



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms H Jones

**Respondent:** Atal y Fro

**Heard at:** Cardiff via CVP                      **On:** 22 – 26 February 2021  
and 1 March 2021

**Before:** Employment Judge R Havard  
**Members:** Ms S Atkinson  
Mr P Charles

**Representation:**

Claimant: Ms H Swain (Lay Representative)

Respondent: Mr A George (Solicitor)

## RESERVED JUDGMENT

1. The unanimous judgment of the Tribunal is that the Claimant's claim of sexual harassment is not well-founded and is dismissed;
2. The unanimous judgment of the Tribunal is that the Claimant's claim of sex discrimination is not well-founded and is dismissed;
3. The unanimous judgment of the Tribunal is that the Claimant's claim of victimisation is not well-founded and is dismissed;
4. The unanimous judgment of the Tribunal is that the Claimant's claim of wrongful dismissal and breach of contract are not well-founded and are dismissed.

## REASONS

### Introduction

1. By a claim form dated 5 November 2019, the Claimant indicated that she wished to pursue a claim of unfair dismissal, wrongful dismissal, sexual harassment, victimisation, and discrimination on the grounds of her sex.

2. The Respondent lodged a response in which it disputed the claims pursued by the Claimant.
3. At a preliminary hearing conducted in person on 21 January 2020 before Employment Judge Jenkins, it was recorded that the Claimant's claim of unfair dismissal had been dismissed due to her lack of continuous service. However, the Claimant wished to apply to add claims of discrimination on the ground of her sexual orientation as a gay woman, again in respect of both direct discrimination and harassment.
4. The issues to be determined by this Tribunal were agreed at the preliminary hearing before Judge Jenkins. Whilst the application by the Claimant to amend her claim to include claims of direct discrimination and harassment on the grounds of sexual orientation was not considered by Judge Jenkins on 21 January 2020, the issues agreed at that hearing included the ground of sexual orientation in parenthesis in the event that the application to amend her claim was successful.
5. The application to amend her claim in this way, which was opposed, was heard before Employment Judge Moore on 19 March 2020. For the reasons outlined in that decision, the application was successful.

### **Issues**

6. At the beginning of this hearing, it was confirmed by both Ms Swain and Mr George that there was no requirement for those issues agreed at the preliminary hearing on 21 January 2020 to be amended in any way.
7. The Tribunal also considered carefully the content of the Scott Schedule (pages 30 to 52) in which the Claimant provided additional information with regard to each head of claim.
8. The agreed issues are:
  1. *Equality Act 2010 ("EqA"), section 13: direct discrimination because of sex and/or sexual orientation.*
    - a. Did the Respondent treat the Claimant as follows:
      - i. By not applying its disciplinary policy to her; and
      - ii. By dismissing her?
    - b. Was that treatment "less favourable treatment" ie did the Respondent treat the Claimant less favourably than it treated or would have treated others ("comparators") in not materially different circumstances?;
    - c. The Claimant relies on the following comparators:

- (a) A male former employee called Clayton, [a heterosexual female former employee, Kay Quinn] and/or hypothetical comparators.
  - d. If so, was this because of the Claimant's sex or sexual orientation; and/or because of the protective characteristic of sex or sexual orientation more generally?
2. *EqA, section 26: harassment relating to sex and/or sexual orientation.*
- a. Did the Respondent engage in conduct as follows:
    - i. By the text message contact from its Chair; and
    - ii. By dismissing her due to information provided to the Board by the Chair?
  - e. If so, was that conduct unwanted?
  - f. If so, did it relate to the protected characteristic of sex or sexual orientation?
  - g. Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
  - h. Did the conduct have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? (Where the conduct has this effect involves taking into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.)
3. *EqA, section 27: victimisation.*
- a. Did the Claimant do a "protected act" and/or did the Respondent believe that the Claimant had done or might do a protected act, in that she had complained about the text contact from the Respondent's Chair and was in the process of submitting a grievance?
  - b. Did the Respondent subject the Claimant to a detriment by dismissing her?
  - c. If so, was this because the Claimant did a protected act and/or because the Respondent believed the Claimant had done, or might do, a protected act?
4. *Breach of contract.*

- a. Was the Respondent's disciplinary policy of contractual effect?
- b. If so, did the Respondent breach the terms of that policy in relation to the dismissal of the Claimant?

5. *Remedy.*

- a. If the Claimant succeeds, in whole or part, the Tribunal will be concerned with issues of remedy and in particular, if the Claimant is awarded compensation and/or damages, will decide how much should be awarded.

**Evidence**

1. The Claimant gave evidence on her own behalf.
2. In addition, the following gave evidence on behalf of the Claimant:
  - i. Ms Sophie Hirst, a Service Manager at the Respondent from October 2017 to October 2018;
  - ii. Ms Helen Kell, Business Development Manager for the Gwella Partnership from May 2015 to May 2019;
  - iii. Ms Sarah McCarthy, Adolescent to Parent Violence and Abuse Officer at the Respondent from September 2018 to November 2019;
  - iv. Ms Jane Lewis, Service Manager at the Respondent from October 2018 to September 2019;
  - v. Ms Michelle Church, Trustee at the Respondent from March 2018 to August 2019;
  - vi. Ms Linda Greenfield, Finance and HR Manager for the Respondent from 2004 until October 2019.
3. The Respondent called:
  - i. Ms Carryn Williams, Trustee of the Respondent throughout the material time;
  - ii. Ms Sarah Capstick, Trustee of the Respondent from June 2018 and Chair of the Board of the Respondent from 19 November 2018;
  - iii. Ms Jemma Wray, Trustee of the Respondent from March 2018;
  - iv. Ms Lorraine Griffiths, Trustee of the Respondent from mid-2018;

- v. Mr John Stanley, Independent HR Consultant.
4. All those who gave oral evidence had provided written witness statements.
5. An agreed bundle had been prepared by the Respondent and submitted, together with an index. The bundle ran to 668 pages.
6. Unless otherwise stated, any page references in this judgment refer to pages in the bundle.

### **Submissions**

7. At the outset of the hearing, Mr George lodged a document entitled "Skeleton Argument on Behalf of the Respondent".
8. At the conclusion of the evidence, Mr George and then Ms Swain provided oral submissions. Neither had submitted any further written submissions to the Tribunal.

### **Findings of Fact**

9. The Respondent provides a range of services to those who maybe victims of domestic abuse and sexual violence. It is a charitable organisation governed by a board of trustees who are effectively volunteers and who are not paid for the work that they do.
10. On 8 January 2018, the Claimant was appointed as a Director and became Chief Executive Officer of the Respondent. The contract of employment (pages 53 to 59) was signed by the Claimant on 12 January 2018. References to the Disciplinary Policy are found at paragraphs 14d to 17 and 20. There was a dispute between the parties with regard to which disciplinary policy applied to the Claimant's contract. The Respondent maintained that the disciplinary policy at page 60 of the bundle applied to the Claimant. Paragraph 7 of that policy (page 61) states as follows:

7 *"The Disciplinary Policy and Procedure do not apply to staff that are undergoing a current probationary period. Any problems with conduct or performance, which may arise during a probationary period, are dealt with the Recruitment and Selection Policy and Procedure. Atal y Fro reserves the right to use a truncated version of this Policy during the initial 24 months of an employees' employment or to dispense with the process altogether."*

11. However, the Claimant, supported by the Finance and HR Manager, Ms Greenfield, maintained that the Disciplinary Procedure commencing at page 76 was the policy that applied to her contract. At paragraph 6 of that policy (page 77), it states:

6 *"However the disciplinary process will always be invoked in cases when an employee's conduct or performance requires a serious and formal"*

*intervention due to alleged serious or gross misconduct or because earlier and less formal interventions have failed to produce and improvement in conduct or performance."*

12. The Tribunal had listened carefully to the evidence of the Claimant, Linda Greenfield, and Ms Capstick. The Tribunal had also taken into consideration the email exchanges that took place between Ms Greenfield, the Claimant, Ms Capstick and the other trustees. It illustrated that a raft of policies were being reviewed. Indeed, by reference to an email from Ms Capstick to the trustees on 31 October 2018 (page 101) there were 47 policies which were being reviewed, 46 of which were approved. However, the disciplinary policy was the only policy which was not approved and again, this is confirmed, for example, by Ms Carryn Williams in her email of 6 October 2018 (page 99).
13. The disciplinary policy had also been discussed at the Board meeting on 18 August 2018 (page 290).
14. The Tribunal accepted that it was ultimately for the trustees to approve the multiplicity of policies that, taking account of the activities of the Respondent, were required, and this would include the disciplinary policy. The disciplinary policy at page 60 indicated that it was amended by the Board of Trustees on 31 October 2018 which was consistent with the email of that date from Ms Capstick to the Board. There was then an email from the Claimant to the trustees copied to Ms Greenfield confirming that the policies had been updated and that Ms Greenfield would be sending the amended policies out to staff. The Tribunal was therefore satisfied, on the balance of probabilities, that the disciplinary policy in existence as at the date of the Claimant's dismissal in July / August 2019 was the policy at page 60 of the bundle.
15. The relevance of the disciplinary policy will be considered at a later stage in this judgment.
16. At the time of the Emergency Board Meeting ("EBM") on 31 July 2019 at which, subject to obtaining advice, the trustees who were present decided that the Claimant should be dismissed, the trustees of the Respondent were: Sarah Capstick; Carryn Williams, Jemma Wray, Lorraine Griffiths and Michelle Church.
17. At the time of the Claimant's appointment as Chief Executive Officer in January 2018, only Ms Carryn Williams had an involvement with the charity. It was in October 2017 that Ms Williams had applied to become a trustee of the Respondent; the process of appointment involved an interview and attendance at three meetings of the Board of Trustees. The first meeting she attended was on 1 November 2017 at which the appointment of the new chief executive was discussed, the current holder of that position having resigned.
18. By the time of Ms Williams's second meeting on 14 December 2017, the Claimant had been appointed as a director and was in attendance. This was the first occasion on which Ms Williams had met the Claimant and she had not been involved with either the Claimant's appointment or the appointment of any other trustees on the Board.

