016 as a trainee. Mr Bretherton was her training supervisor for 6 months in 2017. Person B described Mr Bretherton as initially being “very friendly very approachable [and] very hands on [in that] he took time to explain things”. Person B stated that his “behaviour changed once he got my personal mobile telephone number”. Mr Bretherton would send text messages outside of working hours and at weekends such that Person B’s boyfriend at the time questioned her about it. However, Person B considered that Mr Bretherton was just being friendly.
- 14.1.2 Person B stated that whilst the text messages were not sexual in nature at any time, Mr Bretherton became “quite angry” if she did not reply, would “be really off” with her in the office, would not speak to her and would not give her work. Person B stated that Mr Bretherton would “often mention that it was him telling the partners if [she] was good enough” which “made [her] feel like [she] owed him”.
- 14.1.3 Person B stated that there were times when she was unsure as to what Mr Bretherton expected from her in circumstances where, on occasion, he would “ask [her] to meet him outside the office if he was angry about something to do with [her] behaviour towards our 'friendship'... and he would lay into me saying that I was not a good enough friend, or I needed to decide what level of friendship I wanted from him because he could not understand why I was so terrible...”
- 14.1.4 Person B noted a change in the messages sent by Mr Bretherton from around July 2018 in that he “started to want to know where [she] was, what [she] was doing, who [she] was talking to and who [she] was with” as well as who she had slept with.
- 14.1.5 Person B commented on her concerns in the change to Colleague 3 to whom she sent an e-message on 17 July 2018 in the following terms:

“... Being close to someone doesn't involve being inappropriate, running to partners saying she's sleeping with X, constantly prying into private and sex life, knocking someone's confidence really low, basically bullying them in social situations, sending them constant streams of texts accusing of shit, sending ridiculous texts asking for promises from a relationship...”

- 14.1.6 Person B stated that “things came to a head” towards the end of her training contract when Mr Bretherton described her as “hot” in a conversation. The following e-message exchange took place:

Mr Bretherton to Person B:

“...So I have been giving your comment on weds (*sic*) [11 July 2018] about inappropriate chat when being married a lot of thought over the last few days and apart from massively upsetting me because I have never been inappropriate to you & that comment is completely out of character, it has also massively spooked me. I have a really important year professionally coming up & I can’t risk having any comments like that being made around work colleagues. I therefore think we should completely stop messaging or seeing each other outside of a pure work context. I will also let the partners know that I think you should sit with somebody else once you join...”

Person B to Mr Bretherton:

“...Once again you’ve completely twist what I said, I never said inappropriate, I said I personally don’t like being told if I’m hot because I find it uncomfortable and rather than having a conversation you blew off the handle. I’m also stunned by ‘I can’t risk any comments being made around work colleagues’ – I have never once made a comment like that to a colleague and I think you know me well enough to know I never would. You were unbelievably rude to me yesterday at the point where I cried in front of [Colleague 3] as I left because I’ve never been made to feel like that in a social situation. Anyway your decision, thanks for letting me know...”

- 14.1.7 Person B qualified as a solicitor into the REF Team in September 2018 and went on a three month secondment which she described as “very well timed” given that she was “terrified about having to join the REF Team again”.

Colleague 1

- 14.1.8 Colleague 1 did not observe or hear of any issue between Person B and Mr Bretherton prior to her complaint in or around July 2018 (he could not recall the exact date). Person B relayed to Colleague 1 that Mr Bretherton had sent messages which, although not sexual, had left her feeling uncomfortable. Person B did not wish to report her complaint formally to the Firm but asked Colleague 1 to speak to Mr Bretherton.
- 14.1.9 Colleague 1 stated that when he did so, Mr Bretherton was upset as he viewed Person B as a friend yet she considered his behaviour to be intrusive. Colleague 1 agreed with Mr Bretherton that he and Person B would cease social contact and that Mr Bretherton would not seek to resurrect the friendship.

Colleague 3

- 14.1.10 Colleague 3 recalled a barbeque at Mr Bretherton’s home [July 2018] at which he was “off” with Person B. Colleague 3 stated that Mr Bretherton thought Person B was

“seeing or going out with one of the other Directors in the Team and he was annoyed about it. He said it was because he had been her Trainee Supervisor and he had put a lot of time and effort into helping Person B in the Team and it he felt that she was not being loyal to him. He was not saying anything specifically to Person B, but he was dropping hints at the BBQ. I think he had thought she had gone to a concert/festival with the other Director, and so was making underhand comments that she picked up on, but he was not specifically saying, and Person B got upset and left early.”

- 14.1.11 Colleague 3 made plain in her evidence that she had no concerns with and never felt uncomfortable around Mr Bretherton.
- 14.1.12 In cross examination, Colleague 3 accepted that Mr Bretherton and Person B got on well, messaged each other outside of work and socialised together. They, along with Colleague 3 and Colleague 5 were part of a friendship group inside and outside of the office.
- 14.1.13 Colleague 3 accepted that there was general office gossip that Person B and another Director within the Firm were having a relationship, which Person B denied and Mr Bretherton did not believe. Mr Bretherton questioned his friendship with Person B in conversations with Colleague 3 and 5 along the lines of “why won’t [Person B] tell me about this relationship since we’re good friends”.
- 14.1.14 With regards to the barbeque at Mr Bretherton’s house in July 2018, Colleague 3 accepted that Mr Bretherton was making “digs” at Person B which caused an awkward atmosphere. She spoke with Mr Bretherton after Person B had left the barbeque and he stated that he did not think that he had done anything wrong and was just being honest. Colleague 3 accepted that after the barbeque, Person B did not want to report the matter to HR, Colleague 1 was asked to find a solution and it was agreed that Mr Bretherton and Person B would cease social contact and further that when Person B returned to the REF Team, they would not work together for a period of time.

Colleague 5

- 14.1.15 Colleague 5 was aware of the issues between Mr Bretherton and Person B. He described them as getting on very well initially but there came a time when Mr Bretherton “got too entwined with Person B in terms of messaging her all the time (and generally being paranoid about Person B’s whereabouts). Mr Bretherton “had suspicions that Person B was seeing one of the other Directors in the REF Team and he became quite obsessed about this”. Colleague 5 acknowledged that there was office gossip in relation to Person B and a Director but asserted that gossip “was probably largely driven by Mr Bretherton”.
- 14.1.16 Colleague 5 recalled Mr Bretherton talking to him about this generally and in particular about a time when Person B was on holiday and the other Director was away at the same time. Mr Bretherton was checking their social media accounts and commenting that they were together despite the fact that Person B had told him she was with friends. Colleague 5 stated that Mr Bretherton was uncomfortable with that and “seemed to be bordering on obsession”. Colleague 5 considered it to be jealousy on the part of Mr Bretherton.

