



# EMPLOYMENT TRIBUNALS

**Claimant:** MS B F Shahgaldi

**Respondent:** Guildford College of Further and Higher Education

**Heard at:** Reading                      **On:** 20, 21 and 22 February 2018

**Before:** Employment Judge Gumbiti-Zimuto

**Representation:**  
**For the Claimant:** In Person  
**For the Respondent:** Mrs B Huggins (Counsel)

## RESERVED JUDGMENT

1. The claimant's claim of unfair dismissal is well founded and succeeds.
2. The claimant's claims for unlawful deduction from wages and wrongful dismissal succeed.
3. A remedy hearing has been listed to take place at Reading Employment Tribunal, 30/31 Friar Street (***Entrance in Merchants Place***), Reading RG1 1DX to start at 10am on the **2 January 2018**.
4. The claimant is to send to the respondent, to arrive by no later than 28 days after the date on which this judgment and reasons is sent to the parties, a schedule of loss.
5. The parties are to exchange statements of any witness whose evidence they intend to rely on at the remedy hearing no later than 56 days after the date on which this judgment and reasons is sent to the parties.

## REASONS

1. In a claim form presented on the 16 December 2016 the claimant made a complaint of unfair dismissal and various other complaints including complaints of age, race and sex discrimination. The claimant abandoned the discrimination claims by not paying a deposit order made in respect of those claims and they struck out by a judgment of Employment Judge Vowles made on the 25 May 2017.

2. When this hearing was listed the claims before the employment tribunal were unfair dismissal, wrongful dismissal and unlawful deduction from wages. At the commencement of the hearing before me the claimant stated that she was pursuing a claim for unfair dismissal and made no reference to wrongful dismissal or unlawful deduction from wages. In the evidence that the claimant has presented she makes no reference to unlawful deduction from wages. I have been concerned only with the claim for unfair dismissal. I have treated the claims of unlawful deduction from wages as though were withdrawn, however if I am wrong to do that, on the evidence presented I dismiss the claims because they have not been made out. Nothing was said about unpaid holiday pay or wrongful dismissal.
3. At a preliminary hearing heard at Watford by telephone the issues in the unfair dismissal claim were identified as follows:
  - a. Was the claimant dismissed for some other substantial reason?
  - b. Was this a fair reason for dismissal in accordance with S98 Employment Rights Act 1996?
  - c. Was the process used prior to the claimant's dismissal fair and in accordance with the ACAS Codes of Conduct?
  - d. Did the dismissal fall within the range of responses open to an employer?
  - e. If the claimant was unfairly dismissed, should any award be reduced to reflect contributory fault?
  - f. If the Tribunal find that the claimant's dismissal was procedurally unfair, should a Polkey reduction be applied to any award on the basis that the claimant would have been dismissed in any event?
4. The claimant gave evidence in support of her own case. The respondent relied on the evidence of Sue Clyne (who at the relevant time was employed by the respondent as Executive Director of Workforce Development) and Anna Armstrong (HR Business Partner). The witnesses all produced statements which were taken as their evidence in chief. I was also provided with a trial bundle containing 669 pages of documents to which a few additions were made during the hearing. From these sources I made the findings of fact set out below.
5. The claimant's employment with the respondent commenced on 10 September 2003 the claimant was employed by the respondent as a college lecturer for Construction with Programme Management. The claimant was employed at Guildford College of Further and Higher Education.
6. In 2014 the claimant was given a final written warning that was to remain on her file for 12 months and expire on 17 March 2015. In giving the

claimant the final written warning it was recognised that there had been an inconsistent approach by management in dealing with issues relating to the claimant when they had arisen. The claimant was to be provided with training to support her in improving her behaviour towards colleagues.

