



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Mrs K Morris

AND

Respondent
Magna Housing Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD BY VIDEO (CVP)

ON

20 and 21 May 2021

EMPLOYMENT JUDGE GRAY

Representation

For the Claimant: In person
For the Respondent: Mrs J Headford (Solicitor)

RESERVED JUDGMENT

The judgment of the tribunal is that the Claimant's complaint of unfair dismissal fails and is dismissed.

JUDGMENT having been reserved on the 21 May 2021, in accordance with Rule 62(2) of the Employment Tribunals Rules of Procedure 2013, the following written reasons are also provided:

1. By a claim form presented on 31 January 2019 (see page A1 of the hearing bundle) the Claimant brought the following complaints;
 - a. Unfair dismissal pursuant to sections 94 and 98(4) of the Employment Rights Act 1996 (“the Act”); and
 - b. Discrimination on the grounds of disability pursuant to sections 20 and 21 of the Equality Act 2010 (“the EqA”).
2. At a preliminary hearing before me on the 6 and 7 July 2020 (see pages B51 to B71 of the hearing bundle) it was determined that “...***the Claimant is not a disabled person within the meaning of the Equality Act 2010 at times material to this claim by reason of depression. The Claimant’s complaint of disability discrimination (a failure to make reasonable adjustments) is therefore dismissed. The Claimant’s complaint of unfair dismissal continues.***”.
3. The determination of the Unfair Dismissal complaint was listed for this 2-day hearing (20 and 21 May 2021) to take place by video (CVP) with the parties’ consent.
4. As recorded by Employment Judge Roper in his case management summary dated 18 June 2020 (see pages B43 to B50), the Claimant commenced the Early Conciliation process with ACAS on 4 December 2018 and the Early Conciliation Certificate was issued on 4 January 2019. Accordingly, any act or omission which took place on or after 5 September 2018 (which allows for the extension under the Early Conciliation provisions) would be in time.
5. The Claimant was dismissed on 7 November 2018. This is confirmed by the Claimant in her claim form (see page A4) and the Respondent agrees (see page A21). The parties also confirmed this dismissal date at the start of this hearing, so no time limit jurisdictional issues arise for this complaint.
6. The parties had proposed the following timetable for this hearing which was agreed at the start of the hearing:

DAY 1 – am	10:00 – 10:30 10:30 – 12:30 12:30 – 13:00	Checking internet connections and microphones; housekeeping and directions (incl remote hearing matters). J’s reading in R’s witness evidence
DAY 1 – pm	14:00 - 16:00	R’s witness evidence
DAY 2 – am	10:00 – 12:00 12:00 – 13:00	C’s witness evidence Submissions
DAY 2 – pm		Decision and remedy

7. Unfortunately, this timetable could not be met, with evidence and submissions being concluded by 4:30pm on the second day. It was therefore necessary for judgment to be reserved, and for that judgment to be limited to liability.
8. For this hearing I was provided with:
 - a. A bundle consisting of 650 pages including the following witness statements:
 - i. Claimant
 - ii. John Wilmot – investigating officer for the Respondent
 - iii. Christine Boland – dismissing officer for the Respondent
 - iv. David Aldwinckle – heard the appeal for the Respondent
 - b. An agreed reading list.
 - c. Agreed List of Issues.
 - d. Respondent’s Skeleton Argument including a cast list and chronology.
 - e. Bundle of Respondent’s Authorities.
9. The agreed list of issues (which is based on those issues as set out in the case management order of Employment Judgment Roper (see page B48)) were confirmed with the parties at the start of the hearing. It was agreed that the issues in relation to liability would be determined first.
10. The agreed issues are therefore (as taken from the agreed list of issues document):
 - It is agreed that the Claimant was dismissed.
 - It is agreed that the reason for dismissal was conduct which is a potentially fair reason under s98(2) Employment Rights Act 1996 (ERA).
 - The issues for determination at trial (as stated by EJ Roper in the CMO dated 18 June 2020) are as follows.

Unfair Dismissal

1. Did the Respondent hold a genuine belief that the Claimant was guilty of misconduct?
2. Did the Respondent have reasonable grounds for believing the Claimant was guilty of conduct on reasonable grounds and following a reasonable investigation as was warranted in the circumstances?
3. The Claimant's allegations, as to which the burden of proof is neutral, are (by reference to the paragraphs in the Claimant's rider to her originating application) that:
 - (a) The Respondent refused to provide a recording of an overheard telephone call which the Claimant suggests demonstrates that there was a conspiracy against her (paragraph 23);
 - (b) Witnesses were not called and therefore she was not able to cross examine any witnesses at the disciplinary hearing (paragraph 24);
 - (c) The investigating officer Mr Wilmot was not impartial, and the disciplinary officer prejudged both the question whether he was, and the outcome of the disciplinary hearing (paragraph 26);
 - (d) Specific instances of misconduct and the exact basis for the conclusion she had committed the misconduct were not identified by the disciplinary officer Ms Boland (paragraph 28);
 - (e) The disciplinary and appeal hearing ignored evidence that some of the allegations had been disproved (paragraph 30 and specifically in respect of the appeal); and
 - (f) She was treated inconsistently with another employee against whom allegations were made (paragraph 30).
4. Was the decision to dismiss a fair sanction, that is, was it within the range of reasonable responses open to a reasonable employer when faced with these facts?
5. Did the Respondent adopt a fair procedure? If not, would the Claimant have been fairly dismissed in any event and/or to what extent and if so when?

6. Should compensation be reduced under *Polkey v Dayton* to reflect the chance that the Claimant would have been dismissed in any event and any procedural defects made no difference to the outcome;

7. Did the Claimant contribute to the dismissal by her conduct?

Remedy

8. What Basic Award is payable (if any)?

9. Would it be just and equitable to reduce the Basic Award due to the Claimant's conduct prior to dismissal and if so to what extent?

10. Is a Compensatory Award payable? If so how much should it be?
The Tribunal will
decide:

11. If there is a compensatory award,

(g) What financial losses has the dismissal caused the Claimant?

(h) Has the Claimant taken reasonable steps to replace any lost earnings, for example by looking for another job?

(i) If not, for what period of loss should the claimant be compensated?

(j) Is there a chance that the Claimant would have been fairly dismissed in any event if a fair procedure had been followed, or for some other reason?

(k) If so, should the Claimant's compensation be reduced and, if so, by how much?

(l) Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply? If so, did the Respondent or the Claimant unreasonably fail to comply with it? If so is it just and equitable to increase or decrease any award payable to the Claimant and, if so, by what proportion up to 25%?