- 14.1.17 Colleague 5 recalled the barbeque at Mr Bretherton's house in July 2018. He stated that before Person B arrived, Mr Bretherton was discussing that he thought she was at a festival with the other Director. When she arrived, he made "lots of sly comments about where she had been, almost like he was trying to catch her out". Colleague 5 stated that he and his partner felt uncomfortable at the time. Person B left and Mr Bretherton asked him to proof read a text he was going to send her which was "along the lines that he was going to cut off contact with her and he did not think it was sensible that they had a relationship anymore (as she was not being honest with him about the relationship he suspected her of having or being a good friend to him)."
- 14.1.18 In cross examination, Colleague 5 did not accept that his recollection had been clouded by subsequent discussions with others. Colleague 5 maintained that, as regards the suspected relationship, his logical conclusion that Mr Bretherton was "obsessive" and "preoccupied" with it was largely due to the fact that his "behaviour didn't seem rational". Colleague 5 accepted that after the barbeque, the plan was that Mr Bretherton and Person B would not work together for a trial period, It was put to him that Mr Bretherton accepted the fallout and moved on very quickly. Colleague 5 stated that he was "not sure about very quickly" and that Mr Bretherton "didn't have an option ... but to accept it".

Colleague 6

- 14.1.19 Colleague 6 was a trainee then a solicitor at the material times. She was good friends with Person B through whom she met Mr Bretherton. Colleague 5 found Mr Bretherton to be "too friendly" such that she "always felt like he encroached [her] personal space when he spoke to [her]".
- 14.1.20 Colleague 6 recalled Mr Bretherton questioning her after the Firm's annual party in December 2018 about where Person B was and who she was with. Around 2.30am, Colleague 6 was at the bar with Mr Bretherton and he was sending e-messages to Person B asking where she was, who she was with and why wasn't she back yet. Mr Bretherton asked Colleague 6 for Person B's room number. Colleague 6 did not provide that information and left the bar for her own room at around 3.30a.m.
- 14.1.21 Colleague 6 stated that when Person B was on holiday with girlfriends and that during the entire weekend, Mr Bretherton was e-messaging her asking where she was, who she was with and for photographs of them all.
- 14.1.22 Colleague 6 was shown some of the messages sent by Mr Bretherton to Person B at the material time.
- 14.1.23 In cross examination, Colleague 6 accepted that to begin with Person B and Mr Bretherton were good friends and got on well. Colleague 6 maintained, despite significant challenge, that Mr Bretherton was "over friendly" and that her recollection had not "been coloured with hindsight" in light of subsequent events.

Colleague 7

- 14.1.24 Colleague 7 was aware that Mr Bretherton was Person B's supervisor from March – September 2017. He recalled that they worked very well together. Their friendship was clear and continued after Mr Bretherton ceased his formal supervision of her.
- 14.1.25 Colleague 7 noted that the friendship deteriorated a number of months after Person B left the REF Team. He attributed that deterioration to Mr Bretherton's suspicions of Person B being romantically involved with another director within the REF Team which left Mr Bretherton "frustrated and disappointed that she was keeping it from him" and which "appeared to motivate him to uncover what was going on and had consequential ramifications for their friendship".
- 14.1.26 Colleague 7 was not present at the barbeque at Mr Bretherton's house in July 2018. He was made aware of what had transpired at that barbecue when Mr Bretherton and Person B approached him thereafter to discuss the same. Colleague 7 described Mr Bretherton's position as him having "explained that he had 'gone too far' trying to prove himself right regarding his assertion that Person B was seeing a member of the team, and that he had made direct allegations and comments to Person B which had resulted in a large falling out". Colleague 7 described Person B's position as her being "clearly upset" in that "she had serious concerns with Mr Bretherton's behaviour towards her. She said that Mr Bretherton had become fixated on the suspicion that she was having a relationship with another member of the team. She told me that Mr Bretherton actively engaged in finding out information about her social life with a view to discovering what she was doing and trying to catch her out. She told me that this culminated in a series of messages between them which she felt were intrusive and out of hand, and she wanted advice on what should be done next".
- 14.1.27 Colleague 7 stated that Person B did not want to raise her concerns with HR but wanted to "bring the interaction to an end and nip things in the bud". Colleague 7 therefore suggested that they were to both completely terminate social contact and should have a "distancing period where they did not speak to one another" and further that they should "remove one another from reach other's social media platforms". Both of them agreed to that proposed course of action.

Respondent's Position

- 14.1.28 Mr Bretherton stated that his relationship with Person B was fundamentally different to the "fantasy sexual relationship" he had with Person A. In circumstances where the REF Team was non-hierarchical, it was not uncommon for colleagues of different seniority to interact socially and in a relaxed manner with each other. Mr Bretherton considered he and Person B to have been good friends to the extent that she assisted in the organisation of his stag do towards the beginning of her seat in the REF Team, attended social events at his home with other members of the REF Team and was one of the first friends to visit his home upon the birth of his child.
- 14.1.29 Mr Bretherton stated that until the "falling out" in July 2018, he believed that Person B was comfortable with their friendship and the manner in which they interacted. Mr Bretherton recognised, with the benefit of hindsight and distance of time, that from approximately April 2018 he became "overly focussed on quizzing Person B about

the nature of her suspected sexual relationship with another legal director within the Firm.

- 14.1.30 Mr Bretherton stated that he reassured Colleague 7 that the “falling out” would not impact on his professional relationship with Person B within the office. Colleague 1 subsequently advised him that he “should avoid close friendships with people in the office and that, going forward, the interactions between [him] and Person B would need to be managed as she had been upset about the fallout”.
- 14.1.31 Mr Bretherton recognised, with the benefit of hindsight and distance of time, that given his position of seniority relative to Person B, he had the potential even if only indirectly to influence her job.

