



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms E Balcerzak

v

Cardinal Hume Centre

Heard at: London Central

On: 6 – 9 January 2020

Before: Employment Judge E Burns

Representation

For the Claimant: In person

For the Respondent: Mr T Shepherd (Counsel)

RESERVED JUDGMENT

The judgment of the Employment Tribunal is that the claimant's claim for unfair dismissal is not upheld and her claim is therefore dismissed.

REASONS

CLAIMS AND ISSUES

1. By a claim form presented on 31 August 2018, following a period of early conciliation from 18 July 2018 to 14 August 2018, the claimant brought a claim of unfair dismissal and a claim for notice pay.
2. The matter was listed for a final hearing on 14 February 2019, but for various reasons the final hearing could not proceed. A preliminary hearing was conducted instead to discuss the issues in the case. Various case management orders were also made.
3. The claimant withdrew the claim for notice pay, as she accepted that she had been paid for a notice period that was spent on garden leave. The remaining issues relating to liability were agreed as follows:

1. Did the respondent dismiss the claimant for a potentially fair reason? The respondent says that the reason was conduct or some other substantial reason, namely an irretrievable breakdown in trust.
2. Did the respondent have a genuine and reasonably held belief that the misconduct took place, following such investigation as was reasonable?
3. Was the dismissal procedurally fair?
4. Was the decision to dismiss a fair sanction, that is, was it within the reasonable range of responses of a reasonable employer?

THE HEARING

4. The hearing had been listed for four days, to include liability and remedy. The claimant represented herself and the respondent was represented by counsel.
5. Ensuring the case could be heard within the listing was challenging. In fact, it took the full four days to hear the witness evidence and parties' closing submissions on liability.
6. Various case management issues arose. I explained the reasons for my case management decisions carefully as we went along, including my commitment to ensuring that the claimant was not legally disadvantaged because she was a litigant in person or because English was not her first language. I provided guidance on the procedure and we had a number of discussions about the next steps and the timetable as the hearing progressed. In addition, I explained the legal tests I would be applying when discussing the relevance of the evidence and the content of submissions.

Witness Evidence

7. For the respondent, the tribunal heard oral evidence from:
 - Mrs Maureen Boughton, Human Resources Director
 - Ms Aimee Djengiz, Family and Young People's Services Manager
 - Mr Mark Foster, Director of Services
 - Ms Cathy Corcoran, former Chief Executive Officer
8. The respondent had submitted a written witness statement from Jane Sandeman, former Director of Finance and Central Services and the claimant's line manager. Ms Sandeman did not attend the hearing to give oral evidence. I was told that she had left the respondent in May 2019. I did not give any weight to her written statement.
9. For the claimant, the tribunal heard evidence from the claimant herself.

10. The claimant had sent her witness statement to the respondent before receiving its witness statements. She asked the respondent's witnesses if they had prepared their witness statements in response to receiving her statement. Each of the respondent's witnesses said that they had not. I accepted this was the position, as I could see that there were a number of issues raised in the claimant's statement that were not mentioned by the respondent's witnesses in their written statements. They did not appear to have been prepared reactively.

Documentary Evidence

11. There were two bundles. One was prepared by the respondent and ran to 297 pages. The other was prepared by the claimant and ran to 352 pages. There was a good deal of duplication between the bundles.
12. I read all the documents in both bundles to which I was referred. The page numbers of key documents that I have relied upon when reaching my decision are given below. Page references are to the respondent's bundle unless specified otherwise by the annotation "C". This is not because I preferred the respondent's bundle. The claimant had not provided a paginated version of her bundle for the witness table or the respondent (although she and I had a paginated copy) and therefore it was more convenient to use the respondent's paginated bundle where the documents were in both bundles.
13. The respondent's bundle contained 16 pages of documents which the claimant said she had not seen previously. I determined that the documents were relevant to the issues and should be included.
14. The claimant was concerned that some of the documents in the respondent's bundle were not copies of original signed documents on letterhead. She suggested the documents could not be relied upon and that the respondent may be trying to mislead the tribunal. Examples included her contract of employment and various letters addressed to her. She had included copies of the original signed documents in her bundle. Having compared the versions in her bundle with the copies in the respondent's bundle, I was satisfied that the respondent had provided carbon copies of the same documents and there was no attempt to deceive me.
15. The claimant's written witness statement included reference to correspondence sent in reliance on section 111A of the Employment Rights Act 1996 and marked '*without prejudice*'. The statement attached that correspondence. I read the relevant part of her statement before realising what it contained, but did not read the attachments. I explained the relevant legal principles to the claimant, and she agreed that the documents should not be before me. The respondent was content to proceed on the basis that I would disregard what I had read.
16. During the course of the hearing, it became apparent the claimant had prepared a lever arch file of documents while she was employed in order

to refute the allegations of misconduct against her. She had retained some of the documents, but not the complete file. This came to light during the claimant's cross-examination of the respondent's witnesses when the claimant asked Ms Djengiz why the respondent had not included the documents in its bundle.

17. Counsel for the respondent was unaware of the file of documents and had not seen its contents. On taking instructions, he was able to tell me that the respondent had provided the documents to its solicitors, but not whether they had been included in the disclosure exercise.
18. The claimant believed the documents should be before the tribunal. The respondent, without being ordered to do so, agreed, but reserved its position on relevancy. The respondent provided copies of the file of documents at the start of the fourth day of the hearing, after the respondent's witnesses had been cross examined.
19. I was satisfied the tribunal was able to take appropriate account of the file of documents. The claimant was able to check the original file and had an opportunity to explain the relevance of the documents to me and explain how she felt they supported her case. We discussed recalling the respondent's witnesses in connection with the documents. Both parties were satisfied that they did not need to recall any of the respondent's witnesses and question them about the documents.

Timetable

20. During the course of the hearing, I exercised my power under rule 45 of the tribunal rules which states:

"A Tribunal may impose limits on the time that a party may take in presenting evidence, questioning witnesses or making submissions, and may prevent the party from proceeding beyond any time so allotted."
21. The hearing started on time on the first day. Following preliminary discussions which took 45 minutes, I read the witness statements and reviewed the documents referred to in them until 2 pm.
22. Following a discussion about the without prejudice documents, the claimant began her cross examination of the respondent's first witness just before 2:30 pm. She continued with that witness the following day.
23. Two of the respondent's witnesses were only available on the second day of the hearing. This became apparent after the mid-morning break on that day. We agreed to interpose them, and the claimant spent the remainder of the second day cross examining them. I gave the claimant until 5 pm (with a lunch break) to cross examine both witnesses, which I considered was a proportionate amount of time, if not generous.
24. Despite me persistently warning the claimant of the time constraints she did not manage her time well and was left with proportionately less time

with the second witness (Mr Foster). Her time management was not helped by her insistence on repeatedly asking questions which were either not relevant or which had already been asked and answered several times. She appeared to find it very difficult to take guidance or direction from me, although she was polite and courteous at all times.

25. A similar thing occurred on the third day when the claimant was questioning the respondent's remaining witnesses. She was left with proportionately less time to question Ms Corcoran. I was satisfied, however, that she was able to put her key points to all of the respondent's witnesses.
26. The timetable was further affected by the need to adjourn (after lunch on the third day) to enable the respondent to provide copies of the file of documents referred to above.
27. On the fourth day, at the point at which we were about to start the respondent's cross examination of the claimant, the claimant, accompanied by a solicitor from the ELIPs scheme, indicated that she may wish to apply for an amendment of her claim. The tribunal adjourned to allow the claimant to be properly advised on this issue. The claimant decided not to proceed with the application.
28. In order to give the respondent adequate time to cross examine the claimant (1 hr 40 mins) I sat late. We concluded at 5:45 pm on the final day. Both parties provided written closing submissions which they expanded upon orally. I limited both parties to half an hour.

Further Written Submissions

29. The claimant requested that she be given the opportunity to be able to make written submissions after the end of the hearing. At the time of making the application she had not had the opportunity to explain the relevance of the file of documents orally to me and wanted the chance to do this in writing.
30. The respondent objected to the claimant's application and I did not allow it. The documents had been put together to support the detailed written submissions the claimant had prepared during the respondent's investigation process. Their significance could therefore be readily understood from reading those submissions. In light of this, and the opportunity I gave to the claimant to explain the documents orally, I decided further written submissions on them would not be required and would place a disproportionate burden on the respondent.

FINDINGS OF FACT

31. My findings of fact are set out below. Where I have had to reach a conclusion in relation to disputed facts, I have made my findings on the balance of probabilities.

