EMPLOYMENT TRIBUNALS

Claimant: Mrs H Tansey

Respondent: DWF LLP

HELD AT: Manchester **ON:** 10 – 14 December 2018
25 and 26 February 2019
(In Chambers)

BEFORE: Employment Judge Langridge
Ms S Howarth
Mr P Stowe

REPRESENTATION:

Claimant: Ms C Widdett, Counsel
Respondent: Mr T Gilbart, Counsel

JUDGMENT

1. The claimant was fairly dismissed on the grounds of gross misconduct.

2. The claimant was not dismissed on the ground that she had made a protected disclosure.

3. The claims for breach of contract and unlawful detriments due to making protected disclosures are both dismissed on withdrawal.

REASONS

Introduction

1. The claimant was dismissed by the respondent law firm on 15 September 2017 as she was approaching the conclusion of her training contract with a view to being admitted as a solicitor. The reason for dismissal relied on by the respondent was the claimant's conduct, the allegations against her relating to various breaches of confidentiality concerning information belonging to the respondent or its clients or other parties involved in litigation.

2. The claimant's application to the Tribunal alleged that her dismissal was unfair under section 98(4) Employment Rights Act 1996 ('ERA'), and also that it was automatically unfair under section 103A ERA in that the reason (or principal reason) for dismissal was that she had made protected disclosures. The claimant further alleged that she had been subjected to detriments as a result of making protected disclosures. Finally, she claimed that the respondent breached her contract by failing to give her notice of termination.

3. At the outset of the hearing on 10 December 2018 the claimant withdrew her breach of contract claim. The whistleblowing detriment claims under section 47(B)(1) ERA were pursued during the hearing until after the completion of the claimant's oral evidence, when they were withdrawn. This followed the claimant's concessions during cross-examination that none of the five alleged detriments could have occurred on the ground that she had made protected disclosures. Causation could not be made out in light of the chronology of the alleged detriments, all of which events occurred before the disclosures dated 5 July 2017.

4. The claimant contended that her dismissal was unfair because her actions did not amount to gross misconduct and did not justify dismissal. She said the respondent made no attempt to deal with the instances of misconduct in a proportionate manner, and that others had been treated more leniently in the comparable circumstances. The claimant also complained that the respondent's decision not to allow her to be accompanied during the disciplinary process by anyone other than a colleague or trade union representative (as prescribed by section 10 Employment Relations Act 1999) was unfair given the serious implications of the allegations she was defending for her prospective career as a solicitor.

5. In its Response the respondent disputed that its decision to dismiss the claimant was unfair or that it had anything to do with any protected disclosures. The respondent relied on its allegations of disclosure of confidential information, amounting to a serious breach of the claimant's contract of employment as well as a breach of its policies and professional codes of conduct as the reason for dismissal. The respondent asserted that its investigation into the issues was fair and thorough, that it investigated and found unsubstantiated the matters dealt within the disclosures of 5 July 2017 and that the dismissal was fair in all the circumstances. The respondent disputed that the disclosures made by the claimant were qualifying or protected disclosures under the ERA.

6. When the hearing began in December 2018 it was immediately apparent that there was a very substantial volume of documentation to review. The parties had prepared an agreed 'core bundle' running to three volumes and almost 1,500 pages. In addition the Tribunal was provided with three further lever arch files containing documents gathered during the internal disciplinary investigation. Supplementary documents prepared internally were made available as needed for reference purposes only.

7. It was agreed that although this was a dismissal claim, the claimant would give her evidence first. She gave evidence on her own behalf over the course of two days, after which the Tribunal heard evidence from six witnesses for the respondent. These were Amy Blakeman, an HR Adviser; Claire Dickson, a litigation solicitor who carried out the disciplinary investigation; Deborah Abraham, the respondent's Director of Risk Management; Johnathon Hainey, formerly a partner in the respondent's commercial litigation team and the person who took the decision to dismiss; Paul Inman, partner and head of the respondent's real estate team, who dealt with the appeal against dismissal; and finally Gregory Morris, the respondent's Head of Risk Assessment. Having heard evidence from all the witnesses and heard submissions on behalf of both parties on 14 December, the Tribunal reserved its decision.

8. During the course of the hearing the Tribunal requested that the parties provide it with an agreed summary in table form of the claimant's actions which were relied on by the respondent in its decision to dismiss, cross-referenced to documents. This was produced by Mr Gilbart on the understanding that the narrative contained within the table was a summary of the respondent's position. Twelve items were set out in this document and although all of them were referred to during the course of the hearing, the more serious items were given more attention as they played a more key role in the decision to dismiss.

9. The same document included a separate table setting out the matters relied upon by the claimant. This identified twenty one items, mainly in the form of emails or documents which had been provided to her by Ms Jones, either before or during the claimant's employment with the respondent. The claimant relied heavily on the communications she received from Ms Jones in defending her own actions. The main thrust of her argument was that Ms Jones's manner of communicating confidential information created confusion and a blurring of boundaries as to what could and could not be communicated, especially when the communication was sent from a work email address to an address external to the firm's system. The claimant also relied on these communications to argue that Ms Jones was disclosing confidential information in an equivalent manner such that the claimant should not be punished in an inconsistent way, or so severely, given that her senior colleague had not been punished.

Issues and relevant law

10. In considering the unfair dismissal claim the first question for the Tribunal was to determine the reason for dismissal. The respondent relied on conduct under section 98(2)(b) ERA as the reason, and this was not disputed by the claimant. She did, however, challenge the contention that she was guilty of gross misconduct warranting dismissal.

11. The next stage was to consider the question of fairness in accordance with section 98(4) ERA, which requires the Tribunal to take into account equity and the substantial merits of the case, the size and administrative resources of the employer, and the circumstances of the case. Those circumstances may include, for example, issues about the consistency of treatment between individuals and the fairness of procedures.

12. The leading case on fairness in conduct cases is British Home Stores v Burchell [1978] IRLR 379 which set out three elements to consider: firstly, whether the respondent's belief in its reason for dismissal was a genuine one; secondly, whether that belief was held on reasonable grounds; and thirdly, whether the respondent had carried out a reasonable investigation. The Tribunal also took account the principles laid down in Foley v Post Office [2000] IRLR 827, as well as Sainsbury v Hitt [2003] IRLR 23 and Iceland Frozen Foods v Jones [1982] IRLR 439. The Tribunal had to avoid bringing its own view of the dismissal decision into consideration, but instead had to decide whether this respondent's decision to dismiss fell within the range of reasonable responses which an employer might apply when considering the conduct in question. This range also applied to the procedures followed and the sanction itself.

13. Applying these principles to the arguments in the present case, the Tribunal had to address the following questions of law:

13.1 Was there a reasonable basis on which the respondent could conclude that the claimant was guilty of gross misconduct, as distinct from misconduct warranting a sanction other than dismissal?

13.2 Did the respondent actually believe that the claimant was guilty of gross misconduct, and was it entitled to hold such a belief on the basis of the evidence it had gathered?

13.3 When the respondent decided that dismissal should be the outcome, was it entitled reasonably to take that view, and was that sanction within the range of responses open to a reasonable employer? Alternatively, was it a decision which no employer, acting reasonably, could have reached on the evidence?

14. The key issues of fact in this case included whether:

14.1 the claimant was (or should have been) aware of the requirement to protect confidential information;

14.2 the claimant was (or should have been) aware of the respondent's rules and policies on the use of IT;

14.3 the mitigating circumstances put forward by the claimant were properly taken into account;

14.4 the respondent's decision was inconsistent with the way it treated other employees in the same or similar circumstances.

15. Guidance as to the alleged inconsistent treatment is available from Hadjioannou v Coral Casinos Ltd [1981] IRLR 352 and Securicor v Smith [1989] IRLR 356. In essence, the Tribunal was required to consider whether the respondent had addressed its mind to the different cases and whether it had a rational basis for making a distinction between its handling of them. The Tribunal should only interfere with that approach if there was no rational basis for such a distinction to be made.

16. In Hadjioannou the EAT held that the evaluation of the cases of other employees is essentially a matter for the Tribunal. The emphasis in section 98(4) of the Act is on the particular circumstances of the individual employee's case. There are limited circumstances in which a claimant may argue that the treatment she received was not on a par with the way that a colleague was treated. These circumstances include cases where the evidence about the handling of other cases supports an inference that the purported reason stated by the employers is not the real or genuine reason for dismissal. In addition, the EAT said that:

> "Evidence as to decisions made by an employer in truly parallel circumstances may be sufficient to support an argument, in a particular case, that it was not reasonable on the part of the employer to visit the particular employee's conduct with the penalty of dismissal and that some lesser penalty would have been appropriate in the circumstances. Industrial Tribunals should scrutinise arguments based upon disparity with particular care and there will not be many cases in which the evidence supports the proposition that there are other cases which are truly similar, or sufficiently similar, to afford an adequate basis for argument. It is of the highest importance that flexibility should be retained and employers and Tribunals should not be encouraged to think that tariff approach to industrial misconduct is appropriate."

17. Accordingly, in this case there needed to be some evidential basis upon which to find that the claimant's dismissal was unfair by comparison to the way her colleagues were treated, and that evidence needed to show that their actions were sufficiently similar as to demonstrate such unfairness.

18. Supplementary points to be considered in relation to the unfair dismissal claim included the question whether, if the respondent's handling of the dismissal was flawed, there was sufficient evidence before the Tribunal to indicate that dismissal would have followed in any event, following Polkey v AE Dayton Services [1987] IRLR 503. The Tribunal was also asked to consider the question of contributory conduct under section 123(6) of the Act.

19. Turning to the whistleblowing claim, the claimant relied on two disclosures she made in a detailed witness statement provided to the respondent on 5 July 2017, and referred to in her amended grounds of claim, namely:

19.1 Procuring a breach of contract. This was an issue about one of the partners of the respondent encouraging the claimant to leave her employment in order to work for another law firm.

19.2 Encouraging the claimant to divulge to the respondent confidential and commercially sensitive information belonging to their client Serco.

20. The meaning of 'protected disclosure' is set out in section 43A ERA:

> *"In this Act a 'protected disclosure' means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H."*

21. The relevant parts of section 43B provide as follows:

> *"(1) a 'qualifying disclosure' means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—*
>
> *(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject"*

22. The claimant relied on section 43B(1)(b) and characterised her disclosures as tending to show a breach of a legal obligation. The law does not require the claimant's disclosures to be correct, providing she had a reasonable belief in them and in the public interest requirement. Where a breach of a legal obligation is relied on, the claimant should identify the breach in question: Fincham v HM Prison Service EAT/0925/01.

23. On the question of public interest, the Court of Appeal in Chesterton Global v Nurmohamed [2015] IRLR 614 identified four factors to be considered:

23.1 The numbers in the group whose interests the disclosure served.

23.2 The nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed. A disclosure affecting a very important interest is more likely to be in the public interest than a disclosure of trivial wrongdoing affecting the same number of people and all the more so if the effect is marginal or indirect.