The Tribunal’s Findings

- 14.1.32 The uncontested evidence before the Tribunal was that Mr Bretherton (a) was a Legal Director within the REF Team and (b) was Person B’s supervisor for part of her training contract at the Firm. On the basis of the evidence before it and the partial admission which was properly made, the Tribunal found Allegation 1.3 **proved** on a balance of probabilities.

- 14.2 **Allegation 1.3.1: Used any or all of the inappropriate words as set out in Schedule 7**

Applicant’s Case

- 14.2.1 The Applicant’s case as to the particulars of each incident was predominantly predicated on the evidence of Person B. Person B’s evidence as to each incident has been summarised below, alongside the Respondent’s position and the Tribunal’s findings in tabular form. Any relevant evidence of other witnesses who spoke to the allegation generally or specifically in relation to any particular is summarised above.

Respondent’s Position

- 14.2.2 Mr Bretherton’s position as to the particular incidents alleged have been summarised below alongside the Applicant’s case and the Tribunal’s findings in tabular form. In broad terms, where Mr Bretherton either admitted an incident (on the basis that the exact words were used or words to the effect of what was alleged), denied (in that Mr Bretherton was clear that the incident as alleged did not happen) or not admitted (where Mr Bretherton had no recollection of the specific incident alleged but accepted that it could have).

The Tribunal’s Findings

- 14.2.3 The Tribunal carefully considered each particular alleged in its determination in order to ascertain whether, on a balance of probabilities, it was found proved. Given the number of particulars pleaded and the vast amount of evidence received, a summary of the parties’ positions and the Tribunal’s findings have been set out below in tabular form.

Schedule 7				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
6.	He would lay into me saying that I was not a good enough friend, or I needed to decide what level of friendship I wanted from him because he could not understand why I was so terrible.	<p>Person B recalled a couple of times when Mr Bretherton asked her to meet him outside of the office if he was angry about something her behaviour in their friendship and when he behaved in the manner alleged.</p> <p>Person B was unsure of what Mr Bretherton expected of her relied upon an e-message between her and Colleague 3 on 12 July 2018 which described a conversation with Mr Bretherton in which "he had tried to make [her] promise certain levels of behaviour".</p>	<p>Denied in terms that Person B left the REF Team as a trainee in September 2017 which meant that they would talk and e-message less.</p> <p>Mr Bretherton understood the reasons for reduced communication but asserted that there was a period when Person B "became more aloof and he did talk to her to try to understand why as [he] was worried that [he] had upset her".</p>	<p>The Tribunal considered the conflict of evidence before it and preferred the evidence of Person B and Colleague 3.</p> <p>In so doing, the Tribunal found the particular proved on a balance of probabilities.</p>
67.	Who's the boy? Fair play, I know a dirty weekend.	Person B produced screenshots of contemporaneous e-messages in the terms alleged.	Admitted.	The Tribunal found the particular proved on a balance of probabilities given the evidence before it and the admission which was found to have been properly made.
68.	Mr Bretherton would constantly ask me questions about who I had slept with.	Person B maintained that her sex life was nothing to do with Mr Bretherton.	Not admitted in that Mr Bretherton has no recollection of having said the words as alleged.	The Tribunal considered the conflict of evidence before it, Mr Bretherton's inability to recollect and partial acceptance that it could have occurred.

Schedule 7				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
	Mr Bretherton accused me of sleeping with [her best friend from University].		<p>He accepted that he could have sent Person B messages of the kind alleged in the context of his friendship with her.</p> <p>Mr Bretherton denied that the messages would have been "constant".</p>	In so doing, it found the particular proved on a balance of probabilities.
69.	You have to compete to be my favourite blonde.	<p>Person B stated her response to Mr Bretherton was "that's not a competition I'll be entering" and produced screenshots of contemporaneous e-messages to that effect.</p> <p>Person B stated that her responses "would shut him down".</p>	Admitted in that, whilst he cannot be sure, Mr Bretherton believed that the comment would have been made outside of work as he regularly left work early on a Friday to get home or for after work drinks. It was an exchange of messages between friends and a "light hearted joke".	The Tribunal found the particular proved on a balance of probabilities given the evidence before it and the admission which was found to have been properly made.
70	Yep we have a pretty blonde.	Person B accepted having described a vacation schemer as "super cute" in the e-message exchange.	Admitted that this "isolated and inappropriate comment" was an informal exchange between good friends made outside of work and in circumstances where Person B had "previously commented on other people's appearances" to him.	The Tribunal found the particular proved on a balance of probabilities given the evidence before it and the admission which was found to have been properly made.

Schedule 7				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
71	Mr Bretherton made a comment to me that I was "hot".	Person B told him that the comment was "highly inappropriate ... made [her] feel very uncomfortable". She stated that he "just flipped and said it was a huge year for his career ... he was probably looking at being made a Partner. He said that he thought it best if we did not speak anymore, which [she] was fine with, because [she] did not want anything more to do with him. [She] had pulled him up on him saying something inappropriate to [her] and he was more concerned that [she] would tell everybody else which would impact on his career within the Firm".	Admitted in that the comment was made outside of work in response to a "self-deprecating remark about her appearance". Mr Bretherton asserted that it was an attempt on his part to "be nice and reassure" Person B in making the comment.	Proved on the evidence before the Tribunal and the admission which was found to have been properly made. The Tribunal did not consider the explanation advanced by Mr Bretherton for making the comment as relevant in finding the facts of the particular proved.

- 14.2.4 Having considered each particular in turn, the Tribunal determined that Person B was a composed, articulate, clear, fair and credible witness.
- 14.2.5 The Tribunal considered that even on the admissions made by Mr Bretherton, it was plain that his conduct went far beyond the realms of friendship.
- 14.2.6 The Tribunal therefore found, for the reasons set out above and the findings made on each particular in Schedule 7, Allegation 1.3.1 **proved** on a balance of probabilities.
- 14.3 **Allegation 1.3.2: Sent some or all of the e-messages which were inappropriate in both volume and/or content as set out in Schedule 8**

Applicant's Case

- 14.3.1 The Applicant's case as to the particulars of each incident was predominantly predicated on the evidence of Person B. Person B's evidence as to each incident has been summarised below, alongside the Respondent's position and the Tribunal's findings in tabular form. Any relevant evidence of other witnesses who spoke to the allegation generally or specifically in relation to any particular is summarised above.