7. There is no evidence of what if any action was taken to deal with the management failings identified. Sue Clyne accepts that no action was taken to provide the claimant with the training referred to. Even though this was the respondent's failure Sue Clyne considered the claimant at fault in failing to follow it up.
8. The claimant was suspended by the respondent on the 8 July 2015 (p282). The suspension was to enable an investigation into allegations against the claimant to take place. The allegations were investigated by Sean Jones who produced a report dated 7 November 2015 (p331). Sean Jones concluded that he could not make a conclusive judgment as to whether there was a case for the claimant to answer, however, he recommended that a disciplinary hearing is convened to consider the allegations further. The claimant was invited to a disciplinary hearing to consider allegations of misconduct. Although a meeting was set for the 26 November 2015 the meeting never took place.
9. While the claimant was suspended she made a "grievance of discrimination and unfair treatment by Ms Joanne Shankland, Director" (p338). The grievance was never dealt with under the respondent's grievance policy, it was never investigated. The grievance concerned matters related to the disciplinary issues for which the claimant was suspended. Sue Clyne stated in her evidence referring to the claimant's grievance, that when the negotiations to terminate the claimant's employment ended "we considered that it showed a break down in relations with the department therefore we went on SOSR<sup>1</sup>". The claimant's bare grievance was treated as grounds for supporting the termination of the claimant's employment.
10. The respondent's grievance policy<sup>2</sup> provides that on receipt of a written grievance from an employee, the appropriate manager will arrange to meet with the aggrieved employee within five working days, where possible, to hear the grievance. There was never any meeting to consider the claimant's grievance. By the date of the claimant's grievance on the 13 July 2016 there had been no action taken by the respondent in respect of the claimant's grievance under the respondent's grievance policy. During the claimant's SOSR rehearing Sue Clyne stated that "with regards to the breakdown in relationships, there is no particular date this occurred

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<sup>1</sup> Some other substantial reason.

<sup>2</sup> The version of the grievance policy produced was approved in November 2016. However, I was informed that the version produced was, in so far as was material, the same as the original version from February 2015.

however the tipping point was when [the claimant] submitted a grievance against Jo Shankland in November 2015.” The respondent did not make the decision to commence the SOSR process until March 2016.

11. Sue Clyne said that protected discussions took place with a view to ending the claimant’s employment. Sue Clyne stated in answer to questions from the claimant that, “the protected discussions that took place were important because it explains why we acted as we did”. When those discussions failed to result in agreement Joanne Shankland was asked, on 22 February 2016, if she was willing to undergo mediation with the claimant. It was following Joanne Shankland’s refusal that the SOSR process started.
12. Sue Clyne explains that in March 2016 the decision was taken to consider dismissal for some other substantial reason because there was no evidence that if the claimant returned to work her relationships with colleagues would improve and those who were involved in the grievances (Joanne Shankland) had rejected mediation.
13. On 19 April 2016 Sue Clyne wrote to the claimant explaining the procedure that the respondent intended to follow “for the dismissal proposition” on the grounds of SOSR (p427). The claimant’s grievance against Joanne Shankland was to be put in “abeyance” although Joanne Shankland would be interviewed for the SOSR investigation.
14. Philip Coulthard carried out an investigation that included meeting with the claimant and other members of staff. Philip Coulthard produced a written report that recommended that allegations against the claimant should be considered at a formal hearing to determine whether the claimant’s employment should be terminated (p507).
15. The claimant was invited to a formal hearing to discuss whether her employment should be terminated for SOSR. The hearing took place on the 6 July 2016. The hearing was conducted by Tony Sanderson who informed the claimant in a letter dated 13 July 2016 that she was dismissed as of that date.
16. The claimant appealed the decision to dismiss her. The appeal was conducted by Mike Potter, Principal and Chief Executive. The appeal was dismissed.
17. Neither Tony Sanderson or Mike Potter attended to give evidence.
18. In his letter of 13 July 2016 Tony Sanderson set out five allegations against the claimant.
19. The first allegation was that the claimant’s behaviour towards certain colleagues caused or contributed to a decision by on or more of them to leave College, such as to damage the College’s business. Tony Sanderson found that three former members of staff cited that a factor contributing to their decision to leave employment with the College as due

to the claimant's behaviour towards them. Tony Sanderson accepted the claimant's argument in respect of two others who were said to have left because of the claimant's conduct. Tony Sanderson's conclusion in respect of this allegation was expressed as follows:

"I do accept your challenge and that there are other contributing factors cited within the resignations, however I cannot ignore the fact that three former members of staff have clearly confirmed that your behaviour towards them was a primary reason for their choice to leave the College."