23.3 The nature of the wrongdoing disclosed. If deliberate wrongdoing, it is more likely to be in the public interest than inadvertent wrongdoing affecting the same number of people.

23.4 The larger and more prominent the wrongdoer the more obviously should a disclosure about its activities engage the public interest.

24. In examining this claim the Tribunal had to decide whether the disclosures made by the claimant to her employer on 5 July 2017 were qualifying and protected disclosures. If so, then the Tribunal had to determine whether the making of these disclosures was the reason or principal reason for the claimant's dismissal. If so, the dismissal would be automatically unfair under section 103A ERA.

Findings of fact

25. From December 2013 and on various dates during 2014 the claimant was working with the respondent on an occasional basis in order to gain work experience

with the firm. This came about because the claimant had a close personal friendship with one of the firm's partners, Rachel Jones. The work experience was not paid employment but it was arranged and carried out on the understanding that the claimant was to be offered a contract of employment with the firm. By early 2014 Ms Jones had decided she would recruit the claimant later in the year to work as a paralegal in her team, once she had reached the end of her legal studies. In anticipation of this employment, Ms Jones had made arrangements for the claimant to attend some client meetings from December 2013 onwards, and an inquest in which the respondent was instructed. During this time Ms Jones and the claimant were in regular contact with each other and Ms Jones was providing information to the claimant about the work opportunities which were available. In an email to Ms Jones dated 18 November 2013 the claimant referred to being away from college over the holiday period between 20 December and 20 January, which represented a good opportunity to do some training with the firm.

26. In December 2013 Ms Jones sent information to the claimant by email relating to a client, Serco Limited ('Serco'), whose identity as a client of the firm was in the public domain. The information sent to the claimant was not, however, in the public domain and its subject-matter was confidential. These emails were sent to the claimant for the specific purpose of facilitating her work experience, and in the case of an email dated 19 December 2013 explicitly for the purpose of attendance at a court hearing in January 2014.

27. On 6 February 2014 the claimant was sent a bundle of documents by Ms Jones relating to another hearing. At that time the claimant had not been required to sign any confidentiality agreement, but both she and Ms Jones knew and understood that the context in which the information was shared was linked to the respondent's confidential business as a firm of solicitors. As the claimant was nearing the end of her law degree (incorporating a Masters in Legal Practice), she was aware from her studies (not least through the teaching she had received on ethics) of the importance of protecting the confidentiality of client information. By this time it was intended that the claimant would join the respondent as an employee as soon as possible. In her 6 February email Ms Jones commented, "Get in this team pronto", expressing her enthusiasm for what the claimant could offer the firm.

28. One of the reasons Ms Jones was keen to have the respondent appoint the claimant was that she was a mature student coming into the legal profession after a career in banking. The claimant had spent 19 years working at Halifax plc and then HBOS plc, until June 2009. She then was involved in two businesses of which she was a director, Brigantia Limited and Brigantia Funding LLP, both operated by the claimant's friend and mentor Gina Ramsay. The claimant was appointed as a director of Brigantia Limited on 1 December 2010 and became a member of the LLP from 30 March 2012. These appointments overlapped with her studies at Huddersfield University and continued into her employment with the respondent. The claimant was therefore an experienced person, and during her time at HBOS had occupied a fairly senior role which included risk management. Ms Jones considered the claimant to have sufficient work experience generally to be capable of working on secondment at Serco almost immediately on starting work with the respondent.

29. In June 2014 Ms Jones emailed the claimant another document, a retainer pitch relating to Serco, and the following month the claimant accompanied Ms Jones

as part of the ongoing work placement arrangements to a meeting with the client where she prepared notes. The claimant had completed her law exams in May, by which time the respondent had decided to offer her a position as a paralegal. This was on the understanding that she would be immediately seconded to Serco on starting work. Supervision arrangements were in place, both within the firm and through the in-house General Counsel in Serco's legal team.

30. The claimant continued to work with Ms Jones and receive information from her during this period, as they worked to establish the arrangements for this secondment. Some of the information sent by Ms Jones to the claimant in the interim was confidential, but all of it related to the prospective employment in October 2014. On 15 October Ms Jones emailed a client-specific brochure to the claimant, making plain the confidential nature of the information by annotating her email in bold capitals, instructing her not to forward it to anyone outside the firm. This was within days of the employment starting and by then the claimant was being treated as a member of the firm.

31. The claimant signed a contract of employment as a paralegal on 20 October 2014. She read and understood its provisions which included the following clauses:

> "4.2 You are required to be familiar with and comply with all policies and procedures of DWF and/or DWF LLP in force from time to time.
>
> "4.3 You acknowledge and agree that you will at all times during your employment … be subject to a duty of good will, trust, confidence, exclusive service, faith and fidelity to DWF and/or DWF LLP. These duties include, without limitation, the duty throughout the duration of this agreement:
>
> "(g) not without the prior written consent of DWF engage in any form of business or employment other than your employment with DWF whether inside or outside your normal hours of work.
>
> "17. Confidentiality
>
> 17.1 You will not either directly or indirectly during your employment or after its termination use or divulge or communicate to any person, firm, company or organisation any secret or Confidential Information or information constituting a trade secret acquired or discovered by you in the course of your employment relating to the business of DWF and/or DWF LLP, including the business or personal interests of its clients, employees, consultants, suppliers or business contacts. In particular Confidential Information includes but is not limited to:
>
> (b) lists and particulars of DWF and/or DWF LLP's clients and the individual contacts at such clients;"

32. In its evidence to the Tribunal the respondent was unable to identify in any detail what matters had been covered during the claimant's two day induction training in October 2014. The claimant asserted that it was mainly about time recording and said she was not made aware of the firm's policies and procedures. Nevertheless, by the time of signing her contract the claimant had the benefit of

reading the confidentiality clause and was aware of her duty to familiarise herself with the firm's policies and procedures. She also had a general knowledge and awareness of the importance of confidentiality through her previous employment in banking and through her recently completed legal studies.

33. During her secondment in Serco the claimant was expected to contribute to the development of a close working relationship between the respondent and its client, in such a way as to facilitate the transfer of information back and forth between the two. This was part of the purpose of the secondment, which was understood between the respondent and the client to be designed to give the law firm a commercial advantage in getting to know its client better, as well as being better able to deliver full services to the client.

34. During her secondment the claimant had access to documents and information belonging to Serco. She was able to and did share some of this information with the respondent as part of her day to day duties, and in doing so did not breach any duty of confidentiality. At some stage the claimant had access to a file containing submissions from various law firms who had presented bids to Serco as part of a tender process. The claimant removed this file (or a copy of it) from the client's office and took it to the respondent's office where she left it on a shelf by her work station. She was not specifically asked to do that by anyone at the respondent. It was in any event usual for law firms bidding for work to share information with each other, including about pricing, and this was understood by the partners of the respondent to be understood in the marketplace. Pricing information relating to previous tenders was of limited benefit to the firm for the future, as it would become out of date.

35. In answer to the Tribunal's questions about this, the claimant said a colleague had removed the tender document from Serco, after which she made a copy of it and kept this on a shelf by her desk. The colleague was Colin Murray, an associate solicitor who had also been seconded to Serco, overlapping for a short time with the claimant's secondment there. However, the Tribunal found that her evidence about this was far from clear. Initially she said Mr Murray had removed the file, which she only found out at a later date when he referred to it in a meeting. When asked the question again, the claimant named Ms Jones as the person who had given the instruction to remove the document. The Tribunal did not accept this evidence and finds that the claimant removed the document, but not at the bidding of any colleague.

36. During her secondment the claimant also had contact with other law firms who were potential competitors of the respondent. This included Pinsent Masons, who provided employment law services to Serco. At the start of the secondment the claimant met solicitors from Pinsent Masons who initially did not know she was employed by the respondent. However, that soon changed and by early May 2015 at the latest Pinsent Masons were well aware that the claimant was attending meetings on behalf of Serco while on secondment from another law firm. On 7 May the claimant emailed a colleague at the respondent referring to a meeting she had attended with Pinsent Masons that day and commenting, "They hate me being there". Despite this, the claimant maintained during the later internal procedures that her identity as an employee of the respondent had not been known to Pinsent Masons for some time, treating this as part of her disclosure about being asked to

provide the respondent with "competitive intelligence" when making her disclosures on 5 July 2017. The handing over of a document prepared by Pinsent Masons describing their employment law services to Serco, including pricing information, formed part of the subject-matter of disclosures, but in fact this was given to the claimant in around October 2015 when the firm knew who she was.

37. On 21 September 2015 the claimant's status with the respondent changed and she took up a position as a Trainee Solicitor under a new contract. She signed the Trainee Solicitor contract on that date after reading and understanding its contents. Like the paralegal contract previously, the claimant was required (under clause 3.2) to be "familiar with and comply with all policies and procedures" of the respondent in force from time to time. There was a similar prohibition on being engaged in any form of business or employment other than with the respondent, and a confidentiality provision was set out in identical terms to the paralegal contract in clause 16 of this new contract.

38. The relevance of the prohibition on being engaged in another business or employment was that the disciplinary allegations against the claimant included a concern about her failure to disclose formally her interest in the businesses operated by Gina Ramsay. While this formed part of the decision to dismiss, that issue was overturned on appeal and is therefore of limited relevance to this judgment.

39. The claimant was again aware from her new contract that the respondent operated policies and procedures with which it was her responsibility to familiarise herself. Those documents included an Acceptable Use Policy relating to use of the respondent's IT systems, an Information Security Policy and a Data Protection Policy. The Acceptable Use Policy dated 11 May 2015 contained provisions on home printing and information being taken off site, stating:

> "It is vital that the Firm always protects clients' confidential information. It is a fundamental feature of our relationship with clients, a regulatory obligation and one of the professional principles set out in the Legal Services Act 2007. The firm's regulators expect it to have effective systems and controls in place to protect confidentiality. The duty of confidentiality to all clients applies to all of the firm's people: partners, employees and consultants, whatever their role in DWF …
>
> "The Firm must also comply with the Data Protection Act 1998 in respect of client confidential information that relates to living individuals".

40. The Policy went on to set out provisions protecting the removal from the office of any hard copy client confidential information, and made clear that printing documents at home was not supported. The policy said this about the use of email:

> "External emails should only be used for legitimate business purposes. The email system is not intended for personal use. External emails are potentially reaching a wider audience so when sending external emails, the following guidelines must be followed:

- Do not email client related documents to a personal email account for any purpose, legitimate or otherwise. Web based email access is not permitted."