Respondent's Position

- 14.3.2 Mr Bretherton's position as to the particular incidents alleged have been summarised below alongside the Applicant's case and the Tribunal's findings in tabular form. In broad terms, where Mr Bretherton either admitted an incident (on the basis that the exact words were used or words to the effect of what was alleged), denied (in that Mr Bretherton was clear that the incident as alleged did not happen) or not admitted (where Mr Bretherton had no recollection of the specific incident alleged but accepted that it could have).

The Tribunal's Findings

- 14.3.3 The Applicant's case as to the particulars of each incident was predominantly predicated on the evidence of Person B. Person B's evidence as to each incident has been summarised below, alongside the Respondent's position and the Tribunal's findings in tabular form. Any relevant evidence of other witnesses who spoke to the allegation generally or specifically in relation to any particular is summarised above.

Schedule 8				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
72.	The messages then started to change. Mr Bretherton started to want to know what I was doing, who I was talking to and who I was with.	<p>Person B spoke of an example when Mr Bretherton was viewing a friend's, (whom she was with that weekend) Instagram stories such that the friend asked Person B who he was.</p> <p>Person B produced a screenshot of her contemporaneous e-message to Colleague 3 in relation to the incident.</p>	Admitted in that Mr Bretherton believed those messages were sent outside of work but could not be certain as Person B had not provided specific details or copies of the messages.	The Tribunal found the particular proved on a balance of probabilities given the evidence before it and the admission which was found to have been properly made.
73.	Mr Bretherton would send me messages constantly asking for photos of me and "the girls".	Person B stated that his incident occurred when she was on a weekend break.	<p>Denied in that, whilst Mr Bretherton did send messages asking for photographs, it was not constant and was when Person B was away from the office either on holiday or at the weekend.</p> <p>Mr Bretherton maintained that they were messages sent by him as a friend, at a time when he and Person B were close friends.</p>	<p>The Tribunal considered the conflict of evidence before it and preferred the evidence of Person B and rejected the assertion made that the messages were sent in the context of their friendship.</p> <p>In so doing, the Tribunal found the particular proved on a balance of probabilities.</p>
74.	As the night went on Mr Bretherton got more and more drunk and after I left the pub I received a stream of texts from [him].	Person B produced screenshots of the contemporaneous e-messages.	Admitted in that it is the same incident as that alleged at Particular 67 and occurred outside of work after post work drinks.	The Tribunal found the particular proved on a balance of probabilities given the evidence before it and the admission which was found to have been properly made.

Schedule 8				
	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
75.	Mr Bretherton sent constant texts asking who I was with and to send photographs of who I was with.	<p>Person B stated that this incident occurred when she was at a festival and culminated in him sending a message “saying that he had been able to get a free ticket and that he was thinking of coming along”.</p> <p>Person B believed that he sent that e-message (which she produced) to “unsettle or unnerve” her but she replied, “saying something along the lines of 'lucky you' to try and let him know [she] was not bothered”.</p>	<p>Denied that the messages were constant in that the e-message chain relied upon (dated 13 July 2018) shows Mr Bretherton having asked for a photograph of who Person B was with on one occasion at a time when he and Person B were still friends and the messaging took place outside of work.</p>	<p>The Tribunal considered the conflict of evidence before it and preferred the evidence of Person B.</p> <p>In so doing, the Tribunal found the particular proved on a balance of probabilities.</p>

14.3.4 The Tribunal therefore found, for the reasons set out above and the findings made on each particular in Schedule 8, Allegation 1.3.2 **proved** on a balance of probabilities.

14.4 **Principle 2 (lack of integrity)**

Applicant's Case

14.4.1 Ms Bruce submitted that Mr Bretherton lacked integrity in that (a) he pursued a course of conduct which he knew or ought to have known was unwelcome and unwanted or, at the very least, risked being so; (b) when Person B made plain that his behaviour towards her was inappropriate he denied the same and sought to embarrass and humiliate her at a social event with colleagues at his home. Further, he sought to blame Person B and hold her responsible for potential consequences on his career; (c) the content and quantity of e-messages wholly inappropriate given his seniority, the fact that he was Person B's former trainee supervisor and had the ability to impact on her career and (d) there was a clear nexus between Mr Bretherton's work and his conduct towards Person B.

14.4.2 Ms Bruce therefore contended that by virtue of his conduct, Mr Bretherton breached Principle 2.

Respondent's Position

14.4.3 Mr Bretherton denied having acted with a lack of integrity in that the particulars relied upon occurred (a) when he was not Person B's Supervisor; (b) when he was her friend; and (c) outside of the office environment.

14.4.4 Further, Mr Bretherton asserted that the messages were intended to be "jovial comments about her appearance" in circumstances where he honestly believed Person B was comfortable with at a time when they were good friends.

The Tribunal's Findings

14.4.5 The Tribunal applied the principles promulgated in Wingate when determining whether Mr Bretherton acted without integrity as regards Person B. In so doing, the Tribunal considered the nature of the misconduct found proved and the admissions made. The Tribunal did not accept the suggestion that Mr Bretherton's behaviour was part of their friendship which he believed Person B was comfortable with until the "falling out". The Tribunal did not accept the suggestion that Mr Bretherton did not lack integrity as the proven misconduct occurred outside of the office and after he ceased supervision of Person B

14.4.6 The Tribunal determined that no solicitor acting with integrity would have communicated, verbally and by e-message, with a trainee in the manner that Mr Bretherton did. The Tribunal therefore found the breach of Principle 2 **proved** on a balance of probabilities.

14.7 **Principle 6 (public trust)**

Applicant's Case

- 14.7.1 Ms Bruce submitted that the public would be rightly dismayed at the treatment of Mr Bretherton, a 36 year old Legal Director, meted out to a trainee within the department in circumstances where there existed a demonstrable lack of insight, failure to apologise and attempt to apportion blame on Person B for the possible consequences of his own behaviour.
- 14.7.2 Ms Bruce therefore submitted that, by virtue of his conduct, Mr Bretherton breached Principle 6.

Respondent's Position

- 14.7.3 Mr Bretherton admitted that, as a consequence of his actions, he unintentionally breached undermined public trust in him, in the profession and in the provision of legal services contrary to Principle 6.