(m) If the Claimant was unfairly dismissed, did she cause or contribute to her dismissal by her conduct? If so, would it be just and equitable to reduce the compensatory award? If so, by what proportion?

11. The Respondent's chronology was then discussed, and it was confirmed by the Claimant that it could be an agreed chronology if the dates she applied and was interviewed for her new job were amended.

12. These were amended (as highlighted in bold italics in the chronology copied below) and approved by the Respondent. The agreed chronology was therefore:

02.09.13 C's employment by R commences

27.04.18 C sees her GP about her anxiety

14.05.18 MB starts employment with R

26.07.18 MB leaves R's employment

31.07.18 MB complains about bullying by C and others

16.08.18 C interviewed as part of an investigation into Morris Berhane's complaint

31.08.18 C signed off work with "anxiety depression"

27.09.18 JW produces a report on his investigation of MB's allegations

22.10.22 R calls C to a formal gross misconduct disciplinary meeting with CB

04.11.18 C submits her response to the investigation report

07.11.18 Disciplinary meeting, C's employment terminated

08.11.18 By this date C ~~has been interviewed~~ ***applied*** for a new job

15.11.18 Dismissal decision letter

16.11.18 C appeals

21.11.18 C interviewed for the new job

22.11.18 Appeal meeting

27.11.18 Appeal outcome letter

11.12.18 commences new employment

The Facts

13. I heard evidence from the Claimant and all three of the Respondent's witnesses. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary as presented to me on these issues, and after listening to the factual and legal submissions made by and on behalf of the respective parties on these issues.
14. The Respondent is described in the grounds of resistance (page A28) as a community-based housing association providing homes and housing-related services in the Dorset and Somerset area. The Claimant describes the Respondent in her witness statement as a Registered Social Landlord.
15. The Claimant was employed by the Respondent as a Housing Officer – Community Safety. Her continuous employment service was from 2 September 2013 to 7 November 2018.
16. The Claimant's statement of main terms and conditions of employment is at pages C74 to C78 of the hearing bundle. This notes the Claimant's start date for continuous employment as being the 3 November 2014. However, as the Claimant explains in her witness statement, she says she commenced a temporary employment with the Respondent on 28 April 2013 and that the date of commencement for the purposes of continuity of employment is 2 September 2013. This is not in dispute.
17. The Claimant explains in her statement that she commenced the role of Housing Officer – Community Safety, on 4 August 2014, initially on a fixed term period and then being made permanent from 2 May 2015. This was not disputed by the Respondent in evidence.
18. The Respondent's disciplinary procedure is at pages C248 to C256 of the bundle. From that the following is noted:
 - a. Paragraph 1.2, which the Claimant said during her answers in cross examination she relies upon to say witnesses are required to attend disciplinary hearings. This paragraph refers to there being a general expectation on employees to cooperate fully with the procedure and all reasonable requests made under it.
 - b. Paragraphs 5.6 and 5.7 which expressly deal with the attendance of witnesses at disciplinary hearings. The Respondent refers to these paragraphs.

- c. Examples of gross misconduct which include, as noted by Ms Bolland in paragraph 43 of her witness statement, "... continued / repeated failure to follow a reasonable management request, bullying, negligent acts, behaviours or omissions leading to a loss of trust and confidence and behaviour bringing Magna into disrepute....".
19. The alleged conduct issues in this claim relate to the Claimant's interaction with other staff at the Respondent and in particular Morris Berhane (MB) who was appointed as a Housing Manager – Community Safety, the Claimant's line manager, commencing employment on the 14 May 2018.
20. The Claimant had herself applied for this role but was not shortlisted for it. As set out in her statement at paragraph 19 ... "I believe I was contacted on 13 April 2018 to advise I had been unsuccessful in my application and was not being invited to interview... This news was most surprising given [the Claimant's] experience and excellent performance, in addition to knowing the team and the IT systems."
21. The Claimant was asked about this matter in cross examination and in particular the reference she makes in paragraph 25 of her witness statement about having ... "heightened angst about a new manager...".
22. It was put to the Claimant that she didn't welcome a new manager. The Claimant did not agree with this. About the heightened angst about a new manager, the Claimant referred to this as being mental wellbeing in general and being diagnosed with anxiety and depression (and about this she referred to paragraph 24 of her statement) that she had angst about many matters. Despite opportunity to do so the Claimant did not explain why she had made the specific reference she had made to the new manager in her statement.
23. As confirmed in the agreed chronology and at paragraph 24 of the Claimant's witness statement on the 27 April 2018 the Claimant sees her GP about her anxiety.
24. The Claimant in her evidence referred an email dated 7 June 2018 (page C413) from MB to his team (which included the Claimant) that the Claimant highlights says MB felt welcomed as he says in that email that he wants "to thank you all for making me feel so welcomed".
25. There is no evidence from MB about this. About this email it is noted that it pre-dates MB's complaint email on the 23 July 2018 (as referred to below) by just under seven weeks.

26. Further, the Claimant highlights from her appraisal on the 25 June 2018 (page D593) that MB says in relation to her behaviour feedback (as also referred to in paragraph 39 of her witness statement... "... In a quarterly review on 25 June 2018 he graded me as exceeding expectations and expressly stated that "Morris has no problem with Kate's behaviour" [D593].".
27. This appraisal pre-dates MB's complaint email on the 23 July 2018. Again, there is no evidence from MB about this, so we do not know his reasons for writing what he did at that time. I would note here though that as considered in the following paragraphs of this fact finding, the Respondent does not rely only on what MB has submitted to it, so it is therefore important to consider the totality of evidence that the Respondent relies upon.
28. There is then an incident on the 16 July 2018 concerning MB's conduct. Mr Wilmot explained in his oral evidence that he received an email from MB dated 23 July 2018 (pages C127 and C 128), it was then necessary to deal with the 16 July 2018 conduct of MB, this led to MB resigning and leaving the Respondent's employment on the 26 July 2018. Mr Wilmot says that after informing the team of MB leaving, he then got emails from other members of the team on the 30 and 31 July 2018 raising concerns as to the way MB had been treated that then prompted a need to investigate matters. These emails are copied in the bundle at pages C151 to C157.
29. Mr Wilmot was requested to investigate matters by Ms Bolland (his line manager).
30. Mr Wilmot describes these matters in his witness statement at paragraphs 11 to 14.
31. The email of MB dated 23 July 2018 to Mr Wilmot is at pages C127 and C128. It raises under the matter heading "private and confidential – Kate" a number of complaints about the Claimant such as a refusal to take him out on site visits, that the Claimant was verbally hostile to him at the last two ASB meetings and the Claimant not getting a work colleague involved in a case.
32. Mr Wilmot says in paragraph 11 ... "... Morris left the business for unrelated reasons. The moment Morris left, there was a noticeable change in Kate's behaviour and she was far more communicative and social. Shortly before he left, Morris sent in emails raising his concerns about Kate's conduct towards him...this was the first time to my knowledge he had complained about Kate."

