

States of Guernsey



**EMPLOYMENT & DISCRIMINATION TRIBUNAL**

**APPLICANT:** **Mrs Rosemarie Henderson**  
Represented by: Rachel Richardson (Associate Solicitor)

**RESPONDENT:** **Channel Island Ceramics**  
Represented by: Advocate Peter Ferbrache

**Witnesses:**

**Called by the Applicant:**

Mrs Rosemarie Henderson  
Mr Michael Henderson

**Called by the Respondent:**

Mr John Litchfield  
Mr Andrew Wilkinson  
Mr Jeff Le Messurier  
Mr Mike Collenette  
Ms Rachael Barclay  
Mr Andrew Batiste

*By Witness Statement*  
Mr Tim Barnes  
Mr Chris Lacheur

**Decision of the Tribunal Hearing held on 15 & 22 September & 20 October 2010**

**Tribunal Members:** Mr Peter Woodward, Mrs Alison Girollet and Mrs Paula Brierley

**UNANIMOUS DECISION**

Having considered all the evidence presented, whether recorded in this judgment or not, and the representations of both parties, and having due regard to all the circumstances, the Tribunal found that, under the provisions of the Employment Protection (Guernsey) Law, 1998 as amended that the Applicant was subject to a fair dismissal.

In relation to the claim of sex discrimination, having considered all the evidence presented, whether recorded in this judgment or not, and the representation of both parties and having regard to all the circumstances, the Tribunal found that under the provision of the Sex Discrimination (Employment) (Guernsey) Ordinance 2005 that the Applicant was not discriminated against.

In view of the above findings, the claim is dismissed.

Mr Peter Woodward

9 December 2010

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Signature of the Chairman

Date

NOTE: Any award made by a Tribunal may be liable to Income Tax  
Any costs relating to the recovery of this award are to be borne by the Employer

Any Notice of an Appeal should be sent to the Secretary to the Tribunal within a period of one month beginning on the date of this written decision. The detailed reasons for the Tribunal's Decision are available on application to the Secretary to the Tribunal, Commerce and Employment, Raymond Falla House, PO Box 459, Longue Rue, St Martins, Guernsey, GY1 6AF.

**The Law referred to in this document is The Employment Protection (Guernsey) Law, 1998, as amended.**

**Extended Reasons**

**1.0 Introduction**

- 1.1 The Applicant, who was represented by Rachel Richardson, gave witness testimony, which was also supported by documentary evidence (EE1 to EE8 Refer).
- 1.2 The Applicant called the following witness:-  
Mr Michael Henderson
- 1.3 The Respondent was represented by Advocate Peter Ferbrache.
- 1.4 Advocate Ferbrache called the following witnesses:-

Mr John Litchfield  
Mr Andrew Wilkinson  
Mr Jeff Le Messurier  
Mr Mike Collenette  
Ms Rachael Barclay  
Mr Andrew Batiste

By Witness Statement  
Mr Tim Barnes  
Mr Chris Lacheur

These witnesses were supported by documentary evidence (ER1-6 Refer).

- 1.5 At the outset of the hearing the parties confirmed that:-
  - 1.5.1 It was agreed that the effective date of termination was 5 May 2010.
  - 1.5.2 The salary figures as detailed in the Applicant's ET1 were agreed by the Respondent.
- 1.6 The Applicant claimed that she had been both unfairly dismissed and subject to sexual discrimination whilst in the Respondent's employment.
- 1.7 The Respondent admitted that they had dismissed Mrs Henderson however they stated that this was a fair dismissal based on grounds of misconduct by the Applicant and that during her employment with the Respondent Mrs Henderson had not suffered any detriment as a result of her gender. Allegations of bullying behaviour by the Respondent toward the Applicant were strongly refuted

**2.0 Facts Found**

- 2.1 The Applicant commenced employment with the Respondent on 1 February 2007 in the role of "Designer Furniture Sales" and the "Effective Date of Termination" was 5 May 2010. The Applicants earnings in the final six months of her employment were agreed by both parties as £13,103.76

- 2.2 The Applicant was one of several individuals employed by the Respondent to sell bespoke, kitchens, bathrooms and other house furnishings. The company was founded approximately 32 years ago and employs other staff such as kitchen / bathroom fitters, carpenters and tile layers.
- 2.3 The role undertaken by the Applicant included initial contact with the client, followed by the specification and layout of new installations, agreement to final plans / quotations, and then liaison with the client until the completion of the agreed works. This work was sometimes of a complex and intensive nature over many months requiring a close and continuing client contact; however it could also include the sales of relatively simple proprietary products where the client relationship was limited to a few minutes contact.
- 2.4 Prior to her commencement of employment the Applicant was issued with a letter of appointment which amounted to some 12 pages of information relating to her specific duties, the Respondent's sales & quotation process and details of the services and products that could be made available. (Pages 1 to 12 ER1, Tab 1 refer)
- 2.5 A "Statement of Particulars of Terms of Employment" was issued to the Applicant on 1 March 2007 which included reference to the Respondent's grievance and disciplinary procedures, their policy of "equal opportunities" and the existence of a company handbook. (Pages 13 to 36 ER1, Tab1 refer)
- 2.6 On 12 December 2009, the Applicant submitted a letter of resignation to Mr Wilkinson stating she had been bullied by Mr Litchfield and that she had not received incremental salary payments which had been committed to her in her contract of employment. She alleged that mistakes made by male colleagues were ignored whilst she was being continually critiqued. She stated she had been forced to resign with immediate effect (page 232 ER1 Tab 6 refers)
- 2.7 On 16 December 2009, a meeting took place between the Applicant, Mr Litchfield and Mr Wilkinson at the Respondent's premises. The minutes of this meeting (pages 227 to 230 ER1 Tab 6 refer) contain reference by the Applicant to the alleged bullying behaviour by Mr Litchfield, as well as details of client complaints alleged by Mr Litchfield as being the outcome of work undertaken by the Applicant. During this meeting a discussion took place as to the Applicant's working relationships with a number of her colleagues, and in particular her working relationship with Mr Le Messurier. The meeting ended with an agreement that Mrs Henderson would resume her employment with the Respondent and that Mr Litchfield would develop an action plan with recommendations that both parties could agree to. Further meetings took place between the Applicant and Mr Litchfield on the 19 and 23 December 2009.
- 2.8 Mr Litchfield subsequently developed a memorandum, entitled "A Way Forward", which was agreed at a meeting with the Applicant on 29 December 2009 (EE5 refers); this detailed some proposed solutions to the apparent disagreements over client requirements and referred the Applicant to company policies on documentation requirements. In paragraph 8 of this memorandum, Mr Litchfield made reference to alleged communication failure / deficiencies by the Applicant with both clients and colleagues. (EE5 refers)
- 2.9 On 4 January 2010 Mr Wilkinson met with the Applicant to discuss alleged verbal abuse by the Applicant toward Mr Le Messurier. The minutes of the meeting recorded that the Applicant did not disagree she had been verbally abusive however she stated that this was in response to verbal abuse toward her by Mr Le Messurier (page 221 ER1 Tab 6 refers)

- 2.10 On 2 February 2010 Mr Litchfield met with the Applicant and issued her with a recorded verbal warning which referenced client complaints from “Company” and Mrs M together with alleged inappropriate behaviour toward Mr Le Messurier. The warning was to be retained on file for six months; there was also provision in the document for the Applicant to appeal against the disciplinary action to either Mr Batiste or Mr Le Lacheur. (Page 218 ER1 Tab 6 refers). The Tribunal notes that Mrs Henderson did not appeal this decision.
- 2.11 Subsequently, on 28 April 2010, Mr Litchfield met with the Applicant; During this meeting Mr Litchfield alleged that her work colleagues had complained to him that she was continuing to bully Mr Le Messurier; the minutes taken by Mr Wilkinson record that Mrs Henderson had “emphatically refuted” this allegation. The Applicant was advised that a meeting was to be scheduled with Mr Litchfield and, as the matter was serious she was advised that she should have “someone” present with her at this meeting as it might lead to further disciplinary actions against her. The Applicant was instructed that she would be required to work in the back office until the formal meeting took place. (Page 217 ER1 Tab 6 refers).
- 2.12 A confirmatory email was issued to Mrs Henderson advising her that she should attend a “Disciplinary Meeting” with Mr Litchfield and Mr Wilkinson, on 5 May 2010, in the company’s conference room. The email stated that in view of the seriousness of the allegations that they could lead to disciplinary action “up to and including dismissal” if proven. Mr Litchfield further advised Mrs Henderson that she was welcome to bring a friend, work colleague or anyone else of her choosing to this meeting. A detailed list of 12 allegations was included in the email (Page 215 ER1 Tab 6 refers).
- 2.13 A disciplinary meeting was held with the Applicant at 11.00 am on 5 May 2010; the Applicant was accompanied by Mr Tim Barnes as an “employee colleague”. Mr Litchfield led the meeting; also in attendance were Mr Wilkinson and Mr Castle (Castle Defence). The minutes record the allegations of client complaints and allegations in relation to Mrs Henderson’s working relationships with her colleagues. The minutes also record responses from Mrs Henderson to these allegations. The meeting concluded at circa 3.00 pm with Mr Litchfield stating that the Applicant would be suspended on full pay until a management decision on these issues had been determined. (Pages 201 to 207 ER1 Tab 6 refer)
- 2.14 On May 8 2010, a letter was issued by Mr Litchfield to the Applicant which stated that a decision had been made to terminate her employment with two months paid notice. The letter provided for an appeal to Mr Batiste if requested by the Applicant, the appeal to be lodged by 13 May 2010 latest. (Pages 188 to 189 ER1 Tab 6 refer)
- 2.15 An email was issued to CIC employees on 9 May 2010 by Mr Litchfield stating that the Applicant had left the company.
- 2.16 The appeal was heard by Mr Batiste on 14 May 2009. In an email sent to the Applicant dated 16 May 2010 Mr Batiste confirmed that he upheld the decision to dismiss. (Page 187 ER1 Tab 6 refers)

