Case No: 2300116/2019

EMPLOYMENT TRIBUNALS

Claimant: Jasmine Dodd

Respondent: Harwoods Limited

Heard at: London South Croydon
On: 6-8 August 2020. 9-10 August and 7 September 2020 in chambers

Before: Employment Judge Sage
Members: Ms. H Bharadia
Ms. Beeston

Representation
Claimant: Ms Banton of Counsel

Respondent: Ms Gyane of Counsel

JUDGMENT

1. The Claimant's claim for breach of contract and unpaid holiday pay are dismissed upon withdrawal
2. The Claimant's claim for automatic unfair dismissal contrary to section 103A is not well founded and is dismissed.
3. The Claimant's claim for detriment contrary to section 27 of the Equality Act 2010 is well founded.
4. The Claimant's claim for detriment contrary to section 47B Employment Rights Act 1996 is well founded.

REASONS

1. By a claim form presented on the 11 January 2019 the Claimant claimed whistleblowing detriment, dismissal and victimisation. Her claims for breach of contract and holiday pay were withdrawn on the first day of the hearing.

2. The Respondent defended the claims.

Witnesses

3. Witnesses for the Claimant were as follows:

The Claimant
Ms Parsons

Mr Woodage by CVP
For the Respondent we heard from:
Mr Cook Head of Business
Ms Gilbert HR consultant and
Mr A Harwood Chief Executive

The Issues

4. The Claimant brings the following claims;
   (I) PIDA Detriments and Automatic Unfair Dismissal ERA 1996 including post termination detriments.
   (II) Victimisation including post termination victimisation by way of detriments and dismissal under the Equality Act 2010

5. **PID Detriments – Disclosures**

a. Did the Claimant make a qualifying disclosure in respect of the following:
(i) The bullying and harassment of the reception team by the service team and salespeople at Harwoods Crawley. An example being in the Spring of 2018 (this was confirmed to be 2017), a customer entered the Showroom and there were no Sales Executives available on the Land Rover Sales Team. The Claimant got a sales manager to see the customer in keeping with her training. Subsequently the Claimant was cornered by Sofie Sardar and Steve King, who shouted at her and told her never to go to a Sales Manager again. Steve King came right up to her face when he said this to the Claimant. The Claimant was understandably very upset and felt belittled and uncomfortable about the incident. The Claimant raised this bullying incident with the Head of Business, Jamie Cook the following day. He then called in the Land Rover Sales Manager who basically just said “don’t worry about it Jasmine, Sophie will be long gone before you."

(ii) At a sales event on Saturday the 5th May 2018 (this was confirmed to be 2017), the Claimant who didn’t normally work at weekends went in to support the weekend team, as it was expected to be busy. Steve King was busy with a customer and a couple who he had been dealing with previously, came into the showroom and didn’t want to wait. The Claimant had to ask someone else to see them. When Steve King found out he shouted at the Claimant that she was “useless and should do her job properly”, staff and customers alike overheard this. Again, the Claimant raised this incident to the Head of Business Jamie Cook, who responded “he didn’t want to get involved.”

(iii) Racial discrimination by the sales team of Indian and foreign customers using the dealership. This occurred frequently and it was always the same Sales Executives that refused to deal with Asian and Indian customers. Sophie Sardar said she wouldn’t deal with them because “she didn’t make any money out of the them.” It was most humiliating and at times and the Claimant didn’t know what to say to the customers as they could see and hear what was going on. This had a seriously negative impact on the Claimant because she had come from an environment whereby, she had

enriched her own life with different cultures and couldn't understand why people behaved like this. None of the Managers at the Respondent seem to care that this was happening. Archie Harwood was fully aware there was racism in the showroom, he told the Claimant that he had spoken to Jo Peters a Sales Executive about her behaviour regarding racism. He also knew Steve King had "cultural concerns" but did nothing about it and instead reemployed him back into the business. It was confirmed by the Respondent in their skeleton argument that this was in February 2018 but also possibly in the summer of 2017.

(iv) On Ist October 2018, the Claimant raised concerns when she spoke to the Head of Business, Jamie Cook to make him aware that two members of the reception team were suffering from anxiety due to the hostile environment within the service team. The Claimant also raised the same concerns to the Dealer Principal.

(v) On 4th October 2018 at the meeting the Claimant raised the same issues regarding bullying and harassment by members of the sales and service team against her and other members of her team to the dealer Principal and Sue Gilbert.

(vi) The Claimant's grievance dated the 15th October 2018 to the Respondent which cites a series of protected disclosures regarding a number of issues which had previously been raised with Management by the Claimant and within the organisation.

(a) In addressing the treatment of the Claimant in breach of her contract
(b) The bullying and harassment of the reception team by the service team and salespeople
(c) Being shouted at by Steve King on 5 May
(d) Racial discrimination by the sales team

b. Did the disclosure amount to a protected disclosure? The Claimant contends that all disclosures were made to the Respondent and are properly constituted protected disclosures.

6. **PIDA Detriment.**

a. Did the Respondent subject the Claimant to a detriment on the ground that she had made a protected disclosure?

b. The Claimant contends that she suffered the following detriments:

(i) Failing to address the Claimant's concerns regarding bullying and racist incidents occurring frequently at the Respondent as set out in the Grounds of Complaint and in particular at paragraph 8 of the Grounds of Complaint.

(ii) The Claimant had been informed by the Respondent that TD's grievance was against "The Reception Team" therefore it was not conducted objectively, as not everyone was interviewed.

(iii) Failure to interview all the reception team in relation to TD's grievance.

(iv) Failure to conduct a fair investigation in relation to TD's grievance.

(v) In relation to TD's grievance staff members were interviewed at random, 3 were interviewed casually over the phone. The Claimant was grilled for an hour and a half at a meeting that was prearranged and the meeting was recorded by Sue Gilbert.

(vi) Subjecting the Claimant to the meeting on 4th October, without warning unfairly criticising her and informing her that she had to improve her communications with internal customers.

(vii) Informing the Claimant during the meeting on 4th October 2018 that she would be subjected to performance management.

(viii) Failure to conduct a detailed investigation into the Claimant's grievance in contrast to the grievance raised by TD, a casual member of staff, whose grievance was investigated.

(ix) Failure to deal with fairly or at all, the Claimant's grievance and/or appeal against dismissal.

7. **Unfair Dismissal/PIDA Dismissal s103A ERA 1996**

a. Did the Claimant make a qualifying disclosure in respect of paragraph 5a. (i) -(v) above?

b. If there was a protected disclosure, was this the reason or principal reason for dismissing the Claimant?

8. **Post termination PIDA Detriments**

a. Did the Claimant make a qualifying disclosure in respect of paragraph 5a. (i) —(vi) above?

b. The Claimant contends that she suffered the following detriment:

(i) Dismissing the Claimant's grievance and/or appeal in the manner that it did and without any or any proper reference to grievance procedures.

9. **Victimisations Equality Act 2010**

a. Did the Claimant do a protected act within the meaning of section 27(2) of the Equality Act 2010 in respect of paragraph 1a. (i) -(v) above?
b. If yes, did the Respondent subject the Claimant to a detriment because of that protected act?
c. The Claimant contends that she suffered the following detriments as in paragraph 6b. (i) — (ix) above.

10. **Post termination Victimisation**

a. Did the Claimant do a protected act in respect of paragraph 1a. (i) —(vi) above?
b. If yes, did the Respondent subject the Claimant to a detriment because

of that protected act?
c. The Claimant contends that she suffered the following detriment:
(i) Dismissing the Claimant's grievance and/or appeal in the manner that it did and without any or any proper reference to grievance procedures.

11. **ACAS Code of Practice**

    a. Did the Respondent fail to comply with the ACAS Code of practice on Disciplinary and grievance Procedures in relation to the Claimant's grievance and/or dismissal?
    b. If yes should the compensation be uplifted.

Findings of fact

Background facts

12. The Claimant was employed by the Respondent as a Showroom Host from the 16 January 2017 until her dismissal on the 12 October 2018. She worked Monday to Friday and only rarely worked on weekends to carry out training, to support new staff and to attend sales events such as that held on the 5 May 2017. It was noted by the Tribunal that the Claimant signed her emails Head Receptionist/Showroom Host (page 93 of the bundle) and it was not disputed that the Claimant carried out a number of additional duties not included in her job description. Those additional duties were the recruitment of receptionist staff, compiling rotas, training (specifically in February and September 2018) and she was being trained to carry out one to one meetings. The Claimant was paid what was described as bonus payments for these additional duties.

13. The Claimant had 33 years' prior experience with British Airways (and British Caledonian) and she recruited a number of ex British Airways staff into the Respondent's reception team.

14. The Respondent is a Jaguar Land Rover dealership and is a large employer, employing 987 staff. 86 staff were employed in the Crawley Branch where the Claimant worked. Despite the considerable size of the company, the Respondent had no Equal Opportunies or whistle blowing Policy in place at the relevant time and no diversity training took place. The Respondent did not employ any human resources staff, relying instead on advice from consultants as and when required. The Respondent conducted no formal one to one meetings or appraisals. The Tribunal were told that they employed a permanent HR person three weeks prior to the tribunal hearing.

15. It was not disputed that the Claimant enjoyed a cordial working relationship with Mr Cook who at the relevant time was the Head of Business at Crawley. Mr A. Harwood the CEO of the organisation also stated that he had a good working relationship with the Claimant. Mr Harwood and Mr Cook agreed that the Claimant was good at her job and she exhibited 'excellent customer service skills' and had high standards. The Tribunal were also taken to 194-5 of the bundle which was a string of text messages on the 24 July 2018 between the Claimant and Mr Harwood where he sought her opinion about the re-employment of Mr King, a Sales Executive. This reflected that he

valued and respected her opinion about matters that extended outside of her role and at times sought her input on staffing issues.