33. Mr Wilmot undertakes the investigation into the matters raised about the Claimant.
34. Mr Wilmot states at paragraph 15 of his witness statement "I initially met with the members of the team who had raised concerns. I also contacted individuals (Jill Brighouse & Amanda Shirani) who I had been told had witnessed Kate's behaviour. It is certainly not the case that I selected who to interview based on personal preference, as Kate now suggests, or that I was biased in any way. I included a statement from Jill but not one from Amanda, as I did not feel it added anything to what Jill had already said. I am not aware of failing to approach any witnesses who may have had evidence to give which would have supported Kate. Had Kate considered that I had missed out a material witness, it was open to her to ask me to interview that person; however she did not."
35. The investigation does appear to be an extensive process. The report produced from the investigation runs to 39 pages (C88 to C126). There are then 43 appendices to the report, which includes 8 sets of interview notes (pages C175 to C242) all of which include the note at the end inviting comments, and if no comments are made that they would be considered an accurate reflection of the meeting.
36. The Claimant is interviewed on the 16 August 2018 and the Claimant's interview notes are at pages C201 to C230. These notes include the Claimant's subsequent comments to create an agreed record.
37. About these interview notes the Claimant seemed to suggest during her being cross examined that only her interview notes could be considered as evidence for the disciplinary process. By way of example the Claimant referred to the interview notes of one of the other Housing Officers (see page C180) saying that she had not provided evidence to support that she had been bullied as a child as the notes says she said. The Claimant has though not presented any evidence to say that this statement by that Housing Officer in her interview is untrue. It also does not feature as an allegation against the Claimant, i.e. that the Claimant was the one bullying that Housing Officer as a child. This assertion, that only the Claimant's interview notes amount to evidence, has therefore not been substantiated by the Claimant.
38. As is noted in the agreed chronology the Claimant is signed off work with "anxiety depression" on the 31 August 2018.
39. It is then on the 27 September 2018 that Mr Wilmot produces the written report on his investigation into MB's allegations and the matters raised by other work colleagues. The conclusion of the report is that the Claimant should be subjected to a disciplinary about whether she is guilty of gross

misconduct (see page C124). The Claimant's colleague Andrew Burdess (AB) is also recommended for the same treatment. As Mr Wilmot confirms in his witness evidence at paragraph 22, he felt "the evidence did not support Morris's complaint of racial discrimination."

40. The Claimant is sent a copy of the investigation report.
41. As is detailed in Mr Wilmot's statement ... "28. Following this I was telephoned by Kate and we spoke about the report [page C319]. She said she understood why the report had taken so long to produce as it was very lengthy. She seemed calm about it and told me she thought it was a fair report, although she did not agree with all of it. There was no suggestion at this point that she felt the investigation was biased or incomplete. There was a brief discussion about the need to rebuild relationships if the outcome of the disciplinary was to allow her to return to work."
42. The Claimant describes this telephone call in her witness statement at paragraph 98 saying ... "I telephoned Mr Wilmot after receiving the investigation report. I told him I wanted to get back to work. He told me to stay away until after the disciplinary hearing. I asked if I was suspended and he confirmed I was not."
43. The Claimant was asked about this telephone call in cross examination. The Claimant confirmed that she could not recall if the fairness of the report was discussed. The Claimant did not state positively that it did not happen. For these reasons I accept Mr Wilmot's recollection of the call, particularly as there is a contemporaneous email recording matters (see page C319).
44. The Claimant is then invited to a disciplinary hearing by letter dated 22 October 2018 (pages C321 and C322). It says:

Following the recent investigation by John Wilmot, Tenancy Services Manager, it is alleged that –

- You acted in such a way towards Morris Berhane that it can be classed as bullying;
- You displayed inappropriate behaviour towards colleagues;
- You failed to follow reasonable management requests;
- You breached Magna's policies or procedures;
- The behaviours displayed by you have led to a loss of trust and confidence;
- The behaviour displayed by you brings Magna into disrepute.

45. The letter confirms the Claimant's right to attend the hearing with a work colleague or Trade Union representative. It also confirms that the allegations could potentially be considered gross misconduct and the outcome could be summary dismissal.
46. It is then on the 4 November 2018 that the Claimant submits her response to the investigation report (see pages C334 to C524). This consists of 10 appendices including one (Appendix 4 - as at pages C341 to C360 of the bundle) which is the Claimant's written response to the written report of Mr Wilmot.
47. The disciplinary hearing then takes place on the 7 November 2018 and the conclusion of the hearing is that the Claimant is dismissed summarily for gross misconduct. Notes of the hearing are at pages C532 to C541.
48. The Claimant had said in her witness statement at paragraph 111 that ... "When attending the disciplinary meeting on 7 November 2018, Ms Boland, advised that she had not read my defence paperwork prior to the hearing. She adjourned the meeting whilst she did so.". The Claimant was challenged about this in cross examination and she amended her factual position to being Ms Bolland said she would like to adjourn to re-read the Claimant's response in more detail.
49. It was also highlighted to the Claimant in cross examination that there are a number of references Ms Bolland makes to the Claimant's response in the disciplinary hearing notes which show she had read the content. Reference is made to page C534 of the bundle referring to page 17 and 4 of the Claimant's response; page C535 to pages 9, 11 and 17; and page C536 to page 17.
50. For these reasons there is no evidence that I can find to say, on the balance of probability, that Ms Bolland did not consider the Claimant's response.
51. The notes of the disciplinary hearing record the decision to dismiss and the reasons for it that were relayed orally to the Claimant at that time (see pages C540 to C541).
52. The oral dismissal statement as recorded in the hearing notes runs to 14 paragraphs, confirming the Claimant is dismissed without notice for gross misconduct. Reference is made to Ms Bolland saying she has ... "taken account of the points you raised in the meeting particularly about hearsay, gossip also whether the investigating officer should have interviewed more members of the tenancy services team about the altercation between you and MB at the team meeting on 27 June 2018...". Also... "Having read JW's report through again and reflected on it, I'm more than satisfied that