41. The respondent's Information Security Policy dated 20 April 2013 contained provisions about information security and began as follows:

> "The information we hold is valuable. We need to protect it in the interests of our clients and the firm and to meet our legal and professional obligations. The protection of information is the responsibility of everyone. Everyone who has access to information held by the firm should therefore read this policy and implement the measures it describes.
>
> "Information security protects information from a wide range of threats to ensure business continuity, minimise business damage and maximise return on investments and business opportunities. It is characterised here as the preservation of:
>
> - Confidentiality – ensuring that information is accessible only to those authorised to have access."

42. The Data Protection Policy required the respondent and those working in the firm to comply with the statutory provisions.

43. As a trainee solicitor the claimant was also required to comply with the requirements of the regulatory body, the Solicitors Regulation Authority (SRA). The applicable version of the SRA Handbook was published on 1 November 2016. It set out the Mandatory Principles and provided that solicitors and their employees must:

(i) Act with integrity;

(ii) Not allow their independence to be compromised;

(iii) Act in the best interests of each client;

(iv) Comply with their legal and regulatory obligations.

44. An explanatory note about acting in the best interests of each client made plain that it was mandatory to act in good faith and to observe the duty of confidentiality to the client. Further guidance on the duty of confidentiality was set out in Chapter 4 of the Handbook, which said this:

> "Protection of confidential information is a fundamental feature of your relationship with clients. It exists as a concept both as a matter of law and as a matter of conduct. This duty continues despite the end of the retainer and even after the death of the client."

45. The outcomes identified in the Handbook included the following:

> "You must achieve these outcomes:

> "Outcome 4.1 You keep the affairs of clients confidential unless disclosure is required or permitted by law or the client consents."

46. Other policies operated by the respondent were a Disciplinary Policy and Procedure which included at Appendix 1 a non-exhaustive list of examples of misconduct and gross misconduct. Examples of gross misconduct included:

> 50.1 Breaching any professional codes of conduct, including breaches of the SRA's code of conduct;
>
> 50.2 Serious breach of our risk and compliance policies;
>
> 50.3 Unauthorised use, processing or disclosure of confidential information or personal data contrary to our Data Protection Policy;
>
> 50.4 Unauthorised use or a disclosure of confidential information or failure to ensure that confidential information in your possession is kept secure.

47. Another relevant feature of the Disciplinary Policy and Procedure dealt with the firm's policy on the right to be accompanied, which was stated:

> "You have the right to be accompanied at all formal hearings under the Procedure. Your companion may be either a trade union representative or a work colleague."

48. Finally, the firm operated a Whistleblowing Policy outlining its commitment to dealing appropriately with any matters reported under it. Guidance was given as to the manner in which whistleblowing concerns should be raised, though the policy did not prescribe rules about the procedure the firm would adopt when acting on any disclosure.

49. In her oral evidence the claimant confirmed that she was aware that confidentiality was an important principle for the SRA and that it was indeed a fundamental principle, as well as being a common-sense feature of the role of any solicitor. She also accepted that the Data Protection Act was very important to that role.

50. Although the claimant believed she was able to perform at a more advanced level than would usually be the case, due to her previous career in banking, she did not have an entirely successful relationship with Serco, who asked for her secondment to be ended. On 29 October 2015, a few weeks after starting her training contract, the claimant was withdrawn from the secondment to take up a position in the respondent's Police and Prison Team. The partner supervising this team was Rachel Jones. As part of her training the claimant worked in the respondent's Occupational Health team from June 2016, returning to the Police and Prison Team on 6 February 2017.

51. On a very few occasions after the claimant's employment began, Ms Jones had emailed her at her personal G-mail address. Unlike the work placement period, by this time the claimant was subject to an express duty of confidentiality as an employee. For example, on 25 October 2015 Ms Jones emailed information to the

claimant's G-mail account about a police case, outside the secure CJSM email system that was designed to protect confidential information about the case. The information itself was not about the substance of the case but rather about internal arrangements within the respondent firm to ensure confidentiality was maintained between teams. The respondent sometimes consciously sent such communications outside the CJSM system as it tended to be overused, and it did not view such communications as a breach of confidentiality.

52. In around October or November 2016 Ms Jones sent text messages to the claimant's personal phone, updating her on a high-profile case she was involved in, which was featuring heavily in the media. This formed part of the usual communications between team members about their current work, all of whom were subject to an express duty of confidentiality.

53. On 1 March 2017 the respondent became aware that the claimant had sent two emails to clients in breach of its supervision policy, which required all trainee solicitors to refer outgoing emails to a supervisor or more senior colleague for checking before sending. As the supervising partner, Rachel Jones was immediately made aware of the issue and was granted access to the claimant's email account on 7 March. Ms Jones noticed that some emails appeared to have been sent by the claimant to outside third parties (not clients of the firm) and she raised her concerns about that with colleagues, who took over responsibility for doing a full search of the claimant's email account.

54. On 13 March the respondent appointed an investigating officer to look into the concerns about the use of the email account, namely Clare Dickinson, a solicitor in the respondent's litigation department. Gregory Morris, the respondent's Head of Risk Assessment, informed the SRA that the investigation was taking place. This led to the claimant's Training Principal asking the SRA to extend the time for completion of her training contract, as the respondent was unable to complete the necessary paperwork to support the claimant's admission to the Roll of Solicitors while the investigation was outstanding.

55. On 14 March the claimant was made aware of the concerns for the first time, after being called to a meeting with Ms Dickinson. Amy Blakeman, an HR adviser, was also in attendance. The claimant was told that some serious concerns had arisen regarding confidential information belonging to the respondent being emailed to third parties. She was invited to bring someone into the meeting but declined the offer. A brief discussion followed to establish the identity of Gina Ramsay, the addressee of some of the emails, and to find out what other business interests the claimant had. She was then suspended on full pay pending investigation. She was made aware of the nature of the allegations, which were expressed to be unauthorised use or disclosure of confidential information or personal data, breaching her employment contract, the SRA's Code of Conduct and the respondent's IT policies. The suspension and the reasons for it were confirmed in a letter of the same day.

56. The claimant was unhappy about the lack of any notice of this initial investigation meeting, but the respondent deliberately chose not to give advance notice due to the sensitive nature of its concerns. At that stage its priority was to

understand the nature and likely scope of the breaches so that it could manage any associated risks.

57. On 16 March the claimant sent a detailed reply to the suspension letter saying:

> "Firstly, I wish to acknowledge the error in my performance relating to these allegations and that I understand this matter to be a serious one".

58. The letter went on to explain the claimant's relationship with Ms Ramsay and to clarify the claimant's husband's business interests. The claimant admitted to disclosing confidential information, though disputed that she had "made use of this" as alleged. She then put points forward in mitigation of her actions and concluded by saying:

> "I trust you will understand I recognise the mistakes I have made for which I unreservedly apologise".

59. One of the claimant's particular concerns was the status of her application for admission to the Roll of Solicitors. The respondent replied to this on 20 March confirming that the paperwork could not be submitted pending the outcome of the investigation.

60. On 30 March the claimant was invited to an investigation meeting to discuss the allegations. She was made aware that they were categorised as potential gross misconduct and was offered the right to bring a colleague or a trade union representative in accordance with the respondent's policy and her statutory right. The claimant was also invited to view the relevant documents during the morning of 4 April, before the investigation interview took place in the afternoon of that day, and took up that invitation.

61. On 31 March the claimant was provided with the respondent's Data Protection Policy, Information Security Policy and Acceptable Use Policy. She acknowledged receipt of these and requested that the respondent consider allowing her to bring her husband to the meeting as a note-taker. The respondent replied immediately to say this was not an option and that her rights were limited to the policy. Later that day the claimant made a further request for a companion outside the scope of the policy, in this case a junior barrister "who will be expert in taking a note and with whom I can confer". She clarified that she did not intend that the barrister would speak on her behalf or address the meeting in any way. This request was immediately refused by the respondent, who pointed out that the purpose of the meeting was fact-finding rather than a formal legal hearing. The respondent offered to make a secretary available to help the claimant with note-taking. The claimant declined. She attended the investigation meeting with Ms Dickinson that afternoon, at which a note-taker was present in addition to Ms Blakeman from HR. The notes were forwarded to the claimant on 10 April and she was given an opportunity to respond with her comments on them.

62. On 11 April Gina Ramsay wrote a detailed letter to Ms Dickinson providing some background information and context about her relationship with the claimant. She disputed that information she had received from the claimant was as serious as

had been presented and confirmed that all emails and their attachments had now been deleted from her email account.

63. The claimant did not carry out any subsequent inspection of the files even though invitations to do so were put forward in May and July 2017. In her oral evidence the claimant said the reason for this was that she found it "too damaging to my health, it was too hard to face my mistakes over and again".

64. On 9 May 2017 Ms Dickinson produced her investigation report. This included a statement taken from Rachel Jones, who responded to information provided by the claimant to the effect that Ms Jones had sent emails to her between February 2014 and October 2015, before the claimant's employment began. The claimant had put this forward to mitigate the fact that she had sent emails to Ms Ramsay. In her statement to the investigator Ms Jones stated that the four emails she sent to the claimant before her employment began related to cases in which the claimant was involved through work experience, as well as some legal market review updates. After the claimant's employment began Ms Jones sent three emails to the claimant's personal email address rather than her business one. Some of those messages were sent around the time of the employment starting. In two cases the personal email account was used well after the claimant's employment began but while she was on secondment with Serco.

65. The investigation report set out the process that had been followed. In doing so Ms Dickinson referred to "Serco's internal investigation", saying that the client had undertaken its own investigation into the claimant's email use during her time there. The report summarised the breaches of confidentiality and the claimant's detailed responses as well as her mitigation. Ms Dickinson recommended that the matter proceed to a formal disciplinary hearing as there was a case to answer. The report and attached witness statements were provided to the claimant on 10 May and by a letter of 11 May she was invited to a disciplinary hearing on 18 May to meet the following allegations:

(1) Unauthorised use or disclosure of confidential information or personal data contrary to DWF's Data Protection Policy;

(2) Serious and/or deliberate breach of employment contract;

(3) Breaching any professional codes of conduct, including breaches of the SRA's principles and code of conduct'

(4) Serious misuse of DWF's information technology systems namely the information security policy and acceptable use policy.

66. The framing of these four allegations remained consistent from suspension to dismissal and the claimant was at all times clear about the nature of the case she was asked to answer. Without reciting every instance of disclosure of information, it is relevant to mention some key communications which underpinned the factual basis of the disciplinary allegations (as set out in the table provided to the Tribunal). All of the following emails were sent to the claimant's friend Gina Ramsay and included:

(i) An email dated 9 February 2015 containing legal advice on strategy in litigation.

(ii) An email dated 1 February 2016 with a template zero hours contract "attached as requested" and other information relating to Serco. In evidence the claimant said she sent this because Ms Ramsay had asked about a zero hours contract for her cleaning staff.

(iii) An email dated 25 May 2016 attaching slides from an internal presentation about the respondent's fraud products, marked "private and confidential, not for distribution".