32. I have begun this section by setting out a brief summary and outline chronology. I then go into further detail in respect of the key factual matters that are relevant to the legal issues to be decided.

Brief Summary and Outline Chronology

33. The respondent is a charity providing support to homeless young people and poorly housed families and others in need. It employs 63 employees and has around a further 100 volunteers that work for it. It has a very small HR function which consists of a Director of HR and her admin support.
34. The claimant commenced employment with the respondent on 21 July 2015 as a Finance Assistant, reporting to Ms Jane Sandeman, the Director of Finance and Central Services. There was one other employee in the Finance Department, a Senior Finance Assistant called Anna Shepherd. Ms Sandeman was a qualified accountant.
35. The claimant was originally employed to work 3 days per week. This was increased to 4 days from 1 April 2017 (54).
36. Ms Sandeman began to develop concerns about the claimant's conduct towards the end of 2017 / the beginning of 2018. Her main concern was that the claimant was failing to follow her reasonable instructions. She was also concerned that the claimant was taking too long to complete tasks and missing important deadlines.
37. The two issues were intrinsically linked. In Ms Sandeman's opinion, she was instructing the claimant to do things that would save her (the claimant) time. The consequences of the claimant not obeying was that the claimant was spending time on unnecessary tasks with the knock on effect that she was not completing her work. Ms Sandeman was also concerned that the claimant was requiring other staff to spend time on unnecessary financial administration.
38. Ms Sandeman shared her concerns with the respondent's Director of HR, Mrs Maureen Boughton. In response to the concerns raised by Ms Sandeman, an investigation process under the respondent's disciplinary procedure was initiated. The investigator was Ms Aimee Djengiz. She commenced her investigation on 3 April 2018 and completed it by 4 May 2018. Her investigation included interviewing Ms Sandeman and the claimant as well as reviewing various documents.
39. The claimant did not accept that she had failed to comply with reasonable management instructions. She accepted that she had disobeyed her line manager's instructions, but maintained throughout the respondent's disciplinary process (and during the tribunal hearing), that this was because the instructions were not reasonable and did not comply with the accountancy code of conduct or principles. She did not accept that she was behind with aspects of her work.

40. Ms Sandeman felt the claimant's behaviour deteriorated following the initiation of the investigation and became so serious that it was creating risk for the respondent. She therefore asked Ms Boughton if it was possible to suspend the claimant. Ms Boughton actioned this and the claimant was suspended on full pay on 4 May 2018.
41. The claimant was invited to attend a disciplinary hearing to be conducted by Mr Mark Foster, Director of Services. He met with the claimant on 15 May 2018. The hearing was adjourned until 1 June 2018. When the claimant did not attend that adjourned hearing, Mr Foster decided that she should be dismissed with one month's notice in her absence.
42. The claimant viewed the respondent's disciplinary process as unfair, cruel and one-sided. She regularly referred to it at the time (and during the hearing) as a "prosecution" as if it was a criminal process. My finding is that this was not because English is not her first language, but was a deliberate choice of vocabulary by her. She made numerous allegations against several of the respondent's employees during the disciplinary process, some of them serious. Mr Foster decided that these were unsubstantiated, and that the claimant should be dismissed for misconduct/ breakdown in the working relationship.
43. The claimant's last day of employment was 7 July 2018. Having been suspended, the claimant did not undertake any work between that date and her last day of employment. Her notice period was said to be spent on "garden leave."
44. The claimant appealed against the decision to dismiss her. The respondent's chief executive, Ms Corcoran invited her to attend an appeal hearing on 18 June 2018. Ms Corcoran rejected the claimant's appeal and upheld Mr Foster's decision to dismiss the claimant.

Key Factual Matters in Detail

45. Having provided a brief overview, I now set out in more detail the factual findings I have made on key matters that I consider are relevant to deciding the issues in the case.

Relevant background information

46. One of the objections raised by the claimant about the respondent's decision to dismiss her, was that she had worked for the respondent for almost three years before the disciplinary investigation, during which time she had received positive appraisals. She said that her performance and conduct did not change, but my finding is that this was not the case.
47. During her earlier employment, the claimant had indeed received positive feedback and appraisals. There is clear evidence that this was the case in May 2016 (C34-36) and June 2017(C37-38). However, even in these early appraisals there is some evidence of concerns about her performance.

One person notes in May 2016 that the claimant sometimes appeared to be nervous and panicked. Another notes that the claimant may need to look at her time management as she is often in the office after her official finish time. In May 2017 it is noted that *“On the odd occasion, rigidly in following an internal procedure has allowed bureaucracy to triumph over common sense. A little flexibility could have been exercised without compromising financial integrity.”*

48. The claimant was very committed to her work. The claimant is someone who sets herself very high standards and wants to produce perfect output. I find this is what led to her having her working hours extended in April 2017. Her line manager, Ms Sandeman recognised that the claimant needed additional time to complete her work to her own high standards with the thoroughness she (the claimant) felt was necessary. Ms Sandeman therefore sought, and was granted, approval for an increase in the claimant’s working hours.
49. The respondent paid for the claimant to obtain accountancy qualifications relevant to her role. She achieved a distinction in the AAT Foundation Certificate in Accounting - Level 2 in 2017 with extremely impressive results (57 and C12 – 18).
50. The claimant asked the respondent to pay for her to undertake Level 3 of the same qualification. She was required to prepare a business case setting out the benefits for the respondent of her doing the course. She did this in June 2017 (55 - 56). She identified a number of ways in which she felt the course would benefit the respondent.
51. The respondent was happy to approve the request and entered into a standard type training agreement with the claimant. This gave it the power to claw back some of all of the training course fees if the claimant left the respondent voluntarily or as a result of being dismissed within a set time period of completing the course (C19-20).
52. The claimant treated the content of the business case as her “promise” to the respondent. This included, in her mind, a promise to help the respondent eliminate mistakes in its financial processes and improve efficiency. It is of particular relevance that she notes in the document her desire to guide her colleagues on how to produce vital documents to enable her to process them efficiently and without delay. She states that *“I need a lot of accounting principles to deal with crucial matters”* and sets out her belief that *“any mistake can damage the company’s reputation and image.”* The document reveals, to a degree, the disproportionate importance the claimant gave to accountancy matters being perfect.
53. The claimant started to study the AAT Level 3 course in the Autumn of 2017. From this point onwards there began to be a change in her behaviour. Up until this point, she had followed instructions given to her by her line manager. However, she became convinced, due to what she was learning on the course, that her line manager was asking her to do things

that were incorrect and in breach of accountancy principles. She was motivated by the “promise” she had made in her business case to take independent action.

54. Although Ms Sandeman did not attend the hearing as a witness, her thoughts about the claimant are clearly articulated in the notes of the investigation meeting she attended with Ms Djengiz on 5 April 2018. The notes states as follows:

“JS [Ms Sandeman] said that EB [the claimant] cannot make judgements on important and minor errors e.g. a PO not being signed or spelling error. JS says EB is not able to make judgements and so the payment run doesn’t get done until all errors are cleared up. JS said the framework EB uses bears no relationship to [the respondent’s] policy. JS said EB uses this framework to cope. JS says that she has said to EB that she (is the manager and that she has given the okay to accept certain errors but EB will still not do so.” (73)

55. In early March 2018, Ms Sandeman was becoming increasingly concerned about the claimant’s behaviour. She therefore spoke to Mrs Boughton, Director of HR to ask for her advice in dealing with the claimant.
56. Ms Boughton did not speak to the claimant about the concerns raised by Ms Sandeman. This was because the practice within the respondent is for HR to provide guidance to line managers to address concerns with staff directly, rather than for HR to intervene and take over. It would not therefore have been appropriate for Mrs Boughton to speak to the claimant.
57. Initially, Mrs Boughton advised Ms Sandeman to meet with the claimant under the respondent’s Capability Procedure with a view to developing a personal improvement plan to deal with the issues. Ms Sandeman prepared an initial draft letter and sent it Ms Boughton by email on 2 March 2018. Had the letter been sent it would have invited the claimant to attend a “capacity interview” to review her capability to carry out her duties as Finance Assistant. (67A-67B).
58. Ms Sandeman brought to Ms Boughton’s attention two further incidents where the claimant had failed to follow her instructions a few days later (67C). Ms Boughton incorporated the incidents into the draft letter and sent it back to Ms Sandeman on 4 March 2018 (67C – 67E).
59. Ms Sandeman did not send the letter to the claimant. This was because a further incident occurred on Friday 9 March 2018. Ms Sandeman emailed Ms Boughton that day to say that she had just had “another run in” with the claimant. She explained the circumstances and added “*I feel now that we should go to disciplinary. I don’t think it is acceptable to have someone who cannot obey simple orders and who has no concept of outcomes.*” (68)

60. Before Mrs Boughton had an opportunity to respond, on 13 March 2018, Ms Sandeman received a complaint about the claimant from a colleague via email (69). She forwarded this to Ms Boughton. Based on these two further issues, the respondent decided to instigate a misconduct investigation under its disciplinary procedure, rather than seek to address the concerns about the claimant through its Capability Procedure.
61. Mrs Boughton asked Ms Sandeman to provide further details of the behaviour that the claimant was exhibiting for the purposes of the investigation. Ms Sandeman provided a detailed document to Ms Boughton (294 – 297) on 19 March 2018. The document provided a chronology of Ms Sandeman's growing concerns about the claimant's behaviour during the previous three months dating back to 15 December 2017. Ms Sandeman also documented how she had tried to address her concerns with the claimant directly, but that this appeared to make the problem worse.