### **Mr John Litchfield**

- 3.1 The witness read from a witness statement to be found in bundle ER1 (Pages 79 to 89 Tab3 refers). Mr Litchfield is the Managing Director of CIC and has performed this role for 32 years.
- 3.2 Mr Litchfield stated that the Applicant claimed a high-level of job expertise at her job interview and she also claimed to be both a better designer and salesperson than her husband. As her husband was already a director of CIC and was the company's best designer

this was a significant assertion. However, soon after Mrs Henderson commenced employment Mr Litchfield realised that her drawing skills were not as good as she claimed. Despite this issue Mr Litchfield thought that Mrs Henderson could be developed with training

- 3.3 Mrs Henderson started to attend external training events, however in the opinion of Mr Litchfield she did not cope well with this training. For example a six-day training session with a company named Mobalpa in Geneva was described by her as a waste of time. Her response to internal training opportunities was no better according to Mr Litchfield; for example she would often find negative things to say about the products and would interrupt proceedings in a time-wasting manner.
- 3.4 Mr Litchfield was also concerned as time went by that there were a considerable number of clients who asked not to deal with Mrs Henderson. Apparently she did not listen to what they wanted and the designs she proposed did not relate to their requirements; in some cases clients were lost to competitor companies. Mr Litchfield conceded that on occasion other members of staff had disagreements with clients, however, in the case of Mrs Henderson, his concern was the frequency with which this was occurring and the significance of the complaints.
- 3.5 Mr Litchfield's concerns deepened when he observed Mrs Henderson being overly possessive about the ownership of the clients, attempting to keep them for herself even though this was against the clients wishes. There was no underlying financial reason for this behaviour, as the company did not operate a bonus system on sales. In his opinion there was far more need to redistribute the work of Mrs Henderson than for any other employee in the sales team; this being due to complaints as to her work and to her poor relationship with a number of clients.
- 3.6 Mr Litchfield's concerns deepened even further in September 2009, when another situation arose involving Mrs Henderson. A contractor, who had been retained by the client, Mr S, to work with CIC, had sent some very critical e-mails as to work performed by Mrs Henderson, such emails being promptly deleted without allowing Mr Litchfield an opportunity to review them. Mr Litchfield claimed there were many issues with this particular work assignment and it cost CIC several thousand pounds to resolve those issues. In the same period other customer complaints were also on the increase. The Tribunal's attention was drawn to pages 105 to 175 I Tab 4 ER1 listing some 17 complaints for the period Autumn 2009 to April 2010.
- 3.7 Mr Litchfield recalled having had regular meetings with Mrs Henderson, as did his colleagues Andrew Batiste and Andrew Wilkinson. All of them brought the Applicant's attention to issues regarding her negative attitudes towards customers and other members of staff, and also to the increasing list of complaints received from customers in relation to her work. Mr Litchfield forwarded many of the e-mail complaints to Mrs Henderson together with constructive suggestions about how such issues could be dealt with in the future, however the Mrs Henderson's response was always to blame someone else or alternatively she would allege that her husband, a director of CIC, had agreed her actions. Mr Litchfield stated that he often gave Mrs Henderson the benefit of the doubt only to discover later that she was blatantly lying to him. An example of this being the complaint from "S" and evidence of this alleged falsehood is detailed on page 141 Tab1 ER1. Mr Litchfield also claimed that Mrs Henderson had lied in relation to dealings with Mrs B when she alleged that a colleague had been both rude and dealt incorrectly with the client when in fact it was the Applicant herself who had behaved in this way (Pages 132 & 133 ER1 Tab 4 refer).
- 3.8 Mr Litchfield stated that he had always had regular contact with Mrs Henderson but as 2009 progressed, meetings which should have taken a few minutes were becoming very protracted. Mrs Henderson was constantly referring to the period when she ran her own

business and that she didn't agree with company policies on a number of areas. These discussions on company policies became ever more challenging with Mrs Henderson seeming too misconstrue his responses; and increasingly misinterpreting instructions given to her at staff meetings. Mr Litchfield told the Tribunal an example of this was in relation to quotations and their coding/pricing which she would frequently get wrong; even when she had been told to pass the documents to a colleague for amendment / correction to save time, Mrs Henderson would persist with the quotation.

- 3.9 On 12 December 2009 the Applicant tendered her resignation in writing, accusing Mr Litchfield of making many condemnatory comments about her and that in her view it had become a standing joke that she was always being told off by him. Further she alleged that other female staff had been the butt of such conduct in the past and finally that mistakes by male members of staff were being ignored (Page 232 Tab 6 ER1 refers). However, following meetings with Andrew Wilkinson on 15 December 2009 and then subsequently on 16 December 2009 with Mr Litchfield, the Applicant continued in her employment.
- 3.10 During the meeting of 15 December 2009, the Applicant alleged that it was only the female staff being reprimanded by the management, and this was sexist. In relation to the complaints as to her job performance Mrs Henderson stated much of this was down to conflicting instructions/information from various directors of CIC. Mr Wilkinson e-mailed details of this meeting to Mr Litchfield on 15 December 2009; (Page 231 Tab 6 ER1 refers) and with this information in mind Mr Litchfield met with the Applicant on 17 December 2009. The Tribunal also notes the sexually explicit emails sent specifically to Mr Le Messurier by the Applicant in 2009 (pages 180 to 186 ER1 Tab 5 refer) as well as an email sent to several CIC addresses by the Applicant (pages 180 to 181 Tab 5 ER1 refer).
- 3.11 The meeting of 16 December 2009 (refer to section 2.7 above) was long and protracted and not only dealt with customer complaints but also involved extensive discussions as to her relationships with other employees, in particular members of the sales team, and very specifically her animosity towards Jeff Le Messurier (Page 125 ER1 Tab 4 refers). The minutes of the meeting were taken by Mr Wilkinson and, during this meeting, Mr Litchfield disagreed with the Applicant that his criticisms of her work could be construed as bullying and he also denied the Applicant's allegations that he had bullied other members of staff. Mr Litchfield stated that he tried to respond as flexibly as possible to Mrs Henderson's concerns and the minutes record his willingness to resolve issues that had been raised by her.
- 3.12 The minutes also record that Mrs Henderson referred to Mr Le Messurier as a "little B\*\*\*\*\*". Mr Litchfield told the Applicant that she should not use this expression and that it was the third time that he had to remind her about the inappropriateness of such comments. The Applicant was asked if she would try to achieve a better relationship with Mr Le Messurier; however the minutes record she responded with a "resounding no". Mrs Henderson told Mr Litchfield that Mr Le Messurier was taking over her clients and this was not acceptable. Mr Litchfield told the Tribunal that he had to go to considerable lengths to explain to Mrs Henderson that the intent was that they worked as a team and that it was not unusual for clients to be taken over by other sales staff at the beginning or in the middle of projects. The minutes record Mrs Henderson as being very adamant in her position, stating that she would refuse to offer any apology to Mr Le Messurier, and that this would only change if Mr Le Messurier was to apologise to her for taking away her clients.
- 3.13 Mr Litchfield stated that as a result of this meeting, and following subsequent discussions with Mrs Henderson, he produced the "Way Forward Document" , dated 29 December. According to Mr Litchfield this served as the basis to continuing discussions with the Applicant over the following five months. (EE5 refers). The Tribunal notes that this document

ends with the following statement: - *"I will offer gentle reminders for you to keep to what we agree here. However when it comes to issues of offensive behaviour towards clients or other members of staff including verbal abuse or slamming the phone down they will be treated as misconduct and will result in verbal and then written warnings; ultimately they will end in dismissal"*

- 3.14 Mr Litchfield told the Tribunal that he had given Mrs Henderson considerable scope and time to improve her capability and her attitude in the work place. Also as her husband was a Director of CIC he was reluctant to use a disciplinary process and that his preferred style of working was to address issues by talking through any problems with the employee concerned and to try to sort things out with a minimum of formality. Mr Litchfield confirmed that the 17 complaints referenced in the bundles were not the totality of the complaints that had been made against the Applicant by clients; however the others were of a more minor or unsubstantiated nature.
- 3.15 Mr Litchfield received an e-mail from Andrew Wilkinson on 20 January 2010, which detailed continuing issues between the Applicant and Mr Le Messurier. This communication is further dealt with in section 8 of this judgement. Thus by the beginning of February, Mr Litchfield felt that he had no choice but to issue an official verbal warning on 2 February 2010. (Page 218 Tab 6 ER1 refers). This warning was issued on the basis of continuing customer complaints and her continuing unacceptable behaviour towards Mr Le Messurier. At this meeting Mrs Henderson alleged that Mr Le Messurier sent her a sexually explicit and offensive email. (Pages 178 and 179 ER1 Tab 5 refer) Mr Litchfield asked for a copy to be forwarded to him and was emailed a copy on the same day. This being the an email sent on 23 January 2010 to 13 employees of CIC including Mrs Henderson which referred to an imaginary new car named "Clitaurus" designed for women. (Pages 178 and 179 ER1 Tab 5 refer). Mr Litchfield sent a confidential email to Mr Le Messurier on 3 February 2010 recommending that he take Mrs Henderson off the distribution lists of any such future emails and that he should, in addition, check with other female staff whether they wished to be in receipt of any such emails (Page 178 ER1 Tab 5 refers).
- 3.16 After the warning given to the Applicant in February, and having checked with Mr Le Messurier, Mr Litchfield thought that the Applicant was taking the issues seriously and that things were improving. However all the other sales staff (through Ms Barclay) asked to meet with Mr Litchfield on the Applicant's next day off (22 April 2010). The issues as relayed by Ms Barclay are set out at Section 4 of this decision. Mr Litchfield began to realise that all was not well and that Mr Le Messurier had been putting on a brave face. Given the gravity of the sales staff's concerns as relayed by Ms Barclay Mr Litchfield arranged for Mr Wilkinson to meet each of the sales team on an individual basis to further discuss and understand the issues raised. Based on this new information, Mr Litchfield came to the conclusion that his earlier assessment of the Applicant was wrong and the situation was indeed actually much worse.
- 3.17 Mr Litchfield concluded that he had no choice but to conduct another disciplinary meeting with her and that, in the meantime, he would not allow her to work anywhere within the sales area and moved her to the back office. However, the Applicant continued to make comments about Mr Le Messurier (calling him "The Poison(ed) Dwarf") and Mr Litchfield also overheard the Applicant make a disparaging comment about himself. The Applicant continued to be generally disruptive and deliberately provocative, for example leaving an advocate's letter of appointment on a printer face up all day for all the staff to see, and also entering an external appointment with this lawyer in the works diary rather than entering it as a "private" appointment Mr Litchfield told the Tribunal that he had little choice but to put the Applicant on "garden leave" until her disciplinary hearing.

