EMPLOYMENT TRIBUNALS

Claimant: Miss P. Bertram

Respondent: Bermondsey Community Nursery

Heard at: London South, Croydon
On: 15-18 April 2019 and the 17 and 20 May 2019 in chambers

Before: Employment Judge Sage
Members: Ms. L. Grayson
Mr. N. Shanks
Representation

Claimant: In person

Respondent: Ms. P. Hall Consultant

RESERVED JUDGMENT

1. The Claimant's claim for unfair dismissal is well founded.
2. The Claimant's claim for discrimination on the grounds of Part Time Status is not well founded and is dismissed.
3. The case has been listed for a 1 day remedy hearing on the 23 August 2019 at10.00am.

REASONS

1. By a claim form presented on the 24 September 2017 the Claimant claimed unfair dismissal and part time workers discrimination. The Claimant had been employed for over 24 years as a Nursery Manager. The Claimant stated that the procedure was unfair and was for a contrived matter that was designed to reduce overheads. The Claimant claimed that she has suffered a detriment due to her part time status.

2. The Respondent denied that the dismissal was unfair, they state it was for a fair reason and the Claimant was dismissed for gross misconduct. They

stated that the dismissal was handled by an impartial panel. They denied that the dismissal was contrived or that Ms Seymour was brought in with the intention to manage the Claimant out of the business. They denied that the Claimant was discriminated due to her part time status.

3. **The Issues**
   The issues had been agreed at previous preliminary hearings. They are as follows:
4. In relation to the claim for unfair dismissal:
   a. The Respondent relies on conduct, a potentially fair reason to dismiss;
   b. Did the Respondent hold a genuine belief in the Claimant's misconduct on reasonable grounds after conducting a reasonable investigation;
   c. Did the Respondent's decision to dismiss fall within the bounds of reasonable responses in the circumstances for a reasonable employer;
   d. Did the Respondent follow a fair procedure in the dismissal of the Claimant;
   e. If the dismissal was unfair, did the Claimant contribute to the dismissal by her own culpable conduct;
   f. If the dismissal was procedurally unfair, would the Claimant have been dismissed anyway if a fair procedure had been used?
5. In relation to the claim for Part Time Workers Discrimination the issues are:
   a. Was the Claimant continually harassed and pressurized to return to full time hours against her wishes?
   b. That the disciplinary process instituted against her was not suspended when she submitted a grievance;
   c. Management said in both emails and verbally that they wanted to replace her with a full time employee and this was a contributory factor in the decision to terminate her employment.
   d. The Claimant clarified that Ms. B Kolenda, Ms. Michaels, Ms. Ajoke and Ms. Letcher are alleged to have been those responsible for pressurizing the Claimant to return to work and this took place from 2009 until her dismissal. The Claimant clarified that the incidents involving Ms. Kolenda referred to December 2016 AGM and the 1:1 meetings she had with the Claimant.
   e. The Respondent will argue the defence of justification.

Preliminary Issues

6. At the beginning of the hearing on the first day there was a dispute about an additional bundle produced by Claimant called C1 which she said was disclosed to the Respondent last year. This bundle was allowed in on the first day of the hearing.

7. There was then a discussion about bundle R1, which was an additional bundle produced by the Respondent (pages 487-621). This bundle was admitted.

8. There was a discussion at the end of the hearing on the 16 April 2019 where it was noted by the Tribunal that there were no Committee minutes in the bundle relating to the disciplinary process and the decision to dismiss. An order was made for these documents to be produced as well as the

documents provided to the Committee at the point of suspension including the email sent, the recipients and the attachments. The Tribunal also asked for evidence of whether the reports produced by Ms Ramsden and Mr Carter had been shared with the Committee. This was ordered to be produced the following day the 17 April 2019. The Respondent duly produced R2 comprising of 202 pages on the 17 April 2019. The Claimant was given time to read and consider these documents for an hour. These documents were relevant to the issues in the case and should have been disclosed at the relevant time.

Witnesses.

From the Respondent we heard from:

Ms. Kolenda former member of the Management Committee and on the Respondent's Board of Trustees from 2014 to 26 February 2019.

Ms. Michaels, Member of the Management Committee at the relevant time.

Ms. Seymour Chair of the Board at the relevant time.

The Claimant and
Ms. Letcher Chair of the Board (she provided a statement but did not attend to give evidence).

Findings of Fact

9. The Claimant began work for the Respondent on the 7 July 1993 firstly as a Nursery Officer on a temporary basis and then was asked to join as a permanent member of staff by the then Chair of the Management Committee. The Respondent is a charity and used to be under the control of the Local Authority, it was then transferred to private hands. The management of the charity is via a Management Committee "MC" which is comprised of volunteers and is responsible for management of the organisation and ensures that all statutory requirements are complied with. The membership of the MC changes every few years.

10. The Claimant told the Tribunal that the Respondent had utilised the services of Peninsula for the previous 7 years to provide them with legal advice and they handled all employment law issues relating to conduct and contractual issues. It was noted by the Tribunal that Peninsula and their service called Face2Face were instructed throughout the Claimant's disciplinary process.

11. The Claimant was promoted to the role of Nursery Manager which was the role she held at the date of termination. The Claimant's job description was at pages 43-5 and her role was Early Years Manager. The Tribunal saw an email dated the 11 June 2012 showing a list of employees and the salaries paid. The number of staff on the payroll appeared to have increased to 12 in 2017 (page 118).

12. The Tribunal saw a number of contracts in the bundle at pages 30 signed in 2008 showing her hours of work to be 35 and salary to be £30,606.48 (for a 5-day week). The Claimant worked full time in the role until 2009 when she requested to reduce her hours due to two bereavements and her

daughter's diagnosis with leukaemia. The Tribunal saw the reduction in hours recorded by a letter at page 150 of the bundle reducing the Claimant's hours from 35 to 28 on the 9 January 2009 and then page 151 dated the 8 November 2009 reducing the Claimant's hours to 21 per week working Monday to Wednesday. The change of hours was said to be following her request for flexible working. The contractual change showing the reduction to a three day week was recorded in a contract signed in 2011 showing a salary of £18,390.

13. The Claimant line managed 6 staff at first but by the end of her employment this had increased to 14 staff in total. The Claimant conducted one to one meetings and performance reviews of all her line reports.

14. The Claimant had several different managers during her employment with the Respondent. We heard that the Chair of the MC was her line manager. The Claimant was managed by Pauline Richards until February 2012 when Ms Letcher took over as Chair until the 23 March 2015 when she stepped down. Ms Kolenda in cross examination confirmed that the Claimant spoke to her about her concerns that Pauline was bullying her. Ms Kolenda joined the organisation in 2013 and she confirmed that she had known the Claimant for 3-4 years, she took over as the Chair and as line manager of the Claimant in 2015.

15. After Ms Kolenda stood down Ms. Michaels took over as the Claimant's line manager. Ms Michaels confirmed to the Tribunal in answers to supplementary questions that she practiced as a barrister specialising in family law. After Ms. Michaels stood down from managing the Claimant, Ms Seymour took over. Ms. Seymour confirmed in answers to cross examination that the role of Chair not have a job description, but it essentially was to "*co-ordinate and oversee the Committee and the management of the organization to ensure good outcomes and policies and practices are followed*", she confirmed it was an "*oversight role rather than a management role*". Ms Seymour told the Tribunal in cross examination that when she took over she had the following concerns "*I pulled the Annual Report and Accounts because they are publicly available. I was mainly concerned that the Nursery had got a large sum of money and not spent it and there was a large loss. We needed to reduce variable costs to make it sustainable by not relying on cashflow. The lump sum needed to be spent otherwise they may take it back*". Ms Seymour told the Tribunal that she was an auditor and worked for Ernst and Young in Mergers and Acquisitions and she felt that it was important for her to look at the financial data in preparation for her role.

16. It was not disputed that the Respondent had mislaid, lost or destroyed a significant number of documents relating to the Claimant's employment. It was noted that in an interview held by Ms Seymour with Ms Letcher on the 16 February 2017 (page 222) that "*paperwork was appalling*" and paperwork had been "*inadvertently thrown away*". The Claimant's evidence to the Tribunal given in cross examination was that the MC held all the paperwork relating to her employment off site and it had not been produced by the Respondent in connection with these proceedings. Ms Seymour accepted in cross examination that they had been unable to find any of the Claimant's supervision notes.

17. There was evidence to suggest that the Claimant agreed with the previous Chair of the management Committee Ms. Letcher that she should increase her hours and work 4.5 days a week, this agreement was with the approval of Ms. Pine the Secretary and Vice Chair and Ms Rutter the Treasurer (see the Claimant's evidence and that of Ms. Letcher). The Tribunal were taken to an email dated the 10 April 2014 that evidenced the Claimant's salary increase to 4.5 days per week from the 1 April 2014 (see page 202) and she claimed for an additional half day on the 28 March 2014. The Claimant's salary was increased following her telephone call to the Payroll Bureau.

Ms Kolenda's evidence on her line management of the Claimant.

18. There was consistent evidence that the Claimant attended regular 1:1 meetings with her managers, Ms Kolenda confirmed that she had monthly meetings with the Claimant and she held quarterly reviews with her. This included supervision meetings. It was accepted that the Chair's job was to ensure that the Nursery was running well and that it was commercially viable and that it complied with the policies, legal and educational requirements. Ms. Kolenda also confirmed that finance was monitored once a week and the finances were looked at every month by the Treasurer. The Accountant would produce a monthly profit and loss account to present to the management meeting.