19. It was apparent to both the Claimant and Ms Williams that there were concerns at the structure of the Board. There were seven trustees on the Board, five of whom were men and two were women with the Chair being a man. In Ms Williams's view, this was most unusual in a women's aid charity. Ms Williams was also concerned at the attitude and approach towards the Claimant by the Board. In a private conversation with the Claimant after a meeting on 20 February 2018, which was Ms Williams's third meeting, she spoke with the Claimant to confirm her support.
20. The behaviour of the Chair continued to be of concern. On 19 March 2018, the Claimant sent an email to the two existing women trustees and to Ms Williams and another prospective woman trustee raising the governance issues. She said in the email that the current arrangement may have meant that the Respondent was in breach of its Memoranda and Articles with the Charity Commission. The Claimant set out an action plan in the email to establish a woman-only Board.
21. At or about the same time, the Claimant submitted a grievance against the chair as a result of his behaviour and conduct. She also confirmed to the two women trustees that she had submitted a whistleblowing report to the Charity Commission regarding the conduct of the chair and the governance issues.
22. On 27 March 2018, a meeting was held and a discussion took place regarding the formation of a new Board with Ms Williams voted as Acting Chair.
23. Subsequently, it was as a result of an approach by the Claimant that Ms Jemma Wray, Ms Lorraine Griffiths, Ms Michelle Church and Ms Sarah Capstick all became trustees of the Respondent.
24. The Claimant made it known to all the prospective trustees that there were issues with regard to the governance of the Respondent and they also became aware of the grievance that the Claimant was pursuing against the previous Chair and Board. Indeed, the grievance was substantially upheld and remedied.
25. This meant that the newly appointed Board comprised of seven women trustees, six of whom had been directly recruited by the Claimant.

### **The Trustees**

26. Taking account of the decisions taken by the trustees, the Tribunal considered it was relevant to set out in some detail the experience and expertise of the trustees who were on the Board and, save for Ms Church, were the decision-makers at the EBM on 31 July 2019.
27. At the time of her appointment as a trustee in March 2018, Ms Wray was the national Head of Wales for BBC Children in Need. She had served five years as a trustee of another women's aid in South Wales as well as acting as a Chief Executive Officer. She had served as trustee of multiple women's organisations in Wales over the past 13 years. She had worked for various charities for some 20 years and had held overall responsibility for safeguarding in those charities and she had held trustee positions for over 15 years.

28. Lorraine Griffiths has worked in management positions in a housing support provider with nine managers reporting to her and with overall responsibility for more than 70 staff. At the time of her appointment in mid-2018, Ms Griffiths had known the Claimant for approximately 16 years.
29. Ms Carryn Williams had extensive experience as a senior manager in Social Services in Wales for over 20 years. She had experience in commissioning and contracting of statutory, voluntary, and private services for both adults and children. Ms Williams had managed staff providing safeguarding training and advice to voluntary organisations. She had experience of: managing finance and human resources; commissioning and contracting; administration; training of social workers' development; writing statutory plans; acting as professional adviser across all client groups including child protection performance management and quality. As one of her many roles, Ms Williams had led the team of consultants commissioned by the UK Government to evaluate all Social Services Children's Services in England and writing the national evaluation report.
30. Ms Michelle Church was appointed a trustee in March 2018. She had known the Claimant for over 10 years ever since the Claimant was lead for Vale Supporting People and Ms Church fulfilled the same role at Blaenau Gwent Wales. Ms Church had not held a Board position before.
31. Ms Sarah Capstick was approached by the Claimant in June 2018, inviting Ms Capstick to consider becoming a trustee. Indeed, the initial invitation was via a Facebook Messenger message on 7 June 2018.
32. Ms Capstick was working for the Vale of Glamorgan Council covering the Cardiff and Vale Regional Collaborative Committee when she first met the Claimant. This committee formed part of the Governance Structure for the Supporting People Programme Grant and Ms Capstick worked across the region co-ordinating committee meetings and supporting the members of the committee. Ms Capstick described her current employment as promoting, "The whole of the third sector in Cardiff, developing links with statutory partners and being an independent voice for the third sector in meetings". She goes on to say that, *"I promote best practice and good governance. I also sit on a number of sub-groups for the Cardiff and Vale Regional Safeguarding Boards (adult and children) including the Policy, Procedure and Practice sub-group and run the process to identify the third sector representatives on the other sub-groups and on the Board itself. I chair a number of multi-agency groups covering workforce, substance misuse, learning disabilities and I am increasingly working or representing on a national level."*
33. The Tribunal found that the trustees appointed to the Board of the Respondent were individuals of very considerable expertise and experience in the sector.

### **Relationship between the Claimant and the Trustees**

34. The Claimant confirmed in her oral evidence that her relationship with Carryn Williams was amicable and that Ms Williams had been supportive of the Claimant



when dealing with the male trustees leading up to the reorganisation. The Claimant described the relationship as cordial and there was very little interaction outside of normal working hours. The Claimant denied that she ever had an intention of taking a grievance out against Ms Williams.

35. As for Ms Wray, the Claimant had known her prior to her appointment as a trustee. The Claimant considered that they enjoyed a friendly professional relationship. Whilst Ms Wray attended early Board meetings, in March 2019, she suffered a bereavement, resuming her active role in the Respondent in July 2019.
36. The Claimant confirmed that she enjoyed a professional friendly relationship with Lorraine Griffiths whom the Claimant had supported in her appointment as trustee in March 2018. They would meet for coffee and lunch and they would also meet professionally as Ms Griffiths was running projects in the Vale of Glamorgan Council.
37. Finally, Michelle Church was very supportive of the Claimant who had recommended her for her first Board position as a trustee of the Respondent, again in March 2018.

#### **Relationship between the Claimant and Ms Sarah Capstick**

38. The Claimant's witness statement does not include any information describing how she came to know Ms Capstick nor did she provide further information in the course of her oral evidence. The description provided in the witness statement of Ms Capstick provided relevant background which was not challenged.
39. As indicated, Ms Capstick first met the Claimant whilst she was working for the Vale of Glamorgan Council. In the course of her work, Ms Capstick came to learn about the Respondent and the housing-related support it provided; the Claimant was one of four representatives from the housing and third sectors. Throughout the time at which Ms Capstick worked for the Vale of Glamorgan Council up to July 2015, her relationship with the Claimant was friendly but purely professional. Having taken up her current role in July 2015 promoting the whole of the third sector in Cardiff, Ms Capstick would see the Claimant on a number of occasions in a professional capacity either in meetings at which both happened to be attending or meetings that were facilitated or co-ordinated by Ms Capstick.
40. At a time when the Claimant joined the Vale of Glamorgan Council, she asked to meet with Ms Capstick to discuss the third sector. This meeting occurred on 26 January 2017. Whilst they discussed work-related matters, they also talked about their personal and family lives and the Claimant also mentioned having obtained a "settlement" from her former employers.
41. There was no indication of any further contact between Ms Capstick and the Claimant until January 2018. Again, the contact took place via Facebook and it led to the Claimant sending some dates to Ms Capstick in order to arrange a meeting.
42. The communications between the Claimant and Ms Capstick are at pages 490 to 581 of the bundle. The Tribunal found the pages and chronology extremely

difficult to navigate as the text exchanges are not in date order and it is very difficult, on occasion, to identify who sent, and who received, a particular message.

43. However, at page 503 of the bundle there is an entry on 25 January 2018 at 22:29 which says "Say Hi to your new Facebook friend, Helen."

44. Ms Capstick sends a message to the Claimant saying, "How are you? Have you moved jobs yet?" to which the Claimant replies:

*"Hiya Sar, Im good thanks and yes have moved over now on week 3!! How's things with you, we need 2 catch up so when are you down the Vale next?" (sic)*

45. Ms Capstick and the Claimant did not in fact meet until 2 May 2018 when Ms Capstick went to see the Claimant at her office. During that meeting, they discussed governance issues, the male Board of Trustees and other work-related matters. However, one of the Claimant's children was with her and it was in the course of this meeting that the Claimant asked Ms Capstick how, "the wife was." Ms Capstick told her that they had split up and Ms Capstick was quite surprised at this reference as she had not been married or in a civil partnership with her former partner.

46. On 7 June 2018, following the discussion between Ms Capstick and the Claimant about governance and the structure of the Board at the Respondent, the Claimant sent the following text to Ms Capstick (page 499):

*"Hi Sar I have a big favour to ask you, I can't remember if I asked before but I really need 2 new Board members before the 25<sup>th</sup> of June as we need to change our constitution and I'm wondering if you would consider it!! You can say no that's fine but if you agree I would get you to fill in an application form then meet with me and my acting chair for an informal interview. What do you think???"*

47. Ms Capstick replied that she would consider it.

48. On 8 June 2018, the Claimant sent the following messages to Ms Capstick:

*"Hey Sar that brilliant I will try and send it later thank you for this I owe you. I'm also looking for anyone with finance knowledge if you know anyone".*

49. At 21:39 on 8 June 2018, the Claimant sent the following message (page 498):

*"Application form sent, let me know if you don't get it. On a good note I will love working with you again".*

50. The Tribunal found that the exchanges between Ms Capstick and the Claimant were a mix of topics, both personal and work-related.