Aimee Djengiz

62. Ms Boughton asked Ms Aimee Djengiz, Family and Young People's Services Manager to conduct the investigation.
63. The claimant has alleged that Ms Djengiz was not a suitable person to conduct the investigation for a number of reasons.
64. The first reason was because the claimant considered Ms Djengiz to be too junior a manager. I note that the claimant did not raise this concern to the respondent at any time during the disciplinary process. Ms Djengiz was a second tier manager. She reported to the Director of Services. Although she had only been employed by the respondent for around year at the time of the investigation, she had previous management experience and had conducted other disciplinary investigations.
65. A further reason was because Ms Djengiz was not an accountant. The claimant raised this with Ms Djengiz directly during the investigation. Ms Djengiz felt that her experience of financial matters was sufficient.
66. The claimant also alleged that Ms Djengiz was not impartial. This was because, although Ms Djengiz came from another part of the respondent's organisation and was not part of the finance team, she had had interaction with the claimant in her role as she was responsible for liaising with the finance department with regard to petty cash claims and in relation to the processing of purchase orders and invoices. This was correct, but did not mean that Ms Djengiz was unable to be impartial.
67. The claimant also alleged that Ms Djengiz was not suitable to conduct the investigation because of her own poor practice in relation to preparation of petty cash claims and because of her attitude to the finance department.
68. The claimant collated examples of incorrect petty cash claims submitted by Ms Djengiz and asserted that she was one of the worst offenders in the

whole of the respondent. In her evidence to the tribunal, Ms Djengiz accepted that many of her petty claims had contained errors, but was unable to comment on whether she was the worst offender in the respondent's organisation. She explained that, in her view, many of the errors were trivial such as spelling mistakes, minor adding up errors or using an incorrect date format. She added that after the claimant left the respondent a higher proportion of her petty cash claims were accepted.

69. The claimant also believed that Ms Djengiz deliberately pushed work to the finance department rather than do it herself. She raised elements of this allegation with Ms Djengiz herself during the investigation and expanded upon this concern at the disciplinary hearing stage. Ms Djengiz denied that she deliberately pushed work to the finance department to avoid doing it herself and I accept her evidence on this point.
70. The final reason the claimant did not believe that Ms Djengiz should have been appointed as the investigator was because Ms Djengiz had previously upset the claimant. This was in connection with an email she had sent to an external contact of the organisation who was chasing payment of an invoice in November 2017. Ms Djengiz had emailed the contact to provide them with the claimant's name and direct work telephone number as the correct person in the finance department to deal with the matter.
71. The claimant perceived Ms Djengiz's actions as a breach of data protection and complained to her line manager about it. Ms Djengiz was not made aware of the concern at the time. The claimant raised this issue during the disciplinary hearing stage. She asserted that Ms Djengiz was not in a position to make judgements on her when she was responsible for such poor practice.
72. I am unable to conclude whether Ms Djengiz's actions were in breach of the respondent's policy on data protection as I was not referred to it. However, the explanation she gave me for sharing the claimant's details with the contact did not appear to me to constitute poor practice.

The Investigation Process

73. The claimant has alleged that the investigation was one-sided. She has accused the respondent of ambushing her, not providing details of the allegations against her, using a confusing numbering system and deliberately trying to intimidate her. She was also concerned at the length of time it took.
74. Ms Djengiz emailed the claimant on 3 April 2019 to invite her to attend an investigatory meeting on 6 April 2018 (C41). The invitation was in the form of an attached letter (71 – 72) that made it clear that Ms Djengiz had been asked to conduct an investigatory meeting regarding concerns of "*potential general misconduct; whereby it is alleged that you have failed to follow reasonable management instructions.*"

75. The letter provided no further detail of the allegations, but did say:
- “I understand that you have been made aware of this by your line manager and that a process would be initiated to explore it further.”*
76. The claimant claims that the email came out of the blue and gave her “*the shock of her life*” as her line manager had not said anything about the possibility of investigation in advance to her.
77. It is unclear whether or not Ms Sandeman informed the claimant that there was to be a disciplinary investigation. There is however evidence, contained in the claimant’s own witness statement, that Ms Sandeman had informed the claimant on several occasions that if the claimant disobeyed her instructions, Ms Sandeman would need to speak to HR about her behaviour. Although the claimant may not have been told specifically about the investigation, my finding is that it should not have come as a surprise to her that formal action was being taken.
78. Ms Djengiz’s letter advised the claimant that she could be accompanied to the meeting by a work colleague or trade union representative notwithstanding that this was not a statutory right. A copy of the respondent’s disciplinary policy was also attached. The letter advised the claimant that the matter was to be treated in the strictest of confidence.
79. Following an exchange of emails between Ms Djengiz and the claimant, it was agreed that the date of the investigation meeting would be rearranged to 10 April 2018. In addition, Ms Djengiz sent the claimant (on 5 April 2018) a document summarising the actual allegations she wished to investigate (291 – 293). I note that the summary was not sent on the respondent’s letterhead.
80. The document refers to the claimant by initials. The claimant takes great offence at this and says it was tantamount to treating her like a dog. The respondent’s explanation for using initials was to preserve the claimant’s confidentiality. This is a common practice within its organisation when referring to employees and clients. I accept the respondent’s evidence on this.
81. Ms Djengiz met with Ms Sandeman on 5 April 2019. Notes from the meeting were prepared by a note taker and were later shared with the claimant in advance of the disciplinary hearing (73 – 77). In order to assist with the discussion, Ms Djengiz labelled the allegations from (a) to (p). This labelling had not been added to the summary of the allegations that had been sent the claimant.
82. The claimant emailed Ms Djengiz on 9 April 2019 (81) attaching a detailed written response to the allegations (131 – 144). The claimant numbered the allegations from 1 to 15. The claimant later alleged that Ms Djengiz used a different numbering system purely in order to confuse her. The evidence does not support this allegation.

83. In her cover email, the claimant stated:

"I am aware of the vindictive behaviour of Ms Jane Sandeman and Ms Anna Shepherd, have been shown in the manner whereby all listed allegations against me by Ms Jane Sandeman have been manipulated to suit their plot.

I observe [the] two of them and I witness how they exhibit their hatred and animosity towards me." (81)

84. Ms Djengiz met with the claimant over the course of 2 days, from 11 am to 1:25 pm on 10 April and from 12.00 to 1.40 pm on 11 April. A note taker prepared notes of the meetings. Ms Djengiz sent these to the claimant by email on 23 April 2018 and requested that she return them with any comments / amendments by 27 April 2018. The claimant duly did this (82 – 114).

85. The claimant alleges that Ms Djengiz questioned her in a robust manner, including interrupting her and that this was deliberately designed to intimidate her. Ms Djengiz denies this allegation and says that she approached the investigation entirely impartially. She accepted that she interrupted the claimant on occasions, but explained that this was because she wanted to get clarity on the issues. She explained that she asked the claimant a number of direct questions which she wanted the claimant to answer, but that she was not answering.

86. Having read the minutes of the investigation interviews and from my observations of Ms Djengiz on the witness stand, I find that she did deliberately try to intimidate or confuse the claimant. Her aim was to understand the claimant's version of events and she have the claimant every opportunity to tell her story.

87. The claimant also alleges that the notetaker took too great an interest in the investigation interviews. Ms Djengiz said that the secretary did interrupt the meeting a couple of times, but this was to check that she had understood the claimant's answer for the purposes of her notetaking. She acknowledged the secretary did ask the claimant to share her written response with her, but this was because the claimant had been reading from sections of it and this would have helped with the accuracy of her note. I accept Ms Djengiz evidence on this.