20. In so far as the allegation relates to George Beach this concerns matters for which the claimant was suspended and Philip Coulthard was "not in a position to make a conclusive judgment as to whether there is a case for [the claimant] to answer". Allegations unproven in the misconduct investigation were taken as substantiated and used to form conclusions in the SOSR process. In so far as the allegation relates to Eileen Marwan these matters go back to February 2014, were investigated in March 2014 and for which the claimant was given a final written warning which had expired on 17 March 2015 (p191). The claimant was never interviewed in respect of this matter at around the time the allegation was first made and only found out about it when she was informed of the outcome of the investigation into a different complaint by Margie Kemp. In so far as the allegation relates to Margie Kemp this goes back to August 2013, the claimant states that there was no contemporaneous investigation and also states that the real reasons for Margie Kemp leaving the respondent's employment were personal to Margie Kemp (the claimant articulated further in her evidence) and entirely unrelated to the claimant; further the claimant states that the investigation which took place started months after the allegations had been made and the context of the claimant's alleged behaviours was never established. These points made by the claimant were not contradicted by evidence from the respondent.
21. The absence of Tony Sanderson leaves me unable to understand (i) (if the claimant's evidence is not accepted) the extent to which the claimant in fact challenged matters in the investigation, (ii) the nature of the challenge, and (iii) how if at all these matters were considered by Tony Sanderson in coming to his decision. The claimant's evidence before me shows that there was a credible challenge to be made in respect of the allegations found proved by Tony Sanderson.
22. The second allegation was that the claimant's behaviour to "these individuals" has produced multiple complaints against the claimant on which the College has expended considerable time and resource. Tony Sanderson found that a significant number of employees have raised complaint about the claimant in the period from 2010 to July 2016. There were eight investigations involving the claimant as result of either a complaint by the claimant or a complaint against the claimant.

23. Tony Sanderson was concerned by the “sheer volume of complaints and investigations taken place since 2010”. Tony Sanderson concluded that “the amount of time and college resources that has been spent on these complaints, issues and formal proceedings is vast and clearly evidence in the information I have been provided with.”
24. There is a complaint made by the claimant against the respondent of a failure of management. In context of the disciplinary action taken in 2014 there was found to be an inconsistent approach by management to dealing with issues when they had arisen and a recommendation that this be taken on board and improved in the future. There is no evidence of this having happened. There is no indication of this being given any consideration or if it was considered how it was approached by Tony Sanderson.
25. There is no consideration at all in the decision letter of whether the claimant’s complaints were justified or whether the complaints that were made against the claimant were justified. There is therefore no assessment of the extent to which it can be said that the claimant was at fault as opposed to just being involved in the complaints. The concern was the “sheer volume of complaints and investigations”. The fact that there is a lot of time spent considering the complaints does not lead to a conclusion that it is in accordance with justice and equity for the claimant to lose her employment.
26. The third allegation was that it is reasonable to assume that the claimant’s behaviour, if left unchecked, would cause or contribute to the departure of other members of staff in the future, such as to damage the College’s business. Tony Sanderson’s letter states that the history of what has happened in the time since 2010 leads him to this belief. Tony Sanderson also noted the unsubstantiated statement of Joanne Shankland that if the claimant returned to work staff would leave. Tony Sanderson stated: “My impression from your response at the hearing is that you favour the formal procedure to deal with your complaints, choosing to escalate the issue with management if it is something you do not agree with, which of course is your right, however leads me to believe that you would therefore continue to raise complaints formally rather than attempting to address your behaviour to resolve them informally.”
27. Tony Sanderson penalises the claimant for exercising what he states is her right. He also says the claimant will “continue to raise complaints formally rather than attempting to address your behaviour”. The meaning of this is not clear but it appears to hold the claimant as acting in a wrongful and culpable way by raising a grievance and suggests that in doing so the claimant will be acting wrongly. Tony Sanderson finds that the claimant believed that “raising a grievance was helpful”.
28. Tony Sanderson fails to examine at all the validity of the statement made by Joanne Shankland that “staff are uncomfortable and some have

informed her that they would resign.” Tony Sanderson merely stated that he has “no reason to doubt this statement”.