51. For example, on Sunday 16 December 2018, the following exchange took place (page 506):

Ms Capstick: "Asking purely as a friend. How are you feeling?"

The Claimant: *"Hi Sar not brilliant still having to take the tablets as my backs bad when I don't and they make me feel sick and dizzy so I've been resting under Hells orders!"*

Ms Capstick: *"Glad you listen to someone occasionally. Not good though. Keep it warm and look after yourself. Have you had your ears checked to make sure dizzy isn't due to an ear infection and pain is masked by other pain."*

The Claimant: *"Yeah they checked that in hospital as well as x-rays on my back so I'm all clear for that. Keeping warm is good its freezing here!"*

52. There were also exchanges when the Claimant was enquiring about the health of members of Ms Capstick's family. The exchanges are at page 507 of the bundle. Whilst the date of the exchanges was not clear, the final entry was a message sent on 15 March 2019.

53. The exchanges were as follows:

Ms Capstick at 7.30 am: *"My niece is in critical care. I might not get everything done I am meant to for AYF ahead of the Board meeting, but I will try"*.

The Claimant at 08.08: *"Oh hell that's not good news Sar, and don't even think about work"*.

Ms Capstick at 21.00: *"I work cope ... sorry for all emails. Things not good with niece but Gran is progressing & can sit in a chair (but not wheelchair)."*

The Claimant at 21.02: *"Sod work family is more important I hope your niece improves soon and good news about your gran"*.

54. The Claimant claims that she found the increasing number of messages, particularly those of a personal nature, to be oppressive. Furthermore, the Claimant maintained that the messages that were being sent by Ms Capstick were intruding into the Claimant's private life, were personal in nature, and were suggestive of someone who wished to develop a deeper relationship with the Claimant.

55. It was also suggested by the Claimant that it was "offensive" for Ms Capstick to refer to the Claimant's partner as "the Mrs".

56. Prior to April 2019, there was no indication in any of the messages that the Claimant had requested Ms Capstick to refrain from communicating with her outside working hours or in respect of personal matters. Indeed, the only messages which included the expression "your Mrs" or "the Mrs" were in August 2018 to November 2018 (pages 493 to 497). There was no indication in any message from the Claimant to Ms Capstick that she found such terminology offensive. Further, Ms Capstick's evidence that the Claimant used that expression to describe Ms Capstick's former partner was not challenged. Finally, there were numerous exchanges of messages between the Claimant and Ms Capstick up to March 2019 which illustrated that they were still communicating with each other on a friendly basis in respect of personal as well as professional

matters. Indeed, there was reference to the Claimant organising a "date" for Ms Capstick.

57. The Claimant stated that she did not consider she was in a position to confront Ms Capstick and suggested that it was very difficult to challenge someone in a position of power. The Claimant said that the fact that Ms Capstick did not know that the messages that she was sending to the Claimant were offensive to the Claimant was not the Claimant's problem. It was also suggested by the Claimant that she "*was setting the boundary all the way through.*"
58. When asked why she did not tell Ms Capstick explicitly to refrain from sending messages which were not related to work, the Claimant stated "*I was concerned about doing that because of the power imbalance and my experience with the previous chair.*"
59. The Claimant then stated that she felt she had little option but to text back but not at the times she received the messages.
60. The Claimant stated in her evidence it would have been obvious to Ms Capstick that her messages sent outside working hours and unrelated to work were unwelcome because of the sporadic, delayed, and brief nature of her responses.
61. However, the Tribunal did not accept the Claimant's evidence. The Tribunal had considered very carefully the text messages exchanged between the Claimant and Ms Capstick. The content of the messages relating to work was entirely uncontroversial. As for the messages of a personal nature, much of it related to circumstances involving Ms Capstick or her family or Ms Capstick asking after the welfare of the Claimant. There was nothing within any of the messages which could be described as offensive, intimidating or suggestive.
62. The Tribunal did not accept the Claimant's evidence that she felt unable to confront Ms Capstick due to the power imbalance. Perhaps, as chair, Ms Capstick should not have entered into such personal exchanges with the Claimant. However, the Tribunal took into consideration the fact that the Claimant and Ms Capstick had known each other for some time prior to Ms Capstick taking up her position as trustee and chair of the Respondent. It was clearly a friendly relationship between the two even though the Claimant denied that they were friends, and it was also clear that the Claimant was a person who was prepared to take action if she considered it necessary.
63. This was not to say that the Tribunal found that the Claimant was a "serial complainer" of which the Claimant said she had been accused. However, the Claimant had pursued a grievance against the Respondent's former Chair and had been successful. She had also reported the Chair to the Charity Commission. Further, as outlined at paragraph 94 below, the Claimant was fully prepared to pursue a complaint relating to the conduct towards her of a person within the organisation which was responsible for 30% of the funding received by the Respondent.

64. In any event, the Claimant indicated that she wished to "reset the boundaries" between her and Ms Capstick and, in order to do so, sent Ms Capstick a message on 11 April 2019 (page 510). This message read:

*"Hi Sarah, this is my work mob can we please use this going forward for work. Just finished a meeting in Cardiff and about to drive home so will ring you tomorrow. Thanks Helen".*

The immediate response of Ms Capstick was to say:

*"Absolutely. Have stored in my phone."*

65. It was suggested by the Claimant that she detected a change in attitude towards her by Ms Capstick. This was denied by Ms Capstick. In her evidence, the Claimant said that she was told, although she did not say by who, that Ms Capstick would, *"try and get her own back if she didn't get her own way."*
66. The Claimant also said that a previous line manager, who had not provided a statement to the Tribunal, claimed that *"Ms Capstick would seek retribution on me."*
67. Ms Greenfield, Ms Lewis and Ms Church indicated that they saw a change in behaviour by Ms Capstick towards the Claimant but the Tribunal accepted the evidence of Ms Capstick, which was supported by her immediate response to the message of 11 April 2019 from the Claimant that she was perfectly happy to communicate with the Claimant about work on that particular mobile.
68. Secondly, there were numerous exchanges of messages following 11 April 2019, which were of a personal nature, which were perfectly cordial (for example at pages 512, 566, 545, 542, 539).
69. The Tribunal also took into consideration the evidence of Jemma Wray and Lorraine Griffiths who confirmed that they would often have to concentrate on the work they were undertaking for the Respondent outside of normal working hours due to their commitments to their paid daytime employment.
70. The Claimant complained that Ms Capstick's attitude towards her changed following the text of 11 April 2019 (page 510) and that this change of attitude had been noticed by Linda Greenfield, Jane Lewis and Michelle Church, all of whom gave evidence on behalf of the Claimant. However, there was no evidence to suggest that Ms Capstick behaved towards the Claimant in an aggressive, hostile, or even unpleasant manner.
71. The Tribunal also took into account the fact that neither Carryn Williams nor Jemma Wray nor Lorraine Griffiths were aware of the Claimant's concerns with regard to Ms Capstick's contact with her. This was particularly surprising in the case of Lorraine Griffiths who said that she was friendly with the Claimant and would meet regularly for lunch and coffee; at no stage were any concerns raised with her.

72. Whilst it was not clear who had undertaken the exercise, the Claimant had provided a schedule that purported to set out some data about the number of messages which were sent by Ms Capstick to the Claimant and that it was suggested that Ms Capstick sent far more messages than the Claimant (page 580). It also purports to indicate the percentage of messages which were related to work and also how many were sent outside working hours.
73. The Tribunal was not persuaded that this statistical information was of any real value. The figures are described as "approximate" and that it also is difficult to be exact when considering a chain of message that were being sent. Furthermore, as the Tribunal has already found, it is not surprising that many of the messages would have been sent by Ms Capstick outside working hours as her working hours would have been taken up with her involvement in her "daytime job". As the Tribunal has already found, none of the messages could be defined in any way as hostile, offensive, intimidatory or suggestive.

### **Circumstances leading to the Claimant's dismissal**

74. The Respondent contracted with Family Action ("FA") to provide education programmes to victims and perpetrators of domestic abuse. FA would receive its funding from the Welsh Government ("WG") and FA would then pay the Respondent for the services it provided in accordance with the contract.
75. The relationship between the Respondent and FA had been difficult. FA was a much larger charitable organisation than the Respondent.
76. Having been appointed in January 2018, the Claimant produced a special report for the Board of Trustees dated 9 July 2018. It set out a list of what the Claimant considered to be failings by former trustees and current male trustees (described as "de facto" trustees). One such failing was the failure to ensure policies and procedures of the organisation were legal and compliant. The current policies and procedures, to include safeguarding, *"haven't been reviewed in line with current legislation or kept up with current good practice."*
77. This was consistent with the evidence of Ms Carryn Williams who stated that she had been concerned about the Children Safeguarding Policy following a meeting with the Claimant in February 2018 which showed that it was out of date. A revised safeguarding policy was approved on 31 October 2018 as one of a number of policies which were subject to review.
78. In January 2019, safeguarding policies were prioritised at the Board meeting. At a Board meeting on 18 March 2019, it was agreed that Michelle Church would review the Children in Wales Policy identified by Ms Williams as an appropriate policy following research of the All Wales Child Protection Procedures 2008.
79. On 8 May 2019, the Claimant attended a Contract and Partnership Meeting with FA. Whilst the Claimant took issue with the content of the notes of the meeting, FA had identified a number of areas of concern with regard to the Respondent's performance (page 115 to 119) FA were concerned with the data, and lack of

data, which had been provided. For example, the data suggested, *"lots of drift and delay and that staff are not following up with service users"*.