- it's balanced and thorough...". Further, ... "I've given consideration to your response to JW's report and the mitigating factors that JW sets out on page 38 of his report."
53. Ms Bolland is recorded as saying ... "For all the reasons set out in JW's report, I have concluded that you did bully MB both individually and collectively with colleagues and in doing so, you breached Magna's policies and procedures as set out in JW's report. Regards the bullying, it's called upward bullying, when you display the behaviours you did towards your manager. I don't doubt that some of what MB said to you caused you stress, but you had a choice about the way you reacted and dealt with the stress and you chose to deal with it negatively on the whole." ... "You don't have to have intended to bully him for it to have happened." ... "There are many examples of inappropriate behaviour towards MB and, although you have tried to be very specific (split hairs) about certain words such as 'ignore' compared with 'having your head down', and whether or not he 'repeatedly' asked you to take him on a visit and whether it was a 'refusal' or 'just you forgot', the fact is that, he asked you to do it and in 11 weeks you never took him on a visit. This was a reasonable request." ... "There are examples throughout the report, the statements and your response which support my decision but which are too numerous to mention. For example KW, although a long time ago, it gives context and lends weight to what others have observed in you."
54. Ms Bolland is recorded as saying ... "I've looked through Magna's behaviour framework and I can see that much of the behaviour you displayed amounts to negative examples for example, not embracing change, not taking responsibility for your actions and your lack of sensitivity around KW and why she didn't come forward at the time. The very fact that you have called into question and denied a lot of what was said indicates you haven't accepted responsibility for your own actions."
55. Ms Bolland was challenged in cross examination about her reliance on matters concerning "KW" (as referred to in the disciplinary hearing notes) and Ms Bolland explained that it was the way the Claimant reacted to what KW had said rather than the conduct involving KW that was relevant to her decision. Ms Bolland explained that the Claimant was focused on why KW didn't complain at the time, rather than engaging with what had been said about her.
56. Ms Bolland is further recorded as saying to the Claimant at the disciplinary hearing.... "There are examples of your colleagues discounting your behaviour by saying they 'get it', you care about what you do and you are 'passionate'. I believe you are, but unfortunately, this has an overwhelming tendency to come out negatively e.g. you do not accept responsibility for your own actions; you do not embrace change and you

are disruptive when change is introduced; you are negative at work or constantly criticize – bringing down morale of those around you; you have bad time-keeping; you take credit for success without acknowledging others. Regarding leads by example, you convey a lack of sensitivity and/or treat people with a lack of respect; you make negative comments about colleagues etc; you do not listen to the views of others.”.

57. Further, ... “Regards trust Kate, as head of department, I don’t trust that if you go back to that department, that I could be confident that none of this would happen again or that nothing similar would happen again. There’s nothing I’ve seen or read throughout this process which improves that view. The depth and breadth, number and seriousness of the allegations and the impact it’s had on your colleagues is too much. We have a zero tolerance approach to bullying and so to send you back to any department within Magna would not be appropriate.”.

58. The Claimant does not assert that the written record of the oral reasons given for her dismissal, as communicated at the disciplinary hearing, is not an accurate account of what she was told at that hearing.

59. Confirmation of dismissal is then confirmed by letter dated 15 November 2018 (pages C543 and C544). It records that ... “When the meeting reconvened, I informed you that my decision is that you should be summarily dismissed for gross misconduct. This means that it is effective immediately and you are not entitled to any notice or pay in lieu of notice.”.

60. The outcome letter informs the Claimant about her right of appeal.

61. By email dated 16 November 2018 the Claimant submits an appeal against the decision (see pages C545 and C546).

62. The appeal letter sets out the grounds of appeal as being:

“The reasons to support an appeal against the decision to dismiss for gross misconduct are:

1. I am apologetic for the impact this matter has had on my team, Housing Services and anyone else affected. I never intended that my presence would cause the effect it did, and have learned an awful lot from the whole process that has resulted in a change in myself, the way I consider other people, the manner in which I present myself and the impact of behaviour as a whole;
2. Magna Housing have failed to adhere to their own policies and procedures namely, Policy Against Bullying and Harassment, Disciplinary Procedure, Magna’s Dignity at Work – Guidance on

dealing with bullying and harassment at work, Equality and Diversity Policy and Grievance Procedure;

3. Morris has not confirmed an 'impact' of alleged behaviour on him. The burden of proof rests with him to prove the allegation of bullying. Without confirmation of this, an adverse inference cannot be drawn to suggest that bullying has occurred;
 4. A finding of gross misconduct does not have to result in a dismissal. Consideration as to past conduct, disciplinary record, performance and attendance should be used in mitigation. Additional training and mediation are also options for consideration. The decision to dismiss was unfair, inconsistent and draconian;
 5. No consideration has been given to my health before, during and after the investigation; the impact of my anxiety on my ability to respond to stressful situations and, not least my depression, a protected characteristic under the Disability Discrimination Act."
63. There is also an appeal statement (pages C547 to C550) that the Claimant read out at that the appeal meeting which took place on the 22 November 2018.
64. The Claimant at no point, as she now asserts in answers to cross examination, asserted in her grounds of appeal that she did not understand what she had been dismissed for.
65. In cross examination it was put to the Claimant that her appeal was to enable her to bring unfair dismissal and disability claims to the Tribunal. The Claimant confirmed no, she appealed because she thought to dismiss on the spot was unfair, and yes, she did want to clear her name, as she was accused of being a racist bully. As already noted, the Claimant was not accused of that by the Respondent though.
66. The appeal outcome letter is dated 27 November 2018 and is at pages C563 to C567.
67. The finding of gross misconduct was upheld, save that the allegation of bringing the Respondent into disrepute was dropped. Mr Aldwinkle explains the reasons for this in paragraph 18.d. of his witness statement. Mr Aldwinkle also confirmed the reasons when asked about this in cross examination. He confirmed that he did not consider a closed face book group where comments were posted could bring the Respondent into public disrepute. This is also detailed in the appeal outcome letter at pages C565 and C566.
68. The Claimant is also given a payment in lieu of notice. Mr Aldwinkle explains in paragraph 19 of his statement that he did this because he recognised that the Claimant having been summarily dismissed would be

in some financial difficulty and this was to mitigate the impact to the Claimant particularly in trying to find alternative employment in the run up to Christmas.