29. In assessing the various allegations made against the claimant Tony Sanderson is purporting to be giving consideration to the claimants' behaviour. The context in which he does this is unfair. The allegations made against the claimant do not allow her to answer any specific allegations. However, Tony Sanderson evaluates the claimant's behaviour based on a consideration of historic matters. This necessarily leads to the claimant challenging matters she does not accept. Tony Sanderson then goes on to rely on this, unfairly in my view, as a basis for making findings against the claimant and about her behaviour. Tony Sanderson's conclusion that the claimant's “denial to all complaints and issues and continuous blame of others and management, suggests that you do not see your behaviour as inappropriate in any circumstances discussed, and therefore leads me to believe that it would not be addressed and continued as is, leading to further issues”, is in my view unfair because it assumes that the claimant is always at fault.
30. The fourth allegation is that the claimant's behaviour towards managers and directors involved in various complaints investigations and meetings with the claimant have led them to make statements about the difficulty in working with the claimant. Tony Sanderson concludes that the claimant is a difficult person to work with. Tony Sanderson stated that “many perceive [the claimant's] behaviour to be challenging. Tony Sanderson accepted the statement made by Joanne Shankland that “staff members do not wish to continue to work with” the claimant.
31. In my view allegation four cannot justify dismissal without some evidence from Tony Sanderson to explain why it should do so, even when taken with other matters. The behaviour relied on is unexplained. The difficulty in working with the claimant is unexplained. The reference to the claimant's behaviour being challenging to managers is unexplained. Whether the claimant's behaviour (unidentified) was or was not capable of control by appropriate management is unexplored. Tony Sanderson's failure to give evidence prevents me from being able to understand why on the information that he apparently considered the conclusion that the claimant is “a difficult individual to work with” justified dismissal.
32. The fifth allegation is that taken together or separately the conduct has led to the destruction of the relationship of trust and confidence between the claimant and the College. Tony Sanderson found that the claimant's inappropriate behaviour has been a major cause of the break down.
33. Tony Sanderson found that the allegations against the claimant were equivalent to gross misconduct and he dismissed the claimant without notice. The claimant appealed the decision to dismiss him. While the appeal against dismissal was refused the claimant was paid her notice pay.

34. Section 98 of the Employment Rights Act 1996 provides that in determining whether the dismissal of an employee is fair or unfair, it is for the employer to show the reason (or, if more than one, the principal reason) for the dismissal, and that it is either a reason falling within section 98 (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held. The determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and (b) shall be determined in accordance with equity and the substantial merits of the case.
35. Each case depends on its facts. Section 98 must be applied to the facts to determine whether they give rise to SOSR of a kind to justify the dismissal of an employee holding the position that the employee held, the employer has to establish the facts which justify the reason or principal reason for the dismissal. In a given case a breakdown in confidence between an employer and one of its employees, for which the latter was responsible and which actually or potentially damaged the operations of the employer's organisation, it must be possible for an employer fairly to dismiss an employee, provided always the terms of section 98(4) are satisfied.
36. Was the claimant dismissed for some other substantial reason? A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee.
37. I am satisfied that it was the claimant's alleged conduct that was the reason why the claimant was suspended. The claimant was suspended for months before a decision was made on the disciplinary investigation.
38. At the point that the disciplinary investigation by Jason Jones was concluded the recommendation was that a disciplinary hearing is convened to consider the allegations further. The reason why this does not happen is unexplained save that there was an entry into protected conversations. The protected conversations were not instigated by an approach from the claimant.
39. On the collapse of the protected conversations there is no explanation as to why the disciplinary proceedings were abandoned and the SOSR route followed by the respondent. In the SOSR hearing Sue Clyne accepted that the evidence following the Jason Jones investigation did not justify disciplinary action. This did not however appear to be the reason for starting the SOSR process.
40. The SOSR process according to Sue Clyne was began because "there was no evidence that if Fariba returned to work her relationships with colleagues would improve and those who were involved in grievances



rejected additional mediation.” The decision to start the SOSR process was made in March 2016 at which point the claimant had been suspended from work since July 2015.