- 3.18 Mr Litchfield said that after the disciplinary hearing on 5 May 2010, he was left in no doubt that the Applicant was not at all contrite as to her behaviour towards Mr Le Messurier and that her bullying behaviours were likely to continue. The Applicant informed him at that meeting that she had taken legal advice and told him that calling someone a “poisoned dwarf” was not bullying. Mr Litchfield formed the opinion that the Applicant had developed a “deep blame culture” towards many other members of staff in her direct team as well as toward many other company employees. The Applicant had openly complained about these other staff to customers and her behaviour had become very caustic and rude; which she seemed to think was amusing. For example the Applicant had been reported to say in reference to the male / female balance of newly hired CIC staff that Mr Le Messurier could not be called a man. Attention was also drawn to the fact that the Applicant no longer spoke to Mr Le Messurier unless driven by client requirement, and then, according to witnesses, she would only respond begrudgingly. Throughout the hearing, the Applicant refused to acknowledge that she could be bullying Mr Le Messurier alleging that it was him who had bullied her. When he had asked the Applicant for specific examples, the Applicant was unable to give any except that they liked different oven arrangements and that Mr Le Messurier was dealing with some of her clients. On this latter point Mr Litchfield informed the Applicant that the client arrangements took place at his request. When it was put to the Applicant at the disciplinary hearing that that she had been telling clients not to deal with Mr Le Messurier, and that she would give them more discount if they dealt with her, the Applicant told Mr Litchfield that she may have said that as a joke to Paul Hodgeson and that she had not been serious. Mr Litchfield had responded that he could not see the funny side of this issue and it should not be said to clients even in jest.
- 3.19 The meeting then turned to the issue of customer complaints from clients, including those from Hy, Tn, Hs, Cs and Cr. Issues discussed included not responding to a client for a period of four months, attempting to sell an inappropriate kitchen, wrong measurements and lack of site notes for one particular project which led to considerable difficulties when Mr Litchfield tried to resolve the client issues. It was also alleged that Mrs Henderson had exceeded her discretion to give customer discounts beyond any promotional rates and she was presented with documentary evidence by Mr Litchfield.
- 3.20 The meeting moved on to the issue of challenges to management authority by Mrs Henderson and in particular the instance where a client requested Mr Le Messurier for alteration to be made to plans drawn up by Mrs Henderson whilst she was on vacation. When Mrs Henderson returned from her vacation she altered the plans back to their original form against the client's wishes. At the hearing Mrs Henderson would not concede that this was going against the client's wishes and those of CIC, and held the view that Mr Le Messurier should have refused to work with the client.
- 3.21 Before bringing the meeting to a close, Mr Litchfield stated that he had still not heard any examples as to how Mr Le Messurier had bullied her and that if she could remember any such instances she should provide a list of those instances to him by the following day. Mr Litchfield told the Applicant that she remained suspended on full pay until a decision was made and that it was likely this would be done verbally and in writing in the next 48 hours.
- 3.22 Mr Litchfield wrote to the Applicant on 8 May 2010, in a letter which set out his conclusions from the hearing and informing the Applicant of his decision to dismiss her. In his letter, Mr Litchfield concluded that of the complaints made by clients against her, she had either refuted them all or sought to shift the blame to others; despite clear evidence to the contrary. Her refusal to either acknowledge her mistakes, or undertake to improve, gave him no comfort that they would not be repeated. In dealing with the allegations concerning the Applicant's attitude and behaviour towards Mr Le Messurier, Mr Litchfield noted that she had continued to make derogatory comments about Mr Le Messurier both directly and in the



hearing of clients and staff and had given no clear and unambiguous undertaking to stop doing this. Mr Litchfield wrote that although the Applicant had hinted at a willingness to try to improve her relationship with Mr Le Messurier, this was hedged with so much caution and conditions as to be virtually meaningless. In summing up his letter Mr Litchfield told the Applicant her employment could not continue due to her lack of good service to clients and her continued bullying of Mr Le Messurier which was not only upsetting to Mr Le Messurier but was now clearly upsetting other members of staff and clients. Mr Litchfield's letter confirmed that ordinarily, it would be reasonable to dismiss summarily without notice but that in order to give the Applicant time to find alternative employment, she would receive a payment amounting to two months contractual notice. The letter also set out the arrangements for an appeal to Mr Batiste should the Applicant disagree with his decision and stated that, if Mr Batiste came to a different conclusion to that of Mr Litchfield, then Mr Batiste's view would prevail.

- 3.23 Under cross examination Mr Litchfield conceded that he did not have written evidence for all the complaints that he had listed and explained to the Tribunal that in some cases, the complaints had initially been made verbally. He refuted the assertion by Ms Richardson that it was not unreasonable to have 17 complaints. In his opinion it was the nature of the complaints and their impact on the business which had to be taken into account. Mr Litchfield was also of the opinion that the Applicant had made many more mistakes than her colleagues; in particular he stated he was continually talking to the fitting department with reference to her errors, and that he was also continually asking for her client meeting notes which she did not develop. This was in significant contrast to other members of staff.
- 3.24 Mr Litchfield stated that the term "Poisoned Dwarf" went well beyond the routine leg pulling that occurred in the office; and he could not recollect any other offensive nicknames of this nature being used by any other staff. He accepted that from time to time there were personality conflicts between staff but it was rare to have one member of staff with so many conflicts and a seemingly permanent undercurrent of friction with other team members. In his 32 years of experience of running CIC he had never had so many complaints from so many staff as to the behaviour of Mrs Henderson.
- 3.25 Mr Litchfield agreed that Mrs Henderson had ranked fourth in her sales figures for the previous year but argued total volume alone was not the best measure and that these figures did not show the profitability of the sales neither did they take account of the payments made by CIC for correction of mistakes made by Mrs Henderson.
- 3.26 Mr Litchfield confirmed he had not sent a formal invitation for the disciplinary meeting of 2 February 2010, the request to attend was sent by e-mail.
- 3.27 Turning to the meeting of 5 May 2010, it was Mr Litchfield's opinion that this meeting could not be delayed further to accommodate the choice of colleague by Mrs Henderson. Mr Litchfield explained to the Tribunal that they had delayed the hearing already and it was his intention that he must deal with the bullying issue before he went on his vacation.
- 3.28 The attention of Mr Litchfield was drawn to the Commerce and Employment Code of Practice on Disciplinary Practice and Procedures of Employment (EE3 refers), and in particular the recommended procedures. Mr Litchfield agreed he had been aware of this code prior to 5 May 2010.

*Mr Litchfield was recalled to the witness stand after the Applicant had given her evidence to support her allegations of sexual discrimination.*

- 3.29 Mr Litchfield told the Tribunal that Mrs Henderson had been paid a higher salary than Mr Le Messurier whilst in employment with CIC. He also stated that CIC did not have a “glass ceiling” in relation to job progression and the CIC sales team was relatively balanced between the genders. He also mentioned that the CIC fitting team included a female tiling expert who had originally joined CIC as a cleaner.
- 3.30 The witness denied that he had put disproportionate pressure on the female support staff in the “back office” when a number of coding errors had occurred and he stated that the way in which he had dealt with the issue had nothing to do with the gender of the staff.
- 3.31 He did not think that he was more lenient in his treatment of Mr Le Messurier than Mrs Henderson when client issues arose, however the fact that Mrs Henderson made more errors inevitably meant he needed to spend more time with Mrs Henderson and ultimately to take disciplinary action in relation to these errors. His behaviour towards her could not be construed as bullying. He had made every attempt to stay calm and reasoned with Mrs Henderson despite some very difficult and frustrating discussions.
- 3.32 Mr Litchfield agreed that he had transferred work from Mrs Henderson to Mr Le Messurier and this was due to either the need to balance team member work-loads or to respond to client requests that someone other than Mrs Henderson deal with their project.
- 3.33 Mr Litchfield agreed that the email sent to Mrs Henderson by Mr Le Messurier referring to an imaginary new car called the “C\*\*\*\*\*” (Page 179 Tab 5 ER1 refers) had been inappropriate and drew the attention of the Tribunal to an email sent to Mr Le Messurier indicating it had been offensive. He suggested that Mr Le Messurier should remove Mrs Henderson from any future email. He also dealt with the complaint within 24 hours of it being drawn to his attention (Page 178 Tab 5 ER1 refers) and there had been no repetition of this behaviour by Mr Le Messurier. The Tribunal also took note of potentially offensive emails relating to sexual characteristics of both males and females sent by Mrs Henderson to other team members including Mr Le Messurier (Pages 180 to 185 Tab 5 ER1 refer).
- 3.34 Mr Litchfield rejected assertions by Mrs Henderson that she had received less formal product training than male colleagues; details of this rebuttal can be found on page 193 Tab 6 ER1.
- 3.35 Mrs Henderson had alleged during the meeting of 5 May 2010 that she had been bullied by Mr Le Messurier, not the reverse. Mr Litchfield informed the Tribunal that this was the first time that Mrs Henderson had made such an allegation. He requested specific instances of this alleged bullying however other than Mrs Henderson stating that they preferred different oven arrangements there seemed to be no substance to these allegations. Mr Litchfield stated he had requested Mrs Henderson again by email on 7 May 2010 to send him specific examples (Page 199 Tab 6 ER1 refers), however no further examples were given. Nevertheless he did consult other team members on his return from vacation later in May and could find no substance to her concerns.
- 3.36 Mr Litchfield had stated that he had no recollection of formally disciplining any other female employee, however when presented with a redacted document of a CIC Board meeting held in January 2009 he did recall a female employee had been at the first formal verbal stage of a disciplinary process. He stated that he had phoned in to this particular meeting and had deliberately not inquired about this issue in depth as he realised that at a later stage he might be required to hold an appeal against a disciplinary decision.
- 3.37 Mr Litchfield rejected the Applicants assertion that he had given preference to Mr Le Messurier over Mrs Henderson due to the fact that as a younger employee he had a far longer potential longevity with CIC than Mrs Henderson.