16. The Tribunal also heard from Mr Woodage on behalf of the Claimant. He had worked for the Respondent for 24 years before his contract terminated on the 2 July 2019; he had worked as a Group Buyer in the Crawley branch. He praised the Claimant's performance saying that under her stewardship she had "earned themselves the accolade of being the best reception team in the group".

17. The Claimant as part of her role as Head Receptionist, interviewed and employed a zero hours weekend receptionist called Ms Dowzer and Ms Lewis as a receptionist. Ms Dowzer was the daughter of an important customer of the Respondent. The interview was carried out on the 16 January 2017. Ms Dowzer was 17 at the time.

Disclosures made during employment.

18. The Claimant raised a number of issues and concerns during her employment about bullying and harassment by the Sales and Service Team towards the Reception Team; which were clarified in oral evidence to be in 2017 (as referred to above in the list of issues at 5(a)(i)). The Claimant gave one example of the bullying which was being shouted at by Mr King and Ms Sardar. This allegation was put to Mr Cook in cross examination and he denied that the Claimant informed him of this incident.

19. Although this was denied by Mr Cook, the Tribunal on the balance of probabilities accept the evidence of the Claimant that she raised concerns about bullying and harassment with him on a number of occasions. We conclude this because this was corroborated by Ms Parsons who worked on reception from April 2017 until February 2018. In her statement at paragraph 3, Ms Parsons stated that the Claimant had "spoken to Jamie Cook often about the hostility and racism we witnessed and suffered by members of the sales and service team". Ms Parsons confirmed that she resigned because she could no longer work in what she described as a 'hostile and negative environment'. This evidence reflected that the Claimant raised regular concerns about hostile and bullying treatment of the reception team by others. There was evidence to show that the disclosures related to the adverse treatment of a number of people within the workplace.

20. There was no evidence before the Tribunal that what the Claimant was complaining about in this disclosure was less favourable treatment because of race or sex. The example provided by the Claimant above in relation to the conduct of Mr King appeared to be unprofessional but no suggestion that this was alleged to be an act of discrimination.

21. The Tribunal noted that the Claimant in her role as Head Receptionist, undertook tasks of a managerial nature and a conversation raising concerns about the treatment of her and her team was consistent with the Claimant's extended role. It was not disputed that the Claimant discussed with Mr Cook and Mr Harwood about the Sales and Service Team refusing to take phone calls from reception. The Tribunal conclude that it was plausible and consistent that these concerns were raised as Mr Cook confirmed that the

Claimant would 'moan' to him about other staff which suggested that complaints had been raised and he identified them as 'moans' suggesting that he did not take them seriously at the time. Mr Cook also told the investigation into the Dowzer grievance (see below) that Mr King had told him that he did not like the Claimant (page 138 dated August 2018). This was corroborative evidence that there was hostility between the two employees and also that Mr Cook was aware of this at the time but he failed to take any action.

22. The next disclosure referred to above in the list of issues at 5(a)(ii) was alleged to have occurred in May 2017 and was in reaction to an incident again involving Mr King (who left the business in March 2018) who allegedly said to the Claimant that she was useless and that she should "do her job properly". This appeared to be a single event only impacting on the Claimant. Mr Cook denied when this was put to him in cross examination that the Claimant raised this with him. The Claimant told the Tribunal that she raised this matter with him verbally and on the balance of probabilities we prefer the evidence of the Claimant to Mr Cook on this point.

23. The Tribunal find as a fact that on the evidence, the Claimant held a reasonable belief that she was being subjected to bullying behaviour. However, disclosure number 5(a)(ii) appeared to be focussed solely on her exchange with Mr King, there was no suggestion that this disclosure made reference to the wider reception team.

24. The Claimant conceded in cross examination that after she raised disclosures 5(a)(i) and 5(a)(ii) with Mr Cook in early 2017, their relationship continued to be cordial and he continued to be supportive of her and to praise her performance. There was no evidence of the Claimant suffering any detrimental action as a result of raising the first two concerns. There was also no evidence to suggest that the Respondent failed to investigate her complaints because she had raised a protected disclosure. The Tribunal also noted that the Claimant handed in her notice in February 2018 but was persuaded by Mr Cook to stay describing her as the 'missing cog'. This corroborated that the Respondent valued the Claimant and there was no evidence to suggest that after disclosures (i) and (ii) were made, she was subjected to a detriment or that their attitude towards her changed.

25. The Tribunal was taken by the Respondent to an additional disclosure (not included in the agreed issues above) relied on by the Claimant that alleged that Mr Cook did not employ any foreign nationals in the showroom, details of this allegation were in the further particulars on page 53 paragraph 12 and in her statement at paragraph 91. The Claimant alleged that Mr Cook said to her that Mr Lovell (in the Croydon branch) had "too many problems with them" and he did not want them in the Crawley Branch ('them' being a reference to foreign nationals). Mr Cook denied that this conversation took place. The Tribunal saw no consistent evidence that the Claimant raised this matter as a grievance or made a disclosure to the Respondent, unlike the complaints of bullying and harassment referred to above, which were corroborated by the supporting evidence of others. The Tribunal conclude that the Claimant has failed to provide any consistent evidence that she disclosed information to the Respondent about this matter.

26. The Tribunal now come to the disclosure referred to above at 5(a)(iii) which was the Claimant's disclosure raised with Mr Harwood in the summer of 2017 and February 2018. The disclosure was that the sales team refused to serve Asian and Indian customers, this focussed specifically on the actions of Ms Sardar and Mr King but also extended to others. This disclosure contained specific details that the Sales Team avoided serving Asian and Indian customers and the reason they did so was because, in their view, they did not make any money out of these customers and they were referred to disparagingly as 'tyre kickers' (inferring that they were time wasters). Again, this was an oral disclosure.

27. Mr Harwood recalled the Claimant mentioning this to him in 2017 and he recalled that the Claimant told him that the sales team would 'avoid dealing with foreign customers'. In cross examination Mr Harwood accepted that the Claimant disclosed this information and he accepted they had engaged in a *"long conversation when a lot of information was shared. I did not probe, only when I was asked in November when I recalled it*". He accepted that this was a serious allegation and he "*wished he had asked more questions at the time".*

28. Although Mr Harwood accepted that he had a long conversation with the Claimant in 2017, he denied that he had a subsequent conversation about the sales team refusing to serve foreign customers in 2018. As there was a dispute on the evidence in relation to the disclosure in February 2018, the Tribunal considered the totality of the evidence. We first noted that the Claimant's witness Ms Parsons in her statement at paragraph 5 stated that she was appalled by what she witnessed in respect of racism. She stated that members of the Sales team would refuse to serve Asian customers and the stock answer was "*they won't buy anything. I am not going to bother*" and sometimes customers would overhear this. She said that this happened on a few occasions and "*all the sales team had the same attitude*". She also corroborated that the Claimant spoke to Mr Cook about it. This evidence was not challenged in cross examination. As this witness worked from April 2017 until February 2018 and witnessed racism on a number of occasions, this corroborated that it was not a single or isolated incident.

29. The Tribunal also considered the text messages at pages 194-5 of the bundle showing a conversation between the Claimant and Mr Harwood on the 24-5 July 2018. In his text Mr Harwood referred to Mr King being *"unpleasant to you and this was true of others*" and he asked for the Claimant's views on Mr King's interaction with customers. In a later email he also referred to having '*cultural concerns'* about Mr King. This document corroborated the Claimant's evidence that she raised the conduct of Mr King with Mr Harwood in relation to her interactions with him, the reception team and with customers and on the balance of probabilities the Tribunal therefore prefer the evidence of the Claimant that she also discussed this with him in February 2018 as Mr King and his colleagues had, in Mr Harwood's own words, been unpleasant to other staff and this continued until he left. The Tribunal accept the Claimant's recollection that she had a second conversation about this matter in February 2018.

30. Although in Mr Harwood's statement at paragraphs 14-15 he explained his use of the word 'cultural' concerns referred to above had no link with race whatsoever, it was put to him in cross examination that this was a reference to race but he denied this saying he had made a mistake and referred to the misspelling of another word in the same text. The Tribunal were taken to Mr Harwood's email to Ms Gilbert dated the 3 November 2018 sent in relation to the Claimant's grievance. He stated that the word cultural concerns should have read 'cultural fit concerns'. He did not explain to the Tribunal how the additional word 'fit' changed the meaning of his text message.

31. The Tribunal find as a fact and on the balance of probabilities that the words cultural concerns related to concerns held about the conduct of Mr King to those from other cultural backgrounds. This description was consistent with the issues that had been raised by other staff about Mr King and was also consistent with the complaints raised by the Claimant about him. Mr Harwood's explanation that this was a typographical error was not credible. The Tribunal noted that despite the cultural concerns held about Mr King, he was employed again in the Pulborough branch in late 2018 (but he failed to pass his probationary period).

32. The Tribunal therefore find as a fact and on the balance of probabilities that this was a complaint that was escalated by the Claimant with sufficient details to amount to a disclosure of information in 2017 and in 2018. Serious concerns of discrimination were raised in respect of the treatment of customers from Asian or Indian backgrounds.

The dismissal of Ms Dowzer.