The Tribunal's Findings

- 14.7.4 The Tribunal paid significant regard to the power imbalance when considering the content of the communications, verbally and by e-message, between Mr Bretherton and Person B. The Tribunal noted the unhealthy and obsessive interest in Person B's personal life, his distorted view of their friendship and what he considered that required of Person B as well as the comments he made in relation to her appearance. The Tribunal determined that Mr Bretherton's entire approach to and expectations of his friendship with Person B undermined public trust in the profession.
- 14.7.5 Therefore, on the basis of the proven particulars, the finding set out above and the admission made, the Tribunal found the breach of Principle 6 **proved** on a balance of probabilities.

14.8 **Outcome 11.1 (unfair advantage)**

Applicant's Case

- 14.8.1 Ms Bruce submitted that Mr Bretherton took unfair advantage of Person B as a consequence of the manner and extent to which he made her the object of his attention which went far beyond the scope of a professional working relationship.
- 14.8.2 Ms Bruce therefore submitted that, in so doing, he failed to achieve Outcome 11.1.

Respondent's Position

- 14.8.3 Mr Bretherton made plain that he did not seek to take advantage of Person B and "was not alive to the risk that [he] might be doing so unwittingly". Mr Bretherton accepted that he "unintentionally took advantage" of her but was not aware of the same at the material time.

- 14.8.4 Mr Bretherton admitted that as a consequence of his actions, he unintentionally took unfair advantage of Person A and in so doing failed to achieve Outcome 11.1.

The Tribunal's Findings

- 14.8.5 On the basis of the proven particulars and the partial admission made, the Tribunal found the failure to achieve Outcome 11.1 **proved** on a balance of probabilities.

15. Allegation 1.4

15.1 Sexual motivation / abuse of position/unfair advantage

Applicant's Case

- 15.1.1 Ms Bruce contended that Mr Bretherton's conduct towards Person B was sexually motivated in that (a) he used sexualised words and behaviour, (b) he asked her questions about her sexual experiences, (c) he implied that she was in competition with other colleagues by reference to attractiveness (d) his repeated and obsessive nature of his attention to where she was, who she was with and whether she was having a relationship with another person within the Firm and (e) he described her as "hot" which led to the demise of their friendship.

Respondent's Position

- 15.1.2 Mr Bretherton did not accept that his behaviour with Person B was sexually motivated and asserted that it was "simply in the context of [their] friendship". Ms Carpenter KC submitted that aligned with the fact that Person B herself did not allege sexual motivation on the part of Mr Bretherton.

The Tribunal's Findings

- 15.1.3 The Tribunal found, as set out above, that Mr Bretherton's approach to his friendship with Person B was unhealthy, obsessive and distorted. Those findings did not necessarily equate to sexual motivation. In circumstances where Person B did not consider his conduct to have been sexually motivated and cognisant of the fact that there were two instances in which Mr Bretherton commented on her appearance, the Tribunal found the allegation of sexual motivation **not proved** on a balance of probabilities.

15.2 Abuse of Position

- 15.2.1 For the reasons set out above at §14.1.32, the Tribunal found the allegation of abuse of position **proved** on a balance of probabilities.

15.3 Unfair Advantage

- 15.3.1 For the reasons set out above at §14.8.5 the Tribunal found the allegation of taking unfair advantage of Person B **proved** on a balance of probabilities.

16. **Allegation 1.5:**

16.1 In January 2019, but in a position of seniority in relation to her, behaved inappropriately towards Person C including using any or all of the inappropriate words as set out in schedule 9.

Applicant's Case

16.1.1 As regards the Firm's annual party in January 2019, Person C stated that she saw Mr Bretherton and another colleague throwing ice cubes over the balcony and onto the floor below. Person C recalled that Mr Bretherton proceeded to put ice cubes down the back of her dress. She firmly told him "no" and he asked her to tell him where the ice cubes were going, "down [her] cleavage or elsewhere". Person C left the venue upset, told Colleague 1 the following day that she would discuss it on the next working day in the office which she did. Colleague 1 was very supportive and Person C did not want to make a formal complaint to HR.

16.1.2 In cross examination, Person C stated that the throwing of ice cubes was "unsafe and immature". Person C rejected the suggestion that she did not tell Mr Bretherton "no" when he put ice cubes down her back or that he could not have heard her say that in circumstances where she "locked eyes with him". Person C rejected the suggestion that she did not show Mr Bretherton that she was upset given that she "left the club immediately" after the incident and was crying.

Person A

16.1.3 Person A described standing on a balcony with Mr Bretherton and Person C throwing ice cubes at people below them. Person A went to the bathroom and upon her return she noticed that Person C had gone. Person A asked Mr Bretherton where she was and he stated that she had gone back to the hotel. Person C later told Person A that "Mr Bretherton had pulled her dress and asked her where she wanted the next ice cube to go and she got upset and left".

Colleague 1

16.1.4 Colleague 1 was present at the work event where the incident occurred in January 2019 but did not witness the same. He was told at the event that Person C had been upset during the course of the evening. Colleague 1 saw Person C at the train station the following day and relayed that he understood her to have been upset the night before and asked if she wanted to talk about it. Colleague 1 did not recall her response but the following day, in the office, Person C told Colleague 1 that Mr Bretherton had put ice cubes down the back of her dress and it upset her. She did not want to report it formally to HR but wanted Colleague 1 to speak with him. Colleague 1 did so. Mr Bretherton was very apologetic and regretful but considered that his actions constituted "banter/larking around".

Respondent's Position

- 16.1.5 Mr Bretherton never worked with Person C directly but she attended REF Team social events she was friends with Person A. Mr Bretherton and Person C “were always quite friendly towards each other”.
- 16.1.6 The incident alleged occurred in the early hours of the morning after drinks and the Firm’s annual party after which a group of colleagues went onto a nightclub. He was upstairs in the nightclub with Person A and Person C where they were all throwing ice cubes over the terrace onto the people below. Mr Bretherton stated that the game progressed to them “jokingly throwing ice cubes at each other”.
- 16.1.7 Mr Bretherton “went to put an ice cube down the back of Person C’s dress” and “jokingly saying to Person C ‘you tell me where this is going’”. At no point did Mr Bretherton recollect Person C telling him to stop or that she had left the club.
- 16.1.8 Mr Bretherton first became aware when Colleague 1 spoke to him about it at work and relayed that Person C was upset and had spoken to her supervisor. Mr Bretherton was “shocked and upset” given that he “had no idea she had become upset by what was ultimately a very childish ... harmless game”. Mr Bretherton immediately apologised to Colleague 1 and was told that Person C did not want to make a formal complaint to HR.
- 16.1.9 Mr Bretherton was “incredibly shocked” to find out that the Applicant was investigating the incident with Person C in circumstances where he (a) believed that the matter was closed and (b) it was not investigated by the Firm.