#### **4.0 Ms Rachael Barclay**

- 4.1 The witness read from a witness statement to be found in bundle ER1 (Pages 98 to 99 Tab 3 refer).
- 4.2 The witness informed the Tribunal that she had had been in employment with CIC since 2000 and worked as a bathroom designer. This role involved drawing plans for bathrooms and costing them. From time to time her work overlapped with that of the Applicant in that she would design bathrooms after Mrs Henderson had been to the customer's homes to make the necessary measurements.
- 4.3 The witness testified that Mrs Henderson had always been pleasant to her but she had overheard the Applicant arguing with her husband Michael Henderson in the CIC showroom using swear words.
- 4.4 Ms Barclay considered that Mrs Henderson had displayed the worst of her behaviours at CIC towards Mr Le Messurier whom she referred to as the "poison dwarf" or "that w\*\*\*\*\*" behind his back. Mrs Henderson would say that he was no good as a kitchen designer and he had no idea of what he was doing; she criticised the work of Mr Le Messurier in front of other members of the team. It was also her habit to ignore Mr Le Messurier; for example she would greet everybody else on the sales team at the beginning of the working day with the pointed exception of Mr Le Messurier. Ms Barclay had overheard her criticising Mr Le Messurier to customers and it seemed to the witness that Mrs Henderson would get particularly angry when for some reason her work was reallocated to Mr Le Messurier.
- 4.5 The witness stated that on the designs she received from Mrs Henderson there was often a lack of notes about budgets, tiles and / or sanitary ware; in addition Mrs Henderson would often specify items that were not necessary, or items that would not work. The witness stated she would rectify the designs only to find them changed back again by Mrs Henderson; this led to subsequent problems at the time of fitting the bathrooms. This behaviour was not typical of other members of staff on the sales and design team. The witness observed that in her opinion Mrs Henderson had not been a team player nor would she admit that she might be wrong about anything.
- 4.6 The witness stated that in her period of employment with CIC she had never observed any behaviour that would be seen as the preference of a female over a male or vice-versa. In her opinion the company was not discriminatory towards females.
- 4.7 Under cross examination the witness stated that Mrs Henderson was not an abhorrent bully, however the treatment of Mr Le Messurier was of such a nature that it seemed to be more than just a personality clash.
- 4.8 The witness was not aware of any female member of the staff of CIC being disciplined and for her own part had never been formally disciplined; although she recalled a particular problem which required discussion between herself and Mr Litchfield to resolve. The outcome of this discussion was that she became a designer rather than continuing to act as a salesperson, this outcome being satisfactory both to her and to Mr Litchfield.

#### **5.0 Mr Andy Batiste**

- 5.1 The witness read from a witness statement to be found in bundle ER1 (Pages 100 to 101 Tab 3 refer).

- 5.2 Mr Batiste is a joint Managing Director of CIC and has worked for the company for 22 years.
- 5.3 His work overlapped with that of Mrs Henderson in that he would often take her draft drawings and turn them into an overall design. A second stage would then occur with Mrs Henderson developing more detailed drawings which he in turn would convert into detailed drawings and specifications for the Fitting Department. Often she would make mistakes in her measurements e.g. incorrect heights / positioning for doors and windows and he could not have confidence in her work. In addition her drawings often lacked detail as to services or fixtures and fittings. This was in marked comparison to the drawings produced by other CIC staff.
- 5.4 Whilst their working relationship was not always marked by disagreements Mrs Henderson would not talk to him for periods of weeks if he had done something to annoy her and this was often in relation to her inflexibility toward client requirements and disagreements to CIC policy.
- 5.5 The witness overheard Mrs Henderson making derogatory comments about Mr Le Messurier however he did not hear her call him names. He told the Tribunal that he never witnessed any CIC staff being rude to Mrs Henderson neither had he observed Mr Litchfield bullying her. He also stated that whilst Mrs Henderson would express her opinions very forcibly to Mr Litchfield he never shouted at her or got cross and on the contrary he dealt patiently and calmly with all of her issues.
- 5.6 In relation to the appeal against her dismissal he and Mrs Henderson met for approximately one to one and a half hours and he believed he had been given total freedom of action to either confirm her dismissal or overrule the decision.
- 5.7 Under cross examination the witness confirmed he was familiar with the CIC Disciplinary procedure however this was the first time he had conducted a disciplinary appeal. He confirmed that he had not received any specific training in the conduct of an appeal. In the event he conducted the appeal with the documentation sent to him by Mr Litchfield and that submitted by Mrs Henderson.
- 5.8 He had come to the conclusion that there was no interim disciplinary penalty that could be substituted for dismissal having decided that it was very unlikely that Mrs Henderson would change her behaviours. He concluded that he should uphold the dismissal.

**6.0 Mr Mike Collenette**

- 6.1 The witness read from a witness statement to be found in bundle ER1 (pages 96 to 97 Tab 3 refer).
- 6.2 Mr Collenette was Contracts Manager for CIC during the period in which Mrs Henderson was employed. His work overlapped with Mrs Henderson in two ways. As Contracts Manager it was his role to check that the proposed layout and fittings submitted by Mrs Henderson would actually work on site. Secondly as an active member of the sales team his normal workplace was the sales area, known as the "circle", at the front of the showroom which he shared with Mrs Henderson and other members of the sales team.
- 6.3 The witness told the Tribunal that he had tried hard to work effectively with Mrs Henderson but she didn't seem to like the fitting staff. It was evident that she thought that their fitting service was expensive and told clients of her opinion. On occasions she would design things that just didn't work; for example not leaving enough room for cabinet doors to open and then refusing to alter her designs. Often it got to the stage that Mr Collenette and his fitting

team would simply alter the design without telling Mrs Henderson to avoid further conflict. Also Mrs Henderson would repeat the same error on a design even though she knew it had caused major problems with a prior project. She also used inappropriate language, for example telling a customer that Mr Collenette was a “dickhead”. On occasions Mrs Henderson would say that her designs were according to clients’ requirements, however, when he got to the site he found it was not true.

- 6.4 The effect of Mrs Henderson's behaviour in the sales team was very negative. The witness stated that there were days that he didn't wish to work due to her continued poor behaviour. In particular Mrs Henderson took a significant dislike to Mr Le Messurier and this dislike deepened when Mr Litchfield gave Mr Le Messurier some of her clients to deal with. It seemed to Mr Collenette that Mrs Henderson was very possessive as to her clients and this did not seem to be rational given that there was no commission system, and it was the practice in CIC for clients to be shared amongst the sales team. In Mr Collenette’s opinion Mr Litchfield had transferred clients from Mrs Henderson to Mr Le Messurier because Mrs Henderson had either performed below standard work or because clients said they didn't want to deal with her any more.
- 6.5 The witness frequently observed the interaction between Mr Litchfield and Mrs Henderson and did not see any instances where he bullied her. It was the opinion of the witness that Mrs Henderson had worked for herself for a long time and wanted to do things her own way. In relation to Mr Le Messurier the witness never observed him bullying Mrs Henderson.
- 6.6 Mr Collenette told the Tribunal that Mrs Henderson took a very independent view as to the discounts she would offer clients and he had overheard her telling clients that they should have approached her first rather than any other member of the sales team as she would give better discounts. He held the opinion that she was so motivated to achieve sales that on occasions she would conclude a deal which did not make any profit for CIC.
- 6.7 Under cross examination Mr Collenette told the Tribunal that he had been the subject of client complaints whilst employed at CIC, but this had never led to formal discipline by Mr Litchfield.
- 6.8 When questioned as to the rationale for reallocating clients between sales team members Mr Collenette responded that it was normally due to the need to rebalance workload rather than clients having issues with a particular salesperson.
- 6.9 Mr Collenette corroborated previous testimony that whilst Mrs Henderson enjoyed high sales figures these were not necessarily profitable sales

#### **7.0 Mr Jeff Le Messurier**

- 7.1 The witness read from a witness statement to be found in bundle ER1 (Pages 93 to 95 Tab 3 refer)
- 7.2 Mr Le Messurier joined CIC in August 2008 as a kitchen salesman and designer. Prior to joining the company he had been a master cabinet maker.
- 7.3 The witness worked alongside Mrs Henderson in the company's Forest Road showroom; initially his working relationship with Mrs Henderson was satisfactory however it quickly became clear to him that she had formed an apparent dislike of him, criticising him in front of both customers and work colleagues.