80. It stated that, *"of 134 open cases, only four have been audited"*.

81. This meant that certain Key Performance Indicators ("KPIs") had not been met although there was a dispute between the Claimant and those representing FA at the meeting with regard to whose responsibility it was for the provision of the data.

82. In particular, the following was noted:

*"No data provided by AyF for this KPI and the report states "This is not currently recorded by AyF". HJ said that this was [Lead Delivery Provider] data. [Lead Delivery Partner Employee 2 & 3] explained that this is AyF data and it is a statutory requirement of AyF to ensure that the children of their clients are considered in full during the continuous assessment process so that risks to children from the DVA reported is understood and acted on. HJ reported that AyF do not keep information on children unless they are working with them directly. [Lead Delivery Partner Employee 2] reported that this is not safe and is very concerning. This must be rectified quickly and staff made aware of AyF responsibilities for safeguarding children immediately."*

83. Later in the note it states:

*"There needs to be full consideration of risks to children in the household based on the presenting circumstances and needs of adults and the extent of risk due to presenting parental factors and behaviours. HJ will look at this with her staff and take this forward."*

84. An action point was agreed that, *"HJ and AyF management staff will examine this area immediately and ensure that statutory responsibilities of the organisation are fulfilled."*

85. The note of the meeting also said that FA, *"enquired as to whether AyF have safeguarding / practice standards for their staff documented; ... HJ explained that AyF do not have safeguarding or practice standards in place and taking a look at [Lead Delivery Partner] standards might assist in developing these."*

86. An action point was agreed, namely that, *"HJ to develop a plan for AyF to improve quality practice, quality assurance, improve safeguarding and inform [Lead Delivery Partner Employee 2] of how she can assist (if helpful)."*

87. At a Board meeting of the Respondent on 20 May 2019, the trustees, Sarah Capstick, Carryn Williams and Lorraine Griffiths, were in attendance together with the Claimant and Linda Greenfield. In the minutes of that meeting (page 120) it says under action point 1.1 that there was a slight delay with regard to the safeguarding policy and under action point 5, it stated, *"no safeguarding issues to report."* Carryn Williams was also surprised when the Claimant informed the trustees that the Respondent had passed the Welsh Women's Aid standards,

particularly as Ms Williams said that WWA required a review of the Children Safeguard Policy which was still with Ms Church to complete.

88. Whilst the Claimant raised concerns about the contract with FA, Ms Williams stated and the Tribunal found that at no time was the Board informed that FA had raised serious issues in relation to safeguarding.
89. The Claimant indicated that she was aware of the safeguarding issues from the time that she commenced her employment with the Respondent; she stated that she had been addressing those issues. However, the Tribunal was satisfied that there remained significant issues with regard to safeguarding as described by Ms Williams.
90. Furthermore, it was maintained by the Claimant that FA was requiring the Respondent to carry out services relating to domestic violence activities which were not covered by the contract. There were some inconsistencies with regard to the evidence in relation to this aspect. Ms Capstick had also stated that there were occasions when both FA and the Respondent were operating outside the remit of the contract. However, whether or not that was the case, the Tribunal found the evidence of Jemma Wray on this issue to be compelling.
91. Ms Wray did not consider that FA were endeavouring to require the Respondent to undertake work outside the terms of the contract. FA was seeking to ensure that the safety of, and risks to, children needed to be considered in the course of the assessment and the educational work undertaken by the Respondent with adults. The risks identified with regard to the adults needed to take account of the potential consequent risks to children.
92. Ms Wray stated as an example circumstances where the Respondent was working with a woman who may have been the subject of domestic abuse and that woman has a child of her own. If the woman disclosed she had been sexually abused by, for example, her father, then even though the Respondent was not working with the child, the Respondent had to take account, from a safeguarding perspective, of whether that child was at risk.
93. The Respondent may never have contact with the child but it may obtain information relating to a risk to the child. Such information must be recorded as well as the actions the Respondent may need to take. For example, the information may have to be passed on with regard to the child even though, as stated, the Respondent's services would not extend to that child. FA was not asking the Respondent to carry out services with the children. This was consistent with the notes of the contract meeting on 8 May 2019 to which reference is made above at paragraphs 82 and 83.
94. On 7 July 2019, the Claimant sent an email to the trustees informing them that she had lodged a complaint regarding the behaviour of an employee of FA. The Claimant stated that the employee had been verbally abusive towards her when requesting certain data and information to which the Claimant did not believe FA were entitled. In her email (page 121) the Claimant stated that she believed the employee was, *"deliberately jeopardising our position on this contract and*



*undermining our standing with (the funder). Additionally her behaviour following the meeting with [the funder] was totally unacceptable and I am not prepared to be bullied by her. I hope you will support my course of action".*

95. The Tribunal had not been shown the email of complaint sent to FA but the nature of her complaint can be identified from the detailed response that was sent by FA on 12 July 2019 (pages 122 to 126).
96. It was clear from the response that the scope of the complaint was wide. It also confirmed that the Claimant had involved the funder, WG, which had been requested to support the Claimant in her complaint as illustrated by paragraph number 2 on page 123.
97. Despite the fact that the contract with FA was responsible for 30% of the total revenue of the Respondent, the Claimant had not consulted with the trustees prior to lodging the complaint which was sent on 5 July 2019 as it was two days later before she sent an email to the trustees informing them of what she had done.
98. On the same day that FA submitted its response in which it refuted all of the allegations being made by the Claimant, namely 12 July 2019, the Claimant sent the response to Ms Capstick. The Claimant suggested that the document from FA needed to be discussed with the Board and that any reaction to FA's response should now come from the Board.
99. On 14 July 2019, Ms Capstick wrote to the Claimant (page 128) thanking her for sending her details of the complaint and response from FA asking the Claimant for clarification on:  
  
*"- 1) What safeguarding has been raised externally? What concerns do [they] have about our safeguarding? – there is a huge operational & governance risk, and will need explaining to the Board.*  
  
*-2) Can we provide evidence to back up that we have exceeded targets? I know there has been issues with the reporting by a member of staff, which could mean full reporting isn't possible."*
100. On 15 July 2019, the Claimant wrote again to FA (page 129) saying that she was disappointed with FA's response. As for the encounter with the employee, in which it was alleged by the Claimant that the employee shouted in her face, *"Give me the fucking information"*, the Claimant was making an FOI request to find out whether there was CCTV footage of the confrontation. The FA said that if the Claimant was able to obtain CCTV evidence then they would be happy to view it. This exchange was forwarded to the Board.
101. Whilst the minutes of the Board meeting of 15 July 2019 were not produced, it was confirmed in an email from Ms Capstick to the trustees copied to the Claimant that a Board member would be involved in any response and any meetings with FA and also WG.

102. On 17 July 2019, Ms Capstick wrote to the Claimant and the trustees informing the Claimant that Ms Williams would submit the response to WG on behalf of the Board. This was in response to an email of 16 July 2019 from the Claimant to the Board saying that she had been contacted by WG, who in turn had been contacted by FA who had raised concerns around safeguarding. The Claimant had indicated to WG that the Respondent provided behaviour changing programmes and not domestic abuse services under the contract but the Tribunal repeated that, in accordance with the evidence of Ms Wray, which it had accepted, safeguarding was an integral aspect of the services provided by the Respondent under the contract. However, in the email, the Claimant maintained that the Respondent had followed the correct safeguarding procedures in respect of the services provided under the contract. The Claimant confirmed that WG had asked for the Respondent to provide its safeguarding policy any risk assessment used on the contract and an assurance that there was no child at risk currently in the Respondent's services. It also asked that the Respondent undertake mediation with FA.
103. On 17 July 2019, the Claimant sent an email to FA copied to Ms Capstick confirming that she and her Board were prepared to meet with FA but not with FA's employee following her behaviour towards the Claimant, which the Claimant said was the basis of her complaint. However, she confirmed that WG had asked that FA and the Respondent reach an outcome with regard to safeguarding.
104. In a subsequent email on 17 July 2019, Ms Capstick wrote to the trustees, forwarding the email that had been sent by the Claimant to FA. Ms Capstick confirmed that, at the Board meeting on 15 July 2019, it was agreed that all communication with FA should come through or involve a Board member and that the email that the Claimant had sent had not been discussed with Ms Capstick beforehand.
105. There was then a series of emails that confirmed that Ms Williams would submit a response to WG on behalf of the Board. She would do so, once she had received the information to enable her to provide the necessary reassurance to WG in respect of the issues raised by them to include safeguarding. At the same time, emails were exchanged between Ms Capstick and the Claimant with regard to arranging a meeting.
106. On 17 July 2019, Ms Williams sent an email to WG enclosing copies of the Respondent's safeguarding policies and risk assessments, confirming that no child was at risk in the Respondent's service. It stated that all files had been reviewed to check for any safeguarding concerns. Ms Williams stated and the Tribunal found that this was information provided to her by the Claimant and preceded the email of 18 July 2019 from WG to the Claimant at 14:30 hours.
107. The Tribunal considered it was noteworthy that earlier that day at 9.26 am on 18 July 2019, it was confirmed by Ms Capstick to the Claimant and the trustees that all communication with FA until the matter was resolved was to be done by a Board member, "*due to escalation and to protect the Claimant.*" In an email sent out 10 minutes later to the same recipient Ms Capstick clarified that this step has been taken in order to "*... protect and support our CEO*".