33. It was not disputed that Ms Dowzer's employment did not go well and Mr Cook and the Claimant agreed that she should be dismissed. Mr Cook asked the Claimant to carry out the dismissal, which she agreed to do. On this point Mr Woodage at paragraph 4 of his statement gave the opinion that the Claimant had been asked by the management to carry out tasks that she was not trained to do, and this was one example.

34. The Claimant dismissed Ms Dowzer on the 12 May 2018. It was not disputed that the dismissal was not carried out according to best practice however it was also accepted by the Respondent that the Claimant had not been trained to carry out dismissals and had no experience of doing so. The Tribunal will not go into detail on this issue as it was not relevant to the issues before us. Ms Dowzer subsequently raised a grievance on the 31 July 2018 about the conduct of the Claimant during her employment and about the dismissal process. The grievance also mentioned others in the reception team who worked at weekends. It was investigated by Ms Gilbert the consultant HR adviser.

Detriments during employment

35. The first detriment in the agreed list of issues was that the Respondent failed to address the Claimant's concerns about alleged bullying and racism. The Tribunal accept that failing to deal with a complaint of bullying and harassment can be a detriment. However, there was no evidence before the Tribunal to suggest that the Respondent failed to address the

concerns raised because she had made a number of disclosures. It was noted by the Tribunal that the Respondent did not appear to have any effective procedures in place to deal with bullying and harassment. It was also noted that in the documents produced during the Dowzer investigation, Mr Cook confirmed to Ms Gilbert that they had 'agreed' to ignore the Dowzer grievance at first (see page 137). This appeared to be a consistent approach adopted by this Respondent at the time, to ignore all grievances and complaints irrespective of the nature or severity of the concern raised.

36. Although no action was taken by the Respondent, there was no evidence to suggest that this was because she had raised these matters as a concern, it was due to the complete absence of effective procedures and HR advice and support. The Tribunal also have found as a fact above that after the Claimant raised the first three alleged disclosures, there was no change in the attitude of the Respondent towards her. She was still highly respected and valued and their attitude did not appear to change. We again refer to the Respondent convincing the Claimant to withdraw her notice in February 2018.

37. We therefore conclude that although no action was taken after the first three disclosures, this was due to ineffective management; there was no evidence before the Tribunal to suggest that this was because she had raised those disclosures.

38. The Tribunal will deal with detriments (ii) to (v) together as they all relate to the conduct of the investigation into Ms Dowzer's grievance. The Claimant alleged that she was subjected to a detriment because the Respondent failed to interview all the Reception Team and failed to conduct a fair investigation into the Dowzer grievance. The evidence before the Tribunal was that Ms Dowzer raised a written grievance after her dismissal and named a number of people. However, the main focus of the grievance was the conduct of the Claimant during her employment and the manner in which the dismissal was handled. The Claimant accepted in cross examination that the Respondent had to investigate the grievance, but she felt that the grievance itself was 'not true and very generalised' however that was merely her opinion. Her complaint was that not all the people named were questioned and the staff members were interviewed randomly and some over the phone. The Tribunal noted that Ms Gilbert interviewed 11 people (paragraph 7 of her statement) and the Tribunal conclude that all those interviewed were either named or relevant to the investigation.

39. The Claimant confirmed in cross examination that at the time Ms Gilbert investigated the Dowzer grievance she was not aware that the Claimant had made a number of protected disclosures to the Respondent. There was no evidence to suggest that the persons interviewed were questioned randomly as suggested by the Claimant. It was noted that Ms Gilbert had chosen the persons to interview from the written grievance and after interviewing Ms Dowzer. Ms Gilbert had devised a series of questions to ask each witness and to that extent it appeared to be a reasonable way of carrying out the investigation. There was no evidence to suggest that Ms Gilbert's approach was random as suggested by the Claimant.

40. Although the Claimant complained that she was 'grilled' for over an hour and a half in her interview as part of the investigation, this was due to the

fact that she conducted the dismissal and was mentioned on a variety of occasions in the grievance whereas others named by Ms Dowzer had less of a part to play.

41. The Claimant also complained that the investigation did not extend to all the reception team. However, the Claimant acknowledged in cross examination that as Ms Dowzer worked only at weekends, Mr Gallivan and Ms Anderson (who were the weekend staff), should be interviewed. The evidence before the Tribunal suggested that the investigation was reasonable. There was no evidence to suggest that the grievance investigation was conducted in a way that was detrimental to the Claimant or that it was carried out in this way because the Claimant had raised a number of complaints during her employment.

42. Following the investigation of the grievance, Ms Lewis who worked on reception provided a statement dated the 1 September 2018 at pages 146-150 expressing concerns about the Claimant. Ms Lewis was hired at the same time as Ms Dowzer following an interview carried out by the Claimant. She stated that she nearly resigned because of the Claimant's treatment of her at Easter time in 2018. She discussed her concerns with Mr Cook in May 2018, saying that she felt she could no longer work with the Claimant. A role came up at the Pulborough branch which she applied for and she moved out of the Crawley branch in June 2018. Ms Lewis described the Claimant's conduct as being 'domineering and controlling' and of being in 'critical parent mode'. She also accused the Claimant of accessing and reading her emails. Although many of those interviewed in connection with the Dowzer grievance expressed strong support for the Claimant, concerns had also been expressed about her management style. This criticism was mirrored in the oral evidence given by Mr Harwood who described the Claimant as being "direct and instructional" in her approach.

Disclosure on the 1 October 2018

43. The Tribunal will now consider the disclosure referred to above at paragraph 5(a)(iv) on the 1st October 2018 to Mr Cook. This was referred to in the Claimant's statement at paragraph 18 that two members of the reception team were suffering from anxiety due to the hostile environment. Mr Cook had no recollection of this disclosure. There was no evidence to suggest that specific details were provided by the Claimant. There was no evidence that details were provided of the acts complained of, who was suffering from anxiety and who was responsible for causing it (as by that date Mr King and Ms Sardar were no longer employed in the Crawley Branch). This allegation lack specificity.

The meeting of the 4 October 2018.

44. The Respondent called the Claimant to a meeting on the 4 October, which they stated was called at the request of the Claimant. The Respondent said that the purpose of the meeting was to provide constructive feedback on the grievance outcome and to discuss the concerns that had been raised by Ms Lewis. Mr Cook and Ms Gilbert said at paragraphs 27 and 19 respectively that this was to be an informal meeting but aimed at "feedback comments" and to "assist in her professional development". The Tribunal

saw at page 162 of the bundle a document outlining a number of recommendations that were made after the conclusion of the grievance investigation suggesting areas where the Claimant should improve, this document was not shared with the Claimant prior to or during the meeting.

45. Although the Claimant told the Tribunal in answers to cross examination that she requested to be accompanied by a colleague and this was refused, there was no contemporaneous evidence to support this and it was denied by both Mr Cook and Ms Gilbert. The Tribunal prefer the evidence of the Respondent on this point to the Claimant's as this was not referred to in the above list of issues or in her statement and it was not a request that was referred to or repeated in the meeting or in her subsequent post termination grievance.

46. The Claimant recorded the meeting on her phone. Although in cross examination the Claimant stated that she recorded the meeting because she had noticed a change in attitude by Mr Cook and Harwood in the days leading up to the meeting, this was not corroborated in her two grievance letters on page 169 (which gave no reason for recording the meeting) and in her letter of grievance on page 176. The Claimant also told the Tribunal that she recorded due to being refused a request to be accompanied, but again this was not corroborated, and we do not find either reason to be credible.

47. It was unfortunate that the Respondent failed to confirm the purpose and objective of the meeting on the 4 October or to provide an indication of what was to be discussed. Ms Gilbert accepted that the way in which the meeting was called was not best practice. It was apparent that the expectations of the parties in the meeting were diametrically opposed. The Claimant thought that she would receive the outcome of the grievance. However, the Respondent wanted to tackle what they had identified in the grievance investigation as some of the Claimant's development issues in relation to her communication skills with the sales and service team and with some of her colleagues on reception. Although Ms Gilbert said a number of times in the meeting that what was taking place was a constructive conversation, the Claimant did not perceive it in that way and felt ambushed as she was unprepared for the criticism that she faced.

48. It was noted that during the meeting Ms Gilbert confirmed that the Claimant was 'absolutely brilliant with external customers' but there were weaknesses in relation to her communication with internal staff. The Claimant asked many times for examples and evidence of where her communications had fallen short (the Tribunal counted 10 requests for examples in total), but none were provided by Mr Cook or Ms Gilbert; they said that this would be provided in a one to one meeting the following week. Ms Gilbert said in cross examination that the reason she did not give examples in this meeting because it was not sensitive or fair to put it all on the Claimant. It was therefore not clear to the Tribunal why the meeting had been called and what the Respondent had hoped to achieve as they did not provide the Claimant with any examples of where her communications had fallen short and what action needed to be taken to improve. The Claimant became distressed and at one stage (page 21) she indicated that she may resign. The Tribunal had the benefit of listening to the recording and it was clear that the Claimant was distressed and tearful

in the meeting.

49. The alleged protected disclosure referred to above at 5(a)(v) was made in this meeting. In the meeting it was noted that the Claimant made a number of generalised comments about the hostility of the Service department towards the Reception Team. The only additional information provided by the Claimant was that she said that Debra had been told that the Service Team 'hated' the reception team. In the meeting she also stated that the previous week she had 'made a comment' to Mr Cook about the hostility and the Tribunal conclude that this was a reference to the conversation that she had with Mr Cook on the 1st October (even though this conversation took place that week not in the previous week). This was the extent of the detail provided by the Claimant at the time. The disclosures were unparticularised and vague assertions and were not supported by any details. There was also no suggestion in this meeting that the reception team were being treated less favourably due to their sex or race.