(iv) An email dated 26 July 2016 with an Occupational Health file review, relating to litigation the respondent was conducting for a client. This review contained witnesses' contact information, a personal medical history of the person making the claim, legal advice on the merits and value of the claim, and advice on strategy. This was drafted by the claimant while working in the respondent's Occupational Health team.

(v) An email dated 16 December 2016 attaching a skeleton argument containing details relating to claimants and their medical issues.

(vi) An email dated 16 December 2016 attaching various documents relating to cases the respondent was conducting for clients, including a statement dealing with a private conversation between lawyers.

(vii) An email dated 4 January 2017 attaching counsel's advice on a case, which included views on the credibility of witnesses and a review of medical records.

(viii) Very many emails attaching copies of a publication prepared by the respondent called Key Client News. The claimant did not think this was confidential but rather contained information about clients that was in the public domain. She conceded that by sending these to Ms Ramsay she was disclosing the names of the respondent's clients, which was itself confidential information.

67. On 12 May the claimant made a request for a copy of the Serco investigation report, relying on the wording in Ms Dickinson's report which suggested that a specific document existed. She made requests for other documents such as her appraisals and training records, and reiterated her wish to be represented at the disciplinary hearing by a lawyer. In its reply of 15 May the respondent informed the claimant that no investigation report had been prepared by Serco and that the emails Serco had identified had been forwarded to the respondent and included in the investigation bundle which was available to the claimant to review. The respondent reiterated that the claimant could be accompanied at the hearing by a colleague or a trade union representative in accordance with its policy.

68. On 16 May the claimant responded saying, "I take your point regarding the Serco investigation", acknowledging that she could inspect the documents but

repeating her request to be accompanied by a lawyer. She requested a postponement of the disciplinary hearing, and this was agreed.

69. In a further response dated 23 May, the respondent told the claimant there was no further information available from Serco that had not already been provided, and it again reiterated its policy on the right to a companion at the hearing. The hearing was rescheduled to 2 June 2017.

70. The claimant considered that the question of the companion for the disciplinary hearing remained unresolved. She wrote again on 26 May noting the respondent's position and stating, "I will not take this issue any further at this stage, but reserve my rights". This was a reference to her request to be accompanied by a lawyer, but she repeated her request that her husband be able to attend with her. In its reply of 30 May the respondent again relied on its policy, informing the claimant that she could be accompanied only by a colleague or union representative. The respondent set out its detailed reasons including its reasons for distinguishing the case law relied on by the claimant in support of her position.

71. On 31 May the claimant submitted a fit note stating that she was unfit to work due to stress, and signing her off work until 23 June. On that date the claimant confirmed that she was now fit to attend the disciplinary hearing and again requested that she be accompanied by a family member. On 26 June the respondent informed the claimant that the disciplinary hearing had been rescheduled for 7 July and again declined to allow her to be accompanied by anyone other than a colleague or a trade union representative.

72. A few days prior to the disciplinary hearing, on 3 July, the claimant emailed the respondent to let them know she would not be attending the office to view files and saying, "I have already done so and from what I gather from the investigation report a lot of the additional information is information that is available from Companies House, unless of course there is something to which you specifically wish to draw my attention?". She expressed her concern that her request to be accompanied by her husband had not been granted and referred to the stress and anxiety created by the disciplinary process. Two days later, on 5 July, the claimant received an email in which the respondent repeated once again its stance on the right to be accompanied, sent to the claimant at 13:39 that day.

73. A short time after the above email, at 13:50 on 5 July 2017, the claimant sent an email to the respondent's Head of Insurance, Paul Berry, marking the message as both urgent and confidential and bearing the heading "Your decision is required before Friday 7 July 2017". The email attached an extremely lengthy witness statement and accompanying schedules, together comprising 50 pages ('the 5 July statement'). The claimant acknowledged that she was taking an unusual step by sending the statement to Mr Berry, and explained that she had consciously chosen not to send it to the partner hearing the disciplinary matter or to the HR advisers. She explained that she had admitted to making mistakes and said that having reviewed thoroughly all her records she had discovered "numerous compromises of confidential client and firm information as set out in my statement". The claimant explicitly referred to section 43(C)(1)(a) ERA, in effect treating it as a protected disclosure in that it was made to her employer.

74. The 5 July statement included content about the claimant being an "exemplary team member" and about the "atmosphere" in which she operated with Rachel Jones. In this context the claimant referred to Ms Jones using her personal G-mail account. She also alleged that Ms Jones had sent client confidential information to her before her employment began, and during employment had inappropriately shared confidential information regarding matters the claimant was not working on.

75. Two particular disclosures in this statement became the subject-matter of the later whistleblowing claims. The first appeared under the heading "RJ breaches of fiduciary duty". The claimant alleged that Ms Jones had encouraged her to leave the respondent to join another law firm to be set up by Ms Jones's then partner, with the possibility of Ms Jones taking clients with her. The evidence of that conversation took the form of a few text messages from which the claimant quoted, though without producing the messages themselves. In one text message Ms Jones commented, "How would big clients ever work in a smaller firm?"

76. The second disclosure was headed "Competitive intelligence". The claimant alleged that she was repeatedly asked to provide the respondent with information while on secondment to Serco. She gave the following particular examples:

76.1 That a file containing submissions for a Serco tender exercise had been removed from the client's office by an employee of the respondent.

76.2 That she had attended several meetings with the client and Pinsent Masons without any indication being given to the law firm that she was on secondment from the respondent, a competitor.

76.3 That she was instructed by Ms Jones to provide to the respondent a document containing information about Pinsent Masons' employment law services to the client.

77. The claimant asked Mr Berry for the opportunity of dealing with the very sensitive information included in her documents, suggesting that others, including senior people in the firm, were implicated by breaches of confidentiality. She referred to the existence of three large ring binders of supporting material that she would be presenting at the disciplinary meeting and expressed her belief that the hearing would be "a done deal", as would the appeal. The claimant's email to Mr Berry said:

> "You should know that I have been subjected to the most inept, amateurish 'investigation' imaginable, clearly conducted by a set of very aggressive and out of their depth DWF employees".

78. On receipt of the 5 July statement Mr Berry forwarded it to Deborah Abraham, Director of Risk Management. She confirmed that it should be treated as a report under the respondent's Whistleblowing Policy and investigated as such. She suggested that the disciplinary hearing be postponed, and wrote to the claimant advising her of this and providing a copy of the Whistleblowing Policy. The respondent took care to protect the confidentiality of the disclosure, notifying the

disciplinary officer, Johnathon Hainey and the HR advisers, that the hearing was being postponed "for administrative reasons".

79. The disciplinary hearing being put on hold, there then followed an investigation by Ms Abraham into the concerns raised by the claimant, beginning with a three hour interview with her on 13 July. The following day the claimant wrote to Ms Abraham providing further information, and again on 17 July. As with the disciplinary stages, the claimant was provided with notes of the interview and was able to provide her comments on them. Ms Abraham interviewed Rachel Jones on 19 July, taking forward the areas of concern that the claimant had raised. Colin Murray was also interviewed, in relation to the allegation that confidential information had been removed from Serco. Both denied the wrongdoing alleged.

80. The findings of Ms Abraham's investigation were summarised in a report dated 27 July 2017 with appended witness statements. She concluded that the four allegations raised by the claimant were not substantiated.

81. Ms Abraham made recommendations that the findings be communicated to the claimant, Ms Jones and Mr Murray. She made some broader recommendations about the manner in which the claimant had been recruited, as it had become apparent that this had not conformed with the respondent's usual arrangements. In her eagerness to have the claimant in her team, Ms Jones had overridden the unsuccessful result of a trainee assessment exercise and gone ahead with the claimant's appointment. A further recommendation was made that any person working with the firm, even on a short work placement, should be asked to sign a non-disclosure agreement. Ms Abraham concluded by recommending that the claimant's 5 July statement and accompanying documents be released to the disciplinary panel, but without disclosing the whistleblowing investigation so they could reach their own conclusions. Those recommendations were followed.

82. By a letter dated 15 August from the Head of HR Business Partners, Paul Jenks, the claimant was notified in summary form of the outcome of the whistleblowing report. She was told that the allegations had been thoroughly investigated but not substantiated, and that recommendations would be acted upon. She was told that her statement would be released to the disciplinary panel. The claimant was also advised that if she was unhappy with the outcome of the investigation she could make a further report and her concerns would be investigated again if there was good reason to do so. The claimant did not take up that invitation.

83. The disciplinary process resumed immediately afterwards, and in a formal letter dated 21 August the claimant was invited to a rearranged hearing on 25 August. The four allegations were set out as previously, and the respondent again made the claimant aware that if proved the allegations could amount to gross misconduct leading to summary dismissal.

84. The claimant was unhappy that she received only a summary outcome of the whistleblowing investigation and not the detailed report, and emailed Ms Abraham on 21 August to say so. Although she had received Mr Jenks's letter, she told Ms Abraham that she had not yet received a copy of "the outcomes of the investigation

and your recommendations". She meant the detail of the report, and asked for a copy by return in order to prepare for the disciplinary hearing.

85. When confirming that she would attend the rearranged hearing, in an email dated 23 August, the claimant again asked to be accompanied by her husband and was again informed that the respondent would not depart from its policy.

86. The disciplinary hearing took place over approximately two hours on 25 August 2017 and was chaired by Johnathon Hainey with Gwen Needham, senior HR adviser, in attendance as well as a note-taker. In advance of the disciplinary hearing Mr Hainey had read the material the claimant put forward. At the outset of the meeting he set out a summary of how he proposed to deal with the matter and the claimant was happy with this. The claimant was unaccompanied at the disciplinary hearing. During the correspondence about a companion the firm had offered to identify a solicitor with relevant expertise who was not known to her or to the other parties involved, as the claimant had been conscious of the embarrassment of having a colleague privy to the allegations. She did not take up this offer.

87. The hearing was a detailed review of the firm's concerns and the claimant's response, including the matters raised in her 5 July statement. The claimant had the opportunity to raise her concerns about the process, including the fact that she felt Ms Dickinson was not experienced or impartial as an investigator, and she discussed her particular concerns about the actions of Rachel Jones. She made the comparison between the disclosure by her of confidential information and the requests she said had been made of her to remove information from Serco to give the firm a commercial advantage. In the discussion about documents being removed from Serco, the claimant was asked who had removed them and said it was "another partner of the firm" but without giving a name. Similarly, she said she was "instructed by people much more senior to her" to bring out information. In a discussion about attending meetings with Pinsent Masons the claimant was asked if they were aware that she worked for DWF and she said they were, in a departure from the assertions made in her 5 July statement.