- 7.4 It seemed to the witness that Mrs Henderson had revelled in the way she behaved towards him; the witness alleged that she would boast to clients that she bullied him, expressing it in a semi-humorous fashion.
- 7.5 In his opinion Mrs Henderson was fiercely protective of her clients and hated it when someone took over one of her projects. The witness claimed that he never sought to do this of his own accord and it only happened when a client was reassigned to him by Mr Litchfield. He told the Tribunal that when such work reallocation occurred she would often shout and swear at him and made it clear that she expected him to refuse to take the job.
- 7.6 The witness informed the tribunal that he also observed Mrs Henderson having shouting matches with her husband and on more than one occasion heard her tell him to "F\*\*\* Off" when clients were within hearing and then storm out of the showroom. She would also criticise CIC to clients and use the expression "this place is a joke". On occasions she would also say to customers that they should have dealt with her rather than the witness as she would have given more discount. The witness stated she would often exceed the discounts allowed by policy and then put her husband's initials on the quote to authorise it, even though he was not physically present and had not seen the quote.
- 7.7 The witness also corroborated testimony from Mr Litchfield and other witnesses that Mrs Henderson frequently made errors in her work. Often this was down to poor note-taking and inaccurate sketches prior to final design. On occasions she would redraw the plans that had originally been drawn up by the witness only to find that the clients were not happy with these revisions and had not required them to be made. A particular example of this issue was with a client named "My". This client complained that almost every item on the plan, which had been drawn up by Mrs Henderson, was not what they had requested, the layout was confusing and the materials being specified were not of the quality they had come to expect from CIC; and finally the written quote did not match the design plan.
- 7.8 The witness stated that he had found the working relationship with Mrs Henderson very stressful, he found her conduct intimidating and expressed the opinion that he was unlikely to have stayed with CIC if she had continued in employment with them.
- 7.9 Under cross examination the witness confirmed that the customer complaints detailed in his witness statement had occurred prior to 2010.
- 7.10 The witness confirmed that if Mr Litchfield had proposed mediation as a mechanism for resolving the issues between himself and Mrs Henderson he would have attempted such a solution; however in his opinion it was not an option that Mrs Henderson wanted to take up.
- 7.11 The witness stated he had initially tried to resolve the situation with Mrs Henderson by talking to her husband however he then subsequently spoke to Mr Litchfield when the situation became worse in mid-2009. By the end of the year her behaviour became very difficult to cope with.

#### **8.0 Mr Andrew Wilkinson**

- 8.1 The witness read from a witness statement to be found in bundle ER1 (Pages 90 to 92 Tab 3 refer).
- 8.2 Mr Wilkinson has been employed at Channel Island Ceramics since 2004; he combines the role of Company Secretary, Office Manager and Personnel Manager and reports to Mr Litchfield.

- 8.3 Mr Wilkinson observed that Mrs Henderson had found it difficult to fit in to the CIC team and that she been used to running her own firm and making her own decisions. She could be quite abrupt to staff members but seemed to be very good with clients. However, it soon became clear that she would not use CIC preferred suppliers; for example, she would insist on specifying the Eurobath products instead of those of Hansgrohe. The witness also observed that Mrs Henderson preferred to run her own diary rather than input to the company diary. This made it difficult for senior management to keep track of Mrs Henderson and made communication more difficult.
- 8.4 Mr Wilkinson was aware that during 2009 Mrs Henderson was making a lot of mistakes in her work. He stated that there had been several complaints from customers and comments from the staff. In the event Mr Litchfield sent Mrs Henderson an e-mail on 12 December 2009 setting out the problems and suggesting some solutions. Mrs Henderson's response to this, on the same day, was to offer her resignation. Mr Litchfield did not want her to go and persuaded her instead to attend a meeting with himself on 16 December 2009 to discuss the points raised in his e-mail and try to gain a commitment to improvement in her work.
- 8.5 Mr Wilkinson observed that the meeting on 16 December was in his words "very hard and frustrating". Despite ample evidence of problems Mrs Henderson refused to accept that any of the complaints were her responsibility. She blamed other people, including staff colleagues and the customers themselves; also Mrs Henderson responded with arguments that Mr Wilkinson considered irrelevant. In his opinion Mr Litchfield remained very calm during this meeting and kept making his points objectively; he even offered to modify some of CIC's policies and working practices to make it easier for Mrs Henderson to adapt but, in the end she simply would not agree to do anything he asked of her.
- 8.6 Mr Wilkinson stated that during the following days more complaints started to come in about the Applicant and so another meeting was held on 23 December 2009 which he also attended. In this meeting Mr Litchfield acknowledged that the Applicant's drawings had improved a bit and that she was now using the company diary; but he did have the issue of these latest complaints. Mrs Henderson again refused to accept the responsibility for mistakes and blamed everyone else. Mr Litchfield also raised the issue of Mrs Henderson's treatment of Mr Le Messurier and said that it had to improve. In his opinion Mrs Henderson gave a grudging agreement that she would try to improve her relationship with Mr Le Messurier.
- 8.7 In the period immediately after Christmas and into the New Year the relationship between Mrs Henderson and Mr Le Messurier worsened. A client had come in on a day when Mrs Henderson was on vacation and Mr Litchfield had instructed Mr Le Messurier to take over the client. When Mrs Henderson returned from her vacation she was extremely angry and snatched back the customer file from Mr Le Messurier. She seemed to use every opportunity to critique him and goad him and it was at this point that Mr Le Messurier complained to Mr Litchfield about this behaviour.
- 8.8 Mr Wilkinson recalled that on Monday 4 January 2010 he had met with Mrs Henderson on his own. He asked Mrs Henderson why had she been abusive to Mr Le Messurier during the past two weeks and Mrs Henderson replied only because Mr Le Messurier had been abusive to her first. Mr Wilkinson asked Mrs Henderson what Mr Le Messurier had said to her and Mrs Henderson responded by stating she could not remember the exact words. Mr Wilkinson pressed Mrs Henderson again to establish if she could recall any of the words used but after a long pause she replied she could not remember.
- 8.9 During the same meeting Mr Wilkinson showed Mrs Henderson a quote for a client named Mrs L and drew her attention to the fact that this quote seemed to contain many errors. Mrs

Henderson replied by saying this was not the quote she had hand-delivered to the client on the evening of 31 December 2009. Mr Wilkinson suspended the meeting and attempted to find the company copy of the quote however it became clear that no such copy existed. In his opinion the document that he was reviewing, with the errors, was a copy of the one that had been given to the client by Mrs Henderson; the copy having been obtained by Mr Le Messurier when the client visited the showroom to make her complaint. (The Tribunal notes that the Respondent submitted documentation relating to Ms L and her complaint in ER1 Tab 4 pages 156 to 163)

- 8.10 Mr Wilkinson also noted that when Mr Le Messurier had told Mrs Henderson that he had in his possession the “L” quote that Mrs Henderson had allegedly responded by saying “that's the last bloody place it should be”. Mr Le Messurier had reportedly informed Mrs Henderson that she had the “fillers” wrong and that they needed checking; Mr Le Messurier said that there was no further conversation and Mrs Henderson left the showroom. (Page 221 ER1 Tab 6 refers)
- 8.11 Mr Wilkinson attended the meeting of 2 February 2010, at which Mrs Henderson was given a recorded verbal warning. Mr Wilkinson stated that Mrs Henderson refused to sign the warning document. He told the Tribunal that at the end of the meeting Mrs Henderson accused Mr Le Messurier of harassing her. Mr Litchfield asked for details and she said there had been offensive e-mails sent to her by Mr Le Messurier. Mrs Henderson subsequently forwarded to Mr Litchfield a copy of an e-mail sent to her by Mr Le Messurier. This being the an email dated 23 January 2010 sent to 13 employees of CIC including Mrs Henderson which referred to an imaginary new car name “C\*\*\*\*\*” which was going to be applied to a car for women.(Pages 178 and 179 ER1 Tab 5 refer)
- 8.12 Under cross examination the witness could not recall if Mrs Henderson had been given an opportunity to bring a colleague to the meeting of 2 February 2010. Mr Wilkinson also told the Tribunal that the only written record of this meeting was submission ER5. There were no detailed minutes of this meeting. He also confirmed that Mrs Henderson had not been subjected to any formal disciplinary process prior to this date.
- 8.13 Mr Wilkinson confirmed that there had been three formal disciplinary actions in relation to CIC employees in the past and all of these employees had been male. The Tribunal notes that Mrs Henderson’s bundle contains document EE7, this being a redacted minute from a CIC Board meeting of 22 January which states that a female employee was at the first written stage of the companies disciplinary procedures.
- 8.14 During the period February to April 2010, Mr Wilkinson stated that he had received more complaints from staff as to inappropriate behaviour toward Mr Le Messurier by Mrs Henderson and Mr Le Messurier personally met with him to complain about the behaviour of Mrs Henderson. He reported these concerns to Mr Litchfield who had in the meantime been approached independently by Rachael Barclay to express her concerns. In response to these complaints Mr Litchfield requested Mr Wilkinson to have one to one interviews with each of the sales staff and report his findings.
- 8.15 Mr Wilkinson informed Mr Litchfield that members of the sales team had informed him that Mrs Henderson was regularly calling Mr Le Messurier “The Poison Dwarf” and had also been overheard raising her voice when arguing with her husband in the showroom. Staff members indicated to the witness that they believed action should be taken and in some cases they were so unhappy with the tensions created by this behaviour that they were considering leaving the company. In discussion with Mr Litchfield he also understood that there had been further customer complaints against Mrs Henderson in the past two to three months.



- 8.16 The witness attended the meeting with Mrs Henderson on 5 May 2010 and corroborated the account of the proceedings given by Mr Litchfield. He stated that as in previous meetings Mrs Henderson refused to accept any of the critique against her and blamed others for events to date. She also admitted in the meeting to calling Mr Le Messurier "The Poison Dwarf" and "The Little S\*\*t". Mrs Henderson confirmed that she understood that Mr Litchfield had passed some of her clients to Mr Le Messurier but felt that Mr Le Messurier should have refused to take them on and by doing so had acted unprofessionally. Mrs Henderson refused to give any clear undertaking to improve her relationship with Mr Le Messurier.
- 8.17 Under cross examination, Mr Wilkinson held to his view that Mrs Henderson would not have made any significant attempt to change her behaviour toward Mr Le Messurier; despite the minutes recording that she thought there could be a probable resolution of her problems with Mr Le Messurier if they met in the presence of a third party. Mr Wilkinson told the Tribunal that in his opinion the pattern of behaviour by Mrs Henderson toward Mr Le Messurier was so ingrained that he did not believe it could change. He also stated that he thought that dismissal was the only option left and believed that without such action other members of the sales team would have resigned.