19. Ms Kolenda confirmed that she became aware that the Claimant was working a 4.5 day week in February 2016 which was when Ms Letcher told her of the verbal agreement. This was following her request for information on the 30 September 2015 querying the Claimant's hours as she had been informed that the Claimant worked a 4 day week (see page 141). Ms Kolenda confirmed to the Tribunal that it was her understanding was that it was a 'verbal agreement to work flexibly'. She confirmed that flexible meant 'when you like'. There was no requirement for the Claimant to record her hours with her manager or to submit a claim every time she worked a half day. There was no evidence the half day was to be claimed as overtime.

20. Ms. Kolenda was taken in cross examination to page 139 which was an email from Ms Letcher dated the 26 January 2016 confirming that a bonus had been agreed for the Claimant to be paid £3-5K on the successful completion of the refurbishment and that "*it had been agreed verbally, though deliberately not in writing, that she also work half a day at home on a Friday (admin) and be remunerated for that. She did not want this to be referred to in a contract in case she wanted to reduce her hours back down due to childcare etc…or if there were weeks when she was unable to work; so, that half day was flexible as and when needed – which was most weeks*". This email was not copied to the Claimant at the time. Although the recipient of the information (Mr. D'Souza) indicated that this information left them 'flabbergasted' no action was taken by Ms Kolenda to discuss this with the Claimant or to take steps to formalise the arrangements for half day working. Although Ms Kolenda said that she became aware that the Claimant was working a 4.5 day week in February 2016, it appeared from this email that she was put on notice of the existence of the agreement on the 26 January 2016.

21. There were no documents in the bundle evidencing the Claimant's supervision and 1:1 meetings, as they had been destroyed. There were also no relevant committee meeting minutes until they were ordered to be produced by the Tribunal on the 16 April 2019 (see above). It was accepted by Ms Seymour in cross examination that her previous managers (Ms Kolenda and Ms Letcher) were aware that the Claimant worked a 4.5 day week and the consistent evidence before the Tribunal was that this arrangement had been in place from April 2014 until February 2017. The working practice continued without challenge by two managers and no concerns were raised about the Claimant's working hours, practices, performance or her salary before February 2017.

Ms Seymour's appointment at Chair.

22. Ms. Seymour took over as Chair on the 17 January 2017 and the Tribunal saw that she undertook a significant amount of work collating information in preparation for her new role (which she described as an onboarding process). Ms. Seymour was concerned that the Claimant appeared to be on what she described as an "extremely high" salary and felt that "something about the Claimant's pay did not sit comfortably" with her. She therefore conducted some preliminary investigations and the Tribunal saw at page 118 an email to the Claimant asking for information on the 22 December 2016 including questions about the running of the organization. The Claimant provided information about the hours of work of staff on the 11 January 2017 and she confirmed that she worked "9.30-4pm Mon, Tues, Wed Thurs" she did not mention the agreement that she work flexibly half a day on Friday**.** There was then an email on page 133 dated the 30 January 2017 asking the Claimant to provide information about payroll and the Claimant replied on the 31 January 2017 (page 135) confirming that either herself or Ms Nicholls filled out the salary detail and then the "(monthly) report is put in the payroll folder for Margaret's attention". These arrangements were confirmed by the payroll company (page 157).

23. The Claimant gave evidence of her recollection of her first meeting with Ms Seymour which took place in early January 2017 (see paragraph 6 of her statement). The evidence reflected that Ms Seymour came to introduce herself to the Claimant and her deputy Ms Nicholls and she said "*I just thought I would come in to introduce myself formerly. I am June Seymour. I got rid of the last manager at the other Nursery I Chair and I don't take any bullshit*". Although Ms Seymour disputed the veracity of this evidence she accepted in cross examination that she used the word 'bullshit' in the meeting but stated that the comment was intended to be supportive as it was said in connection with a member of staff. Ms. Seymour did not feel that it was inappropriate to use this word in the workplace; it was her evidence that they could not be overheard by anyone as the discussion took place in an office away from the children. Ms Seymour accepted in cross examination that although some people may have found the word to be inappropriate as she was not an employee and she felt that she had not 'signed up' to the terms and conditions. The Tribunal find as a fact and on the balance of probabilities that we prefer the evidence of the Claimant to that of Ms Seymour. The Tribunal accept that the Claimant's recollection of what was said in this meeting was accurate and in the light of the fact that Ms Seymour accepted that the word 'bullshit' was used, which we accept was an inappropriate word to use in the context of a first meeting with staff

in the workplace and the Claimant's consistent evidence about the conduct of this meeting.

24. Ms. Kolenda emailed Ms. Seymour on the 10 February 2017 with a copy of the email dated the 26 January 2016 from Ms Letcher to her, with the words "I could imagine that this is what the additional payments up to 30K relate to?" The Tribunal saw no evidence that Ms Seymour asked further questions of Ms Kolenda of her understanding of the arrangement or of her discussions with Ms Letcher and the Claimant at the time.

25. Ms. Seymour then produced a report which was seen in the R2 bundle at pages 69-75, it was sent to the MC and the covering email described the attachment as "Misconduct Investigation Timeline". Ms. Seymour asked for the matter to be discussed at a telephone conference on the 12 February 2017. In this report Ms. Seymour stated that she had "*obtained a copy of the Claimant's contract which showed a salary significantly less than what she is currently being paid*" (page 72) and the PDF was that of the 2011 contract (it was noted by the Tribunal that the 2011 contact was for a 3 day week not for a 4.5 day week which was the Claimant's working pattern at the relevant time see page 38 of the bundle see above at paragraph 12). Ms. Seymour then told the Committee that she had discussed with Peninsula "*an alleged fraud perpetrated by unauthorised salary increases*", she stated that the person she spoke to was "shocked". She also stated that she had spoken to a legal help line who had provided the opinion that "*this in her mind is fraud*" (page 74). Although she referred to the corroborative evidence provided by the payroll company that appeared to exonerate the Claimant, she felt that this should be disregarded because the inconsistencies may be "*due to possible collusion between [the Claimant] and the payroll outsourcing company*". The Tribunal noted that Ms Seymour expressed strong and preconceived views about the Claimant's conduct and that of the external payroll provider before the matter had been investigated and before the Claimant had been given an opportunity to comment on the evidence. It was also noted that these views had been shared with the entire MC, representing the Claimant's line manager and the employer. The MC agreed for the Claimant to be suspended on full pay after considering Ms Seymour's report.

26. The Tribunal saw the minutes of the MC meeting at page 167 of the bundle, this was held by telephone, again the meeting was described as an emergency management meeting to discuss "*alleged unauthorised salary increases which may constitute fraud*", the Tribunal noted that again the minute of the meeting did not express the concern neutrally and the tone and the words used by Ms Seymour strongly suggested that the matter may have been prejudged. Ms Seymour informed the meeting that she had been advised by Peninsula and the Pre School Alliance help line that the Claimant should be suspended immediately "to ensure the integrity of Nursery funds, files and evidence" (page 168). The entire Committee agreed with the recommendation to suspend.

The Suspension Meeting.

27. The Claimant was invited to a suspension meeting by a text message. Ms Seymour did not inform the Claimant she was to be suspended and she was not aware she was facing a formal minuted meeting. The text message was

seen in the Claimant's bundle C1 at page 155, it only informed the Claimant that they were to meet for breakfast to discuss a few things. The suspension meeting was held in an 'All Bar One' on the 13 February 2017 and the minutes were on pages 217-9, they were not agreed. The Claimant was taken to page 218 of the minutes in cross examination and she accepted that she told Ms Seymour that the hours she worked were flexible. The Claimant was not allowed to return to work premises after suspension and although she was asked to provide documentary proof of her Friday working agreement, she was not allowed to contact anyone or to gain access to her emails or files. The Claimant was not provided with the outcome of the preliminary investigations that had been undertaken by Ms Seymour. The Claimant was handed a letter to confirm her suspension (see page 220), the allegation was stated to be that the Claimant was in receipt of "unauthorised salary increases". Ms Seymour did not accept in cross examination that it was inappropriate to hold a suspension meeting in a bar, despite the fact that the Claimant's grievance on this point was later upheld (see below at paragraph 56).

28. Ms Seymour carried out an investigation and she contacted the previous Chair Ms. Letcher by telephone on the 16 February 2017, the minutes were on pages 222-4. Ms. Letcher confirmed that their paperwork was appalling and most of the Claimant's files had been destroyed. She confirmed she was aware that the Claimant was being paid for 4-4.5 days per week and that *"[the Claimant] agreed at some point she would work ½ day a week from home*" (page 222). It was her understanding that the Claimant would "*send emails, work on policies, do appraisals, etc*" from home. Ms Letcher also confirmed that she *"used to it with [the Claimant] to approve the payroll and sign off the input sheets*" (page 223). She confirmed that "*there may have been negligent and a failure of controls but did not feel that PB had done anything fraudulent*". Ms Letcher also stated that she *"had close monitoring of the work that PB was doing and does not feel that [the Claimant] was taking advantage of her trust of the committee at the time*". Ms Seymour told Ms Letcher that she was "*looking for positive evidence to prove the salary*". Ms Letcher told Ms Seymour that the Claimant was not "*authorizing her own pay increases".*

29. Ms Seymour then interviewed Ms Rutter on the 20 February 2017 and the minutes were on page 225-6. Ms Rutter confirmed that it was her understanding that "*NL had an agreement with PB to work 4 days per week, with the flexibility to go to 4.5 days if needed*".