88. Having interviewed Ms Sandeman and the claimant, Ms Djengiz concluded that on at least 5 occasions the claimant had admitted to not doing as instructed by Ms Sandeman. Ms Djengiz did not consider it was necessary to interview anyone else, including Anna Shepherd because of the claimant's own admissions. The claimant did not ask Ms Djengiz to interview anyone else.

89. Following the interviews, Ms Djengiz began to prepare an investigation report. An investigation report is contained in the bundle at pages 146 – 152 and has on its cover the date of 12 April 2018. It is an unfinished

document and during the course of the hearing, the respondent conceded that it was not sent to the claimant.

90. Following the investigation interview, the claimant and Ms Djengiz exchanged emails about additional documentary evidence which the claimant wished to provide to her. The claimant provided Ms Djengiz with a file of 200 documents on 29 April 2018. Ms Djengiz reviewed these documents. She said that had she felt she needed to meet with the claimant to go through the documents she would have done so, but she took the view that this was not necessary.

91. Ms Djengiz sent the claimant a letter dated 4 May 2018 (157) by email (158). Ms Djengiz provided no information about the findings of her investigation other than as set out in her letter. The letter states:

"[The investigation] has now been concluded and I can advise you that it is recommended that a disciplinary hearing is convened."

92. The letter goes on to say that the claimant would be invited to attend a disciplinary hearing and would receive further details in due course. It adds:

"At the hearing the Disciplinary Manager will consider whether any disciplinary action should be taken against you in respect of the above (sic) allegations, namely; general misconduct, that you have failed to follow reasonable management instructions."

93. It was not clear from the letter what view Ms Djengiz had taken of the specific matters she had investigated. In particular, her conclusion that the claimant had, on at least five occasions, admitted not following her manager's instructions was not conveyed to the claimant.

94. I find that the reason that Ms Djengiz did not finalise the investigation report was because of the claimant's suspension. When the claimant was suspended, Ms Boughton wanted to move as quickly as possible to a disciplinary hearing, to avoid her having a lengthy suspension. This led to a decision not to finalise the investigation report, but to rely on the other documents that Ms AD had generated, namely the notes of the meetings with Ms Sandeman and the claimant, to show the investigation findings.

Allegations that were Investigated

95. I set out below my findings in relation to some of the allegations that were investigated. Not all the matters investigated are included, just those that I consider are most relevant.

96. One of the allegations concerned the claimant's behaviour in connection with invoices received from a particular supplier of the respondent. This took place at the end of January/beginning of February.

97. The claimant was concerned about invoices. Having looked at them, Ms Sandeman was satisfied they could be paid. She specifically instructed the claimant not to contact the company about the invoices. Instead, she wanted the claimant to focus on her work, some of which was overdue. Ms Sandeman told Ms Djengiz that contrary to her instructions, the claimant did speak to the company about the invoices and told them that the company that it would not be paid until it changed the invoices.
98. The claimant denied this allegation. She defended her actions to Mr Djengiz by saying that the company contacted her initially and it was necessary to speak to them about three matters. This included ensuring the respondent had the company's correct bank details, to clarify an issue between two accounts and because of the format of the invoices.
99. The claimant did not admit saying to the company that she would not pay them unless they changed the format of their invoice, but the outcome of her conversations and correspondence with the company meant they did alter the invoice format. Ms Djengiz recorded that the claimant refused to answer the question of whether she had explicitly gone against Ms Sandeman's direct instructions. However, Ms Djengiz formed the view that this was the case.
100. Another allegation concerned an incident that was initially thought to have occurred on 22 February 2018, but clearly happened on 23 February 2018. The claimant was asked to log into her phone and pick up a call by her manager but, by her own admission, did not do so. She said this was because she thought it was a general call and she was busy and needed to get to the bank.
101. The claimant admitted refusing to obey her manager's instruction to accept a petty cash slip on 2 March 2018. Technically, the petty cash slip should have had an issuer's signature on it, as well as an authorising signature, but only had the authorising signature. Although she was told by her manager that she could accept the slip as it was and was instructed not to approach the member of staff involved, the claimant, by her own admission, went to the respondent's hostel manager in order to investigate the matter.
102. The claimant admitted not being prepared to follow her manager's instructions on 9 March 2018. On this date, the daily funds were down by 1p. Ms Sandeman instructed the claimant to simply "journal" the penny, but the claimant refused to accept that this was an appropriate way to address the problem.
103. On 13 March 2018, Ms Sandeman had received a complaint about the claimant regarding the time it had taken for the claimant to issue a receipt and get a cheque for one of her clients. The payment was needed urgently in connection with the client's application to remain in the UK. Despite being told that the cheque was needed urgently, the claimant refused to issue it until she was satisfied that the required paperwork was in place. This led to the cheque not being issued until the following day (69).

104. I note that the cheque incident was not one where the claimant had disobeyed instructions given to her by her manager. Ms Sandeman was not involved in the transaction. Her view was that the claimant should have realised the urgency of the matter, issued the cheque and dealt with any problems arising later. Ms Sandeman felt the incident was typical of the claimant's approach and lack of flexibility.
105. On 16 March 2018, the claimant received some petty cash claims which had been incorrectly totalled by 20p. The claimant wanted to get the person who had submitted the petty cash claims incorrectly to do them again. The claimant accepted that she refused to accept the verbal instructions given to by Ms Sandeman not to do this, even though Ms Sandeman told her that if she chose not to follow her instructions her behaviour would amount to misconduct.
106. The claimant asked Ms Sandeman to give her a formal signed written instruction to accept the 20p error, but when Ms Sandeman said she would not do this, the claimant, by her own admission, approached the individual who had submitted the claim in direct contradiction of Ms Sandeman's instructions.
107. The claimant explained in her defence that she had asked for the written authority because:

"I knew that without a written authorisation for processing a wrong claim I would end up in trouble. That is why I asked Ms Sandeman for a written authority. Notwithstanding, as an AAT student, I need to comply with all accountancy principles at all times, which means that I need to do the right thing always."

She added

"Notwithstanding, no matter if it is £0.20 or £0.01, in accounts accuracy must be kept to a single penny otherwise the trail balance for the entire company will not balance. That has a very negative connotation for other financial statements and compulsions. Every accountant understands that." (127)

108. The final allegation I have considered concerned requests made by one of the respondent's employees on 20 March 2018 to make a £50 increase to the Employment Petty cash tin and £250 to the OP cash tin. The claimant was not satisfied with her line manager giving her verbal authorisation to do this, or even to accept an email from her by way of authority. The claimant was only prepared to action the requests when Ms Sandeman signed and dated a handwritten authorisation that the claimant prepared.
109. There was also evidence that the claimant had developed her own processes that did not correspond with the processes and financial controls the respondent had in place. The claimant admitted this.

110. The claimant justified her actions to Ms Djengiz by saying that the majority of the paperwork given to her while she was working at the respondent had discrepancies. She said that, as she could not process incorrect documents, she had to put them right before she could process them. The claimant also provided evidence that she always caught up with her outstanding work. Ms Djengiz formed the view that, because of her focus on perfection, the claimant did find herself regularly behind with her everyday tasks and had to work additional hours to catch up.

Suspension

111. Ms Sandeman contacted Mrs Boughton on 2 May 2018 and asked her if the claimant could be suspended. Ms Sandeman told Mrs Boughton that she was concerned that the claimant was no longer taking instruction from her and was doing things independently which was putting the year end at risk. She said she needed to mitigate the risk before the auditors arrived on 14 May 2020(156-157).
112. Ms Sandeman provided a number of examples of her concerns. She had discovered, for example, that the claimant was continuing to disobey her instruction how to deal with the 1p discrepancy discovered on 9 March 2018 and was having meetings with the fundraising team to try and sort it out.
113. Ms Sandeman had also been informed the claimant was refusing to pay two volunteers through the respondent's BAC's system. Ms Sandeman added that the claimant was continuing to insist that managers undertake processes that were not relevant to financial controls of the department. This included making the ESOL coordinator spend time renumbering her petty cash sheets for 2017 – 2018 when this was not necessary for audit purposes.
114. Mrs Boughton wrote to the claimant to suspend her on full pay. The letter (153 – 155) was dated 3 May 2018, but was not received by the claimant until on the morning of 4 May 2018.
115. The letter informed the claimant that she was being suspended on full pay and that this was *“a precautionary measure taken to protect the Centre from risk and to allow for the continuation of the fair and impartial investigation to proceed and does not prejudice the outcome of any subsequent potential disciplinary hearing.”*
116. The letter stated that the claimant would receive the outcome of the investigation by the end of 4 May 2018 and set out the details about the claimant's behaviour that had led to the decision to suspend her. The letter also referred the claimant to the respondent's EAP scheme.
117. The suspension was not undertaken by Mrs Boughton in person as she was not in the office on 4 May 2018. Mrs Boughton arranged for Ms Sandeman to ensure that the claimant had received the letter and to ask the claimant for her safe key and access fob.