50. At one stage in the meeting Ms Gilbert is recorded as saying that the Claimant was "looking scary" (page 21) and the Claimant replied that she was aghast and the Tribunal conclude that this meant she was surprised by what she was being told. Ms Gilbert was asked by the Tribunal for her description of why the Claimant looked scary and she replied that the Claimant had her "legs crossed, arms folded, leaning forward, scowling, pursed lips and staring intently" and she said that this went on throughout the meeting. Ms Gilbert was asked in cross examination about the ET3 on page 33 at paragraph 8 where it stated that she had asked the Claimant "if she was trying to threaten her" and she accepted that this was not said. Ms Gilbert confirmed that she was not scared or intimidated in the meeting. The meeting ended with the Claimant leaving saying she wanted to 'think about it'.

51. Although the Respondent told the Tribunal that the Claimant got up and walked out of the meeting, this was not corroborated by the recording which the Tribunal listened to. The Tribunal having listened to this recording concluded that the conversation continued until the end of the meeting without a gap. Although the recording showed the Claimant standing up and going towards the door (as this part of the recording was caught on video) the talking continued until the Claimant indicated that she wished to leave. There was no evidence that the Claimant got up and walked out of the meeting, she was upset and explained that she was leaving. The Respondent's evidence on this point was not credible.

52. The Tribunal having listened to the recording and read the transcript considered whether this meeting was a detriment and we concluded that it was. The meeting conveyed the clear message that the Claimant's performance had to improve, and her internal communications were unsatisfactory. She was to attend a number of one to one meetings with Mr Cook and was expected to improve. The Tribunal have already found as a fact that there were no appraisals or one to one meetings in place at the Respondent company so the Claimant would have understood the forthcoming meetings to be performance related and a form of sanction.

53. We heard evidence from Mr. Woodage on this point and we accept his unchallenged evidence at paragraph 6 of his statement where he stated

that he felt that Mr Cook had wished to distance himself from the dismissal of Ms Dowzer and he "*essentially got [the Claimant] to do his dirty work for him*". He felt that Mr Cook had effectively thrown the Claimant "*under a bus*". He felt that the Claimant was 'scapegoated' by the Respondent as Ms Dowzer's family were high value customers. Although he added that he felt that the Claimant was 'also victimised' he gave no reason for this conclusion.

54. On the balance of probabilities the Tribunal conclude that the Claimant was subjected to a detriment by the manner in which this meeting was conducted and the proposal to place her under supervision, however the reason that this was done was not because she had previously raised protected disclosures but because they wanted to distance themselves from the Dowzer grievance and to place the culpability for the incident solely on the Claimant.

55. The day after the meeting the Claimant went off sick and then on the 11 October 2018 (page 165) she emailed Mr Cook telling him that she had been signed off sick with stress and anxiety. She informed Mr Cook that she was too upset to talk to him but also confirmed that she "should return to work on the 29 October". She asked in this letter why her work emails had been blocked however Mr Cook did not provide an answer to this question.

56. In reply to this letter, the Respondent dismissed the Claimant and the dismissal letter was at page 168 and signed by Mr Cook and dated the 12 October. It stated firstly that the Claimant had failed to attend work "*due to being off sick with stress and anxiety*". In the second paragraph it referred to the meeting on the 4 October and commented that at this meeting the Claimant refused to "*take on board any constructive comments with regards to your work and clearly did not want to discuss it further*". The letter then stated that *"in the light of the above*" the Claimant's services were no longer required and she was to be paid one month's notice and outstanding holiday pay.

57. The decision to dismiss was taken by Mr Cook but after discussion with Ms Gilbert. Although the letter was unclear whether the sickness absence was a reason for dismissal, Ms Gilbert's evidence was that although the sickness was referred to, she stated the she was acknowledging the sick note and this was "*just how I write letters*". The Tribunal noted that the letter did not simply acknowledge the sick note, it remarked that the Claimant 'failed to attend work' due to sickness. The Tribunal conclude on balance that this was therefore a factor that was taken into account when deciding to dismiss the Claimant. Mr Cook's evidence corroborated Ms Gilbert's that the reason for dismissal was the Claimant's "*failure to take on board criticism and the ramifications on the team"*. Although he also denied that her sickness absence was a factor taken into account the Tribunal conclude that as the sick note was not mentioned but her absence due to sickness was, that this was a factor he considered when deciding to dismiss. Mr Cook denied that he took the decision to dismiss because she had raised complaints of discrimination bullying and harassment.

58. The Tribunal find as a fact and on the balance of probabilities that the reason for dismissal was the Claimant's attitude in the meeting and the fact

that she had taken absence due to sickness. We conclude that Mr Cook and Ms Gilbert had found the Claimant to be challenging. It was consistent evidence that in respect of all complaints that had been raised by all staff, nothing was done. For example, Ms Lewis raised a complaint about the Claimant in May 2018, and this was not investigated at the time (see above at paragraph 42). The Claimant raised complaints about the Sales Team, and this was not dealt with. All complaints had been ignored, save for the Dowzer grievance (which at first instance was ignored) and the Tribunal conclude that the only reason this was dealt with, was that Ms Dowzer's step father was a high value customer of the business as suggested by Mr Woodage in his evidence. The Respondent therefore took the decision to dismiss the Claimant because she was challenging their conclusions reached about her behaviour and we accept the evidence of Mr Woodage who held a senior managerial position at the time, that they could avoid blame by dismissing the Claimant, who in this meeting had refused to accept the criticisms put to her.

59. Although it was suggested to the Tribunal by the Respondent's witnesses that they dismissed because they were concerned that the Claimant would act inappropriately to her Team, this reason was not included in the dismissal letter and was unsupported by any evidence. The Tribunal therefore conclude that this was not one of the reasons for dismissal

60. Ms Gilbert was asked in cross examination why no procedure was followed when deciding to dismiss the Claimant and her reply was "*it was non contractual, her failure to take anything on board. It was clear she was not going to take anything on board. We tried our hardest, it was due to be discussed in the one to one the following week. It never entered our minds to use the disciplinary procedure".*

61. Ms Gilbert was asked in cross examination what would happen if the person had raised bullying harassment and discrimination and she replied "*there would be an investigation. We would not dismiss someone for raising issues*". She again confirmed in cross examination that she was unaware that the Claimant had previously raised issues with Mr Cook.

62. The Tribunal further find as a fact that although the Respondent followed no process or procedure prior to dismissing the Claimant, there was no evidence to suggest that this was because the Claimant had previously raised concerns regarding discrimination, bullying and harassment. The Respondent had no policies or procedures in place and it was Ms Gilbert's view that the Claimant was not entitled to a dismissal process under the terms of her contract. This was the reason why no process was followed prior to dismissing the Claimant. There was no evidence that the Respondent failed to follow a dismissal process because she had raised two disclosures.

63. Although the Respondent concluded that the Claimant's negative attitude would not change, this was based on mere conjecture and assumption. The Claimant was not given an opportunity to come back and discuss the issues that were referred to in the meeting on the 4 October and had no opportunity to make representations before the decision was taken to dismiss. The Tribunal find as a fact that although the dismissal process was poorly handled due to the advice given by Ms Gilbert, there was no

evidence to suggest it was because protected disclosures had been made.

Post termination Disclosures

64. After receiving the dismissal letter, the Claimant wrote to Mr Guy Harwood, the Chairman of the Respondent Company, to protest about the dismissal and the conduct of the meeting on the 4 October. This letter was at pages 169-173. The Claimant complained that she was not given the opportunity to know what she had done wrong or to defend herself and she denied that she said at the meeting that she wasn't interested in receiving feedback. The Claimant also referred to the ineptitude of the management team and highlighted some of their shortcomings and the failings of the consultants. At page 172 she stated that "*there is also racism very evident at the dealership. If an Asian or mixed nationals come into the showroom, certain Sales Executives don't want to deal with them, because of their race"*. At page 173 of the letter she stated that *"I feel because I am a woman, I am being discriminated against",* the Tribunal noted that this was the first time that the Claimant had mentioned sex discrimination. The Claimant ended the letter by saying that she had not been dismissed because of her performance "*but on the strength of a witch hunt, that was subjectively conducted to make me culpable for the Managements own failings"*. The Tribunal noted that the above two quotes were the only references to discrimination in a lengthy letter.

65. Mr Guy Harwood replied to the letter by email on the 15 October 2018 at page 174 and commented that he felt that the Claimant had "*great distain for the Company and its management"*. He went on to state that he "*understood that you were very defensive, aggressive and rude when [Mr Cook and Ms Gilbert] tried to talk to you in a constructive way about the outcome of [Ms Dowzer's grievance]*". He ended the letter by suggesting that they both "move on". He did not offer her a meeting to discuss her concerns or offer her an appeal process. Although this letter stated that the Claimant was rude in the meeting on the 4 October there was no suggestion of this in the recording the Tribunal listened to and it was confirmed by both Ms Gilbert and Mr Cook that the Claimant did not shout or swear in the meeting. The Tribunal accept however that the Claimant could be described as acting defensively on the 4 October.

66. The Claimant then lodged a grievance/appeal against her dismissal which was on page 176-7 dated the 15 October 2018. The focus of much of the grievance was to challenge the decision to place her on performance management and felt that she had been "*singled out and scapegoated*". She then went on to state that *"I have raised a concern in the past about inappropriate racial discrimination by the sales team of Indian and foreign customers. I found this appalling particularly being myself of mixed national origin. I believe I may have been victimised for raising these issues with management*". She then stated that *"I have also raised concerns about bullying and harassment of the reception team by the service team and sales people. Such conduct in the workplace is unacceptable"*. The Claimant ended the letter by saying that she wished to appeal her dismissal *"which was undertaken whilst I was on sick leave without any formal process. I believe it to be further evidence of victimisation".* She asked for her grievance to be considered as part of her appeal against dismissal.

67. The Tribunal find as a fact that the grievance letter made reference to her previous disclosures of race discrimination. The letter stated that she had previously raised a concern about *"inappropriate racial discrimination in the past*" and she believed that she may have been victimised because of this. The Claimant made a link between her past disclosures and her subsequent dismissal without due process maintaining that the dismissal was therefore an act of victimisation.

68. The Tribunal further find as a fact that the grievance letter did not provide a disclosure of information, it referred to making complaints in the past about unacceptable behaviour. There was also no evidence to suggest that the Claimant was making this disclosure in the public interest as it was made to the employer as part of her grievance and an appeal against dismissal and reflected her own personal views about the Respondent.

69. The Tribunal noted that in the first letter to Mr G Harwood the Claimant made a mere assertion that she had been discriminated against because of her sex, however she provided no information about the type of treatment suffered. It was also noted that the complaint of sex discrimination was not referred to in her grievance letter. The Tribunal conclude that the complaint of sex discrimination lacked any detail and amounted to a mere allegation unsupported by any facts.

70. Ms Gilbert acknowledged the letter by email dated the 15 October at page 183 and in the second paragraph of the email she stated that on the 4 October 2018 the Claimant had "*declined to take [development issues] on board and after a short while walked out of the meeting, refusing to discuss anything further with us*". Ms Gilbert denied that the Claimant had been told she would be placed on performance management, she clarified that the Claimant was told that she would be addressing learning points in a one to one with Mr Cook. Ms Gilbert accepted in the letter that the Claimant's dismissal was undertaken without formal process as "*the Company is under no obligation to use the formal process as it is not contractual during the first two years of service. This does not indicate any victimisation towards you*". She ended the letter by saying that "*we do not intend to enter into any further discussions with you around your employment with Harwoods Limited*". This letter clearly stated that they did not intend to deal with the grievance or appeal, this approach appeared to be consistent with Ms Gilbert's initial advice given to Mr Cook when he first received a complaint from Ms Dowzer, which was to 'ignore it'.

71. The Claimant replied on the 17 October 2018 expressing her disappointment about the Respondent's decision to ignore her right to appeal or to raise a grievance. In reply Ms Gilbert (page 187) again responded saying that "*we do not see any value in holding an appeal meeting with you regarding your dismissal and do not intend to enter into any further discussions with you regarding your employment with us".* This response appeared to be clear that they wished to have no further communications with the Claimant. The Respondent did not appear to consider whether they should comply with the ACAS Code of Practice by holding an appeal or investigating her grievance.

72. There were no further communications between the parties until the Claimant instructed solicitors who wrote to the Respondent on the 2

November 2018 (pages 189-190) setting out details of the Claimant's complaints. The solicitor's letter stated that the Claimant had raised protected disclosures which in her reasonable belief tended to show that the Respondent had failed to comply with a legal obligation or health and safety and that the treatment amounted to bullying and harassment and race discrimination. There was no reference in this letter to sex discrimination.

73. The Respondent decided to conduct an investigation after receipt of this letter and the Tribunal conclude that this was because the Claimant had instructed lawyers. Prior to this letter the Respondent had been quite clear that they did not intend to take any further action in relation to her grievance.

The grievance investigation

74. Ms Gilbert investigated the Claimant's grievance. Ms Gilbert accepted in cross examination that it was not best practice for her to deal with it as she had taken part in the decision to dismiss and had dealt with the investigation of the grievance by Ms Dowzer against the Claimant. She could not therefore be described as independent.

75. The Tribunal saw that Ms Gilbert interviewed 11 people, but she did not interview the Claimant. Ms Gilbert told the Tribunal in answers to cross examination that she would not meet with the Claimant due to her demeanour in the meeting of the 4 October and the fact that she had recorded the meeting. Even though this may have been the case, the Claimant was not asked to provide written representations to the grievance process in the alternative, to ensure that a fair and thorough process was followed.

76. It was not a detailed interview process, all interviewees appeared to have been asked whether they had witnessed bullying and harassment within the sales team or dealership and whether they were aware of any sales executive being unwilling to serve foreign nationals.

77. Mr Harwood was interviewed; he confirmed that the Claimant mentioned this to him in the summer of 2017 (page 196) that the sales staff "*would avoid dealing with foreign customers*" and he accepted that he did not take what the Claimant had told him seriously, referring to what he had been told as a passing comment. This description was inconsistent with how he described the Claimant's disclosures to the Tribunal, which is referred to above at paragraph 27, where he described it as a long conversation. He also referred to his discussion with the Claimant about Mr King who he did not feel was a "*good cultural fit for the Group*". He also accepted that he knew that Mr King and Ms Sardar had formed a gang against the Claimant.

78. Mr Harwood agreed in cross examination that the Claimant's work ethic was of a high standard, but he said that at times the Claimant was "*part of the problem*". He added that at times the Claimant needed to "*understand her place*" and he was asked for further clarification of this comment and he said that it was due to her "*direct and instructional approach*". Although this description appeared to be harsh, it was consistent with the views expressed by Ms Lewis in her email to Ms Gilbert of her experience of being

managed by the Claimant.

79. Mr Cook was interviewed (page 202) and he admitted that the Claimant had raised on a couple of occasions with him concerns about some exchanges between reception and the service advisers, but he felt that this was a 'two-way thing'. He gave no specific examples. Mr Cook's evidence given to the grievance investigation corroborated the Claimant's evidence that she had raised concerns with him.

80. Ms Lintott was interviewed on the 6 November 2018 (page 204). In the interview she said that she found the racism 'disgusting'. She provided an example of this where she approached Mr King and asked him to serve a customer, he said it was '*no problem*' and Ms Lintott pointed out the customer, an Asian gentleman and Mr King then looked at her and said "*No I'm busy*". Ms Lintott then asked Ms Sardar and she asked if it was the Asian gentleman and when she confirmed that it was, Ms Sardar replied that she was "*going to the toilet and was busy*". Ms Lintott then asked Mr Day to serve the Asian customer and he said "*he would be a few minutes as he had a job to do*" but failed to serve the customer. The Asian customer walked out. It was confirmed that this was witnessed in the summer of 2017.

81. Ms Gilbert conceded in cross examination that one member of staff had told her that she had witnessed racism and that "*there may have been one incident, but I could not corroborate it*". However, the Tribunal noted that the investigation uncovered that the Claimant had spoken with both Mr Cook and Harwood about her concerns of bullying and harassment and racism. The serious allegation of racist behaviour by the sales team had also been corroborated by Ms Lintott.

82. The outcome letter from Ms Gilbert to the Claimant was dated the 14 November 2018 at pages 209-211 sent to the Claimant's solicitors. It was confirmed in the letter that the decision was made to terminate the Claimant's employment due to her "*unhelpful attitude and actions in the meeting on the 4 October 2018 and her subsequent email stating she would be off sick for one week…*". This corroborated the Tribunal's previous finding that the Claimant was dismissed because of what happened in the meeting and due to her subsequent sickness absence. This was made clear in the letter where it was stated that they decided to terminate her employment "*due to her being off sick with the stress she caused herself*". On page 210 she stated she had carried out an investigation and "*no evidence or suggestion of any bullying harassment or racism has subsequently been found to have taken place*". This quote was put to Ms Gilbert in cross examination and she accepted that the letter could have been worded better and with hindsight she would have worded the letter differently.

83. The Tribunal conclude on the balance of probabilities that this was not a case of a badly worded phrase or sentence. The grievance outcome was an entirely inaccurate report of the evidence that had been gathered during the investigation. Ms Gilbert had found corroborative evidence of racism within the workplace and had also been told that the Claimant had reported bullying and harassment of the Reception Team. To say that no evidence *or suggestion* of racism had been found was false. The Tribunal conclude

that to record a false outcome of the investigation was a detriment to the Claimant. The Tribunal further find as a fact that the reason the letter falsely claimed that there was no evidence of bullying and harassment or racism, was because she had done a protected act and raised a protected disclosure. Ms Gilbert provided no credible reason as to why the letter misrepresented the evidence that had been gathered during the investigation, which corroborated the Claimant's disclosures referred to in her grievance.

84. The Respondent failed to consider the Claimant's appeal against dismissal and no reason was provided as to why this was. It was noted that in the grievance outcome Ms Gilbert stated that the Respondent was not "*obliged to follow the Company disciplinary or grievance procedure as this did not form part of [the Claimant's] contract of employment and there is no legal requirement to follow the ACAS Code of practice*". Although this was Ms Gilbert's view, she did not explain in this letter or to the Tribunal why she then proceeded to deal with the grievance but not the appeal process. The Claimant was therefore denied the right to appeal the dismissal which was to her detriment.

The Law

Employment Rights Act 1996
43A Meaning of "protected disclosure"

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

43B Disclosures qualifying for protection

(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, [is made in the public interest and] tends to show one or more of the following—

(a) that a criminal offence has been committed, is being committed or is likely to be committed,
(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
(d) that the health or safety of any individual has been, is being or is likely to be endangered,
(e) that the environment has been, is being or is likely to be damaged, or
(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.

(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or

elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

(4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.

(5) In this Part "the relevant failure", in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).

Employment Rights Act 1996
47B Protected disclosures

(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

[(1A) A worker ("W") has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—

(a) by another worker of W's employer in the course of that other worker's employment, or
(b) by an agent of W's employer with the employer's authority,

on the ground that W has made a protected disclosure.

(1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.

(1C) For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker's employer.

(1D) In proceedings against W's employer in respect of anything alleged to have been done as mentioned in subsection (1A)(a), it is a defence for the employer to show that the employer took all reasonable steps to prevent the other worker—

(a) from doing that thing, or
(b) from doing anything of that description.

(1E) A worker or agent of W's employer is not liable by reason of subsection (1A) for doing something that subjects W to detriment if—

(a) the worker or agent does that thing in reliance on a statement by the employer that doing it does not contravene this Act, and

(b) it is reasonable for the worker or agent to rely on the statement.

But this does not prevent the employer from being liable by reason of subsection (1B).]

(2) … this section does not apply where—

(a) the worker is an employee, and
(b) the detriment in question amounts to dismissal (within the meaning of [Part X]).

(3) For the purposes of this section, and of sections 48 and 49 so far as relating to this section, "worker", "worker's contract", "employment" and "employer" have the extended meaning given by section 43K.]

Employment Rights Act 1996
103A Protected disclosure

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

Equality Act 2010

27 Victimisation

(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 this 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.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

Submissions and cases referred to

85. These were oral and in writing and were considered by the Tribunal and references were made to those submissions below. In additional to the cases discussed below the Tribunal was also taken to the following cases:
    Fincham v H M Prison Service KEA/0925/01
    Parkins v Sodexho Ltd [2002] IRLR 109 EAT
    Base Childrenswear Ltd v Otshundi [2019] EWCA Civ 1648
    Commerzbank AG v Rajput [2019] ICR 1613

Cases referred to by both Counsel

86. The Tribunal was reminded by the Claimant in their closing submissions that the Claimant must show that one of the acts in Section 27 (a) to (d) above done by the Claimant has influenced the alleged victimiser in his unfavourable treatment of her (*Aziz v Trinity Taxis Ltd* [1988] ICR 534). The House of Lords by a majority (Lord Browne–Wilkinson dissenting) has made it clear that the alleged victimiser need not be 'consciously motivated' *Nagarajan.*

87. The Claimant further reminded the Tribunal to adopt the accumulative approach of the EAT when assessing victimisation espoused in the case of, *Qureshi v Victoria University of Manchester and Another* [2001] ICR 863 and that the totality of the case must be considered as stated in *Driskel v Peninsular Business Services Ltd* [2000] IRLR 151. The Tribunal was also warned against following a fragmented and discursive judgment; more importantly, there is the potential noted in *Reed and Bull* [1999] IRLR 299 for ignoring the impact of totality of successive incidents, individually trivial.

88. Both Counsel referred the Tribunal to the case of Cavendish *Munro Professional Risks Management Ltd v Geduld* [2010] IRLR 38 where EAT found that there was a *crucial* difference between the giving of information and making allegations. The Tribunal was reminded that the giving of information must include the conveying of facts. In the case of *Bolton School v Evans* [2006] IRLR 500, EAT, a Claimant who made woolly and vague complaints was not found to have made a protected disclosure. Also merely expressing an adverse opinion of what the employer was proposing to do did not qualify: *Goode v Marks & Spencer plc UKEAT/0442/09*, [2010] All ER (D) 63 (Sep).

89. The Respondent referred the Tribunal to the case of *Kilraine v London Borough of Wandsworth [2018] EWCA Civ 1436* which confirmed that the giving of information means that a disclosure must have sufficient factual content and specificity to be capable of 'tending to show..'' one of the matters in section 43B(1)

90. The case of *Chesterton Global Ltd v Nurmohamed [2017] IRLR 837 CA*, did not rule out a protected disclosure merely because there was a personal interest involved (especially where other employees were concerned); and (b) there can be a public interest in the affairs of a private company, not just in the public sector. The disclosure did of course affect other individuals. Further *Chesterton* reminded of the connection to the grounds of detriment. The Tribunal were reminded that a disclosure can be in the

public interest if a small group of the public, who are also employees in a department are similarly affected.

91. The Respondent referred the Tribunal to the case of *Parsons v Airplus International Limited UKEAT/0111/17* which confirmed that in law a disclosure does not have to be wholly in the public interest or wholly from self interest, it does not prevent a Tribunal from finding as a fact that it is one of them. The Respondent identified that in this case two further points were made firstly that in the particular facts of this case (making disclosures as part of a disciplinary dispute with the employer) the fact that the Claimant believed it was made in the public interest was not relevant and secondly a case of whistle blowing dismissal is not made out by simply a 'coincidence of timing' between making the disclosures and the termination.

92. The Tribunal was also taken to the case of *Kraus v Penna plc [2004] IRLR 260 EAT* and the subsequent case of *Babula v Waltham Forest College [2007] IRLR 346 CA* where it was confirmed that the failure to comply under subsection (1)(b) was likely or probable but it was rejected in the latter case that it must be proved that failure to comply with any legal obligation must exist.

Decision

The Unanimous decision of the Tribunal is as follows:

93. The Tribunal will first consider whether the Claimant had raised a qualifying and protected disclosure, the Tribunal first considered whether disclosure 5(a)(i) above made to Mr Cook was a protected disclosure. We concluded that although the information provided about her exchange with Mr King was specific to her and was unprofessional behaviour it was provided as an example of bulling and harassment. It was therefore corroborative of the treatment of the reception staff by the sales and service team and was sufficient to amount to information which tended to show that there was a breach of a legal obligation.

94. The Tribunal considered the disclosure at 5(a)(ii). It was not disputed by Mr Cook that the Claimant 'moaned' about other departments and there was sufficient corroborative evidence to confirm that what the Claimant disclosed was information about bullying of her alone, it was worded as information about the bullying by Mr King of the Claimant, not of anyone else. The first two disclosures therefore amounted to information.

95. We then considered in relation to disclosure 5(a)(i) and (ii) whether the Claimant had a reasonable belief that the information tended to show the breach of a legal obligation and/or a breach of health and safety. We considered the case of Kilraine above. The Tribunal conclude that the Claimant was of that belief; she was reporting concerns of bullying and harassment which was capable of amounting to a breach of common law duty of trust and confidence or could amount to a breach of health and safety (the duty to provide a safe working environment). It was noted that the allegations were serious and had resulted in a number of employees

leaving and Ms Parsons described in her statement feeling depressed due to working in the hostile environment. There was compelling evidence to show that the Claimant held a reasonable belief that there was a breach of a legal obligation or a breach of health and safety.

96. The Tribunal then had to consider whether the Claimant had a reasonable belief that disclosures (i) and (ii) were in the public interest. The Tribunal have been referred to the cases above by both Counsel of Chesterton Global which held that merely because there was a personal interest, this did not rule out there being a public interest. It has been confirmed in this case that the definition of the public can refer to a small group of employees. The facts found above confirmed that the Claimant's disclosure at (i) referred to a group of employees being subjected to bullying and harassment by other departments; it was not solely a disagreement between individuals or a complaint serving a personal interest alone. The Tribunal on the evidence conclude that the Claimant believed the interests of her colleagues to be in the public interest and that view was objectively reasonable. The Tribunal conclude that disclosure (i) was made in the public interest.

97. The Tribunal then considered whether disclosure (ii) was made in the public interest and we considered that it was not. The way in which the disclosure was worded reflected the fact that it only referred to an exchange involving the Claimant and Mr King, it was therefore a complaint that was personal in nature and was not made in the public interest. The Tribunal therefore conclude that 5(a)(ii) was not a protected disclosure as it lacked the necessary requirement that it is made in the public interest.

98. The Tribunal therefore conclude that disclosure 5(a)(i) is a protected disclosure for the above reasons.

99. The Tribunal then considered whether disclosures 5(a)(i) and 5(a)(ii) amounted to protected acts under the Equality Act. The test under section 27 is different and required the Claimant to show that an allegation was made that a person had contravened the Equality Act under subsection 27(2)(d). From the evidence before us there was nothing to suggest that what was being pursued was a complaint about less favourable treatment on the grounds of sex or race. There was no evidence to suggest that the Claimant characterised the actions of Mr King or of others in the Sales/ Service department as acts of discrimination. There was no evidence that she relayed this as a concern to Mr Cook at the time. The first time that the Claimant referred to sex discrimination was in her letter to Mr G Harwood post termination and in that letter no details were provided to support her claim of sex discrimination in the letter sent by her solicitor to the Respondent. In the absence of any evidence to suggest that these disclosures contained allegations of discrimination, we conclude on all the evidence that these were not protected acts under the Equality Act.

100. Although the Tribunal noted that the Respondent in their skeleton argument referred to two additional protected disclosures at paragraph 18(iii) and (iv), the Tribunal heard no evidence to suggest that the Claimant relied upon these examples as they were not included in the agreed list of issues. Although the Claimant in her statement at paragraph

28 referred to Mr Clarke being bullied and mentioning this to Mr Cook, the Tribunal found as a fact that this disclosure lacked specificity. The Tribunal also heard no evidence to suggest that the actions of Ms Leach in the Service department amounted to anything more than a complaint of unprofessional conduct. The Claimant's evidence in chief led no details about either of these matters. There was no evidence before the Tribunal to suggest that these were protected acts or protected disclosures.

101. The Tribunal now turn to matter above at 5(a)(iii) in the agreed list of issues. We have found as a fact that this was a disclosure of information as opposed to a mere allegation. The disclosure was made to Mr Harwood who accepted that this was discussed at some length and in his words a lot of information was shared. This was a disclosure of a breach of a legal obligation which had the necessary quality of being in the public interest as it adversely impacted the public who attended the showroom as well as other staff working for the Respondent. The Tribunal therefore conclude that this amounted to a protected disclosure.

102. The Tribunal then considered whether the disclosure above at 5(a)(iii) was a protected act under the Equality Act. We concluded that the disclosure amounted to an allegation under section 27(2)(d) that a person had contravened the Act. The disclosure was that the sales team had discriminated against customers in the showroom on the grounds of their race. This is therefore a protected act under the Equality Act.

103. The Tribunal did not find as a fact that the Claimant had raised a protected disclosure in relation to the allegation that the Respondent did not employ foreign nationals. We have found that there may have been a conversation about this matter but nothing more than that. This was not a disclosure of information made by the Claimant to the Respondent.

104. Turning to disclosure number 5(a)(iv) and 5(a)(v) above in relation to the disclosures made on the 1 and 4 October, we refer to our findings of fact above at paragraphs 43 and 49 and conclude that there was a lack of clarity of the persons alleged to have suffered from anxiety and the failure to provide information about alleged harassment or bullying raised in the 4 October meeting. The Tribunal conclude that due to the failure to provide detailed information, these were mere allegations and not disclosures of information. Although this may have been a further escalation of concerns about the treatment of the reception team by other departments, these disclosures provided no additional details to those already disclosed.

105. Although the Claimant relied in the alternative that disclosures 5(a)(iv) and 5(a)(v) were protected acts under the Equality Act, the Tribunal could find no suggestion that the Claimant was making an allegation that someone had contravened the Act. It was noted that in the meeting on the 4 October 2018 the Claimant failed to provide any specific details of the alleged harassment and made no suggestion that what was being complained about was an allegation of discrimination. It is for this reason that the Tribunal did not find that these disclosures amounted to protected acts.

106. Turning to the Claimant's grievance at 5(a)(vi) we considered

both of the Claimant's letters to the Respondent dated the 15 October referred to above. The Claimant's first letter to Mr G Harwood expressed her personal views about her experiences within the company, in the absence of an exit interview. However, she made reference to race and sex discrimination in this letter. The Claimant's grievance letter clarified that she had raised concerns about race discrimination in the past and she felt that, as a result she had been victimised. This was a protected act under the Equality Act and this point was conceded by the Respondent in closing submissions.

107. The Tribunal then considered whether the disclosure above at 5(a)(vi) also amounted to a protected disclosure. The Tribunal have concluded that the oral disclosures made of race discrimination in 2017 and 2018 had sufficient detail to amount to a disclosure of information that tended to show that the Respondent had breached a legal obligation. We also concluded that the oral disclosure was in the public interest. However, the reference made in the grievance letter provided no further information.

108. The Tribunal then considered whether the grievance letter suggested that that the Claimant had a reasonable belief that the making of this disclosure was in the public interest. The Tribunal considered the case of *Parsons v Airplus International Ltd* referred to us by the Respondent which was authority for the principle that where a disclosure is made in the course of disciplinary proceedings, a Tribunal is entitled to rule that the disclosure was made in the person's self-interest. In this case the Tribunal conclude that the reference made by the Claimant in her grievance letter to discrimination, bullying and harassment, was not made in the public interest. We conclude this from the wording of the letter and the intention behind the letter, which was to pursue a complaint solely about dismissal and the way in which it had been conducted. It therefore lacked the necessary ingredient of escalating a concern that was in the reasonable belief of the Claimant made in the public interest, it pursued the single objective of pursuing a complaint against the Respondent.

109. The Tribunal conclude that the Claimant made protected disclosures in respect of paragraph 5(a)(i) and 5(a)(iii). The Tribunal also conclude that the Claimant did a protected act in respect of 5(a)(iii) and 5(a)(vi) above.

The detriments

110. Turning to the detriments the first of which was that the Respondent failed to deal with her complaints of bullying and harassment. The Tribunal found as a fact that although the Claimant raised several protected disclosures with both Mr Cook and Mr A Harwood, their relationships remained cordial and they continued to value her opinion as a respected employee. There was no evidence that as a result of raising various concerns that she suffered a detriment. The Tribunal also found as a fact that even though the Claimant tendered her resignation in February 2018, she was persuaded to stay by Mr Cook. This evidence showed that the Claimant continued to be supported and valued after she had raised protected disclosures 5(a)(i) and 5(a)(iii). There was no evidence to suggest that their attitude changed towards the Claimant after she raised her protected disclosures and act.

111. Although the Tribunal accept that failing to deal with a concern about bullying and harassment can be a disadvantage to the employee by causing additional stress or 'turning a blind eye' to unacceptable conduct, there was no evidence that the Claimant suffered in this way and it was noted that she only went off with stress after the meeting of the 4 October. During the Claimant's employment, the disclosures which were found to be protected disclosures or act were dated from April 2017 to February 2018, there was no evidence to suggest that the Claimant suffered a detriment because she had raised protected disclosures or had done protected acts.

112. The Tribunal have found as a fact that the Respondent's failure to deal with her concerns was not because she had raised a number of protected disclosures, but it was due to the fact that they had poor HR procedures in place and appeared to have little or no understanding of how to handle these matters. This was partly due to the fact that they had no training or awareness of equality issues and they had no effective policies and procedures in place. The Tribunal considered why the Respondent failed to deal with the complaints and we concluded on all the facts that it was not because she had made protected disclosures. All the evidence before the Tribunal suggested that they failed to deal with any staff complaints due to their poor understanding of equality issues and of whistle blowing. The Tribunal have concluded that the Respondent failed to deal effectively with any complaints raised by staff and we refer to the examples above of Ms Lewis and Ms Dowzer in the first instance. The approach by the Respondent was to ignore most grievances and this was the consistent approach they adopted. Although it was a detriment to fail to deal with the concerns that had been raised, we conclude that this failure was not because the Claimant had raised a number of protected disclosures or a protected act. This head of claim is not well founded and is dismissed.

113. The Tribunal will take all the detriments relating to the Ms Dowzer grievance investigation together referred to above at paragraphs 6(b)(ii) to 6(b)(v). The Tribunal have found as a fact that at the time Ms Gilbert commenced the grievance investigation, she was unaware that the Claimant had raised two protected disclosures and had done one protected act during her employment.

114. The Claimant conceded in cross examination that the Dowzer grievance had to be investigated and she accepted that she had to be interviewed as part of that investigation because she was named in the grievance. Even though the Claimant complained that the investigation was unfair or poorly conducted, there was no consistent evidence to show that this was the case. There was also no evidence to suggest that the investigation was conducted in this way because the Claimant had raised protected disclosures and a protected act. It was noted that the last protected disclosure/protected act found by the Tribunal was in February 2018 and the Dowzer investigation was carried out some six months later. The Claimant has failed to show any nexus between her protected disclosures and the manner in which the investigation was carried out. In the absence of any evidence to show that this was a detriment and it was a detriment because she had raised a protected disclosure or had done a protected act, this head of claim is therefore dismissed.

115. Moving on to deal with the detriments above at paragraphs 6(b)(vi) and 6(b)(vii), the Claimant claimed that she was subjected to a detriment on the 4 October 2018 when she was called to a meeting without warning. However the Tribunal noted that the Claimant received prior warning of the meeting but was unaware that she would be informed of concerns about her performance or that she would be subjected to performance management going forward. We accept that this meeting was a detriment to the Claimant as the concerns about her performance came as a complete surprise to her and she became upset and distressed at being told of the Respondent's criticisms of her performance.

116. The Tribunal considered whether the Claimant was subjected to a detriment because she had raised protected disclosures or had done a protected act. We again rely on the finding of fact that Ms Gilbert was not aware of the Claimant's protected disclosures at the time the meeting was called and at the date of the meeting. The meeting was called by Ms Gilbert with Mr Cook in attendance but there was no evidence to suggest that they called the meeting as a detriment for raising protected disclosures in 2017 and in February 2018.

117. The Tribunal also considered why the meeting was conducted in this way and why the Claimant was given no notice that she was likely to receive information that was critical of her. We conclude that the meeting was conducted in this way because the Claimant had mishandled the dismissal of Ms Dowzer and this had created difficulties with an important high value customer. The Claimant has failed to provide any evidence to suggest that there was a nexus between the protected acts and disclosures and the manner in which the meeting was conducted. Although the Claimant was shocked and surprised at the proposals made in the meeting to subject her to performance management, it was clear that this decision was made after the dismissal of Ms Dowzer had caused difficulties and the findings made as a result of that investigation. The Claimant has failed to provide any evidence that shows a causal connection between the protected disclosures or acts and the meeting of the 4 October. This head of claim is not well founded and is dismissed.

Dismissal

118. The Tribunal now turn to whether the Claimant was dismissed because she had made two protected disclosures. The Tribunal stood back and considered the evidence in this case as a whole and not as a series of unrelated events. We considered that the Claimant was comfortable raising complaints during her employment and was not subjected to a detriment for doing so. The burden of proof is on the Claimant to show that she was dismissed for an automatically unfair reason. The Tribunal had to consider whether the making of the disclosures was the reason or the principle reason for the dismissal.

119. We found as a fact that Ms Gilbert was unaware that the Claimant had made any protected disclosures during her employment. Although we found as a fact that the decision to dismiss was made jointly by Mr Cook and Ms Gilbert, the Claimant had escalated her concerns to Mr Cook of bullying and harassment of the Reception Team. The Tribunal have to decide what facts were considered by the person who took the

decision to dismiss. We also considered that it is no defence to an employer to say that they did not believe the disclosure to be protected.

120. Looking back as a whole at the history of the Claimant's disclosures to Mr Cook and to Mr Harwood and the reason given for dismissal, we considered what motivated the decision maker to act as they did. We were told by Mr Cook and Ms Gilbert that the Claimant was dismissed because she would not accept criticism and we conclude that this was the true reason for dismissal taken together with the fact that the Claimant was on sick leave. It was clear that the meeting on the 4 October had not gone well. The Claimant had challenged them both to provide evidence of their critical comments and they were not prepared for this. The Claimant then went off sick and although Ms Gilbert told the Tribunal that this was not taken into account as a reason to dismiss, we found as a fact that it was a factor that was taken into consideration.

121. The Respondent had formed the view that the Claimant would be difficult to manage going forward and she would not change, although this view was harsh and unsubstantiated, we concluded that this was a factor that they took into account.

122. The Tribunal also accepted the unchallenged evidence of Mr Woodage that the Respondent wanted to get rid of the Claimant because they wanted to distance themselves from the dismissal of Ms Dowzer. This view was entirely consistent with the manner in which they approached the Dowzer grievance and the way in which they sought to manage the Claimant going forward. We concluded that they dismissed the Claimant because they wanted to build bridges with a wealthy client and not because she had previously raised concerns. We conclude therefore that the reason or the principle reason for dismissal was not on the ground that the Claimant had raised protected disclosures.

123. The Tribunal also considered whether the Claimant was dismissed because she had done a protected act by the date of dismissal. The Claimant had failed to provide any evidence to suggest that she was dismissed for doing a protected act, there was no evidence of a causal connection between the protected act at paragraph 5(a)(iii) and the decision to dismiss. In the absence of any evidence on which we could conclude that the dismissal was on that ground, the burden of proof does not shift to the Respondent. This head of claim is therefore dismissed.

Post Termination Detriments.

124. Turning to the post termination detriments, we considered whether the Respondent failed to conduct a detailed investigation into the grievance and if so, was this done on the ground that the Claimant had made a number of protected disclosures or had done two protected acts. Having looked at the investigation, it appeared that all employees were asked two questions and when the responses were recorded, no follow up investigations were carried out. When Ms Lintott gave her evidence to corroborate that she had witnessed race discrimination, no follow up investigations were conducted. No second interviews were carried out to follow up where concerns had been disclosed. The investigation was cursory, and we compared the thoroughness of the Dowzer grievance

investigation to that conducted into the Claimant's grievance. It was noted that after the Dowzer grievance investigation was completed a series of recommendations were drawn up (page 162) whereas no report or recommendations were made after the Claimant's grievance was completed which was surprising in the light of the serious concerns that had been disclosed by Ms Lintott.

125. The facts supported the Claimant's evidence that she was treated differently throughout the grievance process and we conclude on the balance of probabilities that the reason for the difference in treatment was because she had raised two protected disclosures and protected acts. The Tribunal was surprised that no action was taken by HR to produce a report or recommendations especially in the light of the corroborative evidence that had come to light of race discrimination in the workplace. This was a detriment to the Claimant, and we conclude that this was because the Claimant had made protected disclosures and had done two protected acts.

126. The burden of proof therefore shifts to the Respondent to provide evidence that the protected disclosure did not materially influence the unfair treatment. In respect of the protected acts under the Equality Act it must be shown that the treatment was in no sense whatsoever on that ground. The Respondent has provided no evidence to discharge either burden of proof. There has been no explanation why they failed to conduct a searching enquiry to get to the bottom of the allegations. We also considered it was inappropriate for Ms Gilbert to conduct the investigation as she was mentioned in the grievance and had discussed and agreed with Mr Cook that the Claimant should be dismissed. She was not independent and this we believe was reflected in the cursory nature of the investigation.

127. Although we concluded that the grievance letter was not a protected disclosure, it referred back to disclosures 5(a)(i) and 5(a)(iii) which were corroborated by the evidence. The Respondent has been unable to explain why they misrepresented the evidence that had been gathered in the investigation and we conclude that the reference to the previous protected disclosures materially influenced both the approach adopted to the grievance and the outcome. We conclude on all the evidence that the Claimant's claim of detriment because of raising a protected disclosure is well founded. The Tribunal also conclude that the Claimant's claim of victimisation is well founded.

128. The conduct of the grievance investigation also breached the ACAS code of practice on grievance procedures for the reason stated above.

129. The Tribunal also found as a fact that the letter communicating the outcome of the grievance contained a material inaccuracy and the Tribunal heard no credible explanation as to why this was. The Claimant was told that they had uncovered no discrimination, this was false and we believe that this further corroborated the attitude of the Respondent to this grievance, that it was a matter of unimportance and they paid mere lip service to the investigation and into the outcome letter. We conclude that this was a detriment because the Claimant had both done two protected acts under the Equality Act and because she had raised two protected

disclosures. The Respondent failed to provide an adequate explanation as to why the outcome of the investigation was not accurately conveyed to the Claimant and the Tribunal did not find Ms Gilbert's explanation on this point to be credible. The outcome was not 'inelegantly put' it contained a material misrepresentation of the facts before the Respondent.

130. Lastly the Tribunal considered whether it was a detriment to fail to consider the Claimant's appeal against dismissal. We conclude that it was. Ms Gilbert was unable to explain why no appeal was considered on this matter on the papers. The Respondent could provide no explanation for failing to consider the appeal.

131. We have found as a fact that although the Claimant raised an appeal against the Respondent's decision to dismiss, this appeal was not heard. The reason for this was that the Respondent saw no value in holding an appeal. Although the Respondent later decided to consider the grievance after receiving her solicitor's letter, they maintained their view that the Claimant was not entitled to have an appeal as they were not legally obliged to follow the ACAS Code of Practice and the Claimant was not contractually entitled to an appeal. The Tribunal conclude that this was a detriment because the Claimant had raised complaints of discrimination in her grievance.

132. The burden of proof shifts to the Respondent to show that the decision was in no sense whatsoever on that ground. Ms Gilbert has failed to discharge that burden. Even though the Claimant clearly set out her view that she had been subjected to victimisation in her letter, the only reason given in the letter for failing to hold an appeal was on the basis of Ms Gilbert's understanding of the Claimant's entitlement under the contract. Although the Respondent's evidence as to why they failed to provide an appeals process was in relation to the fact that the disciplinary and grievance procedure was non-contractual, it was noted that this did not prevent them from holding a grievance investigation and to provide a written outcome.

133. The decision not to provide the Claimant with an appeal process to challenge the decision to dismiss was on the balance of probabilities because the Claimant had raised allegations of victimisation in her letter of appeal. We conclude that this was a detriment because she had done a protected act. The Tribunal considered whether Ms Gilbert's evidence was the real reason (that it was non-contractual) and we conclude that it was not. We conclude this because of the inconsistent manner in which they approached the grievance aspect in comparison to the appeal. We conclude that they dealt with the grievance because it raised serious concerns about the Respondent and the outcome was inaccurate, seeking to exonerate them, despite clear evidence to the contrary. The Respondent completed a grievance process despite the fact that it was not contractual but failed to provide an appeal process. The Tribunal conclude that the Respondent failed to offer an appeal as an act of victimisation.

134. Ms Gilbert failed to provide a consistent or credible explanation why no appeal was heard, and the Tribunal therefore conclude on the balance of probabilities that this was due to the fact that she had raised complaints of discrimination. We conclude therefore that the

Claimant's complaint of post termination detriment is well founded.

135. We also conclude that the failure to provide the Claimant with an appeal process and outcome was a post termination detriment for raising protected disclosures. The Tribunal took into account the fact that Ms Gilbert had misled the Claimant about the outcome of the investigation and in the same letter had refused to deal with the appeal. The Tribunal conclude on the balance of probabilities that these two matters were linked and the appeal was refused due to the allegations made in the letter. The Tribunal conclude that there was a nexus between the allegations set out in the letter and the manner in which it was dealt with by the Respondent. Although the Tribunal have concluded that the grievance letter was not a protected act, it referred to the previous oral disclosures numbered 5(a)(i) and 5(a)(iii) which were found to be protected acts. It was clear that the Claimant was referring to these protected disclosures in her grievance letter. Failing to provide the Claimant with an appeal process was a detriment and we further conclude that this was a post termination detriment because the Claimant had made two protected disclosures.

136. The Tribunal conclude that the failure to provide the Claimant with an appeal against dismissal amounted to a breach of the ACAS code of practice.

137. This case will now be listed for a remedy hearing however in order to avoid the necessity of a further hearing the parties are encouraged to see if this matter can be resolved without the need for a further hearing. The parties are given 28 days from the promulgation of this decision to see if a negotiated settlement is possible. If it cannot, the parties are ordered to agree on the length of remedy hearing required and to inform the Tribunal of this within 56 days of the promulgation of this decision together with a list of dates to avoid for a period of 6 months. The remedy hearing will then be listed.

138. The Tribunal also orders that any further documents to be relied on by either party should be exchanged by the 25 January 2021 and put in an agreed bundle by the Respondent and an electronic copy is to be provided to the Claimant and the Tribunal. Statements should be exchanged 28 days before the hearing,

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Employment Judge Sage

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Dated: 19 November 2020