30. Ms Letcher emailed Ms Seymour correcting the minutes that had been sent by comments in an email dated the 24 February 2017 (pages 230-1). In the first paragraph of her email she stated that she was not comfortable providing Ms Seymour with a statement. She stated that "*it is my best recollection that Paulette was authorized to work four and then four and a half days during my tenure as Chair, this was agreed between myself Rachel Pine and Kirsty. I don't believe that she was paid for times or days that she was not working and I don't believe it was her intention to defraud or 'steal' from the nursery as has been suggested. Her time and those agreements were clearly not well enough documented or managed by her or by the Committee or the office during that period of time – that can certainly be agreed".*

The Investigation Process.

31. Ms Seymour wrote to the Claimant on the 27 February 2017 (page 232A-B) inviting her to an investigation meeting to take place the following day. The meeting was to discuss five allegations of making false representations about her salary and hours worked and of making false representations about annual leave. The meeting was to be conducted by Ms Seymour and Ms Michaels was to attend as a notetaker. This meeting was then rescheduled for the 2 March 2017 after insufficient notice had been provided to the Claimant to attend the first meeting.

32. The minutes of the investigation meeting were on pages 236-270. The Claimant never had sight of the minutes taken by Ms Michaels. The Claimant gave examples of the sort of work she carried out at home on Fridays and told the meeting that she worked every Friday (see page 264 of the bundle). Then in cross examination the Claimant was taken to an email in the bundle dated the 14 May 2015 (page 494) which was an out of office message stating that she did not work on a Friday and she was asked which was correct, did she work on Friday or did she not; she replied "*when I send emails from work I say I do not work on Friday as I am not in the building, people send these emails if they want to speak to someone in the building, I am not in the Nursery on a Friday*". The Claimant was asked in cross examination whether she worked on a Friday and she replied, *"I worked on Friday, it was stipulated that it was flexible, I always worked more than 3.5 hours I keep explaining how I work"*.

33. The Tribunal noted that the Claimant's evidence appeared to be unclear on the precise nature of the oral agreement. The Claimant's evidence to the Tribunal was that the hours on Friday were authorised by Ms Letcher and Ms Kolenda but all the records had been destroyed as her records were kept outside of the building by the MC. The Claimant also confirmed that she was not required to record her hours worked on a Friday as overtime. The Claimant provided the Tribunal with C1 a bundle of documents evidencing the work that she carried out on a Friday. The Claimant was taken to Ms Letcher's statement and it was put to her that there was a suggestion of contributary fault and she replied "*if I had known this was going to happen, I would have kept every document*". It was also put to the Claimant that in Ms Letcher's statement she said that the Claimant had not been given carte blanche to work flexibly when she felt like it and the Claimant replied *"I was catching up with paperwork even when off sick. If you read the statement in its entirety, she said that she authorized this, she also said the paperwork was thrown away*". The Claimant told the Tribunal in answers to its questions that she trusted the Committee. She told the Tribunal that she was told that the terms of the agreement were written down by Ms Letcher and taken to the Committee for approval, but they kept the paperwork outside of the office. She said that the confirmation of the new increased hours and salary was on her file. The totality of the Claimant's evidence suggested that she worked over and above her contracted hours and she believed that there was flexibility of how and when she worked the additional 3.5 hours. This appeared to be a different understanding of the terms of the agreement to that given by Ms Letcher, who understood that the work would normally be carried out on Friday.

34. Ms Letcher was again interviewed by Ms Seymour on the 7 March 2017 and the minutes were on pages 272-3. It was her evidence that she wanted to give the Claimant the opportunity to lead and manage the nursery in full that is why she asked her to work four days a week in 2012 and then in April 2014 asked her to work half a day at home flexibly when needed. Ms Seymour then provided a quote from the minutes of the meeting with the Claimant (that they were going to pay the Claimant for four and a half days "*for all the work that I've done all the extra work that I do and for all the extra hours that I do outside work*") and asked Ms Letcher if it were true and she replied that it was not her intention to pay the Claimant if she were not working. This appeared to be a different understanding to the Claimant as to how and when the additional half day would be utilised.

35. In the interview Ms Letcher asked Ms Seymour what she wanted from the process and she replied "*she did not want to take this to a criminal stage. It was JS's hope that PB would acknowledge what she had done and each could go their separate ways*". Ms Seymour went on to state that the Management Committee would "most likely" follow through with disciplinary procedures and the nursery "*needed a manager to make it sustainable that can be trusted and that can work full time to lead the team*". The Tribunal noted that Ms Seymour appeared to have formed a view that the Claimant was guilty of the offences by expecting her to accept 'what she had done' and to resign from a role she had held for 23 years. Ms Seymour had come to this conclusion prior to completion of the investigation process. At the date of this interview, Ms Seymour had only met the Claimant twice by this stage, once in Janaury and then in the suspension meeting. It was also noted that Ms Seymour expressed a view that she wished to replace the Claimant with someone who could work full time which suggested that there was already a plan to replace the Claimant with a full time employee.

36. It was put to Ms Seymour in cross examination that the comment about replacing the Claimant with a full-time member of staff looked bias which she accepted. Ms Seymour stated that it was not her motivation. The Tribunal find as a fact and on the balance of probabilities that the desire to replace the Claimant with a full-time employee did not appear to be Ms Seymour's sole or predominant motivation for investigating, referring the matter to a disciplinary hearing and (subsequently) dismissing her. The Tribunal accept that the entire thrust of the investigation was focussed on conduct issues. Ms Seymour's evidence on this point was credible.

The Investigatory Meeting.

37. The Claimant was then invited to an investigation meeting by Ms Seymour by a letter dated the 10 March 2017 at pages 274A-B, the allegations were as follows:
    a. Alleged blatant breach of company rules and procedures with regard to the authorization of pay increases;
    b. Alleged falsification of hours worked on the 10 April 2014 and the 28 March 2014;
    c. Alleged falsification of hours worked between May 2012 and February 2017;
    d. Unauthorized leave over and above contracted entitlement (on various dates staring in 2012 to 2017);

e. Alleged false representation of the reason for her salary increase in April 2014;
f. Failing to provide to the Respondent her level 3 NVQ certificate.

38. Ms Seymour attached all the investigation minutes and documents that had been produced during her investigation including the minutes taken on the 2 March 2017 but not the audio tape. The Claimant was informed that the hearing would be chaired by an impartial 'HRFace2Face' Consultant from Peninsula, who would provide recommendations to the Board. The Claimant was warned that if proven, she could face dismissal; she was advised of her right to be accompanied. This meeting was scheduled to take place on the 14 March.

39. The Claimant was off sick so a postponement was granted to move the date to the 20 March. The Claimant was moved on to SSP and as a result she received an overpayment of salary, she was requested to repay the sum of £1045.99 immediately (page 283 by a letter dated the 17 March 2017). The Claimant put to Ms Seymour that it was unfair to be asked to pay back a sum of money immediately and she replied that she had taken advice from Peninsula and she was told it was 'OK' to ask for it and in her view "it was not fair to be paid money you had not earned".

40. The Claimant indicated she wished to raise a grievance on the 17 March 2017 (see page 284 of the bundle) and she was advised that this should be sent to Ms Seymour. The Tribunal saw the grievance at page 291 dated the 23 March 2017. It related to the failure to grant the Claimant a postponement and to demand payment forthwith of the overpayment of salary. There was also a complaint that the Claimant had been subjected to discriminatory and unfair treatment because of her part time status. She stated that the Committee did not wish to continue employing a Part Time Worker, she stated that this was discriminatory and unfair. The disciplinary process was not halted to allow the grievance to be considered despite the fact that one part of the grievance related to the Respondent failing to provide the audio taped record and documentation used "to build evidence" against her which was referred to in the meeting held on the 2 March 2017. The grievance was acknowledged on the 6 April 2017 by Ms Michaels who told the Claimant that her grievance would be heard on the 10 April 2017, the Claimant was unable to attend on this date, so it was postponed to a later date.

41. The disciplinary hearing finally took place on the 23 March 2017 before Ms Ramsden an independent consultant. The hearing was recorded.

The Ramsden Report.

42. The disciplinary report produced by Ms Ramsden "the Ramsden Report" was seen at pages 375-391 dated the 13 April 2017. In outline the allegation in relation to the NVQ certificate (see above at paragraph 37(f)) was not well founded as the Claimant was able to produce the certificate in the hearing. in relation to all other allegations, Ms Ramsden concluded that there was insufficient corroborative evidence as there had been (at the time) no stringent financial controls in place and it was unreasonable for the Respondent to expect the Claimant to recall historical events going back

more than 2 years. However, Ms Ramsden made some sensible recommendations going forward (page 390-1 of the bundle) that in future all contractual changes were to be evidenced in writing, that the Respondent should introduce a policy for documenting hours worked away from the workplace and ensuring that all staff sign in. The Respondent also needed to formalize the Claimant's verbal agreement in relation to Friday working, this would ensure that contractual hours and leave entitlement is fully documented. The Respondent was also advised to clarify the position in relation to annual leave with all staff. Ms Ramsden recommended that a copy of the report and the minutes be sent to the Claimant.