118. The claimant subsequently alleged that the suspension was put in place in order to enable the respondent to destroy evidence. She did not say what evidence was destroyed or give any examples of any evidence or arguments that she was not able to raise in her defence as a result of the suspension. I consider that there is no evidence to support the claimant's allegation find that the respondent suspended the claimant because it genuinely believed that her presence in the office created risk as explained in the letter sent to her.

Claimant's Response to the Allegations leading to the Suspension

119. Following her suspension, the claimant emailed Mrs Boughton (160-164). In her first email dated 4 May 2018, the claimant commented on the examples of her behaviour set out in the suspension letter. She accepted that she had acted as stated in the suspension letter, but justified this behaviour at length due to the need for accuracy in accountancy documentation.
120. The claimant refused to accept that her actions created any risk. She explained that she was acting as she was in order to try and implement the promise she had made to the respondent in her business case for funding for the accountancy course.
121. In her second email, dated 7 May 2018, the claimant provided a statement of her position overall. She stated:

"This is not a question of not obeying reasonable management instructions. It is a question of poor management and mismanagement. I am not going to be a victim of fraud or manipulating of accountancy documents like altering information on the face of the cheque issued by another person, purchase orders, petty cash vouchers, expense forms etc. because this is against accountancy principles and at the moment I am a student of accountancy."

She explains:

"For me to put information into the system I need to correct them and to make them acceptable by the system. In order to do this, I need to meet those involved in preparing this, so we all sit down and correct them. If not, I will have a problem in processing it further to achieve the expected result....."

"So where is the disciplinary action for me to say "Yes"? To accept doing inefficient, inaccurate work? So, I will say "Yes" to something which has no solution to the problem at the moment? Because I will continue to insist in doing my work according to the accountancy code of conduct because I do not want to be a victim of fraud and be imprisoned or lose my accountancy membership....."

We have to solve the problem. If not, if continued, this is why many people are not lasting long in that Finance Department and other Departments. In this world people do not want to face the truth because the truth will set people free from their evil plot.”

122. The claimant’s reference to an “evil plot” was to her view of the behaviour of her manager and colleague Anna Shepherd towards her. She adds:

“I have gone through a lot of emotional stress, bullying me, and stressing me out, intimidating me and some other awkward behaviour”

123. She concludes her email saying:

“Once again, disciplinary action is not the solution to this problem. This is a round table problem solving solution. Whereby the matters involved are discussed, amicably not to be treated in a vindictive manner by squeezing ideas, manipulating information to provide evidence and means to prosecute and crucify an innocent person. Also gaining support from staff who are not interested in efficient work because the organisation is a charity organisation. They think efficient work does not matter, what matters is how long they can stay to collect their wages and leave huge amount of backlog of unfinished and unattended work and leave the Company as soon as their ambition are satisfied. The staff need to be encouraged to do their work well to achieve a better result.”

Disciplinary

124. Mrs Boughton arranged for Mark Foster, Director of Services to conduct the disciplinary hearing.

125. Mrs Boughton wrote to the claimant to invite her to attend a disciplinary hearing on 15 May 2020. The letter, dated 9 May (166 – 168) stated:

“At this hearing, we will consider whether any disciplinary action should be taken against you in respect of: general misconduct where you have failed to follow reasonable management instructions.”

126. The respondent enclosed the notes of the investigation meetings conducted by Ms Djengiz with the letter to the claimant. The letter advised the claimant that she had a right to be accompanied to the meeting, possible outcomes ranging from warnings to dismissal, and that she was entitled to call witnesses if she wished. She also sent the claimant her emails of 4 and 7 May 2018 saying that they would be referred to by Mr Foster.

127. Mrs Boughton ensured that Mr Foster was provided with copies of the notes from the investigation meetings conducted by Ms Djengiz (including the claimant’s amended version), the suspension letter, the emails that the claimant had sent to Ms Djengiz including her written submission in relation to allegations, the claimant’s emails of 4 and 7 May 2018 and the

file of documents the claimant had prepared. Mr Foster was also given a copy of the draft investigation report by Mrs Boughton.

128. The claimant wrote to Mrs Boughton by email to request that she be accompanied at the disciplinary hearing by one of the respondent's trustees, Andrew Rose. Mrs Boughton rejected the suggestion. She replied saying:

"I can understand you thinking of Andrew however he is not an objective person given he is a trustee and works closely with our finance department and should keep at arm's length from this issue." (169)

129. The disciplinary hearing proceeded as planned on 15 May 2018. It was held away from the respondent's head office to preserve the claimant's confidentiality.

130. Mr Foster was accompanied by the same notetaker as previously. Notes of the hearing were included in the bundle. The notes were sent to the claimant with her letter of dismissal, but she was not given an opportunity to amend them. She said in her evidence that they were inaccurate and explained what was missing or incorrect. My finding is that the notes are incomplete in places and are not, understandably, a verbatim record of the discussions. They do not contain any false or misleading information however (170 – 173).

131. Mr Foster established that the claimant had not been sent any information about the conclusions reached by Ms Djengiz. He therefore arranged for Mrs Boughton to send the claimant further information. She did this after the disciplinary hearing by a letter dated 17 May (180 – 181). She attached a document called "Examination of the Issues" to the email.

132. The document was an extract from Ms Djengiz's draft investigation report setting out her findings against the matters numbered (a) to (p) which Mr Foster was using as a summary. The extract sent to the claimant did not include the conclusions Ms Djengiz had reached that, by the claimant's own admission, she had disobeyed her manager on at least five occasions. Mr Foster discussed this finding with her at the hearing, however. I note that the extract was not sent on the respondent's letterhead.

133. The claimant had emailed Mr Foster on the day of the disciplinary hearing with two emails headed "Some Evidence." The first email included the heading "Poor management and mismanagement – examples" and listed 15 lengthy points complaining about how Ms Sandeman ran the Finance Department (174 – 179).

134. The second email provided examples of positive feedback provided to the claimant. The claimant added:

"because of the [positive feedback], [Ms Sandeman and Anna Shepherd] started a lot of violence behaviour beyond control."

She adds that their behaviour became worse when she got her accountancy exam results and goes on to say:

“From there, the intensity to carry out her plot to mar and damage my reputation was growing rapidly, conniving with Anna and ganging some other staff, directors, managers and ordinary staff, every moment of working in Finance department becomes a chaotic and unbearable situation for me, turning my good work upside down, spending time she should have applied her management technique into the work instead she turned it into disruptive behaviour which is inappropriate to office environment with Anna’s collaboration like shouting, slamming door against me not saying sorry, no politeness but aggression.”

135. During the disciplinary hearing, Mr Foster told the claimant that it appeared to him, from all the information that he had received, that there were a significant number of occasions when she had not followed instructions from her line manager. He added that the correspondence received from the claimant, which accused Ms Sandeman of poor management and mismanagement, seemed to indicate a breakdown in the relationship with the claimant having a lack of trust and confidence in her line manager.
136. Mr Foster explained that there were times in the past where he didn’t agree with his line manager and although he could make suggestions and offered alternatives, in the end he had to follow his manager’s decisions. He asked the claimant to explain why she felt she could not do what she was being asked.
137. The claimant explained that she understood from her course that she must comply with the accountancy principles at all times, and that if she didn’t there would be consequences. These ranged from being excluded from the professional body (even though at that point in time she was just a student) to the potential of being imprisoned. The claimant accused her line manager of mismanagement and of manipulation of documents including an occasion where her manager had asked her to falsify three cheques.
138. Mr Foster concluded the meeting by suggesting the claimant provide a response to each of the allegations once she received the summary document. He requested that this should be brief and not more than just a couple of sentences. He specifically asked her to clarify exactly what contraventions of the accountancy principles she alleged were taking place and to put forward suggestions for remedying them in the context of the respondent organisation. He mentioned that the respondent had a whistleblowing policy for concerns of this nature.
139. Mr Foster also advised the claimant that if she wished to raise a grievance about her colleague Anna Shepherd’s behaviour, she could do so under the respondent’s grievance procedure and should speak to Mrs Boughton. The meeting was adjourned at that point.