69. The Claimant did not inform Mr Aldwinkle at the appeal hearing that she had applied for a new job and been for a job interview on the 21 November 2018. The notes of the appeal hearing instead record (page C553) ... "...KM further explained that she was currently without pay and had two dependants, and a gross misconduct outcome so could not apply for other jobs."
70. In cross examination Mr Aldwinkle did not accept that the decision to summary dismiss was flawed. Mr Aldwinkle was not challenged that his hearing of the appeal was in any way flawed, or indeed that the outcome of the appeal was unreasonable.
71. As can be seen from the findings already made the content of the investigation report and the Claimant's response to it is extensive. It is therefore appropriate in my view to focus on the specifics of the six allegations of unfairness the Claimant makes, as set out in the agreed list of issues, and deal with each of those in turn, referencing any further relevant findings of fact specific to the challenges the Claimant makes:
72. The first challenge is that ... ***"(a) The Respondent refused to provide a recording of an overheard telephone call which the Claimant suggests demonstrates that there was a conspiracy against her (paragraph 23);"***
73. About this the Claimant says in her witness statement at paragraph 58 ... "On the morning of 25 July 2018, I heard Mr Wilmot in a telephone conversation with Andrew Bellchambers. I heard Mr Wilmot say he would "sort it" and that "he has effectively put words into your mouth". I have persistently requested a copy of this telephone recording [C327] since I was interviewed on 16 August 2018, but my request has been declined."
74. During cross examination the Claimant was taken to the emails relevant to the disclosure of the alleged telephone call during the disciplinary process (see pages C328 to C331) which confirmed there were no other calls other than the one considered by the Respondent. A transcript of the call the Respondent says it identified and considered is at page C79 and it does not appear to include the words the Claimant says she heard.
75. The Claimant maintained there was another call that had been concealed. About this the Claimant was asked if the employee who had investigated the existence of the calls for disclosure at that time, confirming at that time

that there were no other calls, was part of the conspiracy. The Claimant confirmed that she was not stating he was.

76. With this confirmation and a lack of evidence from the Claimant to explain what the conspiracy is, I do not find that the Claimant has proven on the balance of probability that another call took place between Mr Wilmot and Andrew Bellchambers that was concealed by the Respondent. The Claimant has also by her own evidence excused the actions of a key person in the telephone call disclosure process at the times material to the disciplinary hearing. The Claimant has therefore not proven on the balance of probability evidence of a conspiracy, either as to the content of the alleged call or its existence being concealed.
77. The second challenge is that ... ***“(b) Witnesses were not called and therefore she was not able to cross examine any witnesses at the disciplinary hearing (paragraph 24);”***
78. The Claimant explains this allegation in paragraphs 103 to 105 of her witness statement.
79. The Claimant explains ... “I requested the attendance of witnesses to the disciplinary hearing [C334] for them to clarify discrepancies in the investigation report; predominantly the witness evidence of Ms Ford suggesting that she had felt excluded...”.
80. The Claimant asserts that her request for witness attendance being declined was ... “a breach of the company’s own Disciplinary Procedure.”. In cross examination the Claimant confirmed that she relied on paragraph 1.2 of the disciplinary procedure which refers to there being a general expectation on employees to cooperate fully with the procedure and all reasonable requests made under it.
81. As noted already the Respondent refers to paragraphs 5.6 and 5.7 (see page C251) of the disciplinary policy and these clauses do suggest the Claimant can ask for witnesses to attend the disciplinary hearing.
82. The requested witnesses did not want to attend the hearing, and their attendance was excused on the basis that the Claimant could raise questions in writing with them. As explained by Ms Bolland in her witness statement at paragraph 17 ... “The Claimant was offered an opportunity to put questions to the witnesses in writing and be given their answers and was reminded at the disciplinary meeting but she decided against doing so, saying there was no need [C539].”. The notes of the disciplinary hearing do record:

“Meeting adjourned at 11.10am and reconvened at 11.30am.

CB Do you have any questions for the witnesses?

KM I've looked at it and think I've got the answers I need. I would like to bypass this and get an outcome of this meeting sooner."

83. During cross examination of the Claimant, the Claimant accepted, with reference to the email at page C326, that Ms Bolland was considering the Claimant's request about the attendance of witnesses and was not dismissing it out of hand.
84. On the basis of the Claimant's recorded position about witnesses at the disciplinary hearing and her acceptance that her initial request was not dismissed out of hand, I do not find that the Claimant has evidenced that this part of the process was unfair to her.
85. The third challenge is that ... ***“(c) The investigating officer Mr Wilmot was not impartial, and the disciplinary officer prejudged both the question whether he was, and the outcome of the disciplinary hearing (paragraph 26);”***
86. The Claimant makes references to matters concerning this allegation in paragraphs 113, 140 and 143 to 145 of her witness statement, but there is no specific explanation presented by the Claimant as to why Mr Wilmot would not be impartial. Instead there are suggestions, for example at paragraph 143 of the Claimant's statement she says that... “It can only be assumed that Mr Wilmot's failure to address continued concerns about Mr Berhane's odour of alcohol was down to Mr Wilmot's own similar presentation in this regard, particularly after Janet Rowan's retirement get-together.”. Further, at paragraph 144 ... “... The situation was clearly mismanaged by Mr Wilmot and Ms Boland in a cover up for a greater degree of misconduct throughout the Housing Services department.”. Also, at paragraph 145, that no satisfactory references were received for MB.
87. During the oral evidence the Claimant was asked to clarify why Mr Wilmot did not act with impartiality as she alleges. The Claimant explained that it was her assertion that Mr Wilmot had orchestrated the investigation report to find her guilty, as people would believe that of the Claimant, to deflect from his own conduct in the way he had dealt with MB. This allegation does not appear to have been raised specifically at the disciplinary nor at the appeal nor in the Claimant's witness statement.
88. The Claimant referred to the fourth paragraph of her appeal statement at page C547 of the bundle and the bullet point at the top of page C549 of the bundle to suggest it had been. That is not what those parts of the

- document say. They refer to matters to suggest the Claimant believed the process was biased against her, but they do not articulate the motive for that as she now asserts during oral evidence at this hearing.
89. It was put to Mr Wilmot in cross examination that this was his motivation and he denied it. He said that it was a difficult 11 weeks (while MB was employed) between the team, they never gave specifics about issues with MB. He explained he needed definitive evidence to act.
90. In response to questions during cross examination Mr Wilmot explained that he saw the email from MB dated 23 July 2018 a few days later when he returned from holiday. However, it was then necessary to deal with the 16 July 2018 conduct of MB first and this led to MB resigning. After then informing the team of that, he then got emails on the 30 and 31 July 2018 from other members of the team that then prompted the need to investigate matters against the Claimant.
91. This does seem a coherent and contemporaneous document supported process, rather than an orchestration on Mr Wilmot's part to deflect attention from him.
92. The Claimant in evidence referred to a copy of a handwritten letter from MB (at page C129), that was sent in a postmarked envelope dated 31 July 2018 (see page C130). The Claimant asserted that this was criticism of Mr Wilmot that would have motivated him the way the Claimant now asserts. However, in this letter MB says about Mr Wilmot that he was supportive, but he never addressed the issues. This though does not detract from the allegations that have already been made against the Claimant (as detailed in the factual findings set out above) which are more serious, being, as MB asserts in his email dated 23 July 2018, the perpetrator of "the issues".
93. As noted by the Respondent's representative in her skeleton argument... "Far from accusing JW of any lack of impartiality at the time of his report, C telephoned JW on receipt of the report and said that she could see why it had taken him so long due to its sheer length and she felt it was "fair" and assured JW that she had no bad feelings towards him [C319]". As is detailed in the factual findings set out above, I accept the account of Mr Wilmot about this telephone call.
94. For these reasons I do not find that the Claimant has proven on the balance of probability that Mr Wilmot lacked impartiality. Therefore, the finding by Ms Bolland that Mr Wilmot did not lack impartiality would seem to be reasonable.
95. The fourth challenge is that ... ***“(d) Specific instances of misconduct and the exact basis for the conclusion she had committed the***

misconduct were not identified by the disciplinary officer Ms Boland (paragraph 28);”