The Tribunal's Finding's

- 16.1.10 The Applicant’s case as to the particulars of each incident was predominantly predicated on the evidence of Person C. Person C’s evidence as to each incident has been summarised below, alongside the Respondent’s position and the Tribunal’s findings in tabular form. Any relevant evidence of other witnesses who spoke to the allegation generally or specifically in relation to any particular is summarised above.

	Particular	Applicant's Case	Respondent's Position	Tribunal's Findings
76.	Mr Bretherton started to put ice cubes down the back of my dress.	Person C stated that it was Mr Bretherton and a trainee throwing ice cubes, she did not participate and when he put ice cubes down the back of her dress she turned around and very firmly said 'no'.	Mr Bretherton admitted the incident and asserted that it occurred outside of the office in a nightclub following the Firm's annual party.	The Tribunal found the particular proved on a balance of probabilities given the evidence before it and the admission which was found to have been properly made.
77.	"You tell me where this is going, your cleavage or elsewhere".	Person C maintained that Mr Bretherton used the words as alleged.	Mr Bretherton admitted to having said "you tell me where this is going" or words to that effect. Mr Bretherton denied that he referred to Person C's cleavage.	The Tribunal considered the conflict of evidence before it and preferred the evidence of Person C. In so doing, the Tribunal found the particular proved on a balance of probabilities.

16.2 Principle 2 (lack of integrity)

Applicant's Case

- 16.2.1 Ms Bruce submitted that Mr Bretherton lacked integrity in that (a) he pursued a course of conduct which he knew or ought to have known was unwelcome and unwanted or at the very least risked being so; (b) he failed to apologise to Person C after she “firmly said no” and continued his inappropriate and sexualised behaviour by stating “you tell me where this is going your cleavage or elsewhere” or words to that effect which plainly lacked insight; and (c) the inappropriate action of putting ice cubes down the back of a more junior colleagues’ dress in any event.
- 16.2.2 Ms Bruce submitted that no solicitor acting with integrity would have behaved in the manner set out above and in so doing, Mr Bretherton breached Principle 2.

Respondent's Position

- 16.2.3 Mr Bretherton denied having acted with a lack of integrity in that it was (a) an isolated incident; (b) a childish game that Person C was participating in and (d) he did not hear Person C tell him to stop or refer to her cleavage.

The Tribunal's Findings

- 16.2.4 The Tribunal considered, on balance, that the particulars found proved amounted to an unacceptable childish game in which Mr Bretherton made reference to an intimate part of Person C’s body but which was isolated in nature and did not constitute a lack of integrity.
- 16.2.5 The Tribunal therefore found the breach of Principle 2 **not proved** on a balance of probabilities.

16.3 Principle 6 (public trust)

Applicant's Case

- 16.3.1 Ms Bruce submitted that, notwithstanding the fact that Mr Bretherton had been warned about making inappropriate comments to Person A in October 2017 and Person B in July 2018, he still elected to touch a junior colleague by putting ice cubes down the back of her dress. He further chose to reference an intimate part of her body (her cleavage) such that she left the venue in tears.
- 16.3.2 Ms Bruce contended that, in so doing, Mr Bretherton undermined public trust in the profession and the provision of legal services contrary to Principle 6.

Respondent's Position

- 16.3.3 Mr Bretherton admitted that, as a consequence of his actions, he unintentionally undermined public trust in him, in the profession and in the provision of legal services contrary to Principle 6.

The Tribunal's Findings

16.3.4 The Tribunal accepted the contention that Mr Bretherton failed to take heed of the previous warnings he had been given as regards his inappropriate comments to Person A and B. The Tribunal noted the time and circumstances of this isolated incident namely it was the early hours of the morning after the Firm's annual party and in relation to Person C with whom no issue had previously been raised. Notwithstanding those considerations, the fact remained that Mr Bretherton, in his position of seniority, chose to behave in the manner that he did with a 19 year old junior colleague. In so doing, the Tribunal determined that he undermined public trust in the profession.

16.3.5 Therefore, on the basis of the proven particulars, the finding set out above and the admission made, the Tribunal found the breach of Principle 6 **proved** on a balance of probabilities.

16.4 **Outcome 11.1 (unfair advantage)**

Applicant's Case

16.4.1 Ms Bruce contended that Mr Bretherton took unfair advantage of Person C to behave in the manner that he did conscious of his seniority in position over her.

Respondent's Position

16.4.2 Mr Bretherton stated that he "never sought nor intended to take unfair advantage of Person C" and it "never occurred to him at the time that [his] behaviour was inappropriate due to [his] more senior position". He since came to realise that his behaviour was inappropriate and admitted that he "unwittingly" took unfair advantage of Person C and in so doing failed to achieve Outcome 11.1.

The Tribunal's Findings

16.4.3 On the basis of the proven particulars and the partial admission made, the Tribunal found the failure to achieve Outcome 11.1 **proved** on a balance of probabilities.

17. **Allegation 1.6**

17.1 Sexual motivation/abuse of position / unfair advantage

Applicant's Case

17.1.1 Ms Bruce submitted that Mr Bretherton's conduct was sexually motivated in terms of the words used (cleavage) and behaviour exhibited (putting ice cubes down her dress). Ms Bruce contended that his behaviour was in pursuit of immediate sexual gratification and/or a future sexual relationship.

Respondent's Position

17.1.2 Ms Carpenter KC submitted that, even if the word “cleavage” was used, Mr Bretherton’s conduct could not be classified as sexually motivated. Person C did not allege sexual motivation, Colleague 1 did not recall her mention sexual motivation when she complained to him about Mr Bretherton’s conduct and the isolated incident was “no more than a silly game”.

The Tribunal's Findings

17.1.3 The Tribunal did not accept that either the comment made as regards Person C’s cleavage or the act of putting ice cubes down the back of her dress was sexualised or amounted to demonstrable sexual motivation on the part of Mr Bretherton.