88. The claimant repeated some points she had made throughout, saying she had not appreciated that she was breaching confidentiality, that she had made mistakes and that they would not be repeated. She agreed with Mr Hainey that the fact that there had not been any damage caused by the breaches was a matter of luck. At the end of the meeting she acknowledged that her career with the respondent might be over, and said she understood that but asked that Mr Hainey not "finish her career in its entirety".

89. Following the disciplinary hearing Mr Hainey looked into some issues the claimant had raised, interviewing Rachel Jones on 30 August to discuss the claimant's point that she had worked in a culture of sharing information and that this had been facilitated by the way Ms Jones communicated with her, particularly before her employment began. When asked about sending some emails to the claimant's personal email account after she started working for the respondent, Ms Jones said she was sometimes not aware of doing this. During the secondment to Serco she sometimes sent emails to both work and personal addresses to ensure the claimant received them. She acknowledged this was poor practice. Ms Dickinson was also interviewed and was asked whether Ms Jones had had any influence on or

involvement in the disciplinary investigation. She confirmed that she had not, and that she herself had led the investigation with support from HR. Although this was the first disciplinary investigation she had conducted, she felt competent to do it as it was similar to her work as a solicitor. She explained that no notice had been given of the first investigation meeting because the respondent was concerned about preserving evidence.

90. By a detailed 14 page letter dated 15 September 2017 Mr Hainey notified the claimant of the outcome of the disciplinary process, namely her dismissal on the grounds of gross misconduct. He was satisfied that all four allegations were made out, finding that they were a serious and/or deliberate breach of her employment contract, a breach of the SRA's Principles and Code of Conduct, and a serious misuse of the respondent's IT systems and policies. The letter was structured so as to address these four questions:

1. Conduct complained of and your response.
2. Does this represent misconduct?
3. If it does, does it amount to gross misconduct?
4. Is there any mitigation and what is the impact of that mitigation?

91. On the question whether the disclosure of confidential information amounted to misconduct, Mr Hainey concluded that it did, by reference to the respondent's policies, the claimant's contract of employment and the SRA Principles and Code of Conduct. He considered whether this was gross misconduct and set out reasons for concluding that it did. He provided several extracts from the Disciplinary Policy which made plain that such conduct would be regarded as gross misconduct, and went through his reasoning in detail. In doing so, Mr Hainey noted the claimant's submission that her actions had not been "deliberate" in that she did not consider her friend Ms Ramsay to be a third party. He disagreed with this submission and found it troubling. In other words, while the claimant had by this time expressed regret for her mistakes, aspects of her defence to the allegations gave Mr Hainey cause for serious concern in themselves.

92. The claimant's mitigation was dealt with in similar detail in the dismissal letter, Mr Hainey having given this careful consideration. The thrust of the claimant's case was about what she saw as a culture of communicating with Rachel Jones in a particular way, giving the examples of emails being sent prior to her employment, and some messages after employment being sent inappropriately. Mr Hainey addressed his mind to these examples and concluded that they were entirely different from the sending of highly confidential information to an external third party in the form of Ms Ramsay.

93. The claimant's argument that she had been instructed to obtain "competitive intelligence" during her secondment at Serco was also dealt with in the decision letter. He referred to the example the claimant had provided, namely the document obtained from Pinsent Masons, and noted that at the disciplinary hearing the claimant had conceded that that firm had freely provided the document to her in the knowledge that she worked for the respondent.

94. Having concluded that the claimant was guilty of the conduct (noting her admissions as to this), and that it amounted to gross misconduct, Mr Hainey was not

satisfied that there were any mitigating factors such as to warrant imposing a lesser penalty than dismissal. He therefore dismissed the claimant without notice.

95. The claimant was offered a right of appeal and wrote by return to exercise this right. This was followed by a detailed letter dated 4 October setting out her five grounds of appeal, which can be summarised as follows:

(1) The instances of misconduct did not amount to gross misconduct in law.

(2) Alternatively, if they did, that was not in itself a reason for dismissal.

(3) No attempt had been made to see the instances of misconduct in a proportionate manner.

(4) In relation to the findings in respect of outside business interests, they were perverse and contrary to the weight of evidence.

(5) The "serious breaches of security" set out in her 5 July statement had not been taken into account and had been misunderstood in the context in which they were considered.

96. On 3 November the claimant was invited to an appeal meeting to be held on 14 November and was offered the chance to view documents in advance. On 11 November the claimant asked whether she could choose a person to accompany her at the appeal meeting and requested a copy of the firm's Anti Bribery and Corruption Policy. This was provided. The respondent restated her right to be accompanied as being limited to its policy.

97. The appeal hearing took place on 14 November and was chaired by Paul Inman. Mr Inman was advised by Jacqui Woodhouse, HR Business Partner and a note-taker was present. The claimant was unaccompanied. When asked what outcome she was seeking from the appeal the claimant confirmed that she would not now wish to return to the firm and her primary concern was her standing with the SRA. She said she felt that a "gentler disciplinary standard" should be applied to trainees as distinct from equity partners. She felt the disciplinary sanction was unfair.

98. Following the appeal hearing Mr Inman took steps to speak to Mr Hainey and Ms Abraham to discuss and understand their decisions. Ms Abraham confirmed that she had not taken part in any decision relating to the disciplinary outcome.

99. On 18 December 2017 Mr Inman wrote the claimant a detailed letter notifying her of his decision. He upheld the decision reached by Mr Hainey in all respects but one. Mr Inman felt that the concern about not formally disclosing her outside business interests was a less serious matter for which a warning would have been appropriate. He did not view that as gross misconduct. However, the allegations of breaches of confidentiality were considered by him to be gross misconduct and the dismissal was upheld on that basis. He considered the claimant's point about the manner in which Ms Jones had communicated with her both before and after her employment, and concluded that this was legitimate in the context of work experience and sharing information about ongoing cases within the firm. He felt there was "a very significant difference" between that and the claimant's communications

to a third party with no connection to the firm. He concluded that the claimant had disclosed confidential information wilfully and was satisfied that this amounted to gross misconduct.

100. In answer to the fifth ground of appeal, which Mr Inman said he did not entirely follow, he said he was satisfied that the concerns about others' conduct had been fully and fairly investigated by Ms Abraham, and the respondent had taken proper account of the matters raised. That concluded the internal procedures and the claimant's dismissal for gross misconduct stood.

Conclusions

101. The claimant acknowledged from the outset that she had carried out the actions for which she was disciplined, though she disagreed that dismissal was a fair sanction. Her principal argument was that her actions were not deliberate and did not amount to gross misconduct or misconduct of sufficient seriousness to warrant dismissal. She relied on the mitigating circumstance of her senior colleague, Rachel Jones, having encouraged her to communicate by email in such a way as to blur the boundaries between what was legitimate to send out of the office, and what was not. At the Tribunal hearing she went further and argued that both Ms Jones and Colin Murray had themselves committed comparable acts and were not punished, such that her treatment was inconsistent and unfair.

102. The claimant also submitted that the respondent's handling of the internal procedures was flawed and unfair, referring to the lack of her chosen companion in circumstances which were stressful, given the potential impact on her future as a solicitor. She challenged Ms Dickinson's lack of experience in being able to carry out a fair and reasonable investigation, and the manner in which the respondent provided the summary outcome only from Ms Abraham's investigation.

103. These were some of the arguments put forward by the claimant in presenting her claims. She also sought to argue that the reason for her dismissal was the fact that she had made protected disclosures, and maintained until a very late stage in the hearing that she had been subjected to detriments for the same reason.

104. For its part, the respondent submitted that it acted upon its concerns, and was entitled to do so, as soon as it found out that the claimant had sent emails out of the office without having them checked and approved by a supervisor in accordance with its policy. This was a legitimate starting point for her email account to be checked, and this in turn led the respondent to discover that the claimant had sent many other emails either to her own personal account or to her friend Gina Ramsay. The which initiated the disciplinary investigation took place in early March 2017, some months before the claimant made her disclosures on 5 July, and so the respondent argued that its decision to investigate could not have been because of any disclosure.

105. A number of key features of this case were not in dispute. For example, the claimant never denied that she sent emails out of the office, either to her own personal account or to Ms Ramsay. She also did not dispute that she had a general awareness of the importance of protecting confidential information in the context of a legal practice, and as a prospective solicitor herself.

106. The claimant's background and experience at HBOS was in a fairly senior role and her duties included risk management. In that capacity the claimant would have had a high level of awareness of the importance of protecting confidential information and would have been familiar with the general principles of the Data Protection Act. At the time she started working for the respondent, the claimant had just completed her full-time law studies. Her degree incorporated the mandatory Legal Practice Course and training on ethics. In her oral evidence the claimant confirmed she was aware that confidentiality was an important principle for the SRA and that it was a fundamental Principle of the Code of Practice, as well as a common sense part of the role of a solicitor. She said she was aware that the Data Protection Act was important to legal work. When asked by the Tribunal about her understanding of confidentiality, the claimant accepted that it did come up in the context of the work she was doing with the respondent, though claimed she had had no formal training in it. She said during cross-examination that she "didn't realise she had breached policies and procedures until it was pointed out".

107. The claimant said in evidence it "never dawned on her" that she could not send out Key Client Updates, as she thought the information gathered in them was in the public domain. She gave no thought to the fact that the respondent was paying people to gather that information and providing a resource for that to happen, nor did she consider the fact that the identity of clients would be disclosed to Ms Ramsay when sending the information to her. The claimant also said in evidence that confidentiality was not at the forefront of her mind, relying on the fact that she was "in the field" at Serco, on her own, and had had no training on it. She relied on what she described as "all sorts of documents" being sent to her before her employment began, such that the lines were blurred as to what was or was not able to be sent.

108. During the disciplinary investigation the claimant told the respondent that her wrongdoing was not giving confidentiality a moment's thought. Had she done that, she would have realised it was wrong.

109. While the claimant admitted the conduct throughout, and that it was a breach of the Data Protection Act and her common law obligations, she defended her actions by saying her actions were not done deliberately or for anyone's gain. She argued that no harm had resulted, though conceded to Mr Hainey that this was more a matter of luck. Her explanation for forwarding information was that it was for her own personal development, and also because she and Ms Ramsay enjoyed discussing law with each other. Ms Ramsay had an academic interest in law although she was no longer practising, after previously working as a solicitor in Australia.

110. On cross-examination the claimant accepted that it was not a case of there being a culture leading her to believe that disclosure was acceptable. Nevertheless, she maintained that the manner of her communications with Rachel Jones led her to believe her actions were not wrong. She acknowledged that it would have been different if she had been sending information to a random person but because Gina Ramsay was her "trusted person" in the same way as she was Ms Jones's trusted person, she felt the situations were comparable.

111. The Tribunal was not convinced by the claimant's evidence about her knowledge and understanding of the rules she was required to comply with. It was

inconsistent and at times evasive, for example when she was asked about aspects of the respondent's policy on IT usage. The explanations offered for sending the information to Ms Ramsay, and her assertion that she was an equivalent trusted person were inherently implausible. Overall the Tribunal was satisfied that the claimant did have a good understanding and awareness of the fundamental requirement of protecting client confidentiality. As for disclosing the highly sensitive medical records of a party involved in litigation with the firm's client, the claimant fairly conceded in her evidence that this was a breach of the Data Protection Act. Even if the steps taken by the respondent during induction were less than thorough, in terms of drawing the claimant's attention to its policies, the respondent was still entitled to expect the claimant's compliance with those fundamental principles.

112. The tribunal evaluated the evidence as a whole, both written and oral, but has not attempted to recite every material aspect of the evidence in this judgment.

113. The Tribunal examined the claimant's arguments about why her dismissal for the admitted conduct was unfair and improper, and assessed the credibility of her as a witness as well as the witnesses who gave evidence for the respondent. Where it was necessary to prefer the evidence of one witness over another, the Tribunal was more impressed by the evidence of the respondent's witnesses. In particular, Mr Hainey and Mr Inman as the decision-makers impressed the Tribunal with their frankness and their conscientious approach to the difficult questions which faced them.

114. In the case of the claimant, the Tribunal felt she had a tendency to overstate the position in an effort to support her position. One example of this was the insistence that Pinsent Masons did not know she worked for a rival law firm, which was contrary to her email indicating the opposite. She also disputed that she was doing some work experience around December 2013 and January 2014, when this was contradicted by emails showing that she was intended to attend a trial during her Christmas and New Year break from university. The fact that the claimant maintained until the conclusion of her evidence that she had suffered various detriments by virtue of making protected disclosures did nothing to help her credibility, given that it must always have been obvious to her that any such treatment predated the statement provided on 5 July 2017.

115. The starting point for the respondent's investigation was the discovery that the claimant had twice failed to comply with the requirement to have emails checked before sending. The Tribunal accepted the respondent's explanation that this gave it legitimate cause to access and investigate the claimant's email account. The enquiry brought serious concerns to light about the claimant's use of her email account and her disclosure of confidential information, mainly to Gina Ramsay.

116. The claimant took issue with the respondent's handling of the case throughout. She pointed to a number of procedural failings and substantive flaws in arguing that her dismissal was unfair. The first challenge was to the respondent's decision not to give any forewarning of the initial investigation meeting on 14 March 2017. This was a conscious decision on the part of the respondent, because its priority at the time was to protect its clients and its information, and ensure the claimant did not have access to this pending further investigation. At that early stage the respondent did not know the extent or seriousness of what had been sent out of

the office, or to whom. It was reasonable for the respondent to act as it did, and no unfairness resulted from the lack of notice on this occasion. For all future meetings the claimant was given good forewarning, copies of (or access to) all relevant documents, and the opportunity to be accompanied by a colleague or trade union official.

117. It was not in dispute that the claimant understood from the outset and throughout the internal proceedings what the nature of the respondent's concerns were, what conduct she was being asked to answer to, and the potentially serious implications of the allegations. It was also not in dispute that her suspension in such circumstances was warranted. The claimant's letter dated 16 March 2017, two days after the initial meeting and suspension, demonstrated that she had a good and clear understanding of what was happening.

118. As the investigation progressed the claimant was given an opportunity to answer the respondent's questions, to comment on the documents shown to her and to review and comment on the respondent's detailed notes of the meetings. When the disciplinary process took longer than expected, the respondent wrote to the claimant to explain what was happening. The respondent also updated the SRA and requested further extensions for the paperwork relating to the admissions process to be submitted, subject to the investigation. Although the claimant criticised the respondent's handling of the correspondence with the SRA, this was not something which impinged on the internal investigation or the decisions reached.

119. Other complaints about the process were the long-running issue about the identity of the claimant's companion at meetings, the arrangements for viewing documents, and the failure to provide an investigation report from Serco.

120. The claimant remained consistently dissatisfied by the issue of her companion and never accepted that the respondent should rely on its policy even though this honoured her statutory rights. Her insistence on bringing another party was inconsistent, on the one hand requesting a junior barrister, yet clarifying that this person was not intended to speak at the meeting. It was understandable that the claimant wished her husband to accompany her, but in the Tribunal's view it was not unreasonable for the respondent to turn this down. It did so thoughtfully and after addressing its mind to the issue. It considered the legal authorities on the point and supported its decision by reference to those cases. The respondent did make efforts to accommodate the claimant to some extent, agreeing that her husband could be present in its offices to be available to provide support outside the hearing. It also made an effort to support the claimant by offering to find a solicitor within the firm with the appropriate expertise but independent of the issues. Those were the actions of a reasonable employer.

121. During the disciplinary process the respondent offered support in another form, through access to the Employee Assistance Programme. The claimant had no need of this as she had already arranged private counselling.

122. It cannot be said that the claimant was deprived of an opportunity to view the material the subject of the allegations, as this was offered on numerous occasions, and she only inspected them once. The claimant was told there were eight files, each of which was indexed and organised thematically. This invitation was extended

on 30 March 2017 and repeated in May and June. During this period and before the disciplinary hearing took place on 25 August 2017 the claimant had no problem with the arrangements. She understood that the respondent was concerned not to have its confidential information taken out of the office, and that the sheer volume of material meant inspection was the only sensible option. By the time of the Tribunal hearing the claimant complained that the volume of documentation made the task unmanageable because (contrary to what she had been told at the time) they were not indexed. That was not, however, raised as an issue previously.

123. The reference in the investigation report to "Serco's internal investigation" understandably led the claimant to believe a report had been produced. After requesting a copy, the respondent clarified that no such report existed and it had forwarded all information gathered by Serco in the form of some emails. In her email of 16 May 2017 the claimant accepted this explanation, but despite this she continued to raise the issue and to assert that she had not been provided with the "Serco investigation report".

124. The claimant criticised Ms Dickinson as the investigator, saying she was relatively junior and inexperienced, and going so far as to suggest she was motivated by a personal animus. These broad assertions were unsupported by any evidence and the claimant was unable to point the Tribunal to anything in the investigation or resulting report which showed that it had been conducted unfairly.

125. The investigation report was thorough and detailed, and no real challenge to its reliability was identified during the course of this hearing. It cross-referenced to a great many detailed documents and addressed also the question of the mitigation put forward by the claimant. The only real point of dispute raised by the claimant was that Ms Dickinson had not attached enough weight to the mitigation, a complaint which was made in relation to Mr Hainey's and Mr Inman's decisions as well. The claimant's criticisms reflected that she simply did not agree with the outcomes reached.

126. Similarly, the claimant had no complaints about the procedural handling of the whistleblowing complaint, only its outcome. She had felt able to discuss the issues in detail with Ms Abraham and confirmed that she was able to provide a considerable amount of supporting information to the investigation. The only issues the claimant had with Ms Abraham's report were the conclusions reached and the provision of a summary outcome only. When it was suggested to the claimant during this hearing that it was fairer to her to keep the whistleblowing investigation report separate from the disciplinary process, she disagreed. She felt they were inextricably linked. The claimant seemed not to appreciate that by its actions the respondent had put her in a better position than if the report had been provided to Mr Hainey. This is because he would be free to reach his own conclusions on the matters raised in her 5 July statement, rather than be influenced by Ms Abraham's conclusions.

<u>Unfair dismissal claim</u>

127. There was no issue that the respondent's reason for dismissing the claimant was her conduct, a potentially fair reason under section 98(2)(b) ERA. The focus of the Tribunal's assessment was therefore on fairness under section 98(4). The question was whether the respondent was entitled to rely on the claimant's conduct

as a reason to dismiss, having regard to all of the circumstances of the case, the respondent's size and resources, and equity and the substantial merits of the case. The Tribunal was mindful of the need to avoid substituting its own view as to how it might have dealt with the allegations. Instead, the Tribunal had to consider fairness in light of what the respondent believed and what it knew (or ought to have known) at the time it took its decisions, then consider whether its decisions fell within or outside the band of reasonable responses. Another employer might well have taken a more lenient approach, but for the dismissal to be unfair, the decision would have to one that no reasonable employer would have reached in the circumstances.

128. The Burchell guidelines are relevant to the question of fairness. There was no dispute here that the respondent genuinely believed the claimant to be guilty of the misconduct. Indeed, she admitted the conduct from the outset. It was clear to the Tribunal that the respondent conducted a reasonable investigation which was done with care and thoroughness and in considerable detail. A great deal of information was gathered, much of it from the claimant herself, and it was all taken into account. No relevant enquiry was left unexplored. Ms Dickinson took a detailed statement from the claimant and other witnesses, and ensured that the claimant's mitigation points were properly reflected in her report.

129. As for the conduct for which the claimant was dismissed, the Tribunal was not invited to review every example of misconduct relied on by the respondent, nor considered this necessary, as the most serious allegations were identified in table form. The Tribunal noted that the internal investigation had produced 12 lever arch files containing hard copies of the emails sent out by the claimant including attachments. It was not in dispute that the volume was very high, especially taking into account the numerous Key Client Updates.

130. In defending the allegations about disclosure of confidential information, the claimant contended that she had received equivalent information from Ms Jones both before and after her employment began. The instances relied on by the claimant were also set out in the table provided to the Tribunal. This table enabled the Tribunal to examine the key examples of communications on both sides, the most important of which are dealt with in this judgment.

131. The evidence gathered by the respondent showed that the material sent to Gina Ramsay by the claimant included: legal advice which was subject to legal professional privilege; Key Client updates compiled by the respondent; a template zero hours contract produced for a client; and papers relating to litigation with third parties whose identity and personal medical information was disclosed. The respondent concluded that there was no legitimate reason to send any of this information to Ms Ramsay as she had no connection with the firm or its clients. In the Tribunal's view it was entirely reasonable for the respondent to reach this conclusion. A review of some of the key examples (referred to in paragraph 66 of the findings of fact), demonstrates amply that the respondent had evidence upon which to form its belief in the misconduct.

132. The template zero hours contract was attached "as requested" to the claimant's email dated 1 February 2016, as well as other information relating to Serco. The document was apparently useful to Ms Ramsay because she wanted such a contract for her cleaning staff. The template belonged either to the

respondent or its client, and its provision to Ms Ramsay meant she was obtaining for free a document with a commercial value. On cross-examination the claimant conceded this was a breach of confidentiality, although she had not made this concession during the internal proceedings.

133. The Occupational Health file review emailed on 26 July 2016 contained a party's personal medical history as well as privileged legal advice. The claimant's stated reason for sending it to Ms Ramsay was because she was "intellectual and interested in the law". It "didn't cross her mind" to send a redacted version. She conceded it was highly confidential and private. The respondent was entitled to treat this as a particularly serious breach of confidentiality, and to reject the claimant's somewhat implausible explanation for her actions.

134. Similarly the claimant's explanation for emailing Ms Ramsay on 16 December 2016 with a skeleton argument containing claimants' medical issues was no answer to the respondent's concerns. She said she sent this to Ms Ramsay "for interest". In another email to Ms Ramsay of the same date, the claimant attached various documents relating to client cases the respondent was handling. These included a legally privileged note. The claimant said she sent this to Ms Ramsay "from an academic perspective" and with a view to "personal progression". The email of 4 January 2017 attached a legally privileged document in the form of counsel's advice on a case and included a review of medical records. The claimant's only explanation for sending this was that Ms Ramsay was "interested from an academic perspective". In all these cases the respondent was entitled to treat the disclosures as very serious breaches and to reject the claimant's explanations.

135. During the disciplinary process the claimant admitted the breaches and agreed they were serious. She accepted that she knew about the importance of protecting confidential information, and knew this was especially serious with information belonging to clients or containing highly personal medical information of a third party.

136. The allegations were heard by Mr Hainey, an independent manager with no previous involvement in the case. He pre-read the voluminous material and weighed the evidence and the claimant's response conscientiously. He considered the information put forward in mitigation and gave the claimant a full opportunity to put forward her case. This included her points about how Rachel Jones had conducted herself, although the Tribunal accepted Mr Hainey's evidence that the point being made was about Ms Jones having blurred the boundaries in communications, rather than as someone who was guilty of comparable misconduct. However labelled, the issues of fact were nevertheless presented and formed part of Mr Hainey's consideration.

137. Whether the claimant's actions were sufficiently serious to warrant dismissal is a mixed question of law and fact. Confidentiality is a fundamental principle within the legal profession and recognised as such by its regulator, the SRA. Its importance was reinforced by the respondent in clear and explicit terms through its policies and it was addressed expressly in the claimant's contract of employment. The claimant read, understood and signed the trainee solicitor contract dated 21 September 2015, and was aware of the requirements (also contained in her paralegal contract) to be familiar with and comply with all the respondent's policies and procedures, and not to

divulge or communicate any confidential information. More specific provisions were spelled out in the Acceptable Use Policy, which stated:

> "It is vital that the Firm always protects clients' confidential information. It is a fundamental feature of our relationship with clients, a regulatory obligation and one of the professional principles set out in the Legal Services Act 2007."
>
> "The Firm must also comply with the Data Protection Act 1998 in respect of client confidential information that relates to living individuals".

138. Equally clear was the Information Security Policy, which said:

> "External emails should only be used for legitimate business purposes. The email system is not intended for personal use. […] Do not email client related documents to a personal email account for any purpose, legitimate or otherwise."

139. The respondent's Disciplinary Policy and Procedure included breaching the SRA Code of Conduct and unauthorised disclosure of confidential information as examples of gross misconduct. Having regard to the contractual and common law principles applicable to the case, which the claimant acknowledged were also a matter of common sense for a prospective solicitor, the Tribunal concludes that the breaches of confidentiality were of a very serious nature and that in principle it was open to the respondent to dismiss the claimant summarily for them.

140. The next question is whether the respondent fairly took account of the points put forward by the claimant in mitigation. When gross misconduct is alleged, an employee can expect dismissal without notice to be the outcome, but a reasonable employer should be prepared to take into consideration mitigating factors and any other arguments about fairness, such as whether others have been treated differently in the same or similar circumstances. Both points were key elements of the claimant's case. She made two broad points, the first being that she was led by Rachel Jones's actions and that is why she communicated in the way that she did. This was presented at the disciplinary hearing as an issue about the culture in which she was encouraged to work. By the time it reached the Employment Tribunal, it was also relied on as an example of Ms Jones being treated inconsistently, in that she had escaped punishment for comparable conduct. A further inconsistency argument related to the claimant being instructed to obtain confidential information from Serco and its employment lawyers, Pinsent Masons, and here the claimant's colleague Colin Murray was also implicated by the allegation, as he was said to have copied a confidential tender document belonging to Serco.

141. The respondent was aware from the investigation that certain material had been sent by Rachel Jones to the claimant prior to her employment beginning. It took the view that every such email was connected to the work experience she was undertaking or to her impending appointment as a paralegal with the firm. This was illustrated by the fact that as early as February 2014 Ms Jones was saying in an email to the claimant: "Get in this team pronto". The claimant accompanied Ms Jones to a meeting at Serco in August 2014 and started her secondment there immediately on taking up employment with the respondent.

142. The claimant sought in her evidence to distance herself from the idea that she was doing work experience in 2013 and 2014. When asked about the emails sent to her by Rachel Jones pre-employment, the claimant suggested that her joining the firm was "not set in stone". This was, however, contradicted by the tone and content of her email exchanges with Ms Jones which made it clear that this was not in doubt. In answer to the suggestion that papers were sent to her in anticipation of attending a court hearing in January 2014, the claimant said this would not have happened because she would have been half way through her exams. However, her email to Ms Jones of 18 November 2013, referring to her being away from college between 20 December and 20 January, made no mention of this.

143. When the claimant was asked about information relating to Serco being sent to her in the context of her forthcoming secondment, her answer was evasive. She said there were "other examples" and referred to her sending emails out of the firm for personal development, side-stepping the question.

144. The claimant said in cross-examination, "Rachel Jones and I never spoke about confidentiality because she trusted me, as I trusted Gina Ramsay". She explicitly said she did not accept there was a fundamental difference between the two relationships. When asked by the Tribunal why she felt there was no difference between her relationship with Ms Ramsay and her communications with Ms Jones, the claimant surprisingly claimed that she was "still confused", saying this confusion arose because it was in contemplation of employment and nothing had been signed. She clarified that Rachel Jones was a good friend before she joined the firm and she saw both women as mentors.

145. The claimant's mitigation arguments included the fact that some information had been shared with her by Ms Jones during employment, outside the firm's email system, either by email to her personal G-mail account or by text to her personal mobile phone. The example of the latter was a high profile case which was in the media at the time. Ms Jones was asked about this as part of the investigation and said it was an exercise in sharing information with team members. The claimant conceded in evidence that it was common for lawyers to discuss cases with each other and that these communications were subject to their duty of confidentiality. She further conceded that this was the nature of the text exchanges with Ms Jones. The emails sent to the G-mail account were also investigated and were found to have been sent openly, sometimes copying in other colleagues, and very infrequently. The respondent felt there was some culpability on Ms Jones's part, but that it was minor.

146. The assertion that Ms Jones and Mr Murray had been involved in the obtaining of confidential information from Serco in connection with the claimant's secondment was another relevant matter for the respondent to consider. The allegations were investigated and the resulting information was taken into account by both Mr Hainey and Mr Inman in reaching their respective decisions.

147. This aspect of the claimant's defence to the allegations was the subject-matter of the second disclosure in her 5 July statement. She said she had been asked repeatedly to provide information to the respondent from Serco whilst on secondment, and was encouraged to enable the respondent to gain a competitive advantage over other law firms. The claimant did not name any individual in this

context. She referred to the Serco tender document in the respondent's possession which included submissions from various panel law firms, including information on pricing. She also said she had been instructed by Ms Jones to provide the Pinsent Masons document containing information about their employment law work and pricing to a member of the respondent's employment team, as they were interested in bidding for that work.

148. Through Ms Abraham the respondent investigated the claimant's allegations but considered them unfounded. No tender document was found at the claimant's workstation. When interviewed, Rachel Jones said she could not recall the Pinsent Masons document, and said it was untrue to say that they had been unaware of the claimant's secondment from the respondent. Mr Murray denied any involvement in taking or copying a tender document from Serco. The whistleblowing report was not provided to Mr Hainey for the disciplinary hearing, so he relied on the information provided by the claimant. In her 5 July statement the claimant said the Serco tender document had been taken by an employee. She also claimed that a partner had instructed the removal of documents including the Pinsent Masons document. There was an absence of specific detail such as dates and names.

149. In his evidence to the Tribunal Mr Hainey was frank and clear about his understanding of the exchange of information between a law firm and a client during a secondment. He said it was no secret that part of the purpose of such an arrangement was to get a better understanding of the client business, and this would also be clear to the client. It would give any law firm an inherent commercial advantage and is not an unusual arrangement. When giving evidence the claimant acknowledged that part of the purpose of a secondment is to advance the law firm's interests by getting to know the client better, and that obtaining information generally was a legitimate part of that relationship. Mr Hainey commented that everyone knew how tender submissions worked, meaning that it was routine to share pricing information and tender documents. In any event, the pricing information would quickly become out of date and would be of limited use in relation to any future tender.

150. When he gave evidence, Mr Inman agreed there is a commercial advantage to a secondment arrangement. Like Mr Hainey he felt that there was no evidence of any confidential information being taken from the client.

151. The Tribunal accepted Mr Hainey's evidence about his understanding about how these issues had been raised at the disciplinary hearing. He said the claimant had put them forward in the context of her alleged confusion about what was or was not confidential. She had originally presented the information to Mr Hainey as if Pinsent Masons had no idea she worked with a rival law firm, though she did concede at the disciplinary hearing that they were in fact aware. She also told Mr Hainey that Pinsent Masons had "freely provided a copy of the document to her". The concession that they knew she was on secondment from the respondent was also made while giving evidence, in response to being taken to emails during cross-examination contradicting her original stance. The email of 7 May 2015 about Pinsent Masons hating her being there showed that they had this knowledge from an early stage. The claimant also conceded that this fact had not been mentioned in her 5 July statement; a statement in which she had sought to give the impression that her identity was not known to Pinsent Masons at any time.

152. Mr Hainey addressed his mind to the allegations about the conduct of Ms Jones and Mr Murray and reached the conclusion that there was no comparison between what was said about them and the claimant's actions. He was entitled to reach that view. In his handling of the appeal Mr Inman considered the same information, and he too concluded that such actions were not directly comparable to what the claimant had done.

153. The Tribunal is satisfied that both Mr Hainey and Mr Inman dealt conscientiously and fairly with the issues they were tasked with deciding. They took steps to ensure they had a clear understanding of the issues by interviewing key decision-makers before reaching their decisions. Mr Inman came to the appeal with an independent mind, as demonstrated by the fact that he overturned Mr Hainey's decision on the claimant's failure to disclose her external business interests.

154. Mr Inman was influenced by the fact that some aspects of the claimant's case (such as the Serco tender document, or the sharing of information about a high profile case) were distinguishable because the communications were contained within the firm, and all employees were subject within that environment to a duty of confidentiality.

155. The claimant did not feel that enough weight was attached to her mitigation by the decision-makers, but the Tribunal does not accept that and concludes that the respondent did fairly weigh all of these matters in reaching its decisions. Both Mr Hainey and Mr Inman addressed their minds to the issues and were entitled to make a distinction between the claimant's conduct and that which she alleged others had done. The highly confidential material disclosed to a third party by the claimant bore no comparison with the information she received from Ms Jones for the purpose of work experience. Although the claimant tried to persuade the respondent that the two cases were equivalent, and even sought to compare her relationship with Ms Ramsay and Ms Jones as that of equivalent trusted friends, this portrayal was self-evidently incorrect and the respondent had a proper basis upon which to treat Ms Ramsay as a third party entirely unconnected with the firm.