#### **9.0 Witness Statement Mr Tim Barnes**

- 9.1 The Tribunal has read the witness statement enclosed in the bundle ER1 page 103 Tab3 refer) and takes note of the contents therein.

#### **10.0 Witness statement Mr Chris Le Lacheur**

- 10.1 The Tribunal has read the witness statement enclosed in the bundle (ER1 Tab pages 104 to 105 Tab3 refer) and takes note of the contents therein.

#### **11.0 Mrs Rosemarie Henderson**

- 11.1 Mrs Henderson informed the Tribunal that she had in excess of 23 years' experience as a kitchen designer and that for much of her employment with CIC she was happy with the work. She received very positive feedback from many of her clients including a Mrs L who had praised her ability to deal effectively with a very restricted kitchen space and another client who had made it very clear that the only reason he had continued to use CIC was down to the quality of her work. Other specific instances of positive client feedback were given in evidence however Mrs Henderson was not sure if Mr Litchfield had been aware of this client feedback.
- 11.2 Mrs Henderson stated that she had been employed for over three years by CIC and in this period had dealt with hundreds of clients spending possibly just a few minutes with them or possibly establishing a long term working relationship for a large project.
- 11.3 The witness told the Tribunal that at first her working relationship with Mr Le Messurier had been satisfactory and given her experience and his lack of experience in kitchen design she did her best to help him. But it soon became obvious to her that he did not like her. She informed her husband and Tim Barnes that whilst he might be a master cabinetmaker he was not competent in designing kitchens.
- 11.4 Mrs Henderson and Mr Le Messurier came into conflict over a number of clients. For example over Mrs B; Mrs Henderson was due to go on vacation and she had asked Mr Le Messurier to annotate the plan and talk it through with the client. In the event he did not annotate plan until the client phoned and he then claimed that the notes compiled by Mrs

Henderson were undecipherable and that he needed to re-measure on site. However, Mrs Henderson stated she thought her plan was excellent and was very upset when Mr Le Messurier stated that the client no longer wished to liaise with her.

- 11.5 Mrs Henderson could not recall saying to Mr Le Messurier's wife at the CIC Christmas party in December 2009 that she was "the office bitch". She stated that if it had been said it would have been a joke, and she thought that her discussions with Mr Le Messurier's wife had been cordial during the party. Had Mr Le Messurier's wife reacted badly, Mrs Henderson was sure she would have remembered.
- 11.6 Mrs Henderson informed the Tribunal that Mr Le Messurier was continually complaining about her and she took to ignoring him in the hope that he would stop what he was doing. With reference to the term "Poisoned Dwarf," the witness could not deny using the term but stated that for her it was a coping mechanism to deal with bullying behaviour by Mr Le Messurier. It had become a standing joke in the office that she was being, in her words, for "hauled over the coals", and this was her way of responding. She also informed the Tribunal that she had complained to Mr Wilkinson about the bullying behaviours of Mr Le Messurier but her complaints had not been taken seriously.
- 11.7 Turning to her working relationship with Mr Litchfield, Mrs Henderson stated that he would not have understood how his actions toward her could be construed as bullying and when, in December 2009, the witness had walked out on the job she stated it was not in a temper tantrum but she was in floods of tears due to his behaviour. He had been continually complaining about her, every working day making many complaints, up to 10 to 15 per day; it seemed to Mrs Henderson it had become an endless process.
- 11.8 Mrs Henderson stated that she had been dismissed from a job she loved and the nature of the dismissal had destroyed any chance of obtaining a similar job on the island. If CIC had given her a written warning and not dismissed her she stated that she would have considered this very seriously and she did not wish to leave her job. Mrs Henderson recalled that at both the meeting of the 5 May 2010 and the subsequent appeal she had told CIC directors that she had no doubt that the issues could be resolved. In the event, she was dismissed without any attempt at mediation or discussion of alternative roles, both of which were in her opinion possible.
- 11.9 Mrs Henderson brought to the attention of the Tribunal an e-mail which had been issued by CIC the day after her dismissal and prior to her appeal (Page 187 ER1 Tab 6 refers). This email stated that she had left the company. In her opinion this made the appeal pointless because it was quite clear from the tone of this communication that the final decision had been made and that an appeal would make no difference.
- 11.10 Mrs Henderson was of the opinion that she made no more mistakes than were typically made by other members of the sales staff, however, in December 2009 she was subject to disciplinary interview whilst Mr Le Messurier was apparently not critiqued in any way. It had become commonplace for Mr Litchfield to harangue and critique her in front of her sales colleagues whilst not adopting this tone with any other member of the team. Mrs Henderson informed the Tribunal that the reason for walking out on the job in December 2009 was because she had formed a strong belief that she was going to be sacked by Mr Litchfield and she wanted to take her own action to anticipate this.
- 11.11 Mrs Henderson also informed the Tribunal that there was sometimes a need to give larger discounts but whatever discounts she granted was always pre-approved by her husband as a director of CIC. Also she denied that she had been fully briefed by CIC on the company discount policy.

- 11.12 Under cross examination Mrs Henderson would not express an opinion either way as to whether it was acceptable to use the expression "Poisoned Dwarf". However, in the context of Mr Le Messurier's behaviour towards her she did not think it was unacceptable. The witness could not recall using the term "W\*\*\*\*\*" in relation to Mr Le Messurier however recalled calling him a "Little S\*\*\*" and agreed that whilst this might not have been acceptable it was understandable. Finally in relation to calling Mr Le Messurier "A Little B\*\*\*\*\*" she did recall using this language.
- 11.13 Mrs Henderson did not believe that she was as argumentative towards CIC's staff as she had been portrayed and that she certainly had never had swearing rows with her husband in public.
- 11.14 Mrs Henderson stated that the reason she had criticised Mr Le Messurier was because, in her professional opinion, she needed to advise the directors of the company that Mr Le Messurier needed extensive training; and as to the issue of her ignoring Mr Le Messurier she believed this was the best behaviour to adopt.
- 11.15 In relation to the allegations of sexual discrimination, Mrs Henderson informed the Tribunal that she had been offended by an email sent to her by Mr Le Messurier which referred to an imaginary new car model called a "C\*\*\*\*\*" and had complained to Mr Litchfield. (Page 179 ER1 Tab 5 refers). She had also been offended by alleged sexual banter from Mike Collenette; however there was no evidence that Mrs Henderson raised this issue to CIC management.
- 11.16 It was put to Mrs Henderson that Mrs Barclay had sat close to her in the sales circle for the period of her employment and had never observed her being bullied. Mrs Henderson responded that Mrs Barclay only worked part-time and also took school vacations to look after her family; therefore she may well have missed periods when the bullying was taking place.
- 11.17 Mrs Henderson stated that she was subject to oppressive management bullying by Mr Litchfield and this was not a behaviour she had ever observed him taking with a male employee. She also believed that she had received less product training than her male colleagues. Mrs Henderson alleged that CIC was a "boys club" and that female employees in general at CIC were treated differently and disciplined more harshly than the males. Mrs Henderson was also very concerned that her complaints against Mr Le Messurier were not taken seriously whereas his complaints about her were. Mrs Henderson came to believe that this was because he was a male and that whilst she only had three years employment left until her retirement Mr Le Messurier had many more years of his career in front of him. Therefore, in her opinion Mr Litchfield strongly favoured Mr Le Messurier in preference to her.
- 11.18 Mrs Henderson stated that the level of disciplinary actions against females in CIC was disproportionately higher than that of actions taken against male employees. It was her belief there had been at least three formal disciplinary actions against females and only possibly one against a male. However she could not be certain of these assertions.

## **12.0 Mr Michael Henderson**

- 12.1 The witness read from a witness statement to be found in the bundle (Pages 1 to 4 EE1Tab 2 refer).

- 12.2 Michael Henderson (Mr Henderson) is a director of CIC, has worked for the company for almost 13 years and he is married to the Applicant.
- 12.3 Mr Henderson stated that Mrs Henderson was an experienced designer, having served over 20 years in this specific field; this was particularly useful to CIC as it could take up to three years to train somebody fully into this role. Mr Henderson stated that Mrs Henderson had very effective personal skills and could relate well to clients; also she was very willing to undertake many more site visits than other CIC sales staff including visits over the evenings and weekends. In his opinion Mrs Henderson always displayed a high degree of professionalism and had successfully dealt with difficult clients on the behalf of other colleagues in the sales team.
- 12.4 At no time did Mr Henderson see Mrs Henderson being rude to Mr Le Messurier on the sales floor, either in front of customers or when no customers were present. Neither did Mrs Henderson make any comments to clients about Mr Le Messurier in his presence. He thought that Mrs Henderson had always treated Mr Le Messurier professionally and had not bullied him. With reference to the term "Poison Dwarf" Mr Henderson told the Tribunal that there were many other nicknames used in the workplace, this was not a unique event.
- 12.5 In regard to the alleged client complaints the witness corroborated evidence given by Mrs Henderson that she had not been responsible for these issues and they had been wrongly ascribed to her when they were the responsibility of other members of the CIC staff. In addition Mr Henderson had full access to the CIC "Client Response Sheet" and he believed that Mrs Henderson had given priority to clients in line with this planning document. Mr Henderson informed the tribunal that Mrs Henderson had dealt with hundreds of clients during her time with CIC and it was not unexpected she might have a few client complaints. In his opinion she had no more client complaints levelled against her than against him or any other members of the sales team.
- 12.6 Turning to the issue of alleged mistakes in measurement and specification of materials and Mr Henderson was only aware of one significant error by Mrs Henderson. He stated that it had become a standing joke that the CIC external planning department was asking for excessive details on initial drawings.
- 12.7 Mr Henderson gave detailed evidence as to the discount policy of CIC and he stated that discounting had been a high priority during the difficult trading conditions of 2009. In the event that Mrs Henderson wished to give an extra discount he would pre-approve it. It was his opinion that Mrs Henderson did not favour giving discounts in general.
- 12.8 Mr Henderson expressed surprise that part of the complaint against Mrs Henderson was that she would tell clients that the CIC Fittings Department charges were expensive. As far as he was aware it had been the policy of the company in recent times to lessen the amount of fitting work undertaken by increasing prices. He had attended meetings run by the joint managing directors when they had stated the sales staff should try to restrict the fitting service only to high-value clients and should otherwise encourage clients to seek sub contract of fitting services.
- 12.9 Mr Henderson informed the Tribunal that he had nothing to do with the dismissal of Mrs Henderson or her subsequent appeal. However, he was most concerned that Mr Litchfield had not responded to Mrs Henderson's grievances re the bullying behaviours by Mr Le Messurier whereas when Mr Le Messurier complained it had resulted in the dismissal of Mrs Henderson. Under cross examination, Mr Henderson could not point to any evidence that supported his assertion that Mrs Henderson had made formal grievances against Mr Le Messurier prior to 5 May 2010.