17.1.4 The Tribunal did not accept that Mr Bretherton abused his position of seniority notwithstanding the unacceptable the childish game which was isolated in nature.

17.1.5 The Tribunal did accept, however, that Mr Bretherton’s conduct amounted to him taking unfair advantage of Person C for the reasons set out above §16.4.3.

17.1.6 The Tribunal therefore found the allegations of sexualised and/or sexual motivation **not proved** on a balance of probabilities.

17.1.7 The Tribunal found the allegation of taking unfair advantage **proved** on a balance of probabilities.

Previous Disciplinary Matters

18. None.

Mitigation

19. Ms Carpenter KC submitted that Mr Bretherton, very much regretted his misconduct and apologised to all concerned. He made admissions at the earliest opportunity as regards Person A. He did not know of the further allegations until they came to light during the course of the Applicant’s investigation. In relation to Persons B and C, upon receipt of the Applicant’s Notice of Referral to the Tribunal in October 2021, he made admissions to allegations pertaining to them. That was at the first opportunity in circumstances where they did not form part of the Firm’s investigation given that he apologised to them at the material time and the measures put in place by the Firm appeared to have been the end of the matter. All admissions made by Mr Bretherton at those early stages were repeated in pleadings filed at and evidence before the Tribunal.

20. Ms Carpenter KC reminded the Tribunal of Mr Bretherton’s extensive cooperation in respect of historic allegations which occurred in 2017 – 2018 (Person A), 2018 (Person B) and 2019 (Person C).

21. Ms Carpenter KC asserted that Mr Bretherton had demonstrated insight into his failings by way of admissions made, apologies given and co-operation throughout.

She submitted that the additional particulars found proved should not detract from the admissions made at the earliest opportunity.

22. Ms Carpenter KC reminded the Tribunal of the delay in bringing proceedings namely three years of investigation by the Firm and the Applicant and five years post the first incidents for Tribunal consideration the first incidents. That delay, she submitted, had caused immeasurable stress and anxiety to Mr Bretherton and his family.
23. Ms Carpenter KC commended the Tribunal's Guidance Note on Sanctions and adopted that staged approach contained therein.
24. As regards culpability in respect of Person A, Ms Carpenter KC submitted that Mr Bretherton "was not at its highest" in terms that; (a) he accepted his behaviour was sexual, (b) he understood at the material time that it was reciprocated, (c) he genuinely believed it was a "consensual sexual fantasy relationship" despite the Tribunal finding against him; (d) there was no motivation for misconduct on his part at the material time as he did not think that he was doing anything wrong; (e) he did not appreciate the power imbalance at the time.
25. As regards culpability in respect of Person B, Ms Carpenter KC submitted that culpability was "not at its highest" in terms that the Tribunal rejected the allegation that it was sexual and accepted that it occurred during the course of a friendship notwithstanding the differing expectations of that friendship on Mr Bretherton's part. At the material time, Mr Bretherton did not appreciate the power imbalance and was not aware that Person B was uncomfortable until she expressed the same after the "hot" comment.
26. As regards culpability in respect of Person C, Ms Carpenter KC reminded the Tribunal that it had not found the incident to have been sexual, accepted that it was a "stupid and spontaneous" game which occurred in the early hours of the morning at a nightclub after the Firm's annual dinner.
27. Ms Carpenter KC urged the Tribunal to take into account distress on Mr Bretherton for incorrectly being accused of sexual misconduct regarding Persons B and C in circumstances where they should never have been brought by the Applicant. It caused deep upset to Mr Bretherton and his family for the case to have been presented as a course of sexual misconduct against three complainants.
28. Ms Carpenter KC submitted that Mr Bretherton never intentionally or recklessly abused his position of power as, at all material times, it did not occur to him that was the case. She further submitted that, at all material times, Mr Bretherton was not the most experienced solicitor in that he was a Director as opposed to a partner.
29. As regards harm, Mr Bretherton accepted that he sadly caused harm to Person A as well as, to a lesser extent, Persons B and C. He had no idea at the time of having done so. Mr Bretherton was distressed to read of the impact statements of each complainant. Ms Carpenter KC submitted that the harm caused to Person A was lesser than that set out in her impact statement given Mr Bretherton's evidence that she stated at the material time that she enjoyed their interactions and it was fun. Ms Carpenter KC contended that whilst the impact statement contained medicalised terminology as to

the harm caused, there was no medical evidence to support the impact as expressed by Person A. Ms Carpenter KC further submitted that any harm caused would have been exacerbated by the delay in bringing proceedings before the Tribunal.

30. Ms Carpenter KC contended that all aggravating features to the misconduct were contained within the pleaded allegations in respect of which findings had already been made.
31. As to mitigating features, Ms Carpenter KC submitted that the misconduct found was predicated on errors of judgment exercised by Mr Bretherton who cooperated extensively with the Firm, the Applicant and the Tribunal throughout the lengthy process. He made open and frank admissions to certain allegations and demonstrated genuine insight in so doing as well as the apologies given.
32. By November 2018 Mr Bretherton altered his working practices, reduced interactions with the junior members of the REF Team and focused more on his family and young child. He took on a lead role at the Firm's Thrive Committee which dealt with gender inequality in the workplace.
33. Post resignation from the Firm in September 2019, Mr Bretherton joined Gunnercooke as a partner in their REF Team. Mr Bretherton predominantly worked from home, had no supervision responsibilities and dealt mainly with mid-level lawyers as and when required. Ms Carpenter KC submitted that there was no future risk to the profession, the public or colleagues given the changes made by Mr Bretherton, the fact that it was four years since the last incident, there had been no incidents/complaints since and no conditions placed on his practising certificate despite the admissions he had made in April 2020. It had taken three years from being reported to the Applicant for proceedings to be heard before the Tribunal. That delay had caused enormous stress and anxiety to Mr Bretherton which should be taken into account when determining sanction.
34. Ms Carpenter KC reminded the Tribunal that Mr Bretherton was of previous good character and had held an unblemished regulatory record prior to the findings made. Ms Carpenter KC referred the Tribunal to the two character references filed on his behalf.
35. Ms Carpenter KC submitted that given all relevant factors, the proportionate and appropriate sanction was either a high financial penalty or a short period of suspension. Ms Carpenter KC referred the Tribunal to Mr Bretherton's Statement of Means dated 14 November 2022 and contended that if the financial penalty was high, that would impact on Mr Bretherton's ability to pay the Applicant's costs therefore a short period of suspension may be more appropriate.