41. Following the SOSR process the stated reason for dismissing the claimant was that the relationship between the claimant and Guildford College had broken down. This was based on the claimant’s conduct as presented to the decision makers in the SOSR process. Dismissal because of a breakdown in the relationship between employee and employer is a potentially fair reason for SOSR.
42. Was this a fair reason for dismissal in accordance with S98 Employment Rights Act 1996? Was the process used prior to the claimant’s dismissal fair and in accordance with the ACAS Codes of Conduct?
43. I have come to the conclusion that the claimant was unfairly dismissed because the respondent followed a fundamentally unfair procedure.
44. The claimant was suspended on the 8 July 2015. The claimant was told she was suspended for three weeks until the 30 July 2015. In fact, the claimant’s suspension continued well beyond that date until her dismissal on 13 July 2016. In the suspension letter the claimant was told the respondent “will be in contact shortly about the arrangements for the investigation.” The respondent’s disciplinary procedure provides that matters should be dealt with promptly and without unreasonable delay.
45. In August 2015, whilst her suspension was continuing, the claimant was asked to attend college to assist with the “students’ qualification”. On 26 August 2015 the claimant wrote to the respondent saying that she needed further information about the concerns that have justified her suspension and asking for a timetable to clarify when the investigation interview will take place and how long the whole process of the investigation will take.
46. On 3 September 2015, eight weeks after her suspension, the claimant was informed that potential witnesses and the investigator were not available over the summer period. The claimant was informed that her suspension was being extended to the 21 September 2015 to allow the investigation to take place. The claimant’s suspension continued beyond this date.
47. On 17 November 2015 the claimant was informed that she was required to attend a disciplinary hearing into allegations of potential misconduct. The claimant was provided with a copy of the investigation report and statements. The report prepared by Jason Jones contained the following summary outcome: *“From the information gathered in this thorough investigation I feel that there is a balance of evidence to both support and dispute the allegations made by the Guildford College Group against Dr Bannoo Shahgaldi. I am therefore not in a position to make a conclusive judgment as to whether or not there is a case for Dr Shahgaldi to answer and recommend that a disciplinary hearing be convened to consider the allegations further.”*

48. The claimant's extended absence resulted in positions against the claimant returning being formed. Anna Armstrong in her evidence to Philip Coulthard's investigation states that in the claimant's absence "a strong team ethos has been built up." Joanne Shankland in her statement for Philip Coulthard talks of a strong and stable HE team and says that if the claimant returns the team would be unstable again. The claimant's extended absence resulted in positions hardening against her return.
49. It should be borne in mind that, if the unsubstantiated allegations which resulted in the claimant's initial suspension are ignored, the claimant was working in a manner that the respondent permitted. Lynda Owen in her statement to Philip Coulthard said that the claimant's managers "normalised her behaviour and ignored it". Alleged conduct or behaviour which was not the subject of censure by advice or disciplinary action and permitted by managers to continue was used as reason not to allow the claimant to return to work. The delay in dealing with the claimant's case exacerbated this and made the hardening of positions more likely.
50. The general principles of the respondent's disciplinary policy provide that matters should be dealt with promptly and without unreasonable delay (3.3). If following an investigation, the appropriate senior manager believes there may be a case to answer a disciplinary hearing will be arranged in accordance with the disciplinary policy (3.7). The policy provides that in the interests of ensuring the disciplinary matters are resolved promptly and without unreasonable delay, time limits are given for appropriate stages in this Policy. The time limits may be amended, ideally by mutual agreement, if it is not practicable to adhere to them (3.16). There are no specific time limits mentioned in respect of the time taken to deal with the investigation. However, there are other time limits for action to be taken which require action in a matter of days rather than the months extending to over a year which took effect in the claimant's case if the time is measured from the date of suspension to the date of dismissal.
51. In the section on disciplinary action it states that where it is decided that there is a disciplinary case to answer, the employee should be notified of this in writing (8.2). The meeting shall be held without unreasonable delay whilst allowing the employee enough time to prepare their case (8.4).
52. The procedure adopted in the claimant's case was bespoke for her case. It was however intended to follow the spirit of the respondent's disciplinary procedure and observe ACAS guidance in dealing with dismissals. The ACAS Code of Practice states that: "It is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the cases." To the extent that the claimant's dismissal is covered by the Code of Practice on Disciplinary and Grievance Procedures the respondent failed to follow the ACAS Code.