43. Ms Seymour was unhappy with what she described as the quality of the report produced by Ms Ramsden in her statement she said that she felt that some the evidence had been overlooked and she did not feel that she had *"invested herself*" in the process. Ms Seymour stated that there were "*extreme deficiencies*" in the report. In cross examination Ms Seymour told the Tribunal that she tried to remain objective throughout the investigation. In answer to the Tribunal's questions she stated that she felt that evidence had been overlooked because "*most of the comments were about the evidence provided on the day, she was expected to comment on the documents*", however the Tribunal have found as a fact that the agreement was oral and there were very few contemporaneous documents relating to the Claimant's employment, supervision or working hours that had been retained.

Ms Seymour's comments on the Ramsden Report.

44. The Tribunal were taken to Ms Seymour's comments on the Ramsden report at pages 391A-Q. The Tribunal noted that several comments were made about the evidence given by those interviewed by Ms Ramsden. For example in an interview with Ms Letcher at page 391H where she stated that it was her "recollection is that this half day would generally be used on a Friday…"; the comment made by Ms Seymour in the review function at JS4 was as follows: *"This states that it was for a Friday so how is this not evidence. It is consistent with all the evidence provided so far".* The Tribunal note that this comment appeared to ignore the word 'generally' to give context to this quote and the evidence given by Ms Letcher given before Ms Ramsden and in interviews conducted by Ms Seymour. It was noted that Ms Seymour made the same point at JS16 where she stated that *"NL already confirmed this was to be done on a Friday…",* her interpretation of what was said by Ms Letcher in this interview appeared again to ignore the thrust of the evidence before Ms Ramsden. Ms Seymour also made a comment about the evidence of Ms Letcher at JS9 where the minutes reflected that Ms Letcher stated that "in her opinion" she did not feel that the Claimant had been deliberately fraudulent. Ms Seymour added the following comment: "*This is an opinion. How is that evidence*". Ms Seymour in answers to the Tribunal's question accepted that the comment at JS9 wasn't appropriate. At comment JS12, which was in relation to a response on the evidence provided by Ms Letcher that she or a member of the Committee would sign off payroll, the comment added by Ms Seymour was *"This did not happen since 2012, and even if it did, the amounts on the payroll input sheets were not correct for Paulette".* This comment appeared to be corroboration that the Committee had consistently failed in its duties to supervise their most senior member of staff from 2012 and this was a failing

of both Ms Letcher and Ms Kolenda. This view was supported by Ms Letcher herself where she accepted that perhaps there had been negligence on her part and a failure to have in place appropriate controls during this period.

45. There was one example identified by the Tribunal of where the report was not as thorough as it might have been, and this was at page 391J at comment JS19 in relation to the evidence about the Claimant authorizing her own pay increase. It is stated in this comment that there was an email from the Claimant authorizing her pay increase on the 28 March 2014. This was evidence that had not been referred to and was relevant. To that extent one document had been overlooked however there appeared to be no other instance where relevant contemporaneous documentation had been overlooked that was relevant to the findings and conclusions of the report.

46. The comments made by Ms Seymour about the Claimant's oral evidence given in the disciplinary hearing were seen from pages 391K onwards and in response to the comment at paragraph 29 where the Claimant was recorded to have said that there were no stringent authorisation measures in place Ms Seymour's comment at JS20 was "*This is not true, there were stringent authorisation measures in place until 2012 when Natalie took over…".* However, this evidence appeared to be consistent with all the evidence before Ms Ramsden, that there had been stringent procedures in place until Ms Letcher took over, thereafter there had been a failure of oversight during the relevant period (2012 -2017), the Claimant's evidence therefore appeared to be accurate. It was also noted by the Tribunal that the charges only related to the period from 2012. There was also a comment made by Ms Seymour at JS26 about the lack of stringent financial checks in place at the relevant time and her comment was "*again there was until 2011 and then again when I came on board..".* This comment appeared to ignore the evidence given by Ms Letcher and the Claimant (the only two parties privy to the exact terms the agreement) that Ms Letcher accepted that she had failed to put in place stringent controls and had failed to properly document or monitor the terms of the agreement reached.

47. The conclusion reached at paragraph 41 of the report was that there were no procedures for recording hours worked when working away from the Nursery. Ms Seymour commented at JS25 on this conclusion that *"there was a procedure for logging work. It is possible that the reason there is no evidence is because she was not working. She emails on every day that she works. This is good evidence of her working practices".* Ms Seymour's comments about the daily practices for what she described as 'logging work' were not shown to the Tribunal and there was no evidence that there was any requirement to document work which was completed away from the workplace. Ms Seymour had no evidence to suggest that the Claimant regularly adopted a practice of emailing when she worked and as she had never worked with the Claimant (and had only spoken with her twice) and had little experience or understanding of the Claimant's normal working practices. The final comment made by Ms Seymour was at page 391O at JS43 in relation to paragraph 70 of Ms Ramsden's report, which found that Ms Letcher had authorised the additional hours, and she stated: "*the point is about lying. She lied to me to my face…".* When this comment was put to Ms Seymour by the Tribunal and she was asked how it related to the quality of the report, she replied that "*that was my conclusion*". The Tribunal noted that the many comments added by Ms Seymour to this report

reflected her strong negative personal feelings about the Claimant, it was clear that these views had been formed at a very early stage of the process and during her initial investigations. Ms Seymour appeared to disagree with any conclusion that contradicted her own personal views The Tribunal further find as a fact that the Ramsden report was independent and based on the evidence provided by all the relevant witnesses and produced an outcome that was consistent with the evidence before her. The report came to a logical conclusion on the evidence and looking at the totality of the evidence before Ms Ramsden, the conclusions did not appear to have been adversely impacted by the failure to refer to the one email referred to above.

48. Ms Seymour did not provide a copy of the Ramsden report to the Claimant at any time before these proceedings began. We also noted that after the report had been produced, Ms Seymour emailed her colleagues on the Committee on the 12 April 2017 (page 19 of R2) expressing her concerns about what she described as the quality of the report and/or of the qualifications of the consultant and she had made a formal complaint to Peninsula. There was no consistent evidence to suggest that the report was shared with the Committee however Ms Michaels stated that she had seen the report but there was no evidence that the report was discussed or considered by anyone on the MC. It was confirmed that they had now received the NVQ certificate and this complaint would be removed, however the Claimant was never informed that this allegation was dropped.

49. Ms Seymour wrote to the Claimant on the 3 May 2017 (page 392-3 of the bundle) informing her that her grievance would be heard on the 8 May but also stated that "*as further matters of concern had come to light that we want to discuss"* she was invited to what was described as a reconvened disciplinary hearing. The two new charges were in outline that the Claimant had made contact with the Payroll Bureau without lawful authority informing them that she would be working a four and a half day week in future, despite only being authorized by Ms Letcher to claim this on a "as and when needed basis" and secondly her intention was to claim for additional hours "without any intention of working those hours". The letter made no reference to the Ramsden report and did not refer to the communications with the Committee on the 12 April where the report was discussed.

50. The Tribunal find as a fact that the Claimant was not informed of the Respondent's decision to reject the Ramsden report nor the impact that this would have on the time it would take to complete the disciplinary process. The Claimant was also not informed that the allegation in relation to the NVQ had been dropped (even though this had been agreed with the Committee on the 12 April). The two additional matters that were added to the list of charges did not appear to be new allegations but simply a rewording or refocusing of the original allegations. There were a number of documents sent to the Claimant with the letter including a copy of the signing in book. The meeting was then rearranged to the 15 May 2017 (page 394). This meeting was described throughout the correspondence as a reconvened or rescheduled disciplinary hearing which the Tribunal felt to be misleading as it gave the impression that this was a continuation of the hearing conducted by Ms Ramsden, which in Ms Seymour's mind it was not. It was clear that all the work carried out by Ms Ramsden had been rejected by Ms Seymour and the only two charges to be considered going forward were the two allegations referred to in the letter of the 8 May 2017.

Although the interview notes of the interviews conducted by Ms Ramsden were provided to the new consultant, the report was not.

51. Ms Seymour accepted in cross examination that she did not update the Claimant of the progress made in the disciplinary and grievance procedure. There was no evidence that anyone from the Respondent organisation kept in touch with the Claimant or enquired after her well-being during her suspension. There was also no evidence that the Claimant was provided with an opportunity to get access to her work emails or other documents and she was not provided with an opportunity to contact witnesses who may have been prepared to provide evidence to the disciplinary process on her behalf.

The Carter Report.

52. The disciplinary and grievance hearings took place on the same day both were before Mr Carter another independent consultant. The minutes were on pages 398-415. It was noted that the meeting only dealt with the two new allegations and no further discussion took place of the original six allegations. Mr Carter only interviewed the Claimant and looked at the documentation before him which was recorded in paragraphs 9 and 10 of the report (this included the documents before the Ramsden hearing). In the outcome dated the 17 June 2017, Mr Carter concluded that the Claimant acted '*without lawful authority or reasonable excuse'* by contacting the Payroll Bureau to increase her salary to 4.5 days. He concluded this by focusing only on Ms Letcher's interview with Ms Seymour on the 7 March 2017 where she stated that it was not her intention for this to be paid to the Claimant if she did not work on that day. This conclusion ignored the other evidence provided by Ms Letcher in the interview with Ms Ramsden (see above at paragraph 44) and her previous interviews and emails with Ms Seymour on the 24 February email where she confirmed that the Claimant was authorised to work 4.5 days per week and in her interview on the 16 February where Ms Letcher confirmed that she had close monitoring of the Claimant and of the work that she did and her clear view was that the Claimant had not authorised her own pay increase (see above at paragraph 28). There appeared to be no consideration of how all the evidence before him supported the conclusions he reached.