108. However, later that day at 14.30, WG wrote to the Claimant looking to summarise the actions which had been agreed following various conversations that had taken place (page 153).
109. The paragraph numbered one stated as follows:
- "That both organisations individually confirm whether or not they believe any child to be at risk within the service at this point in time and provide assurances that the appropriate safeguarding action has been taken to address the risk for that child / children as outlined in your safeguarding policy and procedure. This would include confirmation that children thought to be at risk have been referred to Children Social Services or police". (sic)*
110. This paragraph was in red underlining the seriousness of the enquiry. Ms Williams stated, *"in all my years I have never seen an email including red writing"*.
111. There were other action points that needed to be met and suggestions from WG about how the services may be delivered, for example with the two organisations operating under separate contracts with WG as opposed to FA being the lead provider. It concluded by saying, *"it is disappointing that relations between your two organisations appear to have become unworkable ..."*.
112. On 18 July 2019, Ms Capstick wrote to the trustees and the Claimant indicating that there was a need for an Emergency Board Meeting. This was arranged for 31 July 2019.
113. In her email, Ms Capstick emphasised that, *"as a Board our responsibility and number one priority should always be to ensure that our services are delivered safely and that the safety of children in our care is paramount."* (page 155)
114. Ms Williams responded (page 157) agreeing with all that was said in Ms Capstick's email. Her email was copied to the Claimant and confirmed that as a Board, they needed to understand fully WG's concern regarding the Respondent's safeguarding practice and called for all necessary information to enable her to carry out that assessment.
115. On 19 July 2019, Ms Capstick wrote to the Claimant confirming that the issue was now being managed by the Board. There were email exchanges between members of the Board including Michelle Church and Ms Williams. They related to WG and the apportionment of responsibility. However, as Ms Williams said in her email of 21 July 2019 (page 165), *"having been a commissioner of statutory and preventative children's services for over 20 years it is the safeguarding allegation that would be driving my actions. Safeguarding legislation has primacy over contract law. I repeat that the [funder] email prioritises safeguarding in red and we have to assure the Social Services part of WG our services are safe and if not what action we are taking otherwise we will not be seen as a safe organisation to contract with."*
116. On 21 July 2019 (page 168) Ms Capstick wrote to the Claimant copied to the trustees requesting her to produce all necessary information to the Board by

24 July 2019 to enable a proper assessment of the position with regard to safeguarding and also the contractual position. The Claimant responded on 22 July 2019 expressing concern at the approach of the Board and that the tone of the emails suggested a blame culture. There was also resistance from the Claimant to the negotiations that were conducted by Ms Capstick but Ms Capstick looked to allay the Claimant's concerns by her email of 23 July 2019. This confirmed that no blame had been attributed in any of the emails and that she was, *"disappointed that you have interpreted the tone of the mails to be creation of a blame culture. Instead the purpose of the emails has been in order to remedy the situation in hand, and to ensure the preservation of the organisation."*

117. Despite that fact, the Claimant was still exchanging emails with another trustee, Michelle Church, with regard to concerns about Ms Capstick handling negotiations with FA and referring to the boundaries she said that she had put in place in respect of the relationship she had with Ms Capstick. In her email of 22 July 2019 (page 181) she concluded by saying, *"I am writing to you so that should I need to take this further you are aware of this situation."*
118. Ms Church responded and confirmed that she had highlighted the concerns with another Board member Jemma Wray but Ms Wray indicated, and the Tribunal found, that, having been away from the organisation for some months, on her return she did not see the email from Ms Church until August 2019.
119. The relationship between the Claimant and FA continued to deteriorate to the extent that, on 24 July 2019, the FA wrote to Ms Capstick (page 188) and outlined certain options on how the two organisations may operate in the future.
120. The second option proposed that the current arrangement would continue with FA in the lead in a sub-contract arrangement but this was on the basis that the Claimant *"is not in any way, part or involved in [the Respondent] and [lead delivery partner] contract or management or governance. This is not just because she refuses to work with [the employee] but also due to our concerns of her as CEO and her lack of knowledge and governance towards safeguarding."* This was forwarded to the Claimant and the trustees and the Claimant said that they would have to respond, highlighting FA's *"bad practice"*.
121. On 24 July 2019, the Claimant and Ms Capstick met and the content of the meeting was recorded on the Claimant's mobile phone. The discussion covered not only their relationship but also the ongoing issue with FA. There were numerous references made by the Claimant to ensuring that proper boundaries existed between them. Ms Capstick accepted the position and the requests made by the Claimant in respect of the way in which they should communicate with each other in the future.
122. It was confirmed by Ms Capstick that the meeting did not form part of a capability procedure and no reference was made to it being part of a disciplinary process. Ms Capstick accepted the reassurances given by the Claimant with regard to safeguarding and the fulfilment by the Respondent of its contractual obligations.

123. This was confirmed by the Claimant in an email to Ms Capstick and the Board on 25 July 2019.
124. On the same day, the Claimant wrote to the Board reacting to an email from FA to WG. She requested the Board, *"to take legal advice on slander"* relating to *"the unprofessional and very personal attack on myself and JL and the very unprofessional and ill-conceived attack on the work of this organisation"*.
125. In the same email, the Claimant says *"the spurious claims of safeguarding and unprofessional practice and suggestions to go to local authorities to whistleblow is extremely serious and without evidence or foundation."*
126. On 26 July 2019, Ms Capstick wrote to the Claimant and the Board stating:
- "In order to safeguard staff, especially [the Claimant], the Board are now communicating directly with [FA] so they don't have to. This protects [the Claimant] and other staff from any further claims being made against them by [FA]."*
127. The Claimant produced a document entitled *"Report of Case Reviews of Families that have Children"* dated 26 July 2019 (page 198) in advance of the Emergency Board Meeting ("EBM") on 31 July 2019.
128. This document, together with the documents listed at page 204 of the bundle, were considered by the Board in advance of, and at, the EBM on 31 July 2019. Indeed, Ms Williams had carried out an in-depth analysis of this information.

### **Emergency Board Meeting on 31 July 2019**

129. The Claimant was on holiday at the time of the EBM but was able to join the EBM remotely. Two other members of the senior management team, Jane Lewis, who is the deputy CEO and Linda Greenfield, the finance officer. The trustees other than Ms Church were present.
130. It was a long meeting. Ms Griffiths estimated that it lasted three and a half to four hours. The Claimant, Ms Lewis and Ms Greenfield were present for the first hour to hour and a half. It was suggested that the "allegations" being made by FA were not put to the Claimant but the Tribunal was satisfied that the issues of concern with regard to the relationship with FA and safeguarding generally were discussed. Indeed, if that were not so, there would seem to be little point in the EBM taking place. It was also suggested that the audio connection between the Claimant, who was holidaying in Scotland, and the Board was not particularly good but the Tribunal accepted the evidence of Ms Griffiths and found that the Claimant and the Board were able to hear what each other was saying. At the conclusion of the discussion between the Board and the senior management team, the Claimant, Ms Lewis and Ms Greenfield left the meeting and the trustees then held a discussion about what should be done.
131. It had been suggested by the Claimant that Ms Capstick and FA had conspired with each other to manipulate a situation which would lead to her dismissal. The Claimant referred to the telephone conversation between Ms Capstick and the

FA on 23 July 2019 to which FA referred in the first line of its email of 24 July 2019. The Tribunal did not accept the Claimant's evidence. There was no evidence at all to support such a conclusion and it was not consistent with the content of emails from Ms Capstick to the Board in which she sought to emphasise that the measures being taken were in an effort to protect and support the Claimant.

132. The Tribunal accepted the evidence of Lorraine Griffiths, Carryn Williams and Jemma Wray with regard to the discussion at the EBM on 31 July 2019 which led to the decision that the only option available to the trustees was to dismiss the Claimant. Indeed, another option that was considered by the likes of Ms Wray was that they should resign as trustees but this would mean that the organisation itself would not have been able to carry on.
133. In advance of the EBM, Ms Williams had read thoroughly all the documents and reached the conclusion that the failures on the part of the Respondent were such that the organisation was not meeting its legislative requirements or following the All Wales Child Protection Procedures 2008. Whilst the Claimant had provided assurances that there were no safeguarding issues, Ms Williams concluded that this was not supported in any way by the evidence.
134. It was also concluded that staff training in safeguarding was inadequate (page 488). The report which had been provided by the Claimant also failed to address safeguarding concerns and the trustees were concerned that the report was more concerned about the contractual issues and reference to allegations of slander. The overall conclusion was that there was a substantial shortfall in documents provided to the Board in relation to safeguarding. Ms Williams outlined to the trustees her findings.
135. The Tribunal acknowledged that the Claimant disagreed with a number of the conclusions reached by Ms Williams in the assessment she had made of the situation which existed in the lead up to the EBM on 31 July 2019. However, the Tribunal found that Ms Williams, faced with the evidence before her, reached those conclusions in good faith. The Tribunal took into consideration the accepted good relationship the Claimant enjoyed with Ms Williams, Ms Wray and Ms Griffiths. The last thing that the trustees wished, leaving aside Ms Capstick for the moment, was to be involved in what they considered to be such a serious situation with regard to the work being undertaken by the Respondent, the shortcomings they believed existed, and the prospect of having to dismiss the Claimant. However, it was stated, and the Tribunal found, that the main priority was to ensure the continued existence and reputation of the Respondent, both of which were at stake. There was also a concern with regard to the professional reputations of the trustees themselves who were undertaking this role on a voluntary unpaid basis. The Tribunal was satisfied that the trustees had considered options available to them before taking the decision to dismiss the Claimant and they felt that dismissal was the only realistic option.
136. The Tribunal accepted the evidence of Ms Griffiths, Ms Williams and Ms Wray that Ms Capstick, whilst chairing the meeting, did not instigate the discussion which led to the decision to dismiss the Claimant. The Tribunal also accepted

their evidence and found that they had no concerns with regard to the way in which Ms Capstick was acting as chair of the Board of Trustees.