140. Following the disciplinary hearing, Mr Foster investigated the allegation that the claimant had made about the cheques by emailing Ms Sandeman to ask her about this on 17 May 2018. In the email exchange with Ms Sandeman, she confirmed as follows:

“In some instances, people don’t put exactly the right date on the cheque or don’t put Centre on the cheque name. Rather than send the cheque back the donor we put that information on the cheque. We would never alter the signature and amount – that is the control.” (216A-216B)

141. On 18 May 2018, the claimant emailed Mr Foster to express concerns about the impact of the ongoing disciplinary process on her upcoming exams. She stated that the case was prolonging and disturbing her studies and that she was spending the time she should be using to study preparing answers to the *“unending allegations.”* She added *“If you wish to continue I do not mind after my exams.”* (183)

142. Following the meeting, the claimant wrote to Mr Foster by email of 21 May 2018. In the letter, she stated:

“Thank you very much, for God has sent you intervene in this case. You are the only genuine, reliable, unbiased investigator by the way you structure and form your questions.” (185)

143. The claimant acknowledged that Mr Foster was trying to investigate the breakdown in the relationship between her and Ms Sandeman. Subsequently she sent him further information about why she felt the relationship had broken down. in a series of emails dated 23 May 2018 (188 – 193). The first email made further accusations against Anna Shepherd and Ms Sandeman. The second contained accusations against Ms Djengiz. She also sent him a detailed response to the specific allegations that had been considered in the investigation (115 – 130) and some photographs, but did not provide the requested evidence that any of Ms Sandeman’s requests or processes involved breaches of accountancy principles.

144. The claimant did not contact Mrs Boughton and ask her about how she could submit a grievance.

145. The disciplinary hearing was reconvened on 1 June 2018. An invitation to the reconvened hearing was sent to the claimant at relatively short notice (26 hours). It was sent by email of 31 May at 10:14 to her personal email account (208). The claimant did not attend the reconvened disciplinary hearing. This was not because she was not aware it was happening, nor because she felt she had had insufficient notice of it. The reason was because of her exams. She did not contact the respondent to let it know that she was not attending, but relied on the fact that she had previously informed them that the disciplinary process was impacting on her studies.

146. Mr Foster proceeded to make a decision in the claimant's absence. He considered he had sufficient information to make a fair decision. That decision was that the claimant should be dismissed with notice.

The Reason for the Decision to Dismiss

147. Mr Foster wrote to the claimant to confirm his decision in a letter dated 5 June 2018 (209 – 210). The letter sets out the reasons for his decision as follows;

“It is clear overall that your relationship with your line manager Jane Sandeman has broken down and nothing in the information you have submitted give me any reasonable prospect that this can be repaired. Indeed, I note in the information that you openly question Jane’s direction and leadership but despite requests to do so have failed to provide any clear evidence of where her instructions could lead to breaches in good accountancy practice. Without this evidence the allegations you have made undermine the relationship as they are unsubstantiated and therefore cannot be addressed.

Particular instances have arisen where you have failed to carry out reasonable instruction within the context of ensuring a relatively small team can effectively and flexibly great in providing financial support services to the organisation. You may have alternative views in how process could be achieved but these need to be discussed within the context of the employee/manager relationship. Again there is no evidence that instructions given by Jane are in any way contrary to good practice and are in the main to enable a relatively small organisation to function effectively.

There was no evidence or prospect that this broken relationship with Jane and the organisation as a whole could be rebuilt and this is untenable in an organisation and therefore results in dismissal.” (209 – 210)

148. Mr Foster expanded on his reasoning when giving evidence to the tribunal. He explained that he had had a great deal of written information when making his decision and did not feel that he needed anything further. He considered the situation “in the round” and arrived at the conclusion that the claimant's relationship with the organisation had broken down. In his view, the claimant could not accept that the way the respondent was working was acceptable, but had failed to substantiate the really very serious allegations that she had made against a number of colleagues. He explained that he couldn't see any prospect of finding a way back from that position.
149. When asked how he felt the breakdown had been caused, Mr Foster explained that he felt that the claimant was not capable of taking a nuanced view of financial accounting matters. He felt that she had set herself certain rules (based on her learning from her course) that she believed and could not deviate from them. He explained that those rules did not work in a complex organisation that had six different services arms

and which needed staff to show a degree of flexibility in order to support their vulnerable client base. In his opinion, the claimant had demonstrated that she was not able to learn from or take advice and instruction from her line manager.

150. The dismissal letter informed the claimant that she had of right to appeal to the respondent's CEO. The timetable included in the letter was only 7 days and not 10 days as per the respondent's policy. This was a mistake made by Mr Foster.
151. The respondent did not seek to exercise its contractual right under the training agreement to clawback the course fees paid on behalf go the claimant for her accountancy course.

Appeal

152. The claimant submitted an appeal by way of a letter dated 11 June 2018 (212 – 213). The letter set out eight points of appeal, but effectively contained no new information. Of note, the claimant reiterated her concern about the respondent's use of her initials. She also said of the right to be accompanied:

"I chose not to be accompanied because I have no friends, no trade union representative, etc. but God. I do not accept your offer of anyone you wish to accompany me, to avoid further bias since everyone coming into the case is biased."

153. The appeal hearing was on 18 June 2018. The Chief Executive of the respondent, Cathy Corcoran met with the claimant for an hour between 2 pm to 3 pm. Ms Corcoran gave the claimant a full opportunity to expand upon the contents of her letter of appeal.
154. One of the keys areas of discussion was Ms Corcoran's ability to consider the matter when she was not an accountant. Ms Corcoran explained in her mind, that the concerns about the claimant stemmed from her refusal to follow reasonable instructions and it was not necessary to be an accountant to do this. In addition, in view of her role as Chief Executive running the respondent charity for 15 years with consistently positive audits, she considered she was sufficiently experienced to determine whether accountancy matters involving the kinds of small amounts cited by the claimant were proper or not.
155. The claimant brought up the matter of the cheques again and insisted that making any change to a cheque was illegal. When Ms Corcoran disagreed with this and tried to explain why she held this view, the claimant would not accept it. In order to enable the discussion to proceed, Ms Corcoran asked them claimant to agree to disagree.
156. The same notetaker was present to take notes (217 – 218). The respondent did not send the notes to the claimant until eight months after the appeal hearing. Mrs Boughton told me that this was an omission as the

Respondent's usual practice is to send minutes out with an appeal outcome.

157. Mrs Corcoran confirmed the outcome of the appeal in a letter dated 21 June 2018 (219 – 220). Her reasoning and decision are set out in a single paragraph as follows:

“The decision of 5 June still stands. In my view, having listened carefully to your responses during our meeting, I find that (a) you did not offer any plausible response as to why you refused to follow the directions and instructions of your line manager, Sandeman, which I deem to have been reasonable requests and (b) given the comments you made during the meeting as well as your written submissions, I have assessed the feasibility of an alternative outcome to this matter, but it is my firm view that the working relationship between yourself and the Centre is irretrievably broken and therefore I accept that the termination was warranted and appropriate.”

158. Mrs Corcoran explained in her evidence to the tribunal that it was with a heavy heart that she reached this conclusion because the whole ethos of the respondent was to provide individuals with opportunities to develop themselves personally and professionally. She added that she could not envisage mediation or anything of that nature being successful because the claimant was too entrenched in her position.

159. In her evidence to the tribunal, the claimant refused to accept that her relationship with the respondent as an organisation had broken down irretrievably. However, in her witness statement and oral evidence she accused her line manager and colleague of conducting an “evil plot” and exhibiting hatred and animosity towards her due to their jealousy of her.

160. She also accused all of those involved in the disciplinary process of antagonistic behaviour towards her. This included four of the respondent's senior directors as well as the secretary who took notes. She said: *“Each of them were vigorously defending [Ms Sandeman] and putting a blind eye, deaf ear to my part of the defence.”*

161. She said several times that she did not trust the respondent and accused the respondent of fabricating some of the evidence that was before the tribunal and deliberately leaving documents out of the respondent's bundle. My finding is that none of these allegations were supported by any evidence.

LAW / ANALYSIS AND CONCLUSIONS

162. I now explain the the law and apply it to the facts I have found, in order to determine the issues.

Unfair Dismissal – Reason

Law

163. Under section 98(1), of the Employment Rights Act 1996 it is for the employer to show the reason (or, if more than one, the principal reason) for the dismissal, and that it is either a reason falling within subsection (2), e.g. conduct, or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
164. The task of identifying the real principle reason for the dismissal rests with the tribunal. If in the tribunal's view a respondent has identified the incorrect principle reason for dismissal, it can substitute another of the potentially fair reasons and still make a finding of a fair dismissal. Often this will depend on why the label used by the employer is incorrect. It may be because the employer has made a genuine mistake about the law or it may amount to a deliberate attempt to conceal the true reason.