53. In relation to the second allegation he concluded that Ms Letcher intended that any additional hours worked should be claimed as overtime "*in accordance with [the Respondent's] overtime rules and procedures…*" (paragraph 42 on page 405). There had been no evidence given by Ms Letcher to suggest that payment for the half day was to be claimed as overtime and this was not supported by any evidence either before Ms Ramsden, Ms Seymour or before the Tribunal. He also concluded that the Claimant '*rarely worked on a Friday'*; despite there being no reliable evidence retained by the Respondent of the work carried out by the Claimant and of the supervisions of the Claimant at the relevant time. It was also contrary to the Claimant's evidence. However, this conclusion was entirely consistent with Ms Seymour's comment on the Claimant's evidence above at paragraph 47 above (referred to at JS25). Mr Carter concluded therefore that the Claimant intended "*to deceive the management committee as to her actions and was deceitful and was responsible for false accounting*". Again, the conclusions reached by Mr Carter appeared to be

at odds with the evidence given by Ms Letcher over three interviews and the evidence of the Claimant. It was unclear how Mr Carter concluded that the Claimant had acted with an intention to deceive as the evidence of Ms Letcher, the Claimant and Ms Koldenda was that they were all aware of the terms of the agreement. The only evidence of dishonesty appeared in the comments made by Ms Seymour on the Ramsden report where she stated that the Claimant had lied to her face. Although the Claimant's evidence on how and when the additional half day's work was to be completed appeared to be contradicted by Ms Letcher's who understood that it would generally be done on a Friday, she seemed to be satisfied that the Claimant was working in accordance with her understanding of the terms of the oral agreement. The only disagreement was in relation to the flexibility as to when and how the additional work was to be carried out.

54. There was also no evidence of false accounting and no reference to any falsification of documents to support his conclusion. He made no reference to any of the other six allegations. Mr Carter in his report referred to the signing in book to support his conclusion however Ms Seymour in cross examination accepted that this book possibly was inaccurate, and she learnt by hearsay from what staff had told her about the discipline of signing in. Ms Seymour accepted that this was the only record of the hours worked by staff. She accepted that there were gaps in the book. The Tribunal were unsure of the relevance of the signing in book as the allegation related to work that had been undertaken on a Friday when the Claimant was generally working from home therefore she would not have signed in as she was not in the office.

55. Mr Carter also dealt with the grievance and the outcome was at pages 408-415 which was also dated the 17 June 2017. It was noted in the grievance outcome that the Claimant pursued a complaint about the comment made by Ms Seymour in January 2017 where she used the word 'bullshit' (referred to above). It was noted that the comment was the same as that referred to in the Claimant's witness statement we therefore conclude that her evidence on this matter remained consistent throughout. This part of the grievance was not upheld by Mr Carter as he concluded that the comment was not intended to be intimidatory, it was intended to be supportive to the Claimant showing that she had support when managing underperforming staff.

56. Two of the Claimant's grievances were upheld, firstly he found it was inappropriate to hold a suspension meeting in All Bar One. Secondly, he found that she was not provided with the audio tape and documentation of the meeting which he concluded was the one held in February however the Tribunal believe that this was a reference to the 2 March 2017 meeting. It was noted that even though the second complaint had been upheld, no steps were taken to provide the Claimant with these documents before finalising the disciplinary hearing. The finding of the complaint of part time employee discrimination was not well founded as no evidence was provided during the grievance hearing to support the claim. Even though two grievance points had been upheld the Respondent did not apologize for their actions and it appeared that in Tribunal there was a reluctance to accept any wrongdoing despite a clear finding against them.

The Respondent's disciplinary process.

57. On receipt of the Carter report, Ms Seymour sent it to the Committee on the 9 June 2017 (see page 27 of R2), it was noted that at that date she only had receipt of the disciplinary report not the grievance outcome. A meeting of the Committee was convened the following day and the minutes were seen at pages 49-50 of R2. The minutes of the discussion were on page 50 and reflected that the consensus of the meeting was that "the report is of good quality" even though the outcome only reached conclusions on the new reworded allegations put to the Claimant after the Ramsden report, no mention was made of the allegations relating to (for example) holiday pay or the NVQ issue, this on the face it was a significant failing in the quality and sufficiency of the outcomes reached. There was no discussion in the meeting of the findings or conclusions of the report, the decision was simply reached by a show of hands. The meeting appeared from the paucity of detail in the minutes, to accept without question, debate or discussion, Ms Seymour's opinion of the quality and sufficiency of the report and there was no evidence of any discussion of whether the Respondent concluded that the allegations (however many there were) were well founded and if so what sanction was appropriate to take in respect of each.

58. The Claimant was informed of the outcome of the grievance under cover of a letter dated the 19 June 2017 (see page 416 of the bundle) after it had been approved by the Committee. The letter was from Ms Spencer, she stated that the "report represents my decision". The letter did not attach the grievance outcome or the recordings it was to be sent to the Claimant within 10 working days. The letter stated that she would be provided with the minutes of the reconvened disciplinary hearing and the grievance hearing notes within 10 working days. The Tribunal note that the Claimant did not have an opportunity to agree the minutes before the decision to dismiss was taken.

59. It was accepted by Ms Seymour that the Claimant never had an opportunity to face the Committee to make representations or to respond to the findings and conclusions in the Carter report. The Respondent never put the report to the Claimant to allow her to challenge the findings and to provide evidence in support of her defence. The Claimant only receive a copy of the report and a letter informing her that she was dismissed (see below).

The dismissal letter.

60. The Claimant was dismissed by a letter dated the 19 June 2017 (page 417), her employment was ended summarily. The letter gave no indication which allegations had been upheld and which had been dropped due to lack of evidence (for example the NVQ issue), in the letter Ms Seymour wrote "*please find attached [the Carter report], which represents my decision*". The Claimant was not given an indication whether all 8 allegations had been found proven or whether the 6 original allegations had been dropped and only the last two allegations had led to her dismissal. The dismissal letter made no reference to the Ramsden report and attached only the Carter report, giving the Claimant an entirely false representation of the processes that had been followed by the Respondent. Ms Seymour, who sent the dismissal letter to the Claimant, did not explain that the original report had been rejected by her and the second report had reached an entirely different conclusion based on different charges.

61. The dismissal letter informed the Claimant of her right to appeal however in the final sentence Ms Seymour stated that "this matter is now closed".

62. Ms Seymour was asked in cross examination why she dismissed the Claimant; firstly she said it was in the contents of the Carter report and added that you needed to look into the allegations. Ms Seymour was asked this question three times in cross examination, but she was unable to provide an adequate answer. The Tribunal were unclear of the precise reason the Respondent relied on to dismiss the Claimant we therefore asked the question a fourth time and Ms Seymour replied: "*the Board felt that the Claimant had authorized an increase in her pay that was not in the spirit of Ms. Letcher's agreement. Evidence from Mr Carter showed that there was a lack of evidence of work done at home on Fridays. That work was not recorded in the signing in book and trust had been breached".* The Tribunal take this explanation as the reason for dismissal, there being no other explanation of the reason for dismissal in the letter and no evidence that the MC reached a consensus of the reason for dismissal.

63. Taking the three reasons for dismissal, firstly that the Claimant had authorised an increase in her pay, this was denied by Ms Letcher in her evidence (see above at paragraph 28). Secondly that the authorisation was not in the spirit of the agreement however there appeared to be no analysis of the terms of the oral agreement and whether there had in fact been a breach of the terms of the oral agreement (and when). Although the Tribunal had identified a contradiction between Ms Letcher and the Claimant's understanding of the terms of their agreement, this was partly due to the poor controls in place, the lack of documentation and a failure of the Respondent to record the agreement in writing or to record and monitor how the additional half day would be utilised.

64. The last reason given for dismissal, namely the lack of evidence of work being undertaken on Friday, the Tribunal note that this allegation related to the dates of 2014-2016, Ms Letcher's evidence was that all the Claimant's supervision notes and 1:1's had been destroyed, however she confirmed that weekly meetings were held and supervision took place. Ms Koldenda also had notice of the agreement and continued to honour the terms of the oral agreement for a further year without challenging the Claimant. Ms Kolenda also accepted that regular supervision meetings took place with the Claimant and she was not asked to keep records of work she had done on a Friday, even though documents could not be produced did not necessarily lead to a conclusion that no work had been carried out. It was also relevant that Ms Letcher had accepted responsibility for the failure to secure documentation relating to the Claimant's performance and supervision.

65. On the third part of the charge that Ms Seymour felt was well founded was that the Claimant did not record her work in the signing in book; there was no evidence to suggest that this was a requirement put in place at the relevant time and the signing in book appeared to be just that, a book to sign in and out, there was no space to record work done and there was no evidence that this was ever done. The Tribunal note that Ms Seymour did not tell the Tribunal that the Claimant had been dismissed for breaching the Respondent's overtime rules or for false accounting. It was of considerable

concern to the Tribunal that the Respondent appeared to be unclear as to the precise reason for dismissal especially in the light of the serious nature of all 8 allegations.