156. In considering this question the Tribunal has had regard to the principles on the consistency of treatment set out in Hadjioannou. This requires a fair comparison to be made between the circumstances of the dismissed employee and the others who are alleged to have been treated more leniently. The Tribunal concludes that such a comparison is not made out in this case. If it were true that Rachel Jones had sent confidential client information to the claimant only in her capacity as a personal friend, the position might be different. However, the Tribunal is satisfied that every communication sent by Ms Jones to the claimant before her employment began was sent in the context of work placement arrangements and in anticipation of future employment with the firm. The emails sent to the claimant's personal email account after the employment began were a breach of the guidelines in the respondent's policy, but of a minor nature, and in any case the information was subject to the claimant's duty of confidentiality by that point. A distinction could validly be made by the respondent.

157. The claimant's evidence about Mr Murray's removal of a confidential tender document from Serco was unclear and inconsistent. We were not satisfied that there

was evidence before the respondent (or before the Tribunal) that Mr Murray had been instructed to or did in fact remove a document improperly. What was clear from the claimant's evidence was that she had made a copy of a tender document and placed it in her office. Judging the respondent's actions by what it knew and understood at the time, the Tribunal does not accept that the allegations made by the claimant supported her argument that she was treated in an inconsistent manner to others who had taken equivalent actions.

158. It was not the Tribunal's role to decide whether it believed the points raised in mitigation were strong enough to avoid the claimant's dismissal. The question was whether the respondent was reasonably entitled to reject those points and to dismiss the claimant rather than impose any lesser disciplinary sanction. The Tribunal is satisfied that in the circumstances the respondent was entitled to conclude that dismissal was warranted. Considering this alongside the procedural handling of the case and in accordance with the principles in section 98(4) ERA, the decision to dismiss summarily fell squarely within the band of reasonable responses.

Protected disclosures claim

159. The Tribunal has dealt already with the claimant's arguments, later withdrawn, about being subjected to five detriments as a result of making protected disclosures. For completeness, it is worth mentioning briefly the subject-matter of those claims, which overlapped considerably with the issues in the unfair dismissal claim. The pursuing of these claims until the end of her evidence had a bearing on the Tribunal's assessment of the claimant's credibility.

160. The first detriment was said to be the disclosure by Rachel Jones and her then partner of confidential information about the disciplinary proceedings to the owner of a ski chalet shortly after the claimant's suspension in March 2017. The two couples had booked a holiday together and it was no longer appropriate to share accommodation. Even on her own account, the claimant was unable to provide any information about what had been disclosed. In any event, the date of the holiday meant it could not possibly have been connected to the making of a protected disclosure on 5 July 2017.

161. The second detriment arose from the respondent's stance on the claimant's companion at formal meetings. This too predated the disclosures by some months, because the claimant first requested an alternative companion on 31 March and was turned down the same day. Repeated requests and refusals were made until the fifth refusal which was communicated on 5 July 2017 in advance of the disclosure being sent. They could not possibly have been related.

162. The third detriment related to access to documents. This was plainly offered by the respondent on more than one occasion and was at no time refused. It was on 3 July 2017 that the claimant finally declined to inspect the papers again. On any view of it, all these communications predated the disclosures made after the event.

163. The fourth detriment related to the decision not to provide the claimant with the full whistleblowing report dated 27 July 2017. The claimant was still able to pursue her points by reference to the 5 July statement when defending herself at the disciplinary hearing, and the respondent's protection of the confidentiality of the

whistleblowing investigation ensured that the disciplinary process was not influenced by the rejection of the claimant's allegations.

164. The fifth and final detriment related to what was erroneously described as the "Serco investigation report". Three days after this was first requested by the claimant on 12 May 2017, the respondent made her aware that no such report existed. The point was reiterated on 23 May and no further requests were made. All of these communications predated the making of any disclosures.

165. Turning to the two disclosures made in the 5 July statement, in order for them to gain statutory protection, section 43B(1)(b) ERA requires that the claimant should have had a reasonable belief that the information she disclosed tended to show a failure to comply with a legal obligation. The disclosures should also have been made in the public interest. If those components were present, the claimant's disclosures would be qualifying and protected disclosures, given the circumstances in which they were made.

166. The Tribunal was unconvinced that either of the two disclosures was protected, on several grounds. The timing of the disclosures, made just two days before the disciplinary hearing was scheduled to take place and yet four months after the claimant's suspension, suggested that their principal purpose was to defend if not deflect the disciplinary case. The claimant was certainly entitled to argue the points in her defence, as clearly they had a bearing on the breach of confidentiality allegations, but in considering the evidence the Tribunal had to decide whether the claimant had a genuine belief that they tended to show a breach of a legal obligation, and that they were made in the public interest.

167. The first disclosure was that Rachel Jones had encouraged the claimant to join another law firm to be established by her then partner, with the possibility of taking clients with her. The conversation in question appeared to be limited to some text messages. The claimant quoted extracts from these in her 5 July statement but without producing the full conversations. Her summary contained no indication that any clients would be approached with a view to taking their business elsewhere. On the contrary, Ms Jones's text saying, "How would big clients ever work in a smaller firm" suggested the opposite. At best, it was ambiguous.

168. When asked by the Tribunal what breach of contract this disclosure identified, the claimant simply said it was about taking clients away from the respondent. The Tribunal considered whether this suggested a failure to comply with a legal obligation. We were not provided with evidence of any express contractual duties owed by Ms Jones to the respondent, though accepted that as a partner in the respondent firm she would owe the business fiduciary duties. The Tribunal accepted that in principle this information could tend to show a breach of those legal obligations, if it were true that Ms Jones was involved in facilitating a competing business to entice away members of staff or clients.

169. While the first disclosure may have related to Ms Jones's legal obligations to her firm, the Tribunal was not satisfied that the claimant had such a belief in her mind when making the disclosure. She did not even raise the issue with Ms Abraham in her investigation interview. Furthermore, that there may have been a failure to comply with a legal obligation was far from clear to the Tribunal on the evidence it

heard, the claimant providing no such evidence on the question of Ms Jones's fiduciary or contractual duties.

170. The next question to which the Tribunal directed itself was whether this disclosure was made in the public interest, following the guidance in Chesterton Global Limited. We concluded that it was not, because the interests affected by the disclosure would be the private interests of the partners of the respondent firm and the proprietary interests of the business itself, to the extent that it had the right to protect its relationships with clients and with partners and staff. Weighing the private nature of the interests and the nature of the wrongdoing, an apparently casual and tentative conversation between friends and colleagues, the Tribunal does not accept this disclosure as being in the public interest.

171. The second disclosure was that the claimant had been asked to provide confidential information from Serco, specifically a tender document and the Pinsent Masons document. The Tribunal considered whether this second allegation amounted to an assertion that a legal obligation had been breached. This was far from clear because there was no evidence that the claimant had been instructed to act improperly or in breach of the respondent's duties towards its client, nor was there evidence that documents were removed from the client's offices or that they were confidential and should not have been removed. The Tribunal accepted the respondent's evidence that it was in the very nature of the secondment relationship that information went back and forth between the client and its legal advisers.

172. The Tribunal has already concluded that this information was presented at the disciplinary hearing to illustrate what the claimant saw as blurred boundaries which had led her into confusion about what she could and could not send to Gina Ramsay. This called into question whether the claimant had a reasonable belief that any legal obligation was being breached. While we accept that reliance on the information in the disciplinary proceedings did not preclude the claimant from treating this as a protected disclosure, the Tribunal's conclusion on the facts is that the claimant did not believe the information tended to show a failure to comply with any legal obligation. There was no evidence to support that belief, given the (largely undisputed) evidence about the benefits of sharing information with a client through a secondment.

173. There was a similar lack of evidence supporting the failure to comply with a legal obligation in respect of the second disclosure. The Tribunal saw no evidence that this duty was breached by the removal and copying of a tender document (if that happened) or by the taking of the Pinsent Masons document. According to the claimant's own statement to Mr Hainey, that had been freely provided to her at a time when they knew she worked for the respondent. The disclosure was therefore based in part on information the claimant knew to be untrue. In any event, all documents supplied to the claimant by Serco, or copied by her to take to the respondent's office, were subject to the duty of confidentiality to which the claimant and the respondent firm was subject.

174. Even if we were wrong in this conclusion, the Tribunal does not accept that there is any public interest element to this second disclosure. If it were the case that any duty of confidentiality was breached, this would have been a private matter

between the respondent and its client. It did not involve large numbers of parties nor was the nature of the alleged act such as to create a wider public interest element.

175. For the above reasons the Tribunal concludes that the claimant's two disclosures dated 5 July 2017 were not qualifying protected disclosures in accordance with sections 43A and 43B(1)(b) ERA.

176. Although we did not find that the claimant's disclosures were protected, if the Tribunal had had to evaluate the claim under section 103A ERA, that the reason for dismissal was because she asserted that she had made protected disclosures, it would have had no hesitation in concluding that the claim was without merit. The claimant was unable during the course of this hearing to articulate any explanation for why she made that assertion, and none was apparent from the evidence. When asked why she felt her dismissal was because of whistleblowing, the claimant said: "The respondent didn't like the fact that I defended myself, they tried to scare me. It was only when I put my witness statement and documents together that I realised what I had been doing".

177. The claimant was unable to point to any evidence supporting her theory, and the Tribunal saw no evidence to support it, nor any evidence of a causal connection. On the contrary, the basis for the investigation being started arose around four months before the disclosure was made in July 2017. In her evidence the claimant conceded that the issues were serious and that the respondent was entitled to investigate. Her letter of 16 March 2017 made admissions and offered apologies but did not suggest that the actions were undeserving of a full investigation and consideration. In cross-examination the claimant even conceded that the conduct could fall into a number of the categories of gross misconduct set out in the respondent's Disciplinary Policy and Procedure.

178. Causation would not therefore have been made out. The respondent acted with legitimate cause by investigating the claimant's email account, and this set off a chain of events and evidence leading ultimately to dismissal. The respondent was already on that course and nothing changed after or as a result of the 5 July statement. The Tribunal would therefore have been satisfied that the only reason why the respondent dismissed the claimant was that it believed on good evidence that she had committed acts of serious misconduct by disclosing confidential information. The respondent was entitled to treat those actions as amounting to gross misconduct and breaches of her contractual duties and its policies, as well as the SRA Code of Conduct and Principles.

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Employment Judge Langridge

Date 21 June 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

9 July 2019

FOR THE TRIBUNAL OFFICE

[JE]