Analysis and Conclusion

165. In the claimant's case, the respondent initiated a disciplinary process into behaviour which it originally categorised as misconduct, namely her failure to obey reasonable instructions given to her by her line manager. It formed the view that she was guilty of that misconduct based on her own admissions that she had acted contrary to the line manager's instructions on several occasions.
166. My finding, however, is that misconduct was not the principle reason for the claimant's dismissal. Although the respondent's belief that the claimant was guilty of misconduct continued to be a factor in its decision making, by the time the respondent made its decision to dismiss the claimant, this reasoning had been superseded by the belief that the claimant's relationship with the organisation had irretrievably broken down.
167. Mr Foster accepted that the claimant had only refused to carry out her line manager's instructions because she believed she was being asked to do things that were contrary to the accountancy principles. He did not agree that this was the case, because in his view, the instructions the claimant had been given were reasonable. This was because the amounts involved were minimal and the mistakes so insignificant that it was obvious to him that the approach adopted by Ms Sandeman was correct, taking into account the context in which the charity worked.
168. It appeared to Mr Foster that the claimant no longer trusted or could ever trust any instructions she was being given by her manager. Her behaviour towards her manager meant that the relationship between them had broken down.
169. In addition, based on what the claimant had said at the disciplinary hearing and the material she sent him, Mr Foster formed the view that the broken relationship extended to the entire respondent's organisation and there

was no evidence or prospect that it could be rebuilt. This was why he decided to dismiss her.

170. I note that the respondent's decision was to dismiss the claimant with a month's notice which is consistent with the decision being based on the irretrievable breakdown in relationship rather for gross misconduct.
171. This reason does qualify as a substantial reason of a kind such as to justify dismissal and therefore does therefore meet the test set out in section 98(1) Employment Rights Act 1998.

Was the Dismissal Fair?

Law

172. Under section 98(4) of the Employment Rights Act 1996 '... the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and shall be determined in accordance with equity and the substantial merits of the case.'
173. The question is whether the respondent's dismissal of the claimant fell within the band of reasonable responses open to a reasonable employer. It is not for me to substitute my own decision. The objective standards of the reasonable employer must be applied to all aspects of the question whether an employee was fairly and reasonably dismissed.
174. The range of reasonable responses test (or, to put it another way, the need to apply the objective standards of the reasonable employer) applies to all aspects of the question whether an employee was fairly and reasonably dismissed. This includes procedural aspects of the decision making process as well as the substantive decision. (*Sainsbury's Supermarkets Ltd v Hitt* [2003] IRLR 23, CA)
175. When considering the employer's procedure, I must take into account the process as a whole, including any appeal stage. (*Taylor v OCS Group Limited* [2006] EWCA Civ 702)
176. By virtue of section 207 of the Trade Union and Labour Relations (Consolidation) Act 1992, the ACAS Code on Disciplinary and Grievance Procedures is admissible in evidence and if any provision of the Code appears to the tribunal to be relevant to any question arising in the proceedings, it shall be taken into account in determining that question.
177. The higher courts have considered what is required of an employer, by way of fairness, in a number of cases concerning a "some other substantial reason" dismissal based on an irretrievable breakdown in an employee's relationship with the respondent. In cases such as *Jefferson*

(Commercial) LLP v Westgate [2013] ALL ER 303, *Express Medicals Ltd v O'Donnell* (UKEAT/0236/15), and *Phoenix House Ltd v Stockman & Ors* [2016] IRLR 848, the key principle established is that the content of the employer's procedural duty will be fact sensitive in each case.

178. The case law, however, says that elements of the ACAS Code incorporating basic common sense principles of fairness, which are capable of being applied to such a decision should be applied. This includes the following:
- an appropriate degree of meaningful consultation and discussion with the claimant
 - consideration of whether the claimant has had an adequate opportunity to put her case or to challenge effectively the assertions that have been made against her
 - a genuine belief on the part of the respondent that the relationship has deteriorated to such an extent that the employee cannot be reincorporated into the workforce without unacceptable disruption
 - evidence that the respondent has considered whether the relationship is capable of repair.

Analysis and Conclusions

179. In my judgment, all of the elements of procedural and substantive fairness that I would expect of a reasonable employer in a fair “some other substantial reason” dismissal process based on a relationship breakdown are present in this case. In reaching this decision, the factors I have considered a number of factors. I have also considered the specific concerns raised by the claimant during the course of the hearing about the respondent’s process and decision.
180. As noted above, the respondent began by treating the matter as a conduct issue. This meant that it followed its disciplinary process which incorporated an investigation stage, disciplinary hearing stage and appeal stage. This provided a structure for the claimant to understand the allegations against her, respond to those allegations and have her response considered by three different people, Ms Djengiz, Mr Foster and Ms Corcoran. Mr Foster was more senior than Ms Djengiz and Ms Corcoran was more senior than Mr Foster such that each of them could have overruled the person who had considered the case before them.
181. The claimant was offered the opportunity to be accompanied at all stages of the respondent’s process. The only request she made was to be accompanied by a trustee. In my judgment, it was within the range of reasonable reasonable for the respondent not to allow her to be accompanied by Mr Rose. I note that the respondent encouraged her to choose a different companion, but she failed to take up this opportunity.
182. Although the claimant claims that the respondent’s decision to investigate her misconduct came out of the blue and ambushed her I have found that this was not true as a matter of fact.

183. The claimant also complains that the respondent should have sought to resolve its concerns with her informally before initiating a formal disciplinary investigation. In my judgment, it was within the range of reasonable responses for Mrs Boughton to advise Ms Sandeman that, due to the nature of the concerns, a disciplinary investigation into misconduct should be initiated.
184. I do not consider, as suggested by the claimant, that fairness required Mrs Boughton to approach the claimant before the disciplinary procedure was initiated. Mrs Boughton's failure to do this did not mean that she believed Ms Sandeman over the claimant or that the process was one-sided. It was not Mrs Boughton's role to investigate the concerns. She had appointed an investigator to do this in accordance with the respondent's policy.
185. The claimant complains that Ms Djengiz and Ms Corcoran also ought to have tried to speak with her informally rather than follow the process. She suggests their failure to do so indicated they were biased against her. I reject this. Entering into informal discussions with the claimant outside of the formal process could have undermined it and I would not expect this from a reasonable employer.
186. With regard to the choice of investigator, I am satisfied that the respondent's choice of Ms Djengiz was well within the range of reasonable responses of a reasonable employer. The respondent selected someone who was not part of the claimant's direct line management and came from another part of the respondent's organisation. The fact that she had had professional interaction with the claimant meant she had a good understanding of some, but not all financial procedures was helpful and did not, in my judgement create a conflict of interests.
187. I am also satisfied that this Ms Djengiz was sufficiently senior and experienced to undertake the investigation and would have felt sufficiently comfortable in her role to make findings that contradicted Ms Sandeman's version of events if this is what the evidence before her required.
188. I do not judge the fact that Ms Djengiz had made mistakes in petty cash claims prevented her from approaching the investigation in an even handed and reasonable way. Nor do I consider that her alleged breach of personal data rules had any bearing on her approach.
189. I have considered the criticism made by the claimant that the respondent should have used an accountant to undertake the investigation. I do not accept this. I consider Ms Djengiz, Mr Foster and Ms Corcoran understood the relevant issues. Each of them had experience of working with financial documentation and budgets. They also understood the context of the organisation and were able to make judgments about whether they preferred what Ms Sandeman, a qualified accountant and experienced financial director, was saying about the financial issues that had arisen or accepted the claimant's position.