137. Both Ms Griffiths and Ms Wray reached the conclusion that the relationship between the Board and the CEO was one that was fundamentally based on trust and confidence and that neither of them had any trust and confidence in the Claimant continuing as CEO.
138. The Tribunal accepted the evidence of Ms Wray, Ms Griffiths and Ms Williams that there was no discussion about any issues in terms of the relationship between Ms Capstick and the Claimant. The decision that they reached was focused entirely on the Claimant's performance as CEO, the fact that they had not been provided with a full picture of the shortcomings identified and had been provided with reassurances with regard to safeguarding and meeting other contractual requirements which were not supported by evidence. Indeed, Ms Williams stated that the Respondent was dealing with high-risk family situations and known perpetrators of domestic violence and their children. Ms Williams concluded that, fortunately, no child had been harmed but, *"this was despite the lack of systems, not because of them"*.
139. The Tribunal accepted the evidence of Ms Williams, Ms Wray and Ms Griffiths and found that none of them in their involvement in other organisations had ever discussed the potential dismissal of a chief executive officer let alone reached the conclusion that this was the only option. The decision to dismiss was based on the severity of the safeguarding issues and the lack of insight and acknowledgement the Claimant had displayed towards those issues.
140. The Tribunal found that the trustees' decision to dismiss the Claimant had nothing to do with either the Claimant's sex or her sexual orientation as a gay woman.
141. Whilst the decision to dismiss the Claimant was unanimous, the Tribunal found that Ms Capstick was not an active contributor to that discussion which was instigated by Ms Griffiths and Ms Wray, supported by Ms Williams. Ms Williams, Ms Wray and Ms Griffiths' decision was not led, or influenced in any way, by Ms Capstick.
142. The only trustee who was not present at that meeting when the decision was made was Ms Church who, on 5 August 2019, resigned from the Board. Ms Church indicated that, at the time of her resignation, she was not aware of the decision that had been taken at the EBM.

#### **Events following the EBM on 31 July 2019**

143. Before notifying the Claimant of the decision, the Board took advice with regard to the appropriate process to be followed. The letter dated 12 August 2019 was sent to the Claimant setting out the reasons for the Board's decision to terminate her employment on the grounds of some other substantial reason on the basis that the Board no longer had trust and confidence in the Claimant being able to fulfil her role as CEO.

144. On the same day, Ms Capstick sent an email to the staff (page 213). It did not indicate that the Claimant had been dismissed but confirmed that she would not be available and that staff should not contact her. It was suggested that the trustees had informed third parties of their decision to dismiss the Claimant but the Tribunal was not satisfied that there was any evidence to that effect. However, it was inevitable that the email sent to the staff on 12 August 2019 would lead to considerable speculation and assumptions being made.
145. On 13 August 2019, the Claimant sent an email to the trustees (page 215) requesting copies of investigation findings and any policies and procedures followed by the trustees in reaching their decision. The email also suggested that both Ms Church and Ms Wray knew of the Claimant's intention to submit a grievance. If that was a reference to the Claimant's email to Ms Church of 22 July 2019, the Tribunal noted that Ms Church took no part in the decision to dismiss the Claimant. The Tribunal had also found that Ms Wray did not look at an email from Ms Church until August 2019 and stated explicitly in her email of 13 August 2019 (page 216) that at no time had the Claimant indicated to her that she had any intention to raise a grievance. Indeed, the Tribunal did not find that the email from the Claimant to Ms Church stated with any clarity that she intended to do so.
146. On 15 August 2019, the Claimant submitted a formal grievance and, on the same day, lodged an appeal against her dismissal. The Tribunal found that the trustees who were involved in the decision to dismiss the Claimant were not aware of the Claimant's intention to pursue a grievance when they reached that decision on 31 July 2019.
147. It was decided by the Respondent to instruct an external independent employment consultant, Mr Jon Stanley, to consider the Claimant's grievance and appeal against her dismissal. As there was such overlap between the issues raised in the grievance and the appeal, both were considered together. Following presentation of documentation in support of the grievance and the appeal and interviews with the trustees and the Claimant, Mr Stanley wrote an outcome letter dated 23 September 2019 (page 244) in which he concluded that neither the grievance nor the appeal could be upheld. The Claimant maintained that the process was an unfair one in that Mr Stanley declined to interview Michelle Church and Linda Greenfield as part of his investigation, that Mr Stanley was overly brusque and dismissive in the course of the discussion with the Claimant on 11 September 2019 and his outcome letter was unnecessarily dismissive.
148. Having considered the Claimant's evidence and that of Ms Kell who accompanied the Claimant, then having considered the evidence of Mr Stanley, the Tribunal was satisfied that the investigation of both the grievance and the appeal covered the same topics and Mr Stanley's conclusions were based on a thorough assessment of the evidence, both written and oral, before him. It may be that Mr Stanley's approach appeared brusque but the Tribunal was not satisfied that this affected the reasonableness of the conclusions that he reached. The Tribunal also considered that it was a matter for Mr Stanley's judgement whether it was necessary, in light of the issues he had to resolve, to interview Ms Church and Ms Greenfield.



149. The Claimant also asserted that, in failing to follow a disciplinary procedure in reaching its decision to dismiss her, the Respondent had treated her less favourably than it treated others. The Claimant relied on both actual and hypothetical comparatives.
150. The Claimant relied on a number of actual comparators which are set out in the Scott Schedule (pages 30 to 32). The Claimant maintained that as a female and a lesbian, she received less favourable treatment than comparators in depriving her of her contractual right to a disciplinary / capability procedure.
151. The Claimant relied on the following actual comparators; SP; JS; CG; GK; SK and TO. In relation to the comparators, the Claimant included a short description in the Scott Schedule. When the identity of the proposed actual comparators became known, Ms Carryn Williams carried out an analysis of the HR files in relation to those individuals. It was suggested at the hearing by the Claimant and Ms Greenfield that, in fact, there were also online files in respect of the comparators but when Ms Williams asked Ms Greenfield for the information in respect of the comparators, no mention was made of the online information and no such information was given to her.
152. With regard to SP, the Claimant described this person as a heterosexual woman with under two years' service who was subject to the capability policy.
153. Ms Williams confirmed that SP was in a "practitioner" position i.e. on the frontline and without managerial responsibility. There was no evidence of any capability or disciplinary process on the file inspected by Ms Williams and the exit interview and letter of resignation indicated a good working relationship.
154. With regard to JS, again she was described by the Claimant as a heterosexual woman subject to capability who had been working for the Respondent for less than two years.
155. Ms Williams' inspection of the HR file established that JS held a team manager position and only worked for the Respondent for three and a half months. Again, there was no evidence of capability or disciplinary processes on file and the exit interview and resignation letter evidenced a good working relationship without concerns.
156. CG was described by the Claimant as a male heterosexual who had over two years' service and was subject to the capability policy.
157. Ms Williams established that CG was again in a practitioner position and had been employed for three years three months. There appeared to have been a written warning on file with a capability improvement action plan and the written notes showed most of the required actions being met. CG resigned and was not responsible for the organisational approach to safeguarding.
158. GK was described by the Claimant as a female heterosexual with over two years' service who was subject to both capability and disciplinary procedures.

159. Ms Williams confirmed that GK held a practitioner's position and worked for the charity for almost 12 years. GK was subject to a capability process in 2016 and the last column of the plan indicated that the required improvement had been made. There was a letter dated 14 August containing a final written warning but no further information was available but the capability issues did not relate to safeguarding.
160. SK was described by the Claimant as a female heterosexual with over two years' service who was subjected to the disciplinary policy.
161. Ms Williams's investigation revealed that SK was in a practitioner position and there was no evidence of capability or disciplinary action on the HR file. SK then resigned and left her employment on 23 November 2018.
162. TO was described by the Claimant as a heterosexual female with over two years' service who was subjected to the disciplinary policy.
163. Ms Williams confirmed that TO held a practitioner position. There was a letter on file dated 14 November 2013 inviting TO to a disciplinary interview for breach of contract for working outside of the charity but no information was available on file.
164. KQ was a former CEO and a female heterosexual with over two years' service but where no action was taken against her despite there being a domestic homicide review which highlighted safeguarding failures.
165. Ms Williams discovered there was a letter of appointment on the file dated 1 December 2009 and a resignation letter dated 18 October 2017. There was no reference to capability or disciplinary procedures on the HR file. Ms Williams stated that KQ did participate in a domestic homicide review which was a multi-agency process following the death of a woman on 4 August 2016, that woman having briefly engaged with the Respondent in the period July to October 2012. There were no safeguarding issues in relation to the individual and KQ undertook the domestic homicide review on behalf of the Respondent. There was no evidence of organisational or managerial failures by KQ.
166. Ms Williams maintained that the only potential comparator to the Claimant was Ms Jane Lewis who gave evidence of behalf of the Claimant. Ms Lewis had held a senior management role but who had been employed for less than two years from October 2018 to September 2019. Whilst she described herself as being line managed by the Claimant and employed as service manager, she held the position of deputy CEO. There were considerable concerns with regard to the qualification of Ms Lewis to hold such a post and she was therefore dismissed and as in the case of the Claimant, Ms Lewis was not subjected to the disciplinary process.