- 12.10 Mr Henderson referred to a disciplinary procedure concerning another employee, a male fitter, who had been with the company for six years. In the opinion of the witness the allegations of misconduct against the employee were significantly more serious than those against Mrs Henderson, however in the event this employee was only given a written warning and was not dismissed.
- 12.11 Mr Henderson stated that all of the management team at CIC were fully up-to-date as to what constituted appropriate and legal disciplinary processes, and was therefore very shocked when the CIC did not follow these processes in relation to Mrs Henderson and CIC had been very unfair in the treatment of her.
- 12.12 In relation to the alleged sex discrimination of Mrs Henderson by CIC the witness stated that it had become quite clear to him that Mr Le Messurier was favoured over Mrs Henderson by Mr Litchfield. One example of how this manifested itself were the frequent reallocations of Mrs Henderson clients to Mr Le Messurier, which in the opinion of the witness were often totally unnecessary. There seemed to be no logic in reassigning the work away from Mrs Henderson given that her experience and knowledge in her field of work far outweighed that of Mr Le Messurier. In his opinion, Mr Le Messurier had made considerable efforts to ingratiate himself with Mr Litchfield, and other senior directors, and this had resulted in him being given more favourable treatment.
- 12.13 Mr Henderson considers that over many years the CIC had treated female employees in a less positive manner than the males. For example they were far more likely to be criticised for errors in their work. Mr Henderson also cited an example of a new female member of staff who had joined the company on the understanding that her holiday commitments would be honoured however due to pressure from male colleagues this agreement would have been broken. It was only through his intervention that CIC apologised to her, and then this was only by an e-mail that he sent on behalf of management.
- 12.14 Mr Henderson stated that he was aware of three female staff who had been disciplined but only one male and this seemed disproportionate when the current staffing profile was twenty male and seven female employees. The Tribunal notes that evidence was offered which illustrated the disciplining of one female member of staff (EE7 refers) in early 2009.
- 12.15 It seemed to Mr Henderson that the level of supervision over Mrs Henderson adopted by Mr Litchfield had become very overbearing and excessive; he had not adopted this management style with any male employees.
- 12.16 The witness was of the opinion that females were not given due credit for good work done in comparison with the males including Mrs Henderson; he thought it was a male dominated environment. Under cross examination the witness suggested the resignation of the only female director of CIC constituted a discriminatory action however he could not provide any specific examples of this alleged differential in treatment between male and female employees at CIC.

### **13.0 The Law**

- 13.1 The Tribunal considered the complaint under The Employment Protection (Guernsey) Law, 1998, as amended, and with particular reference to Sections 6 (2) (b) and 6 (3) which states *"..the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the circumstances (including size and administrative resources of an employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the*

*employee; and that question shall be determined in accordance with equity and the substantial merits of the case”*

- 13.2 The Applicant further alleged sexual discrimination as defined in the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005

#### **14.0 Closing statements**

##### **Advocate Ferbrache**

- 14.1 The Tribunal has reviewed the authorities provided by Advocate Ferbrache drawn from UK decisions which, whilst not binding on this Tribunal, supported his clients’ argument that given the increasingly serious misconduct of the Applicant that the company acted within a reasonable range of responses (ER2 Refers). He further submitted that the Applicant had provided no substantive grounds upon which a claim for sexual discrimination could succeed.

##### **Ms Richardson**

- 14.2 The Tribunal has reviewed the authorities provided by Ms Richardson drawn from UK (EE6 refers) which, whilst not binding on this Tribunal, supported her client’s argument that this dismissal should be deemed unfair. The authorities also included findings by both Guernsey and Jersey tribunals which illustrated how Channel Island Tribunals had dealt with disciplinary process issues.
- 14.3 In a further submission (EE8 Refers) Ms Richardson argued that the decision to dismiss fell outside the reasonable range of responses open to the Respondent in the circumstances. The Respondent had skipped two vital stages in the process i.e. a first written warning and a final written warning. Moreover the Respondent had chosen to do this contrary to written CIC disciplinary policies and the Commerce and Employment Code of Disciplinary Practice and Procedures in Employment. She submitted that there had not been any significant new factor between February and April 2010 which suddenly changed the situation such that a penalty of dismissal could be applied.
- 14.4 In regard to allegations of sexual discrimination both Mrs Henderson and Jeff le Messurier made complaints about each other however it was Mrs Henderson who was disciplined and no action was taken over her complaints. The CIC had an atmosphere that her client described as a “boys club” and she had to listen to sexually explicit banter from Mike Collenette and Jeff Le Messurier which got to a distasteful level. In addition she had been bullied by both Mr Litchfield and Jeff le Messurier; however when she complained she was not listened to and no action was taken. Finally her client contended that far more female CIC employees were disciplined than males and her dismissal was part of a punitive work environment for females. Ms Richardson alleged that this was in her words “clear and direct sex discrimination”.

#### **15.0 Conclusions**

- 15.1 The Tribunal heard three days of oral evidence and considered all the written evidence before it, whether specifically referenced in this judgement or not.
- 15.2 Whatever the complexity of the evidence before it a Tribunal in considering allegations of an unfair dismissal will normally apply a number of basic tests amongst which the following should be applied:-

- i) Was the employee aware of the reasonable requirements of their role and the required adherence to the policies and practices of their employer?
- ii) When the employer considered they had not met these requirements and / or there had been a failure to adhere to reasonable policies and practices were these deficiencies communicated to the employee.
- iii) Was the employee made aware of the impact of their alleged failings and the potential outcomes to them personally if they failed to correct their alleged shortcomings; up to and including the possibility of dismissal.
- iv) Was the employee given enough time to correct the alleged shortcomings, and, where applicable, given support from management to achieve the required changes.
- v) Was the sanction applied one that a reasonable employer might apply given their reasonable consideration of the above tests.
- vi) What was the adherence to company disciplinary policies and did the employer try to abide by the Commerce & Employment code of Disciplinary Practice and Procedures in Employment.

The Tribunal has considered each of these points in turn.

- 15.3 The Tribunal has been persuaded that Mrs Henderson was well aware of the reasonable requirements of her role. In her letter of appointment dated 24 January 2007 her role was described in detail and supplemented by a document entitled "Sales procedure and Client Paperwork" (Pages 1 to 12 ER1 Tab1 refer). In addition, Mrs Henderson was given training both at the CIC premises and abroad in order she could become familiar with CIC products. The evidence further supports that as issues arose over time Mr Litchfield made her aware of these and other requirements.
- 15.4 Mr Litchfield presented very persuasive evidence that the Applicant's shortcomings were communicated to her. Examples of this are abundant in the bundle of submitted documents with particular reference to the section relating to customer complaints (Pages 107 to 177 Tab 4 ER1 refer). Mrs Henderson sought to persuade the Tribunal that, after her recorded verbal warning of 2 February 2010, only a small number of complaints occurred; however the employer has evidenced that these particular complaints were considered serious. Mrs Henderson also argued that she did not commit any more mistakes than her colleagues; however the evidence from a wide range of CIC employees clearly indicates she was more error prone than her colleagues. Finally, it became apparent during the hearing that Mrs Henderson was very reluctant to take responsibility for any alleged errors. This was reflected in her responses to the Tribunal during the Hearing and goes to the credibility of her evidence. This was in marked contrast to her colleagues who readily admitted that, given the complexity of CIC business, they had committed errors and had taken responsibility for them. An example was evidenced by Mrs Barclay who agreed to change her job duties to those where she had acknowledged competence.
- 15.5 The Tribunal was also persuaded that by December 2009, Mrs Henderson was aware that a continuing failure to address the many issues raised by Mr Litchfield would lead to a further disciplinary process which could end ultimately in a dismissal. The Tribunal notes that Mrs Henderson accepted the totality of the Way Forward document (EE5 Refers) with only minor changes.
- 15.6 Following the chronology of events the Tribunal notes that only a few days after this document was finalised on 29 December 2009, that Mr Wilkinson needed to meet again with

Mrs Henderson because of her alleged abuse of Mr Le Messurier. In this meeting Mrs Henderson admitted to being abusive to Mr Le Messurier stating that he had abused her first. No specific examples of this alleged abuse by Mr Le Messurier was mentioned during this meeting.