190. In my judgement it was reasonable of the respondent to believe that each of Ms Djengiz, Mr Foster and Ms Corcoran were able to make appropriate judgements about the financial transactions involved. I note that at the disciplinary hearing stage, Mr Foster gave the claimant an opportunity to provide further information why the claimant considered what she was being asked to do was in breach of accountancy principles and provide him with details of those principles. This ensured she was given a full opportunity to present accountancy arguments if they existed.
191. I found that Ms Djengiz' approached the investigation in an even handed manner. She sought to understand and document the different views of Ms Sandeman and the claimant. Ms Djengiz ensured that the claimant was made fully aware of the matters she was investigating in advance of meeting her. She did not deliberately try to intimidate the claimant during the investigation meetings, nor did she seek to deliberately confuse her by using different numbering systems.
192. I judge that nothing material arises from the use of the claimant's initials rather than her full name in the documentation. Similarly, there is nothing suspicious or inappropriate about the fact that documents were not produced on letterhead. This was not a criminal prosecution, but an internal employment process.
193. Another general criticism made by the claimant is that the respondent treated the disciplinary process as confidential and conducted the disciplinary and appeal meetings with her in an off-site location. In my judgment, this was good practice and was intended to be supportive of the claimant.
194. The claimant has challenged the accuracy of the notes and documents created by the respondent. Unless an employer goes to the expense of recording meetings and transcribing them, it is inevitable that the notes will not be verbatim. I find that it was entirely reasonable for the respondent to use a note taker to take notes as they did. The claimant was provided with notes of the investigation meetings and was given an opportunity to correct them. She was not afforded the same opportunity in relation to the disciplinary hearing and appeal hearing meetings, but was given an opportunity to comment on the accuracy of the notes from the disciplinary hearing at the appeal hearing in person.
195. The claimant was also given multiple opportunities to provide comments on the allegations in writing at all stages of the process and to produce documentation to support her position. Ms Djengiz reviewed the file of documentation provided by the claimant. It was within the range of reasonable responses for her to form the view that she did not need to have further meetings with the claimant to discuss the documents as it was clear from the documents what they showed. The file of documents was passed to Mr Foster and Ms Corcoran and it was open to the claimant to draw items within it to their attention.

196. Ms Djengiz did not consider it was necessary to interview anyone else as part of her investigation. This included Anna Shepherd, notwithstanding that she was a witness to a number of the incidents cited by Ms Sandeman. My judgment is that this decision was within the range of reasonable responses of a reasonable employer. The claimant did not request that Ms Djengiz interviewed anyone, including Ms Shepherd. Ms Djengiz's reason for not interviewing Ms Shepherd was because the claimant had admitted not following Ms Sandeman's instructions and so she was not faced with a factual dispute where a third party's evidence would have been necessary.
197. I have found that the respondent failed to provide the claimant with the detailed findings made by Ms Djengiz. In my judgment this was a flaw in the procedure it followed. It was remedied sufficiently as the process continued and did cause the dismissal to be unfair, however.
198. The reason why the investigation report was not provided was because of the perception by the respondent that it needed to move promptly to a disciplinary hearing in light of the claimant's suspension. I judge this was a reasonable position for it to take. The investigation had been ongoing for a month at this stage. This was not an unreasonable timeframe, but I can appreciate why the respondent felt it would not be in the claimant's interest to delay further.
199. The procedural flaw meant that when the claimant was invited to the first part of the disciplinary hearing, she was not aware, other than in outline, of the case against her. The claimant no doubt found this very difficult in light of her preference for detail and precision. She had, at that stage, provided detailed written and oral responses to the allegations, but was provided with no information in turn as to whether the respondent accepted any parts of her account.
200. Mr Foster remedied the procedural flaw in part when he asked Mrs Boughton to send the claimant the relevant extract from the draft investigation report setting out the analysis Ms Djengiz had undertaken. This did not, however, include the conclusions reached by Ms Djengiz regarding the number of times the claimant had admitted failing to follow Ms Sandeman's instructions. Mr Foster did however tell the claimant what Ms Djengiz had found in broad terms during the disciplinary hearing.
201. The lack of detail would have been more significant had the case continued as one of misconduct, but by this time, matters had moved on and the case was becoming one where the focus was moving on to the deteriorating relationships. The shift occurred when the claimant was suspended.
202. In my judgment, the respondent's decision to suspend the claimant was within the range of reasonable responses of a reasonable employer due to the proximity of the audit. Ms Sandeman needed the accounts team to work cooperatively and to apply the respondent's financial policies and procedures to finalise matters before the auditors arrived. Although the

allegations in the suspension letter were not investigated, based on the claimant's response to them, the letter accurately records the incidents that had occurred. It was therefore reasonable for the respondent to view the claimant's behaviour as serious enough that the audit might be affected.

203. The consequence of the claimant's suspension was that she asserted her views about the respondent more vociferously. The claimant had earlier alluded to Ms Sandeman and Ms Shepherd plotting against her when first notified of the investigation. However, in response to the suspension, the claimant expanded on this. She also expressed her fundamental, and passionately held, view that the respondent's financial department was being badly run. She accused several unnamed members of the respondent's staff of being part of an "evil plot" to be inefficient and identified herself as was one of the only members of the respondent's staff that cared about doing things correctly.
204. Although the disciplinary hearing held on 15 May 2018, continued to be conducted as a disciplinary hearing into allegations of misconduct against the claimant, Mr Foster informed the claimant that he believed the relationship between her and her line manager had broken down and invited her comments. He made it clear that to her that this was an important part of what he felt he needed to consider. In particular, he tried to understand how the current situation had come about in order to consider how it could be repaired. This ensured that the claimant was aware that the respondent was considering an alternative reason for dismissal and was able to comment on it.
205. Mr Foster became convinced that the breakdown in the claimant's relationships was not limited to her finance colleagues, but was with the organisation as a whole, as a result of the material the claimant sent to him. Overall, the claimant provided Ms Foster with several pages of allegations against Ms Sandeman, Ms Shepherd and Ms Djengiz as well as made general allegations against other staff. The language used by the claimant in connection with the allegations was extremely emotive and questioned the ability and integrity of many of the claimant's colleagues.
206. In addition, Mr Foster believed, based on Ms Sandeman's evidence, that the claimant's behaviour was having an adverse impact on the respondent's ability to function effectively. The evidence before him confirmed that the the claimant's actions had created numerous problems for staff who were required to wate time in dealing with minor discrepancies.
207. Mr Foster did not investigate the complaints that the claimant made about Ms Sandeman and Ms Shepherd bullying and harassing her as part of an "evil plot". He did, however, investigate the specific allegation the claimant made that Ms Sandeman had asked her to alter cheques illegally and was satisfied that this was not true. He also gave the claimant the opportunity to provide detail of specific breaches of accountancy principles in case he was jumping to unfair conclusions.

208. The complaints that the claimant was making were such revealed her true feelings about the organisation. In my judgment, it was within the range of reasonable responses for Mr Foster to proceed to conclude that they demonstrated that the claimant's relationship with various colleagues had broken down without further investigation. All the evidence pointed towards these complaints being without foundation and based on a skewed perception. In addition, despite the claimant saying that she had been treated badly by Ms Sandeman and Ms Shepherd for several months, the claimant had not raised a grievance about either of them, nor had she raised a whistleblowing concern.
209. The respondent did give a small amount of consideration as to whether the relationship could be repaired and the claimant's dismissal avoided, through mediation. Mr Foster and Ms Corcoran believed this was not a realistic option. This was because the claimant showed no insight into the impact that her behaviour was having on her colleagues or any willingness to take on board the different points of view they were expressing to her. I judge that reaching this conclusion was within the reasonable range of responses of a reasonable employer in the circumstances.
210. I have considered whether the fact that the decision to dismiss the claimant was made by Mr Foster in her absence makes the decision unfair. I judge that it does not. The claimant did not attend the reconvened disciplinary hearing voluntarily. She had previously expressed concern about the respondent continuing with the disciplinary hearing while she was preparing for her exams, but did not inform the respondent that she would not be attending the reconvened hearing.
211. The claimant was at this time suspended. This ought, in theory, to have given her plenty of additional time to prepare for her exams as she was not required to attend work. Having said this, I accept that she found the prospect of the disciplinary hearing very stressful and this would have impacted on her ability to study.
212. When making his decision Mr Foster had an enormous amount of material before him. There is no evidence that the claimant had additional points that she wanted him to consider. She did not make any fresh points at the appeal hearing, nor introduce new evidence at that stage of the process. I am therefore satisfied that it was reasonable for Mr Foster to decide to dismiss the claimant in her absence.
213. As noted above, the respondent paid the claimant for a month's notice. This was consistent with it believing that she had not acted in such a way as to repudiate the contract her contract of employment. I do not consider the respondent's decision not to claw back any of the training fees has any significance, other than it was intended as a gesture of goodwill which represented the respondent's genuine sadness at the outcome.
214. As noted above, the respondent admitted making a mistake in the amount of time it gave the claimant to submit an appeal, such that she was given 7

days not 10 days. I do not consider this had any adverse impact on the overall fairness of the decision to dismiss her.

215. My conclusion, having considered all the circumstances of the case, including the size and administrative resources of the respondent, is that the respondent had a genuine and reasonably held belief that there had been an irretrievable breakdown in the relationship between it and the respondent. Having followed a fair procedure, it reached a decision to dismiss the claimant that was within the reasonable range of responses of a reasonable employer and there for the claimant's dismissal was fair.

**Employment Judge E Burns
5 February 2020**

Sent to the parties on:

.....07/02/20.

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For the Tribunals Office