### **The Law**

167. Sex and sexual orientation are protected characteristics for the purposes of the Equality Act 2010 ("EqA").

168. The Employment Appeal Tribunal in the **Law Society v Bahl** [2003] IRLR 640, made this simple point, at paragraph 91:

“It is trite but true that the starting point of all tribunals is that they must remember that they are concerned with the rooting out of certain forms of discriminatory treatment. If they forget that fundamental fact, then they are likely to slip into error”.

169. The provisions are designed to combat discrimination. It is not possible to infer unlawful discrimination merely from the fact that an employer has acted unreasonably: see **Glasgow City Council v Zafar** [1998] ICR 120. Tribunals should not reach findings of discrimination as a form of punishment because they consider that the employer’s procedures or practices are unsatisfactory; or that their commitment to equality is poor; see **Seldon v Clarkson, Wright & Jakes** [2009] IRLR 267.

170. In *Bahl*, the Court of Appeal upheld the reasoning of the EAT and emphasised that unreasonable treatment of a claimant cannot in itself lead to an inference of discrimination, even if there is nothing else to explain it. Although that case proceeded under legislation prior to changes made to the burden of proof, the principal is still valid. In other words, unreasonable treatment is not sufficient in itself to raise a prima facie case requiring an answer. As the EAT said in *Bahl* at para 89: “... merely to identify detrimental conduct tells us nothing at all about whether it has resulted from discriminatory conduct”.

## Direct Discrimination

171. Direct discrimination is defined by Section 13 EQA:

### 13 Direct discrimination

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

172. Section 23 EQA provides that a comparison for the purposes of Section 13 must be such that there are no material differences between the circumstances in each case. In **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] ICR 337 Lord Scott noted that this means, in most cases, the Tribunal should consider how the Claimant would have been treated if she had not had the protected characteristic. This is often referred to as relying upon a hypothetical comparator.

173. Since exact comparators within the meaning of section 23 EQA are rare, it may be appropriate for a Tribunal to draw inferences from the actual treatment of a near-comparator to decide how an employer would have treated a hypothetical comparator: see **CP Regents Park Two Ltd v Ilyas** [2015] All ER (D) 196 (Jul).

174. The Courts have long been aware of the difficulties that face Claimants in bringing discrimination claims and of the importance of drawing inferences: **King v The Great Britain-China Centre** [1992] ICR 516.

175. Statutory provision is now made by Section 136 EQA:

136 Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

But subsection (2) does not apply if A shows that A did not contravene the provision.

176. Guidance on the reversal of the burden of proof was given in **Igen v Wong** [2005] IRLR 258. It has repeatedly been approved thereafter: see **Madarassy v Nomura International Plc** [2007] ICR 867. The guidance may be summarised in two stages: (a) the Claimant must establish on the totality of the evidence, on the balance of probabilities, facts from which the Tribunal 'could conclude in the absence of an adequate explanation' that the Respondent had discriminated against her. This means that there must be a 'prima facie case' of discrimination including less favourable treatment than a comparator (actual or hypothetical) with circumstances materially the same as the Claimant's, and facts from which the Tribunal could infer that this less favourable treatment was because of the protected characteristic; (b) if this is established, the Respondent must prove that the less favourable treatment was in no sense whatsoever because of the protected characteristic.

177. It was also said by Mummery LJ in **Madarassy**:

"The most convenient and appropriate way to tackle the issues arising on any discrimination application must always depend upon the nature of the issues and all the circumstances of the case."

178. To establish discrimination, the discriminatory reason for the conduct need not be the sole or even the principal reason for the discrimination; it is enough that it is a contributing cause in the sense of a significant influence: **Nagarajan v London Regional Transport** [1999] IRLR 572.

179. The tribunal's focus "must at all times be the question whether or not they can properly and fairly infer... discrimination.": **Laing v Manchester City Council**, EAT at paragraph 75.

180. In considering what inferences can be drawn, tribunals must adopt a holistic approach, by stepping back and looking at all the facts in the round, and not focussing only on the detail of the various individual acts of discrimination. We must "see both the wood and the trees": **Fraser v University of Leicester** UKEAT/0155/13 at paragraph 79.

## Sexual harassment

181. Section 26(2) of the EqA sets out the definition of sexual harassment:

### *26 Harassment*

*(1) A person (A) harasses another (B) if—*

*(a) A engages in unwanted conduct related to a relevant protected characteristic, and*

*(b) the conduct has the purpose or effect of—*

*(i) violating B's dignity, or*

*(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.*

*(2) A also harasses B if—*

*(a) A engages in unwanted conduct of a sexual nature, and*

*(b) the conduct has the purpose or effect referred to in subsection (1)(b).*

...

*(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—*

*(a) the perception of B;*

*(b) the other circumstances of the case;*

*(c) whether it is reasonable for the conduct to have that effect.*

182. In *Grant v HM Land Registry* [2011] EWCA Civ 769 the Court of Appeal said that in that case even if the conduct was unwanted, and the Claimant was upset by it, the effect could not amount to a violation of dignity, nor could it properly be described as creating an intimidating, hostile degrading, humiliating or offensive environment. It said that Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment.

183. In *Richmond Pharmacology v Dhaliwal* [2009] ICR 724 it was said that dignity is not necessarily violated by things said or done which are trivial and transitory, particularly if it should have been clear that any offence was unintended. ... It is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.

## Victimisation

184. S.27 of the 2010 Act is in the following terms:-

"(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 expressed) 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”.

## Analysis and Conclusions

185. Addressing each issue in turn, the Tribunal has carried out an analysis of the facts and, applying the legal framework, has reached the following conclusions.

**1. *Equality Act 2010 ("EqA"), section 13: direct discrimination because of sex and/or sexual orientation.***

**a. Did the Respondent treat the Claimant as follows:**

**i. by not applying its disciplinary policy to her**

**ii. by dismissing her**

186. It was not disputed, and the Tribunal has found, that the Respondent did not apply its disciplinary policy to the Claimant and it is also accepted that the Respondent dismissed the Claimant.

**b. Was that treatment "less favourable treatment" i.e. did the Respondent treat the Claimant less favourably than it treated or**

**would have treated others ("comparators") in not materially different circumstances?**

**c. The Claimant relies on the following comparators**

**(a) A male former employee called Clayton, [a heterosexual female former employee, Kay Quinn] and / or hypothetical comparators.**

**d. If so, was this because of the Claimant's sex or sexual orientation; and / or because of the protected characteristics of sex or sexual orientation more generally?**

187. The Tribunal concludes that, on the facts, the Claimant has failed to establish, on the balance of probabilities, facts which amount to a prima facie case on the basis of which the Tribunal can infer that discrimination has taken place. There was no basis at all to infer that the Claimant had been treated less favourably than it would have treated others in not materially different circumstances, let alone that there had been any less favourable treatment because of the Claimant's sex or sexual orientation as a gay woman.
188. As stated above, it is for the Claimant to establish on the balance of probabilities a difference in treatment compared to either an actual comparator or a hypothetical comparator.
189. In the agreed list of issues, the Claimant names two actual comparators, a male former employee called Clayton and a heterosexual female former employee Kay Q.
190. In the Scott Schedule, the Claimant has included a number of others former employees, both male and female. In terms of the male comparators, the Tribunal has approached this on the basis that the Claimant considers them to be actual comparators in terms of their sex. In terms of the female former employees, the Claimant has claimed that each of the former female employees were heterosexual and therefore, as a gay woman, the Claimant claims that they are actual comparators based on their sexual orientation.
191. On the basis of the information extracted by Ms Williams from the HR files in respect of the individuals named within the Scott Schedule, the Tribunal is not satisfied that the Claimant has established on the balance of probabilities that those actual comparators are individuals whose circumstances are not materially different to the Claimant's save for their sex or sexual orientation.
192. First, on the basis of its findings of fact, the Tribunal has concluded that the Claimant did not have a contractual right to a disciplinary process prior to any decision that she should be dismissed. Secondly, the decision to dismiss the Claimant was not based on either her conduct or her capability. It was on the basis of "some other substantial reason", namely that there had been a complete breakdown of the relationship between those trustees who attended the EBM and the Claimant such that the trustees no longer had trust and confidence in the Claimant to fulfil her role as CEO.