66. The Claimant presented an appeal dated the 22 June 2017 (page 418-9). She challenged whether the appeals manager Mr Worthington would be impartial as he was a paying parent of the Nursery. One of the Claimant's points of appeal was that she had been denied access to the minutes and the audio recordings of the hearings which had placed her at a disadvantage. She stated that she wanted the appeal to be before someone who was independent and impartial and stated that throughout this disciplinary process she had felt victimized bullied and harassed. The Claimant confirmed by an email on the 21 July 2017 (page 426) that she wished to go ahead with her appeal. It was not disputed that no appeal hearing was arranged.

67. The Respondent provided the Claimant with the recordings and documents that had not been provided to her during the disciplinary process under cover of a letter dated the 29 June 2017 (page 423).

68. It was put to Ms. Seymour in cross examination that she was involved at every stage of the process from suspension, investigation, disciplinary and grievance process and she denied this was the case, it was her view she was merely coordinating the process however she accepted that she carried out the entire investigation. Ms Seymour also accepted in cross examination that the whole Committee voted on the suspension leaving no one independent to hear the disciplinary as it was accepted that they had seen the entirety of the investigation carried out by Ms Seymour.

69. The Claimant was replaced by a full time employee who was paid £2,000 per year more than her

70. Ms. Seymour accepted in cross examination that after the Claimant's dismissal, she emailed a Nursery where the Claimant was "seen to be working" and she provided what she described as an unsolicited reference. The Claimant told the Tribunal that the email stated, "have you seen this person?" and as a result of Ms. Seymour sending this email, the Claimant was dismissed from her new job. The Claimant put to Ms Seymour in cross examination this was an act of malice, which she denied. The Tribunal find as a fact that this was a hostile act by Ms Seymour and appeared to be entirely consistent with the candid views she had expressed on the findings and conclusions of the Ramsden report. Ms Seymour was of the view that the Claimant was a liar, a view that she accepted in cross examination was unprofessional and was her own opinion.

71. The Claimant's evidence given in cross examination about her claim for Part Time discrimination was that she was continually put under pressure to work full time or to move on, the Tribunal saw consistent corroborative evidence that this was the case. She also maintained that she was dismissed because she was part time and they wanted to replace her with a full time employee. Although Ms Seymour accepted that her comment made to Ms Letcher that she wanted to replace the Claimant with a full time employee looked bias, we accept that the evidence showed that decision to dismiss was on the grounds of conduct and not because of Part Time status.

The Law.

Employment Rights Act 1996

98 General

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

(a) the reason (or, if more than one, the principal reason) for the dismissal, and
(b) that it is either a reason falling within subsection (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.

(2) A reason falls within this subsection if it—

(b) relates to the conduct of the employee,

(4) [Where] the employer has fulfilled the requirements of subsection (1), 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.

122 Basic award: reductions

(2) Where the Tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) 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.

123 Compensatory award

(1) Subject to the provisions of this section and sections 124[, 124A and 126], the amount of the compensatory award shall be such amount as the Tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.

(2) The loss referred to in subsection (1) shall be taken to include—

(a) any expenses reasonably incurred by the complainant in consequence of the dismissal, and
(b) subject to subsection (3), loss of any benefit which he might reasonably be expected to have had but for the dismissal.

(3) The loss referred to in subsection (1) shall be taken to include in respect of any loss of—

(a) any entitlement or potential entitlement to a payment on account of dismissal by reason of redundancy (whether in pursuance of Part XI or otherwise), or
(b) any expectation of such a payment,

only the loss referable to the amount (if any) by which the amount of that payment would have exceeded the amount of a basic award (apart from any reduction under section 122) in respect of the same dismissal.

(4) In ascertaining the loss referred to in subsection (1) the Tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or (as the case may be) Scotland.

(5) In determining, for the purposes of subsection (1), how far any loss sustained by the complainant was attributable to action taken by the employer, no account shall be taken of any pressure which by—

(a) calling, organising, procuring or financing a strike or other industrial action, or
(b) threatening to do so,

was exercised on the employer to dismiss the employee; and that question shall be determined as if no such pressure had been exercised.

(6) 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.

124A Adjustments under the Employment Act 2002

Where an award of compensation for unfair dismissal falls to be—

(a) reduced or increased under [section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 (effect of failure to comply with Code: adjustment of awards)], or
(b) increased under section 38 of that Act (failure to give statement of employment particulars),

the adjustment shall be in the amount awarded under section 118(1)(b) and shall be applied immediately before any reduction under section 123(6) or (7).]

Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000

2 Meaning of full-time worker, part-time worker and comparable full-time worker

(1) A worker is a full-time worker for the purpose of these Regulations if he is paid wholly or in part by reference to the time he works and, having regard to the custom and practice of the employer in relation to workers employed by the worker's employer under the same type of contract, is identifiable as a full-time worker.

(2) A worker is a part-time worker for the purpose of these Regulations if he is paid wholly or in part by reference to the time he works and, having regard to the custom and practice of the employer in relation to workers employed by the worker's employer under the same type of contract, is not identifiable as a full-time worker.

[(3) For the purposes of paragraphs (1), (2) and (4), the following shall be regarded as being employed under different types of contract—

(a) employees employed under a contract that is not a contract of apprenticeship;
(b) employees employed under a contract of apprenticeship;
(c) workers who are not employees;

(d) any other description of worker that it is reasonable for the employer to treat differently from other workers on the ground that workers of that description have a different type of contract.]

(4) A full-time worker is a comparable full-time worker in relation to a part-time worker if, at the time when the treatment that is alleged to be less favourable to the part-time worker takes place—

(a) both workers are—

(i) employed by the same employer under the same type of contract, and
(ii) engaged in the same or broadly similar work having regard, where relevant, to whether they have a similar level of qualification, skills and experience; and

(b) the full-time worker works or is based at the same establishment as the part-time worker or, where there is no full-time worker working or based at that establishment who satisfies the requirements of sub-paragraph (a), works or is based at a different establishment and satisfies those requirements.

5 Less favourable treatment of part-time workers

1) A part-time worker has the right not to be treated by his employer less favourably than the employer treats a comparable full-time worker—

(a) as regards the terms of his contract; or
(b) by being subjected to any other detriment by any act, or deliberate failure to act, of his employer.

(2) The right conferred by paragraph (1) applies only if—

(a) the treatment is on the ground that the worker is a part-time worker, and
(b) the treatment is not justified on objective grounds.

7 Unfair dismissal and the right not to be subjected to detriment

(1) An employee who is dismissed shall be regarded as unfairly dismissed for the purposes of Part X of the 1996 Act if the reason (or, if more than one, the principal reason) for the dismissal is a reason specified in paragraph (3).

(2) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on a ground specified in paragraph (3).

(3) The reasons or, as the case may be, grounds are—

(a) that the worker has—

(i) brought proceedings against the employer under these Regulations;
(ii) requested from his employer a written statement of reasons under regulation 6;
(iii) given evidence or information in connection with such proceedings brought by any worker;
(iv) otherwise done anything under these Regulations in relation to the employer or any other person;
(v) alleged that the employer had infringed these Regulations; or
(vi) refused (or proposed to refuse) to forgo a right conferred on him by these Regulations, or

(b) that the employer believes or suspects that the worker has done or intends to do any of the things mentioned in sub-paragraph (a).

(4) Where the reason or principal reason for dismissal or, as the case may be, ground for subjection to any act or deliberate failure to act, is that mentioned in paragraph (3)(a)(v), or (b) so far as it relates thereto, neither paragraph (1) nor paragraph (2) applies if the allegation made by the worker is false and not made in good faith.

(5) Paragraph (2) does not apply where the detriment in question amounts to the dismissal of an employee within the meaning of Part X of the 1996 Act.

8 Complaints to employment Tribunals etc

(1) Subject to regulation 7(5), a worker may present a complaint to an employment Tribunal that his employer has infringed a right conferred on him by regulation 5 or 7(2).

(2) Subject to paragraph (3), an employment Tribunal shall not consider a complaint under this regulation unless it is presented before the end of the period of three months (or, in a case to which regulation 13 applies, six months) beginning with the date of the less favourable treatment or detriment to which the complaint relates or, where an act or failure to act is part of a series of similar acts or failures comprising the less favourable treatment or detriment, the last of them.

[(2A) Regulation 8A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of paragraph (2).]

(3) A Tribunal may consider any such complaint which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

ACAS CODE OF PRACTICE
CODE OF PRACTICE ON DISCIPLINARY AND GRIEVANCE PROCEDURES (2015)

4.

That said, whenever a disciplinary or grievance process is being followed it is important to deal with issues fairly. There are a number of elements to this:

- Employers and employees should raise and deal with issues **promptly** and should not unreasonably delay meetings, decisions or confirmation of those decisions.
- Employers and employees should act **consistently**.
- Employers should carry out any necessary **investigations**, to establish the facts of the case.
- Employers should **inform** employees of the basis of the problem and give them an opportunity to **put their case** in response before any decisions are made.
- Employers should allow employees to be **accompanied** at any formal disciplinary or grievance meeting.
- Employers should allow an employee to **appeal** against any formal decision made.

8.

In cases where a period of suspension with pay is considered necessary, this period should be as brief as possible, should be kept under review and it should be made clear that this suspension is not considered a disciplinary action.

22.

A decision to dismiss should only be taken by a manager who has the authority to do so. The employee should be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

26.

Where an employee feels that disciplinary action taken against them is wrong or unjust they should appeal against the decision. Appeals should be heard without unreasonable delay and ideally at an agreed time and place. Employees should let employers know the grounds for their appeal in writing.