Sanction

36. The Tribunal referred to its Guidance Note on Sanctions (Tenth Edition: June 2022) when considering sanction. The Tribunal reminded itself of the fundamental purpose of sanction promulgated in Bolton v The Law Society [1994] 1 WLR 512 namely:

“...a penalty may be visited on a solicitor ... in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way ...

... to be sure that the offender does not have the opportunity to repeat the offence ...

... the most fundamental of all; to maintain the reputation of the solicitors’ profession ... a profession’s most valuable asset is its collective reputation and the confidence which that inspires ...”

37. In considering culpability, the Tribunal found that Mr Bretherton’s motivation as regards Person A was sexually motivated, controlling and unreasonable as regards Person B and inappropriate, laddish and childish as regards Person C. He was in a position of authority and there existed a demonstrable theme of misogyny directed at young women. The Tribunal found that his conduct in relation to Persons A and B was planned but accepted that it was spontaneous in relation to Person C. All of his conduct was plainly in breach of his position of trust as a Legal Director within the Firm and their junior positions in the same. Mr Bretherton had sole control and bore sole responsibility for his actions. The Tribunal determined that his involvement on the Firm’s Thrive Committee and flexible approach to working given his paternal responsibilities was advanced in an attempt to camouflage and detract from his nefarious misconduct.
38. The Tribunal found that Mr Bretherton had caused significant and profound harm to Person A. The Tribunal accepted Person A’s written evidence on that point and her oral evidence in which she stated:
- “... I was scared that if once I started telling my story or if I ever told anyone about what Mr Bretherton made me do then I would lose my career ... I haven’t been able to make as much progression over the last six years ... because of what’s happened to me ... I’ve had to take time off medically, I’ve had to change teams, so I’ve had to learn a whole new area of law ... I’ve had to miss an exam ... I’m missing weekly (*sic*) of university work just by being here, my marks fell, I’ve had to work really hard just to do myself justice I know I can do academically and I’ve had to overcome so much doubt in myself ...
- ... I’ve had to deal with so much more than anyone else in my intake and I feel really sad thinking about where I could be or if it wasn’t Mr Bretherton who interviewed me that I would have gone into a different team ... I really just had to find my way myself ...”
39. The Tribunal found that Mr Bretherton caused significant harm to Person B such that the Firm had to put a procedure in place upon her qualification. Person B had to consider whether she wanted to return to the REF Team and the procedure deployed was required to curtail Mr Bretherton’s interaction with her at a time when he was a Legal Director within the Team looking towards partnership.
40. The Tribunal found, on the basis of her frank evidence, that there had been minimal harm caused to Person C.

41. The Tribunal determined that Mr Bretherton's misconduct caused significant harm to and gravely damaged the reputation of the profession. It also caused harm to the public in that it had the potential to discourage young women from entering the solicitors' profession particularly given Person A's evidence on that point namely that she:

“... thought that was how women [were] treated in the profession ...”
42. The Tribunal considered that the serious harm caused in all respects was eminently foreseeable given the shocking and abhorrent misconduct of Mr Bretherton.
43. In considering aggravating features the Tribunal found in respect of Persons A and B that it was deliberate, calculated and repeated over a protracted period of time. Mr Bretherton's misconduct was intrusive, indecent and took place both at work and outside of work. Whilst the Tribunal accepted that Person A wanted to be noticed within the Firm, Mr Bretherton took advantage of her age, naivete and the fact that it was her first job after leaving school. It was plain to the Tribunal that Person B considered them to be friends but that Mr Bretherton's expectations in that regard were overbearing, obsessive, intrusive and driven by a desire to control.
44. In considering mitigating features, the Tribunal did not accept that Mr Bretherton had shown insight. The admissions he made were minimal and qualified in circumstances where he either (a) sought to deflect blame onto another or (b) was faced with contemporaneous documentary and oral evidence.
45. The Tribunal accepted that the investigation and proceedings would undoubtedly have caused stress and anxiety to Mr Bretherton and his family. However, those adverse consequences were predicated entirely on his own behaviour and the choices he made at all material times to behave in the manner that he did.
46. Weighing all of the factors above in the balance, the Tribunal assessed the misconduct found as extremely serious such that imposing No Order or a Reprimand was neither appropriate or proportionate.
47. Despite the fact that the Tribunal had the power to impose an unlimited financial penalty, given the seriousness of the misconduct found and the means of Mr Bretherton, the Tribunal did not consider a financial penalty to be appropriate or proportionate.
48. In circumstances where the misconduct transcended profession practice and personal life, the Tribunal did not consider that a Restriction Order, either alone or in conjunction with another Order, was appropriate.
49. The Tribunal carefully considered the submissions made by Ms Carpenter KC as to a short period of suspension. The Tribunal considered the same in the context of its fundamental duty to protect the overarching public interest namely; (a) protection of the public from harm, (b) declaration and upholding of proper standards within the profession and (c) maintenance of public confidence in the regulation of solicitors. Having assessed Mr Bretherton's misconduct at the highest end of the spectrum the Tribunal determined that suspension for any period of time failed to accurately reflect the grave departure from the standards expected of solicitors.

50. The Tribunal therefore determined that an Order Striking Mr Bretherton off the Roll of Solicitors was the appropriate and proportionate sanction.

Costs

51. Mr Western applied for the Applicant's costs fixed in the sum of £23,550.00.
52. Ms Carpenter KC did not oppose the application.

The Tribunal's Findings

53. The Tribunal was surprised at the amount of costs applied for given the length of the substantive hearing, the number of Case Management Hearings convened to manage the case and the complexity of the issues involved. Notwithstanding those factors, the Tribunal considered the application on the basis that it was made and in so doing determined that it was eminently reasonable and proportionate to the case.
54. The Tribunal therefore GRANTED the application.

Statement of Full Order

55. The Tribunal Ordered that the Respondent, OLIVER EDWARD BRETHERTON, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £23,550.00.

Dated this 20th day of September 2023
On behalf of the Tribunal

G Sydenham

G Sydenham
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
20 SEPT 2023