- 15.7 Mrs Henderson was verbally warned by Mr Litchfield on 2 February that her behaviour towards Mr Le Messurier was not acceptable and the warning also noted further client complaints had been made against Mrs Henderson. The document which records this warning (ER1 Tab 6 Page 218 refers) specifically called the attention of Mrs Henderson to the paragraph in the "Way Forward" document which had referenced the disciplinary process and the ultimate sanction of dismissal.
- 15.8 In the following period Mr Litchfield had hoped that his combination of advice and warnings would result in an improvement overall performance by Mrs Henderson. However, by late April it became very clear that the continuing abusive behaviour by Mrs Henderson toward Mr Le Messurier combined with the receipt of yet further client complaints had added a level of gravity to the issues. In addition other staff were threatening to resign, given the continuing behaviour of Mrs Henderson toward Mr Le Messurier. The Tribunal has concluded that CIC had given Mrs Henderson a period of time that would be considered by most employers as reasonable to correct her performance deficiencies.
- 15.9 The disciplinary meeting took place between Mr Litchfield and Mrs Henderson on 5 May (Pages 210 to 207 ER1 tab 6 refer) and the Tribunal notes that Mrs Henderson was accompanied by a colleague of her choice; although it is understood she would have preferred to have been accompanied by a relative who was not available on the day.
- 15.10 This meeting lasted for a number of hours and on inspection of the minutes (Pages 201 to 207 ER1 Tab 6 refer) the Tribunal concludes that Mrs Henderson was given ample opportunity to either refute or rebut the various allegations that were made to her.
- 15.11 Mr Litchfield confirmed his decision to dismiss Mrs Henderson in a letter dated 8 May 2010 and the Tribunal notes this decision was made on the basis that her behaviour had been prejudicial to relationships with CIC clients as well as the decision that CIC could not allow her continuing bullying of a fellow staff member. The Tribunal notes that the reason for the dismissal is consistent with the events of the preceding months.
- 15.12 Subsequently Mr Batiste heard an appeal against this decision by Mrs Henderson in a meeting lasting approximately an hour. Whilst Mr Batiste had no prior experience of running a disciplinary appeal the Tribunal was persuaded that he genuinely believed he had the freedom to reverse the decision to dismiss if that was his conclusion. The Applicant suggested that during this appeal Mr Batiste might have called for additional papers and conducted a broader consultation; the Tribunal considered these points but did not believe they carried sufficient weight to make the appeal process unfair. The Tribunal notes that a communication was issued on 9 May 2010 informing CIC staff that Mrs Henderson had left CIC employment. The Applicant argues that this undermined the credibility of any subsequent appeal, however the Tribunal was persuaded by the testimony from Mr Batiste that he could still have reversed the decision to dismiss.
- 15.13 Mrs Henderson argued that because her dismissal had not been preceded by written warnings, as laid down in the company handbook, or as advised in published guidelines from Commerce and Employment that the dismissal was unfair. However both the CIC policy and the Commerce and Employment guidelines allow for an employer to move to the ultimate sanction of dismissal in the case of serious gross misconduct without such written warnings.



In this case the failings of the employee were considered of such gravity that by May 2010 the employer believed he had no other choice but to dismiss.

- 15.14 The Tribunal notes that the Applicant was made well aware more than four months before her dismissal that failure to improve could ultimately lead to dismissal. The employer went to considerable lengths to ensure the employee knew what the standards were and she was given time and coaching to improve. In February 2010 the Applicant was also reminded by the recorded verbal disciplinary warning of the potential outcome if improvement in job performance did not occur. The Tribunal has been persuaded by the evidence that the Applicant knew her job was at stake and if she did not take corrective action dismissal was a possible outcome. In the event the Applicant seemed to become increasingly obdurate and her deteriorating working relationship with Mr Le Messurier was now having very a serious impact on the rest of the CIC sales team and consequently client relationships. The Tribunal has formed the view that the Applicant was increasingly rejecting any attempt by CIC to manage her as an employee.
- 15.15 The Tribunal has been persuaded by testimony and written evidence that it was most unlikely that Mrs Henderson could have rectified her unacceptable conduct, even with subsequent written warnings. During February, March and April 2010 there had been increasingly serious misconduct. Given this view the Tribunal accepts that a reasonable employer, in the same situation and of similar size and resource, might reasonably have applied the sanction of dismissal without any further warnings. The Tribunal therefore dismisses the claim of unfair dismissal.

*The Tribunal has given separate consideration to the allegations of sexual discrimination by Mrs Henderson during her period of employment*

- 15.16 Whilst the ET1 Application Form had contained extensive allegations relating to alleged unfairness by CIC toward the Applicant the initial submissions prior to the Hearing seemed only to focus on an allegedly offensive email contained in ET1 Schedule 4 and bullying by Mr Litchfield. The Tribunal therefore relied upon the evidence and submissions given during the Hearing to establish the scope of this complaint. Having heard oral testimony from witnesses over a three-day period, the legal arguments from legal representatives and with reference to all of the documents contained in the bundles from both parties the Tribunal has come to the following conclusions.
- 15.17 Mrs Henderson alleged direct discrimination in that her employer treated her less favourably in comparison with equivalent male employees in relation to client complaints, the disciplinary process, design mistakes, and in the way they handled employee grievances in relation to male employees and with specific reference to Mr Le Messurier.
- 15.18 The Tribunal has been persuaded by the evidence that Mrs Henderson was the focus of considerably more client complaints than any of her male colleagues during the period 2009 and up to end of April 2010. The evidence supports that Mr Litchfield dealt with these issues in the same manner as he dealt with complaints relating to other employees whether male or female. The Tribunal is further persuaded that Mr Litchfield relies on calm and measured counselling combined with suggestions for future improvement.
- 15.19 In relation to the disciplinary process it became clear from the evidence that Mr Litchfield was reluctant with all his employees to engage disciplinary processes to the point that some observers might criticise that he failed to use them when it would have been appropriate. The evidence supports that by the end of April 2010, Mrs Henderson was conducting herself in such a manner that the employer came to the conclusion he had no choice but to dismiss the Applicant. Mrs Henderson could not provide any substantial evidence that he would have

acted otherwise with male employee. Broad assertions were made by Mrs Henderson and by her husband that female employees in CIC were far more likely to be disciplined than males; in the event this was not supported by the evidence. On the contrary, evidence given by Ms Barclay illustrated Mr Litchfield adopting a joint problem solving and counselling process with her to deal with some capability issues with an end result which was most satisfactory both to her and CIC.

- 15.20 Mrs Henderson alleged that Mr Litchfield was far more critical of her design mistakes than he was with any male employees. The evidence would seem to support that her colleagues were aware she was making more mistakes than any other member of the team. It was almost inevitable that a conscientious employer would have to spend more time with her than any other team member to resolve these problems. In addition male employees testified to their own shortcomings and explained to the Tribunal the complexity of the work made it difficult for it to be 100% error-free first time. There is very significant evidence that Mrs Henderson was not prepared to accept critique and that her typical behaviour was to blame others, whether CIC colleagues or clients.
- 15.21 The Tribunal was not persuaded that the Respondent bullied the Applicant when raising his concerns as to her work or her conduct.
- 15.22 In relation to, the alleged differences in treating grievances between males and females the tribunal could find no evidence of this. On the contrary when Mrs Henderson submitted her resignation in December 2009, expressing a number of concerns and issues it would seem to the Tribunal that Mr Litchfield spent significant time attempting to deal with her grievances and to make adjustments in her work routines; whilst still emphasising the need for her to improve both her work standards and conduct. The Tribunal also notes that when Mrs Henderson met with Mr Wilkinson in early January 2010, he made every attempt to obtain specific examples of the alleged abuse by Mr Le Messurier. Despite insistent probing she could not offer any examples. The same pattern repeated itself in May 2010, when Mr Litchfield again asked for specific examples when she raised a grievance and again was not given any specific response. Finally the Tribunal did not hear any substantive evidence that Mr Le Messurier had in any way abused Mrs Henderson such that there might be grounds for a grievance.
- 15.23 The Applicant sought to establish that there was a male dominated environment where females were generally treated less favourably, disciplined more often and not given promotion opportunities afforded to male colleagues. The Tribunal has come to the conclusion that this allegation was not supported by any substantive evidence from the Applicant. The Tribunal has formed the opinion that on the contrary female employees could progress from company cleaner to skilled fitter and in the case of Ms Barclay considerable lengths were taken by CIC to meet her job needs and provide vacation entitlement which took into account her family responsibilities.
- 15.24 The Applicant was offended by the alleged sexual banter between Mike Collenette and Jeff Le Messurier; in the event the Applicant did not raise the issue with her employer during her employment and thus deprived him of the opportunity to deal with this issue; if such action had been deemed necessary.
- 15.25 Mrs Henderson had also alleged she was offended by the "C\*\*\*\*\*" email sent to her by Mr Le Messurier, dated 23 January 2010. Email evidence in the bundle supports the argument by Mr Litchfield that within a day of having been alerted to the existence of this email he had given guidance to Mr Le Messurier that he should take Mrs Henderson off any mailing list that contained such materials and he should also check with other female colleagues if they wished to receive such emails in future. The Tribunal notes that there was

no repetition of this behaviour by Mr Le Messurier. The Tribunal was somewhat surprised that Mrs Henderson complained that the receipt of this email was a discriminatory act given the significant evidence in the bundle that Mrs Henderson had been in the habit of sending sexually explicit emails to her work colleagues, including Mr Le Messurier, during 2009. The Tribunal has given Mr Litchfield's course of action much thought and have concluded that in light of the size and resources of the organisation and having taken into consideration the totality of the evidence presented to it, Mr Litchfield's reaction was prompt, took into account Mrs Henderson's views and prevented any further repeat; the Tribunal is persuaded that this incident was not sufficient to constitute a discriminatory act.

- 15.26 In summary, the Tribunal, despite an exhaustive review of the evidence, can find no grounds which would support any allegation of sexual discrimination by CIC toward the Applicant within the meaning of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005.

## **16.0 Decision**

Having considered all the evidence presented, whether recorded in this judgment or not, and the representations of both parties, and having due regard to all the circumstances, the Tribunal found that, under the provisions of the Employment Protection (Guernsey) Law, 1998 as amended that the Applicant was subject to a fair dismissal and dismiss the claim of unfair dismissal.

In relation to the claim of sex discrimination, having considered all the evidence presented, whether recorded in this judgment or not, and the representation of both parties and having regard to all the circumstances, the Tribunal found that under the provision of the Sex Discrimination (Employment) (Guernsey) Ordinance 2005 that the Applicant was not discriminated against and dismiss the claim of sex discrimination.

**Signature of the Chairman: Mr Peter Woodward**

**Date: 9 December 2010**