Grievance

Overlapping grievance and disciplinary cases

46.

Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

Closing Submissions

72. The parties were offered an opportunity to come back and made oral submissions or if they preferred, they could make written submissions. The parties agreed that they preferred to make written submissions. The Tribunal therefore made an order that the parties were to exchange written submissions within 14 days by the 2 May 2019. The Respondent asked for an extension on time to do this on the 29 April and the Claimant objected to their application the following day. The Respondent then replied to the objection on the 30 April 2019 stating that they had "numerous professional commitments" that had to be given their priority which was why they requested an extension. The application for an extension had not been referred to a Judge but by the due date the Respondent failed to exchange their submissions. The Claimant provided her submissions but felt that she had been placed at a disadvantage. The Respondent's submission was dated the 6 May.

73. The submissions and replied were taken into consideration and where appropriate will be referred to in our decision below.

Cases referred to by the Respondent in their closing submissions:

BHS v Burchell [1980] ICR 303

Iceland Frozen Foods v Jones [1982] IRLR 439

Polkey v AE Dayton Services Ltd [1987] IRLR 503

Steen v ASP packaging Ltd [2014] ICR 56

Carl v University of Sheffield [2009] ICR 1286

McMenemy v Capita Business Services Ltd [2007] IRLR 400

The Claimant referred to the following cases:

Agoreyo v London Borough of Lambeth [2019] EWCA Civ 322

Farnaud v Dr Hadwen Trust Limited 2011

British Airways PLC v Pinaud [2018] EWCA Civ 2427

Chhabra v West London Mental Health NHS Trust [2013] EWCA Civ 11

Decision

74. The unanimous decision of the Tribunal is as follows:

75. The Tribunal will first deal with issues in relation to credibility. The Claimant's evidence in this case remained consistent throughout. Her evidence given in cross examination about what she did on the disputed half days when working from home, was consistent with the evidence she provided to Ms Seymour on the 2 March 2017 (page 264). The Claimant was prepared to make concessions where appropriate and conceded, when asked by the Tribunal, that looking back, it would have been sensible to confirm the precise nature of the agreement with Ms Letcher in writing. The Tribunal felt that overall the Claimant was an honest and credible witness apart from her vague recollections as to the nature of the agreement with Ms Letcher and when she carried out the additional 3.5 hours work as we have reflected above in our findings of fact

76. The Tribunal will now deal with the credibility of Ms Seymour, we found her evidence to be contradictory on a number of issues. The first matter was in relation to what we will refer to as the comment made by her when she used the word 'bullshit'. She firstly denied the veracity of the allegation against her but accepted that the word was spoken. We found as a fact therefore that the conversation took place as alleged by the Claimant. Ms Seymour explained to the Tribunal that she did not feel the use to the word to be inappropriate because she was in conversation with two members of staff in an office (and not in front of children) and the office was a private area where they could not be overheard. Ms Seymour then appeared to contradict her own evidence by saying that the reason she held the suspension meeting in All Bar One (within earshot of other customers) was that there was nowhere private to hold a meeting in the work premises. Her evidence on this point appeared to be inconsistent.

77. In relation to the suspension meeting Ms Seymour told the Tribunal that she felt it was appropriate to hold the meeting in All Bar One. It was put to her that Mr Carter had found this to be inappropriate in his grievance outcome. Ms Seymour did not appear to accept that this was unacceptable even though she had concluded that Ms Carter's reports were of high quality and he had concluded that it was inappropriate to hold a meeting in a public place. Ms Seymour's refusal to make a concession even when faced with evidence went against her was a feature of the facts of this case and of the evidence given by this witness.

78. Ms Seymour described her involvement in the disciplinary process as being one of coordination only and denied she had involvement at every stage of the process (see above at paragraph 68). This appeared to be a significant

mischaracterisation of the pivotal role that she played and her description appeared to be diametrically opposed to the clear evidence of her control over the process from start to finish. For the avoidance of doubt the Tribunal found as a fact that Ms Seymour carried out the original 'onboarding' investigation and as a result of this there was a recommendation to the MC that the Claimant should be investigated. Ms Seymour provided a detailed report in support of her case for suspension and investigation alleging that what she had found was evidence of fraud and possible collusion with another company. Ms Seymour's highly emotive assessment of the case at this early stage was shared with the entire MC, leaving no one impartial to consider the disciplinary or appeal hearing, should one be required.

79. Ms Seymour suspended the Claimant, identified the charges, carried out further investigations, referred the matter to an independent consultant and when the consultant found the charges to be unproven, she disregarded the report alleging it was unprofessional and failed to share it with either the MC or the Claimant. Ms Seymour then engaged a further 'independent consultant' who changed the charges. Although the findings and conclusions of one of the charges that led to dismissal was unsupported by the evidence (see above in relation to overtime), Ms Seymour commended this report to the MC stating that this was a professional report and of 'good quality'. The MC appeared to accept this view without question and the Claimant was dismissed without a hearing and without an opportunity to respond to the findings and conclusions made in the report. Ms Seymour wrote the dismissal letter confirming that this was her decision. There was no stage in the process where Ms Seymour did not have a central role to play, she did not merely coordinate matters she controlled the process from investigation to dismissal. There was no evidence that anyone else from the Respondent organisation had any input into the process (save for note taker, but those notes were never provided). Ms Seymour's description of her role in the process as one of mere coordination was not credible or consistent and was contradicted by the extent of the evidence before the Tribunal. Where there is a conflict in the evidence between the Claimant and Ms Seymour, where it is appropriate to do so we will prefer the Claimant's evidence to that of Ms Seymour.

80. Turning to the unfair dismissal claim, the Tribunal accept that the Respondent has shown a potentially fair reason for dismissal, namely conduct.

81. The Tribunal then turned to whether the Respondent carried out a fair process one that was within the band of reasonable responses. We have found as a fact above that the suspension meeting was inappropriate for a number of reasons, it was held in a public bar and the Claimant was misled as to the purpose of the meeting. She was informed that it was a breakfast meeting to have a catch up so was completely unprepared for what was to follow. That was unfair and inappropriate as we have found as a fact above at paragraphs 27 and 56 above. The Claimant was not provided with any evidence against her at that stage.

82. The Claimant was excluded from the office and was not allowed to speak to her colleagues. This made it difficult for her to respond to the allegations against her. There was no evidence that the Respondent took any steps to

ensure that the Claimant had an adequate opportunity to defend herself and to prepare to answer the allegations.

83. The Claimant was suspended for a considerable period of time (13 February until the 19 June 2017), there was no evidence that the Respondent took any steps to keep in touch with her nor did they make any welfare calls. Although the Claimant was off sick for a short period of time which caused one postponement during the process, the bulk of the delay in the disciplinary process which resulted in such a lengthy suspension was caused by the protracted process followed by the Respondent. The Claimant was a longstanding employee of 23 years' service; to be treated from the date of suspension as if she were guilty of all charges appeared to be unusually harsh. This lengthy suspension appeared to be a breach of the ACAS Code of Practice at paragraph 8 where it states that suspension should be brief and be kept under review, there was no evidence to suggest that a review was undertaken or whether the Respondent considered that the Claimant could have been returned to her duties.

84. Ms Seymour conducted the investigation starting with her onboarding process (see above at paragraph 22-25) it was noted that at this early stage Ms Seymour had characterised the potential disciplinary charge as fraud even though no one had at that stage been interviewed. After the Claimant's suspension she interviewed Ms Letcher twice and the Claimant (and one other witness), she did not interview Ms Kolenda, despite the fact that some of the charges related to the time when she had line management responsibilities over the Claimant (from 2015 to 2016), this called into question the adequacy of the investigation. Although Ms Seymour produced a number of documents, there was no evidence she sought to obtain previous copies of the MC minutes where the Claimant's contractual changes were discussed, as referred to by Ms Letcher, this again suggested an inadequate investigation. There appeared to be no evidence that Ms Seymour enquired whether Ms Letcher or Ms Kolenda had kept copies of their supervision notes with the Claimant or the supervision notes completed by the Claimant of her line reports (this was the work she said she completed on her days working from home). The investigation appeared to be focussed solely on the issue of Friday working, rather than the Claimant's workload over 4.5 days. The Tribunal heard that the increase was to work 4.5 days and there was some flexibility as to when the additional half day was to be worked (although the extent of the flexibility was disputed). Focussing solely on what occurred on a Friday resulted in an unduly restrictive investigation.

85. The Claimant was originally charged with six offences, all appeared to be complex and substantially overlapping, some dated back to 2012 (see above at paragraph 37). There were very few contemporaneous documents produced as part of the investigation and the consistent evidence of Ms Letcher was that this was an oral agreement to increase the Claimant's pay to include an additional half day pay which we have found as a fact above. It appeared that Ms Letcher informed Ms Kolenda of this agreement on the 26 January 2016. Ms Letcher accepted that she failed to put the terms of the agreement in writing and in the interview on the 16 February 2017 accepted that there may have been negligence on her part (see above at paragraph 28). This was the contextual background of the employment relationship and the casual manner in which the contractual change had

been actioned. This occurred after Ms Letcher took over in 2012 until when Ms Seymour became Chair in 2017

86. The six charges were before Ms Ramsden, an independent consultant. She conducted a number of interviews (Ms Seymour, the Claimant and Ms Letcher) and concluded that the charges were not well founded and the Claimant should therefore be reinstated. This conclusion appeared to be consistent with the facts before her and she placed equal responsibility on the Claimant and her respective line managers for the lack of written confirmation of the contractual change and the failure to adequately supervise the additional hours worked (see above at paragraph 42). This report was rejected by Ms Seymour and not shared with anyone, the reason given was that Ms Seymour concluded that it was unprofessional, however we have made a number of findings of fact about the comments made on the report above (paragraphs 44-47). It was clear from our findings of fact that Ms Seymour had concluded, from her own investigations, that the Claimant was dishonest, and she sought to distance herself from any conclusions in the report that purported to exonerate the Claimant, or which provided an exculpatory explanation. Ms Seymour's strength of feeling was reflected in the personal and often unprofessional comments on the report, those comments indicated that she had formed a view of the Claimant's guilt and pursued an outcome that was consistent with that preconceived view.

87. Having distanced the Respondent from the Ramsden report, Ms Seymour called the Claimant to what was erroneously described as a reconvened disciplinary hearing. Ms Seymour had instructed a different independent consultant Mr Carter, who drafted a further two charges which he then found to be proven. The Claimant was not informed of the existence of the Ramsden report and was not told that the two new charges would be the entirety of the case against her. The Tribunal found as a fact that Mr Carter reached a decision on one of the charges (in relation to overtime) which could not be sustained on the facts before him (see above at paragraph 53). His conclusion was not based on any evidence as it was noted that Ms Letcher had never referred to the half day as being worked as overtime. His conclusion on this charge was therefore unsustainable on the facts.

88. The first charge in relation to the Claimant contacting the Payroll Bureau appeared to ignore some of the evidence before him which we have found as a fact above at paragraph 52. The Tribunal conclude that following receipt of this report the Respondent could not have held a genuine belief on reasonable grounds that the charges set out the Carter report had been found proven.

89. The Carter report was placed before the Respondent and they voted to dismiss but there was no evidence of any discussion of the findings and conclusions in the report save for Ms Seymour saying that the report was professional. The Claimant did not see the report before she was dismissed. She had no opportunity to make representations to the Respondent before they took their decision to dismiss. The disciplinary process was unfair.

90. The dismissal letter did not say why the Claimant had been dismissed and it was confirmed that Ms Seymour was the decision maker. Ms Seymour had great difficulty explaining why the Claimant had been dismissed to the Tribunal. We refer above to her evidence on this point at paragraphs 60-65.

There was no evidence the MC had read the report or agreed the reason for dismissal, we conclude that the real reason for dismissal were the reasons given by Ms Seymour in oral evidence to the Tribunal. We noted that the reason she gave for dismissing the Claimant were not the same as the conclusions reached by Mr Carter, this reflected the incoherence of the disciplinary process and of the reason for dismissal.

91. The unfairness in the process adopted went beyond mere procedural failures. The charges were unclear and changed, a report exonerating the Claimant was withheld from her, new charges were formulated which were only partly unsubstantiated by the evidence. The Claimant had no opportunity to respond to the report before she was dismissed. The Claimant was not told why she had been dismissed and the reasons for dismissal given by the Respondent in cross examination were inconsistent with the conclusions of the Carter report. The Claimant was not told that some of the charges had been dropped. She was not invited to an appeal.

92. As the failings went beyond mere procedural faults we consider that it would not be appropriate to make any reduction in the compensation for Polkey.

93. We considered whether dismissal was within the band of reasonable responses open to the employer and we were reminded by the Respondent that we must not substitute our view for that of the employer.

94. We have concluded that the dismissal was unfair for the above detailed and significant reasons. The Respondent's conduct of the disciplinary process fell outside of the band of reasonable responses because they failed to establish the reason for dismissal or to clarify whether and how those charges were found to be proven on the evidence. The Tribunal were concerned that there appeared to be a lack of impartiality throughout the whole process which we felt infected the process from the initial onboarding investigation to the dismissal. We considered that the Burchell test requires the Tribunal to consider whether the Respondent had reasonable grounds on which they sustained their belief in the Claimant's misconduct after carrying out a reasonable investigation. The Tribunal have found that Ms Seymour rejected the independent Ramsden report, which appeared even handed, preferring to rely on the outcome of her own investigation and on her predetermined subjective beliefs formed at the start of the investigation. We have also found that she rejected evidence that may be exculpatory. Our conclusions about the reasons given by Ms Seymour for dismissing the Claimant did not appear to be corroborated by the evidence before them and the reasons for dismissal clarified by Ms Seymour in cross examination were inconsistent with the reasons found in the Carter report. It was impossible to determine if the process, which was found to be fundamentally flawed was capable of reaching a fair outcome. The Tribunal conclude that the process was unfair substantively and procedurally. We conclude therefore that the dismissal was not fair and within the band of reasonable responses.

95. Turning to the issue of contributory fault we have found as a fact that the Claimant's evidence as to the work undertaken on a Friday was vague and she gave several different answers when asked during the investigation and in the disciplinary hearings. The Tribunal note that the Claimant self-

authorized her pay increase and although management control over the process appeared lax and unsupported by any documentary evidence, the Claimant was the most senior member of staff and she candidly accepted in cross examination that she could have avoided this situation by recording the pay increase (or pay for additional hours) to cover herself. This she did not do. We were concerned that although we found the Claimant's evidence to be consistent and credible on most matters, on this one critical point relating to Friday working she was unable to provide consistent evidence of regular and sustained work carried out each week, this the Tribunal expected to see when hours had been changed to pay her on a regular basis from 2014. She also told Ms Seymour in an email (see above at paragraph 21 dated the 11 January 2017) that she only worked a four-day week, this was contrary to the agreement to work a 4.5 day per week. This alone was enough to cause Ms Seymour to suspect the Claimant of wrongdoing and this prompted the investigation. Had the Claimant been more open and forthcoming about the terms of the agreement, some of Ms Seymour's suspicions may have been allayed. For this reason, we believe that the Claimant should bear some contributary fault for her dismissal. It is for this reason that we reduce the compensatory award by 50% to reflect that culpability should be shared equally between the Respondent and the Claimant.

96. We now turn to the issue of failing to comply with the ACAS code of practice. We have found as a fact that there was a significant delay during the disciplinary process. The Claimant remained on suspension for over 4 months, there appeared to be no good reason for such a lengthy delay. This appeared to be a breach of the ACAS Code of Practice at paragraph 4 which states that matters should be dealt with promptly and paragraph 8 where it states that suspension should be brief and kept under review. There was no evidence that this was done. The Claimant had no opportunity to put her case to the Committee before they took the decision to dismiss, this was a breach of paragraph 4. The Claimant also did not have sight of the Carter report before dismissal. The Respondent also failed to convene an appeal procedure, this was a breach of paragraph 26 of the Code. The Tribunal also considered whether there was a breach of paragraph 46 of the grievance process, which deals with overlapping grievances and disciplinary processes, we considered that the disciplinary procedure should have been halted to allow the Claimant to be provided with the minutes and documents that had not been provided to her after the meeting of the 2 March 2017, these were not provided until after the outcome had been delivered (on the 29 June). These breaches were significant and resulted in a substantively unfair process, and we conclude that an uplift of 25% should be applied to the compensatory award.

97. The Tribunal now turn to the Claimant's claim for discrimination because of part time status. Although there was evidence that Ms Seymour informed Ms Letcher at an early stage of the process that she intended to replace the Claimant with a full-time employee and did then proceed replace her with a full time employee, there was insufficient evidence to suggest that this was the main or principle reason for dismissal. The reason the Claimant was replaced with a full-time employee was due to the fact that her post was substantive full time and the Respondent and successive managers always considered this to be full time position. The consistent evidence before the Tribunal was that Ms. Seymour was suspicious of the Claimant's salary

which appeared high and having carried out her research had sufficient evidence to suspect there was a conduct issue. Although we have concluded that the process that followed was procedurally and substantively unfair, this did not equate to a conclusion that it was a detriment because the Claimant was a part time employee or that she had previously resisted pressure to return to full time working. The consistent evidence showed that Ms Seymour had concluded that the Claimant had committed an act of dishonesty and even though the Tribunal conclude that the evidence did not support this conclusion, this only suggested that the dismissal was unfair and was not evidence to suggest that it was discriminatory. This head of claim is not well founded and is dismissed.

98. Although the Claimant referred in her statement to comments made to her on the grounds of her part time status that she alleged were detriments (paragraph 32), the Tribunal heard little corroborative evidence to support this and the evidence was not particularised. Although they were corroborated by Ms. Letcher in her statement to the Tribunal, she did not attend to give evidence and we therefore place less weight on this evidence. There was no evidence that the Claimant was subjected to a detriment on the grounds of her part time status. We also conclude that these allegations were significantly out of time (Ms Letcher confirming that these comments were made at the end of her time and shortly thereafter therefore this would be at the beginning of 2016 at the latest making them over 18 months out of time). We also had a concern that due to the significant passage of time and the vagueness of the allegations, it would not have been just and equitable to extent. We conclude that the claim for detriment is not well founded and is dismissed.

99. The case will be listed for a one-day remedy hearing on the **23 August 2019**. The Claimant is ordered to produce an updated schedule of loss and a small remedy bundle indicating steps she has taken to secure other employment and any earnings and benefits she has received since her dismissal. The bundle and schedule of loss is to be sent to the Respondent by the 9 August 2019.

Employment Judge **Sage**

Date 4 June 2019