53. The reasons justifying the claimant's suspension ceased to exist after the Jason Jones investigation into the initial disciplinary charges. Sue Clyne accepted this in the course of the SOSR hearing when she is recorded as agreeing that the evidence in the previous investigation did not warrant disciplinary action. However, she went on to say that the claimant's "attitude, behaviour and approach towards colleagues has continued". Apart from the return to the college in order to assist with the students' qualification there had been no contact between the claimant and her colleagues it is not clear in the circumstances how it can be said that the claimant's "attitude, behaviour and approach towards colleagues has continued". This is unexplained.
54. The respondent never investigated the claimant's grievance. However, the claimant's grievance was provided to Joanne Shankland who then referred to not just the fact of the grievance but the content as justification for the position that there had been an irretrievable breakdown. The failure to resolve the grievance was in breach of the respondent's own procedure.
55. The respondent's grievance policy states that its aim is to resolve differences at work as fairly and speedily as possible (1.2). The grievance procedure provides for the possibility of mediation where both parties agree to participate in the process. On receipt of the written grievance, the appropriate manager will arrange to meet aggrieved the employee within five working days where possible to hear their grievance. The grievance procedure provides for the use of an external investigator or mediator.
56. When the disciplinary proceedings were abandoned this was done without the claimant being given any explanation or information about what was to happen next. In her statement Sue Clyne provides no explanation for the abandonment of the disciplinary procedure. In answer to questions from the claimant it emerged that there were discussions that took place with the claimant's trade union representative. She described these as protected conversations. The claimant's position was that she was unaware of the discussions taking place and they were not conducted with her authority. When an offer was put before the claimant involving the termination of her employment with the respondent she rejected it. The claimant's trade union proposed to the respondent that the claimant be allowed to return work and that mediation take place. Joanne Shankland refused mediation. The failure to keep the claimant properly informed on what was happening in her case was in my view also unfair.
57. I am satisfied that the dismissal of the claimant was unfair having regard to the various criticisms that the claimant makes about the way the respondent dealt with her case.
58. The claimant was advised by her union representative that the respondent was preparing to dismiss her. This chimes with the communication that Sue Clyne had with the claimant's Union representative as detailed in her

letter to the claimant dated 19 April 2016. Sue Clyne refers to her “email to Mr Lincoln of 03 March 216” where she “explained that I wished to meet you in order to set out a proposition that your employment be terminated on grounds that your difficult personality has led to an irretrievable breakdown in working relationships”.