193. For those actual comparators who had been employed by the Respondent for a period greater than two years, they would have a statutory right to a fair procedure and this is to be contrasted with those who had been employed for less than two years, to include the Claimant.
194. The Claimant held the position of Chief Executive Officer. None of the actual comparators save for JS held a management position let along the role of chief executive. In the case of JS, there was no evidence of capability or disciplinary proceedings on file and the exit interview and resignation letter indicated a good working relationship and no concerns.
195. None of the actual comparators would be responsible for the strategic management of the Respondent to include safeguarding, a responsibility which, according to WG, rested with the Claimant as CEO.
196. The Respondent maintained that the only possible actual comparator would be the Deputy Chief Executive Officer, Jane Lewis, who had been employed for less than two years and was dismissed without either a capability or disciplinary process being applied to her.
197. As for a hypothetical comparator, the Claimant asserted that she received less favourable treatment than a hypothetical male employee or a hypothetical heterosexual female employee. However, again there was no evidence to support such an assertion. Furthermore, the Claimant had put forward actual male and heterosexual female comparators and, for the reasons outlined, the Claimant has failed to establish something more from which the Tribunal could decide, in the absence of any other explanation, that the protected characteristic of sex and / or sexual orientation played a part in the treatment of which she complained.
198. The Tribunal has found that the primary decision-makers with regard to the Claimant's dismissal at the EBM was Ms Griffiths, Ms Wray and Ms Williams. They reached their decision because of the significant and genuine concerns they held with regard to safeguarding, the shortcomings in the safeguarding training of staff and the attitude of the Claimant towards these issues. The genuineness of their concerns is illustrated by the submission they felt they had to make to the Charity Commission in the form of a serious incident report advising the Charity Commission that the Respondent was not able to give assurances to WG that children were safe in their services.
199. The position was so serious that the Respondent received an email from WG informing them that they had to write to all the Respondent's funders to inform them that the Respondent could not give assurances that children were safe.
200. The Tribunal relies on its findings of fact and, in particular, paragraphs 132 to 141 above.
201. The Tribunal was entirely satisfied that the Respondent did not discriminate against the Claimant on the basis of her sex or her sexual orientation in failing to apply the disciplinary policy to her or by dismissing her.



202. The Claimant's claim that she has been subjected to discrimination on the basis of her sex and/or sexual orientation is dismissed.

**2. EqA, section 26: harassment relating to sex and / or sexual orientation.**

**a. Did the Respondent engage in conduct as follows:**

**i. By the text message contact from its Chair**

203. It was not in dispute and the Tribunal had found that Ms Capstick had engaged in exchanging text messages with the Claimant.

**ii. By dismissing her due to information provided to the Board by the Chair?**

204. The Tribunal considered that emails such as the one from FA to the Chair of 24 July 2019 (page 188) which Ms Capstick then forwarded to the Board no doubt formed part of the evidence which led ultimately to the trustees' decision to dismiss the Claimant. However, this was only part of the substantial body of evidence that led the trustees to conclude that they no longer had trust and confidence in the Claimant to fulfil her role as Chief Executive Officer. As examples of this additional evidence, the trustees had taken account of the email from WG to the Claimant of 18 July 2019 (page 153) and then the analysis carried out by Ms Williams of the report and additional documentation supplied to the trustees prior to the EBM on 31 July 2019.

205. Consequently, the Tribunal does not find that the Claimant was dismissed due to information provided to the Board by Ms Capstick.

**e. If so, was that conduct unwanted?**

206. With regard to the text message contact with Ms Capstick, the Claimant had indicated that there came a time when the contact became "unwanted". The Claimant had also spoken to Michelle Church and Linda Greenfield about the contact from Ms Capstick but had not seen it as necessary to raise it with any of the other trustees despite having regular contact with them and despite having a friendly relationship with Ms Lorraine Griffiths in particular.

207. In any event, again the Claimant had failed to establish that this related in any way to the protected characteristic of either sex or the Claimant's sexual orientation. Taken as a whole, whilst it may represent a level of over-familiarity between the chair of an organisation and its chief executive officer, the Tribunal took into consideration the fact that Ms Capstick and the Claimant had known each other some appreciable time before the Claimant approached Ms Capstick inviting her to join the Board as a trustee. On a holistic assessment of the entirety of the text messages passing between the Claimant and Ms Capstick, the Tribunal could not infer that any of the content related to either the Claimant's sex or her sexual orientation as a gay woman.

208. Nevertheless, the Tribunal had considered the Claimant's evidence, the reference to conversations with Ms Church and Ms Greenfield and the Claimant's email to Ms Church of 22 July 2019 (page 181). The Tribunal accepts that there came a time when certain of the messages sent by Ms Capstick outside of office hours were unwanted. The Tribunal has found that Ms Capstick's attitude towards the Claimant did not change following the Claimant's text of 11 April 2019 but, as stated, the Claimant had mentioned her concern to other members of staff and to Ms Church. Ms Capstick and the Claimant also discussed this issue when they met on 24 July 2019.

**g. Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?**

209. There was no evidence at all to support the conclusion that the purpose of the text message contact from Ms Capstick was to violate the Claimant's dignity or to create an intimidating, hostile, degrading, humiliating or offensive environment for her. As the Tribunal has found, the content of the entirety of the text message contact was friendly and conversational.

**h. Did the conduct have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? (Where the conduct has this effect involves taking into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.)**

210. The Tribunal had applied the principles in *Grant v HM Land Registry* and *Richmond v Dhaliwal*. The Tribunal has taken into account the Claimant's perception but it has also taken into consideration the context in which the messages were sent. Even if a stage was reached when the messages sent by Ms Capstick to the Claimant out of office hours were unwanted and the Claimant was upset by them, the overall circumstances of the case are such that the Tribunal finds it entirely unreasonable for the conduct to have had the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant.

211. The Claimant's claim of harassment on the basis of her sex or sexual orientation is therefore dismissed.

### **3. *EqA, section 27: victimisation***

**a. Did the Claimant do a "protected act" and/or did the Respondent believe that the Claimant had done or might do a protected act, in that she had complained about the text contact from the Respondent's Chair and was in the process of submitting a grievance?:**

**b. Did the Respondent subject the Claimant to a detriment by dismissing her?**

**c. If so, was this because the Claimant did a protected act and/or because the Respondent believed the Claimant had done, or might do, a protected act?**

212. The Tribunal had some difficulty in discerning precisely the nature of the "protected act" on which the Claimant relied.
213. It had understood that it related to the text that was sent to Ms Capstick on 11 April 2019 that, the Claimant suggested, was designed to "re-set the boundaries" between her and Ms Capstick. It is then suggested by the Claimant that Ms Capstick's attitude towards her changed although the Tribunal has found that there is no evidence to suggest that Ms Capstick's behaviour towards the Claimant became more hostile or aggressive. Indeed, this is illustrated by: Ms Capstick's immediate response to the text; her approach to the Claimant in their discussion on 24 July 2019, and the email correspondence from Ms Capstick to the Board setting out steps which were not only designed to deal with the issues with FA but also to "protect and support" the Claimant (see paragraphs 107 and 126 above).
214. As for the protected act of submitting a grievance or the intention of doing so, it was only on 15 August 2019 that the Claimant submitted a grievance along with her appeal against dismissal. In other words, the grievance was submitted after the trustees had reached their decision to dismiss the Claimant. The Tribunal has found that no indication had been given to Ms Capstick or the other trustees who took part in the decision to dismiss the Claimant that she intended to pursue a grievance. Therefore, it was not in their contemplation when the decision was taken to dismiss the Claimant.
215. The closest the Claimant came to informing a trustee of her intention was in the email to Michelle Church on 22 July 2019 (page 181). In that email, she refers Ms Church to Ms Capstick sending texts and messages out of office hours, saying at the end, *"I'm writing to you so that should I need to take this further you are aware of the situation."* Ms Church took no part in the decision to dismiss the Claimant. The Tribunal found that although Ms Church may have forwarded this email to Ms Wray, Ms Wray did not read that email until August 2019. Furthermore, Ms Wray confirms in her email of 13 August 2019 (page 216) that at no stage did the Claimant indicate to her an intention to pursue a grievance. The Tribunal relies on its findings at paragraph 145 above.
216. In any event, the Tribunal is satisfied that neither the text of 11 April 2019 nor this email played any part in the decision taken by the trustees at the EBM on 31 July 2019 to dismiss the Claimant. That decision was based on legitimate and serious concerns held by the trustees regarding safeguarding and the performance of the Claimant in her role as CEO.
217. Whilst in the Scott Schedule the Claimant also refers to the decision taken by Mr Stanley to dismiss her appeal as victimisation, there is no evidence to suggest that this decision related to a protected act.

218. The Claimant's claim of victimisation is therefore dismissed.

**4. Breach of contract**

**a. Was the Respondent's disciplinary policy of contractual effect?**

**b. If so, did the Respondent breach the terms of that policy in relation to the dismissal of the Claimant?**

219. On the basis of its findings of fact, the Tribunal had concluded that the disciplinary policy which applied at the time of the Claimant's dismissal and which applied to the Claimant's contract of employment was the policy at page 60 of the bundle which had been amended by the Board of Trustees on 31 October 2018. At paragraph 7 of that policy, it states:

*"Atal y Fro reserved the right to use a truncated version of this policy during the initial 24 months of an employee's employment or to dispense with the process altogether."*

220. In the circumstances, and the Claimant having been employed by the Respondent for less than 24 months, the Tribunal found that the Respondent was not in breach of the terms of the disciplinary policy in relation to the dismissal of the Claimant. Furthermore, the Claimant had been dismissed for some other substantial reason and not because of any alleged conduct and therefore the disciplinary policy did not apply.

221. Indeed, even if the Tribunal had considered the policy which the Claimant asserted was the relevant policy, paragraph 6 of that policy (page 77) confirms that a disciplinary process will be invoked in all cases of alleged serious or gross misconduct. Again, the Claimant had not been dismissed on the basis of serious or gross misconduct. Consequently, the paragraph, and thereby the policy, do not apply.

222. It was not disputed that the Claimant had been paid one week's salary at the conclusion of her contract and therefore her claims for wrongful dismissal and breach of contract are dismissed.

Employment Judge R Havard  
Dated: 29 March 2021

JUDGMENT SENT TO THE PARTIES ON 30 March 2021

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS