Case No: 2206864/2017

EMPLOYMENT TRIBUNALS

Claimant: Mrs F Orok

Respondent: Shepherds Bush Housing Association

Heard at: London Central **On:** 3, 4, 5, 8 & 9 April 2019
10 April (in chambers)

Before: Employment Judge H Grewal
Mrs M B Pilfold and Dr V Weerasinghe

Representation

Claimant: Ms N Owen, Counsel

Respondent: Ms C Bell, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:

1 The Tribunal has jurisdiction consider the complaints of victimisation about acts/omissions that occurred before 22 March 2017;

2 The complaints of victimisation under the Equality Act 2010 are not well-founded;

3 The complaints of failure to make reasonable adjustments under the Equality act 2010 are not well-founded;

4 The complaints of failure to comply with section 10 of the Employment Relations Act 1999 are not well-founded;

5 The complaint of unfair dismissal is not well-founded; and

6 The complaint of wrongful dismissal is not well-founded.

REASONS

1 In a claim form presented on 17 August 2017 the Claimant complained of victimisation under the Equality Act 2010 and breach of the right to be accompanied under section 11 of the Employment Relations Act 1999. On 15 January 2018 the Claimant was given leave to amend her claim to include complaints of unfair dismissal, wrongful dismissal, victimisation and disability discrimination in respect of her dismissal on 15 November 2017. Early Conciliation was commenced on 21 June 2017 and the Certificate was granted on 5 August 2017.

The Issues

2 It was agreed that the issues that we had to determine were as follows.

Victimisation

2.1 It was not in dispute that the Claimant's Tribunal claim of 2006 and her grievance of 9 April 2017 were protected acts. There was a dispute over whether her grievance of 14 December 2016 was a protected act.

2.2 Whether the Respondent subjected the Claimant to a detriment by doing any of the following;

(i) Commencing an unjustified disciplinary investigation into the Claimant's expense claim in circumstances where no other members of staff were investigated despite issues with their expenses claims;

(ii) Mr Wilson bullying, shouting at and intimidating the Claimant during the meetings on 10 November, 17 November, 1 December and 5 December 2016;

(iii) Appointing Mr Wilson as the disciplinary investigating officer despite his clear involvement in matters under investigation meaning that no fair and impartial investigation would take place;

(iv) Mr Wilson subjecting the Claimant to repeated pressure to answer his questions during the meeting on 17 November 2017 despite the Claimant asking him to stop the meeting and/or allow her to have someone else present;

(v) In breach of the Respondent's grievance procedure appointing a junior member of staff, Mr Khine, to investigate the Claimant's grievance;

(vi) Indicating that the disciplinary investigation would commence afresh (giving the Respondent a second chance at holding a disciplinary hearing against the Claimant);

(vii) Not upholding the Claimant's grievance despite the weight of evidence supporting it;

(viii) Suspending the Claimant on her first day back at work after long term sickness absence in a manner calculated or likely to cause upset, distress and humiliation to the Claimant in front of her colleagues;

(ix) Rendering the Claimant's right to be accompanied at the reconvened grievance appeal meeting on 16 August 2017 and the disciplinary hearing on 13 November 2017 worthless by refusing to lift the prohibition on contacting colleagues;

(x) Refusing to hold the disciplinary meeting in Watford;

(xi) Dismissing the Claimant.

2.3 If it did, whether it did so because the Claimant had done a protected act.

2.4 Whether the Tribunal has jurisdiction to consider the complaints having regard to the time limits for bringing such complaints.

Breach of the right to be accompanied

2.5 Whether the Respondent permitted the Claimant to be accompanied by a work colleague or a trade union representative at the grievance hearing on 16 August 2017 and the disciplinary hearing on 13 November 2017;

2.6 Whether the Tribunal has jurisdiction to consider the complain having regard to the time limits for bringing the complaint.

Unfair Dismissal

2.7 What was the reason for the dismissal? The Respondent contends that it was a reason related to conduct.

2.8 If it was related to conduct, whether the dismissal as fair.

Wrongful Dismissal

2.9 Whether the Respondent was entitled to terminate the Claimant's employment without notice.

Disability Discrimination

2.10 Whether the Claimant was disabled at the material time by reason of acute stress reaction and/or depression;

2.11 It was not in dispute that the Respondent applied the following two PCPs –

(i) That the disciplinary hearing would be held at Mulliner House, and

(ii) That the Claimant must not contact her colleagues while suspended;

2.12 Whether those PCPS put the Claimant at a substantial disadvantage in comparison with persons who were not disabled;

2.13 If either of them did, whether the Respondent knew or could reasonably have been expected to know that the Claimant was disabled and that the PCP put her at a substantial disadvantage;

2.14 Whether the Respondent failed to take such steps as it was reasonable to take to avoid the disadvantage.

2.15 Whether the Tribunal has jurisdiction to consider the complaints, having regard to the time limits for bringing such complaints.

The Law

3 Section 27 of the Equality Act 2010 ("EA 2010") provides,

"*(1) A person (A) victimises another person (B) if A subjects B to a detriment because –*
(a) B does a protected act, or
(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act –
(a) bringing proceedings under the Act;
(b) giving evidence or information in connection with proceedings under this Act;
(c) doing any other thing for the purposes of or in connection with this Act;
(d) making an allegation (whether or not express) that A or another person has contravened this Act."

4 Section 136(2) and (3) EA 2010 provides that if there are facts from which the tribunal could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the tribunal must hold that the contravention occurred unless A shows that A did not contrive that section.

5 The EHRC Code of Practice on Employment provides,

"*9.8 … Generally, a detriment is anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage…*

9.9 A detriment might also include a threat made to the complainant which they take seriously and it is reasonable for them to take it seriously. There is no need to demonstrate physical or economical consequences. However, an unjustified, sense of grievance alone would not be enough to establish a detriment."

6 Section 10 of the Employee Relations Act 1999 provides,

"*(1) This section applies where a worker –*
(a) Is required or invited by his employer to attend a disciplinary or grievance hearing, and

(b) Reasonably requests to be accompanied at the hearing.

(2A) Where this section applies, the employer must permit the worker to be accompanied at the hearing by one companion who -

(a) Is chosen by the worker; and
(b) Is within subsection (3).

A person is within section 10(3) if he is employed by or an official of a trade union or another of the employer's workers.

7 Section 6(1) of the Equality Act 2010 ("EA 2010") provides,

"*A person (P) has a disability if –*
(a) P has a physical or mental impairment, and
(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities."

The effect of an impairment is long-term if it has lasted for at least 12 months, is likely to last for at least 12 months or it is likely to last for the rest of the life of the person affected (Schedule 1, paragraph 2 EA 2010).

8 Where a provision, criterion or practice of an employer puts a disabled employee at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, the employer is required to take such steps as it is reasonable to have to take to avoid the disadvantage (section 20(3) EA 2010"). The employer is not under a duty to make reasonable adjustments if he does not know and could not reasonably be expected to know that the employee has a disability and is likely to be placed at the disadvantage referred to in the above paragraph (Schedule 8, paragraph 20 EA 2010).

9 The onus is on the employer to prove that the reason or the principal reason for the dismissal was a reason relating to the conduct of the employee (section 98(1) and (2) of the Employment Rights act 1996 ("ERA 1996"). If the employer establishes that, the Tribunal must then consider whether the dismissal was fair within the meaning of Section 98(4), in other words, whether the employer acted reasonably or unreasonably in all the circumstances of the case in treating that reason as a sufficient reason for dismissing the employee.

10 The well-established authority of **British Home Stores Ltd v Burchell [1978] IRLR 379** provides that in a conduct dismissal case the Tribunal has to ask itself the following three questions:

(i) Did the employer believe that the employee was guilty of misconduct?
(ii) Did he have in his mind reasonable grounds upon which to sustain that belief? and
(iii) At the stage which he formed that belief on those grounds had he carried out as much investigation into the matter as was reasonable in the circumstances of the case?

11 In determining the issue of fairness the Tribunal also has to consider whether there were any flaws in the procedure which were such as to render the dismissal unfair, and, finally, whether dismissal was within the band of reasonable responses

open to a reasonable employer in all the circumstances of the case. In judging reasonableness of the employer's conduct the Tribunal must not substitute its decision as to what was the right course to adopt for that of the employer. The function of the Tribunal is to determine whether in the particular circumstances of each case, the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted (**Iceland Frozen Foods Ltd v Jones [1982] IRLR 439,** approved by the Court of Appeal in **Post Office v Foley [2000] IRLR 827).**

12 If the conduct of an employee amounts to a repudiatory breach of the contract, the employer is entitled to dismiss the employee without notice. The degree of misconduct necessary in order for the employee's behaviour to amount to a repudiatory breach is a question of fact for the tribunal to determine.

The Evidence

13 The Claimant gave evidence in support of her claim. The following witnesses gave evidence on behalf of the Respondent (the job titles given are those that they held at the relevant time) – John Wilson (Head of Finance), Mary Canavan (Director of Business Support), Mohit Jain (Director of Finance and Development), Matt Campion (Chief Executive Officer), Martin Horne (Complaints Co-Ordinator), Donna Shepherd (Director of Housing Services), Shirley Silvester (Head of Development) Yvonne Akinmodun (Interim Strategic HR Manager), Verna Wilks (HR Business Partner) and Elizabeth Stringer (Strategic HR Manager).The Tribunal had an agreed bundle of documents that comprised a little over 500 pages. Having considered all the oral and documentary evidence, the Tribunal makes the following findings of fact.

Findings of Fact

14 The Respondent is a provider of affordable housing in West London. The Claimant commenced employment with the Respondent in October 1998 as a Financial Accountant.

15 In January 2005 the Claimant presented a claim to the Employment Tribunal that Patricia Humberstone, the Respondent's Finance Director, had discriminated against her by not awarding her a bonus and salary increase at the end of 2004 because she had taken maternity leave in the latter half of that year.

16 In August 2005 the Claimant presented a second claim to the Employment Tribunal in which she complained of indirect sex discrimination and victimisation in respect of Respondent's refusal to allow her to work two days a week from home. In a decision sent to the parties in June 2006 the Claimant's complaints were upheld. John Wilson was the Claimant's line manager at the time. The Tribunal found that in 2004 Mr Wilson had been sympathetic to the Claimant's wish to work from home two days a week when she returned from maternity leave. However, following the Claimant issuing the claim in January 2005, his attitude had changed. The Tribunal found that at a meeting in April 2005 he had said to the Claimant that she "*should go with the flow and withdraw the pending issues otherwise all flexibility previously given"* would be withdrawn. The Tribunal found that "the pending issues" referred to the Claimant's Tribunal claim. The Tribunal concluded that the refusal to allow the Claimant to work from home was causally connected to the protected act (her previous Tribunal claim). It found that when faced almost simultaneously with a

Tribunal claim and a request for home working, Mr Wilson and Mr Dent (who was then ultimately responsible for the HR function) "*entrenched their positions; moved from a position of informality to formality and moved from a position of trying to accommodate the Claimant to one of being extremely unsympathetic and rigid."* Paul Doe, the Respondent's Chief Executive Officer at the time, also featured in the case. The Tribunal also noted in its decision that, to their credit, the Claimant and John Wilson had managed to maintain a reasonable working relationship during what must have been a difficult period.

17 The Claimant, John Wilson, Patricia Humberstone and Paul Doe continued working in the same positions until the middle of 2016. Between June 2006 and the end of 2016 the Claimant did not make any complaints about John Wilson. Between January 2005 and 2016 the Claimant's salary increased from about £34,005 per annum to £47,496 per annum.

18 Mr Wilson conducted the Claimant's Annual Performance Reviews and gave her high ratings. In 2013 she was given a rating of 5 (when 6 was the highest), in 2014 she was given a 5 (which was the highest rating and denoted "outstanding") and in 2015 she was given a 4 (which denoted "exceeding expectations"). He also made positive comments about her such as "*Keep up the good work. I can certainly agree that the positive approach you take to your work is reflected in the results", "I am recognising the effort you put in to get things to happen. To quote from our discussions, a particularly passionate and successful year""* and "*I enjoy the enthusiasm that you have for your job. Thank you for another good year."* In one of the appraisals the Claimant said, "*I am pleased with the fact that John is approachable; I feel I can discuss issues freely with him".*

19 Ms Humberstone was Mr Wilson's line manager. In the course of her monthly one-to-one discussions with him, they discussed the performance of the Claimant and the three other employees who reported to him. By the end of the year when the appraisals were done they were in agreement about which of the staff would be put forward for bonuses on the basis of the discussions they had had throughout the years. We did not accept the Claimant's evidence that Mr Wilson only gave her the ratings that he did because Mr Humberstone instructed him to give her those ratings because she wanted to put her forward for a bonus.

20 Between 2005 and 2016 Mr Wilson did not subject the Claimant to any detriment or treat her unfavourably in any way because of her Tribunal claims in 2005. The Claimant did not raise any issue or complaint of victimisation during this period. Had the Claimant had any cause for concern, we have no doubt that she would have raised it.

21 The Respondent's 2010 and 2015 Pay and Benefits Policy and Procedure contained the following provisions in relation to claiming expenses –

> "*All claims for travelling and other incidental expenses shall be submitted on the official claim form available on the intranet. Vouchers/receipts in support of the items claimed must be obtained wherever possible and attached to the claim form.*
>
> *A claim form must be approved by the relevant Line Manager before submission to the Finance department for payment."*

"Claims can be made for the following:

6.2 Travel

Where undertaken as necessary part of the job on Group business (excluding travel to and from work) and travel to and from training courses. This may be by public transport, private car, or bike. The amount to be recovered is the cost over and above the normal cost of getting to the office."

22 Under the policy employees who required a car to perform their roles efficiently were entitled to claim business mileage. The policy provided that statutory mileage rates were used to work out the approved mileage allowance payments i.e. the maximum amount of mileage allowance payments that can be paid free of tax under the legislation. The statutory rates were 40p for the first 10,000 business miles and 25p after that. There was another version of the policy which was not dated. The undated version provided that any mileage payment over and above the statutory rate was included in taxable income. It set out the Respondent's pay rates at that stage as being 65 pence a mile for cars.

23 The policy did not state how "the normal cost of getting to the office" was to be worked out. The general understanding was that those who used public transport could claim any expenses that they incurred in addition to their normal journey costs to work. In the case of those who had season tickets, it was the additional amount that they had to pay to get to the destination. Those who normally travelled to work in their own car could claim either the cost of travelling to the destination from the office or the cost of travelling to the destination less the cost of travelling to work by car which was calculated using a mileage rate. There was some confusion as to what the correct mileage rate was.

24 Mr Wilson's view was that the Claimant did not always correctly claim her expenses and her overtime, but Ms Humberstone instructed him to authorise them and he did so. The Claimant often did not deduct the normal cost of getting to the office from her travel expenses. For example, on 18 February 2016 she claimed £25 for travel to a conference. That was the cost of travelling from her home near Watford Junction to a conference in central London. She did not deduct from that the cost of travelling from Watford to the office in Chiswick in her car. Mr Wilson approved it on Ms Humberstone's instruction.

25 Ms Humberstone left in July 2016 and in September 2017 Patrick Shaw was appointed Finance Director. Mr Shaw's approach was that adherence to the policies and procedures in place was important.

26 On 3 October 2016 an employee (H Chohan) put in an expense claim form for £37-50 for travel. She did not deduct from that any sum for her normal cost of travel to work. Her line manager approved it. Mr Wilson informed her line manager that it could not paid until she had deducted travel from home to work in accordance with the Respondent's policy. He made a note to that effect on the claim form. The manager did not deal with it and the claim was left unpaid for some time. On 7 December Mr Wilson contacted the employee directly and said that he understood that she drove to work and asked her what the mileage was. She replied that it was approximately 28 miles one way. Mr Wilson then responded that the amount to be

deducted for normal cost of travel to work was £36.40 (28 x 2 x 0.65). He asked her to confirm whether she agreed with his calculation and she responded that it was fine with her.

27 On 20 October Mr Wilson had a meeting with the Finance Team about an upcoming team Away Day. All members of the team, including the Claimant, were invited. The Claimant was at work that day but might not have attended the meeting. At that meeting Mr Wilson told them that the new Director was someone who wanted to do things "by the book" and that they should ensure that their expense claims were in accordance with the policy.

28 The Away Day took place on 4 November 2016. It took place in central London near King's Cross. About fifteen employees attended and ten of them claimed expenses.

29 Three of the employees who attended the Away Day normally drove into work. They were Mr Wilson, the Claimant and J Bowes. Mr Wilson drove to the office and then travelled on public transport from Turnham Green (in zone 2), the station closest to the office, to the venue in zone 1. Mr Wilson did not claim any expenses because he had a Freedom Pass and the additional travel did not cost him anything. J Bowes drive to the office and claimed £6.50 – the cost of a day pass to travel from zone 2 to zone 1.

30 The other employees all claimed £6.50 or less. Mr Wilson did not carefully scrutinise each claim. There was nothing in any of the forms that immediately appeared incorrect to him. He knew that the cost of travelling from zone 2 (where the office was) to zone 1 (where the venue was) was £6.50. That accorded with what the claims made by the employees. Three of the employees claimed less than £6.50.

31 The Claimant submitted a petty cash form claiming £17. Attached to that was a receipt for an Oyster top up of £17. On 10 November Mr Wilson spoke to the Claimant privately about her expense claim. He explained to her that he was unable to approve it in the format in which she had presented it. She had not given a breakdown of the cost of the journey and the of the amount that she had deducted as the normal cost of travel to and from work. He said that he had confirmed with HR that morning that for those who drove to work the normal cost of travel to be deducted was the number of miles from home to work and back multiplied by 60 pence. He asked the Claimant to submit her claim in the correct format having made a deduction for the normal cost of travel.

32 Later that morning the Claimant returned to Mr Wilson with a higher expense claim for £26.04. She said that she had calculated it properly and it came to more than she had originally claimed. She set out on a post-it note her calculations to arrive at that figure. She claimed £5.60 for a return from Garston to Watford Junction, £25.60 for a return from Watford Junction to King's Cross and £1.50 for bus fares in London. There were no receipts of her having incurred those travel expenses. That come to a total of £32.70. She deducted from that £6.66 for the normal cost of travel to work, which according to the AA mileage rate was the cost of petrol for a journey from her home in Garston to the office and back (19.6 miles each way). She said that David Blackburn, a previous director who had left six years before, had advised her that she should use the AA mileage rate. Mr Wilson said that the advice from HR had been clear and that the normal cost of travel for those who used a car was calculated

at 60p a mile and not on the basis of the cost of petrol for the journey. Mr Wilson said that the reason for that was that the cost of running a car was not just the petrol but also included things such as insurance, servicing, replacing tyres, etc. The Claimant said she only had the cost of the petrol as her husband had bought her the car and paid all the costs, except the petrol. The Claimant would not accept what Mr Wilson said about the correct amount to be deducted. Mr Wilson did not approve her claim and concluded the meeting by saying that they would speak to Mr Shaw about the correct calculation of the mileage rate on his return to work the following week.

33 A little later the Claimant approached Mary Canavan, Director of Business Support, who was walking to her office, and said that she had something for her to sign. She handed her a petty cash slip with some attachments to it. Ms Canavan saw that it was a claim for travel expenses and the amount being claimed was around £26. Although it was normally the line manager's responsibility to approve an employee's expenses, it was not uncommon, if the line manager was absent from the office, for the Director of the appropriate service to approve the claim. Ms Canavan was about to sign the claim, having glanced at it cursorily, when she remembered that she had seen Mr Wilson earlier that day. She asked the Claimant why she was approaching her to sign the claim rather than Mr Wilson. The Claimant responded that she had had a difference of opinion with Mr Wilson regarding the calculation of the mileage for working out her home to office expense. Ms Canavan was aware of the Chohan claim and told the Claimant that another expense claim had not been paid in similar circumstances. Ms Canavan refused to sign the form and told the Claimant that Mr Wilson was the person who should sign the form and that if she did not agree with his interpretation she should take the matter up with the Director, Patrick Shaw, on his return to work.

34 Ms Canavan was concerned that the Claimant, who had a senior role in the Finance team, had attempted to obtain her authorisation for her expense claim without informing her that Mr Wilson had refused to sign it and that there was a dispute between them about the amount to be deducted. She informed both HR and John Wilson of what had taken place.

35 On 14 November 2016 Patrick Shaw and Mr Wilson had their monthly HR review meeting with Verna Wilks. At the meeting Mr Wilson informed Mr Shaw of the incident the previous week regarding the Claimant's expenses. He said that after he had refused to approve her expense because she had not deducted the correct amount for normal cost of travel to work, she had attempted to circumvent his decision by getting another Director to approve them. Mr Shaw instructed Mr Wilson to investigate the matter by interviewing the Claimant and Ms Canavan. Mr Wilson was reluctant to do so but Mr Shaw said that as the Claimant's line manager it was his responsibility to do so. Mr Wilson had not conducted a disciplinary investigation before.

36 The Respondent's Disciplinary Policy provides that the line manager is normally the person who should conduct the investigation. However, it also provides that the investigating officer should be someone "*who is not involved or form part of the alleged misconduct (they cannot be a witness)"*. It also provides that if an investigatory interview is held, the employee should be informed at the outset that the interview is an investigatory interview.

37 On 17 November Mr Wilson asked the Claimant to attend a meeting with him in the Chief Executive's office which was not occupied at the time. Prior to the meeting he had prepared a script and had asked HR to confirm that it covered all the salient points. He started the meeting by reading from the script. This entailed him explaining to her that the purpose of the meeting was to discuss what had happened on 10 November when she had allegedly asked Mary Canavan to sign her expense claim form and why it was a matter of concern. He said that as her line manager he had been given the task of investigating the situation. The investigation would involve him interviewing her and Ms Canavan and recording what they told him. He made her aware of the possibility of disciplinary proceedings. He gave her the option of having her interview there and then or arranging it for another time in a few days' time. The Claimant said that she was prepared to have the interview then but asked whether she could record it. Mr Wilson agreed that she could, and the Claimant went and got her mobile telephone to record it.

38 There was before us a transcript of the meeting and we also heard parts of the audio recording. It was clear from both the transcript and the audio recording the Claimant was loud and assertive and that Mr Wilson did not raise his voice. Mr Wilson said he was going to ask her some questions and the Claimant responded that she wanted to ask him some questions. He said that he would not answer any questions and she said "*Well you should."* She said that on 10 November she had met with him and that what he had said to her was "*contrary to what had prevailed in the past"*, he was using a different rule, as far as she was aware the policy had not changed, and as policy emanated form HR she was within her rights to take the matter to Ms Canavan as Director of HR. Mr Wilson made it clear to her several times that what he wanted to know from her was what had happened when she went to see Ms Canavan. About nine minutes after the interview started, the Claimant said that she did not want to go further with the interview and wanted Mr Shaw to be present. Mr Wilson said that was not possible and that he had been appointed the investigating officer. She said that he could not be the investigating officer because he had a vested interest because the issue emanated from him. Mr Wilson repeated that all he was investigating was what had transpired in the meeting that she had with Ms Canavan. The Claimant kept repeating and insisting that she would not continue the interview and that she wanted Mr Shaw to be present. There was a discussion about whether Mr Wilson had a vested interest. About eighteen minutes into the interview, the Claimant said that she did not feel comfortable speaking to Mr Wilson alone because of "*the history"* between them and because he was connected to the issue, and that either Mr Shaw or Ms Canavan should be present. Mr Wilson made it clear that he did not agree with her and that she was not entitled to dictate that either of them should attend. The interview then continued for about another seventeen minutes during which time they both kept repeating their points of view.

39 On 18 November Mr Wilson conducted an interview with Mary Canavan. Ms Canavan said that she had encountered the Claimant outside her office and the Claimant had said that she had something for her to sign. She had given her a petty cash slip to sign with some attachments. It was for about £26. The details of the calculations were set out on a post-it note. Ms Canavan had started to sign it and had then asked whether Mr Wilson was not in the office. The Claimant had responded that he was but that they had a difference of opinion about his interpretation of how to calculate mileage from home to office. Ms Canavan had responded that he might be right because another expense claim had recently not been paid in similar circumstances. Ms Canavan had told the Claimant that she was not prepared to sign

it and that Mr Wilson as her line manager was the person to sign it. If there was a problem with interpretation they should take it up with Mr Shaw when he returned. The Claimant had only told her about the difference of opinion after Ms Canavan had asked her why she had not got Mr Wilson to sign the form.

40 On 21 November the Claimant met with Mr Shaw and questioned whether it was right for Mr Wilson to be the investigating officer as the issue stemmed from him and whether Mr Shaw could attend the meeting as an observer. Mr Shaw said that he would get advice from HR and revert to her. He saw her later and said that HR had confirmed that Mr Wilson was the right person to investigate the matter as he was the Claimant's line manager and that he could be present as an observer although that would preclude him from being involved in any disciplinary process that might follow.

41 Mr Wilson spoke to HR on the same day. Mr Wilson informed HR that Mr Shaw was the person who had initiated the disciplinary investigation. HR advised that in those circumstances, it would not be appropriate for him to be an observer at the investigatory interview.

42 On 23 November Mr Wilson met briefly with the Claimant and advised her that Mr Shaw could not attend as an observer as he had initiated the investigation and that Ms Canavan could not attend as she was a witness. He said that he would like to hold the meeting within the next week and advised her to find someone else to act as an observer.

43 The investigatory interview with the Claimant took place on 1 December. The Claimant's colleague Nicholas Appeah attended as an observer. The Claimant asked whether she could record the meeting and Mr Wilson refused because he had been advised by HR that it was not the Respondent's policy to permit recording of meetings. Mr Wilson then read out the same script that that he had read at the previous meeting. The Claimant asked him for a copy of the script and Mr Wilson copied it and gave her a copy. The Claimant then gave her account of her meeting with Mary Canavan on 10 November. She said that because there had been a disagreement between her and Mr Wilson and because her Director, Mr Shaw, had not been in the office, she had escalated the matter to Mary Canavan as per the company policy. She said that Ms Canavan had asked her whether she had deducted the normal cost of travel from home to work and she had responded that she had and had shown her the calculations. Ms Canavan had signed the petty cash slip and then asked the Claimant why she had not waited for Mr Wilson to come back to sign it. The Claimant had responded that Mr Wilson was in the office and that she had met with him but there was a dispute between them and she could not take the matter to Mr Shaw because he was not in the office. She said that her previous expense claims had been approved and asked Ms Canavan whether the policy had changed and she had replied that it had not. Ms Canavan had then cancelled her signature and asked her to speak to Mr Shaw. The Claimant said that the amount on the petty cash slip was £17, which was the cost of topping up her Oyster card and less than the actual cost of the journey. The Claimant said that she had thrown away the petty cash slip and the attached documents.

44 After the meeting Mr Wilson regretted having given the Claimant the script. He asked her and Mr Appeah to return to the office and he asked her to return the copy of the script. He said that he wanted to check with HR whether it was alright to have given her the script. The Claimant handed back the original but retained a copy. Mr

Wilson asked her to return all copies of it. The Claimant refused and said things like "*You don't know what you 've done" and "It's not my job to explain what you have done."* Mr Wilson asked her to return it a number of times and the Claimant refused to do so. Mr Wilson was angry and frustrated and raised his voice.

45 The Claimant was sent the notes of the meeting of 1 December and given an opportunity to amend them. She made some amendments.

46 On 7 December 2016 John Wilson produced an investigation report. He attached to that the notes of his interactions with the Claimant on 10 November and of his meetings with the Claimant and Ms Canavan. His summary of findings was that the Claimant had gone outside the correct procedure in asking Mary Canavan to sign an expense claim, particularly as Mr Wilson was in the office and he had made it clear that they would leave the matter to be resolved by Mr Shaw on his return. Furthermore, the amount claimed had not been calculated in accordance with the Respondent's expenses procedure as had been explained to her. He concluded that there was a case to answer and recommended that the matter proceed to a disciplinary investigation.

47 On 7 December the Claimant wrote to Verna Wilks in HR. She asked a number of questions about the disciplinary investigation, including who had instigated the investigation. She said that in all her four meetings with Mr Wilson in the investigation and in prior meetings relating to her expenses claim, she had been made to feel intimidated, bullied and oppressed by him. At the end of the letter she said that she would re-submit her expense claim form and would deduct £24 as Mr Wilson had instructed her to do.

48 Ms Wilks responded the same day. She said that she could not discuss some of the matters raised by her because they related to the matter that was under investigation. She informed her that Mr Shaw had asked for the matter to be investigated. She said that she would like to meet with the Claimant to discuss her allegations of bullying as such matters could not be ignored. On 12 December Ms Wilks offered to meet the Claimant on 14 December to discuss her allegations of bullying.

49 On 12 December Sheelagh Lewis, Head of Repairs, invited the Claimant to a disciplinary hearing on 19 December. The allegation made against her was failure to follow a management instruction for financial gain. The Claimant was sent a copy of the investigation report and all the supporting evidence and a copy of the Respondent's disciplinary policy. She was advised of her right to be accompanied and warned that the outcome could be a warning or even dismissal.

50 On 14 December the Claimant made a complaint of harassment and bullying against Mr Wilson on a form headed "*Harassment and Bullying/Grievance Form"*. The harassment and bullying was said to have taken placed from 10 November 2016 to 5 December 2016. She complained about the conduct of Mr Wilson at the two meetings on 10 November, the meeting on 17 November, the meeting on 1 December and a meeting on 5 December. She said that at the end of the meeting on 17 November she had left the room afraid for her safety and stressed out in tears at how she had been bullied. She said that the audio recording would show that it was "*probably one of the worst cases of extreme bullying on a member of staff."* She did not allege that Mr Wilson's bullying and harassment had anything to do with her race

or the fact that she brought a previous claim of race discrimination against him. She did say that in the course of the meeting on 17 November she had given him two reasons why she did not feel comfortable discussing the matter alone with him. One of them was the "*past history"* between them and his bias against her.

51 On 15 December the Claimant was medically certified as unfit to work because of "*stress reaction to bullying at work"* until 12 January 2017.

52 At an HR meeting on 15 December attended by Yvonne Akinmodun, Verna Wilks and another HR Business Partner, there was a discussion about whether it was appropriate for Mr Wilson to continue as the investigating officer in light of the allegations of harassment and bullying against him. They decided that another investigating officer should be appointed to investigate the matter afresh. They decided to appoint Martin Horne as the new investigating officer. The complaint of bullying and harassment was addressed under the Respondent's grievance procedure. They decided to appoint Noel Khine, Customer Services Project Manager, to investigate the grievance. Mr Khine was a member of the "Leadership Voice" group which was a committee made up of the Directors, the Chef Executive and the Head of Service which discussed and decided upon strategies on behalf of the Respondent.

53 Both the Grievance Policy and the Harassment and Bullying policy provide for the complaint to be investigated by an investigating officer. The Grievance Policy says that it should be someone who "*has no involvement with the concerns that have been raised."* The Harassment and Bullying Policy says that it will be "*an employee who, if possible, does not have a direct working relationship with the complainant or with the person they are raising concerns about and will be at least at the same level as the person about whom the complaint is made."*

54 On 16 December Darren Reynolds wrote to the Claimant that as she had submitted a claim of bullying and harassment against Mr Wilson who had been appointed investigating officer, a decision had been made to investigate the matter afresh. He informed her that Martin Horne, Resolutions Officer, had been appointed investigating officer and that he would take statements from all involved and write a report based on those.

55 Martin Horne interviewed John Wilson on 23 December. Notes were taken at the interview.

56 In January Ms Wilks referred the Claimant to the Respondent's Occupational Health Service. The referral said that the Claimant was absent sick with stress and that she had informed the Respondent that she had been vomiting, having feelings of nausea and bursting into tears following the disciplinary investigation meeting and that she was unable to function or concentrate on the matter. The Respondent sought advice on the severity of her stress and whether it was likely to have occurred from one incident or there was evidence of a pre-existing medical condition. They also sought advice as to whether the Claimant was able to attend a disciplinary investigation meeting during her sickness absence.

57 A Consultant Physician provided the occupational health report on 24 February 2017. She said that the Claimant did not report any previous episodes of anxiety or other psychological symptoms. She said that the Claimant reported disturbed sleep,

significant headaches, reduced concentration, anxiety with features of panic and nausea with vomiting. In her opinion, these were consistent with an acute stress reaction with features of anxiety in response to a situation of conflict. Her opinion was that the disability provisions of the Equality Act 2010 were unlikely to apply due to the relatively short duration of the symptoms. She recommended that consideration be given to assigning the Claimant to a different line manager. For any forthcoming meetings with management she suggested that,

> "*Francesca is able to bring someone with her as form of support, that she is advised in advance of the issues to be discussed so that she can prepare a written statement, that time is allowed for body breaks in the event that these are necessary, and that consideration be given to where these meetings are to take place. I suggest that they are arranged in a meeting room that is away from her usual workspace or at another neutral venue."*

58 The Claimant remained absent sick until 14 June 2017. All her medical certificates stated that she was unfit to work because of stress and bullying at work.

59 At the end of February 2017 Mr Wilson told HR that he had been made aware that the Claimant had asked a junior member of her team, Abdi Warsame, to access a system and print all the Finance department's expense claims for the team Away Day on 4 November 2016. HR asked Mr Horne to interview Mr Warsame about this allegation.

60 On 2 March 2017 Mr Horne interviewed Abdi Warsame. Mr Warsame said that a few months earlier, a few days after the Away Day, the Claimant had approached him with an excel spreadsheet that contained payment details and had asked him to print out the invoices that had been scanned into the system in support of those claims. He said that the spreadsheet had contained names of members of the Finance department. After he had printed out the documents, he had left them on the Claimant's desk.

61 On 9 April 2017 the Claimant wrote to HR to add an appendix to her grievance. In the appendix she complained about not having been provided all the relevant data under her Data Subject Access Request and the fact that the Tribunal judgment from her earlier claim was not in her HR file. In the email she said that she would not be attending any future hearings unless she was allowed to be accompanied by her solicitor or a friend or family member or to record the meeting.

62 In the course of May Noel Khine interviewed John Wilson, Mary Canavan and Nicholas Appeah and obtained statements from Paul Doe and Verna Wilkes. Mr Khine then produced an investigation report in which he set out what the Claimant and the others interviewed by him had said.

63 On 25 May 2017 the Respondent invited the Claimant o a grievance hearing. She was informed that the grievance would be heard by Shirley Sylvester (Head of Development). She was sent a copy of Mr Khine's report which included notes of all the interviews that he had conducted. The grievance hearing took place on 7 June 2017. Ms Sylvester sent the Claimant the outcome on 13 June 2017. She concluded that there was no evidence of bullying, harassment, victimisation or discrimination, as it was defined under the Respondent's Bullying and Harassment Policy.

64 The Claimant's latest medical certificate was due to expire on 14 June 2017. Her contractual sick pay also ran out on that date. It, therefore, seemed possible that she would return to work on that day. The HR department had discussion about the Claimant possibly returning to work, and they decided that if she were to return to work she would be suspended because of the new allegation that she had instructed a junior employee to print off the expense claims and supporting documents of other employees. Had she not been absent sick, she would have been suspended when the allegation had been made. Elizabeth Stringer, Strategic HR Manager, spoke to Mohit Jain, Director of Finance and Development since January 2017, about it and it was decided that he would carry out the suspension if the Claimant returned to work.

65 On 12 June Ms Stringer tried to call the Claimant to inquire whether she would be providing another medical certificate or returning to work. She was not able to speak to the Claimant, so she left two voicemails on her mobile telephone asking her to call her back. The Claimant did not call her back.

66 The Claimant returned to work on 14 June 2017 at about 8 am. Ms Stringer saw her in the office. She approached her and invited her to the HR office for a chat. When they were in the office Ms Stringer told her that Mr Jain wanted to have a meeting with her about something but that he would not be in until 9 am. Ms Stringer then left the room and called Ms Canavan to ask her what to do. Ms Canavan advised her to get the most senior member of staff who was on site at that time to be present for the Claimant's suspension. Ms Stringer asked Sheelagh Lewis, Head of Repairs, to be present. Ms Stringer then returned to the HR office with Ms Lewis and informed the Claimant that she was being suspended on full pay. She did not say anything to her about the new allegation. The Claimant was very upset and asked why she was being suspended and why they could not have done so before she returned to work. Ms Stringer replied that it was because of the disciplinary allegations and that the Respondent preferred to communicate it in person rather than by email. Furthermore, the Respondent had not known whether the Claimant would be returning to work.

67 Ms Stringer told the Claimant that she would need to leave the building and the normal procedure when an employee was suspended was for the employee to be escorted from the office. The Claimant was very annoyed and said that Ms Stringer was breaching her human rights and treating her like a criminal. Ms Stringer suggested as a compromise that the Claimant could return to her desk on her own to collect her belongings and that she should meet her and Ms Lewis by the exit doors. She made it clear that the Claimant should just collect her belongings and not engage in conversation with anyone. They waited for the Claimant by the doors, but after 15 minutes the Claimant had still not appeared. Ms Lewis went up to get the Claimant and when the Claimant appeared she was with two other employees. She eventually left the building.

68 On 14 June 2017 Mr Jain wrote to the Claimant confirming her suspension. He said that she was being suspended "*due to the potentially serious allegation that was brought to our attention regarding your conduct in December 2016, where you failed to follow a management instruction with the potential outcome that you benefit from financial gain."* The suspension was on full pay. The Claimant was advised that she must not attend her place of work or contact any work colleagues until the Respondent authorised her to do so.

69 Paul Doe left the Respondent at the end of June 2017. Matt Campion was appointed Chief Executive Officer to replace him.

70 On 20 June 2017 the Claimant appealed the grievance outcome. The grievance appeal hearing took place on 26 July 2017. It was held in Watford. It was heard by Donna Shepherd, Director of Housing Services. About half an hour after the hearing started the Claimant got up from her chair holding her stomach and ran out of the room. She returned a little later. The HR representative offered to call an ambulance and Ms Shepherd offered to drive the Claimant home. The Claimant said that she needed fresh air and left the room. Shortly after that, Ms Shepherd was informed that the Claimant had gone home. Ms Shepherd spoke to Shirley Sylvester and John Wilson after that.

71 On 27 July the Claimant sent an email to Ms Shepherd and HR. She said that she had seen her doctor who had diagnosed that her symptoms were stress related resulting from the issues at work. She said that as she was suspended, she did not see the need to get a medical certificate.

72 On 28 July Ms Shepherd wrote to the Claimant. She said that if the Claimant wanted to submit any further information in support of her appeal she should do so by 4 August 2017. The Claimant said that she wanted the hearing to be reconvened so that she could present her appeal. As a result, the appeal hearing was reconvened and was scheduled to take place on 16 August 2017 at Watford. The Claimant was advised of her right to be accompanied.

73 On 9 August the Claimant wrote to Ms Shepherd. She queried how she could get a colleague to accompany her at the hearing when the suspension letter had forbidden her from contacting any work colleagues. She asked her to confirm that the ban on contacting her work colleagues had been lifted.

74 Ms Shepherd replied that the terms of the suspension stood. She said that if the Claimant wished to be accompanied by a colleague from work she should give them the name of the colleague and they would made arrangements for the colleague to call her so that she could speak to the colleague about accompanying her. The Claimant did not provide any name and insisted that the terms of the suspension should be varied and she should be allowed to contact her colleagues. The Claimant was warned that if she did not attend, the appeal would go ahead in her absence.

75 The Claimant did not attend the grievance appeal hearing. The grievance appeal outcome was to uphold the original grievance decision. Ms Shepherd sent the Claimant the grievance appeal decision on 22 August 2017. She set out in her letter the reasons why she had not allowed the appeal.

76 On 5 September Mr Horne advised the Claimant that as the grievance had now concluded, he would start the disciplinary investigation. Mr Horne interviewed Mary Canavan on 8 September and John Wilson and Abdi Warsame on 22 September 2017. Mr Warsame confirmed what he had said in his earlier interview.

77 On 25 September Mr Horne invited the Claimant to a disciplinary investigation meeting to investigate two allegations – failure to follow a management instruction with the potential outcome that she benefit from financial gain and a possible breach of the Data Protection Act.

78 The letter was sent to the Claimant by recorded delivery. It was returned by the post office marked “refused”. The Claimant did not attend the meeting and did not make any contact to try to re-arrange the meeting.

79 Mr Horne then drafted a disciplinary investigation report. His report dealt with both the original allegation and the later allegation of asking a junior member of staff to print the expense claim forms of other employees. He attached to his report the notes of all the interviews that he had conducted and the relevant documentary evidence. He concluded that there was a case for formal disciplinary action. He concluded that in respect of the original allegation there was evidence that the Claimant had tried to circumnavigate the normal process to get the expense claim form approved. In respect of the second allegation, he said that the Claimant had asked a junior member of staff to download information on her colleagues’ claims which was *“an unfair use of her authority as a senior member of staff”*. He also said that given the circumstances behind the allegations, the Claimant’s position of trust as Financial Accountant also needed to be taken into account.

80 On 20 October 2017 Mohit Jain invited the Claimant to attend a disciplinary hearing on 30 October 2017. The letter set out only one allegation of misconduct, namely the failure to follow a management instruction, insubordination, with the potential outcome that she would benefit from financial gain. He enclosed in his letter the disciplinary investigation report which included all the evidence gathered by Mr Horne. She was advised of her right to be accompanied and was warned that the allegations could potentially amount to gross misconduct and could, therefore, result in the termination of her employment. The Claimant was asked to confirm her attendance at the hearing by 26 October 2017.

81 On 26 October 2017 solicitors acting for the Claimant wrote to the Respondent asking for the disciplinary process to be postponed pending the conclusion of the Employment Tribunal proceedings. The Claimant had presented a claim to the Tribunal on 17 August 2017. In her claim form, in response to the question “Do you have a disability?” the Claimant said that she did not. The solicitor’s letter did not make any reference to the Claimant being disabled.

82 On 31 October Mr Jain invited the Claimant to a rescheduled disciplinary hearing on 10 November 2017. She was informed that the meeting would take place at the Respondent’s office at Mulliner House.

83 On 3 November the Claimant informed Mr Jain that she could not attend on 10 November and was free to attend after 14 November. She asked for the meeting to be held in Watford and asked for the restriction on her contacting work colleagues to be lifted so that she could make the necessary arrangements to be accompanied.

84 On 6 November Mr Jain advised the Claimant that the meeting would be rescheduled to 13 November at Mulliner House. He said that the term of her suspension about not contacting work colleagues stood, but if she provided him with the names of the colleagues that she would like to accompany her, he would make arrangements for them to contact her. There were further communications between the parties where the Claimant repeated her requests and the Respondent repeated its position. The Claimant said that attending a hearing at Mulliner House filled her with dread and added to her stress and anxiety. She kept thinking about having been frog marched out of the building when she had been suspended.

85 On 12 November the Claimant sent written submissions for the disciplinary hearing. On 13 November she explained that she had sent them because she was unable to attend the hearing for the reasons that she had already given.

86 The disciplinary hearing took place on 13 November 2017. The Claimant did not attend. The following witnesses gave evidence at the disciplinary hearing – Martin Horne, John Wilson, Mary Canavan, Nadia Aoinallah (Finance team member), Abdi Warsame, Nicholas Appeah, Keithra Adderley (HR Administrator). Mr Jain asked the witnesses questions. He put to Mr Wilson points that had been made by the Claimant. The hearing lasted about two hours.

87 On 15 November Mr Jain sent the Claimant his decision. He upheld the allegation against her, concluded that it amounted to gross misconduct and decided that the appropriate sanction was dismissal without notice. The Claimant's employment was terminated on 15 November 2017. His reasons for so concluding were as follows. The Claimant had failed to follow a management instruction. She had sought to have her expenses approved by a director outside her line management without disclosing to that director that her manager had refused to authorise them. If she had succeeded she would have benefitted by getting a financial gain. He also found that requesting a junior member of staff to gather expense claim data submitted by other members of staff was an abuse of her position as there was no business need for her to access that information. As the Claimant was a senior member of the Finance team, those findings were of particular concern. She had deliberately sought to circumvent the Respondent's control and authorisation process for her own financial gain. She had abused her position as a manager and as a member of the Finance function to obtain information for personal advantage. In the circumstances, he saw no viable option but to dismiss her for gross misconduct.

88 On 22 November 2017 the Claimant's doctor provided a short report and her medical records to her solicitors. He said she had a diagnosis of Acute Stress Reaction. She had first presented with that on 15 December 2016 and it was ongoing. The medical records showed that the Claimant had seen her doctor on six occasions between 15 December 2016 and 10 May 2017. She was prescribed 20 mg Fluoxtetine during that period. In April and May it was noted that her sleep and mood had improved. On 13 June 2017 when it was noted that she was returning to work the following day. She was taking 20 mg of Fluoxetine per day at that time. It was noted that after 6 to 8 weeks she could try decreasing that. The Claimant visited her doctor on 26 July 2017 and complained of having been ill at the hearing that day. On 16 October the Claimant asked for Fluoxetine again. She next visited her doctor on 24 October 2017. The notes indicated that she had stopped the Fluoxetine and had recently re-started it. She complained of headaches, poor sleep and fatigue. She was given a medical note that she was not fit for work due to stress until 7 November. On 7 November the Fluoxetine was increased to 40 mg a day.

89 The Claimant appealed against the decision on 21 November 2017. The appeal hearing was originally scheduled for 13 December 2017. Matt Campion, the Respondent's new Chief Executive, was appointed to hear the appeal. The Claimant asked for the venue to be changed to Watford in order to accommodate her health condition. She did not provide any medical evidence to the Respondent. Mr Campion replied that the Watford venue had been booked for the grievance hearing as the Claimant had been off sick at that time. He offered to move the appeal hearing away

from the head office to the Respondent's office at Craft Court Hammersmith. The Claimant responded that she could not attend a meeting in London as she felt that her reasonable requests had not been met. The meeting was rescheduled to 20 December 2017.

90 The disciplinary appeal hearing took place on 20 December 2017. The Claimant did not attend. Mr Jain attended. Mr Campion questioned him and put to him the points that the Claimant had made in her notice of appeal. Mr Campion sent the Claimant the outcome on 22 December 2017. The outcome letter comprised seven pages. Mr Campion dealt with all the points that the Claimant had raised. He said that Mr Jain had attended the meeting and he had questioned him and put to him the points the Claimant had made in her appeal. He did not uphold her appeal.

Conclusions

Victimisation

91 We considered first whether the Claimant's grievance of 14 December 2016 amounted to a protected act under section 27 of the Equality Act 2010. We considered whether in that grievance made an allegation that Mr Wilson had contravened the Equality Act 2010. She did not suggest anywhere in that grievance that he had bullied and harassed at her those meetings because of any protected characteristic. Her case, as we understand it, is that she alleged that he was victimizing her. In order for the Claimant to establish that she would have to show that in her grievance she alleged that Mr Wilson had bullied and harassed because she had brought a claim against him in the Tribunal in 2006. She does not say that. The fact that she told him that she was not happy being interviewed by him alone because of the past history between them is not the same as her alleging that he was bullying and harassing her at that interview because of the previous claim. We concluded that it did not amount to a protected act. However, in case we are wrong in reaching that conclusion, when we considered whether there was any causal link between any of the detriments and the protected acts, we included that one as well.

92 We then considered whether the Claimant was subjected to the detriments of which she complained. We did not accept that the instigation of the disciplinary action against the Claimant was unjustified or that by instigating the Respondent treated her differently from the way it treated others. The important point to remember is that the Respondent did not commence disciplinary action against the Claimant because she had not calculated her expenses properly. It commenced disciplinary action because she tried to get another director to approve her expense after her manager had declined to do so without disclosing that fact to the other director. It might be the case that some of the claim forms were not wholly accurate. None of them struck Mr Wilson as being anomalous because they were all within the range in which he expected them to be. He did not commence disciplinary action against her because she presented an incorrectly completed expense claim form. He told her to do it properly.

93 There was no evidence that the Respondent was aware of anyone else doing what the Claimant did. The Claimant stated in her disciplinary appeal that her staff had gone to Mr Wilson to authorise their expenses when she had refused to do so. She did not provide any details of that assertion. In the hearing before us, she said that she had refused to authorise A Mensah's expense for the Away Day because

she had not made any deductions and there was no receipt attached to it. The claim was for £6.50. We did not find the Claimant's evidence on this to be credible because she never made that point at the disciplinary hearing. In any event, even if that was the case, there was no evidence that Mr Wilson was aware that the Claimant had refused to authorise it. It was accepted that if a line manager was not available, staff could and did approach the manager's manager to sign it.

94 The Claimant's case was that the Respondent instigated the disciplinary action because Mr Doe and Mr Wilson had wanted to get rid of her since her 2006 Tribunal claim but had not been able to do so while Patricia Humberstone was in the organisation. Following her departure in July 2016, they had been able to do so. That case is not credible for a number of reasons. There was no evidence that either Mr Doe or Mr Wilson had been hostile to, or subjected the Claimant to, any detriment for the ten years that they worked together after the case. On the contrary, there was evidence that Mr Wilson had been positive about the Claimant. she had had good appraisals and significant salary increases. There was no evidence that Mr Doe had anything to do with the disciplinary process. The decision to instigate the disciplinary process was not made by Mr Wilson. Mr Shaw decided to instigate the disciplinary process because of the information that Mary Canavan had passed on to others. They had not been involved in the 2006 Tribunal claim and there was no evidence that either of them bore any hostility to the Claimant because of it.

95 Having considered all the evidence carefully, we were satisfied that the instigation of the disciplinary process in November 2016 had nothing to do with the fact that the Claimant had brought and won the Tribunal claim in 2006.

96 We have found that that Mr Wilson raised his voice after the meeting on 1 December 2016 when the Claimant refused to return the script to him; we have not found that he shouted at any of the meetings on 10 November, 17 November or 1 December. There was a dispute or an argument between the Claimant and Mr Wilson at the second meeting on 10 November about how to calculate the cost of home to work travel. They went round in circles and could not agree. That does not amount to bullying or harassment by Mr Wilson. As far as the interview of 17 November is concerned there is nothing that Mr Wilson said or the manner in which he said it that amounts to bullying or harassment of the Claimant. It is clear from listening to it that the Claimant was the one who was loud and forceful and not Mr Wilson. The fact that Mr Wilson continued with the interview after the Claimant made it clear that she did not want to be interviewed by him alone does not amount to bullying or harassment. It is not for the employee to dictate who should be present at the interview. That having been said, the Claimant's view that he was not the appropriate person to conduct the disciplinary investigation because it was likely that he would be a witness had some force, and Mr Wilson should have stopped the interview and sought advice on that point. Had he had more experience of conducting disciplinary investigations, he might have done so. However, he took the view that he had been asked by his line manager to conduct the investigation and that he should do so. We were satisfied that his failure to stop the interview earlier had nothing to do with the Claimant's Tribunal claim of 2006.

97 We accept that Mr Wilson should not have been appointed the investigating officer because it was likely that he would be a witness in the investigation. That decision was made by Mr Shaw. We have found that Mr Wilson was reluctant to conduct the investigation. Mr Shaw had only recently started working for the

Respondent. There was no evidence from which we could infer that Mr Shaw's decision to appoint Mr Wilson was in any way influenced by the Claimant's Tribunal claim ten years earlier.

98 The Claimant made allegations of bullying and harassment against Mr Wilson in relation to his handling of her expense claim and his subsequent investigation. Even before those allegations had been investigated or found to have any substance, the Respondent decided that it would ignore Mr Wilson's investigation report and appoint someone else to conduct the investigation afresh. It is difficult to see how by doing that the Respondent subjected the Claimant to a detriment. The Claimant's allegation that this gave the Respondent "a second chance" at holding a disciplinary action against her would have had more force if the first investigation had found that there were no grounds for progressing the matter to a disciplinary hearing. On the basis of what Mary Canavan had said, the allegations of potential misconduct remained and they needed to be investigated. We concluded that by having a second investigation the Respondent treated the Claimant favourably because it ignored the first investigation on the basis of her complaints (which had not been investigated or substantiated). The Claimant was not subjected to a detriment.

99 The appointment of Mr Khine was not in breach of the Respondent's grievance procedure and he was not a junior employee. By appointing him, the Respondent did not subject the Claimant to a detriment. It had nothing to do with the Tribunal claim of 2006 or because the grievance contained, if it is found that it did contain, any allegations of victimisation under the Equality Act 2010.

100 We have not found that the weight of evidence supported the Claimant's grievance or that the decision to uphold it was wrong or flawed in any material way.

101 The Claimant was suspended on her first day back at work after a long-term sickness absence. HR decided to suspend her because of additional matters that had come to light on her sickness absence. However, while the Claimant remained off sick the Respondent had not felt that it needed to carry out the suspension because she was, in fact not at work. Prior to 14 June 2017 the Respondent attempted to make contact with the Claimant to find out what he plans were. The Claimant did not make contact with the Respondent prior to attending work on 14 June 2017. The Claimant was suspended in a private office and not in front of her colleagues. The Respondent's normal practice (and that of many other employers) is to escort the employee to his/her desk to collect any personal belongings and then off the premises. As the Claimant objected to that, it was agreed that she could return to her desk on her own and then meet Ms Lewis and Ms Stringer by the exit doors. Ms Lewis only had to go upstairs to find her because she took much longer than she should have done. We accepted that the Respondent subjected the Claimant to a detriment by suspending her, but we did not accept that it did so in front of her colleagues and in a manner calculated or likely to cause upset, distress and humiliation to her. We were satisfied that the decision to suspend her had nothing to do with her Tribunal claim of 2006, or any allegation of unlawful acts under the Equality Act 2010 in her grievances of 14 December 2016 or 9 April 2017.

102 The Respondent did not render the Claimant's right to be accompanied at the reconvened grievance appeal hearing on 16 August 2017 or the disciplinary hearing on 13 November 2017 "worthless" by saying that, because of her suspension, she must not contact the employees but should provide the Respondent with their names

and it would get them to contact her. We do see how contacting the employees in that way either put the Claimant at a disadvantage or made it impossible or difficult for her to get someone to accompany her. By imposing that requirement the Respondent did not subject the Claimant to a detriment or render her right to be accompanied "worthless". In any event, there was nothing from which we could infer that that decision had anything to do with the Tribunal claim of 2006 or any allegations of unlawful conduct in the grievances of 14 December 2016 or 9 April 2017.

103 By refusing to hold the disciplinary hearing at Watford on 13 November 2017 the Respondent did not subject the Claimant to a detriment. There was no medical evidence that the Claimant needed to attend a meeting at Watford or that she could not attend a meeting at the office in West London. In February 2017, when the Claimant was off long-term sick, the Occupational Health report had recommended that any forthcoming meetings be arranged away from the Claimant's usual workspace. It had not recommended that they be held in Watford. In any event, things had moved on since then. The Claimant had been fit to return to work from 14 June 2017 onwards. At the end of July the Claimant had informed the Respondent that she had been diagnosed as suffering from stress. By 22 August 2017 the grievance process had concluded and the Claimant's grievances had not been upheld. We do not accept that the refusal to hold the meeting at Watford put the Claimant at a disadvantage. She might have preferred for the meeting to be held in Watford, it might have been more convenient for her, but that does not mean that by refusing to do so the Respondent subjected her to a detriment. In any event, it had nothing to do with the Tribunal claim of 2006 or any allegations of unlawful conduct under the Equality Act 2010 in the grievances of 14 December 2016 or 9 April 2017.

104 The decision to dismiss was made by Mohit Jain and upheld by Matt Campion. Both of them were senior to John Wilson. They had both been appointed recently (in January and June 2017), long after the previous Tribunal case in 2006. There was no evidence that they bore any hostility towards the Claimant because of it or that they had in any way been instructed to reach or influenced in their decision by Paul Doe. They both set out in their decision letters at the time and in evidence before us why they considered that dismissal was the appropriate sanction. We were satisfied that Mr Jain decided to dismiss the Claimant because he took the view that her conduct merited dismissal. We were satisfied that the claim of 2006 or any allegations of unlawful discrimination/victimsation under the Equality Act 2010 played no part in the decision that he reached and that Mr Campion upheld.

105 The complaints of victimisation in respect of acts/omissions that occurred before 22 March 2017 (at paragraph 2.2(i) – (vi)) were not presented within the prescribed primary time limits. We considered whether it would be just and equitable to consider those complaints. It was argued on behalf of the Claimant that it would because the Claimant had been unwell and unfit to work from December 2016 to June 2017. In considering whether to exercise our discretion we took into account the following matters – what the Occupational Health Physician said about the Claimant's health in February 2017, the Claimant raised a grievance about these maters on 14 December 2017 and she did not receive the outcome until 13 June 2017, she tried to resolve matters internally before embarking on Tribunal proceedings, and the fact that the Claimant was able to submit an addendum to her grievance on 9 April 2017. We also took into account the fact that the claims go back to matters that occurred in or after November 2016 and that the Respondent's witnesses have been able to give

evidence about those matters. In all those circumstances, we concluded that it would be just and equitable to consider them.

Right to be accompanied

106 In the present case the Respondent advised the Claimant of her right to be accompanied to the grievance appeal hearing on 16 August 2017 and the disciplinary hearing on 13 November 2017 and permitted her to choose the fellow-worker whom she wanted to accompany her. In order to overcome the logistical difficulties posed by the restriction imposed on the Claimant as a result of her suspension not to contact any work colleagues, the Respondent proposed a sensible and pragmatic solution. If the Claimant provided them with the name or names of persons she wanted to accompany her, they would ask those individuals to make contact with her. There would be direct contact between her and the colleague concerned. The only difference would be that instead of her calling them, they would call her. We do not accept that that proposal had the effect of preventing the Claimant of exercising her right under section 10. It was a way of making it possible for her to exercise that right while still complying with the restrictions imposed by the suspension.

Disability Discrimination

107 The evidence before us was that from 15 December 2016 to 14 June 2017 (a period of six months) the Claimant suffered from stress which was related to bullying at work. It affected her mood and sleep, which started to improve in April and May. During that period she took 20 mg of Fluoxetine per day. She was certified as unfit to work. She had no previous history of anxiety or other psychological symptoms. In June 2017 the Claimant was fit to return to work and she did return to work. She did not visit her doctor again until 26 July when she had suddenly felt ill at a grievance hearing. At some stage she stopped taking the Fluoxetine. She next saw the doctor for stress in October when she re-started the Fluoxetine. Between June and October 2017 she was not given any medical certificates that she was unfit for work.

108 On the basis of that evidence we cannot conclude that between June and November 2017 (the period in respect of which the complaint of failure to make reasonable adjustments is made) the Claimant had a mental impairment and that the effects of that impairment had lasted, or were likely to last for, at least 12 months. We concluded, therefore, that the Claimant was not disabled.

109 In case we are wrong in reaching that conclusion, we went on to consider the complaints of failures to make reasonable adjustments. We considered firstly whether, if the Claimant was disabled between June and November 2017 the Respondent knew or could reasonably have been expected to know that. We concluded that it did not and could not reasonably have been expected to know it. The Respondent knew she was unfit to work for six months because of stress and bullying at work. It knew what the Occupational Health Physician had told it in February 2017. It knew that the Claimant was well enough to return to work in June 2017 without any adjustments being requested. Thereafter the only indication that it had that the Claimant was not well was when she left the grievance hearing on 26 July because she was unwell and the information that she gave them on the telephone the following day. On the basis of the information the Respondent could not reasonably have been expected to know that the Claimant had a mental

impairment which had had or was likely to have a substantial adverse impact on her normal day to day activities for at least twelve months.

110 We then considered whether the PCPs in question put the Claimant at a substantial disadvantage in comparison with person who were not disabled. The first PCP applied was that the disciplinary hearing on 13 November 2019 would be held at the Respondent's office at Mulliner House in West London. There was no medical evidence that the Claimant's stress-related absence prevented her attending a meeting at Mulliner House. The Occupational Health report, which had been prepared some nine months earlier at a time when the Claimant was absent sick, had suggested that any forthcoming meeting be arranged "*in a meeting room that is away from her usual workspace or at another neutral venue".* The first of those alternatives permitted the meeting to be held in Mulliner House. In any event, things had moved on since then. The Claimant had been fit to work in June and had attended at Mulliner House to resume work. The Claimant's evidence was that she found it stressful to attend a meeting at Mulliner House because she had been suspended there in June 2017. The medical evidence before us shows that the Claimant was suffering from stress in October and November 2017. In those circumstances, we accepted that if the Claimant was disabled, by reason of her stress in November 2017, attending a meeting at the premises where a stressful action (suspension) had taken place might have been difficult for her and, therefore, the requirement to do so might have put her at a substantial disadvantage. However, in light of what the Respondent knew about her medical condition after her return to work in June 2017, it could not have known or reasonably been expected to know that. Furthermore, we concluded that the Claimant was not prepared to attend a meeting unless it was held in Watford. She did not attend the appeal hearing although that was held at another venue.

111 We did not see how the PCP not to contact colleagues while she was suspended out the Claimant at a substantial disadvantage in comparison with person who were not disabled. The Respondent put in place arrangements to enable the Claimant to have contact with anyone she wanted to accompany her to any hearings. Those arrangements did not put a person who was suffering from stress at any disadvantage in comparison with a person who was not disabled.

<u>Unfair Dismissal</u>

112 We found that the reason for the dismissal was that Mr Jain concluded at the end of the disciplinary hearing that the Claimant had failed to follow her manager's instructions on how she should calculate her expenses and when he had refused to authorise them she had attempted to get another manager to authorise them without disclosing to her that her line manager had refused to authorise them and that she had done so for financial gain. Furthermore, she had misused her position by getting a junior member of staff to obtain data to support her case in her disiciplinary when there were no job-related reasons for her to access that information. That is a reason related to conduct. Mr Jain believed that the Claimant was guilty of that misconduct.

113 We then considered whether the Respondent acted reasonably in all the circumstances of the case in treating that as a sufficient reason for dismissing the Claimant. We considered first whether the Respondent had carried out as much investigation into the matter as was reasonable in the circumstances and whether Mr Jain had reasonable grounds upon which to sustain his belief that the Claimant was

guilty of the misconduct which he found established at the end of the disciplinary hearing.

114 In considering the reasonableness of the investigation, we bear in mind that the scope of the investigation was narrow. In essence, the Respondent had to determine whether the Claimant did what Ms Canavan claimed that she did on 10 November and, if she did, why she did it and, secondly, whether she did Mr Warsame said that she did and, again, if she did, why she did it. In conducting the disciplinary investigation, Martin Horne interviewed John Wilson, Mary Canavan and Abdi Warsame. He invited the Claimant to attend a disciplinary investigation hearing, but she did not do so. Mr Jain investigated the matter further at the disciplinary hearing. He heard evidence from and questioned the following witnesses – Martin Horne, John Wilson, Mary Canavan, Abdi Warsame, Nicholas Appeah and Keithra Adderley. The Claimant was invited to attend the hearing but she did not attend. She sent in written representations. They were considered by Mr Jain and he put some of the points made by the Claimant to the witnesses. The Claimant did not attend the appeal hearing although it was moved to a different venue. Mr Campion took into account the points raised in the Claimant's notice of appeal and questioned Mr Jain on a number of issues.

115 It was argued on behalf of the Claimant that the Respondent did not investigate whether in deducting the cost of travelling form home to work in car the mileage rate should have been calculated at 40p a mile or 65p a mile. We considered that to be an irrelevant factor. The Claimant had never argued that it should be 40p. More importantly, the issue was not whether the Claimant or Mr Wilson was right. There had been a dispute between them and it had been agreed that they would raise the matter with Mr Shaw when he returned to work.

116 It was also argued that it had never been made clear to the Claimant that it was being alleged that she had misused or abused her position to get the information that she got from Abdi Warsame and, hence, she had not been given the opportunity to respond properly to that allegation. We do not accept that that was the case. The details of the allegation were set out in the report and copies of the interviews with Mr Warsame were attached to it. In his conclusions (see paragraph 79 above) Mr Horne made it clear that if it was accepted that the Claimant did what was alleged it amounted to an unfair use of her authority as a senior manager and that the allegations called into her position of trust as a Financial Accountant. Therefore, the substance of the allegation was made clear to the Claimant and she had very opportunity to respond to it. We accept that it did not feature as a separate allegation in the letter inviting the Claimant to a disciplinary hearing. However, the investigation report was attached to the report and the Claimant addressed it in her written submission sent to Mr Jain on 12 November. The Claimant also addressed the issue in her notice of appeal against her dismissal. She complained that she had not been informed that it was a specific allegation and had, therefore, been deprived of the opportunity to address it. She addressed it in her notice of appeal and concluded by saying that there was a business need for her to access that information. Mr Campion considered what the Claimant said and investigated it with Mr Jain in the appeal hearing. Having considered what they both said, he concluded that Mr Jain had been justified in reaching the decision that he did. Having looked at the process as a whole the Claimant was aware of the nature of the allegation and had the opportunity to address it and did address it.

117 It was also argued on behalf of the Claimant that had Messrs Jain and Campion investigated the matter properly they would have realised that their assertions that everyone else who attended the Away Day had correctly applied the expenses policy were not accurate. Two points need to be made. Firstly, all the other claims were for £6.50 or less and it was not immediately apparent from the claims themselves that they had not been calculated correctly. Secondly, and more importantly, it was irrelevant. The Claimant was not facing disciplinary for not following the expenses policy correctly. She was facing disciplinary action for trying to circumnavigate her manager's refusal to approve her expense claim by getting someone else to sign it by withholding from that person all the relevant information. It was also said that because the Claimant had said in her appeal that her staff had gone to Mr Wilson to authorise their expenses when she had refused to do so and it was normal practice to do so, the Respondent should have investigated that. If the Claimant wanted to advance that as a defence, the onus was on her to provide some evidence of it.

118 We were satisfied that the Respondent carried out as much investigation as was reasonable in the circumstances and that Mr Jain had reasonable grounds upon which to reach his conclusion that the Claimant had been guilty of the misconduct.

119 We considered whether there had been any procedural flaws such as to render the dismissal unfair. We have not accepted, for the reasons that we have already given, that the Claimant was deprived of her right to be accompanied at the disciplinary hearing and the appeal hearing. We have concluded that it was reasonable to hold those hearings at the venues where they were held and that the Claimant could have attended them. The Claimant was provided with all the evidence that was relevant to the allegations made against her.

120 Finally, we considered whether dismissal was within the band of reasonable responses open to a reasonable employer. It was not in dispute that the Claimant had long service and a clean record. She was a senior member of the Respondent's finance team and in a position of trust. Having been told by her line manager that she was not entitled to a certain sum of money in the way of expenses, she had tried to get that sum by getting another manager to approve by withholding the truth from her. It was reasonable for the Respondent to view that as failing to follow her manager's instruction, insubordination and being dishonest to obtain a financial gain. The amount of financial gain is irrelevant. The issue is one of trust and integrity for someone in her position. We considered that for that allegation alone, dismissal was within the band of reasonable responses open to a reasonable employer.

Wrongful Dismissal

121 We concluded that the Claimant's conduct in trying to get Mary Canavan to approve her expense claim in circumstances where her line manager had refused to approve it on the grounds that it had not been correctly calculated and not disclosing that fact to Ms Canavan was both insubordinate and dishonest. The purpose of doing so was to receive more than what her line manager had told her she was entitled to receive. We concluded that having regard to the Claimant's position within the Respondent that was sufficiently serious to amount to a repudiatory breach of her

contact of employment and that the Respondent was entitled to dismiss her without notice.

Employment Judge Grewal

Date 22 July 2019

JUDGMENT & REASONS SENT TO THE PARTIES ON

22 July 2019

.....

FOR THE TRIBUNAL OFFICE