96. The dismissing officer at the Respondent, Ms Bolland, sets out in her witness statement at paragraphs 39 to 47 her thought process, what she says she genuinely believed the Claimant had done and her consideration of the appropriate sanction.
97. Ms Bolland says that she primarily relied upon the evidence in Mr Wilmot’s report.
98. Ms Bolland confirmed that ... “The evidence seemed clear to me and it was not just one person’s word against another’s. The investigatory report set out a very clear summary of what had happened and it was evident that Kate’s actions targeted Morris and that she tried to undermine Morris over an extended period of time”.
99. Ms Bolland states (at paragraph 41) that the Claimant’s actions included the following:
- “a. Verbal hostility to and confrontation of Morris in various team meetings, her behaviour being described by other attendees as snappy and demeaning, almost mocking, being angry, aggressive and argumentative and bullying (plus other similar comments);
 - b. General deliberate disrespect to Morris, including being deliberately late for a meeting organised by Morris;
 - c. Deliberate isolation, non-cooperation and deliberate exclusion of Morris over a period of time;
 - d. Discussions about avoiding Morris and doing so in practice, including working from other locations, to the detriment of customers;
 - e. Persistent criticism of Morris; and
 - f. Failure to comply with management instructions, specifically to take Morris out on a visit with her and to work with a colleague.”
100. Ms Bolland confirmed that ... “I looked at Magna’s disciplinary procedure. This says [page C256] that continued / repeated failure to follow a reasonable management request, bullying, negligent acts, behaviours or omissions leading to a loss of trust and confidence and behaviour bringing Magna into disrepute are all considered to be gross misconduct. I felt these were all relevant.”.

101. Ms Bolland confirmed that she had spent a long time deliberating on the outcome and thinking about the outcome, including alternative sanctions to dismissal. She felt that trust had broken down irretrievably and she did not feel it appropriate to impose any sanction short of dismissal. She felt the Claimant's behaviour had been appalling and she could not trust that she would not behave in the same way in the future with other team members. Ms Bolland says that it was a real concern that the Claimant seemed to think her actions were largely defensible. Whilst Ms Bolland says she was aware of the Claimant's employment history, she did not feel this overruled the findings she had made. Because of ... "the depth and breadth, number and seriousness of the allegations and the impact on Kate's colleagues warranted dismissal. We have a zero tolerance approach to bullying and to allow Kate to return to work would not have been appropriate."
102. Ms Bolland confirmed that ... "There was no one incident which led to my finding; it was more an overall assessment based on a number of incidents over an extended period of time. Kate must have known that what she was doing was completely wrong; however she showed no concern or consideration for Morris at all."
103. Ms Bolland states that the Claimant's conduct was particularly serious because, she says (at paragraph 47) it showed a clear and deliberate pattern of behaviour. Ms Bolland says she took into account the strength of the evidence against the Claimant, the impact on the Claimant's colleagues and the absence of any acknowledgement by the Claimant that she had done anything seriously wrong.
104. The Claimant states in paragraph 115 of her witness statement ... "115. On reaching her decision, Ms Boland advised there were examples throughout the investigation report, statements and my response that support her finding to dismiss but were too numerous to mention. She further stated that "the depth and breadth, number and seriousness of the allegations is too much" but, again, failed to confirm what the specific allegations were. She stated that she was not confident, should I return to my role, that none of this would happen again or that nothing similar would happen again but provided no evidence in support of this opinion. She concluded that Magna have a zero-tolerance approach to bullying so relocation to an alternative department would not be appropriate."
105. From this it can be seen that there is no dispute as to the reason for the dismissal (as was already acknowledged in the parties agreed list of issues), what the Claimant challenges is that there was a lack of specificity on particular allegations.

106. The Claimant refers to an example of this in paragraph 116 of her witness statement ... “116. Ms Boland relied on my ‘continued’ refusal to obey the reasonable instructions of my manager as conduct to amount to gross misconduct; specifically, that I did not take him on a joint visit.”.
107. In the Claimant’s cross examination of Ms Bolland, she challenged her about this asking Ms Bolland to evidence the continued refusal. Initially Ms Bolland explained that there were many examples of bullying where one example of not cooperating is deemed to be bullying. Ms Bolland was asked to explain why she says she genuinely believed the Claimant had refused to comply with management requests (plural). Ms Bolland confirmed that she does genuinely believe it based on the report she read, and it was not the only example, but considered in the whole.
108. It was during re-examination that Ms Bolland clarified her position further explaining that she relied upon the breadth and detail of the allegations compared to the Claimant’s defence. Ms Bolland explained that the Claimant’s defence was a denial of what had been said and was “hair splitting” as to whether she refused to take MB out. Ms Bolland referred to Mr Wilmot’s report, which includes a copy of MB’s email of complaint (as can be seen at page C115 linking to appendix 1 (page C127)). An allegation MB makes is he “asked Kate several times to take me out with her and she has refused....”. Further, Ms Bolland identified issues with the Claimant’s attendance at the Oak House meeting and her refusal to work with “ABe” (see pages C116 to C118).
109. Ms Bolland was also challenged in cross examination as to what specific evidence she relied upon to reach the conclusion the Claimant had displayed inappropriate behaviour to colleagues. Ms Bolland confirmed that colleagues included MB and she referred to the details in the report as at pages C97, C99, and C100.
110. As noted by the Respondent’s representative in her skeleton argument ... “In the present case C had been provided with a 39 page investigation report plus 43 appendices to which she had submitted a very full 29 page response which had 35 appendices. It cannot realistically be suggested that she did not know the case she had to meet.”. This does seem to be the position. The reason for dismissal is not in dispute, what the Claimant asserts is that the Respondent could not genuinely believe she was guilty of what she was accused of. This is supported by the appeal the Claimant submits, where she does not raise issue with the reason or her understanding of it. The Claimant’s appeal instead submits that she is sorry, but she does not feel the Respondent should uphold matters against her and the sanction is too harsh.

111. The Claimant was able to make her challenge to the allegations against her during the disciplinary process, not only by the full response she submitted, but also because of her being able to submit interview notes that she had annotated ... “to accurately reflect my recollection of what had been discussed...” (as per paragraph 92 of the Claimant’s statement).
112. I accept that Ms Bolland genuinely believed that the Claimant was not contrite and that the actions she genuinely believed the Claimant was guilty of do amount to gross misconduct within the examples set out in the Respondent’s disciplinary procedure.
113. The fifth challenge is that ... **“(e) The disciplinary and appeal hearing ignored evidence that some of the allegations had been disproved (paragraph 30 and specifically in respect of the appeal);”**
114. This allegation to an extent overlaps with the fourth allegation.
115. As Ms Bolland says in her statement at paragraph 49 “49. Kate says that I ignored evidence that some of the allegations had been disproved. I am not aware that any of the allegations had been disproved (other than those discounted within the investigation report), and my conclusions were based on the findings of the investigation report.”.
116. Ms Bolland was challenged about what evidence she relied upon in cross examination. She was consistent as to why she says she believed what she believed about the Claimant’s conduct and was able to highlight specifics in the investigation report.
117. The reason for dismissal is not in dispute, what the Claimant asserts is that the Respondent could not genuinely believe she was guilty of what she was accused of.
118. The sixth challenge is that ... **“(f) She was treated inconsistently with another employee [the Claimant confirmed at the start of the hearing and during her evidence that this is Andrew Burdless (AB) who was also subject to a disciplinary] against whom allegations were made (paragraph 30).”**
119. Ms Bolland deals with this issue in paragraph 50 of her witness statement Ms Bolland explains that “... The evidence against them was not the same. There were a number of incidents in which Kate had been involved which did not involve Andy, e.g. Andy had taken Morris on a visit when Kate had never done so. The evidence against Kate was considerably stronger. I did hear a disciplinary hearing against Andy and he was given a final written warning. Andy was, in my view, more willing to

accept that he had done wrong and my assessment was that he was much less likely to behave in that way in the future. This, for me, was a crucial point of distinction. There was no extended pattern of behaviour for Andy and I considered that, with training, it would be possible for him to return to the team.”.

120. The Claimant’s evidence about AB is in paragraph 135 of her statement ... “In consideration of whether the decision to dismiss was fair, the Respondent must show that consistency has been applied for similar previous offences with other staff. Therefore, Mr Burdess retaining his employment confirms a further inconsistency with the Respondent’s handling of the matter.”.
121. The Claimant has presented no evidence to disprove or challenge the points of distinction that Ms Bolland relies upon.
122. This matter was also given specific consideration by Mr Aldwinkle as part of his appeal considerations, as set out in his witness statement at paragraph 18.d. This was not challenged by the Claimant.
123. I therefore accept the Respondent’s evidential position on this matter and accept that AB was distinguishable from the Claimant for the reasons they rely upon to explain a difference of treatment.

The Law

124. Having established the above facts, I now refer to the law.
125. The reason for the dismissal as asserted by the Respondent was conduct which is a potentially fair reason for dismissal under section 98(2)(b) of the Employment Rights Act 1996 (“the Act”). The Claimant agrees she was dismissed for a conduct reason (as set out in the agreed list of issues).
126. I have considered section 98 (4) of the Act which provides “.... the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) – (a) depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and – (b) shall be determined in accordance with equity and the substantial merits of the case”.
127. The starting point should always be the words of section 98(4) themselves. In applying the section, the tribunal must consider the reasonableness of the employer’s conduct, not simply whether it considers

the dismissal to be fair. In judging the reasonableness of the dismissal, the tribunal must not substitute its own decision as to what was the right course to adopt for that of the employer. In many (though not all) cases there is a band of reasonable responses to a set of factual circumstances within which one employer might take one view, and another might quite reasonably take another. The function of the tribunal is to determine in the particular circumstances of each case whether the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair.

128. I have also considered the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015 (“the ACAS Code”), although the Claimant does not assert any breach of the ACAS Code.

129. I was directed by the Respondent’s representative to the following case authorities:

- a. British Home Stores Ltd v Burchell [1978] UKEAT/108/78/2007 IRLR 379
- b. Maintenance Co Ltd v Dormer [1982] IRLR 491
- c. Boys and Girls Welfare Society v McDonald [1995] IRLR 129, as affirmed in London Ambulance Service NHS Trust v Small [2009] IRLR 563 CA
- d. Ulsterbus Limited v Henderson [1989] IRLR 251
- e. Santamera v IEC Limited t/a Express Cargo Forwarding [2003] IRLR 273
- f. Linfood Cash & Carry v Thomson [1989] IRLR 235
- g. A v B [2003] IRLR 405
- h. Brito-Babapulle v Ealing Hospital NHS Trust [2014] EWCA Civ 1626
- i. Hadjioannous v Coral Casinos [1981] I.R.L.R. 352; SPS Technologies Ltd v Chughtai UKEAT/0204/12/SM
- j. Securicor Ltd v Smith [1989] IRLR 396
- k. Epstein v Windsor and Maidenhead RLBC. [2007] 11 WLUK 392
- l. Paul v East Surrey DHA [1982] IRLR 491 at paragraph 34
- m. Sainsburys Supermarkets Plc v Hitt EWCA Civ 1588;
- n. USDAW v Burns UKEAT/0557/12/DA 1 April 2014
- o. Sharkey v Lloyds Bank Plc [2015] UKEAT/0005/15
- p. Foley v Post Office; Midland Bank plc v Madden [2000] IRLR 827
- q. Polkey v A E Dayton Services Ltd [1987] IRLR 503
- r. Software 2000 Ltd UKEAT 0533/06
- s. JP Morgan Securities v Ktorza UKEAT/0311/16 decided on 11 May 2017

130. In oral submissions the Respondent's representative drew particular attention to the following of those case authorities that she submitted were particularly relevant to the evidence presented and the arguments made in this claim:

- a. Boys and Girls Welfare Society v McDonald [1995] IRLR 129,
- b. Ulsterbus Limited v Henderson [1989] IRLR 251
- c. Santamera v IEC Limited t/a Express Cargo Forwarding [2003] IRLR 273, supra at paras 35 and 36
- d. Brito-Babapulle v Ealing Hospital NHS Trust [2014] EWCA Civ 1626
- e. Paul v East Surrey DHA [1982] IRLR 491 at paragraph 34

131. As highlighted by the Respondent's representative in her skeleton argument with reference to Santamera: "[it does not follow that] ... an investigation is unfair overall because individual components of an investigation might have been dealt with differently, or were arguably unfair. Whilst of course an individual component, on the facts of a particular case, may vitiate the whole process, the question which a Tribunal hearing a claim for unfair dismissal has to ask itself is: in all the circumstances, was the investigation as a whole fair?" (see paragraph 36 of that judgment).

132. As the Respondent's representative submits in her skeleton argument and with which I agree ... "The allegation that the disciplinary and appeal hearing ignored evidence that some of the allegations had been disproved (paragraph 30 [A17] and specifically in respect of the appeal): a. R relies again on Santamera – see paragraph 10.b above and the absence of any obligation to carry out "a forensic or quasi-judicial investigation". The question is not whether anything had been proved or disproved in the mind of C but whether R had concluded on reasonable grounds following a reasonable investigation that the allegations against C were sufficiently made out."

The Decision

133. The Claimant was dismissed for the reason of conduct. This is not in dispute as recorded in the agreed list of issues at the outset of this hearing, and in any event is also apparent from the evidence presented by the parties.

134. In a complaint of unfair dismissal, the correct approach is to consider together all the circumstances of the case, both substantive and procedural, and reach a conclusion in all the circumstances. A helpful approach in most cases of conduct dismissal is to identify three elements

(as to the first of which the burden is on the employer; as to the second and third, the burden is neutral).

135. These are:

- a. that the employer did believe the employee to have been guilty of misconduct; - ***I find that the Respondent did believe that the Claimant was guilty of misconduct. As was confirmed by Ms Bolland at this hearing and is recorded as being said at the disciplinary hearing itself ... “For all the reasons set out in JW’s report, I have concluded that you did bully MB both individually and collectively with colleagues and in doing so, you breached Magna’s policies and procedures as set out in JW’s report. Regards the bullying, it’s called upward bullying, when you display the behaviours you did towards your manager. I don’t doubt that some of what MB said to you caused you stress, but you had a choice about the way you reacted and dealt with the stress and you chose to deal with it negatively on the whole.” ... “You don’t have to have intended to bully him for it to have happened.” ... “There are many examples of inappropriate behaviour towards MB and, although you have tried to be very specific (split hairs) about certain words such as ‘ignore’ compared with ‘having your head down’, and whether or not he ‘repeatedly’ asked you to take him on a visit and whether it was a ‘refusal’ or ‘just you forgot’, the fact is that, he asked you to do it and in 11 weeks you never took him on a visit. This was a reasonable request.” ... “There are examples throughout the report, the statements and your response which support my decision but which are too numerous to mention...”***
- b. that the employer had in mind reasonable grounds on which to sustain that belief; - ***I find that the Respondent did have these grounds as I accept the evidence of Ms Bolland as to what she relies upon and the Claimant has not proven on the balance of probability that Mr Wilmott’s investigation was self-motivated so as to make it not impartial;*** and
- c. that the employer, at the stage (or any rate the final stage) at which it formed that belief on those grounds, had carried out as much investigation as was reasonable in the circumstances of the case. The band of reasonable responses test applies as much to the question of whether the investigation was reasonable in all the circumstances as it does to the reasonableness of the decision to dismiss. ***I find that the Respondent did do this.***

136. Addressing the Claimants specific allegations:
- a. I do not find that the Claimant has proven on the balance of probability that another telephone call took place between Mr Wilmot and Andrew Bellchambers that was concealed by the Respondent. The Claimant has also by her own evidence excused the actions of a key person in the telephone call disclosure process at the times material to the disciplinary hearing. The Claimant has therefore not proven on the balance of probability evidence of a conspiracy, either as to the content of the alleged call or its existence being concealed.
 - b. On the basis of the Claimant's recorded position about witnesses at the disciplinary hearing and her acceptance that her initial request was not dismissed out of hand, I do not find that the Claimant has evidenced that this part of the process was unfair to her.
 - c. I do not find that the Claimant has proven on the balance of probability that Mr Wilmot lacked impartiality. Therefore, the finding by Ms Bolland that Mr Wilmot did not lack impartiality would seem to be reasonable.
 - d. For the fourth and fifth allegations. The reason for dismissal is not in dispute, what the Claimant asserts is that the Respondent could not genuinely believe she was guilty of what she was accused of. This is supported by the appeal the Claimant submits, where she does not raise issue with the reason or her understanding of it. The Claimant's appeal instead submits that she is sorry, but she does not feel the Respondent should uphold matters against her and the sanction is too harsh. The Claimant was able to make her challenge to the allegations against her during the disciplinary process, not only by the full response she submitted, but also because of her being able to submit interview notes that she had annotated ... "to accurately reflect my recollection of what had been discussed..." (as per paragraph 92 of the Claimant's statement).
137. The Claimant was genuinely believed by the Respondent to have committed the acts alleged. This was based on reasonable grounds after a reasonable investigation. I accept that Ms Bolland genuinely believed that the Claimant was not contrite and that the actions she genuinely believed the Claimant was guilty of do amount to gross misconduct within the examples set out in the Respondent's disciplinary procedure. For these reasons I do find that the decision to dismiss would fall within the band (or range) of reasonable responses. I have also noted and accept as the representative of the Respondent sets out in her skeleton argument ... "As to the sanction, different employers will take different views of what is

gross misconduct. R's disciplinary procedure includes an appendix which lists examples of misconduct and gross misconduct [C256]. Examples of the latter include bullying and harassment. CB explains her view at her paragraphs 44 to 47."

138. As to the Claimant's sixth allegation that AB was treated more favourably than her, it is my finding that the Claimant has presented no evidence to disprove or challenge the points of distinction that Ms Bolland relies upon. This matter was also given specific consideration by Mr Aldwinkle as part of his appeal considerations, as set out in his witness statement at paragraph 18.d. This was not challenged by the Claimant. I therefore accept the Respondent's evidential position on this matter and accept that AB was distinguishable from the Claimant for the reasons they rely upon to explain a difference of treatment.

139. The complaint of unfair dismissal therefore fails and is dismissed.

140. For the purposes of Rule 62(5) of the Employment Tribunals Rules of Procedure 2013, the issues which the tribunal determined are at paragraph 10; the findings of fact made in relation to those issues are at paragraphs 13 to 123; a concise identification of the relevant law is at paragraphs 124 to 132; how that law has been applied to those findings in order to decide the issues is at paragraphs 133 to 139.

Employment Judge Gray
Dated 2 June 2021

Judgment sent to Parties on
08 June 2021
By Mr J McCormick

For the Tribunal Office