59. The SOSR process embarked on by the respondent was started with the aim of justifying a dismissal of the claimant.
60. The letter of 19 April 2016 set out the procedure that the respondent intended to follow. The claimant was provided with a spreadsheet or “log of issues” setting out details of the allegations against her.
61. The claimant points out that the log of issues consisted of concluded investigations and expired disciplinary decisions of the past six years resurrected as new allegations together with additional unsubstantiated allegations that were over six years old and had never been investigated or discussed with the claimant. The claimant further points out that the log of issues contained routine e-mails and letters of concern misrepresented as complaints and evidence of wrong doing by the claimant. The log of issues contained a reference to alleged complaints that were not produced of which there was no record of any investigation. The claimant points out that the log of issues contained alleged complaints by the claimant against other persons in circumstances where there were no such complaints.
62. Philip Coulthard the SOSR investigator did not give evidence at the Tribunal. Tony Sanderson the dismissing officer did not give evidence and Mike Potter who heard the claimant’s appeal did not give evidence. How the claimant’s objections to the case against her were considered or not considered by the respondent’s decision makers is unexplained.
63. The claimant points out that a statement was made by Anna Armstrong. The statement includes the comment that Anna Armstrong had not worked with the claimant but “having spoken with other colleagues in her team who have found it difficult to work with her” and that there have been a number of complaints made against the claimant and complaint by the claimant “seemingly in retaliation to complaints against her”. The claimant states Anna Armstrong was a person in respect of whom she had raised concerns about a refusal to follow ACAS code of procedure and the respondent’s own disciplinary and grievance policies. The weight attributed to this statement is not explained.
64. The claimant points out that Lynda Owen whose only interaction with the claimant was to go through the investigation of an allegation of bullying and harassment against the claimant. Lynda Owen investigated the matter which led to a disciplinary hearing in 2014. However, despite this limited interaction Lynda Owen felt able to comment that the claimant “‘ploughs her own furrow’ and will do what she feels is right without thought of other people or the college. She feels justified in her stance due to her superior

intellect and academic achievement. ... From her behaviour and accusations, I feel that Fariba is paranoid as to what the college motives are". Lynda Owen states that in her "opinion the relationship between Fariba Shahgaldi and Guildford College Group is beyond repair."

65. Having considered the content of the statement I am unable to understand how it is that Lynda Owen could fairly hold such strong opinions about the claimant based on her limited interactions with the claimant. The absence of any decision maker to explain what weight was attached to this statement and does not assist me in resolving this.
66. The claimant points out that Lynda Owen was a person in respect of whom she had raised concern about a refusal to follow the ACAS code of procedure and the respondent's own disciplinary and grievance policies in her case. The extent to which if at all this was given consideration is also unexplained as a result of the absence of the decision makers in the claimant's case.
67. Lisa Blofeld, in her statement, states that she has encountered the claimant's unreasonable behaviour on a number of occasions. She refers to incidents in 2009 and 2010 as a result of which the claimant would ignore her when she met her. Lisa Blofeld then goes on to relate an incident in 2012 and an incident 2013. She concludes that "these are not one-off incidents, they are part of a general continuous pattern of behaviour, which in my opinion is unacceptable, especially in the work place."
68. How this was considered by the decision makers is unexplained the weight attached to these matters is unexplained where an explanation is required as to why matters going back to 2009, 2010, 2012 and 2013 could form part of justification for dismissal of the claimant in 2016.
69. Joanne Shankland was able to say in her statement about the claimant that she believed the relationship between the claimant and her had broken down. She referred to the grievance made by the claimant which she describes as "untrue outlandish and full of slander ... which questions my professionalism". The claimant points out that the grievance was never investigated by the respondent. Had it been investigated it may have been found to be justified and upheld. It may have been found to be unjustified and dismissed, or somewhere in between the two. The claimant says that it was unfair to use this grievance as part of the evidence upon which the decision to dismiss the claimant is based. The absence of decision makers to explain how this was handled in the consideration of the claimant's case does leaves open the possibility of serious unfairness to the claimant. Was there any consideration given to the possibility of the claimant being in some respect justified in her grievance and if so how was it done?

70. The claimant points out that the report prepared by Philip Coulthard was biased against her, she says it ignored her responses and challenges to the falsehoods recited as well as ignoring evidence against the allegations. The claimant says that she was not allowed to discuss accusations in the log of issues and that she was asked by Philip Coulthard “why wouldn’t I take some money and leave?” Philip Coulthard concludes that the “claimant has behaved unreasonably” and recommends that a hearing should be convened to determine whether her employment should be terminated. The gravamen of the claimant’s criticism as I understand it is that Philip Coulthard reaches a conclusion that she should be disciplined based on unsubstantiated allegations and was critical of the claimant for not taking money and leaving the respondents employment.
71. The claimant complains that the respondent failed to follow its own procedure which she states provides that where an investigation results in no action being taken against the employee, all records of the investigation and suspension will be removed from the employees personal file. The specific procedure relied on was not produced either by the claimant or the respondent. This passage does not appear in the procedure that was produced. I am not persuaded that there is any unfairness shown here.
72. Philip Coulthard did not attend the disciplinary hearing to defend his report and answer questions. The management case was presented by Sue Clyne. The procedure that the claimant was told was being followed was based on the disciplinary procedure which allowed for the employee in the claimant’s position to ask questions, about the evidence obtained during the investigation stage, present evidence and call witnesses. An important limb of the procedure was denied the claimant in not being able to ask questions of Philip Coulthard about his report at the SOSR hearing before Tony Sanderson.
73. The claimant complains that the respondent in dismissing her treated her dismissal as equivalent to gross misconduct and summarily dismissed the claimant. The claimant argues that the references to “your behaviour” in four of the five allegations shows that the claimant was in reality dismissed for a conduct reasons blamed on her unspecified “behaviour”.
74. Did the dismissal fall within the range of responses open to an employer?  
I am satisfied that it was not.
75. The dismissal of the claimant in the circumstances of this case for SOSR was not within the range of responses open to an employer. The claimant was not afforded a fair process. The whole SOSR process was entered with a view to dismissing the claimant. The respondent abandoned a disciplinary process that resulted in the claimant spending about eight months suspended from work at the time the SOSR process was started. The claimant made a grievance against her line manager, relevant to issues upon which she had been suspended, this was not considered by the respondent.

76. Had the grievance been considered and any matters found in the claimant's favour these matters would have been relevant to consider in weighing up whether the claimant should be dismissed because of a breakdown in the relationships with the colleagues.
77. I am satisfied that the claimant was unfairly dismissed.
78. Should any award of compensation be reduced to reflect contributory fault? Section 122 (2) of the Employment Rights Act 1996 provides that where the tribunal considers that any conduct of the complainant before the dismissal was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly.
79. In section 123 (6) the Employment Rights Act 1996 provides that where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.
80. To make a deduction for contributory fault I have to conclude that the claimant was guilty of blameworthy conduct. The evidence presented before me does not prove any blameworthy conduct. The height of the respondent's case is that there was a history of disputation between the claimant and others employed by the respondent. No witness gives evidence of blameworthy conduct. The claimant denies that those matters which have been the subject of consideration and adjudication by the respondent were correctly decided.
81. In presenting evidence to justify the claimant's dismissal the respondent did not seek to obtain evidence about the various complaints made against the claimant or made by the claimant. The allegations involved making assessment of the claimant's behaviour based on the history of the claimant's disputes with colleagues and the respondent. There was no determination of the claimant's conduct in respect of many allegations which underpinned the questions under considerations in the SOSR process.
82. The evidence considered by the respondent does not lead me to conclude that the claimant was guilty of blameworthy conduct justifying a reduction in the award of compensation. The critical feature of this case was consideration of whether there was a breakdown in relationships based on historic matters which were not themselves reviewed.
83. The claimant's grievance was not considered. The claimant was entitled to raise grievances the fact that she had done so historically does not in my view indicate blameworthy conduct justifying a reduction in the award. The circumstances of the claimant's dismissal in this case are such that a reduction in the award of compensation would not be just and equitable.

84. Should a Polkey reduction be applied? There has not been argument presented to me that if there was an unfair dismissal there should be a Polkey reduction. On the material before me I am unable to conclude that there is a basis for saying that the claimant's employment would have been fairly brought to an end on any particular time line or that there is a basis for stating the extent of the chance of the that the claimant's employment being fairly terminated by the respondent. A Polkey reduction is not appropriate in this case.

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Employment Judge Gumbiti-Zimuto

Date: 8 May 2018

Sent to the parties on: .....

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For the Tribunals Office